

**SUPPLEMENTARY INFORMATION:****Public Hearing**

The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rules. The EPA may ask clarifying questions during the oral presentations, but will not respond formally to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearings. Written comments must be postmarked by the last day of the comment period, September 4, 2009.

The public hearings will be held at the following times and locations:

Los Angeles, CA—June 16, 2009, Wilshire Grand Hotel, 930 Wilshire Blvd, Los Angeles, CA 90017, W: <http://www.wilshiregrand.com/index.aspx>.

Dallas, TX—June 17, 2009, Grand Hyatt DFW, 2337 South International Parkway, PO Box 619045, DFW Airport, TX 75261.9045, W: <http://www.grandhyattdfw.com>. This hotel is located near Terminal B at the Dallas-Fort Worth Airport.

Washington, DC—June 18, 2009, Potomac Yard Conference Center, Environmental Protection Agency, Conference Center—4th floor, Rooms 4370 & 4380, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA 22202. Entrance to this facility requires a photo ID.

The public hearings will begin at 10 a.m. and continue into the evening until 8 p.m. (local time) or later, if necessary, depending on the number of speakers wishing to participate. EPA is scheduling lunch breaks from 12:30 p.m. until 2 p.m. and dinner breaks from 5 p.m. to 6:30 p.m.

If you would like to present oral testimony at the hearings, please notify Ms. Pamela Garrett, EPA, Office of Air Quality Planning and Standards, Sector Policy and Programs Division, Energy Strategies Group (D243-01), Research Triangle Park, NC 27711, telephone number 919-541-7966, e-mail address: [garrett.pamela@epa.gov](mailto:garrett.pamela@epa.gov) (preferred method for registering). If using e-mail, please provide the following information: Time you wish to speak (morning, afternoon, evening), name, affiliation, address, e-mail address, telephone and fax numbers, if you need any audiovisual equipment and what kind (i.e., overhead or LCD projector).

EPA will make every effort to follow the schedule as closely as possible on

the day of the hearings; however, please plan for the hearing to run either ahead of schedule or behind schedule. As noted above, registration closes at 5 p.m. EDT two business days prior to each public hearing.

Oral testimony will be limited to 5 minutes for each commenter to address the proposal. We will not be providing equipment for commenters to show overhead slides or make computerized slide presentations unless we receive special requests in advance.

Commenters should notify Ms. Garrett if they will need specific audiovisual equipment. EPA encourages commenters to provide two copies of their oral testimony either electronically on computer disk, CD-ROM, or paper copy. The hearing schedule, including a list of speakers, will be posted on EPA's Web site for the proposal at <http://www.epa.gov/ttn/atw/pcem/pcemgp.html> prior to the hearing. Verbatim transcripts of the hearings and written statements will be included in the rulemaking docket.

**Comment Period**

Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. For the reasons noted above, the public comment period will now end on September 4, 2009. This extension of the public comment period will also allow for adequate time for public comment after the public hearings.

**How Can I Get Copies of the Proposed Rule and Other Related Information?**

The proposed rule for the National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry was published May 6, 2009 (74 FR 21136). EPA has established the public docket for the proposed rulemaking under docket ID No. EPA-HQ-OAR-2002-0051, and a copy of the proposed rule is available in the docket. We note that, since the proposed rule was published, additional materials have been added to the docket. Information on how to access the docket is presented above in the **ADDRESSES** section.

Dated: June 3, 2009.

**Elizabeth Craig,**

*Acting Assistant Administrator.*

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**BILLING CODE 6560-50-P**

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

[FWS-R6-ES-2009-0015; MO 922105 0083-B2]

**Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List *Oenothera acutissima* (Narrowleaf Evening-primrose) as Threatened or Endangered**

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

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list *Oenothera acutissima* (narrowleaf evening-primrose) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition does not present substantial scientific or commercial information indicating that listing *O. acutissima* may be warranted. Therefore, we will not initiate a further status review in response to this petition. We ask the public to submit to us any new information that becomes available concerning the status of *O. acutissima* or threats to its habitat at any time. This information will help us monitor and encourage the conservation of the species.

**DATES:** The finding announced in this document was made on June 9, 2009. You may submit new information concerning this species for our consideration at any time.

**ADDRESSES:** This finding is available on the Internet at <http://www.regulations.gov>. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Western Colorado Field Office, 764 Horizon Drive, Building B, Grand Junction, CO 81506. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

**FOR FURTHER INFORMATION CONTACT:**

Allan R. Pfister, Field Supervisor, Western Colorado Field Office (see **ADDRESSES** section) (telephone 970-243-2778, extension 29). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate 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 at the time we make the determination. 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 this 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 information was presented, we are required to promptly commence a review of the status of the species.

We base this finding on information provided by the petitioners that we determined to be reliable after reviewing sources referenced in the petition and information available in our files at the time of the petition review. This finding summarizes the information included in the petition and information available to us at the time of the petition review. Under section 4(b)(3)(A) of the Act and our regulations at 50 CFR 424.14(b), our review of a 90-day finding is limited to a determination of whether the information in the petition meets the “substantial [scientific or commercial] information” threshold.

We received a petition, dated April 12, 2006, from the Center for Native Ecosystems and the Colorado Native Plant Society requesting that we list *Oenothera acutissima* as threatened or endangered under the Act. Additionally, the petitioners requested that we designate critical habitat concurrently with listing. The petition identified itself as such and included the requisite identification information for the petitioners, as required by 50 CFR 424.14(a). We acknowledged receipt of the petition in a letter dated June 15, 2006. In that letter, we advised the petitioners that due to prior listing allocations in Fiscal Year 2006, we would not be able to begin processing the petition, and that following a review of available information, we determined that emergency listing of *O. acutissima*

was not warranted. Delays in responding to the petition continued due to the high priority of responding to court orders and settlement agreements.

