

Dated: May 29, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: June 16, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9-14559 Filed 6-19-09; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 107

[Docket No. PHMSA-2008-0010 (HM-208G)]

RIN 2137-AE35

Hazardous Materials Transportation; Miscellaneous Revisions to Registration and Fee Assessment Program

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is withdrawing the notice of proposed rulemaking published under this docket on May 5, 2008 (73 FR 24519). Our revised estimates of unexpended balances from previous years and revenues expected to be generated at current registration fee levels indicate that an increase in registration fees is not necessary to fund the national Hazardous Materials Emergency Preparedness (HMEP) grants program at its authorized level of \$28,318,000 for Fiscal Year 2009.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, Office of Hazardous Materials Standards, (202) 366-8553, or David Donaldson, Office of Hazardous Materials Planning and Analysis, (202) 366-4484, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation.

SUPPLEMENTARY INFORMATION:

I. Background

The Hazardous Materials Emergency Preparedness (HMEP) grants program, as mandated by 49 U.S.C. 5116, provides Federal financial and technical assistance to States and Indian tribes to “develop, improve, and carry out emergency plans” within the National Response System and the Emergency Planning and Community Right-To-Know Act of 1986 (Title III), 42 U.S.C.

11001 *et seq.* The grants are used to develop, improve, and implement emergency plans; to train public sector hazardous materials emergency response employees to respond to accidents and incidents involving hazardous materials; to determine flow patterns of hazardous materials within a State and between States; and to determine the need within a State for regional hazardous materials emergency response teams. The HMEP grants program is funded by registration fees collected from persons who offer for transportation or transport certain hazardous materials in intrastate, interstate, or foreign commerce.

Congress reauthorized the Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) in 2005. The Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005 (Title VII of the Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users, Pub. L. 109-59, 119 Stat. 1144, Aug. 10, 2005) authorizes \$28.3 million per year for the HMEP grants program and lowered the maximum registration fee from \$5,000 to \$3,000. The Consolidated Appropriations Act of 2008 (Pub. L. 110-161, 121 Stat. 2404, Dec. 26, 2007) set an obligation limitation of \$28,318,000 for expenses from the HMEP fund, and the Administration’s Fiscal Year 2009 budget requests \$28,300,000 in support of HMEP activity.

II. Current Rulemaking

To ensure full funding of the HMEP grants program for FY 2009, PHMSA proposed an increase in registration fees to fund the program at the \$28.3 million level (73 FR 24519, May 5, 2008). For those registrants not qualifying as a small business or not-for-profit organization, we proposed to increase the registration fee from \$975 (plus a \$25 administrative fee) to \$2,475 (plus a \$25 administrative fee) for registration year 2009–2010 and following years. As explained in the NPRM, an existing surplus enabled us to delay an increase in registration fees, but we concluded that we would not be able to fund the HMEP grants program at the \$28.3 million level in Fiscal Year 2009 without an increase.

We received 13 written comments in response to the NPRM from shippers and carriers and from the emergency response community, including the American Trucking Association (ATA), Council on the Safe Transportation of Hazardous Articles (COSTHA), Institute of Makers of Explosives (IME), International Association of Fire Chiefs

(IAFC), National Association of SARA Title III Program Officials (NASTTPO), and Vessel Operators Hazardous Materials Association, Inc. (VOHMA).

We have recently re-examined our estimates for funding the HMEP grants program based on updated information from the Department of Treasury on the HMEP account carry-over balance, de-obligations of unused grant and administrative funds, increased enforcement of the registration requirements, and current registrant data, and we have further refined our estimates of revenues we anticipate collecting for registration years 2008–2009 (covering July 1, 2008 to June 30, 2009) and 2009–2010 (covering July 1, 2009 to June 30, 2010) at current registration fee levels. Based on this analysis, we have concluded that we will be able to fund the HMEP grants program at the \$28.3 million level in Fiscal Year 2009 without an increase in registration fees. Accordingly, PHMSA is withdrawing the May 5, 2008, NPRM and terminating this rulemaking proceeding. Depending on appropriated and available funding for Fiscal Year 2010, we may initiate a future rulemaking to adjust registration fees for future registration years.

Issued in Washington, DC, on June 9, 2009 under authority delegated in 49 CFR part 106.

Theodore L. Willke,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. E9-14569 Filed 6-19-09; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R6-ES-2009-0037; 92210-1117-0000-B4]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Revise Critical Habitat for *Eriogonum pelinophilum* (Clay-Loving Wild Buckwheat)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of critical habitat review.

