

[4310-55]

Title 50—Wildlife and Fisheries

CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Determination of Five Plants as Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines five plants (*Arabis macdonaldiana*, *Phacelia argillacea*, *Pogogyne abramsii*, *Orcuttia mucronata*, and *Cordylanthus maritimus* ssp. *maritimus*) to be endangered species. Past degradation of and potential loss of habitat due to agriculture, housing developments, filling of coastal salt marshes, road and railroad construction, off-road vehicle use, and mining operations are threatening the continued existence of these species. These plants occur in California, Utah, and northern Baja California, Mexico. This action will provide conservation measures necessary for these plants' continued survival.

DATE: This rulemaking becomes effective on October 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Keith M. Schreiner, Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Secretary of the Smithsonian Institution, in response to section 12 of the Act, presented his report to Congress on January 9, 1975. This report, designated as House Document No. 94-51, contained lists of over 3,100 U.S. vascular plant taxa considered to be endangered, threatened, or extinct. On July 1, 1975, the Director published a notice in the FEDERAL REGISTER (40 FR 27823-27924) of his acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within as well as any habitat which might be determined to be critical, pursuant to section 7 of the Act.

In the FEDERAL REGISTER of June 7, 1976 (41 FR 22915-22922), the Service published proposed rules which among other things:

(1) Set forth the procedural steps of determining endangered or threatened species of plants;

(2) Prescribe the prohibitions which apply to such endangered or threatened plants or to the seeds, roots, or parts thereof;

(3) Establish procedures, conditions, and criteria for the application for and issuance of permits to conduct otherwise prohibited activities.

On June 16, 1976, the Service publishes a proposed rulemaking in the FEDERAL REGISTER (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. This list of 1,700 plant 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 above-mentioned FEDERAL REGISTER publications.

In the June 24, 1977, FEDERAL REGISTER (42 FR 32373-32381), the Service published a final rulemaking detailing the regulations to protect endangered and threatened plant species. The rulemaking established prohibitions and a permit procedure to grant exceptions to the prohibitions under certain circumstances.

SUMMARY OF COMMENTS AND RECOMMENDATIONS

Section 4(b)(1)(C) of the Act requires that a summary of all comments and recommendations received be published in the FEDERAL REGISTER prior to adding any species to the list of endangered and threatened wildlife and plants.

Official comments were received from the State of California. The California Department of Fish and Game did not offer any objections to the four California plants included in this rulemaking. Official comments were not received from the State of Utah or from Mexico. Hundreds of comments were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature in that they did not address individual plant species. Most comments addressed the program or the concept of endangered plants and their protection and regulation. These comments are summarized in the April 26, 1978, FEDERAL REGISTER publication of a final rulemaking to determine 13 plant species to be endangered or threatened species (43 FR 17909-17916).

The California Native Plant Society (CNPS), on contract to the U.S. Forest Service, supplied the Office of Endangered Species status reports on the four California plants included in this rulemaking. These status reports contain distribution and habitat data, endangerment factors, and management suggestions. The management sugges-

tion for *Arabis macdonaldiana* and *Pogogyne abramsii* was that they be declared endangered species as soon as possible so that Federal agencies could preserve that portion of the species' range on public lands. The management suggestion for *Orcuttia mucronata* was that if the species ever grew in large numbers again, some of the plants could be transplanted to a protected alkaline pool or an artificial alkaline vernal pool that could be constructed on any of the waterfowl refuges in the Central Valley. The CNPS suggested that research was needed to identify currently unknown factors adversely influencing *Cordylanthus maritimus* ssp. *maritimus*.

CONCLUSION

After a thorough review and consideration of all the information available, the Director has determined that *Arabis macdonaldiana* Eastwood, *Phacelia argillacea* Atwood, *Pogogyne abramsii* J. T. Howell, *Orcuttia mucronata* Crampton, and *Cordylanthus maritimus* Nutt. ex Benth. ssp. *maritimus* are in danger of becoming extinct throughout all or significant portions of their ranges due to one or more of the factors described in section 4(a) of the Act.

