

*Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal governments, on the relationship between the national government and the States or Tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

**VII. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and

other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 7, 2011.

**Daniel J. Rosenblatt,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.574 is amended by alphabetically adding the following commodities to the table in paragraph (a)(1), and by adding paragraph (a)(3) to read as follows:

**§ 180.574 Fluazinam; tolerances for residues.**

(a) *General.* (1) \* \* \*

Commodity	Parts per million
Apple .....	2.0
Apple, wet pomace .....	5.0
* * * * *	*
Carrot, roots .....	0.70
* * * * *	*

(3) Tolerances are established for residues of fluazinam (3-chloro-N-[3-chloro-2,6-dinitro-4-(trifluoromethyl)phenyl]-5-(trifluoromethyl)-2-pyridinamine), including its metabolites and degradates, in or on the commodities in the table below. Compliance with the tolerance levels specified below is to be determined by measuring only fluazinam, AMPA (2-(6-amino-3-chloro- $\alpha,\alpha,\alpha$ -trifluoro-2-nitro-p-toluidino)-3-chloro-5-(trifluoromethyl) pyridine), DAPA (3-chloro-2-(2,6-diamino-3-chloro- $\alpha,\alpha,\alpha$ -trifluoro-p-toluidino)-5-(trifluoromethyl)pyridine), and their sulfamate conjugates.

Commodity	Parts per million
Cattle, fat .....	0.05
Cattle, meat byproducts .....	0.05
Goat, fat .....	0.05
Goat, meat byproducts .....	0.05
Horse, fat .....	0.05
Horse, meat byproducts .....	0.05
Sheep, fat .....	0.05
Sheep, meat byproducts .....	0.05

\* \* \* \* \*  
[FR Doc. 2011-1019 Filed 1-18-11; 8:45 am]  
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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

[Docket No. FWS-R6-ES-2008-0001; 92220-1113-0000-C6]

RIN 1018-AU67

**Endangered and Threatened Wildlife and Plants; Removal of *Erigeron maguirei* (Maguire Daisy) From the Federal List of Endangered and Threatened Plants; Availability of Final Post-Delisting Monitoring Plan**

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

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service/USFWS), are removing the plant *Erigeron maguirei* (commonly referred to as Maguire daisy) from the List of Endangered and Threatened Plants. The best scientific and commercial data available indicate that this species has recovered and no longer meets the definition of endangered or threatened under the Endangered Species Act of 1973, as amended (ESA). Our review of the status of this species shows that populations are stable, threats are addressed, and adequate regulatory mechanisms are in place so that the species is not currently, and is not likely to again become, an endangered species within the foreseeable future in all or a significant portion of its range. Finally, we announce the availability of the final post-delisting monitoring plan for Maguire daisy.

**DATES:** This rule becomes effective on February 18, 2011.

**ADDRESSES:** Copies of the final post-delisting monitoring plan are available by request from the Utah Field Office (see **FOR FURTHER INFORMATION CONTACT**) or online at: <http://www.fws.gov/mountain-prairie/species/plants/>

*maguireidaisy*/or at: <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Larry Crist, Field Supervisor, U.S. Fish and Wildlife Service, Utah Field Office, 2369 West Orton Circle, West Valley City, UT 84119 (telephone 801/975-3330; facsimile 801/975-3331). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877-8339, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:**

**Previous Federal Action**

Section 12 of the ESA (16 U.S.C. 1531 *et seq.*) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered endangered, threatened, or extinct. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27824) accepting the Smithsonian report as a petition to list taxa named therein under section 4(c)(2) (now section 4(b)(3)) of the ESA and announced our intention to review the status of those plants. *Erigeron maguirei* was included in that report (40 FR 27824, July 1, 1975). Maguire daisy is the common name for *E. maguirei*; however, we will primarily use the scientific name of this species throughout this rule.

On June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24524) to designate approximately 1,700 vascular plant species, including *Erigeron maguirei*, as endangered under section 4 of the ESA. The 1978 amendments to the ESA required that all proposals over 2 years old be withdrawn. On December 10, 1979, we published a notice of withdrawal (44 FR 70796) of that portion of the June 16, 1976, proposal that had not been made final, which included the endangered status determination for *E. maguirei*.

On December 15, 1980, we published in the **Federal Register** a revised notice of review for native plants that designated *Erigeron maguirei* as a candidate species (45 FR 82480). Section 4(b)(3)(B) of the ESA requires

that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition. In addition, section 2(b)(1) of the Public Law 97-304 (the 1982 amendments to the ESA) required that all petitions pending as of October 13, 1982, be treated as if newly submitted on that date. Since the 1975 Smithsonian report was accepted as a petition, all the taxa contained in those notices, including *E. maguirei*, were treated as being newly petitioned as of October 13, 1982. On October 13, 1983, we made a 12-month finding that the petition to list *E. maguirei* var. *maguirei* was warranted but precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Notification of this finding was published in the **Federal Register** on November 28, 1983 (48 FR 53640).

On July 27, 1984, we published a proposed rule to designate *Erigeron maguirei* var. *maguirei* as an endangered species (49 FR 30211). The final rule designating the variety of the species as endangered was published on September 5, 1985 (50 FR 36089).

In 1983, *Erigeron maguirei* var. *harrisonii* was described as a separate variety of *E. maguirei*. On September 27, 1985, we published a notice of review for plants which added *E. maguirei* var. *harrisonii* as a candidate species (50 FR 39526). *E. maguirei* var. *harrisonii* remained as a candidate through the revised plant notice of review published on September 30, 1993 (58 FR 51144).

On September 7, 1994 (59 FR 46219), we proposed to accept a taxonomic revision that combined two varieties, *Erigeron maguirei* var. *maguirei* and *E. maguirei* var. *harrisonii*, into one species, *E. maguirei*. The taxonomic revision was based on new genetic information (Van Buren 1993, p. 1; Van Buren and Harper 2002, p. 1). Due in part to the taxonomic revision, we also proposed reclassifying *E. maguirei* from endangered to threatened because the

population numbers and distribution range of the newly described species, *E. maguirei*, were larger than either of the two varieties. The taxonomic revision and reclassification of *E. maguirei* was finalized on June 19, 1996 (61 FR 31054).

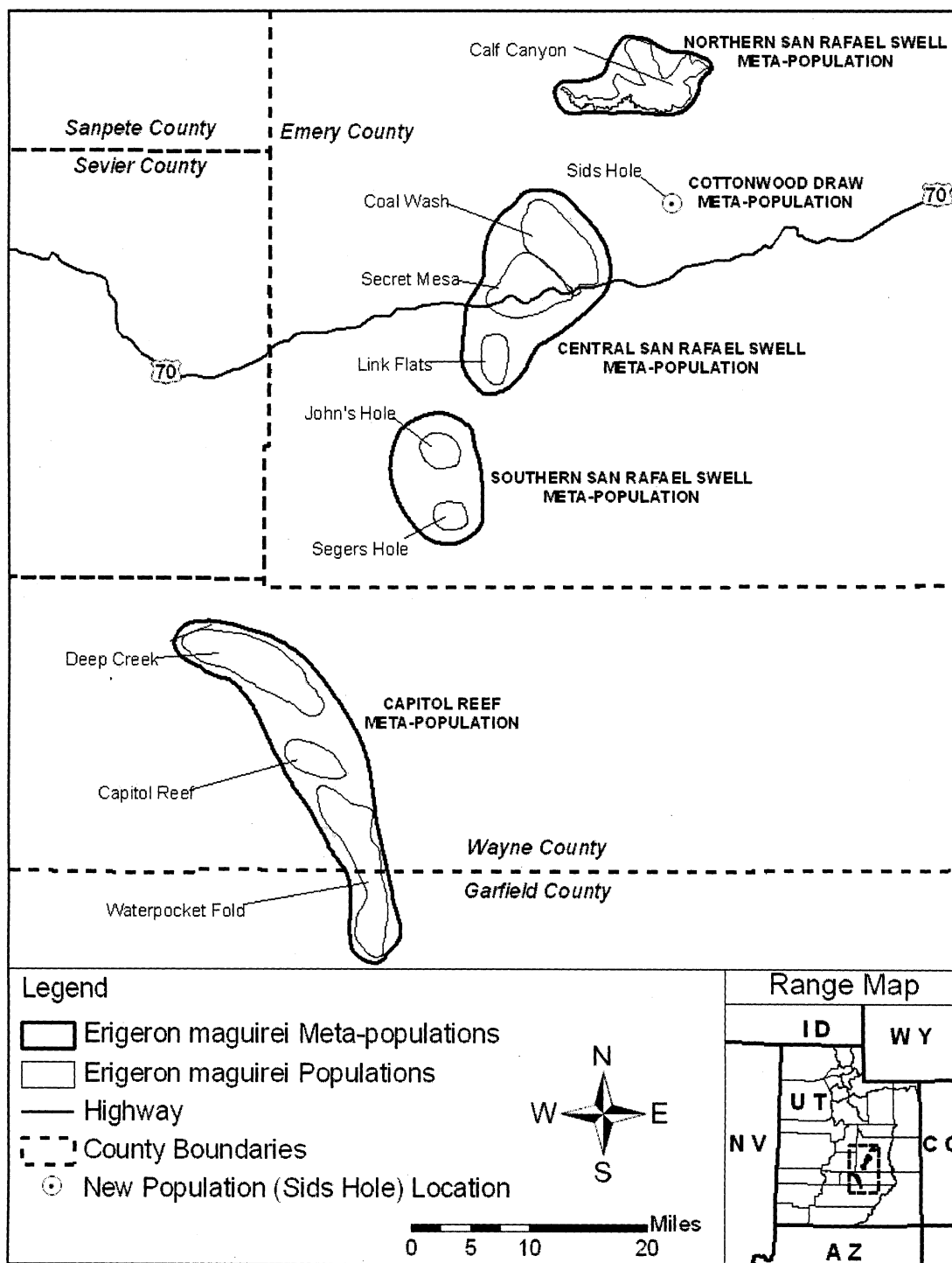
On May 16, 2008, we published a proposed rule to remove *Erigeron maguirei* from the List of Endangered and Threatened Plants, provided notice of the availability of a draft post-delisting monitoring plan, and opened a 60-day public comment period (73 FR 28410). On May 19, 2008, we finalized a 5-year review, initiated on April 7, 2006 (71 FR 17900), which confirmed that the best scientific and commercial data available indicated that this species has recovered and no longer meets the definition of endangered or threatened under the ESA.

**Species Information**

A member of the sunflower family, *Erigeron maguirei* is a perennial herb with a branched woody base. Its stems are decumbent (lying on the ground with the tip ascending) to sprawling or erect. Its basal leaves are spatulate-shaped to oblanceolate (the shape of the leaf is longer than it is wide with the broadest portion of the leaf at the tip and narrower at the base). Its leaves and stems are covered with abundant stiff, coarse, white hairs. Bits of sand commonly cling to the hairs of the leaves and stems. Its flowers are dime-sized with white or pinkish-white petals. The species is further described in our June 19, 1996, final rule reclassifying the species as threatened (61 FR 31054).