SUMMARY: We, the U.S. Fish and Wildlife Service (USFWS), announce a 90-day finding on a petition to revise critical habitat for *Eriogonum pelinophilum* (clay-loving wild buckwheat) under the Endangered

Species Act (Act) of 1973, as amended. Following a review of the petition, we find that the petition presents substantial scientific or commercial information indicating that revision of the critical habitat for *E. pelinophilum* may be warranted. Therefore, with the publication of this notice, we are initiating a review of the critical habitat for the species, and will subsequently issue a 12-month finding to determine if revisions to the species' critical habitat are warranted. To ensure that the review is comprehensive, we are soliciting scientific and commercial data and other information regarding this species.

DATES: The finding announced in this document was made on June 22, 2009. To be considered in the 12-month finding for this petition to revise critical habitat, data and information must be submitted to us by July 22, 2009.

ADDRESSES: You may submit information by one of the following methods:

- Federal rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-R6-ES-2009-0037.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R6-ES-2009-0037; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Information Solicited** section below for more details).

FOR FURTHER INFORMATION CONTACT:

Patty Gelatt, Acting Western Colorado Supervisor, U.S. Fish and Wildlife Service, Ecological Services, 764 Horizon Drive, Building B, Grand Junction, CO 81506-3946, by telephone (970-243-2778), or by facsimile (970-245-6933). People who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Information Solicited

When we make a finding that a petition presents substantial information indicating that revisions to critical habitat may be warranted, we are required to promptly commence a review of the status of the existing critical habitat determination. To ensure that this review of critical habitat is complete and based on the best available science and commercial information, we are soliciting additional information for *Eriogonum pelinophilum*. We request information

from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, agriculture, or any other interested parties concerning the status of critical habitat for *E. pelinophilum*. We are seeking information regarding:

(1) The historical and current status and distribution of *E. pelinophilum*, its biology and ecology, and ongoing conservation measures for the species and its habitat;

(2) Physical and biological features essential to the conservation of the species; and

(3) Information on threats to the species and its habitat.

Please note that submissions merely stating support or opposition to the actions under consideration without providing supporting information, although noted, will not be considered in making a determination; section 4(b)(2) of the Act directs that determinations as to whether critical habitat shall be revised shall be made "solely on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat." At the conclusion of the critical habitat review, we will issue a 12-month finding on the petition, as provided in section 4(b)(3)(D)(ii) of the Act.

You may submit your information concerning this critical habitat review by one of the methods listed in the **ADDRESSES** section.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you provide.

Information and materials we receive, as well as supporting documentation we used in preparing this 90-day finding, will be available for public inspection on <http://www.regulations.gov>, or by appointment during normal business hours, at the U.S. Fish and Wildlife Service, Western Colorado Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(D) of the Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to revise critical habitat for a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly commence a review of the species' critical habitat.

Previous Federal Actions

Eriogonum pelinophilum was proposed for listing as an endangered species on June 22, 1983, and critical habitat was proposed concurrently (48 FR 28504). The final rule designating the species as endangered, and designating 119.8 acres (ac) (48.5 hectares (ha)), the known range of the species at that time, was published on July 13, 1984 (49 FR 28562). Critical habitat for this species is set forth at 50 CFR 17.96(a) under the Family Polygonaceae. The currently designated critical habitat is in Delta County, Colorado.

On July 24, 2006, we received a petition, dated July 17, 2006, from the Center for Native Ecosystems, the Colorado Native Plant Society, and the Uncompahgre Valley Association (collectively referred to as the petitioners) requesting that we revise the critical habitat designation for *Eriogonum pelinophilum*. The petition clearly identified itself as a petition and included the requisite identification information for the petitioners as required in 50 CFR 424.14(a). The petition contained a species and habitat description for *E. pelinophilum*, a description of previous Federal actions, a section addressing statutory requirements for *E. pelinophilum*, a description of the various populations and their status, a section addressing

threats to *E. pelinophilum*, and recommendations regarding critical habitat for the species. Potential threats discussed in the petition include destruction and modification of habitat, threats from herbivory, and threats from inadequate regulatory mechanisms.

