

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Rule To Determine *Townsendia Aprica* (Last Chance *Townsendia*) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service has determined *Townsendia aprica* (Last Chance *townsendia*) to be a threatened species

under the authority of the Endangered Species Act, as amended. The Last Chance *townsendia* has three populations totaling approximately 2,000 individuals in Sevier, Emery, and Wayne Counties, Utah. Most of the plants are on public land managed by the Bureau of Land Management; a few are on private land. One small population is in Capitol Reef National Park. Trampling by cattle, highway construction, off-road vehicle activity, and coal and petroleum exploration are current threats, and coal mining and oil and gas recovery are potential threats to this species. This final rule implements protection provided by the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is September 20, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by

appointment, during normal business hours at the Service's Regional Endangered Species Office at 134 Union Boulevard, fourth floor, Lakewood, Colorado 80228, and the Endangered Species Field Office at Room 2078, 1745 W. 1700 S., Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: John L. England, Botanist, at the above Salt Lake City address (801/524-4430 or FTS 588-4430).

SUPPLEMENTARY INFORMATION:

Background

Townsendia aprica (Last Chance *townsendia*) was discovered in 1966 by Stanley L. Welsh and James L. Reveal, and was described as a new species by them in 1968. It is a herbaceous perennial, less than one inch tall and 1-2 inches wide. *Townsendia aprica* is a member of the aster or sunflower family

(Asteraceae). Stems grow from an underground base and branch to form a dense mat or tuft low to the ground. The flower heads are about one-inch wide with almost no stalk and have distinctive yellow to golden rays. The ray florets are densely glandular, the pappus is very short. The golden ray florets make the plant unusual in its genus; ray florets of the other known taxa are white, blue, or red with fresh (Welsh and Reveal 1968), except in *Townsendia jonesii* var. *lutea* (Welsh 1983) where the yellow is not so intense.

It appears that *Townsendia aprica* has never been abundant. At present, there are 12 individual sites clustered in three known populations in eastern Sevier, adjacent western Emery, and north central Wayne Counties, Utah. *Townsendia aprica* occurs on silty soils of the Mancos Formation, and is associated with the pinyon-juniper vegetative community. The species location on this formation makes it vulnerable to disturbance by coal mining and oil and gas drilling activity.

The first discovered population, with about 400 individual plants, is in the Last Chance Creek drainage about six miles south of Fremont Junction in eastern Sevier County (Welsh 1978, Welsh and Thorne 1979, Welsh and Reveal 1968, England 1984). A second population, with about 1,500 plants, is located about six miles northeast of the Last Chance Creek population in scattered stands between Ivie Creek and Willow Springs Wash in extreme western Emery County (Harris 1980, England 1984, Welsh 1978; N.D. Atwood and S.L. Welsh, pers. comm.). The third population, with about 100 plants, is about 15 miles south of the other two populations in the extreme northern portion of Capitol Reef National Park (England 1984). A botanical collection made in 1971 may represent a fourth population east of the second population near Rock Canyon. The locality information on the museum specimen is not definite and recent searches for this population have failed to locate it (England 1984; N.D. Atwood, pers. comm.). The populations are threatened by current and potential off-road vehicle use, coal mining, petroleum exploration and development, cattle grazing and trampling, and highway construction.

Section 12 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) 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 this report as a petition within the context of section 4(c)(2) of the 1973 Act (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. On June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. This list 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 1975 *Federal Register* notice. *Townsendia aprica* was included in the July 1975 notice (40 FR 27880) and the June 1976 proposal (41 FR 24527). General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, *Federal Register* publication (43 FR 17909).

The Endangered Species Act amendments of 1978 required that all proposals over two years old be withdrawn. On December 10, 1979, the Service published a notice of withdrawal (44 FR 70796) of the still applicable portions of the June 1976 proposal along with other proposals that had expired. The July 1975 notice was replaced on December 15, 1980, by the Service's publication in the *Federal Register* (45 FR 82480) of a new notice of review for plants, which included *Townsendia aprica*. No comments on this species have been received in response to the 1980 notice. On February 15, 1983, the Service published a notice in the *Federal Register* (48 FR 6752) of its prior finding that the petitioned action on this species 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 *Townsendia aprica* 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 January 20, 1984, *Federal Register* (49 FR 2485). Such a finding requires a reevaluation of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore a new finding was made that the petitioned action was warranted and the proposed rule to list the species as endangered in accordance with section 4(b)(3)(B)(ii) of the Act was published in the *Federal Register* (49 FR 22352) on May 29, 1984.

This endangered status was based upon the then current status information, which indicated that the

species was found in only 3 disjunct populations with a total of about 215 individuals. During the 1984 field season and subsequent herbarium searches, the Service's Salt Lake City Field Office developed more accurate status information. *Townsendia aprica* is now known from at least 12 different locations, over an area about 30 miles across, and with a population in excess of 2,000 individuals. The Service, after evaluating the threats and the biological status of *Townsendia aprica*, has determined that the species should be listed as threatened rather than endangered as was proposed in the May 29, 1984, *Federal Register*.