The range of the species is estimated at 390 square miles (1,010 square kilometers) and extends from the San Rafael Swell south through the Waterpocket Fold of Capitol Reef National Park (see Figure 1) (Heil 1987, p. 5; 1989, p. 23; Kass 1990, p. 23; Harper and Van Buren 1998, pp. 1-2; Clark 2001, p. 2; 2002, p. 12; Clark *et al.* 2005, pp. 7-8; Clark *et al.* 2006, pp. 7-8).

**BILLING CODE 4310-55-C**



**FIGURE 1. *Erigeron maguirei* Range (Clark *et al.* 2006).**

*Erigeron maguirei* occurs from 5,200 to 8,600 feet (1,585 to 2,621 meters) in

elevation (Clark *et al.* 2006, pp. 9–11). The highest plant densities occur on

mesa tops between 6,000 and 7,000 feet (1,829 and 2,134 meters) in elevation

(Kass 1990, p. 23; USFWS 1995, p. 2; Clark 2001, p. 3; Clark *et al.* 2006, pp. 9–11).

The distribution of *Erigeron maguirei* includes 10 populations (containing 128 sites) composing 5 meta-populations (Clark *et al.* 2006, p. 8; Ivory 2009a, p. 1; 2009b, p. 1; Clark 2010a, p. 1; Truman 2010, p. 1; Robinson 2010, entire), distributed across the species' range (see Figure 1 above). Populations are defined as groups of occurrence records (sites) located in the same geographic vicinity

(Clark 2006b, p. 5; Figure 1). Sites are defined as occurrence locations recorded by one or more researchers over time within an individual population (Clark 2006b, p. 5). Every site is documented by at least one of the following: (1) A herbarium collection record; (2) field survey forms completed by researchers; or (3) a record from the Utah Natural Heritage Program. Meta-populations are comprised of a number of individual populations less than 1.5 miles (2.4 kilometers) apart, typically

linked by continuous suitable habitat (Clark 2006b, p. 5; Clark 2006c). Populations within a meta-population interact at some level. For *E. maguirei*, the interaction may be from pollinators traveling between the populations or by wind carrying seeds to other populations. Table 1 provides population size estimates, number of sites, and land ownership of each population.

TABLE 1—ERIGERON MAGUIREI POPULATION INFORMATION

Meta-population	Population	Minimum population estimate (number of known sites) per land owner*					
		BLM	SITLA	USFS	NPS	Total	Percent
Northern San Rafael Swell ...	Calf Canyon** .....	500(10)	87(2)	.....	.....	587(12)	0.36
	Cottonwood Draw .....	Sids Hole .....	60(1)	.....	.....	60(1)	0.04
Central San Rafael Swell .....	Coal Wash .....	100(6)	***unkown	.....	.....	100(6)	0.06
	Secret Mesa .....	9,000(9)	1,000(2)	.....	.....	10,000(11)	6.14
	Link Flats .....	200(4)	50(1)	.....	.....	250(5)	0.15
	Southern San Rafael Swell ...	John's Hole .....	300(3)	***unkown	.....	300(3)	0.18
Capitol Reef .....	Segers Hole .....	100(2)	***unkown	.....	.....	100(2)	0.06
	Deep Creek .....	.....	.....	1,500(2)	100,000(29)	101,500(31)	62.31
	Capitol Reef .....	.....	.....	.....	30,000(15)	30,000(15)	18.42
	Waterpocket Fold .....	.....	.....	.....	20,000(42)	20,000(42)	12.28
	Totals .....	10,260(35)	1,137(5)	1,500(2)	150,000(86)	162,897(128)	100.00
	Percent .....	6.30	0.70	0.92	92.08	100.00	

\* BLM = Bureau of Land Management; SITLA = State of Utah School and Institutional Trust Lands Administration; USFS = U.S. Department of Agriculture Forest Service; NPS = National Park Service.

\*\* The Calf Canyon population is the type locality population.

\*\*\* Although suitable habitat exists, these SITLA lands have not been surveyed.

The three largest *Erigeron maguirei* populations (Deep Creek, Capitol Reef, and Waterpocket Fold) comprise the Capitol Reef meta-population. Collectively, these three populations contain 93 percent of the known plants including ninety-two percent within Capitol Reef National Park and 1 percent on U.S. Forest Service (USFS) lands (Fishlake National Forest).

The other seven populations (Calf Canyon, Sids Hole, Coal Wash, Secret Mesa, Link Flats, John's Hole, and Segers Hole) are managed primarily by the Bureau of Land Management (BLM). Portions of three of these seven populations (Calf Canyon, Secret Mesa, and Link Flats) occur on State of Utah School and Institutional Trust Lands Administration (SITLA) lands. The Calf Canyon population is the sole population in the Northern San Rafael Swell meta-population; the Sids Hole population is the sole population in the Cottonwood Draw meta-population; Coal Wash, Secret Mesa, and Link Flats comprise the Central San Rafael Swell meta-population; and John's Hole and Seger's Hole populations comprise the

Southern San Rafael Swell meta-population.

*Erigeron maguirei* occurs primarily on sandstone domes on mesa tops and in cracks and crevices of domes and cliffs in the Navajo Sandstone formation (Clark *et al.* 2006, p. 12). It also occurs within steep, narrow, dry, rocky, and sandy canyon or wash bottoms (Cronquist 1947, p. 165; Anderson 1982, pp. 1–2; Heil 1989, pp. 25–26; Kass 1990, p. 22; Harper and Van Buren 1998, p. 1). Populations within canyon bottoms are established from seeds dispersed by wind or overland flow from source populations on the mesa tops (Heil 1989, p. 25; Kass 1990, p. 27; USFWS 1995, p. 2). These canyon populations are generally small compared with those on the mesa tops (Heil 1989, p. 25; Kass 1990, p. 27; USFWS 1995, p. 2).

*Erigeron maguirei* grows primarily in the Dwarf Mountain Mahogany Slickrock plant community, a community endemic to the Colorado Plateau Region (Heil 1989, p. 23; Clark 2001, pp. 15–16; Clark *et al.* 2006, p. 15). *E. maguirei* also is associated with pinyon juniper-tall shrub, ponderosa

pine-tall shrub slickrock pockets, mesic canyon bottoms, mountain shrub, and intermittent riparian communities (Kass 1990, p. 22; Harper and Van Buren 1998, p. 1; Clark 2002, pp. 15–16; Clark *et al.* 2005, p. 7; Clark *et al.* 2006, p. 15).

Flowering occurs from May to June and takes 4 to 6 weeks to go from the small green "button" bud stage to completion of anthesis, when the flower is no longer open and functional (Alston and Tepedino 2005, p. 54; Clark *et al.* 2006, p. 17). It appears that *Erigeron maguirei* lacks self-compatibility, and that pollinators are necessary for cross pollination to occur (Alston and Tepedino 2005, p. 61). Because of the open nature of the flower head, *E. maguirei* is visited by opportunistic insects searching for nectar (Alston and Tepedino 2005, p. 60). Pollinators include various flies, wasps, and bees (Alston and Tepedino 2005, p. 60).

The species is long-lived, has a low mortality rate, and has the ability to replace individuals at a rate that compensates for mortality (Van Buren and Harper 2002, pp. 2–5). Populations are stable (Van Buren and Harper 2002, p. 2).

## Recovery

Recovery plans are not regulatory documents and are instead intended to provide guidance to the Service, States, and other partners on methods to minimize threats to listed species, establish goals for long-term conservation of listed species, and define criteria that may be used to determine when recovery is achieved. There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and the species is robust enough to reclassify from endangered to threatened or to delist. In other cases, recovery opportunities may be discovered that were not known when the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan.

We approved the Maguire Daisy (*Erigeron maguirei*) Recovery Plan (hereafter referred to as the Recovery Plan) on August 15, 1995 (USFWS 1995, entire). The Recovery Plan outlined three delisting criteria. These criteria, and the status of the species relative to these criteria, are outlined below.

**Delisting Criterion One:** Locate or establish additional populations. Maintain 20 populations that have been demonstrated to be above minimum viable population levels. Until minimum viable population levels are determined, it is assumed that the minimum viable population level will be about 500 individuals (USFWS 1995, p. ii). At the time the Recovery Plan was written, the species was known from 7 populations (32 sites) with a total population of 5,000 individuals (USFWS 1995, p. 2). To achieve this criterion, the Recovery Plan recommended that land managers inventory suitable habitat to determine with a reasonable degree of accuracy the species' population and distribution (USFWS 1995, pp. ii, 6, 7, 12).

In 1999, the BLM, USFS, and the National Park Service (NPS) entered into an interagency agreement to direct

conservation measures for listed and sensitive plant species endemic to central Utah, including *Erigeron maguirei* (BLM *et al.* 1999, entire; Clark 2002, p. 3). The agencies committed funding to survey and monitor *E. maguirei* throughout its range (Clark 2002, p. 3). From 1999 to 2002, approximately 3,521 hectares (8,700 acres) were surveyed for *E. maguirei* on NPS, BLM, and USFS lands (Clark and Clark 1999, p. 45; Clark 2002, p. 13).

The recovery criterion of maintaining 20 viable populations was based on our earlier assumption that the species was distributed in a scattered, disconnected pattern (Clark 2006c, entire). However, the survey efforts identified broader plant distributions and larger population sizes that are evenly distributed across the landscape (Harper and Van Buren 1998, p. 2; Clark and Clark 1999, p. 47; Clark 2001, p. 3; 2002, pp. 13–14; Clark *et al.* 2005, p. 17; Clark *et al.* 2006, p. 17).

We currently know of 10 populations (128 sites) comprising 5 meta-populations, with a total population of 162,897 *Erigeron maguirei* individuals (see Figure 1 and Table 1 above) (Clark *et al.* 2006, p. 16; Ivory 2009a, p. 1; 2009b, p. 1; Clark 2010a, p. 1; Robinson 2010, entire). As previously described, the range of the species covers 390 square miles (1,010 square kilometers) and extends from the San Rafael Swell south through the Waterpocket Fold of Capitol Reef (see Figure 1 above) (Clark *et al.* 2006, p. 17; Clark 2010a, p. 1; Truman 2010, p. 1; Robinson 2010, entire). All three *E. maguirei* populations within the Capitol Reef Meta-Population are linked by contiguous suitable habitat (Clark *et al.* 2006, p. 24). A similar situation exists between populations in each of the three meta-populations within the San Rafael Swell area; suitable habitats are separated by short distances, effectively linking populations (Clark *et al.* 2006, p. 24).