On September 29, 2006, we acknowledged the receipt of the petition but stated that given staff and budget limitations we would not be able to further address the petition at that time. On November 13, 2006, we received a notice of intent to sue dated November 9, 2006, from the petitioners regarding our failure to make a 90-day finding on the petition to revise *Eriogonum pelinophilum* critical habitat. On March 3, 2008, the petitioners filed suit with the United States District Court for the District of Colorado for our failure to make a 90-day finding on the petition to revise critical habitat for the species. On September 30, 2008, we reached a settlement agreement with the plaintiffs to submit a 90-day finding on the petition to revise critical habitat to the **Federal Register** by June 15, 2009, and, if the petition is considered substantial, submit a 12-month finding to the **Federal Register** by September 21, 2009. This 90-day finding evaluates the petition as stipulated in the settlement agreement.

Species Information

In 1958, *Eriogonum pelinophilum* was first collected near Hotchkiss, in Delta County, Colorado, by Howard Gentry. The species was first recognized as its own taxon in 1969, and officially described by James Reveal in 1973 (Reveal 1969, pp. 75–76; 1973, pp. 120–122). No other locations were identified until 1984 (Colorado Natural Heritage Program (CNHP) 1986, p. 1).

Eriogonum pelinophilum is a low-growing, rounded, densely branched subshrub (low shrub with ground-hugging stems) in the buckwheat family (Polygonaceae), with dark green, inrolled leaves that appear needlelike, and clusters of white to cream colored flowers with greenish-red to brownish-red bases and veins at the end of the branches. The *Eriogonum* genus has undergone rapid evolution in the arid regions of the West, and, as a native North American genus, is second only to the *Penstemon* (beardtongue) in number of species (roughly 250 *Eriogonum* species) (Reveal 2005a, p. 1).

Eriogonum pelinophilum is estimated to live between 20 and 50 years (NatureServe 2008, p. 5). Flowering typically occurs from late May to early September with individual flowers lasting fewer than 3 days (Bowlin *et al.* 1992, p. 298). Reproduction requires a

pollinator. Over 50 species of insects visit *E. pelinophilum* flowers; approximately 25 are native bees, and 18 are native ants (Bowlin *et al.* 1992, pp. 299–300). Some fruits are removed by harvester ants (Bowlin *et al.* 1992, p. 299); however, no information is available on species that may disperse seeds.

Eriogonum pelinophilum has been considered a close relative of, or synonymous with, *E. clavellatum* and a close relative of *E. contortum* (Reveal 2006, p. 3). The species is currently recognized as a distinct species (Reveal 2005b, p. 1; Kartesz *in litt.* 2009, p. 1). *E. pelinophilum* is allied to, but distinct from, *E. clavellatum*, and both are distinct from *E. contortum* (Reveal 2006, p. 3). Morphological and distributional differences also occur between *E. pelinophilum*, *E. contortum*, and *E. clavellatum*. *E. pelinophilum* has white flowers and occurs in Delta and Montrose Counties, Colorado; *E. contortum* has yellow flowers and occurs farther north in Mesa and Garfield Counties, Colorado, and Grand County, Utah (Spackman *et al.* 1997, *E. pelinophilum* page). *E. pelinophilum* is shorter, measuring 2 to 4 inches (in) (0.5 to 1 decimeters (dm)), has smaller involucre (bracts below the flowers) of 0.12 to 0.14 in (3 to 3.5 millimeters (mm)), with petals all the same length. *E. clavellatum* is taller measuring 4 to 8 in (1 to 2 dm), has larger involucre, 0.16 to 0.18 in (4 to 4.5 mm), with two different sized petals, and is only known from Montezuma County, Colorado, and adjacent San Juan Mountain Counties in Utah and New Mexico (Spackman *et al.* 1997, *E. pelinophilum* page; Reveal 2005c, p. 1).

Critical Habitat

Background

Critical habitat is defined in section 3(5)(A) of the Act as:

(i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(I) essential to the conservation of the species and

