

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**Endangered and Threatened Wildlife and Plants; Final Rule To Determine *Erigeron Rhizomatus* To Be a Threatened Species**

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

**ACTION:** Final rule.

**SUMMARY:** The Service determines a plant, *Erigeron rhizomatus* (rhizome fleabane), to be a threatened species under the authority of the Endangered Species Act of 1973 (Act), as amended. Approximately 20 populations are known, all of which are in New Mexico. The total number of individual plants is only about 200. This species' survival is threatened due to the low number of plants, its restricted distribution, and the potential for habitat loss if uranium mining in the area is ever reactivated. This action implements the protection provided by the Act for this plant.

**DATE:** The effective date of this rule is May 28, 1984.

**ADDRESS:** The complete file for this rule is available for inspection during normal, business hours, by appointment, at the Service's Regional Office of Endangered Species, 500 Gold Avenue, S.W., Room 4000, Albuquerque, New Mexico 87103.

**FOR FURTHER INFORMATION CONTACT:** Peggy Olwell, Botanist, Region 2 Endangered Species Staff, see address above (505/766-3972 or FTS 474-3972).

**SUPPLEMENTARY INFORMATION:**

**Background**

*Erigeron rhizomatus* is in the aster family. The species was first collected in McKinley County, New Mexico, by R.C. Barneby in 1943 and was described by A. Cronquist in 1947. Approximately 20 populations are now known from two counties in New Mexico. Populations are known on the Cibola National Forest in areas south of Fort Wingate in McKinley County, and on the Cibola National Forest and adjacent areas administered by the Bureau of Land Management (BLM) northwest of Datil in Catron County. These are the only areas in which this *Erigeron* has been found.

*Erigeron rhizomatus* is a perennial herb arising from a horizontal underground stem, or rhizome. The leaves are narrow and oblong to linear, up to 1 centimeter (.4 inch) long and 3 millimeters (.12 inch) wide, and dark green. The flower heads are single, 13-

16 millimeters (.5-.8 inch) wide, and blue or white. The stems are in clumps 25-45 centimeters (10-18 inches) high, and up to 30 centimeters (12 inches) across (Martin and Hutchins, 1981).

*Erigeron rhizomatus* grows in a zone of Chinle shale and associated soils in the piñon-juniper association at 2,190 to 2,400 meters (7,180-7,870 feet) elevation. The Zuni Mountain population is found on loose, decaying slopes of the Chinle shale formation. However, the majority of the Datil plants occur in the Baca formation.

Flowering is from May to June. The species appears to be reproducing well, and individuals of all age classes are present. The clumps of plants are all clones. Establishment of new plants by seed is rare, although a large volume of seed is produced (Fletcher, 1978; Sabo, 1981).

Most of the populations are close to inactive uranium claims. If exploration or mining is reactivated, there may be adverse impacts to the plants.

Federal action affecting 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 report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition acceptance is now governed by section 4(b)(3)(A)) of the Act), and of its intention thereby to review the status of the plant taxa named therein. 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. This list of 1,700 plant species was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document 94-51 and the July 1, 1975, **Federal Register** publication. *Erigeron rhizomatus* 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 April 26, 1978, **Federal Register** (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. In the December 10, 1979, **Federal**

**Register** (44 FR 70796), the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired. *Erigeron rhizomatus*, however, was included in category 1 on the list of plants under review for threatened or endangered classification in the December 15, 1980, **Federal Register** (45 FR 82480). Category 1 refers to taxa for which the Service presently has sufficient information to support the biological appropriateness of their being listed as endangered or threatened species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species covered by the December 15, 1980, notice of review were considered to be petitioned, and the deadline for a finding on those species, including *Erigeron rhizomatus*, was October 13, 1983. For *Erigeron rhizomatus*, the petition finding was made on October 13, 1983, that listing was warranted but precluded by pending listing actions in accordance with section 4(b)(3)(B)(iii) of the Act. Such petitions are recycled under section 4(b)(3)(C)(i) of the Act. The Service published a proposed rule to list *Erigeron rhizomatus* as a threatened species on April 24, 1984 (49 FR 17548), constituting the next 1-year finding which would have been required on or before October 13, 1984.

