

**INTERSTATE COMMERCE
COMMISSION**

49 CFR Part 1033

[Amdt. No. 3 to Fifteenth Revised Service Order No. 1474]

Railroad Car Service Order; Des Moines Union Railway Co., Authorized To Use Tracks and/or Facilities of Chicago, Milwaukee, St. Paul and Pacific Railroad Co., Debtor, (Richard B. Ogilvie, Trustee)

AGENCY: Interstate Commerce Commission.

ACTION: Amendment No. 3 to Fifteenth Revised Service Order No. 1474.

SUMMARY: Pursuant to section 122 of the Rock Island Railroad Transition and Employee Assistance Act, Pub. L. 96-254, this order authorizes Des Moines Union Railway Company (DMU) to provide interim service over the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, (Richard B. Ogilvie), Trustee, and to use such tracks and facilities as are necessary for operations. This order permits DMU to continue to provide service to shippers which would otherwise be deprived of essential rail transportation.

EFFECTIVE DATE: 11:59 p.m., August 31, 1985, and continuing in effect until 11:59 p.m., November 30, 1985, unless otherwise modified, amended or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: M.F. Clemens, Jr. (202) 275-7840 or 275-1559.

Decided: August 29, 1985.

List of Subjects in 49 CFR Part 1033

Railroads.

Upon further consideration of Fifteenth Revised Service Order No. 1474 (50 FR 2676, 11368, and 26774) and good cause appearing therefor:

§ 1033.1474 [Amended]

It is ordered, § 1033.1474 *DES MOINES UNION RAILWAY COMPANY AUTHORIZED TO USE TRACKS AND/OR FACILITIES OF THE CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, DEBTOR (RICHARD B. OGILVIE, TRUSTEE)*, Fifteenth Revised Service Order No. 1474 is amended by substituting the following paragraph (n) for paragraph (n) thereof:

(n) *Expiration date.* The provisions of this order are extended for an additional period of time, and shall expire at 11:59 p.m., November 30, 1985, unless otherwise modified, amended or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., August 31, 1985.

This action is taken under authority of 49 U.S.C. 10304-10305 and section 122, Pub. L. 96-254.

This amendment shall be served upon the Association of American Railroads, Transportation Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Bernard Gaillard, William J. Love, and John H. O'Brien. Board member Love did not participate.

James H. Bayne,

Secretary.

[FR Doc. 85-21174 Filed 9-4-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Endangered Status for Solidago Shortii (Short's Goldenrod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service has determined *Solidago shortii* Torrey and Gray (Short's goldenrod), a plant endemic to three counties in Kentucky, to be an endangered species under the Endangered Species Act of 1973, as amended. Only five populations of *Solidago shortii* are known, and these are threatened by potential recreational activities, natural and human-induced habitat alterations, and development of its habitat. This action will implement Federal protection provided by the Endangered Species Act of 1973, as amended, for *Solidago shortii*.

DATE: The effective date of this rule is October 7, 1985.

ADDRESS: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the above address (704/259-0321 or FTS 8/672-0321).

SUPPLEMENTARY INFORMATION:

Background

Solidago shortii, a member of the Asteraceae (Aster family), was first collected by C.W. Short at Falls of the Ohio, Jefferson County, Kentucky. In 1842, the species was described and named in honor of its discoverer by Torrey and Gray. The original site, which was apparently Rock Island, adjacent to Falls of the Ohio on the Ohio River, was later inundated by dam construction. In 1939, Braun (1941) discovered *Solidago shortii* in the vicinity of Blue Licks, Kentucky. She reported that numerous populations were growing on rocky slopes and in pastures in Nicholas and Fleming Counties, Kentucky. Medley (1980) conducted a status survey for *Solidago shortii*, but despite extensive searches in 1978, 1979, and 1980, he found only one population. This population is located within Blue Licks Battlefield State Park, Robertson County, Kentucky. Medley reported that a major segment of this population was almost completely destroyed by campground construction in the middle 1970s. Medley (1980) further stated that the overgrazed pastures, which, according to Braun (1941), had provided habitat for *Solidago shortii*, were still numerous in the Blue Licks area. However, Medley (1980) concluded, after thorough searches of likely habitat, that the only remaining population was within Blue Licks Battlefield State Park. In 1983, Baskin and Baskin (1984) reported on the discovery of three additional populations of *Solidago shortii*, and in 1984, Baskin (personal communication, October 1984) informed the Service that another population had been found. One population is located just outside the State park's boundary in Nicholas County, and the other three populations are within a 2-mile radius of the park in Nicholas, Fleming, and Robertson Counties, Kentucky, respectively.

