

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine *Primula Maguirei* (maguire Primrose) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Primula maguirei* (maguire primrose) to be a threatened species under the authority of the Endangered Species Act of 1973, as amended. No critical habitat is being proposed at this time. There are nine known populations of *Primula maguirei*, none of which contains more than 100 individual plants. These populations are located in Logan Canyon, Cache County, Utah, on U.S. Forest Service and Utah State lands. The plants grow on ledges and in cracks of vertical cliffs and outcropping of rock within the canyon. The species is threatened by rock climbing, collecting, and potential highway construction. Determination that *Primula maguirei* is a threatened species would provide the species protection under the authority of the Endangered Species Act of 1973, as amended. The Service is requesting comments on this proposed action.

DATES: Comments from all interested parties must be received by June 12, 1984. Public hearing requests must be received by May 29, 1984.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25488, Denver Federal Center, Denver, Colorado 80225. Comments and materials received will be available for public inspection during normal business hours at the Service's Regional Endangered Species Division, 134 Union Boulevard, Fourth Floor, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: Dr. James L. Miller, Regional Botanist, Regional Endangered Species Division, at either address above, 303-234-2498; FTS 234-2498.

SUPPLEMENTARY INFORMATION:**Background**

Primula maguirei was described by L. O. Williams in 1936. The plant is a perennial herb, with conspicuous and showy lavender-colored flowers. Stems are approximately 4-10 cm tall and bear from one to three flowers. Leaves are broadly spatulate, rounded at the tip, and approximately 3-7 cm long and 8-12 mm broad. This species is found only in Logan Canyon, Utah, and grows on damp ledges, crevices, and overhanging rocks of the canyon walls. Montane shrubs, aspen, and conifers are the dominant species of the plant community. *Primula maguirei* is typically found on northerly exposures with a slope of 50 to 100 percent, and at elevations of 4,500 to 5,500 ft. (1,342 to 1,670 m). Geological formations of the canyon are composed mostly of carboniferous limestones and dolomites.

Primula maguirei was first observed in Logan Canyon on May 10, 1911, and was seen again in 1932 and 1953, but the number of plants found on these occasions is not known. At present, there are nine known populations, none of which contains more than 100 individual plants (some contain less than 30). All populations are threatened by potential highway construction, by rock climbing, and collecting.

Section 12 of the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, directed the Secretary of the Smithsonian Institution to prepare a report on those plant species considered to be endangered, threatened, or extinct. This report was submitted to Congress (House Document No. 94-51) on January 3, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823-27924) of its acceptance of the report as a petition within the context of former Section 4(c)(2) of the Endangered Species Act of 1973 (now Section 4(b)(3)(A), as modified), and of its intention to review the status of the plant taxa named therein. *Primula maguirei* was included in that report.

On December 15, 1980, the Service published a new notice of review for plants in the **Federal Register** (45 FR 82480-82569), which included *Primula maguirei* as a Category 1 species. Category 1 is comprised of taxa for which the Service presently has sufficient biological information to support their being listed as endangered or threatened species. The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review are considered to be

petitioned, and the deadline for a finding on those species including *Primula maguirei*, was October 13, 1983.

On October 13, 1983, the petition finding was made that listing *Primula maguirei* was warranted but precluded by other pending listing actions, in accordance with Section 4(b)(3)(B)(iii) of the Act. Such a finding requires a reevaluation of the petition within 12 months, pursuant to Section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made; this proposed rule constitutes the new finding that the petitioned action is warranted and proposes to implement the action in accordance with Section 4(b)(3)(ii) of the Act.

Status reports compiled by Beedlow *et al.* (1980), Welsh and Thorne (1979) and Welsh (1979), and investigations by Service botanists and others have provided new biological data which are included in this proposal. These new data demonstrate low numbers of plants and continuing threats to the species.

Summary of Factors Affecting the Species

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; under revision to accommodate 1982 amendments) set forth the procedures for adding species to the Federal lists. 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 *Primula maguirei* L. D. Williams (Maguire primrose) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Primula maguirei* is found only in Logan Canyon, Cache County, Utah (Welsh and Thorne 1979; Welsh 1979; Beedlow *et al.* 1980). A 1980 survey by Bio-Resources, Inc., of Logan, Utah, located two new populations in addition to the seven previously known, bringing the total of known populations to nine (Beedlow *et al.* 1980). Increased human activities in Logan Canyon pose a threat to this species. The Utah Department of Transportation is planning a highway construction project for U.S. Route 89 between the Right Fork of Logan Canyon to Rick's Spring. One known population center of *P. maguirei* would be affected by this activity, and two additional populations would also probably be disturbed. Any construction along that stretch of highway done without consideration of *P. maguirei* could threaten the species (Beedlow *et al.* 1980). Development of campgrounds

in the Logan Canyon area also may pose a threat to the species (Welsh 1979).

B. *Overutilization for commercial, recreational, scientific or educational purposes.* *Primula maguirei* is a beautiful flowering plant and therefore subject to overcollection. Exploitation for commercial and amateur gardening is a potential threat (Welsh and Thorne 1979). Rock climbing activity is presently damaging some plants; climbers "clean" vegetation from cracks and ledges as they climb (Beedlow *et al.* 1980). Critical habitat is not being proposed due to the potential for exploitation of *Primula maguirei* for gardening purposes.

