

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**Endangered and Threatened Wildlife and Plants; Proposal To Determine "Hudsonia montana" (mountain golden-heather) To Be a Threatened Species and To Determine Its Critical Habitat**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to determine a plant, *Hudsonia montana* (mountain golden-heather), to be a Threatened species and to determine its Critical Habitat under the authority contained in the Endangered Species Act. This plant occurs in North Carolina, on land owned by the U.S. Forest Service and is threatened by trampling and other factors. This proposal, if finalized, would implement Federal protection provided by the Endangered Species Act of 1973, as amended.

**DATES:** Comments from the public must be received by July 28, 1980. Comments from the Governor of North Carolina must be received by August 27, 1980. A public meeting on this proposal will be held on Tuesday, July 1 at 7:00 p.m.

**ADDRESS:** Public meeting location: Western Piedmont Community College auditorium, Morganton, North Carolina.

Comments and materials concerning this proposal, preferably in triplicate, should be sent to the Director (FWS/OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Service's Office of Endangered Species, 1000 N. Glebe Road, Fifth Floor, Arlington, Virginia 22201.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Spinks, Chief, Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 703/235-2771.

**SUPPLEMENTARY INFORMATION:** *Hudsonia montana* (mountain golden-heather) was first discovered on the summit of Table Rock, North Carolina in 1816, by Thomas Nuttall. Today all known populations of the species occur within an eight kilometer radius of Table Rock, and all are on U.S. Forest Service land. The plant is a low perennial shrub with needle-leaves and yellow flowers which measure about

two centimeters across. The plants occur on open wind-swept rock ledges.

The continued existence of this plant and the fragile plant communities in which it occurs are being threatened by trampling. This rule proposes to determine *Hudsonia montana* to be a threatened species and would implement the protection provided by the Endangered Species Act. The following paragraphs further discuss the actions to date involving this plant, the threats to the plant, and effects of the proposed action.

**Background**

Section 12 of the Endangered Species Act of 1973 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. 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. On June 16, 1976, the Service published a proposed rulemaking in the *Federal Register* (41 FR 24523-23472) 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 July 1, 1975 *Federal Register* publication. *Hudsonia montana* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal. The notice of review and the proposal included *Hudsonia ericooides* ssp. *montana* rather than *Hudsonia montana*. Treatment of this taxon as a subspecies by Skog and Nickerson (1972) was followed by the Smithsonian Institution and thus the derived *Federal Register* publications. Since 1972, however, this taxon has been treated as a species by various authors. Recent morphological, cytological, and population studies by Morse (1979) have confirmed the distinctness of *Hudsonia montana* from *Hudsonia ericooides*.

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one year grace period was given to proposals already over two years old. On December 10, 1979, the Service published a notice withdrawing the June 16, 1976, proposal along with

four other proposals which had expired. At this time the Service has sufficient new information to warrant reproposing *Hudsonia montana*. Critical Habitat is being proposed for *Hudsonia montana* for the first time.

The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

**Summary of Factors Affecting the Species**

Section 4(a) of the Endangered Species Act (16 U.S.C. 1531 et seq.) states that the Secretary of the Interior shall determine whether any species is an Endangered species or a Threatened species due to one or more of the five factors described in Section 4(a) of the Act. These factors and their application to *Hudsonia montana* Nuttall (mountain golden-heather) are as follows:

(1) *Present or threatened destruction, modification or curtailment of its habitat or range.* *Hudsonia montana* was originally collected by Thomas Nuttall in 1816, from the summit of Table Rock Mountain in Burke County, North Carolina. Since its discovery, it has been collected at infrequent intervals from this and several other locations all within an eight kilometer radius of Table Rock Mountain, all within Burke County, North Carolina. The species was assumed extinct by various recent treatments due to the failure of botanists to relocate the populations. However, all populations were still extant in 1978 (Morse 1980).

Although all populations are still extant, two populations have shown declines in the number of individuals present (Morse 1980). Nuttall, in 1816, described *Hudsonia montana* as abundant and forming extensive caespitose patches on Table Rock (Pennell 1936). In 1978, approximately 21 plants (including juveniles and seedlings) were observed to be present on Table Rock (Morse, 1980).

This reduction is, in part, due to trampling and soil compaction by human visitors. One location receives heavy use by hikers and campers and one camp fire circle resulted in the partial charring of one large clump of *Hudsonia montana*. The other populations have not been monitored, so changes in the populations cannot be readily determined. All populations are threatened by the heavy use the area receives from hikers and rock climbers and all populations show impact from trampling. Misplaced trails or inadequately regulated hiking and climbing could destroy entire

populations or population segments in a short period.