(II) which may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3(3) of the Act, means the use of

all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, or transplantation.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species must contain the physical and biological features essential to the conservation of the species, and be included only if those features may require special management considerations or protection. Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas containing the essential physical and biological features that provide for requisite life cycle needs of the species (areas on which are found the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement for the conservation of the species). Under the Act and regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species and that designation limited to those areas occupied at the time of

listing would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

Habitat Information

Eriogonum pelinophilum is endemic to the rolling clay (adobe) hills and flats immediately adjacent to the communities of Delta and Montrose, Colorado. The plants extend from near Lazear, east of Delta, on the northern end of the species' range, to the southeastern edge of Montrose in Delta and Montrose Counties, Colorado, and occur from 5,180 to 6,350 feet (ft) (1,579 to 1,965 meters (m)) in elevation (CNHP 2006, p. 3; 2009, spatial data; NatureServe 2008, pp. 4-5; USFWS 2009, Table 1). The known occurrences exist within an area roughly 11.5 miles (mi) (18.5 kilometers (km)) by 28.5 mi (45.6 km) (CNHP 2009, spatial data). The area where *E. pelinophilum* occurs is dry, receiving an average of 8 to 9 in. (20 to 23 centimeters (cm)) of precipitation a year (Western Regional Climate Center 2009a, p. 1; 2009b, p. 1). The soils where *E. pelinophilum* is found are described as whitish, alkaline (pH over 7), clay soils of the Mancos shale formation. They are part of the Billings Series, known for their fine texture and weak, unstable structure (NatureServe 2008, p. 4). In addition, the soils are calcareous (containing calcium carbonate). Plants are generally found within swales or drainages where there is more moisture than surrounding areas. These swales are generally located in low-lying areas that have rolling topography, and steeper, more barren slopes above them. Plants near Delta at lower elevation areas are associated with small areas where snow lingers because of north- and east-facing aspects (Ewing and Glenne 2009, p. 2).

Eriogonum pelinophilum occurs in plant communities characterized by low species diversity, low productivity, and minimal canopy cover (NatureServe 2008, p. 4). The associated vegetation is sparse, with *E. pelinophilum* generally one of the dominant species (CNHP 1987, Table 2). In lower elevations near Delta, the dominant plant species is *Atriplex corrugata* (mat saltbrush); at higher elevations near Montrose, the dominant plant species is *Artemisia nova* (black sagebrush), although *A. corrugata* is still abundant (Southwest Regional Gap Analysis Project 2004, spatial data). Other species associated with *E. pelinophilum* include *Atriplex confertifolia* (shadscale), *Atriplex gardneri* (Gardner's saltbush), *Picrothamnus desertorum* (formerly *Artemisia spinescens*) (bud sagebrush), *Xylorhiza venusta* (charming woodyaster), and another local endemic, *Penstemon retrorsus* (Adobe Hills beardtongue) (CNHP 1987, Table 2; Coles 2006, p. 1; NatureServe 2008, p. 4).

In the following sections, several terms are used that refer to groupings of *Eriogonum pelinophilum*. Element Occurrences (EOs) are defined by Natural Heritage Programs as areas where a species is or was located. For *E. pelinophilum*, EO specifications have been developed that lump one to many polygons (sites) based on a standardized maximum separation distance, in this case 1.2 mi (2 km) across suitable habitat, and 0.6 mi (1 km) across unsuitable habitat (CNHP 2007, p. 1). We use the term 'sites' to define areas that contain an EO. EOs are meant to approximate populations. Although not explicitly stated, we believe that the populations cited by the petitioners are *E. pelinophilum* EOs identified as of 2006.

Evaluation of Information Contained in the Petition

The petitioners state that 16 populations of *Eriogonum pelinophilum* existed in 2006, containing 30,000 to 60,000 individuals total, and that 8 historical occurrences have been fully extirpated (Reveal 2006, p. 2). The petitioners describe general threats to the species' habitat, and specific threats to each of the 16 *E. pelinophilum* populations. The petitioners give reasons why revising critical habitat for *E. pelinophilum* is prudent and determinable, and describe the need as immediate because several of the threats the species faces are growing in magnitude and immediacy. The petitioners claim that critical habitat must be revised because the currently designated habitat omits an area that is

now known to contain the largest and most biologically important populations of the species. Further, they say that the current designation is inadequate for ensuring recovery of the species. The petitioners made recommendations of critical habitat locations in their petition.

We used the information provided in the petition to assess the status of *Eriogonum pelinophilum*. We also used information in our files, including the annual report we receive each January from the Colorado Natural Heritage Program (CNHP 2009, pp. 1-81), new *E. pelinophilum* locations from BIO-Logic Environmental (TriState 2004, map; Boyle *in litt.* 2009, map), and geospatial layers. Geospatial layers included land ownership, locations of conservation easements, and locations of BLM Areas of Critical Environmental Concern.

