
DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Proposal To Determine *Asclepias Welshii* (Welsh's Milkweed) To Be an Endangered Species and To Designate Its Critical Habitat**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Asclepias welshii* (Welsh's milkweed) to be an endangered species and to designate its critical habitat under the authority of the Endangered Species Act, as amended. This species known to occur only in the Coral Pink Sand Dunes area, and in a small area of the Sand Hills to the northeast of the Coral Pink Sand Dunes, Kane County, Utah. In the Coral Pink Sand Dunes, most plants (about 6,000) occur on land administered by the Bureau of Land Management. Another 2,000 plants are thought to occur on State of Utah land in the Coral Pink Sand Dunes State Park, while about 500 plants are estimated to grow in the Sand Hills northeast of the Coral Pink Sand Dunes. Altogether, the total population of this species is thought to be no more than 8,500 plants. The population in the Coral Pink Sand Dunes is distributed by off-road vehicle activity and domestic livestock grazing. This proposal, if made final, would implement for this species the protection provided by the Endangered Species Act of 1973, as amended. The Service seeks data and comments from the public on this proposed action.

DATES: Comments from all interested parties must be received by August 6, 1984. Public hearing requests must be received by July 23, 1984.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, Region 6, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. Comments and materials received will be available for public inspection during normal business hours at the Service's Region

Endangered Species Division, 134 Union, fourth floor, Lakewood, Colorado.

FOR FURTHER INFORMATION CONTACT: James L. Miller, Regional Botanist, Region 6, Endangered Species Division (see **ADDRESSES** section), 303-234-2496; FTS 234-2496.

SUPPLEMENTARY INFORMATION:

Background

Asclepias welshii (Welsh's milkweed) is in the family Asclepiadaceae (milkweed family). It was described by N. Holmgren and P. Holmgren in 1979 from plants collected on the Coral Pink Sand Dunes in Kane County, Utah. Five earlier collections were made in this area between 1954 and 1978 by Walter Cottam, A. H. Barnum, N. Holmgren, and S. L. Welsh (Holmgren and Holmgren, 1979). This plant is an herbaceous perennial, 2.5-10 cm. tall, with large oval leaves and cream colored flowers that are rose-tinged in the middle. This species grows on open, sparsely vegetated sand dunes, and on the lee slopes of dunes in the shade of trees.

The population consists of approximately 8,500 individuals in about 12 separate groups distributed somewhat randomly over the Coral Pink Sand Dunes and in an area of the Sand Hills to the northeast. In the Coral Pink Sand Dunes Area administered by the Bureau of Land Management (BLM), a careful survey disclosed about 6,000 plants. On State of Utah land (Coral Pink Sand Dunes State Park) there are about 2,000 plants, while in the small area of the Sand Hills to the northeast there are an estimated additional 500 plants (Anderson, pers. comm., January 1984). The plants grow on both the tops and sides of the dunes. There is direct evidence of grazing of plants by livestock, with over 50 percent of the plants affected in some parts of the population.

In the summer of 1980, new field work was carried out at the Coral Pink Sand Dunes site by Service botanist (Anderson 1980). This investigation involved mapping groups of plants and counting plants by age class. The investigation showed that the population is being adversely impacted by off-road vehicle (ORV) activity and domestic livestock grazing.

This species was included in the list of plants for threatened or endangered classification in the December 15, 1980, **Federal Register** (42 FR 82480). For administrative purposes, all plants included in that review are treated as being under petition. A finding was made on October 13, 1983, that listing *Asclepias welshii* was warranted but precluded by pending listing actions, in

accordance with Section 4(B)(3)(b)(iii) of the Act. The present proposed rule constitutes the new required finding that action is warranted for this species, and the proposed rule is hereby published to implement the action in accordance with Section 4(b)(3)(B)(ii) of the Act.

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 the 1982 amendments) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Asclepias welshii* N. Holmgren and P. Holmgren are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Off-road vehicle use associated with recreation is impacting the habitat of *Asclepias welshii*. Tracks of ORV's were observed crossing areas with plants of *Asclepias welshii* during 1980. The habitat consists of unstable sand dunes. Increased movement of sand caused by ORV use may have additional indirect impact on the plants.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* The effects of livestock predation on the plants may be considerable, in some areas amounting to more than 50 percent of the plants affected by direct grazing (Anderson 1980). This is a higher incidence of grazing than many species can tolerate. An additional observed effect from trampling has not been quantified.

