

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to Pecos sunflower;

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

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

(4) Current or planned activities in the subject area and their possible impacts on this species.

Any final decision on the proposed regulation for this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to the Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES** section).

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).

Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

References Cited

A complete list of all references cited herein is available upon request from the U.S. Fish and Wildlife Service, New

Mexico Ecological Services Field Office (see **ADDRESSES** section).

Author: The primary author of this proposed rule is Charlie McDonald, New Mexico Ecological Services Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
* <i>Helianthus paradoxus</i> .	* Pecos sunflower (=puzzle sunflower, paradox sunflower).	* U.S.A. (NM, TX)	* Asteraceae	* T	* x	NA	* NA
*	*	*	*	*	*		*

Dated: March 20, 1998.
Jamie Rappaport Clark,
 Director, Fish and Wildlife Service.
 [FR Doc. 98–8518 Filed 3–31–98; 8:45 am]
 BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR
Fish and Wildlife Service
50 CFR Part 17
RIN 1018–AE89
Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Plant Rumex Orthoneurus (Chiricahua Dock)
AGENCY: Fish and Wildlife Service, Interior.
ACTION: Proposed rule.
SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list *Rumex orthoneurus* (commonly known as

Chiricahua or Blumer's dock) as threatened pursuant to the Endangered Species Act of 1973, as amended (Act). This plant is a rare Southwest endemic occurring within riparian and cienega (marshy wetland) habitats. The plant is known from the Chiricahua, Pinaleno, Huachuca, Sierra Ancha, and White mountains in Arizona. In New Mexico, the plant is known from the Mogollon and San Francisco mountains. The plant is also believed to extend into northern New Mexico in the Pecos Wilderness and to have been extirpated from the Lincoln National Forest. A site in Mexico in the Sierra de los Ajos has also been reported. Habitat loss and degradation due to livestock grazing, recreation, water diversions and

development, road construction and maintenance, and wildfire imperil the continued existence of this species. This proposal, if made final, would extend the Act's protection to this plant. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by July 30, 1998. Public hearing requests must be received by May 18, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 W. Royal Palm Rd., Suite 103, Phoenix, Arizona 85021. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Field Supervisor at the above address or at telephone 602/640-2720 or facsimile 602/640-2730.

SUPPLEMENTARY INFORMATION:

Background

Rumex orthoneurus occurs within higher elevation riparian and wetland habitats in moist, loamy soils or shallowly inundated areas (cienegas) adjacent to springs and streams. While most of the sites are in open meadows or along streams with an open canopy, some sites are shaded. The surrounding habitats are generally mixed conifer (Coronado National Forest 1993). These adjacent plant communities primarily include Douglas fir (*Pseudotsuga menziesii*), ponderosa pine (*Pinus ponderosa*), big tooth maple (*Acer grandidentatum*), and white fir (*Abies concolor*) (Van Devender 1980). The dominant species associated with *R. orthoneurus* include sneeze weed (*Helenium hoopesii*), larkspur (*Delphinium andesicola*), monkeyflower (*Mimulus* sp.) and various sedges (*Carex* spp.) (Phillips *et al.* 1980).

Rumex orthoneurus requires a wetland habitat (perennial streams and springs and cienegas) that is rare in the desert southwest. The Arizona Game and Fish Department (1993) estimated that riparian vegetation associated with perennial streams comprises about 0.4 percent of the total Arizona land area, with present riparian areas being remnants of what once existed. Riparian and cienega habitats support many species of limited distribution in the Southwest, and that distribution can become increasingly restricted due to habitat degradation and loss (Hendrickson and Minckley 1984).

Habitat areas supporting *Rumex orthoneurus* are attractive to people and livestock and, as a result, have been subjected to impacts from recreation, water development and diversions, and concentrated livestock grazing (Phillips *et al.* 1980; Van Devender 1980; Coronado National Forest 1993; Tonto National Forest 1993; Sue Rutman, botanist, *in litt.* 1995; David Hodges, Southwest Center for Biological Diversity (SCBD), pers. comm. 1995; SCBD, petition, 1996).