The historic distribution of *Solidago shortii* may have been correlated with disturbance caused by bison. The largest remaining population is adjacent to the old Buffalo Trace, which passes through Blue Licks Battlefield State Park (Medley, 1980). It was also suggested by Braun (1941) that fire may have been a factor that created openings within wooded areas and provided habitat for the species. Whether the loss of the numerous populations reported by Braun (1941) was caused by more

intense grazing pressures during the intervening years or was the result of some other factor or factors is not known.

Short's goldenrod is usually less than 1 meter (39 inches) tall and bears yellow flowers between mid-August and early November. The light brown fruits (achenes) mature several weeks after the flowers wither. The alternately arranged narrow leaves are usually 5-10 centimeters (2-4 inches) long and 0.6-1.5 centimeters (0.24-0.60 inches) wide. *Solidago shortii* is found in cedar glades and openings in oak and hickory forests (Kral, 1983; Medley, 1980), in areas adjacent to the Old Buffalo Trace (Medley, 1980), and in pastures and areas adjacent to roads (Braun, 1941; Baskin and Baskin, 1984).

Federal Government actions on this species began with section 12 of the Endangered Species Act of 1973, which 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 Service published a notice in the Federal Register (40 FR 27823) of its acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)), of the Act and of its intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule 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. The 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. *Solidago shortii* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the Federal Register on April 26, 1978 (43 FR 17909). On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. On December 15, 1980, the Service published a revised notice of review for native plants in the Federal Register (45 FR 82480); *Solidago shortii* was included in that notice as a category-1 species. Category-1 species are those for which data in the Service's

possession indicate that listing is warranted.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments to the Act further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Solidago shortii* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, the Service found that the petitioned listing of *Solidago shortii* was warranted, and that although other pending proposals had precluded its proposal, expeditious progress was being made to list this and other species. Notice of this finding was published in the Federal Register on January 20, 1984 (49 FR 2485). On October 11, 1984, the Service published, in the Federal Register (49 FR 39873), a proposed rule to list *Solidago shortii* as an endangered species, constituting the next required 12-months finding.

Summary of Comments and Recommendations

In the October 11, 1984, proposed rule (49 FR 39873) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in *The Mercury*, Carlisle, Kentucky, on October 25, 1984; *The Times*, Augusta, Kentucky, on October 30, 1984; and the *Gazette*, Flemingsburg, Kentucky, on October 31, 1984; which invited general public comments. Eight substantive comments were received and are discussed below.

The proposal was supported by the Kentucky Department of Parks, the Kentucky Nature Preserves Commission, and one private individual. The Kentucky Department of Fish and Wildlife Resources (KDFWR) also supported the proposal and recommended that critical habitat be designated. They stated that, "In our view, designation of areas as critical habitat would definitely be an asset to protection of the species. This measure would ensure against development by the Department of Parks at the Blue Licks site and protect the smaller populations along the roads if the Department of Transportation deemed road widening necessary. KDFWR does not feel that designation of critical

habitat will cause that much more public attraction to the sites and would afford the species considerably more protection." The Service does not believe that designating critical habitat for *Solidago shortii* would provide the species any significant increased protection. The Kentucky Department of Parks is on record as a staunch supporter of active management to protect the species. The Kentucky Department of Highways is aware of the plant's location, and if Federal funds are involved with a highway project, the Endangered Species Act of 1973, as amended, requires consideration of the plant's welfare whether or not critical habitat is designated. The Service also believes (see "Critical Habitat" section of this rule) that critical habitat designation would draw attention to specific areas inhabited by the species and could further threaten the plant from inadvertent trampling and the increased incidence of taking.