**Summary of Comments and Recommendations**

In the April 24, 1984, proposed rule (49 FR 17548) 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 *Gallup Independent* and *The Defensor Chieftain* newspapers on May 24, 1984, that invited general public comment. Six comments were received. Summaries of the comments and the Service's response are discussed below. No public hearing was requested or held.

Comments supporting the listing were received from the New York Botanical Garden, the State of New Mexico Natural Resources Department, the International Union for Conservation of Nature and Natural Resources, the Bureau of Land Management (BLM), and the Forest Service.

The National Park Service stated that the proposed listing has no immediate effect upon it, but that, if the plant should be found on National Park Service lands, the Fish and Wildlife Service will be notified.

The BLM informed Service that a population exists on BLM-administered land adjacent to Cibola National Forest northwest of Datil, New Mexico. This information has been added to the rule. The BLM pointed out that it has no information regarding the reactivation of uranium mining claims; however, if the claims were to be resumed, the species would be protected from activities that would jeopardize its existence. The BLM commented that fire may be an additional threat to *Erigeron rhizomatus*. It said it is doubtful that the rhizome fleabane is adapted to fire, and a hot fire in adjacent areas may destroy or damage plants. In addition, it commented that intensive livestock or recreational use could damage the populations and that these activities might have to be regulated. The final rule has been changed to reflect these comments.

The Forest Service, in addition to supporting the listing of *Erigeron rhizomatus* as threatened, provided 1983 survey data. It commented on the number of populations and individual plants. The Service concurs with the Forest Service that it is difficult to define a single plant because *E. rhizomatus* reproduces by rhizomes and grows in clumps. The reproductive biology of this species should be studied to better understand this process. The Forest Service also commented that the Datil plants are found in the Baca formation (rather than the Chinle). This information has been incorporated into the final rule. The Forest Service believes that the only threat to *Erigeron rhizomatus* is the uranium mining potential and that the only other activity that may disturb the rhizome fleabane's habitat is road construction. However, it believes that road construction can be conducted giving full recognition to the plant without significant problems. The Forest Service stated that the eradication of *E. rhizomatus* by disease is unlikely due to the scattered distribution of the plant in two mountain ranges. The rule has been changed to reflect this comment. It also requested that the provision in the Act prohibiting possession of the plant from areas under Federal jurisdiction not be implemented. It stated that it believes that the prohibition of collecting would hamper the verification of distribution information on *Erigeron rhizomatus*. The Service does not agree that section

9(a)(2) of the Act will hamper verification of the species' distribution nor does it agree that this restriction is not necessary. The Act does provide for issuance of a permit for collection of plants for scientific purposes. A permit for collection of *Erigeron rhizomatus* may be obtained from the Service for verification of distribution.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all available information, the Service has determined that *Erigeron rhizomatus* should be classified as a threatened species. Procedures found as 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; as revised to accommodate the 1982 Amendments—See final rule at 49 FR 38900, October 1, 1984) 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) of the Act. These factors and their application to *Erigeron rhizomatus* Cronquist are as follows:

**A. The present or threatened destruction, modification, or curtailment of its habitat or range.** The main threats to *Erigeron rhizomatus* are from habitat disturbance, especially if there is ever a resumption of uranium mining. Most of the populations in the Datil and Sawtooth Mountains occur within or very close to extensive, currently inactive, uranium claims and could be destroyed or severely damaged if the claims are ever reactivated and developed without planning for the species' protection. Road construction and resulting erosion also could have adverse impacts on *Erigeron rhizomatus* (Fletcher, 1978; Sabo, 1981). The population on BLM-administered land occurs on an allotment under moderate cattle grazing use. Trampling and the subsequent erosion could damage the population and its habitat (L. MacIntosh, BLM, pers. comm., 1984). Recreation, such as incidental camping and hunting, presents a potential threat to the species on BLM land.

**B. Overutilization for commercial, recreational, scientific, or educational purposes.** *Erigeron rhizomatus* is not presently desired by plant collectors. Collection for scientific study and threats from overuse are small (Sabo, 1981). However, plants are more vulnerable than animals to taking pressures and because of the low numbers of *Erigeron rhizomatus* and its restricted range, vandalism poses a

threat to the survival of this species.