Rumex orthoneurus is an herbaceous, robust perennial within the Polygonaceae (buckwheat family). Plants grow to 1 meter (m) (3.3 feet (ft)) in height with inflorescence stalks up to 2 m (6.6 ft) in height on more vigorous specimens. Large basal leaves are up to 50 centimeters (cm) (19.7 inches (in)) long, 18 cm (7.1 in) wide, and oblong to oblong-lanceolate in shape. Leaves located along the stem become shorter and more narrow as they develop upwards. Characteristics differentiating this plant from other members in its genus with which it could be confused include rhizomes (creeping underground stems) as opposed to taproots, lateral leaf veins almost perpendicular to the middle vein of the leaf, and a lack of swellings on the midribs of the fruiting capsules (Dawson 1979, Phillips *et al.* 1980, Coronado National Forest 1993).

Rumex orthoneurus was first described from a collection of Blumer's by Rechinger (1936). The collection information noted the following—Chiricahua Mountains, Barfoot Park in a rolling andesitic pineland that had been recently lumbered (Dawson 1979). This original type-locality population was extirpated, possibly as a result of uncontrolled water diversions in the 1980's (Coronado National Forest 1993). Plants at this site were introduced from a different population in the Chiricahua Mountains.

Originally, plants now known from the White, Mogollon, and San Francisco mountains were believed to be *Rumex occidentalis*. Several recent taxonomic studies did not indicate otherwise; however, the culmination of this work and the most recent research indicates that plants in the White, Mogollon, and San Francisco mountains are, in fact, *R. orthoneurus* (Mount and Logan 1993, Friar *et al.* 1994, Bellsey and Mount 1995). Additionally, recent research indicates that *R. orthoneurus* extends into northern New Mexico in the Pecos Wilderness and once occurred on the Lincoln National Forest (Robert Bellsey, University of Arizona, to Mima Falk, Coronado National Forest, pers. comm. 1997).

Rumex orthoneurus occurs at 10 sites in Arizona as natural (not introduced) populations in the Chiricahua, Pinaleno, Huachuca, and Sierra Ancha mountains. The extent of its occurrence in the White Mountains of Arizona is being assessed. In the Mogollon and San Francisco mountains on the Gila National Forest in the Gila Wilderness, it is reported from the Willow and Silver Creek drainages, tributaries of the Gila River, and from SA Creek (Bellsey and Mount 1995; Paul Boucher, Gila National Forest, pers. comm. 1997). It is believed to have been extirpated from three natural sites in Arizona.

Extensive, poorly documented introductions of *Rumex orthoneurus* occurred in the 1980s. Twenty-four introduced populations were established as a result of this effort. Many are now extirpated or believed unlikely to persist due to a number of factors, including management conflicts such as grazing and recreation impacts and poor site selection for the species' habitat needs (Coronado National Forest 1993, Tonto National Forest 1993). The Tonto National Forest (1993) identified and designated 15 transplant sites as Priority III populations expected to be extirpated within the next 50 years as a result of the factors noted above. The Tonto National Forest now considers six introduced populations to be extirpated (Stephen Gunzel, District Ranger, *in litt.* 1998).

The number of extant individuals in both natural and introduced populations of *Rumex orthoneurus* is not known precisely and is confounded by the species' form of asexual reproduction through creeping rhizomes. However, overall, numbers have been declining as a result of impacts from grazing, recreation, road construction and maintenance, and wildfire (unpublished Service data 1990, Coronado National Forest 1993, Tonto National Forest 1993). Comparisons over time of populations occurring on the Tonto National Forest have also been confounded by different counting and estimating methods (Charles Bazan, Tonto National Forest, *in litt.* 1997).

Specific site information for *Rumex orthoneurus* is limited primarily to the sites in the Pinaleno, Chiricahua, Huachuca, and Sierra Ancha mountains. This is the best scientific information available and is the basis for the Service's knowledge that the species is declining. An assessment of the other sites by the Forest Service is presently underway and this information will be valuable in determining further management needs for the species. For some documented impacts, such as

grazing, immediate management actions to remove threats cannot be implemented until the land management agencies have undertaken appropriate administrative procedures.