Summary of Comments and Recommendations

In the May 29, 1984, proposed rule (49 FR 22352) 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 was published in the *Richfield Reaper* on June 18, 1984, which invited general public comment. One comment was received. Gerald E. Gordon of the Utah Wildlife Federation commented in favor of the proposed listing by agreeing with the information as contained within the *Federal Register* proposal. No public hearing was requested.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Townsendia aprica* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act 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 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 *Townsendia aprica* (Last Chance townsendia) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* At present, there are three known populations of *Townsendia aprica* within a ten-mile radius between Fremont Junction in extreme eastern Sevier County, Utah, and the northern portion of Capitol Reef

National Park in the extreme northwest corner of Wayne County, Utah (J. Anderson, pers. comm.). The two northern populations occupy habitat that corresponds with the geological strata (Blue Gate Shale) immediately above the coal-bearing seams (Ferron Sandstone) of the Mancos Formation. This area constitutes the bulk of the exposed coal seam area of the Emery Coal Field (Doelling and Smith 1983). Development of the Dog Valley Mine, located in the middle of Willow Springs Wash, has disturbed some potential habitat of *Townsendia aprica*. Coal mining development and production, especially strip mining along the exposed coal seams in the Emery coal field, has the potential of impacting and possibly eradicating 95 percent of the total population of *Townsendia aprica*. Most of the habitat of *Townsendia aprica* under Federal ownership (approximately 80 percent) is under lease either for coal or oil and gas. A cattle driveway and Utah Highway 72 traverse the habitat of the Last Chance Creek population of *Townsendia aprica*. Use of the livestock driveway is continually affecting this population by trampling. Proposed realignment and improvement of Highway 72 has the potential of also affecting this population. Unimproved roads provide access to all populations of *Townsendia aprica* exposing them to the possibility of vehicular disturbance (Harris 1980, MacBryde 1984, England 1984).

B. Overutilization for commercial, recreational, scientific, or educational purpose. None.

C. Disease or predation. None.

D. The inadequacy of existing regulatory mechanisms. *Townsendia aprica* is not specifically protected by any Federal or State laws or regulations. Known populations of *Townsendia aprica* are found on BLM, National Park Service, and private lands. Although the BLM is aware of this species, it cannot completely regulate activities affecting its survival. The small population in Capitol Reef National Park may be vulnerable to roadside disturbance unless actively protected.

E. Other natural or manmade factors affecting its continued existence. The small size and few populations of *Townsendia aprica* make it vulnerable to adverse changes in ecological factors associated with human activities.

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 *Townsendia aprica* as a threatened species. With

only about 2,000 individuals known, the damage occurring, and other damage possible to the species' three populations, threatened status seems an accurate assessment of the species; condition. It is not prudent to propose critical habitat, because doing so would increase risk for the species, as discussed below.

Critical Habitat

Section 4(a)(3) of the Endangered Species 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. *Townsendia aprica* is threatened by off-road vehicles damaging it and its habitat. Publication of critical habitat descriptions and maps would make this species even more vulnerable through possible wanton vandalism and would increase enforcement problems. Therefore, the Service finds that it would not be prudent to determine critical habitat for *Townsendia aprica*.

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, as appropriate, following listing. The protection required by 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. 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. Possible effects of this rule on the BLM might include restricting traffic to some existing roads, fencing to control cattle and vehicles, and administering leases so that the species is accommodated in mineral exploration or development activity.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Townsendia aprica*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, 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. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species, under certain circumstances. No such trade in *Townsendia aprica* is known. It is anticipated that few trade permits would ever be sought or issued since this species is not known in cultivation or common in the wild and is not of particular trade interest.

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. Section 4(d) allows for the provision of such protection to threatened species through regulations. This new protection will apply to *Townsendia aprica* once revised regulations are promulgated. Permits for exceptions to this prohibition are available through sections 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. *Townsendia aprica* occurs primarily on public lands managed by the BLM. It is anticipated that few taking permits for the species would ever be requested, as this plant is not common in the wild and has not been of interest to collectors. 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).

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 49241).

Literature Cited

Doelling, H.H., and M.R. Smith. 1963. Overview of Utah Coal Fields, 1962. Utah Geological and Mineral Survey, Bulletin 118.
 England, J.J.L. 1984. Field report: Herbarium searches and field reconnaissance of *Townsendia aprica* populations. U.S. Fish and Wildlife Service, Salt Lake City, Utah. 4 pp.

Harris, J. 1980. Inventory of endangered and threatened plants on proposed coal lease lands in Emery County. Bureau of Land Management, Moab, Utah. 3 pp.
 MacBryde, B. 1984. Supplemental status information, *Townsendia aprica*, January 1984. U.S. Fish and Wildlife Service, Washington, D.C. 1 p.
 Welsh, S.L. 1978. Status report: *Townsendia aprica*. U.S. Fish and Wildlife Service, Denver, Colorado. 6 pp.
 Welsh, S.L. 1983. Utah flora: Compositae (Asteraceae). Great Basin Naturalist 43(2):179-357.
 Welsh, S.L., and J.L. Reveal. 1968. A new species of *Townsendia* (Compositae) from Utah. Brittonia 20:375-377.
 Welsh, S.L., and K.H. Thorne. 1979. Illustrated manual of proposed endangered and threatened plants of Utah. U.S. Fish and Wildlife Service, Bureau of Land Management, and U.S. Forest Service; Denver, Colorado. 318 pp.

Author

The primary author of this rule is John L. England, Botanist, U.S. Fish and Wildlife Service, Salt Lake City Field Office, Salt Lake City, Utah. Dr. James L. Miller, of the Regional Endangered Species Division, U.S. Fish and Wildlife

Service, Denver, Colorado, 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, 98 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.

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 (h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
<i>Townsendia aprica</i>	Last Chance townsendia.....	U.S.A. (UT).....	T	196	NA	NA

Dated: August 8, 1985.
 P. Daniel Smith,
 Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.
 [FR Doc. 85-19911 Filed 8-20-85; 8:45 am]
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