the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Jacqueline Lewis, (215) 814–2037, or by e-mail at *lewis.jacqueline@epa.gov.*

Dated: September 18, 2009.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. E9–23502 Filed 9–28–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R6-ES-2009-0037] [92210-1117-0000-B4]

Endangered and Threatened Wildlife and Plants; 12–month Finding on a Petition To Revise Critical Habitat for *Eriogonum pelinophilum* (Clay-Loving Wild Buckwheat)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12–month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our 12–month finding on a petition to revise critical habitat for *Eriogonum pelinophilum* (clay-loving wild buckwheat) under the Endangered Species Act of 1973, as amended (Act). After a thorough review of all available scientific and commercial information, we find that revisions to critical habitat for *E. pelinophilum* are warranted but precluded by other priorities. Given this finding, we intend to initiate rulemaking when we complete the higher priorities and we have the necessary resources to do so.

DATES: The finding announced in this document was made on September 29, 2009.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov*. Supporting documentation we used to prepare this finding is available for public inspection, by appointment during normal business hours at the U.S. Fish and Wildlife Service, Western Colorado Ecological Services Office, 764 Horizon Drive, Building B, Grand Junction, CO 81506-3946, by telephone at 970-243-2778; or by facsimile at 970-245-6933.

FOR FURTHER INFORMATION CONTACT: Patty Gelatt, Acting Western Colorado Supervisor, Fish and Wildlife Service, Western Colorado Ecological Services Office, 764 Horizon Drive, Building B, Grand Junction, CO 81506-3946, by telephone at 970-243-2778; or by facsimile at 970-245-6933. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339. Please include ''*Eriogonum pelinophilum* scientific information'' in the subject line for faxes and emails.

SUPPLEMENTARY INFORMATION: Section 4(b)(3)(D)(ii) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition containing substantial scientific and commercial information that indicates revisions to critical habitat may be warranted, we make a finding within 12 months of the date of receipt of the petition and publish a notice in the **Federal Register** indicating how we intend to proceed with the requested revision.

Background

Previous Federal Actions

We proposed to list *Eriogonum pelinophilum* as an endangered species in 1983, and we proposed critical habitat at the same time (48 FR 28504; June 22, 1983). We published the final rule designating the species as endangered in 1984, along with a final critical habitat designation (49 FR 28562; July 13, 1984). Critical habitat, as designated in 1984, encompassed 119.8 acres (ac) (48.5 hectares (ha)), which was then the entire known range of the species (49 FR 28562; July 13, 1984).

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 here as the petitioners) requesting that we amend the critical habitat designation for *Eriogonum pelinophilum* (Center for Native Ecosystems *et al.* 2006, p. 1). The petition clearly identified itself as a petition and included the requisite identification information that 50 CFR 424.14(a) requires. 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, herbivory, and inadequate regulatory mechanisms.

On September 29, 2006, we acknowledged the receipt of the petition but stated that given staff and budget limitations we could not work on the administrative finding at that time (Service 2006, *in litt.*). On November 13, 2006, we received a letter dated November 9, 2006, from the petitioners notifying us of their 60–day intent to sue for our failure to make a 90–day finding for *Eriogonum pelinophilum* (Center for Native Ecosystems 2006, *in litt.*). 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 for the species (Center for Native Ecosystems 2008). On September 25, 2008, a settlement agreement was reached whereby the Service agreed to submit a 90–day finding to the **Federal Register** by June 15, 2009, and, if the petition was considered substantial, submit a 12–month finding to the **Federal Register** by September 21, 2009 (U.S. Department of Justice 2008). This 12–month finding evaluates the status of existing critical habitat as stipulated in the settlement.

We published our 90–day finding regarding the petition to revise critical habitat for *Eriogonum pelinophilum* on June 22, 2009 (74 FR 29456). We determined the petition presented substantial information indicating that revising critical habitat for *E. pelinophilum* under the Act may be warranted, thus initiating this 12–month finding (74 FR 29456; June 22, 2009). We have fully considered all information received in response to information requested in our 90–day finding.

This 12–month finding discusses only those topics directly relevant to the revisions of existing critical habitat for *Eriogonum pelinophilum*. We also are in the process of preparing a 5–year review for *E. pelinophilum* where we are conducting a more thorough review of the species' status (73 FR 58261; October 6, 2008).