The remaining native *Rumex orthoneurus* population in the Chiricahua Mountains occurs at Rustler Park and extends along East Turkey Creek. The type locality at Barfoot Park was extirpated, and plants there now were introduced. A site at Upper Cave Creek, not relocated since the original report by S.B. Bingham in 1976, is presumed extirpated.

In the Pinaleno Mountains, *Rumex orthoneurus* is known from Mount Graham at Hospital Flat and Shannon Campground. Both of these natural populations occur in heavily used public recreation areas (Coronado National Forest 1993). The Coronado National Forest (1993) notes that the Hospital Flat site is subject to impacts from regular road maintenance activities.

Only one natural population of *Rumex orthoneurus* remains in the Huachuca Mountains; this site in Scheelite Canyon is under the administration of the Ft. Huachuca Army Post. While this population is subject to potential recreation impacts, the predominant threat is wildfire (Jim Hessel, Ft. Huachuca, pers. comm. 1997). In 1882, J.G. Lemmon collected *R. orthoneurus* from Ramsey Canyon in the Huachuca Mountains; however, this population was extirpated at an unknown date, possibly from activities associated with the Hamburg Mine (Van Devender 1980, unpublished Service data 1990). In 1990, *R. orthoneurus* was reported from Pat Scott Canyon in the Huachuca Mountains; however, that population has not been relocated (unpublished Service data 1990).

Rumex orthoneurus was believed to have been extirpated from Rose Creek in the Sierra Ancha Mountains; however, the Tonto National Forest (1993) reports finding a small number of plants near a developed spring at the campground located there. Previously, extensive road work and sedimentation had rendered most of the available habitat unsuitable. The other three natural populations in the Sierra Ancha Mountains are at Reynolds Creek, Workman Creek, and Cold Springs Canyon.

The success of introductions of populations of *Rumex orthoneurus* in the Chiricahua, Huachuca, and Sierra Ancha mountains has been variable. Some populations, such as those associated with the Cima Cabin in the Chiricahua Mountains, appear likely to persist over time. Other populations, in habitats which are marginal or unstable,

are experiencing management impacts, or have been irretrievably altered by catastrophic wildfire, are already extirpated or believed unlikely to persist over time. An up-to-date assessment of the introduced populations on the Coronado and Tonto National Forests is needed to fully determine the number of extant introductions remaining. Plants occurring on the Gila National Forest are reportedly not subject to grazing impacts (Paul Boucher, Gila National Forest, pers. comm. 1997).

The Service seeks information regarding the status of *Rumex orthoneurus* populations elsewhere in New Mexico and Mexico. Information on the assumed extirpated population(s) on the Lincoln National Forest and on the status of the reported occurrence in the Sierra de los Ajos in Mexico is needed.

Previous Federal Action

Federal government actions on *Rumex orthoneurus* began as a result of section 12 of the original 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 in the U.S. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975, and included *Rumex orthoneurus* as an endangered species. The Service published a notice on July 1, 1975 (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 provisions are now found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. The July 1, 1975, notice included *Rumex orthoneurus*. On June 16, 1976, the Service published a proposal (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. *Rumex orthoneurus* was included in the June 16, 1976, **Federal Register** document. The 1978 amendments to the Endangered Species Act required all proposals over 2 years old to be withdrawn, although a 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice of withdrawal for that portion of

the June 16, 1976, proposal that had not been made final.

The Service published a Notice of Review for plants in the **Federal Register** on December 15, 1980 (45 FR 82480). This notice listed the status of *Rumex orthoneurus* as a Category 1 candidate. Category 1 candidates were taxa for which the Service had sufficient information to support preparation of listing proposals. The species remained a Category 1 candidate in subsequent Notices of Review published on November 28, 1983 (48 FR 53640), September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144).

Beginning with the combined animal and plant Notice of Review published on February 28, 1996 (61 FR 7596), the Service discontinued the designation of multiple categories of candidates, and only species for which the Service has sufficient information to warrant listing proposals are now recognized as candidates. *Rumex orthoneurus* was identified as a candidate in the February 28, 1996, notice and in the next combined animal and plant notice published on September 19, 1997 (62 FR 49398). Development of a proposed rule to list *R. orthoneurus* has been precluded by work on rules for species with a higher listing priority.