D. *The inadequacy of existing regulatory mechanisms.* There are no effective Federal, State, or local laws or regulations that apply to this species or provide for its protection.

E. *Other natural or manmade factors affecting its continued existence.* The arid climate and unstable habitat of Welsh's milkweed make its ecosystem a fragile one, easily degraded by surface disturbances, and subject to effects from activities on adjoining lands.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Asclepias welshii* as endangered. This is based on the fact

that the species exists in very low numbers, and occurs in a limited fragile ecosystem that is presently threatened by ORV use and livestock grazing. A proposal of critical habitat was considered prudent in this case because most of the plants are known to occur on Federal lands, are not subject to commercial or private collecting pressures, and would benefit from such a determination. A decision to take no action on *asclepias welshii* would exclude this species from needed protection available under the Endangered Species Act. Given the severity of the threats to this species, and its limited distribution and small numbers, to take no action, or to propose is as threatened, would be contrary to the Act's intent.

Critical Habitat

Critical habitat, as defined by Section 3 of the Act and at 50 CFR Part 424, means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

The Act in section 4(a)(3) requires that critical habitat be designated to the maximum extent prudent and determinable concurrent with the determination that a species is endangered or threatened. Critical habitat is being proposed for *Asclepias welshii* to include the entire habitat presently occupied by the species in Kane County, Utah, in both the Coral Pink Sand Dunes, and in a small area to the northeast in the Sand Hills. The Coral Pink Sand Dunes are a clearly definable and recognizable geographic entity, readily located on Geological Survey maps. The known primary constituent element is considered to be the sand dunes themselves.

Section 4(b)(8) requires, for any proposed or final regulation which designates critical habitat, a brief description and evaluation of those activities (public and private) which may adversely modify such habitat or may be affected by such designation. Continued surface disturbance by ORVs, and grazing by domestic livestock are adversely affecting *Asclepias welshii* and its habitat. These activities would need to be regulated or

modified to take into account the well-being of this species.

Such regulations or modifications of adverse activities might include restricting ORV use to existing roads and trails or excluding use from certain areas, and restricting the amount of grazing activity through fencing or other means.

Section 4(b)(2) of the Act requires the service to consider economic and other impacts of designating a particular area as critical habitat. The Service will reevaluate the geographic critical habitat designation at the time of the final rule, after considering all additional information obtained.

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 land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species, these are initiated by the Service following listing. The protection required of Federal agencies and taking 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 402, and are now under revision (see proposal at 48 FR 29989; 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 or results in the destruction or adverse modification of proposed critical habitat. When a species is finally 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 or to destroy or adversely modify its critical habitat. If an adverse effect is expected, the Federal agency must enter into consultation with the Service. Possible effects of this rule on the BLM have already been discussed and are expected to be minimal. BLM's management is likely to be affected, but not to any great extent; restricting traffic

to some existing roads and some fencing might be necessary.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63, set forth a series of general trade prohibitions and exceptions which apply to all endangered plant species. With respect to *Asclepias welshii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, 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 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. It is anticipated that few trade permits will ever be sought or issued for *Asclepias welshii* since it is neither a desirable species for collectors, nor is it common in cultivation or in the wild.

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. This new prohibition will apply to *Asclepias welshii*. Permits for exceptions to this prohibition are available through section 10(a) and 4(d) of the Act, until revised regulations are promulgated to incorporate the 1982 amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417), and these will be made final following public comment. It is likely that few taking permits for *Asclepias welshii* will ever be requested.

Requests for copies of the regulations on plants, and inquiries 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 each 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 pertaining to any threat (or lack thereof) to *Asclepias welshii*;

(2) The location of any additional populations of *Asclepias welshii* and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided for by section 4 of the Act;

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

(4) Current or planned activities in the subject area and their possible impacts on *Asclepias welshii*, and

(5) Any foreseeable economic and other impacts likely to result from designation of critical habitat.