Species Information

Eriogonum pelinophilum was first collected near Hotchkiss, Colorado, in Delta County in 1958 (Reveal 2006, p. 1). The species was first recognized as its own taxon in 1969, and officially described in 1973 (Reveal 1969, pp. 75-76; 1973, pp. 120-122). No other locations were identified until 1984 (Colorado Natural Areas Program (CNAP) 1986, p. 1).

Eriogonum pelinophilum is a low growing, rounded, densely branched subshrub in the buckwheat family (Polygonaceae). It has 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 life history of *Eriogonum pelinophilum* has been examined in two short-term demography studies that track a plant population's change in size and structure through time. The first study was conducted on Bureau of Land Management (BLM) lands at the Fairview Research Natural Area in 1987 and 1988 (CNAP 1986; 1987). The second study was conducted at the Wacker Ranch where life history information was gathered in 1990, 1992, 1993, and 1994 (Carpenter and Schulz 1994), and again in 2008 (Lyon 2008). Neither of these studies occurred over sufficient time periods nor were they conducted frequently enough to calculate critical life history stages for *E. pelinophilum*'s success. In addition, neither study has enough demographic detail to assist in the development of a population viability model. However, both studies do add to our understanding of the species' longevity, habitat, and site differences, as described in the following two paragraphs.

The CNAP life history study for *Eriogonum pelinophilum* established four permanent monitoring plots, two plots at Fairview North and two plots 4 miles (mi) (6 kilometers (km)) south at Fairview South, and tagged 220 plants (CNAP 1987, p. 1). Significant differences in aerial cover, flowering rate, and vigor of *E. pelinophilum* between plots (CNAP 1987, p. 3) suggest site characteristics may influence plant characteristics such as abundance and size. *Artemisia nova* (black sagebrush) was the dominant species by basal area in most plots, but *E. pelinophilum* had the greatest density and frequency (CNAP 1987, p. 8). *E. pelinophilum* occurred in the highest densities away from other shrubs (CNAP 1987, p. 8).

Mortality from 1990 to 1994 averaged 6.0 percent at six permanent *Eriogonum pelinophilum* transects at the Wacker Ranch site but varied from 1.2 to 26.1 percent and was spread across age classes (Carpenter and Schultz 1994, p. 3). Observed growth rates and the number of seedlings observed varied considerably by transect (Carpenter and Schultz 1994, p. 3). This information supports the conclusion that *E. pelinophilum* is very long-lived and that environmental conditions vary considerably over relatively short distances (Carpenter and Schultz 1994, pp. 3-4). When five of the six transects were revisited in 2008, 67 percent remained alive after 18 years, further supporting the idea that the plant is long-lived (Lyon 2008, p. 2). In addition to the 181 tagged plants, at least 321 new plants were located along the 5 relocated transects (Lyon 2008, p. 2). Results were not statistically adequate to detect a change in species abundance (Lyon 2008, p. 3), but do suggest that the species may be stable or increasing at the Wacker Ranch site.

Eriogonum pelinophilum requires a pollinator, and for much of the flowering season is the most abundant species in bloom in its habitat (Bowlin *et al.* 1992, p. 300). Flowering typically occurs from late May to early September with individual flowers lasting fewer than 3 days (Bowlin *et al.* 1992, p. 298). Over 50 species of insects visit *E. pelinophilum* flowers (Bowlin *et al.* 1992, pp. 299-300). Roughly half of these 50 species are native bees and 18 species are native ants (Bowlin *et al.* 1992, pp. 299-300). Seed set is similar between plants that were pollinated by ants versus flying pollinators, suggesting the importance of ants to pollination of the species (Bowlin *et al.* 1992, p. 299). Harvester ants remove some fruits (Bowlin *et al.* 1992, p. 299); however, no information is available for the species on seed dispersal mechanisms.