In 2010, the fifth meta-population (Cottonwood Draw) was discovered east of the Central San Rafael Swell meta-population and south of the Northern San Rafael Swell population (see Figure 1 above) (Clark 2010a, p. 1; Truman 2010, p. 1). The Cottonwood Draw meta-population is currently comprised of a single population (Sids Hole). This area was discovered through recent implementation of the post-delisting monitoring protocol. The area has not been fully surveyed or evaluated and may include additional populations or sites, but is generally viewed as less ideal for the species with patchy areas of suitable habitat that currently appear isolated from other sites or populations.

While not adding much to the species' overall viability, recent discoveries (since the 2008 proposed rule), such as this one, provide added support for our conclusion regarding the species' overall status.

Overall, the available information demonstrates large, sufficiently connected, and evenly distributed populations and suitable habitats that provide and will continue to provide for the desired long-term species' viability intended by the Recovery Plan. In fact, the 10 populations have more desirable biological attributes than the originally suggested 20 populations in the Recovery Plan. For example, the recovery goal of 20 populations was based on the assumption that the populations were small and widely scattered. The 10 current populations are well connected within 5 meta-populations, and these meta-populations are distributed throughout the range of the species (see Figure 1 and Table 1 above). The habitat is contiguous between populations, thereby increasing the species' robustness. Furthermore, the Recovery Plan called for 20 populations of 500 individuals. This suggests recovery at about 10,000 plants. Today, we know of 162,897 *Erigeron maguirei* individuals, far surpassing the implied numeric target in the Recovery Plan. In addition, the species' population is stable (see **Species Information**). Therefore, the available data demonstrate that the intent of this recovery criterion has been met or exceeded.

**Delisting Criteria Two and Three:** Establish formal land management designations for these populations that provide long-term, undisturbed habitat for Maguire daisy (USFWS 1995, p. ii). Ensure that Maguire daisy and its habitat are protected from loss of individuals and environmental degradation (USFWS 1995, p. ii). To achieve these criteria, the Recovery Plan recommended we work with our partners to document the presence of, or establish formal land management designations that provide for long-term protection for, Maguire daisy and its habitat (USFWS 1995, pp. ii, 6, 9, 12).

Approximately 85 percent of the species' range occurs on Federal lands with substantial protective measures in place (see Table 2 and Factor D below). For example, the NPS General Management Plan designated Primitive and Threshold Management Zones (Capitol Reef 1998, pp. 27–31); these land designations afford protection to the three largest *Erigeron maguirei* populations by limiting surface disturbance and construction activities. The BLM designated Wilderness Study

Areas (WSAs), Instant Study Areas (ISA), and Areas of Critical Environmental Concern (ACECs) in the approved 2008 Price Field Office Resource Management Plan (RMP) (BLM 2008c, Maps R-5, R-28, and R-29). These land designations afford protection to six *E. maguirei* populations by minimizing habitat degradation and surface disturbances

from grazing, mining, mineral lease uses, and right-of-way grants (see Factor D) (BLM 2008c, pp. 41, 129, 131, and 135-137; BLM 2009, entire; Stephens 2009, p. 1). Similarly, off-highway vehicle (OHV) use also is effectively managed to minimize disturbances to plants by eliminating cross-country travel on USFS and BLM lands (USFS 2006b, pp. 123, 260-263; 2008, Tile

K11; 2009, Map). OHVs are not allowed in Capitol Reef National Park, which represents the majority of the species' range (see Factor D). More information regarding the protection of *E. maguirei* through land management designations is contained in the Factor D discussion of the **Summary of Factors Affecting the Species**.

TABLE 2—PERCENT OF EACH ERIGERON MAGUIREI POPULATION WITH PROTECTIVE LAND MANAGEMENT DESIGNATIONS BASED ON GIS ANALYSIS

Population	Land ownership	% of range per landowner*	Land management designations	% of landowner range within protective designations
Calf Canyon .....	BLM .....	70	San Rafael Canyon ACEC, Mexican Mountain WSA, Sids Mountain WSA.	97
	SITLA .....	30	None .....	0
Sids Hole .....	BLM .....	**	None .....	0
	BLM .....	95	I-70 Scenic ACEC, Sids Mountain WSA .....	96
Coal Wash .....	SITLA .....	5	None .....	0
	BLM .....	95	I-70 Scenic ACEC, Devils Canyon WSA, Sids Mountain WSA.	88
Secret Mesa .....	SITLA .....	5	None .....	0
	BLM .....	80	Lucky Strike ACEC, Devils Canyon WSA, Link Flats ISA .....	36
Link Flats .....	SITLA .....	20	None .....	0
	BLM .....	95	Muddy Creek ACEC, Muddy Creek WSA .....	100
John's Hole .....	SITLA .....	5	None .....	0
	BLM .....	95	Segers Hole ACEC, Muddy Creek WSA .....	79
Segers Hole .....	SITLA .....	5	None .....	0
	NPS .....	95	Primitive & Threshold Management Zone .....	100
Deep Creek .....	USFS .....	5	Proposed Botanical Area .....	100
	NPS .....	100	Primitive & Threshold Management Zone .....	100
Capitol Reef .....	NPS .....	100	Primitive & Threshold Management Zone .....	100
	NPS .....	100	Primitive & Threshold Management Zone .....	100
Waterpocket Fold .....	NPS .....	100	Primitive & Threshold Management Zone .....	100

\* Populations' ranges within BLM lands were provided by Ivory (2006 and 2007) with the exception of Calf Canyon and Sids Hole; the remaining populations' ranges were estimated based on GIS analysis.  
 \*\* Unknown.

Additionally, the Interagency Rare Plant Team developed the Central Utah Navajo Sandstone Endemics Conservation Agreement and Strategy (hereafter referred to as the Conservation Strategy) (USFS *et al.* 2006, entire). Although we do not base our delisting decision on the existence of the Conservation Strategy, we believe it will provide for the continued conservation of the species. The Conservation Strategy, signed by the USFS, BLM, NPS, and the Service in September 2006, outlines the procedural provisions under which the Federal agencies will manage *Erigeron maguirei* through 2016 (USFS *et al.* 2006, pp. 24-25). In addition, the Conservation Strategy documents the conservation actions needed to mitigate any potential factors impacting the species and to promote the conservation and perpetuation of *E. maguirei* (USFS *et al.* 2006, pp. 38-47). The Conservation Strategy can be viewed in its entirety at: <http://mountain-prairie.fws.gov/species/plants/maguireidaisy/>. Copies also can

be obtained from the Utah Field Office (see **FOR FURTHER INFORMATION CONTACT**).

In summary, Federal land management agencies have worked collaboratively to provide for the long-term protection of *Erigeron maguirei* and its habitat. Land management plans, policies, and regulations are in place that provide protection to *E. maguirei*. Based on the above, the intent of Criteria 2 and 3 have been met.

Based on the best available data, we have determined that the intent of all three recovery criteria is met.

**Summary of Comments and Recommendations**

In our proposed rule (73 FR 28410, May 16, 2008), we requested that all interested parties submit data, comments, new information, or suggestions concerning: (1) Biological information concerning this species; (2) Relevant data concerning any current or likely future threats (or lack thereof) to this species, including the extent and adequacy of Federal and State protection and management that would

be provided to the *Erigeron maguirei* as a delisted species; (3) Additional information concerning the range, distribution, population size, and population trends of this species, including the locations of any additional populations of this species; (4) Current or planned activities in the subject area and their possible impacts on this species; and (5) Our draft post-delisting monitoring plan. We accepted comments for 60 days, ending July 15, 2008 (73 FR 28410, May 16, 2008). During the comment period, we received two comment letters representing three organizations.

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270) and the Office of Management and Budget's (OMB) December 16, 2004, Final Information Quality Bulletin for Peer Review, we solicited independent opinions from 10 knowledgeable individuals who have expertise with the species, who are within the geographic region where the species occurs, or who are familiar with the principles of conservation biology. We received

comments from four of the peer reviewers, all of whom are or were employed by Federal agencies. Although we solicited non-Federal academic peer reviewers, these parties did not respond. Peer reviewers provided new information, management guidance recommendations, editorial changes, and clarifications to the species' description.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding the proposed delisting of *Erigeron maguirei*. Substantive comments received during the comment period are addressed below and, where appropriate, incorporated directly into this final rule and the post-delisting monitoring plan.

**Issue 1:** One commenter expressed concern that SITLA lands are managed for minerals, grazing and recreation, and not for conservation of *Erigeron maguirei*. Isolated SITLA parcels are generally managed in conjunction with the BLM lands for grazing. These SITLA lands also are open for cross-country travel and do not fall into any designated route plan.

**Response:** Less than 1 percent of the species' plants occur on lands owned and managed by SITLA. Therefore, special management designations on SITLA lands, such as travel route designations, are not essential for the conservation of the species and are not necessary to support the delisting of the species.

**Issue 2:** One commenter expressed concern with how the post-delisting monitoring plan for the Maguire daisy characterized the status of several of the remote populations. The commenter believed that these small remote sites (less than or near 50 plants) would be seriously impacted by delisting. The commenter also stated that the Calf Canyon population of 50 plants was last visited in 1982, and it is unknown if it still exists.

**Response:** The draft post-delisting monitoring plan contained information regarding a number of monitoring sites within populations. We believe that the draft post-delisting monitoring plan was confusing with regard to the definitions and use of the terms "population," "site," and "element occurrence." We have now clarified our terminology and have thoroughly reviewed the document to ensure we used the terms properly and consistently throughout the final post-delisting monitoring plan.

Even though some sites contain fewer than 50 individuals, we have little reason to believe these sites are likely to be seriously impacted by delisting. Most of these sites have persisted for long

periods of time without noteworthy negative changes in status. The species is long-lived, has a low mortality rate, and has the ability to replace individuals at a rate that compensates for mortality (Van Buren and Harper 2002, pp. 2–5). Populations are stable (Van Buren and Harper 2002, p. 2). Additionally, the species' preferred habitat (cliffs, rock crevices, and sandstone domes on mesa tops) is subject to few threats (see Summary of Factors Affecting the Species below). Collectively this suggests these sites are unlikely to be lost.

Even if some sites do suffer negative effects, many of these sites are connected to neighboring sites as part of a larger population and meta-population. For example, the Link Flats population is comprised of a number of sites totaling approximately 250 individuals and is within the San Rafael Swell area, where most suitable habitat occurrences are separated by short distances (Clark *et al.* 2006, p. 24). Meta-population dynamics indicate that although individual sites may be lost, they can be recolonized by seed dispersed from other neighboring sites.

As an added safeguard, land managers plan to carefully monitor one site within each population including some small sites (Service 2010, pp. 7–10). If impacts are observed, population trend monitoring will be expanded to include human impact monitoring (Service 2010, pp. 14–15). If a 40 percent or more decline is observed in a 2-year period at any of the monitoring plots, cooperators will evaluate possible causes of the apparent decline and determine the most appropriate response (Service 2010, p. 16). We believe this is sufficient to ensure few, if any, sites are at serious risk of extirpation.