Final promulgation of the regulations on *Asclepias welshii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ 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, Region 6, 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 that 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

- Anderson, John. 1980. Study on *Asclepias welshii* on the Coral Pink Sand Dunes and the Sand Hills. Unpubl. report on file at the U.S. Fish and Wildlife Service's Regional Office, Denver, Colorado. 5 pp.
- Holmgren, N. H. and P. K. Holmgren. 1979. A new species of *Asclepias* (Asclepiadaceae) from Utah. *Brittonia* 31(1): 110-114.

Author

The primary authors of this rule are William L. Baker, Colorado Natural Heritage Inventory, Denver, Colorado, and James L. Miller, Endangered Species Division, Region 6, U.S. Fish and Wildlife Service, Denver, Colorado. J. Scott Peterson, Colorado Natural Heritage Inventory, Denver, Colorado, and John L. Paradiso, Office of

Endangered Species, Washington, D.C., served as editors.

List of Subjects in 50 CFR Part 17

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

Proposed Regulations 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. 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.*).

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	Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Asclepiadaceae—Milkweed family	<i>Asclepias welshii</i>	Welsh's milkweed	U.S.A. (UT)	E	17.96(a)	NA	

3. It is further proposed to amend § 17.96(a) by adding critical habitat of *Asclepias welshii* as follows (the position of this and any following critical habitat entries under § 17.96(a) will be determined at the time of publication of a final rule):

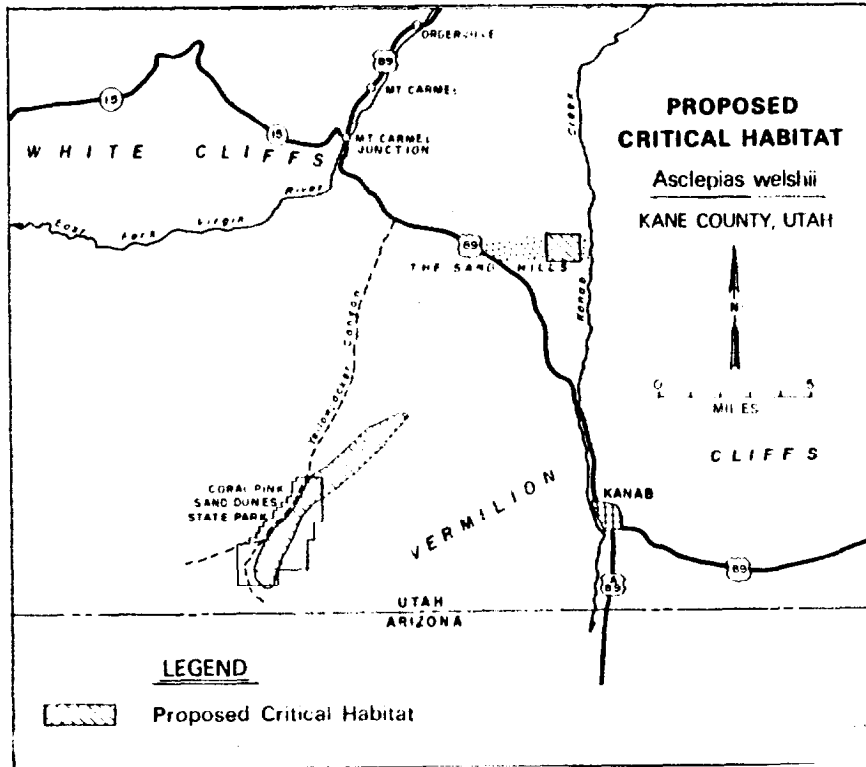
§ 17.96 Critical habitat—plants.

(a) * * *

Critical Habitat for Welsh's Milkweed

Family Asclepiadaceae: Welsh's Milkweed (*Asclepias welshii*)

Utah, Kane County, entire area of the Coral Pink Sand Dunes, about 10 miles west of Kanab; also, the area of the Sand Hills, about 10 miles north of Kanab, within T42S R6W Section 8 (S½ of the N½ and N½ of the S½). The constituent elements of this critical habitat are the sand dunes themselves.



Dated: May 18, 1984.

G. Ray Arnett,
Assistant Secretary for Fish and Wildlife a
Parks.