Eriogonum pelinophilum plants have been found to be smaller at disturbed sites but the number, richness, diversity, or equitability of pollinators was not significantly different between disturbed and undisturbed sites (Tepedino 2009, p. 38). Of all *Eriogonum* species studied to date, none has as many pollinators as *E. pelinophilum* (Tepedino 2009, p. 39). These pollinators cover a wide array of taxonomic and functional types of insects that visit the flowers for nectar and pollen (Tepedino 2009, pp. 38-39). No single pollinator or group of pollinators appears particularly important for *E. pelinophilum* pollination (Tepedino 2009, pp. 38-39, Appendix A). Therefore, preservation of specific pollinators is not a significant concern in conservation of the species (Tepedino 2009, p. 38). Conservation of *E. pelinophilum* should focus primarily on the conservation of undisturbed habitat and associated plant species in as many separate areas as possible to manage for the wide array of pollinators (Tepedino 2009, p. 40).

Eriogonum pelinophilum is considered a close relative or synonymous with *E. clavellatum* and a close relative of *E. contortum* (Reveal 2006, p. 3). All three species are currently recognized as distinct (Reveal 2005b, p. 1; J. Kartesz, Biota of North America Project 2009, *in litt.*, p. 1). The most recent assessment indicates that preliminary genetic analyses show that *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, whereas *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 involucres (bracts below the flowers - 0.12 to 0.14 in. [3 to 3.5 millimeters (mm)] long), with petals all the same length. *E. clavellatum* is taller measuring 4 to 8 in. (1 to 2 dm), has larger involucres (0.16 to 0.18 in. [4 to 4.5 mm] long), with two different sized petals, and is only known from Montezuma County, Colorado and adjacent San Juan Counties in Utah and New Mexico (Spackman *et al.* 1997, *E. pelinophilum* page; Reveal 2005c, p. 1).

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 (1,579 to 1,965 meters) in elevation (Colorado Natural Heritage Program (CNHP) 2006, p. 3; Nature Serve 2008, pp. 4-5; CNHP 2009, spatial data; Service 2009a, Table 1). *E. pelinophilum* is known from an area measuring roughly 11.5 mi (18.5 km) from east to west and 28.5 mi (45.6 km) from north to south (CNHP 2009, spatial data). The Delta/Montrose area 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). Winters are cold, with January being the coldest month, averaging 12 to 39 degrees Fahrenheit (-11 to 4 degrees Celsius). Summers are hot, with July being the hottest month, averaging 55 to 93 degrees Fahrenheit (13 to 34 degrees Celsius) (Western Regional Climate Center 2009a, p. 1; 2009b, p. 1).

The soils where *Eriogonum pelinophilum* are found are whitish, alkaline (with a pH over 7), clay soils of

the Mancos shale formation, a Cretaceous marine sediment formation. Mancos shale outcrops are relatively barren of vegetation in comparison to surrounding areas (Potter *et al.* 1985, p. 137). Several components of the clay soils of the Mancos shale limit plant growth: soils are fine-textured and lose moisture more readily; clay soils are compactable which limits gas exchange and thus root growth; and clay soils hold more water which is unavailable for plant use because water infiltration is slower than other soil types, and the extreme swelling and shrinking of the soils limits water availability and oxygen exchange for plant roots (Potter *et al.* 1985, p. 139). In addition, the soils are calcareous (containing calcium carbonate).

The U. S. Geological Survey is researching the Mancos shale soils occupied by *Eriogonum pelinophilum* at the Gunnison Gorge National Conservation Area (GGNCA). Preliminary results suggest that *E. pelinophilum* is associated with silty clay and silty clay loam soils that can be classified as normal or saline-sodic in relation to pH, electrical conductivity, and sodium adsorption ratio (SAR) of saturated soil paste extracts (Grauch 2009, *in litt.*, p. 1). The principal difference between occupied and unoccupied soils is that the occupied soils have fairly constant SAR values with depth while unoccupied soils have more variable SAR values. Electrical conductivity values of the saturated soil paste extracts have a similar pattern of variation with depth (R. Grauch, *in litt.* 2009, p. 1). A subsequent study comparing the soil samples collected in the study above to soil samples across the Mancos shale terrain of the GGNCA is underway and expected to be available within the next 3 years.