The Kentucky Department of Highways (DOH) informed the Service of their plans for a project adjacent to *Solidago shortii* populations. Their review of the project impact area and the precise location of the plants has shown that none of the plants will be impacted by the project. The Service has been in contact with DOH on this matter and concurs with DOH's assessment.

The Federal Energy Regulatory Commission concluded "... that listing Short's goldenrod as an endangered species would have no effect on any hydroelectric project under the Commission's jurisdiction." The Service concurs with this statement.

The Department of the Army, Corps of Engineers (CoE), referred to the Falmouth Lake Project, but does not believe that a serious conflict would arise because (1) the project is presently inactive and likely will not be built and (2) if it were built, the flood pool elevation would likely not reach the 650.0-foot elevation where the plants are found. CoE also stated, "If further detailed investigations of the Falmouth Lake would be approved and funded, additional coordination will be effected between our respective agencies to assure that Federal and State environmental policies and guidelines are satisfied." The Service appreciates the concern the CoE has shown for this species, and will be available to assist CoE in meeting Endangered Species Act responsibilities if the Falmouth Lake Project is approved.

A University of Kentucky professor with considerable expertise concerning this species supported endangered species status for the plant and supplied

information on one newly found population of *Solidago shortii* in Robertson County, Kentucky. He concluded that this new population should "... in no way affect the proposal for endangered species status of this species." The Service has analyzed this new information, which is included in the "Background" section of this rule. The Service concludes that, as this population is in the same area as the other populations and is threatened by the same factors, the existence of this additional population does not measurably alter the species' status.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Solidago shortii* should be classified as an endangered species. Procedures found at 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 (50 CFR Part 424) were followed. 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 *Solidago shortii* Torrey and Gray (Short's goldenrod) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Solidago shortii* occurs at five locations in an extremely limited portion of Robertson, Nicholas, and Fleming Counties, Kentucky. One of these populations is within Blue Licks Battlefield State Park. In the middle 1970s, a major segment of the park's population was lost during construction of a new campground. Most of the plants remaining at the park (about 2,000 individuals) are within a 1.5-acre area that has been dedicated by the Kentucky Nature Preserve Commission as a nature preserve. Research is needed to determine proper management techniques for maintenance of the species at this site. Additional protection from accidental trampling or inadvertent destruction is also needed. The remaining four sites are located on private property. No plans to develop these sites are known at this time; however, they could be lost to building and other construction activities in the future. Changes in land use, such as more intensive agricultural activities, could further reduce or eliminate *Solidago shortii* from these sites. Kral (1983) states that fire could adversely affect *Solidago shortii*. The populations on private land are

susceptible to fires as these plants are adjacent to roadsides. Although no known highway alterations that would impact the plants are planned at this time, alterations that are not designed in a manner to minimize impacts to *Solidago shortii* could adversely affect the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The largest population (up to half of the known plants) occurs within a Kentucky park. Increased recreational use at the park could adversely impact the species if recreation activities are not carefully directed to areas away from the *Solidago shortii* population. As mentioned above, a major segment of the park's population was destroyed by campground construction. The remaining individuals are vulnerable to accidental trampling by park visitors. The small total number of individual plants in existence (Medley, 1980; Baskin and Baskin, 1984) makes the species vulnerable to overcollecting for scientific purposes. The plants within the park cannot be collected without a permit from the Department of Parks and the Kentucky Nature Preserves Commission. However, the much smaller and consequently more vulnerable populations on private land have no protection from this potential threat.

C. *Disease or predation.* No diseases are known to be adversely impacting *Solidago shortii*. Kral (1983) states that grazing could adversely impact the species.

