

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of *Hudsonia montana* To Be a Threatened Species, With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Hudsonia montana* (mountain golden-heather) to be a Threatened species and determines its Critical Habitat under the authority contained in the Endangered Species Act. This plant occurs in North Carolina solely on public lands administered by the U.S. Forest Service. The plant is threatened by human trampling and other factors. This determination of *Hudsonia montana* to be a Threatened species will implement the protection provided by the Endangered Species Act of 1973, as amended.

DATES: This rule becomes effective on November 19, 1980.

ADDRESSES: Questions concerning this action may be addressed to the Director (FWS/OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, 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 public lands administered by the U.S. Forest Service. 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 community in which it occurs are threatened by trampling. This rule determines *Hudsonia montana* to be a Threatened species and implements 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 this 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) 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 proposal 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 July 1, 1975, **Federal Register** publication. *Hudsonia montana* was included in the Smithsonian's report, the 1975 notice of review, and the 1976 proposal. The notice of review and the proposal included *Hudsonia ericoides* 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 ericoides*.

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 (44 FR 70796) withdrawing the June 16, 1976, proposal along with four other proposals which had expired.

Based on sufficient new information the Service repropoed *Hudsonia montana* on May 29, 1980 and proposed its Critical Habitat for the first time (45 FR 3633). Additional studies conducted by the local Fish and Wildlife Service Area Office this spring and research provided by Dr. L. E. Morse in January of this year provided additional biological evidence verifying the precarious status of the species. A public meeting was held on this

proposal on July 1, 1980, in Morganton, North Carolina.

The regulations to protect Endangered and Threatened plant species appear at 50 CFR 17 and establish the prohibitions and a permit procedure to grant exceptions, under certain circumstances, to the prohibitions.

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 14.

Summary of Comments and Recommendations

In the May 29, 1980, **Federal Register** proposed rule (45 FR 36331) and associated notifications and press releases, all interested parties were requested to submit factual reports or information which might contribute to the development of a final rule. Letters were sent to the Governor of North Carolina, the U.S. Forest Service, and local governments notifying them of the proposed rule and soliciting their comments and suggestions. All comments received during the period from May 29, 1980, through August 27, 1980, were considered and these are discussed below.

The Governor of North Carolina commented that the *Hudsonia* proposal was referred to the North Carolina Plant Conservation Board, which had already placed the plant on North Carolina's threatened plant list. A representative of the North Carolina Department of Agriculture which administers North Carolina's Plant Protection Act spoke at the public meeting. Those comments will be summarized later with the other public meeting comments.

The North Carolina Natural Heritage Program commented favorably on the listing of *Hudsonia montana* and stated that they felt the designation of Threatened status was appropriate. The Burke County Manager commented that Burke County endorsed the listing of *Hudsonia montana* as Threatened.

The U.S. Forest Service commented that they feel their management program adequate to conserve *Hudsonia montana* and therefore did not recommend listing. Service Response: The Forest Service only began developing a monitoring plan in the spring of 1980 to determine what management is needed for *Hudsonia montana*. Once management begins and if long range monitoring shows the plant not to be Threatened, steps will be taken by the Service to delist the species. At this time, the species fits the definition of Threatened and is being listed accordingly.

The Garden Club of America commented that they support the listing of *Hudsonia montana* as a Threatened species. Two private citizens commented that they support the listing of *Hudsonia montana* as Threatened and provided information on status and threats.

A public meeting concerning the proposal of *Hudsonia montana* to be a Threatened species was held on July 1, 1980, in Morganton, North Carolina. Thirty-six people attended. Presentations concerning *Hudsonia montana* and its listing as Threatened were made by Service personnel. Statements and questions from the audience were then entertained. A representative of the North Carolina Department of Agriculture described North Carolina's plant protection program and the North Carolina Plant Conservation Act. He pointed out that *Hudsonia montana* is on the State's list as a threatened species and that Federal listing would complement the protection offered by the State law.

An individual representing a rock climbing and outdoor recreation group voiced concerns over the impact of the listing on such activities. A representative of the North Carolina Bow Hunters' Association voiced concern over the impact of the listing on hunting in Linville Gorge. These concerns were addressed by Service personnel and it was pointed out that such impacts should be minimal or non-existent. If the Forest Service did decide in the future to close areas where the populations of the species occur to hikers and climbers, only several small areas would be involved. Such action would not put an undue burden on climbers in the area since there are many better climbing spots within a matter of feet which are not occupied by *Hudsonia montana*. In fact, Outward Bound, a private enterprise which teaches rockclimbing, among other things, and leases land in the Forest has volunteered help in identifying and monitoring areas occupied by the plant. The audience offered other similar observations and comments in an informal discussion which followed.