Soils appear to play a large role in the distribution of *Eriogonum pelinophilum.* Therefore, we conducted a geospatial analysis using Natural Resources Conservation Service (NRCS) soil layers (Paonia and Ridgeway soil surveys - NRCS 2006a, metadata; 2008, metadata) to better understand the distribution of *E. pelinophilum*. The analysis overlaid soil types with the distribution of *E. pelinophilum* in an effort to determine which soil types were most common where the plants occur. For this analysis, we buffered all known locations by 33 feet (10 meters). We employed this buffer so that *E. pelinophilum* sites represented by a point would more accurately represent the plant habitat where those points are located (Service 2009b, p. 1). For this reason, acreage figures differ significantly from those listed in the ''Population Status'' section below.

The Paonia and Ridgeway soil surveys differ in their naming and definitions of the various soil units, making the data analysis inconsistent between the two surveys. Data was not available for 9 percent (96 ac (39 ha)) of habitat occupied by *E. pelinophilum*. Given these shortcomings, we found the following five soils were most common within the 1,129 ac (457 ha) of occupied habitat of *E. pelinophilum*: 1) typic torriorthents (both 10- to 25-percent slopes, and –Badland complex with 25- to 75-percent slopes) comprised roughly 35 percent (390 ac (158 ha)); 2) ellaybee-persayo silty clay loams (5- to 12-percent slopes) comprised roughly 26 percent (294 ac (119 ha)); 3) killpack silty clay loam (3- to 12-percent slopes) comprised roughly 7 percent (84 ac (34 ha)); 4) chipeta silty clay (3- to 30-percent slopes) comprised 7 percent (77 ac (31 ha)); and 5) Montrose-Delta complex (0- to 2-percent slopes) comprised 6 percent (64 ac (26 ha)). Soil types are described as erosion remnants weathered from calcareous shale and are highly erodible by water (Soil Conservation Service 1981, pp. 24 and 39; NRCS 2006b, map unit descriptions). Several other soil types occurred within occupied habitat, but none comprised over 3 percent or 30 ac (12 ha).

Eriogonum pelinophilum 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 with rolling topography. Steeper, more barren slopes within the Mancos shale habitats, but with more toxic soils for plant life, exist upslope of where the plants occur, generally within 1 mi (1.6 km). *E. pelinophilum* plants at lower elevation sites near Delta were associated with small areas where snow lingers longer than surrounding areas because of their north- and east-facing aspects (Ewing and Glenne 2009, p. 2).

Plant communities associated with *Eriogonum pelinophilum* are 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 (CNAP 1987, Table 2). In lower elevations near Delta, the dominant plant species is *Atriplex corrugata* (mat saltbrush) but at higher elevations near Montrose the dominant plant species is *Artemesia nova* (black sagebrush), although *A. corrugata* is still abundant (Southwest Regional Gap Analysis Project 2004, spatial data). Other associated species 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) (CNAP 1987, Table 2; Coles 2006, p. 1; NatureServe 2008, p. 4).

Population Status

Based on information provided by the CNHP in January 2009, 20 *Eriogonum pelinophilum* Element Occurrences (EOs) are currently known (CNHP 2009, pp. 1-81; Service 2009a, Table 1). The EOs are utilized by Natural Heritage Programs to track rare species and are defined as an area where a species is or was present. For *E. pelinophilum,* EOs are comprised of 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). However, upon closer examination, we found that several EOs, as designated by CNHP, were within 0.6 mi (1 km) of one another. For the purpose of this discussion, we have left the EOs as designated by CNHP. Of these 20 EOs, 7 have not been relocated in over 20 years and are considered historical. A survey was conducted at an additional EO where no plants were relocated (CNHP 2009, pp. 1-81; Service 2009a, Table 1). Table 1 is provided below to portray the EOs and their land management or ownership status. Figure 1 shows the distribution of *E. pelinophilum* habitat in Colorado with EO Numbers and percent occupancy.

TABLE 1. THE COLORADO NATURAL HERITAGE PROGRAM *Eriogonum pelinophilum* EOS.

The EO 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 relocated upon subsequent visit.