D. *The inadequacy of existing regulatory mechanisms.* The Blue Licks Battlefield State Park Nature Preserve population of *Solidago shortii* is afforded protection from unauthorized taking. Taking is authorized through a permit system administered by the Department of Parks and the Kentucky Nature Preserves System. Permits are only issued for valid scientific purposes. Currently, there are no other forms of protection provided to the species. The Endangered Species Act will afford additional protection to *Solidago shortii*.

E. *Other natural or manmade factors affecting its continued existence.* *Solidago shortii* has been reduced to a small number of populations with a limited number of individuals in each population. Therefore, the plant is particularly vulnerable to any natural or human-induced factors, such as fire, that might further reduce population size. Although fire may have been important historically in maintaining suitable habitat, a fire in the plant's existing remnant habitat could destroy an entire population.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Solidago shortii* as an endangered species. Only five populations of this species are known to exist. Four of the five populations are on privately owned property and currently receive no protection or management designed to enhance their continued existence. The fifth population is on property administered by the Kentucky Department of Parks and the Kentucky Nature Preserves Commission. Although this population is within a State park and a dedicated nature preserve, it could still be lost through inadvertent human-induced alterations of its habitat, natural fluctuations in the population, or perturbations of human or natural origin, such as fire. Critical habitat is not being designated for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The 1.5-acre site in Blue Licks Battlefield State Park, which contains the largest remaining population of *Solidago shortii*, has been registered as a nature preserve. Both the Kentucky Department of Parks and the Kentucky Nature Preserves Commission believe that any publicity about the preserve and the extremely rare species that it contains would be disadvantageous to the continued existence of *Solidago shortii*. Although taking without a State permit is prohibited, this prohibition is difficult to enforce. Taking is not prohibited by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from lands under Federal jurisdiction. No Federal lands are involved here. Publication of critical habitat descriptions and maps would increase the vulnerability of *Solidago shortii* and would create additional enforcement problems for the Kentucky Department of Parks. Critical habitat designation may stimulate increased visitation to all the population sites and result in inadvertent trampling, habitat destruction, and taking. The Kentucky Department of Parks and the private landowners on whose property the populations of *Solidago shortii* occur are aware of the plants' locations and the

importance of protecting the plants and their habitat. No additional benefits would result from a determination of critical habitat. Therefore, it is not prudent to designate critical habitat for *Solidago shortii* at this time.

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 possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking 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 and with respect to its critical habitat, if any is being designated. 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)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal projects have been identified that would require formal consultation under section 7(a)(2) with respect to *Solidago shortii*. As this species does not occur on Federal lands, Federal involvement is expected to be minimal.

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 that apply to all endangered plant species. With respect to *Solidago shortii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, 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 would ever be sought or issued since *Solidago shortii* is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. The new prohibition will apply to *Solidago shortii* if it ever is discovered on Federal lands. Permits for exceptions to this prohibition are available through section 10(a) 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 it is anticipated that these will be made final following public comment. *Solidago shortii* is not known to occur on Federal lands, and therefore no requests for permits are anticipated.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of 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. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

Literature Cited

- Baskin, J.M., and C.C. Baskin. 1984. Rediscovery of the rare Kentucky endemic *Solidago shortii* T. & G. in Fleming and Nicholas Counties. *Transactions of the Kentucky Academy of Science* 45:159.
- Braun, E.L. 1941. A new locality for *Solidago shortii*. *Rhodora* 43:484.
- Kral, R. 1983. A report on some rare, threatened, or endangered forest-related vascular plants of the South, USDA, Forest Service, Southern Region, Technical Publication R8-TP2.
- Medley, M.E. 1980. Status of *Solidago shortii*. Unpublished report produced under contract to the U.S. Fish and Wildlife Service, Atlanta, Georgia. 14 pp.
- Torrey, J., and A. Gray. 1842. A flora of North America. New York Botanical Garden, New York. Vol. II: p. 222.