C. *Disease or predation.* None known.

D. *The inadequacy of existing regulatory mechanisms.* No State laws or regulations currently protect *Primula maguirei*. The U.S. Forest Service has established a national policy, based on the National Forest Management Act, of protecting species that it has designated as "sensitive" species (Title 2600, Chapter 2670.3(2)). *Primula maguirei* has received such a classification and hence it is the policy of the Forest Service to provide for its protection. Listing of this species under the Endangered Species Act will provide the regulatory base to sustain the Forest Service in its national sensitive species policy on behalf of *Primula maguirei*, plus add the authority of the Fish and Wildlife Service in providing for the continued conservation of this tax-on as long as it remains listed as threatened. The Endangered Species Act would provide for protection of this species through Section 7 requirements for interagency cooperation, and through Section 9, which prohibits removal of endangered plants from areas under Federal jurisdiction when there is intent to reduce the plant to possession. The latter protection has been proposed for threatened plants in 48 FR 31417-31422 (July 8, 1983) to be codified at 50 CFR 17.61(c). See also 50 CFR 17.71.

E. *Other natural or manmade factors affecting its continued existence.* None known.

Critical Habitat

The Endangered Species Act, as amended, requires that to the maximum extent prudent and determinable the Secretary designate any habitat of a species which is considered to be 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 this species at this time. As discussed under Factor B of the "Summary of Factors Affecting the Species," *Primula maguirei* is a beautiful plant that is threatened by

collecting with the potential for exploitation for commercial and amateur gardening. These activities are difficult to control and are not regulated by the Endangered Species Act with respect to plants, except on Federal lands. The Service believes that critical habitat designation, along with the required publication of maps, would make this species even more vulnerable to overcollection. Therefore, it would not be prudent to determine critical habitat for *Primula maguirei*.

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 land acquisition if necessary, and cooperation with the States; it also requires that recovery actions be carried out for all listed species and these are initiated by the Service following listing. The protection required by Federal agencies and applicable prohibitions 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. 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)(4) requires Federal agencies to informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species. When a species is listed, 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. If an activity may affect a listed species, the Federal agency must enter into formal consultation with the Service under Section 7(a)(2). The Forest Service is already aware of the species' existence on its lands and is presently managing for its protection there.

The Act and implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions which apply to all threatened plant species. With respect to *Primula maguirei*, all trade prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.71, 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 this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can 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 species under certain circumstances. It is not anticipated that many trade permits would ever be issued since *Primula maguirei*, although a desirable species, is not common in cultivation. Its rarity in the wild also precludes any significant trade.

Section 9(a)(2)(B) of the Act, as amended in 1982, states that it is unlawful to remove and reduce to possession endangered plant species from areas under Federal jurisdiction. Section 4(d) provides for the provision of such protection to threatened species through regulations. This new protection will accrue to *Primula maguirei* once revised regulations are promulgated. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417).

Lands involved in this action are managed by the U.S. Forest Service and the State of Utah. No private lands are involved, and it is anticipated that few collecting permits will ever be requested for *Primula maguirei*.

Requests for copies of the regulations on plants, and inquires regarding them, may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of any endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Primula maguirei*;
- (2) The location of any additional populations of *Primula maguirei* and the

reasons why any habitat of this species should or should not be determined to be critical habitat as provided by Section 4 of the Act;

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

(4) Current or planned activities in the subject area and their possible impacts on *Primula maguirei*.

Final promulgation of the regulation on *Primula maguirei* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

National Environmental Policy Act

The Fish and Wildlife Service has determined the Environmental Assessments, as defined by 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. The reasons for this determination were published in the *Federal Register* (48 FR 49244) on October 25, 1983.

References

- Beedlow, Peter A., John G. Carter, and Frank J. Smith. 1980. *Primula maguirei* L. Wms. (Primulaceae): a Preliminary Report on the Population Biology of an Endemic Plant. Bio-Resources, Inc., Logan, Utah. 2 pp.
- Welsh, S.L. and K.H. Thorne. 1979. Illustrated Manual of Proposed Endangered and Threatened Plants of Utah. U.S. Fish and Wildlife Service, Bureau of Land Management, and U.S. Forest Service. Denver, Colorado. 318 pp.
- Welsh, S.L. 1979. Status Report: *Primula maguirei*. U.S. Fish and Wildlife Service, Denver, Colorado. 6 pp.
- Williams, Louis O. 1936. Revisions of the Western Primulas. American Midland Naturalist. 17:741-748.

Author

The primary author of this proposed rule is Julie Bridenbaugh, Endangered Species Division, U.S. Fish and Wildlife Service, Denver Regional Office, Denver, Colorado (303/234-2496). James Miller of the Service's Denver Regional Endangered Species Office, and Bruce MacBryde and John Paradiso of the Service's Washington Office of Endangered Species, served as editors.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 811; 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. It is proposed to amend § 17.12(h) by adding the following in alphabetical order to the List of Endangered and Threatened plants:

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Primulaceae—Primrose family:						
<i>Primula maguirei</i>	Maguire primrose.....	U.S.A. (UT).....	T	NA.....	NA

Dated: March 29, 1984.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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