*Hudsonia montana* grows on exposed quartzite ledges in an ecotone between bare rock and *Leiophyllum*-dominated heath balds which merge into pine-oak forest. All populations occur on land owned by the U.S. Forest Service in the North Fork Catawba River Planning Unit, Pisgah National Forest, North Carolina.

Efforts to develop a habitat management and monitoring plan are being initiated for the *Hudsonia montana* populations by the U.S. Forest Service personnel. Possible measures which this plan could incorporate include:

(a) Regulations restricting climbing, campfires, and off-trail hiking on designated ledges;

(b) Consideration of *Hudsonia* requirements in trail maintenance operations;

(c) Realignment of trails at locations where these pose a threat to the plant and implementation of erosion control measures at these locations; and

(d) Monitoring studies to evaluate the maintenance and reproduction of *Hudsonia montana*.

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

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

(4) *The inadequacy of existing regulatory mechanisms.* During the summer of 1979, North Carolina passed new legislation to protect its Endangered plants. At this time, the State is in the process of developing a list of species to be included under that legislation and *Hudsonia montana* could be protected under the State law in the future.

The Forest Service's regulations prohibit removing, destroying, or damaging any plant that is classified as a Threatened, Endangered, rare, or unique species (36 CFR Part 261). These regulations, however, may be difficult to enforce. The Endangered Species Act will offer additional protection to this species.

(5) *Other natural or man-made factors affecting its continued existence.* *Hudsonia montana* is an early pioneer species and evidence indicates that overtopping by taller shrubs may result in the death of the *Hudsonia* plants.

Removal of these taller shrubs overtopping the *Hudsonia* should be incorporated into the management plan for the species. Seedlings have been noted most often in disturbed substrates so preparation of seed beds perhaps by fire or other means may also be necessary.

The small size and number of the populations cause this species to be in greater danger of extinction due to natural fluctuations of populations, especially in the case of the three smaller populations.

#### Critical Habitat

The Act defines "Critical Habitat" as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, in accordance with the provisions of Section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by the species at the time it is listed, in accordance with the provisions of Section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Section 4(f)(4) of the Act requires, to the maximum extent practicable that any proposal to determine Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or may be impacted by such designation.

Any activity which would result in increased trampling or disturbance of the fragile areas where *Hudsonia montana* occurs would adversely modify the Critical Habitat. The long-term solution on how to best protect *Hudsonia montana* may be to greatly reduce the human traffic in the immediate areas where this plant occurs. In this respect, Critical Habitat designation may affect Federal activities as this may require prohibiting the development of new trails in areas where the plant occurs, relocating old trails, or other steps by the Forest Service.

Critical Habitat for *Hudsonia montana* is being determined to include all known populations of this species in North Carolina. Adjacent suitable habitat is being included as essential to the conservation of the species because it provides an area for natural expansion. Modifications of this Critical Habitat designation may be proposed in the future.

Section 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared a draft impact analysis and believes at this time that economic and other impacts of this action are not significant in the foreseeable future. As

stated above, designation would impact only Forest Service practices relating to controlling recreational land usage. The Service has been in contact with the Forest Service and others who had input into the economic analysis of this proposed Critical Habitat. This economic analysis served as part of the basis for the Service's decisions as to whether or not to exclude any area from the Critical Habitat for *Hudsonia montana*. The Service will prepare a final impact analysis prior to the time of final rulemaking.

#### Effects of This Proposal if Published as a Final Rule

In addition to the effects discussed above, the effects of this proposal if published as a final rule would include, but would not necessarily be limited to, those mentioned below.

The Act and implementing regulations found at 50 CFR 17.61 set forth a series of general prohibitions and exceptions which apply to all Endangered plant species. All of those prohibitions and exceptions also apply to any Threatened species, excluding seeds of cultivated plants treated as Threatened, unless a special rule pertaining to that Threatened species has been published and indicates otherwise. The regulations referred to above, which pertain to Endangered and Threatened plants, are found at §§ 17.61 and 17.71, of 50 CFR and are summarized below.

With respect to *Hudsonia montana*, all prohibitions of Section 9(a)(2) of the Act, as implemented by § 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. Certain exemptions would apply to agents of the Service and State conservation agencies. The Act and § 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving Threatened species under certain circumstances.

Section 7(a) of the Act requires all Federal agencies to evaluate their actions with respect to Endangered and Threatened species. Provisions for Interagency Cooperation are codified at 50 CFR Part 402. If published as a final rule this proposal would require Federal agencies not only to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of *Hudsonia montana*, but also to insure that their actions are not likely to result in the destruction or adverse modification of its Critical

Habitat which has been determined by the Secretary.

In addition, if listed, the Service will review the status of this species to determine whether it 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 Appendices to that Convention or whether it should be considered under other appropriate international agreements.