On May 7, 1996, the Service received a petition from representatives of the Southwest Forest Alliance and the Southwest Center for Biological Diversity requesting the Service to add *Rumex orthoneurus* to the List of Threatened and Endangered Wildlife and Plants. The petition also requested that critical habitat be designated concurrent with the listing. A civil action was filed in the District Court of Arizona on October 2, 1997, alleging the Service's failure to make a 90-day finding. Under section 4(b)(3) of the Act, the addition of a species to the candidate list and its maintenance on that list constitute both a positive 90-day petition finding and a warranted but precluded 12-month petition finding for that species. Because *R. orthoneurus* was already a candidate species when the May 7, 1996, petition was received, no additional petition findings were required, except for annual findings pursuant to section 4(b)(3)(C) of the Act. The need for further annual findings is obviated by this proposed rule.

Processing of this proposed rule conforms with the Service's Extension of Listing Priority Guidance for Fiscal Year 1997, published on October 23, 1997 (62 FR 55268). The guidance clarifies the order in which the Service will process rulemakings following two related events—the lifting of the

moratorium on final listings imposed on April 10, 1995 (Public Law 104-6), and the restoration of significant funding for listing through passage of the Omnibus Budget Reconciliation Law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1); second priority (Tier 2) to resolving the listing status of outstanding proposed listings; third priority (Tier 3) to resolving the conservation status of candidate species and processing 90-day or 12-month administrative findings on listing or reclassification petitions; and fourth priority (Tier 4) to proposed or final critical habitat designations and processing of reclassifications, which provide little or no additional conservation benefit to listed species. This proposed rule falls under Tier 3.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Rumex orthoneurus* Reehinger (Chiricahua dock) are as follows.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Riparian and cienega habitat degradation and loss has been ongoing as a result of livestock grazing, recreation, water development and diversion, road construction and maintenance, logging, mining and associated activities, and wildfire. These activities have all negatively affected habitat supporting *Rumex orthoneurus* populations. Some populations have been extirpated as a result of the activities. Some of the natural populations in the Chiricahua and Huachuca mountains have been extirpated, possibly as a result of water development and diversion, grazing, and mining activities. The site at Rose Creek in the Sierra Ancha Mountains was believed to have been extirpated by road construction; a small number of plants were later found near a spring at the campground located there. One population in the Pinalenos Mountains is regularly impacted by frequent road maintenance.

These activities which alter habitat supporting *Rumex orthoneurus* continue to pose a threat. Much of this habitat modification is caused by soil compaction due to recreational and grazing activities with the result being a loss of suitable niches for seedling establishment, thus threatening the range of this plant in the future. Many populations occur in wetland areas subject to heavy public recreation. The Tonto National Forest (1993) noted evidence of soil compaction and unstable banks at the Workman Creek sites caused by recreational activities.

The Coronado National Forest (1993) discussed the possible extirpation of the type locality as a result of water diversions. Trampling impacts to the population at Hospital Flat and impacts caused by damming the creek where *Rumex orthoneurus* occurs have been observed (David Hodges, Southwest Center for Biological Diversity, pers. comm. 1995). The Coronado National Forest (1993) has stated that recreational impacts, such as trampling, are difficult to prevent in habitats used by campers, hikers, and birdwatchers. The Tonto National Forest receives the highest amount of recreational use of any National Forest in the U.S. (Eddie Alford, Tonto National Forest, pers. comm. 1997).

Grazing impacts *Rumex orthoneurus* at the system, population, and individual plant levels. *Rumex orthoneurus* occurs in wetland habitats attractive to livestock for forage, water, and shelter and is highly palatable to livestock. Populations being grazed often do not produce seeds. Continued grazing could eventually preclude the population's continued existence due to a lack of seed production, compacted soils discouraging seedling establishment, severe trampling of plants and their creeping underground rhizomes, and destabilization of streambanks resulting in habitat loss.