Authors

The primary authors of this final rule are Mr. Robert R. Currie and Mr. Richard G. Biggins, Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259-0321 or FTS 8/672-0321).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read 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. Amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, 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					
Asteraceae—Aster family.						
<i>Solidago serotina</i>	Short's goldenrod	U.S.A. (KY)	E	198	NA	NA

Dated: August 13, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-21090 Filed 9-4-85; 8:45 am]

BILLING CODE 4310-65-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Erigeron maguirei* var. *maguirei* (Maguire daisy)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for *Erigeron maguirei* var. *maguirei* (Maguire daisy). It is known to occur only at the upper end of a sandstone canyon in Emery County, Utah. Only seven plants were seen there in 1982, all on Bureau of Land Management land. Any surface disturbance could easily cause the extinction of this taxon, and it may also be depleted genetically as a consequence of reduced population size. This action implements the protection provided by the Endangered Species Act of 1973, as amended, for the Maguire daisy.

DATE: The effective date of this rule is October 7, 1985.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours of the Service's Endangered Species Regional Staff at the following locations: 134 Union Boulevard, Fourth Floor, Lakewood, Colorado 80228; Room 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104; and Suite B-109, Independence Plaza, 551 25½ Road, Grand Junction, Colorado 81501.

FOR FURTHER INFORMATION CONTACT: Larry England, Salt Lake City (801/524-4430 or FTS 589-4430), or John Anderson, Grand Junction (303/241-0563 or FTS 322-0348), at the above addresses.

SUPPLEMENTARY INFORMATION:

Background

Erigeron maguirei var. *maguirei* (Maguire daisy) is a small perennial daisy, up to 5 inches tall, which blooms

in mid-June; it has leafy and stiffly hairy stems, and bears 1-5 flower heads with relatively few white to pinkish ray flowers surrounding a yellow center of disc flowers. It was first collected by Dr. Bassett Maguire in 1940 in the dry, rocky, sandy bottom of Calf Canyon in the San Rafael Swell, Emery County, Utah. *Erigeron maguirei* was described by Dr. Arthur Cronquist in his monograph of the genus (Cronquist 1947). It was not seen again until 1980, when James Harris, a temporary employee of the Bureau of Land Management (BLM), engaged in floristic inventory, found a single plant in the bottom of Pine Canyon, a side canyon of Calf Canyon. This one plant, which was on State of Utah land, was looked for in 1981, 1982, and 1984, but not found. In 1982, John Anderson, a Service botanist, hiked the entire length of Calf Canyon and its two side canyons, Cow Canyon and Pine Canyon, and found only seven plants of this taxon, all at the upper ends of branches of Pine Canyon on sandstone ledges or among boulders. These seven plants were on BLM land at about 5,800 feet elevation in the pinyon-juniper zone, growing with *Amelanchier utahensis* (Utah serviceberry), *Fraxinus anomala* (single-leaf ash), *Rhus trilobata* (skunkbush), and *Philadelphus microphyllus* (little-leaf mock-orange) (Anderson 1982). Only five plants were seen in 1984. The Maguire daisy is thus one of the rarest taxa in Utah and the nation. In April 1983, *Erigeron maguirei* var. *harrisonii* was described as a new variety. It is a rare related plant in Wayne County, Utah, outside the historical and current range of *E. maguirei* var. *maguirei* (Welsh 1983a, 1983b).

There are mining claims for uranium, and oil and gas leases in the area in which this species grows, as in much of this part of Utah. No commercial deposits are known in the area at present; however, annual assessment work on the claims must still be done, and energy exploration may occur. The canyon bottoms where the Maguire and Harris collections were made are grazed by cattle, which may have affected the Maguire daisy. There is also some recreational motorcycle use in the canyon bottoms. In addition, the five to seven plants are all that remain of a formerly larger population and may not be viable without some management.