Population Status

According to CNHP, 20 *Eriogonum pelinophilum* EOs currently exist (CNHP 2009, pp. 1-81; USFWS 2009, Table 1). Of these 20 EOs, 7 have not been located again in over 20 years and are considered historical. A survey was conducted at an additional EO (015), where no plants were found (CNHP 2009, pp. 1-81; USFWS 2009, Table 1). The petitioners cite a map showing seven extirpated *E. pelinophilum* locations (Reveal 2006, p. 2). These locations are not included in the CNHP database. We have no information on how these extirpations were determined, their exact locations, if they were portions of other EOs, or how many plants were lost; therefore, they are not included in our assessments of populations.

We are aware of two additional populations of *Eriogonum pelinophilum* that are not incorporated into the CNHP database, and that, based on appropriate separation distances, would comprise two new EOs (see Table 1). One site has fewer than 100 plants and the other site has an estimated 500 plants (TriState 2004, map; Boyle *in litt.* 2009, map). Table 1 provides a comparison of populations cited by the petitioners to known EOs, and land management or ownership status.

Of the 12 EOs where *Eriogonum pelinophilum* is currently known to exist (not counting the 2 newly discovered EOs), 2 are ranked by CNHP as A, 6 are ranked as B, 3 are ranked as C, and 1 is ranked as D (CNHP 2009, pp. 1-81; USFWS 2009, Table 1). An A rank represents *E. pelinophilum* occurrences with the largest size, highest number of individuals, and the best-quality habitat; a D rank represents occurrences with the smallest size, the lowest number of

individuals, and the worst-quality habitat (CNHP 2007, pp. 1–2; 2009, pp. 1–81; USFWS 2009, Table 1).

TABLE 1. COLORADO NATURAL HERITAGE PROGRAM (CNHP) *Eriogonum pelinophilum* ELEMENT OCCURRENCES (EOs) COMPARED WITH POPULATIONS CITED IN THE PETITION. RANKS A, B, C, AND D REPRESENT THE QUALITY OF THE EO (FROM BEST- TO WORST-QUALITY, RESPECTIVELY); H INDICATES AN EO HAS NOT BEEN VISITED IN OVER 20 YEARS; AND F INDICATES AN EO THAT COULD NOT BE FOUND DURING SUBSEQUENT VISITS. INCLUDED ARE TWO NEWLY DISCOVERED EOs NOT YET NUMBERED BY CNHP, SEVEN HISTORICAL EOs, AND ONE EO IN WHICH NO PLANTS WERE RECENTLY FOUND (015).

| EO Number | EO Rank | Petition Population | Land Management, with Rough Estimates of Ownership Percentage |
|-----------|---------|-----------------------------------|---|
| 001 | B | a, Lawhead Gulch | private |
| 003 | B | d, North Selig Canal | 33% BLM–66% private |
| 004 | B | g, Olathe South | private |
| 006 | B | h, North Mesa | private |
| 011 | C | i, North Fairview | 50% BLM–50% private |
| 012 | B | n, Sunshine Road | 5% BLM–95% private |
| 014 | A | f, Candy Lane/Peach Valley | BLM |
| 016 | C | p, Dry Cedar Creek | BLM |
| 018 | A | o, Wacker Ranch/Fairview South | 70% BLM–20% Colorado State (CNAP)–10% private |
| 024 | D | j, Montrose Northeast | private |
| 025 | B | e, Selig Canal | 90% BLM–10% private |
| 041 | B | new, discovered in 2007 | 66% BLM–33% private |
| none | none | new, discovered in 2004 | 33% BLM–66% private |
| none | none | new, discovered in 2008 | BLM |
| 015 | F | considered extirpated in petition | private |
| 007 | H, C | b, Peach Valley | private |
| 013 | H, C | l, Cedar Creek | private |
| 017 | H, C | m, Oak Grove Road | private |
| 019 | H, C | c, Star Nelson Airport | private |
| 021 | H, C | k, Montrose East | private |
| 022 | H, C | k, Montrose East | private |
| 023 | H, C | not included in petition | unknown |

The most recent rangewide population estimate for all *Eriogonum pelinophilum* EOs ranked A through D, which does not include the two newly discovered populations, is 276,000 individuals on 575 ac (233 ha) of currently occupied habitat (CNHP 2009, pp. 1–81; USFWS 2009, Table 1). Roughly 46 percent of the habitat is in private ownership, and 54 percent is managed by either the Bureau of Land Management (BLM) or Colorado Natural Areas Program (CNAP) (CNHP 2009, pp. 1–81; USFWS 2009, Table 1). Approximately 14 percent of the total currently occupied habitat is covered by conservation easements, located on privately owned land. Of the 14 known *E. pelinophilum* EOs, including the 2 newly discovered populations, 4 occur wholly on private land; 6 occur on a combination of BLM and private lands; 1 occurs on BLM Colorado State (Colorado Natural Areas), and private lands; and 3 occur wholly on BLM land (see Table 1).