Prior to a change in permittees which eliminated trespass grazing, the *Rumex orthoneurus* population at Rustler Park in the Chiricahua Mountains was adversely affected by grazing, with plants appearing chlorotic, weak, and producing few inflorescences (Falk, Coronado National Forest, pers. comm. 1997). Activities, including grazing, which took place in the early 1900s in the vicinity of the historic Hamburg Mine are believed to be factors causing the extirpation of the population at Ramsey Canyon in the Huachuca Mountains (Van Devender 1980). Virtually all reported occurrences of *R. orthoneurus* on the Apache-Sitgreaves National Forests are being adversely affected by grazing activities (Apache-

Sitgreaves National Forests, unpublished data, 1997).

Phillips *et al.* (1980) reported a proposed uranium mining and milling operation as a threat to the Workman Creek population of *Rumex orthoneurus* in the Sierra Ancha Mountains. A campsite was proposed to be developed, and the bowl area of Carr Mountain (the watershed for the site) was to be developed into a uranium mill. The Tonto National Forest Assessment for *R. orthoneurus* (1993) calls for the removal of mineral entry for this site; however, it is unknown if this has been implemented for Workman Creek. The Tonto National Forest is presently checking into the status of this mining operation and the potential for future mining.

Wildfire is also a threat to *Rumex orthoneurus*. The Dude Fire on the Tonto National Forest, which resulted in increased stream sedimentation and scouring, destroyed one introduced population and rendered the habitat no longer suitable, and significantly reduced available habitat at two other sites. The Bray Creek Fire on the Tonto National Forest similarly reduced suitable habitat along Bray Creek (Tonto National Forest 1993). The Bray Creek site is now considered extirpated. The Rattlesnake Fire on the Coronado National Forest resulted in a significant decline in the size and extent of one population; recovery has been slow and limited to areas containing some remaining suitable substrate. Much of the original creek is now filled with huge boulders as a result of the catastrophic soil loss following this fire.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

No use of this species for these purposes is known.

C. Disease or Predation

The primary predation threat to *Rumex orthoneurus* is from livestock grazing due to its high palatability and occurrence in wetland habitats attractive to livestock. It has been speculated that grazing impacts at some sites have also been caused by deer (Phillips *et al.* 1980). Separation of impacts caused by native wildlife versus livestock, or the wildlife management changes in these wetland habitats has not been assessed. Grazing by trespass cattle and horses has been a problem in the recent past even in those sites protected by enclosures.

While the trespass situation in the Chiricahua Mountains appears to have been resolved within the last year after 8 years of problems, permitted grazing

occurs at *Rumex orthoneurus* sites in the White Mountains on the Apache-Sitgreaves National Forests and at sites on the Tonto National Forest. Grazing impacts on the site in the Pecos Wilderness are unknown. The Gila Wilderness has not had permitted grazing since 1952 (Paul Boucher, Gila National Forest, pers. comm. 1997). Grazing by cattle has not occurred since 1947 on the *R. orthoneurus* sites in the Pinaleno Mountains (Coronado National Forest 1993). Grazing impacts from horses used by outfitter guides and recreationists has not been fully evaluated for most sites.

D. The Inadequacy of Existing Regulatory Mechanisms

Many Federal and State laws and regulations can protect *Rumex orthoneurus* and its habitat. However, Federal and State agency discretion allowed under these laws still permits adverse effects on listed and rare species. Adding *R. orthoneurus* to the list of threatened species will help reduce adverse effects and will direct Federal agencies to work towards its recovery.

Rumex orthoneurus is not included in either of the Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). It is unlikely it would require the trade protections of CITES.

The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) and National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) direct Federal agencies to prepare programmatic-level management plans to guide long-term resource management decisions. Forest plans generally include a commitment to maintain viable populations of all native wildlife, fish and plant species within the Forest's jurisdiction (e.g. Coronado National Forest 1986). However, such general commitments do not preclude adverse effects to rare species by any National Forest.