EO Number	EO Rank[1]	Acreage[2]	Population Name	Land Management with Rough Estimates of Ownership Percentage
001			Lawhead Gulch	private
003	B	67	North Selig Canal	33% BLM- 66% private
004	B	17	Olathe South	private
006	B	15	North Mesa	private
007	H, C		Peach Valley	private
011	C	110	North Fairview	50% BLM - 50% private
012	B	25	Sunshine Road	5% BLM – 95% private
013	H, C	(4)	Cedar Creek	private
014	A	7	Candy Lane/Peach Valley	BLM
015	F	(70)	Selig Canal 3	private
016	C	13	Dry Cedar Creek	BLM
017	H, C	(20)	Oak Grove Road	private
018	A	212	Wacker Ranch/Fairview South	70% BLM – 20% Colorado State (CNAP) – 10% private
019	H	(2)	Star Nelson Airport	private
021	H, C	(26)	Montrose East	private
022	H, C	(19)	Montrose East	private
023	H		Hotchkiss	unknown
024	D	8	Montrose Northeast	private
025	B	18	Selig Canal	90% BLM – 10% private
041	B	6	Garret Ditch	66% BLM – 33% private
none	none	3	Peach Valley North	33% BLM – 66% private
none	none	2	Loutsenhizer Canal	BLM

[1] EOs with both historical (H) rank and C (fair) quality ranks were ranked as C prior to becoming H.
[2] Acreages are approximate, are based on a geospatial layer when available, and on surveyor estimates when a geospatial estimate is not available (CNHP 2009, pp. 1-81). Methods for estimating acreage vary between surveys. Acres listed in parentheses are not included in the total based on their historical (H) or failed to find (F) ranks.

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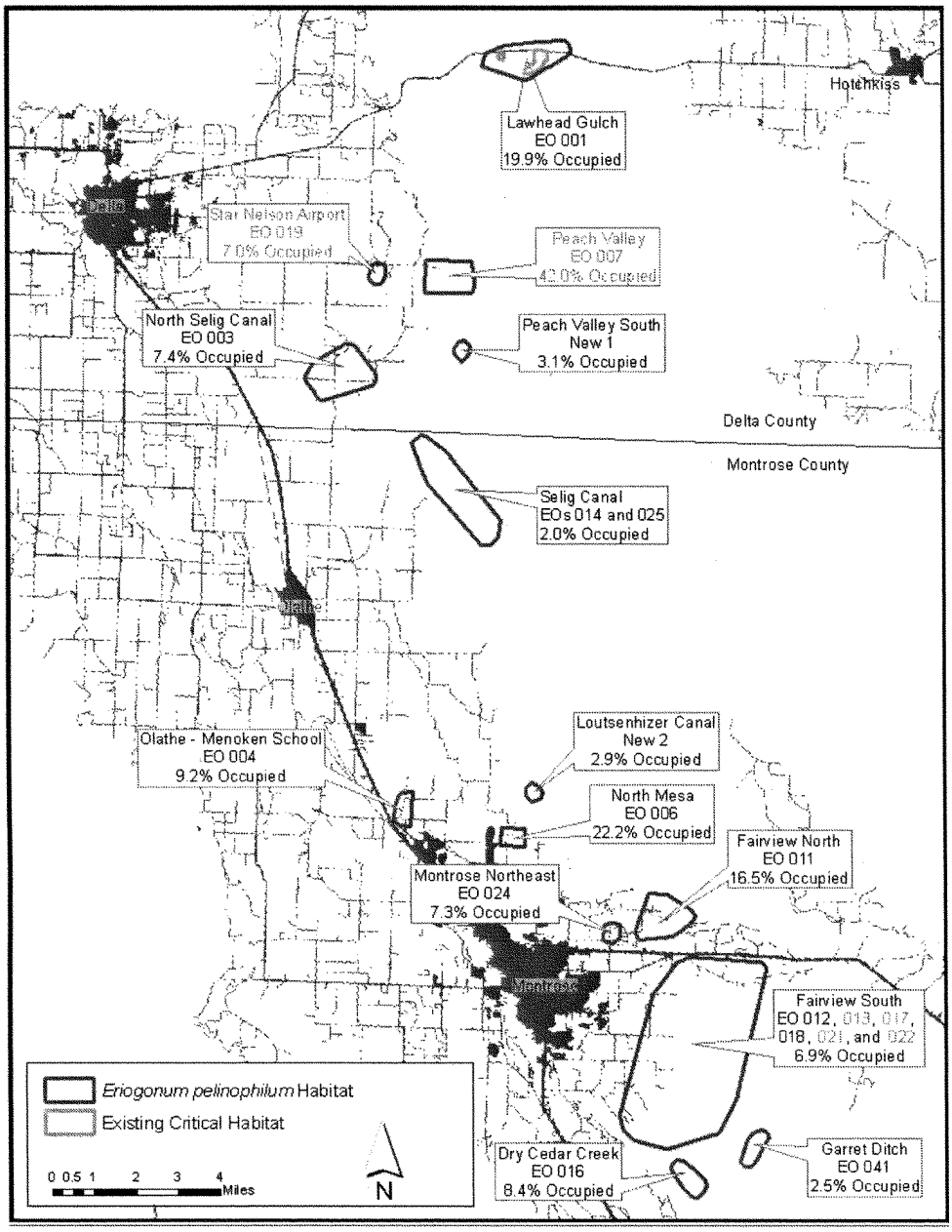
Distribution of Eriogonum pelinophilum habitat in Colorado with Element Occurrence (EO) Numbers and percent occupancy.