Furthermore, even if we lost some or many of these small sites, we do not believe the species would qualify as an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become endangered within the foreseeable future throughout all or a significant portion of its range). *Erigeron maguirei* is estimated at 162,897 individuals over a range of about 390 square miles (1,010 square kilometers) with 10 populations (containing 128 sites) composing 5 meta-populations (see Figure 1 and Table 1 above) (Clark *et al.* 2006, p. 16; Ivory 2009a, p. 1; 2009b, p. 1). In our view, these large, connected, and evenly distributed populations and suitable habitats provide for the species' long-term viability. Thus, even in the unlikely event that some or many of

these small sites were lost, it would not change our determination.

Regarding the Calf Canyon population, the area was resurveyed in 2009 and again in 2010. These surveys identified 10 sites with at least 500 plants total (Ivory 2009a, p. 1; Ivory 2009b, p. 1; Robinson 2010, entire). The majority of the plants were located on a mesa top in the vicinity of the canyon bottom populations where the species was first described. As the final post-delisting monitoring plan was signed prior to the majority of these sites being known, we are making a minor amendment to the plan to reflect the latest information.

**Issue 3:** One commenter recommended including a specific due date for the annual post-delisting monitoring report, such as December 1 of each year. The commenter further recommended that we provide a brief and concise summary to the agencies (NPS, BLM, and the USFS) regarding the status and adequacy of the monitoring efforts each year.

**Response:** We have incorporated these recommendations into the final post-delisting monitoring plan.

**Issue 4:** One commenter noted that many of the protections provided by ACECs and WSA designations on BLM lands are for the protection and management of lands in general and not specifically for *Erigeron maguirei* populations and habitat. These management restrictions would be in place whether *E. maguirei* is listed or not.

**Response:** We acknowledge that many land management designations are in place for other resources; however, *Erigeron maguirei* will benefit from habitat being protected in these areas. We have incorporated language into this final rule to address this comment (see Factor D).

**Issue 5:** One commenter believed that the proposed rule did not fully recognize tar sands development as a threat to this species and does not disclose the number of plants in the Calf Canyon, Secret Mesa, and Link Flats areas within designated tar sands areas. The commenter expressed concern that delisting the species would open up the area for development, and that it appears that we were writing off the populations in this area.

**Response:** Since the proposed rule was published, the BLM has finalized the Record of Decision and Approved RMP, and the Record of Decision for Oil Shale and Tar Sands Resources to Address Land Use Allocations in Colorado, Utah, and Wyoming and Final Programmatic Environmental Impact Statement (BLM 2008a, entire; 2008c,

entire). The final rule fully discloses the percentages of each population that are susceptible to tar sands development (Calf Canyon (0 percent); Secret Mesa (about 1 percent of the population); and Link Flats (almost 37 percent of the population)). The Link Flats population contains less than 1 percent of all known individuals of the entire *E. maguirei* population. Although tar sands development will affect individuals, the effects are expected to be localized and not reach the level that would compromise the species' viability. Tar sands development is further addressed under Factor A below.

*Issue 6:* One commenter expressed concern with potential loss of genetic variation through potential impacts from tar sands development in the eastern and northernmost portions of the range.

*Response:* The potential for genetic isolation is analyzed in this final rule. Based on the close proximity of known populations, connecting habitat between most populations, and available genetic research, the species is not considered threatened by reduced genetic viability. Given the locations of potential development relative to the known distribution of *Erigeron maguirei* populations, we expect impacts to the species to be localized and minor (see Factor A discussion below).

*Issue 7:* One commenter was concerned that the Conservation Strategy was relied upon as justification for delisting. The commenter opined that the Conservation Strategy is not legally binding and was prepared behind closed doors with no public input whatsoever.

*Response:* The commenter is correct that the Conservation Strategy is not legally binding. Future implementation of conservation actions is contingent upon funding availability of each Federal entity. However, our decision to remove *Erigeron maguirei* from the List of Endangered and Threatened Plants is not dependent on future actions associated with the Conservation Strategy. Our decision to remove *E. maguirei* from the List of Endangered and Threatened Plants is based on conservation actions already completed, current population levels and their management, and our analysis of threats to the species. The commenter is correct that public input was not sought in the development of the Conservation Strategy; however, public input was not required. The Conservation Strategy is a management guidance document that was prepared and will be implemented by the involved land management agencies. Although public input was not required during developing the

Conservation Strategy, implementing specific on-the-ground actions must comply with National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) regulations, which include public comment and public disclosure.

*Issue 8:* One commenter stated that seven of the nine populations of *Erigeron maguirei* are open to oil and gas development.

*Response:* Seven of the 10 populations are open to oil and gas leasing (USFS *et al.* 2006, p. 56). The three largest populations (Deep Creek, Capitol Reef, and Waterpocket Fold) on Capitol Reef National Park contain 92 percent of the individuals and occur on lands withdrawn from all mineral exploration and development activities (see Table 1 above and Factor D below; USFS *et al.* 2006, p. 56). Six of the remaining seven populations occur predominantly within the Navajo Sandstone formation, which has low potential for oil and gas development (USFS *et al.* 2006, pp. 37 and 56); the newest population occurs in an area that is atypical, where habitat is disjunct (Clark 2010a, p. 1). We have concluded that oil and gas development within *Erigeron maguirei* habitat is unlikely due to the low potential throughout the majority of the occupied habitats. Factor A presents additional analysis of the potential for energy development to affect the species.

*Issue 9:* One commenter stated that populations within Capitol Reef National Park are not necessarily protected because National Parks are not wildlife or plant sanctuaries, nor are they managed with objectives that are consistent with the protection of rare elements.

*Response:* More than 92 percent of the individual plants occur within Capitol Reef National Park (see Table 1 above). All *Erigeron maguirei* plants within Capitol Reef National Park are within Capitol Reef Primitive and Threshold Management Zones. These land management designations will provide protection to the species for the foreseeable future. Factor D presents our analysis of how these land management designations will specifically afford protection to the species.

*Issue 10:* One commenter was concerned that the delisting proposal downplays the significance of the effects of human and livestock trampling. The commenter believes that *Erigeron maguirei* should not be delisted unless cattle grazing is prohibited in the species' habitat.

*Response:* Eight of the 10 *Erigeron maguirei* populations occur within cattle allotments. However, the plants inhabit areas that are inaccessible to

cattle due to steep terrain. Cattle have trailed through one population approximately once every 5 years for the past 100 years. Although cattle trailing can impact individual plants, the population where this activity occurs is stable (Clark *et al.* 2006, pp. 21, 25), and its viability is not affected by this level of impact. The newest population is near a reservoir used by cattle as a watering hole. Although the area experiences impacts from cattle grazing, this population is persisting without special management considerations affording it protection from grazing activities.

At the time of downlisting, we stated that livestock trampling was known to adversely impact individual plants (61 FR 31054; June 19, 1996). Livestock trampling negatively impacts individuals of *Erigeron maguirei* growing in accessible wash bottoms. However, the threat to the species is low because *E. maguirei* prefers cliffs and rock crevices that are inaccessible to livestock (Clark *et al.* 2006, p. 21). Due to habitat preferences of the species, livestock use is no longer a threat (Clark *et al.* 2006, p. 21).

The impact of grazing is analyzed in this final rule. The best available scientific data indicate that grazing does not pose a threat to the species and is unlikely to become a threat in the foreseeable future (Clark *et al.* 2006, p. 21).

*Issue 11:* One commenter claimed it is disingenuous to conclude that the species is recovered. If the species were to be delisted, it would be because of additional information and investigation, not because it was recovered.

*Response:* We recognize that this delisting is supported by new information. However, none of this information would be available had it not been due to the recovery efforts of the Interagency Rare Plant Team. The Federal partners that make up the Interagency Rare Plant Team deserve credit for implementing extensive recovery actions that allow us to remove the species from the List of Endangered and Threatened Plants. Without these actions, this species would still be listed.

Also of note, but not critical to our "delisting due to recovery" determination, only species delisted due to recovery are subject to the post-delisting monitoring requirement. We believe such a monitoring period is desirable in that it allows us to track any changes in status post-delisting and respond accordingly.



### Summary of Factors Affecting the Species

In making this final determination, we have considered all scientific and commercial information available, which includes information received during our 5-year review (71 FR 17900, April 7, 2006) and the public comment period on our proposed delisting rule (73 FR 28410, May 16, 2008); additional survey data collected in 2008, 2009, and 2010 (Ivory 2008, pp. 1–2; Ivory 2009a, entire; Ivory 2009b, entire; Clark 2010a, p. 1; Truman 2010, p. 1; Robinson 2010, entire); the final BLM RMP; the Final Oil Shale and Tar Sands RMP Amendments to Address Land Use Allocations in Colorado, Utah, and Wyoming and Programmatic Environmental Impact Statement; and additional scientific information from ongoing species' surveys and studies.

Section 4 of the ESA and its implementing regulations (50 CFR 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. "Species" is defined by the ESA as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). We may delist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species is neither endangered nor threatened for the following reasons: (1) The species is extinct; (2) the species has recovered and is no longer endangered or threatened (as is the case with *Erigeron maguirei*); or (3) the original scientific data used at the time the species was classified were in error.

A recovered species is one that no longer meets the ESA's definition of endangered or threatened. Determining whether a species is recovered requires consideration of the same five categories of threats specified in section 4(a)(1) of the ESA. For species that are already listed as endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the ESA's protections.

A species is "endangered" for purposes of the ESA if it is in danger of extinction throughout all or a significant portion of its range and is "threatened" if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The "foreseeable future" is the period of

time over which events or effects reasonably can or should be anticipated, or trends reasonably extrapolated.

The following analysis examines the five factors affecting, or likely to affect, *Erigeron maguirei* within the foreseeable future.

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

When the species was originally listed, the main threat was loss of habitat due to mining claims for uranium, energy exploration, and off-road vehicle (ORV) recreation (50 FR 36089, September 5, 1985). We address these threats to *Erigeron maguirei* below.

#### Mineral Exploration and Development Overview

Mineral exploration and development were listed as threats in the *Erigeron maguirei* listing rule, the Recovery Plan, and the downlisting rule (50 FR 36089, September 5, 1985; USFWS 1995, p. 5; 61 FR 31054, June 19, 1996). The original listing (when the population was estimated at 7 individuals) and subsequent downlisting (when the population was estimated at 3,000 individuals) noted as threats existing uranium mining claims, the potential for extraction to begin when market forces change, and mining activities and associated surface disturbances that could directly or indirectly destroy plants or render the habitat unsuitable for the species (50 FR 36089, September 5, 1985; 61 FR 31054, June 19, 1996).