We attribute the large difference between the rangewide population estimate from the 2006 petition (30,000 to 60,000 individuals; Reveal 2006, p. 2), and our 2009 estimate (276,000 individuals), to increased survey efforts that occurred in 2007 near Fairview South (EO 018), where the known

locations of *Eriogonum pelinophilum* and number of individuals greatly increased (CNHP 2009, EO 18; Ferguson 2007, pp. 2, 4). Survey intensity has not been consistent in the different EOs, so plant numbers at each EO may not be representative of the true abundance. As a general rule, plant estimates that are not based on a sampling protocol tend to underestimate the number of individuals at any given location.

Critical Habitat Evaluation

The existing critical habitat for *Eriogonum pelinophilum*, as designated in 1984, encompasses 119.8 ac (48.5 ha) and one population (Lawhead Gulch, EO 001), which was then the entire known range of the species (49 FR 28565). Within that designation, only about 65 ac (26 ha) of habitat remains occupied (based on a geospatial analysis); approximately 2,000 individual plants persist. By comparing to currently known CNHP EOs, the critical habitat designation for *E. pelinophilum* includes approximately 65 of 575 ac (26 of 233 ha) of currently occupied habitat, or only 11 percent, and 2,000 of 276,000 individuals, or only 0.7 percent (USFWS 2009, Table 1).

Finding

In making this finding, we relied on information provided by the petitioners, sources cited by the petitioners, and information readily available in our files. We evaluated that information in accordance with 50 CFR 424.14(c). Our process for making this 90-day finding under section 4(b)(3)(D) of the Act and section 50 CFR 424.14(c) of our regulations is limited to a determination of whether the information in the petition meets the “substantial scientific and commercial information” threshold.

We have assessed information provided by the petitioners and available in our files. The critical habitat designation from 1984 includes approximately 11 percent of habitat known to be currently occupied and 0.7 percent of individual *Eriogonum pelinophilum* plants. In addition, *E. pelinophilum* has special protections in portions of only four extant EOs (on four private land sites); roughly a third of all the known areas currently occupied by the species is on private land with no protections from destruction or adverse modification of habitat.

Under section 3 of the Act, critical habitat is to include the areas essential to the conservation of the species. Conservation is intended to bring the species to the point at which the

measures provided under the Act are no longer necessary, i.e., the species is recovered. Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas containing the essential physical and biological features that provide for requisite life cycle needs of the species (areas on which are found the PCEs laid out in the appropriate quantity and spatial arrangement for the conservation of the species). The petitioners have presented substantial information to indicate that the critical habitat for *Eriogonum pelinophilum*, as designated, may not represent the entire area containing the physical and biological features essential to the conservation of the species. Only a small proportion of the currently known habitat and individuals are included, only the northernmost portion of the species' range is represented, and areas outside of the designation are only provided special protections in portions of 4 of the remaining 13 populations. Habitat is

often dynamic, and a species' range may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas we may later determine are necessary for the recovery of the species. The known habitat areas occupied by *E. pelinophilum* have changed since critical habitat designation, and identification and designation of currently known occupied habitat may be essential to the conservation of the species.

On the basis of our evaluation of new occupied sites provided in the petition and in our files, we find that the petition presents substantial information indicating that revising critical habitat for *Eriogonum pelinophilum* under the Act may be warranted. Therefore, we are initiating a status review to determine if a revision to critical habitat for *E. pelinophilum* is warranted under the Act, and if so, how we would intend to proceed with such a revision.

References Cited

A complete list of all references cited in this document is available, upon request, from the Western Colorado Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

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The primary authors of this notice are the staff members of the U.S. Fish and Wildlife Service, Western Colorado Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 15, 2009

Rowan W. Gould

Acting Director, U.S. Fish and Wildlife Service

[FR Doc. E9-14709 Filed 6-19-09; 8:45 am]

BILLING CODE 4310-55-S