FIGURE 1. Distribution of *Eriogonum pelinophilum* habitat in Colorado with Element Occurrence (EO) Numbers and percent occupancy.



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The most recent rangewide *E. pelinophilum* population estimate for all 14 current sites is roughly 277,000 individuals across 582 occupied ac (233 ha). Roughly 46 percent of the acres are in private ownership (14 percent of the total acres have conservation easements), and 54 percent of the acres are managed by either the BLM or the CNAP (CNHP 2009, pp. 1-81; Service 2009a, Table 1). The difference between rangewide population estimates from the 2006 petition and those in 2009 are largely attributable to surveys that occurred in 2007 near Fairview South (EO 018), where increased survey efforts greatly expanded the known locations of *E. pelinophilum* as well as the number of individuals (an increase from roughly 30,000 to 250,000 individuals) (CNHP 2009, EO 18; Ferguson 2007, pp. 2 and 4). Survey intensity has not been consistent in the different EOs.

We are aware of two additional populations of *Eriogonum pelinophilum* that are not incorporated into the CNHP database and, based on appropriate separation distances, would comprise two new EOs (Table 1). Although not yet numbered or named by CNHP, we now refer to these sites as Peach Valley North and Loutsenhizer Canal (Table 1). Peach Valley North has fewer than 100 plants and the Loutsenhizer Canal site has an estimated 500 plants (BIO-Logic Environmental 2004, Site 219 p. 7 and spatial data; BIO-Logic Inc. 2008, Figure 2 and spatial data; Boyle 2009, *in litt.*, p. 1). We have a short report in our files (Reveal 2006, p. 2) with a map portraying seven extirpated *E. pelinophilum* locations. These locations are not included in the CNAP's database. We do not have any 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 assessment of populations (Table 1).

Of the 14 occupied *Eriogonum pelinophilum* sites, 4 occur wholly on private land; 6 occur on a combination of BLM and private land; 1 occurs on a combination of BLM, Colorado State (CNAP), and private land; and 3 occur wholly on BLM land (Table 1). Sites on Federal lands are afforded the protections of section 7 of the Act. In addition, four EOs have special land designations that provide some additional level of protection: (1) The majority of Lawhead Gulch is protected through a conservation easement held by the Black Canyon Land Trust, as well as being within the existing critical habitat designation; (2) a portion of the North Selig Canal is protected through a conservation easement held by the Black Canyon Land Trust; (3) roughly half of North Fairview is protected as a BLM Area of Critical Environmental Concern (ACEC), and as a Colorado Natural Area, which was fenced in 2008; and (4) Wacker Ranch/Fairview South is partially protected through a BLM designated ACEC, the CNAP (both at the Fairview South ACEC and Wacker Ranch), and The Nature Conservancy at Wacker Ranch.