#### Uranium

Uranium mining began in the western United States in 1871 (Ringholz 1994, p. 2). In 1952, the first noteworthy deposits of uranium ore in Utah were located (Ringholz 1994, p. 2). By the end of 1962, Utah had produced approximately nine million tons of ore (Ringholz 1994, p. 2). The Atomic Energy Commission held ample uranium ore reserves by 1970 and stopped buying uranium (Ringholz 1994, p. 3). When nuclear power plants came on-line in the mid-1970s, a brief second uranium boom was experienced (Ringholz 1994, p. 3). However, foreign competition, Federal regulations, and nuclear fears virtually put an end to domestic uranium mining (Ringholz 1994, p. 3). Substantial ore remains deep underground in Utah, and should prices rise, mining could be resurrected (Ringholz 1994, p. 3). In 2007, uranium prices increased as did mining activity (Hargreaves 2007, pp. 1–2).

Five uranium districts, areas depicting uranium resource

development potential, overlap *Erigeron maguirei* populations; three of these districts have low potential, and two have moderate potential (Gloyn *et al.* 2005, Map 216; Clark *et al.* 2006, p. 9). We assume the highest potential districts will be developed first, allowing us to work proactively with other Federal agencies to minimize threats to the species and prevent relisting. A small portion of the Link Flats population (9 percent), a small portion of the Coal Wash population (16 percent), and a large portion (85 percent) of the Segers Hole population overlap uranium districts with moderate potential (Gloyn *et al.* 2005, Map 216; Clark *et al.* 2006, p. 9). Thirteen known uranium mineral locations, specific locations where mining claims exist, overlap the mapped *E. maguirei* populations (Clark *et al.* 2006, p. 16; Utah Geological Survey 2007, Map). Only the Lucky Strike Mine is active (Utah Geological Survey 2007, Map). This mine occurs along the southern edge of the mapped Link Flats population (Central San Rafael Swell Meta-Population) (Clark *et al.* 2006, p. 9; Utah Geological Survey 2007, Map). Operation of the mine will not adversely impact this population because it is located on the periphery of the population and is accessed via an existing road. Of the remaining 12 locations, 7 locations never produced uranium, and 5 locations only reached small production levels (Utah Geological Survey 2007, Map). Eleven of these locations occur on the periphery of the mapped *E. maguirei* populations (Clark *et al.* 2006, p. 16; Utah Geological Survey 2007, Map). The only location that occurs within a mapped population is within the Calf Canyon population (Clark *et al.* 2006, p. 16; Utah Geological Survey 2007, Map). Recent surveys extended the population to encapsulate the area around the mining location (Robinson 2010, p. 7); we were previously unaware of plants occurring in this area.

Uranium is restricted to geologic formations such as the Moss Back Member, Monitor Butte Member, and the Mottled Siltstone Unit of the Chinle Formation. *Erigeron maguirei* does not occur in these formations (Clark *et al.* 2006, p. 20). In addition, most of the *E. maguirei* individuals occur on lands managed by Capitol Reef National Park (92 percent) which are withdrawn from mining exploration and development activities (see Factor D) (Clark *et al.* 2006, p. 21; USFS *et al.* 2006, p. 56). In addition, historic mining activities proved there was not enough ore within Capitol Reef National Park to be worth

mining (NPS 2009, p. 2). If uranium mining were to have any impact on *E. maguirei*, impacts would likely be limited to those associated with the access routes to the desired geologic formation (Clark *et al.* 2006, p. 20; Utah Geological Survey 2007, Map). Existing roads would likely be utilized. The most substantial affects of such use would be impacts to pollinators and impacts from road dust. We believe such impacts, if they occurred at all, would likely occur along the periphery of existing populations, would impact only small portions of known populations and, overall, would not likely impacts on the viability of individual populations or the species. Based on the locations of past exploration, the geologic distribution of uranium, and the limited overlap with the habitat requirements of *E. maguirei*, we do not foresee substantial future impacts from uranium mining to *E. maguirei*.

#### Gypsum

We did not previously identify gypsum mining as a threat to the species. Only the Deep Creek population in Capitol Reef National Park has a known gypsum occurrence (Utah Geological Survey 2007, Map). However, lands within Capitol Reef National Park are permanently withdrawn from mining exploration and development activities (see Factor D) (Clark *et al.* 2006, p. 21; USFS *et al.* 2006, p. 56). In addition, this gypsum occurrence is located on the periphery of the mapped *Erigeron maguirei* population and within the Primitive Management Zone (Capitol Reef 1998, p. 27; Utah Geological Survey 2007, Map). Travel through this Management Zone is limited to cross-country hiking or horseback riding on unimproved trails and routes (Capitol Reef 1998, pp. 27–29). Based on the lack of gypsum mining occurring in the range of the species, coupled with the land management designations in place affording protection to the species, we do not foresee gypsum mining adversely affecting the species in the foreseeable future.

#### Oil Shale and Tar Sands Development

Oil shale and tar sands development is not a threat to the species (USFS *et al.* 2006, p. 37). The most geologically prospective oil shale resources do not occur within the range of *Erigeron maguirei* (Clark *et al.* 2006, p. 9; BLM 2008a, p. 11). The most geologically prospective oil shale resources occur in the Uinta Basin of Utah, a distance of approximately 60 air miles (97 kilometers) from the closest population, Calf Canyon (Clark *et al.* 2006, p. 9;

BLM 2008a, p. 11). Thus, we do not consider oil shale development a threat to the species. The rest of this section will focus on tar sands resources within the range of the species.

There are 11 Special Tar Sand Areas in Utah (45 FR 76800, November 20, 1980; 46 FR 6077, January 21, 1981; BLM 2008a, p. 23). Of these, only the San Rafael Swell Special Tar Sands Area occurs within the range of *Erigeron maguirei* (Clark *et al.* 2006, p. 9; BLM 2008b, p. 2–49).

Typically, strip mining is the most efficient method of tar sands extraction, but other approaches include the injection of steam or solvents to reduce the oil's viscosity and allow the oil to be pumped out of the well. *Erigeron maguirei* could be impacted as a result of vegetation clearing, habitat fragmentation, alteration of topography, changes in drainage patterns, erosion, sedimentation from runoff, oil and contaminant spills, fugitive dust, injury or mortality of individual plants, human collection, increased human access, spread of invasive plant species, and air pollution (BLM 2008b, pp. 5–62, 5–84, 5–85, 5–98). In addition, we believe the loss and fragmentation of habitat due to the development of tar sands may negatively impact pollinator species.

Portions of the *Erigeron maguirei* mapped populations of Calf Canyon, Sids Hole, Secret Mesa, and Link Flats occur within the San Rafael Swell Special Tar Sand Area (Clark *et al.* 2006, p. 9; BLM 2008b, p. 2–49; BLM 2008d, Map R–23). However, less than 2 percent of the entire species' mapped population areas overlaps lands available for leasing for commercial tar sands development (Clark *et al.* 2006, p. 9; BLM 2008a, entire; 2008b, p. 2–49). In addition, a substantial amount of suitable habitat for the species occurs throughout the three San Rafael Swell meta-populations that has not been surveyed and may be occupied by *E. maguirei*, or may provide additional linkage habitats within these meta-populations (Clark *et al.* 2006, p. 24). Overall, we do not believe that the possible loss or degradation of the small amount of occupied (less than 2 percent) or other suitable habitat would negatively impact the viability of the species.

In summary, we do not anticipate tar sands development to be a threat to *Erigeron maguirei* in the foreseeable future. There is little overlap between leasable lands and the species' distribution. Based on the small amount of area within the species' range (less than 2 percent) that are available for leasing for commercial tar sands development, we do not anticipate that

tar sands development will impact the species as a whole in the foreseeable future.

#### Oil and Gas Exploration and Development

Oil and gas exploration and development were identified as threats in the *Erigeron maguirei* listing rule, the Recovery Plan, and the downlisting rule (50 FR 36089, September 5, 1985; USFWS 1995, p. 5; 61 FR 31054, June 19, 1996). Oil and gas development includes exploration, drilling, production, and reclamation phases (Tribal Energy and Environmental Information Clearinghouse 2010, entire). Surface disturbance may occur throughout all phases of oil and gas development (Tribal Energy and Environmental Information Clearinghouse 2010, entire). Impacts to plant species from surface disturbance may include the direct effects of crushing and reduction in seed bank. Indirect effects to plant species include increased dust and airborne particulates (well pad and road construction), increased habitat fragmentation, changes in pollinator-plant interactions, and increased invasive species composition within and adjacent to suitable habitats.

Lands within Capitol Reef National Park are withdrawn from oil and gas exploration and development (see Factor D) (USFS *et al.* 2006, p. 56). The surrounding BLM and USFS lands are open to oil and gas leasing, but the potential for oil and gas is low in the Navajo Sandstone formation where *Erigeron maguirei* occurs (USFS *et al.* 2006, p. 34).

Oil and gas leases that were issued prior to the 2008 BLM Price Field Office RMP are managed under stipulations that were in effect when the leases were issued (BLM 2008c, pp. 24, 170). Leases issued after the RMP was signed will have the appropriate oil and gas lease stipulations and best management practices applied to prevent, minimize, or mitigate resource impacts (BLM 2008c, pp. 31, 40–42, 128, Appendix R–3, Appendix R–14, Map R–8).

On BLM-administered lands, portions of *Erigeron maguirei* populations occur within the San Rafael Canyon, Interstate 70, Muddy Creek, and Segers Hole ACECs (see Table 2 above) (Clark *et al.* 2006, pp. 9–11; BLM 2008d, Map R–29). All of these ACECs are open to leasing subject to “no surface occupancy” constraints (BLM 2008c, pp. 135–137). Leasing with “no surface occupancy” means that there will be no development or disturbance whatsoever of the land surface, including establishment of wells or well pads, and

construction of roads, pipelines, or powerlines. There are no exceptions to the “no surface occupancy” stipulation within these ACECs (BLM 2008c, Appendix R–3, pp. 1–4). The WSAs with *E. maguirei* populations, including the Sids Mountain, Devils Canyon, and Muddy Creek WSAs, are unavailable to leasing with the exception of mineral lease uses that existed before or on October 21, 1976; however, there are no active leases within these populations in these WSAs (BLM 2008c, pp. 41, 129, and 131; 2009, entire; Stephens 2009, entire).

While limited exploration has occurred, no known oil or gas fields exist within the known *Erigeron maguirei* populations, and the potential for development is low (Automated Geographic Reference Center 2001, database; Clark *et al.* 2006, p. 21; Utah Division of Oil, Gas, and Mining 2006b, Map; USFS *et al.* 2006, p. 34). The only gas field in the vicinity of *E. maguirei* is the Last Chance Gas Field located approximately 7 miles (11 kilometers) west of the Segers Hole population and 6 miles (10 kilometers) north of the Deep Creek population (Automated Geographic Reference Center 2001, database; Chidsey *et al.* 2005, Map 203DM; Clark *et al.* 2006, p. 16; Utah Division of Oil, Gas, and Mining 2006b, Map). Seven exploratory wells were sited within the mapped *E. maguirei* Secret Mesa and Coal Wash populations, but all of the wells have been plugged and abandoned (Clark *et al.* 2006, p. 9; Utah Division of Oil, Gas, and Mining 2006a, database).