Conclusion

After a thorough review and consideration of all information available, the Director has determined that *Hudsonia montana* (mountain golden-heather) is likely to become an Endangered species within the foreseeable future throughout all or a significant portion of its range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Hudsonia montana* 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 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 earlier known populations were still extant in 1978 (Morse 1980).

Although all previously known 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 apparent 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 public lands administered 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 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* was included upon that list as of July 1, 1980.

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 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 considered in 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 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.

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(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 for best protecting *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.

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 an impact analysis and believes at this time that economic and other impacts of this action are not significant. As stated above, designation would impact only Forest Service practices relating to controlling recreational land use. The Service has been in contact with the Forest Service and others who had input into the impact analysis of determining this 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*.

Effects of the Rule

In addition to the effects discussed above, the effects of this rule will include, but will not necessarily be limited to, those mentioned below.

The Act and implementing regulations published in the June 24, 1977, **Federal Register** (42 FR 32373) 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 exceptions would apply to agents of the Service and State conservation agencies. The Act and 50 CFR § 17.71 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered or Threatened species under certain circumstances. International and interstate commercial trade in *Hudsonia montana* does not exist. It is anticipated that few permits involving plants of wild origin would ever be issued, since this plant is not common in the wild or in cultivation. Additional paperwork and permits required for the public would be minimal in the case of *Hudsonia montana*.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species which is listed as Endangered or Threatened. This protection will now accrue to *Hudsonia montana*. Provisions for Interagency Cooperation implementing Section 7 are codified at 50 CFR Part 402. These 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 of adverse modification of its Critical Habitat which has been determined by the Director. A

discussion of the Forest Service's involvement appears in the Critical Habitat section of this rule. No other Federal involvement is foreseeable at this time.

National Environmental Policy Act

An 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 during regular business hours, by appointment. This assessment forms the basis for a decision that this 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.

Author

This rule is being published under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543; 87 Stat. 844). The primary author of this rule is Ms. E. LaVerne Smith, Washington Office of Endangered Species (703/235-1975).

Literature Cited

Morse, Larry E. 1980. Report on the Conservation 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, New York (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, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended, as set forth below.

1. Section 17.12 is amended by adding, in alphabetical order, the following plant:

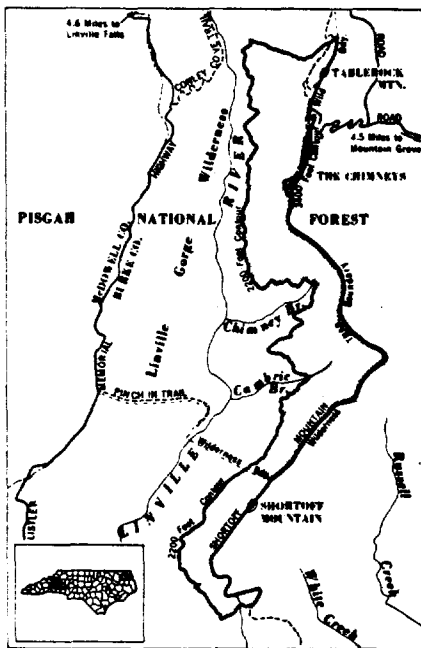
§ 17.12 Endangered and threatened plants.

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. (NC)	T	17.96(a)	NA

§ 17.26 [Amended]

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

Family Cistaceae: Mountain golden heather (*Hudsonia montana*) North Carolina: Burke County; the area bounded by the following: on the west by the 2200' contour; on the east by the Linville Gorge Wilderness Boundary north from the intersection of the 2200' contour and the Shortoff Mountain Trail to where it intersects the 3400' contour at "The chimneys"—then following the 3400' contour north until it reintersects the Wilderness Boundary—then following the Wilderness Boundary again northward until it intersects the 3200' contour extending west from its intersection with the Wilderness Boundary until it begins to turn south—at this point the Boundary extends due east until it intersects the 2200' contour.



Dated: September 30, 1980.

Lynn A. Greenwalt,
Director, Fish and Wildlife Service

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