Section 12 of the Endangered Species Act of 1973 (Act) directed the Secretary of the Smithsonian Institution to prepare a report on these 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. In the Federal Register of July 1, 1975 (40 FR 27823), the Service published a notice of its acceptance of this report as a petition within the context of section 4(c)(2) of the Endangered Species Act of 1973 (petition acceptance is now governed by section 4(b)(3) of the Act, as amended), and of its intention thereby to review the status of the plant taxa named within. In the Federal Register of June 16, 1976 (41 FR 24523), the Service published a proposed rule to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. The list of these 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 Federal Register notice of July 1, 1975. *Erigeron maguirei* was included in the notice of July 1975 (40 FR 27880), and the proposal of June 1976 (41 FR 24531). General comments received in response to the 1976 proposal were summarized in a publication in the Federal Register of April 26, 1978 (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one-year grace period was provided for proposals already over two years old. In the Federal Register of December 10, 1979 (44 FR 70796), the Service published a notice of the withdrawal of the still applicable portions of the proposal of June 16, 1976, along with other proposals that had expired. The notice of July 1, 1975, was replaced by the Service's publication in the Federal Register of December 15, 1980 (45 FR 82480), of a new notice of review for plants, which included *Erigeron maguirei*. No comments on this taxon were received in response to the 1980 notice. In the Federal Register of February 15, 1983 (48 FR 6752), the Service published a notice of its prior finding that the petitioned action on this taxon may be warranted, in accordance

with section 4(b)(3)(A) of the Act, as amended in 1982.

On October 13, 1983, the petition finding was made that listing *Erigeron maguirei* var. *maguirei* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of the finding was published in the Federal Register of January 20, 1984 (49 FR 2485). In the case of such a finding, the petition is recycled and another finding becomes due within 12 months. In the Federal Register of July 27, 1984 (49 FR 30211), the Service published a proposed rule to determine endangered status for *Erigeron maguirei* var. *maguirei*, and that document incorporated the required 12-month finding.

Summary of Comments and Recommendations

In the proposed rule of July 27, 1984 (49 FR 30211), and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice, inviting general public comment, was published in the *Emery County Progress*, Castledale, Utah, on August 10, 1984. Three comments were received and are discussed below. No public hearing was requested or held.

Two comments, one from BLM and one from a private individual, supported the proposed listing. A third comment pointed out a typographical error in the proposed rule. BLM also noted the presence in portions of Pine Canyon of mining claims and oil and gas leases, but that no current or planned activities associated with these were known. In addition, no grazing is authorized by the BLM in one of the upper side canyons of Pine Canyon (which contains potential habitat but not the seven plants). The comment from the private individual was addressed to Senator Orrin Hatch of Utah, who requested information on the proposal for his constituent.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Erigeron maguirei* var. *maguirei* (Maguire daisy) should be classified as an endangered species. Procedures found at 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) were followed. 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 *Erigeron maguirei* Cronquist var. *maguirei* (Maguire daisy) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Maguire daisy is extremely rare. First discovered in 1940, it appears to have been extirpated at two of the three sites from which it is historically known. Only five to seven plants are now known to occur at the third site, which is on BLM land. There are mineral claims for uranium, and oil and gas leases in the area. Even minor surface disturbance, associated with exploration or assessment of these claims and leases, could cause extinction if it occurred where the plants grow. Recreational motorcycle use of the canyon bottom also may threaten these plants.

It should be noted that the present rocky sites might be a marginal habitat that is not suitable for the taxon's survival in the long term. The few existing plants occur at the upper ends of canyons on sandstone ledges or among boulders in less accessible and thus naturally protected areas. This is different habitat from the canyon bottomland where the plants were seen in 1980 and first seen in 1940 ("dry rocky sandy canyon bottom"). Bottomland is more susceptible to impacts such as cattle grazing and off-road vehicle activity. Since the remaining plants are found only at less accessible sites, this upper canyon area may, in fact, be ecologically marginal habitat for a minor remnant of the population of the Maguire daisy. The vulnerable lower canyon bottoms may represent the prime, long-term habitat, and the Maguire daisy's absence there may be a reflection of past land use rather than of the habitat suitability of the upper canyons. This speculation is supported by the fact that the most robust of the remaining plants is one found among boulders on the shallow wash bottom of the upper canyon in soil somewhat deeper than that in which the other plants occur.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not now known to be a problem, but the extremely low numbers of this taxon make it very vulnerable to any taking that might occur.