Based on the lack of supporting evidence of viable oil and gas fields within the vicinity of *Erigeron maguirei* and the land management designations that afford protections to the species, oil and gas exploration and development is no longer a threat within the foreseeable future.

#### Recreational Use

Recreational use, including ORVs and human foot traffic, was previously identified as a threat to the species (50 FR 36089, September 5, 1985; USFWS 1995, p. 5; 61 FR 31054, June 19, 1996). At the time of listing, the species was thought to occur primarily in canyon bottoms and was estimated to have a population of seven individuals (50 FR 36089, September 5, 1985). At the time of downlisting, recreation was still a concern due to overall limited abundance (an estimated 3,000 individual plants) (61 FR 31054, June 19, 1996).

Potential impacts from recreational use include trampling and crushing of plants, soil compaction, introduction of

exotic species, increased erosion, and increased dust deposition on plants. However, *Erigeron maguirei* is not prone to human recreational disturbance because it grows primarily in cliff crevices and on the sandstone domes on mesa tops (Clark 2002, p. 16). Of 60 *E. maguirei* sites in Capitol Reef evaluated for signs of human impacts (Clark 2002, pp. 12–16), only 2 showed signs of human impacts (in both cases foot traffic was observed at the site) (Clark 2002, pp. 12–16).

More than 92 percent of known *Erigeron maguirei* individuals occur in Capitol Reef National Park, which is closed to ORV use (Clark *et al.* 2006, p. 16). The Fishlake National Forest prohibits cross-country vehicle travel forest-wide (USFS 2006b, p. 263; 2009, p. 2). *E. maguirei* habitat does not occur within 0.5 mile (0.8 kilometer) of classified or potentially designated motorized routes on Fishlake National Forest lands (USFS 2006b, pp. 123, 260–263).

Only 6 percent of all known *Erigeron maguirei* plants occur on lands administered by the BLM. Of these, approximately 89 percent of the mapped population occurs within an ACEC, WSA, or ISA (Kass 1990, p. 23; Clark *et al.* 2006, p. 18; Ivory 2006; BLM 2008d, Map R–29; Robinson 2010, entire) (see Table 2 above). The ISAs are managed the same as WSAs (see discussion under Factor D below) (BLM 1995, p. 1). The ACECs, ISAs, and WSAs that contain *E. maguirei* are either closed to motorized vehicles or use is limited to designated roads and trails (Clark *et al.* 2006, p. 20; BLM 2008c, pp. 132, 135–139, Map R–17).

In summary, we do not believe that recreational use is a threat to the species. The plant's preferred habitat of cliff crevices and domes naturally separates it from most human use areas. In addition, ORV restrictions across much of the species' range reduce the potential for recreational vehicles to impact plants.

*Summary of Factor A: Mineral exploration and development and recreational use were listed as threats to Erigeron maguirei in the species' listing rule, the Recovery Plan, and the downlisting rule (50 FR 36089, September 5, 1985; USFWS 1995, p. 5; 61 FR 31054, June 19, 1996). The species occurs predominantly within the Navajo Sandstone formation, which has low potential for oil and gas development and uranium mining (USFS et al. 2006, p. 37). Most mineral resources (like gypsum, tar sands, and oil shale) occur on the periphery of mapped E. maguirei populations and,*

therefore, are not likely to meaningfully impact any of the populations.

Recreational use, particularly hiking and motorized vehicle use, occurs throughout the species' range. However, land management protections are in place throughout most of the species' range, with the primary result of restricting vehicle use to designated roads and trails, thus minimizing impacts to the plants and their habitat. In addition, we now know (see Species Information) that *Erigeron maguirei* grows primarily in crevices and on domes, away from the majority of recreational traffic.

While potential impacts to individuals could occur when either accessing the mineral resources or during recreational use, these activities are considered unlikely to materialize in a meaningful way in the foreseeable future, would be limited to small periphery portions of populations, and therefore would not reduce the long-term viability of any of the populations. In addition, land management designations, which have been discussed briefly in this section and will be discussed later under Factor D, will continue to provide protections for *Erigeron maguirei* and its habitat in the foreseeable future.

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

*Erigeron maguirei* is not a highly collected or sought after species. We know of only one group that propagated *E. maguirei* for private use by rock garden enthusiasts (USFS *et al.* 2006, p. 35; Clark 2007, p. 1), but this group is no longer offering plants for sale (Megown 2007, p. 1). Unauthorized plant and seed collection has not been documented for this species (USFS *et al.* 2006, p. 35). We do not believe overutilization is a current or foreseeable threat to the species.

#### C. Disease or Predation

No diseases are known to impact *Erigeron maguirei*. Therefore, disease is not a current or foreseeable threat to the species.

At the time of listing, we believed that predation due to cattle grazing (or herbivory) had reduced the species' distribution (50 FR 36089, September 5, 1985; 61 FR 31054, June 19, 1996; Harper and Van Buren 1998, p. 2). At that time, only a few *Erigeron maguirei* were known to occur at the upper ends of canyons on sandstone ledges or among boulders. Because the species had historically been documented in canyon bottoms, the plants found on ledges and boulders were thought to be

remnants within marginal habitats. It was thought that grazing in the canyon bottoms had reduced the distribution of the plant to these marginal habitats (50 FR 36089, September 5, 1985).

However, we now know that *Erigeron maguirei* plants are much more widely distributed (see Species Information). Preferred habitat includes cliffs, rock crevices, and sandstone domes on mesa tops that are inaccessible to livestock (Kass 1990, p. 27; USFWS 1995, p. 2; Clark 2001, p. 15; Clark *et al.* 2005, pp. 12, 22, 24; Clark *et al.* 2006, pp. 21–22; USFS *et al.* 2006, p. 56).

The majority of *Erigeron maguirei* populations are thus relatively secure from predation by livestock grazing due to their known habitat preferences (Kass 1990, p. 28; USFWS 1995, p. 5; 61 FR 31054, June 19, 1996). Although 8 of the 10 *E. maguirei* populations occur within cattle allotments, 7 of these populations are inaccessible to cattle grazing due to terrain conditions (USFS *et al.* 2006, p. 56). The eighth population is the newly discovered population at Sids Hole. Cattle use a nearby reservoir as a watering hole. Although the area experiences impacts from cattle grazing, this population is persisting without special management considerations that afford it protection from grazing activities. Of the two populations that are not within an allotment, the Waterpocket Fold population in Capitol Reef, estimated at approximately 20,000 individuals on 42 sites, has a history of cattle trailing (USFS *et al.* 2006, p. 56). Cattle trailing, or moving cattle through the area, occurred at this site about once every 5 years for the past 100 years (Clark *et al.* 2006, pp. 21, 25). Cattle trailing has impacted, and is expected to continue to impact, only a few individual plants (Clark *et al.* 2006, pp. 21, 25); however, those impacts are not at a level that effects the species' viability.

In summary, grazing is no longer a threat to the species, nor is it likely to become one within the foreseeable future. The species has a much broader distribution than originally thought, and the plant prefers cliffs, crevices, and sandstone domes on mesa tops that are generally inaccessible to livestock.

#### D. The Inadequacy of Existing Regulatory Mechanisms

Prior to the species' 1985 listing, no Federal or State laws protected *Erigeron maguirei* (50 FR 36089, September 5, 1985), and its known distribution was limited to Calf Canyon, Utah, and its two side canyons. As previously described, implementation of specific recovery actions and surveys have resulted in and documented many more

*E. maguirei* individuals, sites, and populations than were previously known. Substantial land management protections are in place across the vast majority of the species' range.

Over 99 percent of known *Erigeron maguirei* plants occur on Federal lands managed by Capitol Reef National Park (more than 92 percent), BLM Price Field Office (6 percent), and Fishlake National Forest (1 percent) (see Table 1 above) (Clark *et al.* 2006, p. 16). All three of these agencies have land management designations in place that afford the species protection. Less than 1 percent of the known population occurs on lands administered by SITLA, where no protections for *E. maguirei* exist (Clark *et al.* 2006, p. 16).

National Parks are administered under the provisions of the Organic Act of 1916 (16 U.S.C. 1, 2, 3, and 4), as amended and supplemented. The Organic Act specifies that the NPS will "promote and regulate the use of the Federal areas known as national parks, monuments, and reservations \* \* \* which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations."

As discussed above under Factor A, mineral exploration and development, recreational use, and grazing were listed as threats in the *Erigeron maguirei* listing rule, the Recovery Plan, and the downlisting rule (50 FR 36089, September 5, 1985; USFWS 1995, p. 5; 61 FR 31054, June 19, 1996). Capitol Reef National Park, which contains more than 92 percent of the *Erigeron maguirei* individuals, has land management policies in place that afford protection to the species. The 1976 Mining in the Parks Act (16 U.S.C. 1901 *et seq.*), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), and the Clean Air Act of 1977, as amended, (42 U.S.C. 7401 *et seq.*) provided tools for parks to remove and prevent mining and drilling ventures (NPS 2002, p. 14). All mining claims within Capitol Reef National Park were either declared invalid or were nullified by 1986 (NPS 2002, p. 2). By the end of the 1980s, oil and gas leases were also either eliminated or suspended (NPS 2002, p. 2). All national parks are now closed to new federal mineral leasing (NPS 2006, p. 118). Capitol Reef's 1998 Final General Management Plan Development Concept Plan designates Primitive and Threshold Management Zones within the Park (Capitol Reef 1998, pp. 27–31). All Capitol Reef *E. maguirei* sites are

located within these Management Zones (Clark 2006a, entire). No off-road or off-trail recreational use is allowed within the Park within these zones. In addition, grazing is not allowed within either of these zones (Capitol Reef 1998, pp. 28–31). In order for Capitol Reef National Park lands to be made available for activities that were removed (*i.e.*, mining and grazing), Congress would have to change the laws which currently govern Capitol Reef National Park.

The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) is the primary Federal law governing most land uses on BLM lands. Section 102(a)(8) of the Federal Land Policy and Management Act states public lands will be managed, in part, to provide protection to ecological and environmental resources. The BLM Manual 6840 directs BLM to manage habitat for sensitive species in a manner that will ensure that all actions authorized, funded, or carried out by the BLM do not contribute to the need for the species to become listed (BLM 2008c, p. 80). Typically, this means the impacts to these species are considered during project planning stages and conservation measures may be included at the discretion of agency biologists.

The BLM's RMPs are the basis for all of its actions and authorizations involving BLM-administered lands and resources. The RMPs establish allowable resource uses, general management practices, program constraints, and other parameters of project design (43 CFR 1601.0–5(n)). These plans provide a framework and programmatic guidance for site-specific activity plans. The approved RMP also incorporates resource protection measures and recommended "Best Management Practices" to maintain, protect, and enhance habitats that will support a diversity of non-listed sensitive fish, wildlife, and plant species (BLM 2008c, p. 34). These measures vary between State and field offices.