The Coronado and Tonto National Forests developed assessments with management strategies for *Rumex orthoneurus* in 1993. To date, these plans have not successfully eliminated adverse effects from grazing and recreation. More successful implementation is now underway, although some sites still need recreation management to more fully eliminate threats. Assessment and management strategies have not been developed for the sites at the other National Forests or the Ft. Huachuca Army Post. All land management agencies with lands supporting this species must address this plant in their fire management

planning as wildfire, with a resulting catastrophic loss of soil and habitat modification, poses a threat to many populations.

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. § 4321–4370a) requires Federal agencies to consider the environmental impacts of their actions. The NEPA requires Federal agencies to describe a proposed action, consider alternatives, identify and disclose potential environmental impacts of each alternative, and involve the public in the decision-making process. It does not require Federal agencies to select the alternative having the least significant environmental impact. A Federal action agency may choose an action that will adversely affect listed or candidate species provided these effects were known and identified in a NEPA document.

The wetland habitats supporting *Rumex orthoneurus* have a degree of protection under section 404 of the Clean Water Act and under Federal Executive Orders 11988 (Floodplain Management) and 11990 (Protection of Wetlands). These laws and orders have not halted population decline, extirpation, or habitat losses for *R. orthoneurus*.

Under the Lacey Act (16 U.S.C. 3371 *et seq.*), as amended in 1982, it is prohibited to import, export, sell, receive, acquire, purchase, or engage in interstate or foreign commerce in any species taken, possessed, or sold in violation of any law, treaty, or regulation of the United States, any Tribal law, or any law or regulation of any State. The Lacey Act can provide a degree of protection to *Rumex orthoneurus* to the extent that the species is protected by Arizona State law (described below) and to the extent the Lacey Act can be enforced.

The Arizona Native Plant Law (A.R.S. Chapter 7, Article 1) protects *Rumex orthoneurus* as "highly safeguarded." A permit from the Arizona Department of Agriculture (ADA) must be obtained to legally collect this species from public or private lands in Arizona. Permits may be issued for scientific and educational purposes only. It is unlawful to destroy, dig up, mutilate, collect, cut, harvest, or take any living "highly safeguarded" native plant from private, State, or Federal land without a permit. However, private landowners and Federal and State public agencies may clear land and destroy habitat after giving the ADA sufficient notice to allow plant salvage. Despite the protections of the Arizona Native Plant Law, legal and illegal damage and destruction of plants and habitat continue to occur.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Many of the populations of *Rumex orthoneurus* occur as small sites in isolated mountain ranges. The loss of any of these populations represents a significant curtailment of the species' range, and may have negative effects on the species' ability to sustain itself over time. As discussed previously, wildfire can pose a significant threat to this species. Because of overgrazing and fire suppression, wildfire can be catastrophic.

The generally low numbers of individuals in mostly scattered, isolated populations renders *Rumex orthoneurus* vulnerable to chance extirpations and potential extinction. Small isolated populations have an increased probability of extirpation (Wilcox and Murphy 1985). Once populations are extirpated, natural recolonization of these isolated habitats may not occur (Frankel and Soule 1981).

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 propose this rule. Based on this evaluation, the preferred action is to list *Rumex orthoneurus* as threatened. This plant is threatened by habitat degradation and loss caused by livestock grazing, water diversions and development, recreation, wildfire, road construction and maintenance, and direct predation by livestock. The species is also subject to an increased risk of extinction due to the small number and sizes of populations. While not in immediate danger of extinction, *R. orthoneurus* is likely to become an endangered species in the foreseeable future if the present threats and declines continue.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not prudent for *Rumex orthoneurus* for the following reasons.

All known populations of *Rumex orthoneurus* occur on Federal lands. Some of these sites are small and discrete thus rendering them vulnerable to vandalism of habitat and plants. Publication of precise maps and descriptions of critical habitat in the **Federal Register**, as required in a proposal of critical habitat, may make this plant vulnerable to incidents of vandalism. Because designation of critical habitat may increase the degree of threat to the species, such designation is not prudent.

In addition, critical habitat designation for *Rumex orthoneurus* is not prudent due to lack of benefit. In the U.S., the species occurs entirely on Federal lands; the U.S. Forest Service and Department of the Army are aware of the locations of *R. orthoneurus* populations on their lands and are either implementing conservation strategies or developing them at this time. Therefore, informing these Federal agencies of the locations of the species through designation of critical habitat is unnecessary.