Each of these special designations protects *Eriogonum pelinophilum* differently. Easements held by the Black Canyon Land Trust provide permanent protection for *Eriogonum pelinophilum*, are not actively managed, and have not yet been surveyed for *E. pelinophilum*, although the presence of the plant has been confirmed on all easements (B. Hawke, Executive Director, Black Canyon Land Trust, *in litt.* 2008, pp. 1-2). The BLM's Fairview ACECs, both north and south, were designated to manage and protect *E. pelinophilum* (Ferguson 2006, *in litt.* pp. 1-6). The Fairview North ACEC has been fenced and livestock use has been halted, whereas the Fairview South ACEC is not fenced and receives livestock use. Both Fairview ACECs also are designated as Colorado Natural Areas. The CNAP has provided qualitative monitoring, quantitative monitoring, and management recommendations at both ACECs (Kurzel 2008, *in litt.* pp. 1-4). Wacker Ranch was acquired through a U.S. Fish and Wildlife Recovery Land Acquisition Grant in 2007 to protect *E. pelinophilum* (McGillivary 2007, *in litt.* p. 1). The property is owned by the Colorado Division of Parks and Outdoor Recreation (CNAP), is a Colorado Natural Area, and is managed by The Nature Conservancy (Colorado Division of Parks and Outdoor Recreation and The Nature Conservancy 2007, pp. 1-5). A formal management plan has been completed and nonnative weed control, qualitative and quantitative monitoring, as well as public outreach are ongoing for this property (Kurzel 2008, *in litt.* pp. 1-4).

Critical Habitat

Current Critical Habitat Designation

At the time we designated critical habitat, the designation represented the entire known range of the species. The rule designating critical habitat included as the primary constituent elements those factors associated with the whitish alkaline clay soils within the sparsely vegetated badlands of Mancos shale. The existing critical habitat for *E. pelinophilum,* as designated in 1984, encompasses 119.8 ac (48.5 ha) and one population (Lawhead Gulch, EO 001,50 CFR 17.96(a)). Within that designation, approximately 65 ac (26 ha) of habitat remains occupied containing approximately 2,000 individual plants. The current critical habitat designation for *E. pelinophilum* includes approximately 65 of 582 ac (26 of 233 ha) of currently occupied habitat (11 percent), and 2,000 of 276,000 individuals (0.7 percent) (Service 2009, Table 1). *E. pelinophilum* has special protections in portions of 4 of 20 extant EOs.

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 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 essential to the conservation of the species. The essential features consist of the primary constituent elements (PCEs) in the appropriate quantity and spatial arrangement that provide for requisite life cycle needs 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 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.

12-Month Finding

Section 4(b)(3)(D)(ii) of the Act requires that if we find that a revision to critical habitate should be made, then we are to indicate how we intend to proceed with such revision and promptly publish a notice of our intention. We have reviewed the best available scientific and commercial information available, and we find that revisions to critical habitat for *E. pelinophilum* under the Act should be made. However, we have determined that the development of a revised critical habitat designation for the species is currently precluded by higher priority listing and critical habitat determinations. The resources available for listing actions, including critical habitat designations and revisions, are determined through the annual Congressional appropriations process. We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). Recognizing that designation of critical habitat for species already listed would consume most of the overall Listing Program appropriation, Congress also put a critical habitat subcap in place in FY 2002 and has retained it each subsequent year. In FY 2002 and each year until FY 2006, the Service has had to use virtually the entire critical habitat subcap to address court-mandated designations of critical habitat, and consequently none of the critical habitat subcap funds have been available for other listing activities. In FY 2007, we were able to use some of the critical habitat subcap funds to fund proposed listing determinations for high-priority candidate species. While we were unable to use any of the critical habitat subcap funds to fund proposed listing determinations in FY 2008, we did use a portion of this money to fund the critical habitat portion of some proposed listing determinations. In those cases, this allowed combining the proposed listing determination and proposed critical habitat designation into one rule, thereby increasing efficiency. In FY 2009, we have been able to continue this practise. However, our current projection for FY 2010 is that all of the funding anticipated for the critical habitat portion of the listing allocation will be used to address court-ordered critical habitat designations. As such, we do not anticipate having funding available to work on non-court-ordered actions in FY 2010.

Thus, through the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for critical habitat revisions. Therefore, the funds in the critical habitat subcap, other than those needed to address court-mandated critical habitat for already listed species, set the limits on revisions to critical habitat.