These factors and their application to the plant species contained in this rulemaking are as follows:

Arabis macdonaldiana

(1) *Present or threatened destruction, modification, or curtailment of its habitat or range.* Red Mountain, Medocino County, Calif., is the only known locality for this species. Approximately half of the species' range is privately owned by the Coastal Mining Co., a subsidiary of Hanna Mining Co. This company has unpatented mining claims on the remainder of the species' range, public land managed by the Bureau of Land Management. It is anticipated that this company plans to remove as much of the nickel-containing soil as is economically feasible. This operation could cover the entire top of Red Mountain and extirpate the species.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable to this species.

(3) *Disease or predation.* Not applicable to this species.

(4) *The inadequacy of existing regulatory mechanisms.* California has recently passed legislation to protect native endangered plants. This law primarily provides for the salvage of rare or endangered plants threatened by a proposed change in land use. *Arabis macdonaldiana* has not been listed as rare or endangered pursuant to State law.

(5) *Other natural or manmade factors affecting its continued existence.* None.

Phacelia argillacea

(1) *Present or threatened destruction, modification, or curtailment of its habitat or range.* The only known location of this species is in Utah County, Utah, on the Greenriver Shale Formation. As of 1977, only nine plants were counted. The loss and modification of habitat by the construction of a railroad that bisects its only known population has seriously affected this species. An access road runs along the railroad line and any expansion might extirpate this species.

(2) *Overutilization for commercial, sporting, scientific or educational purposes.* Not applicable to this species.

(3) *Disease or predation.* Not applicable to this species.

(4) *The inadequacy of existing regulatory mechanisms.* There currently exist no State or Federal laws protecting this species or its habitat.

(5) *Other natural or manmade factors affecting its continued existence.* None.

Pogogyne abramsii

(1) *Present or threatened destruction, modification, or curtailment of its habitat or range.* Collections of this species are from vernal pools on mesas of western San Diego County, Calif. Widening of Miramar Road and use of off-road vehicles are destroying the populations on Kearney Mesa. Widening Highway 163 through lands under the jurisdiction of the Miramar Naval Air Station north of San Diego would destroy several dozen vernal pools and a sizable section of the Miramar Mounds Natural Landmark. Cloverleaf construction on Highway 52 in this same area would destroy one-third of the Miramar Mounds Natural Landmark. Vernal pools at the end of Mira Mesa Road are being lost to housing development, off-road vehicle use, and illegal dumping. Some of the historical habitat at Otay Mesa is now in agricultural use.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable to this species.

(3) *Disease or predation.* Not applicable to this species.

(4) *The inadequacy of existing regulatory mechanisms.* California has recently passed legislation to protect native endangered plants. This law primarily provides for the salvage of rare or endangered plants threatened by a proposed change in land use. *Pogogyne abramsii* has not been listed as rare or endangered pursuant to State law.

(5) *Other natural or manmade factors affecting its continued existence.* None.

Orcuttia mucronata

(1) *Present or threatened destruction, modification, or curtailment of its habitat or range.* This species is currently known to occur only in one large (approximately 1 square mile) vernal lakebed 12 miles south of Dixon, Solano County, Calif. The site is surrounded by land used for agricultural purposes. Although the alkaline lake is not likely to be used for agricultural purposes in the near future, such use could take place in the eventual future. Housing developments have destroyed many vernal pools in this region.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable to this species.

(3) *Disease or predation.* Not applicable to this species.

(4) *The inadequacy of existing regulatory mechanisms.* California has recently passed legislation to protect native endangered plants. This law primarily provides for the salvage of rare or endangered plants threatened by a proposed change in land use. *Orcuttia mucronata* has not been listed as rare or endangered pursuant to State law.