Furthermore, because it is likely that an activity that would cause adverse modification of critical habitat would also cause jeopardy to *Rumex orthoneurus*, the designation of critical habitat would not likely provide greater protection for this species or its habitat than that provided by listing. Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency (see Available Conservation Measures section). As such, designation of critical habitat may affect activities where such a Federal nexus exists. Under section 7 of the Act, Federal agencies are required to ensure that their actions do not jeopardize the continued existence of a species or result in destruction or

adverse modification of critical habitat. However, both jeopardizing the continued existence of a species and adverse modification of critical habitat have similar standards and thus similar thresholds for violation of section 7 of the Act. In fact, biological opinions that conclude that a Federal agency action is likely to adversely modify critical habitat but not jeopardize the species for which the critical habitat has been designated are extremely rare. Because, in the U.S., *R. orthoneurus* occurs entirely on Federal lands and because locations of populations of the species are well known to the managers of these Federal lands, no adverse modification of this habitat is likely to occur without consultation under section 7 of the Act. Because of the small size of the species' current range, any adverse modification of the species' critical habitat would also likely jeopardize the species' continued existence. Designation of critical habitat for *R. orthoneurus*, therefore, would provide no additional benefit to the species beyond that conferred by listing.

Protection of the habitat of *Rumex orthoneurus* will be addressed through the section 4 recovery process and the section 7 consultation process. For the reasons discussed above, the Service finds that the designation of critical habitat for *R. orthoneurus* is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the 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 Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants 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. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a

proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Rumex orthoneurus is known from the Coronado, Tonto, Apache-Sitgreaves, Gila, and Santa Fe National Forests and from the Ft. Huachuca Army Post managed by the Department of Defense.

Examples of Federal actions that may affect this plant include recreation management, road construction, livestock grazing, water diversions and developments, granting rights-of-way, and military activities. These and other Federal actions would require section 7 consultation if the agency determines that the proposed action may affect listed species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. All 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 U.S. to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions 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

Dated: March 17, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AE82

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant Phlox *hirsuta* (Yreka Phlox) From Northern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes endangered status pursuant to the Endangered Species Act (Act) of 1973, as amended for one perennial plant, *Phlox hirsuta* (Yreka phlox). *Phlox hirsuta* is known only from two locations on serpentine slopes in Siskiyou County, California. A third location, near Etna Mills, California, has been searched, but no plants or habitat have been found since 1930. Urbanization, inadequate State regulatory mechanisms, and extirpation from random events due to small number of populations and small range of the species threaten *Phlox hirsuta*. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for this plant species.

DATES: Comments from all interested parties must be received by June 1, 1998. Public hearing requests must be received by May 18, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821-6340. Comments and materials received, as well as the supporting documentation used in preparing the rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Diane Elam, Sacramento Fish and Wildlife Office (see **ADDRESSES** section) (telephone 916/979-2120; facsimile 916/979-2128).

SUPPLEMENTARY INFORMATION:

Background

Phlox hirsuta (Yreka phlox) is endemic to Siskiyou County, California

where it grows on serpentine slopes in the vicinity of the City of Yreka (California Native Plant Society (CNPS) 1985). Serpentine soils are derived from ultramafic rocks (rocks with unusually large amounts of magnesium and iron). Ultramafic rocks are found discontinuously throughout California, in the Sierra Nevada and in the Coast Ranges from Santa Barbara County, California to British Columbia. Soils produced from ultramafic rocks have characteristic physical and chemical properties, tending to have high concentrations of magnesium, chromium, and nickel, and low concentrations of calcium, nitrogen, potassium, and phosphorus. Serpentine soils alter the pattern of vegetation and plant species composition nearly everywhere they occur. While serpentine soils are inhospitable for the growth of most plants, some plants are wholly or largely restricted to serpentine substrates (Kruckeberg 1984).