We have endeavored to make our critical habitat designation and revision actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together.

While we are not proposing to revise critical habitat at this time, we have considered whether the physical and biological features essential to the conservation of the species identified in the previous designation are still appropriate for this species. The original critical habitat designation included only the alkaline clay soils as a primary constituent element, and therefore the feature essential to the conservation of the species. Appropriate native vegetation and features that allow for dispersal were not included. Based on the biology of the species, we intend to revise the PCEs, and therefore the essential features, in order to address the following needs of the species: appropriate native vegetation, appropriate soils, and features that allow for dispersal within units. Such features may include suitable habitat for pollinators, appropriate slopes, depressions, rivulets, and sites where snow banks linger. We find that incorporating these concepts into the revised critical habitat designation for *Eriogonum pelinophilum* is important for identifying the specific areas essential to the conservation of the species. We are soliciting any additional information or input on these potential PCEs and essential features.

How the Service Intends To Proceed

We intend to undertake rulemaking to revise critical habitat for *Eriogonum pelinophilum* when funding and staff resources become available. Based on the best available science, including the status review, we will take the following steps to propose the revision of designated critical habitat for *Eriogonum pelinophilum*: (1) Determine the geographical area occupied by the species at the time of listing; (2) identify the physical or biological features essential to the conservation of the species; (3) delineate areas within the geographical area occupied by the species that contain these features, and which may require special management considerations or protections; (4) delineate any areas outside of the geographical area occupied by the species that are essential for the conservation of the species; (5) conduct appropriate analyses under section 4(b)(2) of the Act; and (6) invite the public to review and provide comments on the proposed revision through a public comment period.

We intend that any revisions to critical habitat for *E. pelinophilum* be as accurate as possible. Therefore, we will continue to accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding.

Current Designation and Protections

Until we are able to revise the critical habitat designation for *Eriogonum pelinophilum*, areas that support populations but are outside the critical habitat designation will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act. Federal agency actions are subject to the regulatory protections afforded by section 7(a)(2), as determined on the basis of the best available scientific information at the time of the action. Approximately a third of the areas currently known to be occupied by the species are on private land outside of the current designation. We expect occasional projects on private land to involve a Federal nexus, in which case protections under section 7(a)(2) would also apply. Where a landowner requests Federal agency funding or authorization (i.e., Federal nexus) for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply.

Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome. Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''Reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

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**).

Author

The primary authors of this notice are the staff members of the 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: September 16, 2009.

Thomas L. Strickland

Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. E9–23155 Filed 9–28– 09; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R4-ES-2009-0066]
[92210-1117-0000-B4]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to Revise Critical Habitat for the Florida Manatee (*Trichechus manatus latirostris*)

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, announce a 90–day finding on a petition to revise the critical habitat designation for the Florida subspecies (*Trichechus manatus latirostris*) of the endangered West Indian manatee (*Trichechus manatus*) under the Endangered Species Act of 1973, as amended. Based on our review, we find that the petition, in conjunction with information readily available in our files, presents substantial scientific or commercial information indicating that a revision of the critical habitat designation for the Florida manatee may be warranted. Therefore, with the publication of this notice, we are initiating a review of the current critical habitat designation for the subspecies to determine how we intend to proceed with the revision. To ensure a comprehensive review, we seek information pertaining to the Florida manatee's essential habitat needs from any interested party.

DATES: To allow us adequate time to conduct this review, we request that you send us information on or before October 29, 2009.

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

- Federal eRulemaking Portal: *http://www.regulations.gov*. Search for docket FWS-R4-ES-2009-0066 and then follow the instructions for submitting comments.
- *U.S. mail or hand-delivery*: Public Comments Processing, Attn: FWS-R4-ES-2009-0066; 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: Dave Hankla, Field Supervisor, Jacksonville, Florida Ecological Services Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256, by telephone (904-731-3336), or by facsimile (904-731-3045). If you use a telecommunications device for the deaf (TDD), please 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 a revision of a critical habitat designation may be warranted, we initiate a review of that critical habitat to determine how we intend to proceed with the requested revision of the designation. To ensure that the review is complete and incorporates the best available scientific and commercial information, we seek information regarding the revision of critical habitat for the Florida manatee.