(5) *Other natural or manmade factors affecting its continued existence.* None.

Cordylanthus maritimus ssp. *maritimus*

(1) *Present or threatened destruction, modification, or curtailment of its habitat or range.* Historically, this species has occurred at sea level in coastal salt marshes from Carpinteria, Santa Barbara County, to San Diego County and northern Baja California, Mexico. Present distribution may be restricted to the Tijuana River estuary, San Diego County; Point Mugu, Ventura County; and northern Baja California. Filling in of coastal salt marshes has either eliminated or drastically reduced this species in its known habitats. A current proposal to restore "natural" tidal flow to the marshes of Point Mugu Lagoon could eliminate a flourishing colony of *Cordylanthus maritimus* ssp. *maritimus*.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable to this species.

(3) *Disease or predation.* Not applicable to this species.

(4) *The inadequacy of existing regulatory mechanisms.* California has recently passed legislation to protect native endangered plants. This law primarily provides for the salvage of rare or endangered plants threatened

by a proposed change in land use. *Cordylanthus maritimus* ssp. *maritimus* has not been listed as rare or endangered pursuant to State law.

(5) *Other natural or manmade factors affecting its continued existence.* None.

EFFECT OF THE RULEMAKING

Section 7 of the act provides:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of the act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species or threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

Provisions for interagency cooperation were published on January 4, 1978, in the FEDERAL REGISTER (43 FR 870-876) to assist Federal agencies in complying with section 7.

Endangered species regulations already published in title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all endangered species. The regulations referred to above, which pertain to endangered and threatened plant species, are found at sections 17.61 and 17.71 of title 50 and are summarized below.

All prohibitions of section 9(a)(2) of the act would apply. These prohibitions, in part, would 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 these species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies.

Regulations published in the FEDERAL REGISTER of June 24, 1977 (42 FR 32373), codified in 50 CFR Part 17, provided for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened species under certain circumstances. Such permits involving endangered plants are available for scientific purposes or for enhancing the propagation or survival of the species. Such permits involving threatened plants are available for scientific purposes, the enhancement of the propagation or survival of the species, economic hardship, botanical or horticultural exhibition, educational purposes, or

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other activities consistent with the purposes and policy of the act.

EFFECT INTERNATIONALLY

In addition to the protection provided by the act, the Service will review the status of these species to determine whether they should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate appendixes to that convention or whether they should be considered under other appropriate international agreements.

NATIONAL ENVIRONMENTAL POLICY ACT

An environmental assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment is the basis for a decision that this determination is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this rule is Mrs. Lorraine K. Williams, Washing-

ton Office of Endangered Species, 202-343-7814.

REGULATION PROMULGATION

Accordingly, § 17.12 of part 17 of chapter I of title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Section 17.12 is amended by adding, in alphabetical order by family, genus, and species, the following plants:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Brassicaceae—Mustard family:						
<i>Arabis macdonal-</i>	McDonald's rock cress	U.S.A. (California)	Entire	E	44	NA
<i>diana</i>						
Hydrophyllaceae—Waterleaf family:						
<i>Phacelia argillacea</i>	Unnamed Phacelia	U.S.A. (Utah)	do	E	44	NA
Lamiaceae—Mint family:						
<i>Pogogyne abramsii</i>	San Diego pogogyne	U.S.A. (California)	do	E	44	NA
Poaceae—Grass family:						
<i>Orcuttia mucronata</i>	Crampton's orcutt grass	do	do	E	44	NA
Scrophulariaceae—Snapdragon family:						
<i>Cordylanthus mar-</i>	Salt marsh bird's-beak	U.S.A. (California); Mexico	do	E	44	NA
<i>titmus ssp. maritimus</i>						

NOTE.—The Service has determined that this document does not contain a major action requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

Dated: August 21, 1978.

HARVEY K. NELSON,
Acting Director,
Fish and Wildlife Service.

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