In 1876, Edward Green collected the type specimen of *Phlox hirsuta* 8 kilometers (5 miles) southwest of Yreka, California (Wherry 1955). Elias Nelson described the species in 1899 (Abrams 1951, CNPS 1985). Willis Jepson (1943) reduced the species to varietal status, treating the taxon as *Phlox stansburyi* var. *hirsuta*. Edgar Wherry returned the taxon to full species status in his 1955 revision of the genus *Phlox*.

Phlox hirsuta is a perennial subshrub in the phlox family (Polemoniaceae). The species grows 5 to 15 centimeters (2 to 5.9 inches) high from a stout, woody base and is hairy throughout. Narrowly lanceolate to ovate leaves with glandular margins are crowded on the stem. The leaves are 1.5 to 3 centimeters (0.6 to 1.2 inches) long and 4 to 7 millimeters (0.2 to 0.3 inch) wide. Pink to purple flowers appear from April to June. The corollas of the flowers are 12 to 15 millimeters (0.5 to 0.6 inch) long and are smooth-margined at the apex (CNPS 1977, 1985). The 5 to 8 millimeters (0.2 to 0.3 inch) style is contained within the corolla tube (CNPS 1977, 1985; Hickman 1993). Several other phlox species may occur within the range of *P. hirsuta*. Of these, *P. speciosa* (showy phlox) has notched petal lobes and grows 15 to 40 centimeters (5.9 to 15.8 inches), considerably taller than *P. hirsuta*. *Phlox adsurgens* (northern phlox) is also larger than *P. hirsuta* (15 to 30 centimeters (5.9 to 11.8 inches)). In addition, *P. adsurgens* blooms later (from June to August) than *P. hirsuta* and is glabrous rather than hairy. Prostrate (lying flat on the ground) to decumbent (mostly lying on the ground but with tips curving up) stems and

herbage lacking glands separate *P. diffusa* (spreading phlox) from *P. hirsuta* (CNPS 1977, 1985). Although found at the same latitudes, *P. stansburyi* (Stansbury's phlox) occurs 112 kilometers (70 miles) farther to the east in Lassen and Modoc Counties (CNPS 1977).

Phlox hirsuta is found on serpentine soils at elevations from 880 to 1,340 meters (2,800 to 4,400 feet) in association with Jeffrey pine (*Pinus jeffreyi*), incense cedar (*Calocedrus decurrens*), and junipers (*Juniperus* sp.) (CNPS 1985; California Department of Fish and Game (CDFG) 1986; California Natural Diversity Data Base (CNDDB) 1997). The species is known from only two locations in the vicinity of Yreka, California. One occurrence is an open ridge in a juniper woodland within the City limits of Yreka (CNPS 1977, 1985; CNDDB 1997). Estimates of the area occupied by the occurrence range from approximately 15 hectares (37 acres) (Grant and Virginia Fletcher, *in litt.* 1995) to approximately 36 hectares (90 acres) (Nancy Kang, U.S. Fish and Wildlife Service, *in litt.* 1995a). Other extreme serpentine sites searched in the area do not support additional populations of *Phlox hirsuta* (Adams 1987). The second occurrence is about 8 to 10 kilometers (5 to 6 miles) southwest of Yreka along California State Highway 3 in an open Jeffrey pine forest (CNPS 1977, 1985; CNDDB 1997) and includes approximately 65 hectares (160 acres) of occupied habitat (USFWS maps on file). A third location, where the species was last reported in 1930, is in the vicinity of Mill Creek near Etna Mills. The area was searched, but no plants or appropriate habitat were identified (CNPS 1985), and the location may be erroneous (CDFG 1986, Adams 1987). Surveys have been conducted on 80 percent of the potential habitat (defined as the presence of suitable soils) on Klamath National Forest (Ken Fuller and Diane Elam, U.S. Fish and Wildlife Service, *in litt.* 1997) and Bureau of Land Management (Joe Molter, Bureau of Land Management, pers. comm. 1997) lands within the Redding Resource Area; no new populations of *P. hirsuta* have been discovered.

Land ownership of the two occurrences is a mixture of private land owners, the City of Yreka, and the U.S. Forest Service (CNDDB 1997). The City of Yreka occurrence is the more vigorous and dense of the two occurrences (Linda Barker, Klamath