The BLM Price Field Office RMP was approved in October 2008 (BLM 2008c). *Erigeron maguirei* is provided protection from mineral exploration and development, and recreational use, through land use planning decisions in this RMP (BLM 2008c). A total of 6 percent of all *E. maguirei* populations occur on BLM lands. Of these, approximately 89 percent are within WSAs, ISAs, and/or ACECs (see Table 2 above) (Kass 1990, p. 23; Clark *et al.* 2005, pp. 16 and 19; Ivory 2006, entire; 2007, entire; BLM 2008d, Map R–28).

On BLM lands, WSAs are managed according to the Interim Management Policy for Lands under Wilderness Review (BLM 1995, entire; BLM 1976,

entire) until Congress either designates them into the National Wilderness Preservation System or releases them from wilderness study for other purposes (BLM 1976, p. 1; 2008c, p. 131). The WSAs must be managed so as not to impair their suitability for preservation as wilderness (BLM 1976, p. 2). The WSAs are unavailable to leasing with the exception of mineral lease uses that existed before or on October 21, 1976; however, as discussed under Factor A, there are no active leases within these populations in these WSAs (BLM 2008c, pp. 41, 129, and 131; 2009, entire; Stephens 2009, entire). With the exception of four routes within Sids Mountain WSA, all WSAs are closed to motorized travel (BLM 2008c, pp. 22, 132). All *E. maguirei* individuals and habitat within these areas will be afforded protection from recreational use.

Although these ACECs were not identified specifically to protect *Erigeron maguirei*, their associated land use management provides indirect protection for the plant. For example, the San Rafael Canyon, Interstate 70, and Segers Hole ACECs were designated for their scenic values (BLM 2008c, pp. 135, 137, 139); Muddy Creek ACEC was designated for cultural, historic, and scenic values (BLM 2008c, p. 136); and the Lucky Strike ACEC was designated for its historic value (BLM 2008c, p. 141). The management prescriptions for each of these ACECs are discussed below.

The ACECs are open to leasing subject to “no surface occupancy” constraints (BLM 2008c, pp. 135–137). Leasing with “no surface occupancy” means that there will be no development or disturbance whatsoever of the land surface, including establishment of wells or well pads, and construction of roads, pipelines, or powerlines. There are no exceptions to the “no surface occupancy” stipulation within these ACECs (BLM 2008c, Appendix R–3, pp. 1–4). The ACECs also are either closed to OHV use or OHV use is limited to existing routes and trails. Although these ACECs were not specifically designated for protecting *E. maguirei*, the species will be benefited by the restrictions on surface disturbances (see discussion under Factor A above).

The National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*) directs national forests to manage habitat to maintain viable populations of existing native and desired nonnative vertebrate species in habitat distributed throughout their geographic range on National Forest System lands (USFS 1976, entire). In 1983, the U.S. Department of Agriculture Departmental

Regulation 9500–4 provided further direction to the USFS, expanding the protection requirements of the National Forest Management Act to include plant species (USDA 1983, p. 2).

*Erigeron maguirei* was not known to occur on USFS lands in 1986. Thus, the existing Fishlake Land Management Plan does not identify *E. maguirei* as occurring within the National Forest (USFS 1986). *E. maguirei* was discovered on USFS lands in 1999 (Clark 2010b, p. 1). Less than 1 percent of all known *E. maguirei* plants occur on USFS lands. Approximately 33 percent of the current mapped range of *E. maguirei* on USFS lands is designated as a Semi-Primitive Non-Motorized. The Semi-Primitive Non-Motorized designation means that recreational use is limited to non-motorized access, such as hiking or horseback riding. This designation, although not specifically designated for protecting *E. maguirei*, will benefit the species by limiting recreational use impacts (see discussion under Factor A above). In December 2006, the Fishlake National Forest finalized their Off-Highway Vehicle Route Designation Project, providing protections for the area in which *Erigeron maguirei* occurs (USFS 2006a). Under this plan, motorized routes on Fishlake National Forest lands cannot occur within 0.5 mile (0.8 kilometer) of the Deep Creek population (USFS 2006b, pp. 123, 260–263). The Fishlake National Forest prohibits cross-country vehicle travel forest-wide. This prohibition provides protection to *E. maguirei* from recreational use as described above under Factor A (USFS 2006b, p. 263; 2009, p. 2).

The portion of the species’ range owned by SITLA does not have any special management to benefit *Erigeron maguirei*. The SITLA’s mission is to administer their land to provide funding for Utah’s educational system and other State beneficiaries (SITLA 2009, p. 4). They do not manage their lands for the conservation benefit of rare species. However, less than 1 percent of known *E. maguirei* plants occur on SITLA lands (see Table 2). Known sites on SITLA lands are in suitable habitats adjacent to populations on Federal lands and make up a small portion of known populations (see Table 2). Therefore, we do not believe that the lack of management on SITLA lands is a threat to the species.

*Summary of Factor D:* We find that regulatory mechanisms related specifically to land management are sufficient for avoiding or mitigating the few potential factors that could impact *Erigeron maguirei* individuals (population-level impacts are unlikely

from any factor), as discussed above under Factors A and C. Federal land management agencies have worked collaboratively since the species’ listing to provide for the long-term protection of *E. maguirei* and its habitat. Land management plans, policies, and regulations providing protection to *E. maguirei* include: (1) Capitol Reef Primitive and Threshold Management Zones; (2) BLM WSAs, ISAs, and ACECs; and (3) USFS Semi-Primitive Non-motorized designation. These land management designations have adequately protected *E. maguirei* individuals and habitat in the past, and are expected to continue to do so in the foreseeable future, by limiting and eliminating surface disturbing activities. While less than 1 percent of the species occurs on private land where there are no protections, the species continues to persist in those areas. The threat due to inadequacy of existing regulatory mechanisms is no longer applicable.

#### *E. Other Natural or Manmade Factors Affecting the Species’ Continued Existence*

The 1985 final listing rule postulated that the genetic viability of *Erigeron maguirei* was greatly reduced due to the species’ small population size, geographic separation, and reproductive isolation (50 FR 36089, September 5, 1985). The June 19, 1996, final rule reclassifying *E. maguirei* to threatened identified inbreeding and loss of genetic variability as potential threats because of the species’ small, reproductively isolated populations (61 FR 31054, June 19, 1996).

As discussed previously, implementation of recovery actions, specifically survey efforts, have increased our knowledge of the species’ population status and distribution. We now know that *Erigeron maguirei* is widely distributed and occurs in much greater numbers than previously thought (see Species Information). Newly discovered sites indicate that there is substantial habitat and population connectivity across the species’ range, thus reducing reproductive isolation and inbreeding threats (50 FR 36089, September 5, 1985; USFWS 1995, p. 5; 61 FR 31054, June 19, 1996; Clark *et al.* 2006, p. 24; Ivory 2009a, p. 1; 2009b, p. 1; Clark 2010a, p.1; Truman 2010, p. 1; Robinson 2010, entire). For example, populations in the Capitol Reef and San Rafael areas are separated by short distances and connected by contiguous habitat, allowing genetic interchange across the species’ range (Van Buren 1993, p. 1; Van Buren and Harper 2002, p. 1; Clark *et al.* 2006, p. 24). Due to the number

of populations and individuals of *E. maguirei* found and the inter-connectivity of the habitat, the species is no longer considered threatened by a loss of genetic variability.

Pesticide use occurs within Capitol Reef National Park's Fruita Rural Historic District, a cultural area on the National Register of Historic Places (Alston and Tepedino 2005, p. 10). Management includes spraying apple and pear trees with the pesticide Phosmet to control the codling moth (*Cydia pomonella*) (Alston and Tepedino 2005, p. 10). This pesticide does not appear to affect productivity of *Erigeron maguirei* plants (Alston and Tepedino 2005, pp. 11, 61). No other routine pesticide use is known to occur within the range of *E. maguirei*. Thus, the best scientific data available indicate the current use of the pesticides is not a threat to *E. maguirei*.

When the Recovery Plan was written, the demographic stability of the various populations was not known (USFWS 1995, p. 5). Studies have since concluded that *Erigeron maguirei* is relatively long-lived with low mortality (Van Buren and Harper 2002, p. 2). Furthermore, the available science indicates that the species has the ability to replace individuals at a rate that compensates for mortality (Van Buren and Harper 2002, p. 5). Thus, the available data alleviate the concern for demographic stability.

According to the Intergovernmental Panel on Climate Change (IPCC) (IPCC 2007, p. 2), "[w]arming of the climate system is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level." Average Northern Hemisphere temperatures during the second half of the 20th century were very likely higher than during any other 50-year period in the last 500 years and likely the highest in at least the past 1,300 years (IPCC 2007, p. 2).

The IPCC (2007, p. 7) predicts that changes in the global climate system during the 21st century will be larger than those observed during the 20th century. For the next 2 decades a warming of about 0.2 °C (0.4 °F) per decade is projected (IPCC 2007, p. 7). Afterward, temperature projections increasingly depend on specific emission scenarios (IPCC 2007, p. 7). Various emissions scenarios suggest that by the end of the 21st century, average global temperatures are expected to increase 0.6 to 4.0 °C (1.1 to 7.2 °F), with the greatest warming expected over land (IPCC 2007, p. 8). The IPCC says it is very likely hot extremes, heat

waves, and heavy precipitation will increase in frequency (IPCC 2007, p. 8). However, the confidence in predicting changes in precipitation is less than that for predicting changes in temperature (IPCC 2007, p. 600). The confidence in predicting accurate changes in precipitation levels is further reduced when applying the model to small, localized areas (IPCC 2007, pp. 601, 697). Therefore, although many semi-arid areas like the western United States will suffer a decrease in water resources due to climate change, we cannot be certain at this time how the change will occur over the range of *Erigeron maguirei* (IPCC 2007, pp. 8, 601, 697). Below we analyze possible impacts, given these uncertainties, to the extent we understand them and are able to reasonably project.

Climate change could potentially impact *Erigeron maguirei* or its pollinators, although the specific impacts of altered temperature and precipitation regimes are unknown. Rare plants in the Southwest tend to have fewer individuals during drought-related circumstances (Hughes 2009, entire). Long-term demographic monitoring produced conflicting results; some monitoring plots experienced higher mortality rates during drought years while others did not (Van Buren and Harper 2002, pp. 2–6). While we do not know the long-term response of the species to changes in climatic conditions, we believe impacts will be minimal as *E. maguirei* is a desert plant adapted to hot temperatures and little rainfall based on the life history and habitat requirements of the species. The Interagency Plant Team will continue to monitor the species and be able to identify climate change concerns in the future, if they occur. If additional trend monitoring is warranted past the initial 10-year period to address potential impacts from climate change, monitoring frequency and intensity may be reduced (USFWS 2010, pp. 13–14).