**National Environmental Policy Act**

A draft environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia, and may be examined, by appointment, during regular business hours. A determination will be made at the time of final rulemaking as to whether this is 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.

**Public Comments Solicited**

The Director intends that the rules finally adopted will be as accurate and 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, private interests, or any other interested party

concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

- (1) Biological or other relevant data concerning any threat (or the lack thereof) to the species included in this proposal;
  - (2) The location of *Hudsonia montana* and the reasons why any of its habitat should or should not be determined to be Critical Habitat as provided for by Section 7 of the Act;
  - (3) Additional information concerning the range and distribution of this species;
  - (4) Current or planned activities in the subject areas and the probable impacts of such activities on the area designated as Critical Habitat; and
  - (5) The foreseeable economic and other impacts of the Critical Habitat designation on Federal activities.
- Final promulgation of the rules on *Hudsonia montana* will take into consideration the comments and any additional information received by the Director, and such communications may lead him to adopt final rules that differ from this proposal.

**Public Meetings**

The Service hereby announces that a public meeting will be held on this proposed rule. The public is invited to attend this meeting and to present opinions and information on the proposal. Specific information relating to the public meeting is set out below: Place: 1. Western Piedmont Community College auditorium Morganton, N.C.; date: July 1, 1980; time: 7 p.m.; and

subject: Proposal of *Hudsonia montana* to be threatened.

This proposal is being published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; 87 Stat. 884). The primary author of this proposed rule is Ms. E. LaVerne Smith, Washington Office of Endangered Species (703/235-1975).

**Literature Cited**

Morse, Larry E. 1980. Report on the Conservation Status of *Hudsonia montana*, a Candidate Endangered Species. In: Geographical Data Organization for Rare Plant Conservation, edited by Larry E. Morse and Mary Sue Henifin, The New York Botanical Garden, Bronx, N.Y. (In Press).

Morse, L. E. 1979. Systematics and Ecological Biogeography of the Genus *Hudsonia* (Cistaceae), the Sand Heathers. Ph. D. dissertation. Harvard University, Cambridge, Mass.

Pennel, F. W. 1936. Travels and scientific publications of Thomas Nuttall. *Bartonia* 18:1-51.

Skog, J. T. and N. H. Nickerson. 1972. Variation and Speciation in the genus *Hudsonia*. *Ann. Missouri Botanical Gardens* 59:454-464.

**Regulations Promulgation**

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. It is proposed to amend § 17.12 by adding, in alphabetical order, the following to the list of plants:

**§ 17.12 Endangered and threatened plants.**

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Cistaceae—Rockrose Family:						
<i>Hudsonia montana</i>	Mountain golden-heather	U.S.A. North Carolina	T		Yes	NA

2. Also, the Service proposes to amend § 17.96(a) by adding the Critical Habitat of *Hudsonia montana* after that of *Erysimum capitatum* var. *angustatum* (Contra Costa wallflower) as follows:

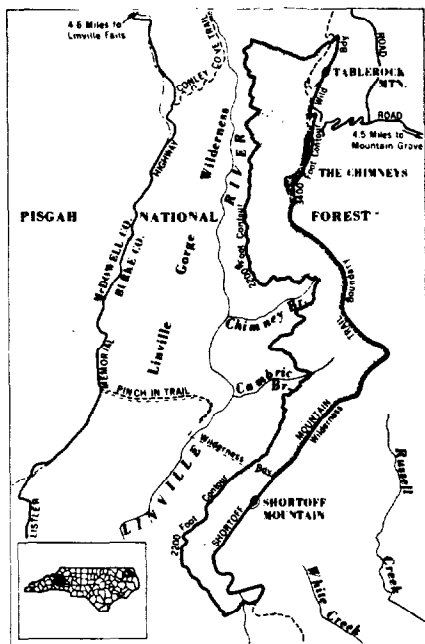
§ 17.96 Critical habitat-plants.

(a) \* \* \*

Family Cistaceae: Mountain golden-heather (*Hudsonia montana*). North Carolina, (Burke County) the area bounded on the west by the 2200' contour, and on the east by a line extending from the intersection of the 2200' contour and the Shortoff Mountain Trail north to the eastern boundary of the Linville Gorge Wilderness; following the boundary northward until it intersects the 3400' contour at "The Chimneys;" then north along the 3400' contour until it rejoins the Wilderness Boundary; then north to the intersection with the 3200' contour north of Tablerock Mountain; then westward along the 3200' contour until the contour turns south. At this point the line extends west until its intersection with the 2200' contour.

\* \* \* \* \*

**Mountain Golden Heather, Burke Co., North Carolina**



Dated: April 10, 1980.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

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