**C. Disease or predation.** No threat from disease or predation to this species is presently known. The scattered distribution of *Erigeron rhizomatus* reduces its susceptibility to disease. However, if any disease should occur, it might seriously reduce the numbers of the plant.

**D. The inadequacy of existing regulatory mechanisms.** There are no State laws offering protection for *Erigeron rhizomatus*. U.S. Forest Service (USFS) regulations prohibit taking of plants on USFS lands (36 CFR 261.9(b)). These regulations are difficult to enforce in backcountry situations.

**E. Other natural or manmade factors affecting its continued existence.** The limited distribution (two New Mexico counties) and low numbers of plants (approximately 200) make *Erigeron rhizomatus* especially vulnerable to habitat disturbances or other stresses.

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 rhizomatus* as threatened.

#### 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 this species at this time. *Erigeron rhizomatus* occurs only on U.S. Forest Service and Bureau of Land Management lands. The Act requires all Federal agencies to carry out programs for the conservation of listed species. The U.S. Forest Service and BLM are aware of where *Erigeron rhizomatus* occurs, and will need to continue to take steps to protect its essential habitat once the species is listed. Also, all Federal agencies, including the U.S. Forest Service and BLM, are bound to avoid any actions that would jeopardize any listed species. Therefore, the determination of critical habitat would not provide any additional benefits for the plants. Critical habitat determinations and publication of detailed maps have the potential of increasing taking pressures or encouraging vandalism. Publication of critical habitat maps for *Erigeron rhizomatus* would enable the public to locate precisely where plants occur, and might lead to vandalism, which could further threaten the species. Because the U.S. Forest Service and BLM know

where *Erigeron rhizomatus* occurs, and will need to continue to protect its habitat, and because a determination of critical habitat might impose further threat to the plants, determination of critical habitat is not considered prudent.

**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. 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. *Erigeron rhizomatus* is known only from U.S. Forest Service and BLM lands. There are uranium mining claims in the vicinity of the majority of the populations in both the Datil and Sawtooth Mountains. The claims are presently inactive. If exploration or a resumption of mining were to occur, there is potential for Federal involvement.

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 *Erigeron rhizomatus*, 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 for 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. International and interstate commercial trade in *Erigeron rhizomatus* is not known to exist. It is not anticipated that many trade permits involving plants of wild origin would ever be issued since this plant is not common in the wild and is not presently in cultivation.

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 from Federal jurisdiction. Section 4(d) allows for the provisions of such protection to threatened species through regulations. This protection will apply to *Erigeron rhizomatus* once revised regulations are promulgated. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. *Erigeron rhizomatus* is known only from Federal lands. 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 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. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

(h) \* \* \*

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
ASTERACEAE—Aster Family:						
<i>Erigeron rhizomatus</i> .....	Rhizome fleabane.....	U.S.A. (NM).....	T	177	NA	NA

Dated: March 25, 1985.

**J. Craig Potter,**  
*Assistant Secretary for Fish and Wildlife and Parks.*  
 [FR Doc. 85-10203 Filed 4-25-85; 8:45 am]

BILLING CODE 4310-55-M

**Literature Cited**

Cronquist, A. 1947. A revision of the North American species of *Erigeron* north of Mexico. *Brittonia* 6:121-302.  
 Fletcher, R. 1978. Status report: *Erigeron rhizomatus*. U.S. Forest Service, Region 3, Albuquerque, New Mexico. 5 pp.  
 Martin, W.C. and Hutchins, C.R. 1981. A Flora of New Mexico. J. Cramer, Germany, xiii + 259 pp.  
 Sabo, D.G. 1981. Status report: *Erigeron rhizomatus*. Office of Endangered Species. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 16 pp.

**Authors**

The primary authors of this final rule are Peggy Olwell and Alisa Shull, Endangered Species staff, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FT'S 474-3972). Status information and a preliminary listing package were provided by D.G. Sabo, P.O. Box 2267, Albuquerque, New Mexico 87103. E. LaVerne Smith of the Office of Endangered Species 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 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, 90 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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