Two of four Capitol Reef sites monitored between 1992 and 2001 experienced flash flood events (Van Buren and Harper 2002, p. 1). At one site, a flash flood event likely resulted in 48 plants being lost (Van Buren and Harper 2002, p. 2). However, the species is long-lived and shows an ability to replace individuals lost to periodic flooding (Van Buren and Harper 2002, pp. 4–5). The species occurs primarily on sandstone domes on mesa tops and in cracks and crevices of domes and cliffs (Clark *et al.* 2006, p. 12). The primary habitat of the species is not prone to flooding. Individuals that are susceptible to flooding occur in canyon bottoms, like the two sites mentioned

above, which were established from seeds dispersed by wind or overland flow from source populations on the mesa tops (Heil 1989, p. 25; Kass 1990, p. 27; USFWS 1995, p. 2). Flooding may affect these individuals; however, canyon populations are small compared to those on the mesa tops (Heil 1989, p. 25; Kass 1990, p. 27; USFWS 1995, p. 2). Therefore, flood events possessing the potential to meaningfully impact *Erigeron maguirei* populations are unlikely in the foreseeable future.

*Summary of Factor E:* Based on the available information, reduced genetic variability, inbreeding posed by geographic separation and reproductive isolation, the use of Phosmet as an insecticide in the Capitol Reef's Fruita Rural Historic District, climate change, and flooding events do not threaten *Erigeron maguirei* in all or a significant portion of the range currently or within the foreseeable future.

#### Conclusion of Five-Factor Analysis

As required by the ESA, we considered the five potential threat factors to assess whether *Erigeron maguirei* is endangered or threatened throughout all or a significant portion of its range. When considering the listing status of the species, the first step in the analysis is to determine whether the species is in danger of extinction throughout all of its range. If this is the case, then the species is listed or remains listed in its entirety. For instance, if the threats to a species are acting only on a portion of its range, but they are at such a large scale that they place the entire species in danger of extinction, we would list or continue to list the entire species.

We carefully assessed the best scientific and commercial data available and determined there is no information to suggest the species is either in danger of extinction throughout all of its range or likely to become endangered in the foreseeable future throughout all its range. Recovery efforts have identified approximately 162,897 *Erigeron maguirei* individuals over an estimated range of 390 square miles (1,010 square kilometers) with 10 populations (containing 128 sites) composing 5 meta-populations (see Figure 1 and Table 1 above) (Clark *et al.* 2006, p. 16; Ivory 2009a, p. 1; 2009b, p. 1; Clark 2010a, p. 1; Truman 2010, p. 1; Robinson 2010, entire). This represents a substantial increase from the time of listing in 1985, when the species was known from 7 individuals in the Calf Canyon population (50 FR 36089, September 5, 1985), and from 1996 when the species was downlisted to threatened and had a population

estimate of approximately 3,000 plants (61 FR 31054, June 19, 1996). Today, the species occurs in large, connected, and well-distributed populations within substantial suitable habitat. Current populations appear stable, threats to the species are not likely to impact the species in a meaningful way, and land management protections are in place. We believe the species' long-term viability is assured. Thus, the species is not currently and is not likely to again become endangered or threatened in all of its range.

Having determined that *Erigeron maguirei* does not meet the definition of endangered or threatened throughout all of its range, we must next consider whether there are any significant portions of its range that are in danger of extinction or are likely to become endangered in the foreseeable future. A portion of a species' range is significant if it is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

Applying the definition described above, we first address whether any portions of the range of *Erigeron maguirei* warranted further consideration. We evaluated *E. maguirei*'s range in the context of whether any potential threats are concentrated in one or more areas of the range, such that if there were concentrated impacts, those populations might be threatened, and further, whether any such population might constitute a significant portion of the range. The potential threat factors we evaluated for possible geographic concentration were the most substantial factor(s) affecting the species. In this case, we evaluated mineral exploration and development and recreational use.

We noted that, as discussed above under Factor A, there are several small geographic areas where localized mineral extraction activities remain as a potential threat in the foreseeable future. However, we concluded that these areas do not warrant further consideration because such activities are unlikely to materialize in a meaningful way and if they do, would be limited to small areas on the periphery of populations. Therefore, there is no substantial information that *Erigeron maguirei* in these areas are likely to become in danger of extinction in the foreseeable future. These areas are too small to impact the viability of the individual populations, meta-populations, or the species.

As discussed above under Factor A, recreational use, particularly hiking and motorized vehicle use, occurs throughout the species' range. However, land management protections are in place throughout most of the species' range, with the primary result of restricting vehicle use to designated roads and trails, thus minimizing impacts to the plants and their habitat. We concluded that impacts from recreational use are not likely to materialize in a meaningful way in the foreseeable future, would be limited to small periphery portions of populations (e.g., SITLA lands), and would not reduce the long-term viability of any of the populations. Therefore, there is no substantial information that *Erigeron maguirei* is being impacted in any area to the extent that population is in danger of extinction in the foreseeable future.

In summary, we have determined that none of the existing or potential threats, either alone or in combination with others, are likely to cause *Erigeron maguirei* to become in danger of extinction within the foreseeable future throughout all or any significant portion of its range. On the basis of this evaluation, we are removing *E. maguirei* from the List of Endangered and Threatened Plants (50 CFR 17.12).

#### Effect of This Rule

This rule will revise 50 CFR 17.12(h) to remove *Erigeron maguirei* from the List of Endangered and Threatened Plants. Because no critical habitat was ever designated for this species, this rule will not affect 50 CFR 17.96. Once this species is removed from the List of Endangered and Threatened Plants, ESA protection will no longer apply. Removal of *E. maguirei* from the List of Endangered and Threatened Plants will relieve Federal agencies from the need to consult with us to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of this species. Delisting *E. maguirei* is expected to have positive effects in terms of management flexibility for the State and Federal governments. Federal agencies will continue to implement management plans to conserve *E. maguirei* and its habitat.

#### Post-Delisting Monitoring

Section 4(g)(1) of the ESA requires us to monitor for at least 5 years species that are delisted due to recovery. Post-delisting monitoring refers to activities undertaken to verify that a species delisted due to recovery remains secure from the risk of extinction after the protections of the ESA no longer apply.

The primary goal of post-delisting monitoring is to monitor the species so that its status does not deteriorate, and if a decline is detected, to take measures to halt the decline so that proposing it as endangered or threatened is not again needed. If at any time during the monitoring period, data indicate that protective status under the ESA should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

Section 4(g) of the ESA explicitly requires cooperation with the States in development and implementation of post-delisting monitoring programs. In early 2007, we asked the State of Utah to be a cooperator in post-delisting monitoring. In a letter dated March 6, 2007, the State suggested their participation in post-delisting monitoring was unnecessary (Harja 2007). We agree with the State's conclusion as the vast majority of the known individual plants (over 99 percent) occur on Federal land.

We have finalized a Post-Delisting Monitoring Plan (Plan) for *Erigeron maguirei* (USFWS 2010, entire). The Plan: (1) Summarizes the species' status at the time of delisting; (2) defines thresholds or triggers for potential monitoring outcomes and conclusions; (3) lays out frequency and duration of monitoring; (4) articulates monitoring methods including sampling considerations; (5) outlines data compilation and reporting procedures and responsibilities; and (6) depicts a post-delisting monitoring implementation schedule, including timing and responsible parties. The Plan was modeled after the Conservation Strategy and incorporated the Maguire Daisy Survey Protocol developed and tested by the Interagency Rare Plant Team (Clark 2006b, entire).

Although section 4(g)(1) of the ESA requires us to monitor the species for a period of only 5 years, signatories to the Plan have committed to monitor the species for a period of at least 10 years. After 10 years of monitoring following protocols stated in the Plan, all available data on this species will be reviewed to determine whether there are any data gaps that need to be addressed. If significant data gaps are found, the Interagency Rare Plant Team will recommend to USFWS management whether demographic monitoring or additional population trend monitoring would be valuable.

#### National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.)

We have determined that an Environmental Assessment or an Environmental Impact Statement, as

defined under the authority of the NEPA of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the ESA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### **Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)**

The OMB regulations at 5 CFR part 1320 implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The OMB regulations at 5 CFR 1320.3(c) define a collection of information as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, recordkeeping, or disclosure requirements imposed on, 10 or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that “ten or more persons” refers to the persons to whom a collection of information is addressed by the agency within any 12-month period. For purposes of this definition, employees of the Federal government are not included. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

This rule does not contain any collections of information that require approval by OMB under the Paperwork Reduction Act. As proposed under the Post-Deletions Monitoring section above, *Erigeron maguirei* populations will be monitored by Capitol Reef, Fishlake National Forest, and the BLM Price field office in accordance with the Conservation Strategy. We do not anticipate a need to request data or other information from 10 or more persons during any 12-month period to satisfy monitoring information needs. If it becomes necessary to collect information from 10 or more non-Federal individuals, groups, or organizations per year, we will first obtain information collection approval from the OMB.

#### **Executive Order 13211**

On May 18, 2001, the President issued an Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

#### **References Cited**

A complete list of all references cited in this document is available upon request from the Field Supervisor, Utah Field Office (*see FOR FURTHER INFORMATION CONTACT*).

#### **Authors**

The primary authors of this document are staff members located at the Utah Field Office, U.S. Fish and Wildlife Service, West Valley City, Utah (*see FOR FURTHER INFORMATION CONTACT*).

#### **List of Subjects in 50 CFR Part 17**

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

#### **Regulation Promulgation**

Accordingly, we hereby 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.

#### **§ 17.12 [Amended]**

- 2. Amend § 17.12(h) by removing the entry for “*Erigeron maguirei*” under “FLOWERING PLANTS” from the List of Endangered and Threatened Plants.

Dated: January 3, 2011.

**Gregory E. Siekaniec,**  
*Acting Director, U.S. Fish and Wildlife Service.*

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#### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 679**

[Docket No. 0910131362–0087–02]

RIN 0648–XA156

#### **Fisheries of the Exclusive Economic Zone Off Alaska; Sculpins, Sharks, Squid, and Octopus in the Gulf of Alaska**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for sculpins, sharks, squid, and

octopus in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2011 total allowable catch (TAC) of sculpins, sharks, squid, and octopus in the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), January 13, 2011, through 2400 hrs, A.l.t., December 31, 2011.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2011 TAC of sculpins, sharks, squid, and octopus in the GOA is 4,500 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010).

In accordance with § 679.20(d)(1)(i) and (d)(1)(ii)(B), the Regional Administrator has determined that the 2011 TAC of sculpins, sharks, squid and octopus in the GOA will be taken as incidental catch in directed fishing for other species. Therefore, the Regional Administrator is establishing a directed fishing allowance for sculpins, sharks, squid and octopus of 0 mt. In accordance with 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for sculpins, sharks, squid and octopus in the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

#### **Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of sculpins, sharks, squid, and octopus in the GOA. NMFS