C. *Disease or predation.* The presently known plants are in rocky areas inaccessible to cattle grazing. The absence of plants in the canyon bottoms, where they were originally

found in 1940 and 1980, may be a result of cattle grazing pressure. Studies are needed to determine the actual impact of cattle grazing and its compatibility with the survival of the daisy. Presumably, this small herbaceous perennial is palatable to cattle. Two of the seven plants have shown some grazing damage, perhaps from deer.

D. *The inadequacy of existing regulatory mechanisms.* No Federal or State laws currently protect *Erigeron maguirei* var. *maguirei*. The Endangered Species Act offers possibilities for protection of this taxon through section 7 (interagency cooperation) requirements and through section 9, which prohibits removal and reduction to possession of specimens from areas under Federal jurisdiction.

E. *Other natural or manmade factors affecting its continued existence.* Because only five to seven plants of the Maguire daisy now appear to exist, its vulnerability is greatly magnified by any inadvertent human actions in the area that do not take its presence into account, or by any natural catastrophe. Its gene pool may be depleted because of the known loss of individuals since 1940.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Erigeron maguirei* var. *maguirei* as an endangered species. With only five to seven individuals known, endangered status seems an accurate assessment of the taxon's condition. A decision to list as threatened would not adequately reflect the threats to the species or the possibility of its extinction. It is not considered prudent to designate critical habitat for this species, because doing so would increase risk to it, as detailed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Maguire daisy at this time. BLM has been informed of this rule, is aware of the location of the Maguire daisy, has acknowledged the threats to the taxon, and is considering this information in its management and planning. Therefore, no further benefits would accrue to the daisy by critical habitat designation. Because of the very

low number of plants, the accessibility of the nearby canyon bottoms to off-road vehicles (i.e., motorcycles), and the potential for vandalism, it could be detrimental to the taxon to publish a critical habitat map and exact location description.

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 possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking 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 and with respect to its critical habitat, if any is designated. 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)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. With respect to *Erigeron maguirei* var. *maguirei*, BLM may be required to consult concerning its administration of mining or oil and gas exploration permits, and grazing leases, where the taxon has been found and may be affected.

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 that apply to all endangered plant species. With respect to *Erigeron maguirei* var. *maguirei*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, 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. No such trade in *Erigeron maguirei* var. *maguirei* is known. It is anticipated that few trade permits will ever be issued, since this plant is not common in the wild or in cultivation.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition now applies to *Erigeron maguirei* var. *vaguirei*. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated these will be made final following public comment. This daisy is currently only known to occur on Federal (BLM) land. It is likely that few taking permits for it 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, 6th Floor Broyhill, Washington, D.C. 20240 (703/235-1903).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under authority of 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. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References

Anderson, J. 1982. Search for *Erigeron maguirei*. U.S. Fish and Wildlife Service, Denver, Colorado, 3pp.
 Cronquist, A. 1947. Revision of the North American species of *Erigeron*, north of Mexico. *Brittonia* 6(2):121-302.
 Harris, J. 1980. Inventory of land in the San Rafael Resource Area for the presence of endangered or threatened plants. Bureau of Land Management, Price, Utah, 3 pp.
 Welsh, S.L. 1983a. Utah flora: Compositae (Asteraceae). *Great Basin Naturalist* 43(2):179-357.
 Welsh, S.L. 1983b. A bouquet of daisies (*Erigeron*, Compositae). *Great Basin Naturalist* 43(2):365-368.

Authors

The primary author of this final rule is Mr. John Anderson, Botanist, of the Grand Junction address given above (303/241-0563 or FTS 322-0348). Mr. John L. England, Botanist, of the Salt Lake City address given above (801/524-4430 of FTS 588-4430), served as editor.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read 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. Amend § 17.12(h) by adding the following, in alphabetical order under the family Asteraceae, 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
ASTERACEAE—Aster family:							
<i>Erigeron maguirei</i> var. <i>maguirei</i>		Maguire daisy	U.S.A. (UT)	E	199	NA	NA

Dated: August 22, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-21091 Filed 9-4-85; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 50458-5048]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) announces the closure of the recreational salmon fishery in the fishery conservation zone (FCZ) for the subareas between Cape Falcon and Cape Blanco, Oregon, and between Cape Blanco and the Oregon-California border at midnight, September 2, 1985, because the coho salmon quota will be reached. The Director, Northwest Region, NMFS (Regional Director), has determined, in consultation with the Oregon Department of Fish and Wildlife (ODFW) and the California Department of Fish and Game (CDFG), that the recreational fishery quota of 170,000 coho salmon for the area south of Cape Falcon will be reached by midnight, September 2, 1985. Immediately following this closure, the recreational salmon fishery in the FCZ between Cape Blanco and the Oregon-California border will reopen for all salmon species except coho. The intended effect is to ensure conservation of coho salmon.

EFFECTIVE DATE: Closure of the FCZ between Cape Falcon, Oregon, and the Oregon-California border to recreational fishing for all salmon species is effective at 2400 hours Pacific Daylight Time (PDT), September 2, 1985. At 0001 hours PDT, September 3, 1985, the FCZ between Cape Blanco and the Oregon-California border is open to recreational fishing for all salmon species except coho.

ADDRESS: Information relevant to this notice has been compiled in aggregate form and is available for public review at the Northwest Region, NMFS, 7800 Sand Point Way NE., Building 1, Seattle, Washington, from 8:00 a.m. to 4:30 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitt (Director, Northwest Region, NMFS) 206-526-6150.

SUPPLEMENTARY INFORMATION: The regulations implementing the framework amendment to the ocean salmon management plan (49 FR 43679, October 31, 1984) specify at § 661.21(a)(1) that: "When a quota for the commercial or the recreational fishery, or both, for any salmon species during any period open to fishing in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by publishing a notice in the Federal Register, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Under the provisions of the framework amendment, the 1985 management measures were published on May 2, 1985 (50 FR 18872). The 1985 recreational season in the FCZ between Cape Falcon, Oregon, and Cape Blanco, Oregon, was established as July 1 through the attainment of a quota of 170,000 coho salmon for the area south of Cape Falcon. The same recreational season was established in the FCZ between Cape Blanco, Oregon, and the Oregon-California border with an additional season to follow immediately for all salmon species except coho through October 31, 1985. Based on the most recent catch and effort information supplied by ODFW and CDFG, the recreational fishery catch in the area south of Cape Falcon is projected to reach the 170,000 coho salmon quota by midnight, September 2, 1985. The Secretary therefore issues this notice closing the recreational fishery in the FCZ between Cape Falcon, Oregon, and the Oregon-California border at midnight, September 2, 1985. The recreational fishery in the FCZ between Cape Blanco, Oregon, and the Oregon-California border reopens for all salmon species except coho effective 0001 hours, September 3, 1985.

The Regional Director consulted with the Director of ODFW regarding this closure. The Director of ODFW has confirmed that Oregon will close the recreational fishery in State waters adjacent to the area of the FCZ between Cape Falcon and the Oregon-California border effective midnight, September 2, 1985, and will reopen the recreational fishery in State waters adjacent to the area of the FCZ effective 0001 hours, September 3, 1985.

This notice does not apply to the regularly scheduled recreational fishery for all salmon species in the FCZ between the Oregon-California border and the U.S.-Mexico border because this area is not affected by the attainment of the coho salmon quota for the area south of Cape Falcon.

Other matters

This action is taken under the authority of 50 CFR Part 661 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: August 30, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-21169 Filed 8-30-85; 3:11 pm]

BILLING CODE 3510-22-M

50 CFR Part 661

[Docket No. 50458-5048]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) announces the closure of the recreational salmon fishery in the fishery conservation zone (FCZ) between the U.S.-Canada border and the Queets River, Washington, at midnight, September 1, 1985, to ensure that the chinook salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with the Washington Department of Fisheries (WDF) that the recreational fishery quota of 2,450