## Previous Federal Actions

*Oenothera acutissima* (known only as *Oenothera* sp. until Wagner provided its full name in 1981) was listed as a Category 2 (C2) candidate for listing on December 15, 1980 (45 FR 82480). Category 2 status included taxa for which information in the Service’s possession indicated that a proposed listing rule was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support a proposed rule. In the Candidate Notice of Review (CNOR) published on February 28, 1996, we announced a revised list of plant and animal taxa that were regarded as candidates for possible addition to the Lists of Threatened and Endangered Wildlife and Plants (61 FR 7595). The revised candidate list included only former Category 1 (C1) species. All former Category 2 species were dropped from the list in order to reduce confusion about the conservation status of these species, and to clarify that the Service no longer regarded these species as candidates for listing. Because the species did not meet the threshold of the definition of a C1 species, *O. acutissima* was removed from the candidate list at that time.

This notice constitutes our 90-day finding on the April 12, 2006, petition to list *Oenothera acutissima*.

## Species Information and Listable Entity Evaluation

*Oenothera acutissima* is a member of the Onagraceae (evening-primrose) family. Plants are low-growing, herbaceous, perennial rosettes with a long, branching taproot that can produce new shoots. Leaves are bright green, stiff, 7–14 centimeters (cm) (2.7–5.5 inches (in)) long, and 5–10 millimeters (mm) (0.2–0.4 in) wide with short pointed teeth along each edge. Flowers are bright yellow fading to deep reddish orange, 2.8–5 cm (1–2 in) long, 2.5–4.3 cm (1–1.7 in) wide (Wagner 1981, p. 155). Blooming season is in June, and flowers open in late afternoon and close at mid-morning.

*Oenothera acutissima* was first recognized by William H. Klein, who collected it with H. D. Harrington in 1966 in Moffat County, Colorado. The species was described in 1981 by Dr. Warren L. Wagner, Curator of Pacific Botany, United States National Herbarium at the Smithsonian (Wagner 1981, p. 153). Dr. Stanley Welsh of Brigham Young University published

this species as *Oenothera flava* var. *acutissima* (Welsh *et al.* 1987, p. 505). However, Wagner asserts that experiments show the two species to be genetically incompatible, and therefore they are two distinct species (Wagner 2006, p. 1). Wagner’s treatment is accepted by PLANTS Database (USDA, NRCS 2007), NatureServe (2007), the Integrated Taxonomic Information System online database (2007), the Utah Rare Plant Guide (UNPS 2006), the Colorado Rare Plant Field Guide (Spackman *et al.* 1997, pp. 1–2), and Weber and Wittmann (2001, p. 232).

## Distribution

*Oenothera acutissima* plants grow on sandy and gravelly soils derived from red quartzite of the Uinta Mountain Group. Occurrences are found in seasonally moist areas in open meadows, depressions, arroyos, and rock crevices of conifer forests at 2,600 meters (m) (8,530 feet (ft)) elevation down to sagebrush scrub communities at 1,190 m (3,904 ft) elevation (Wagner 1981, p. 157). *O. acutissima* is similar to many other evening-primrose species in its ability to thrive on open, bare soil and disturbed ground.

The species is known from 12 occurrences in northeast Utah in Daggett, Duchesne, and Uintah Counties, and 15 occurrences in Colorado in Moffat County, for a total of 27 occurrences. The number of plants estimated by the Utah Natural Heritage Program in Utah is 184,950 (UCDC 2006, 12 records), and estimated by the Colorado Natural Heritage Program (CNHP) in Colorado is 3,410 plants (CNHP 2007, 15 records). Over the total range of 145 by 48 kilometers (km) (90 by 30 miles (mi)), an estimated total of 188,360 plants exist. Land ownership recorded by the Heritage Programs includes 13 occurrences on Federal U.S. Forest Service, Bureau of Land Management (BLM), and National Park Service lands; 3 occurrences are entirely on private land; and 11 occurrences on a combination of Federal and adjacent private lands (UCDC 2006 and CNHP 2007, all records).

## Threats Analysis

Section 4 of the Act and its implementing regulations (50 CFR 424) set forth the procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B)

overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. Listing actions may be warranted based on any of the above threat factors, singly or in combination.

Under the Act, a threatened species is defined as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. An endangered species is defined as a species that is in danger of extinction throughout all or a significant portion of its range. We evaluated each of the five listing factors to determine whether the level of threat identified by information in the petition or in our files was substantial and indicated that listing *Oenothera acutissima* as threatened or endangered may be warranted. Our evaluation is presented below.

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

The petitioners state that substantial threats to the species' habitat include: (1) Livestock trampling; (2) dirt bikes and other off-road vehicles; (3) noxious weeds and seeding; and (4) roads. Each of these topics is discussed below.

##### Livestock Trampling

The petitioners state that livestock trampling is the most significant potential threat to the species, and follow this assertion with several statements:

- Grazing occurs on all lands within Ashley National Forest and BLM jurisdiction that support occurrences of the plant, and on most private lands that support occurrences. Most sites have been impacted by livestock and several have suffered heavy impacts;
- Several occurrences are immediately adjacent to stock ponds and other cattle congregation areas;
- Trampling alters the species' microhabitat through the effects of soils compaction and changes to water drainage pattern; and
- Actual evidence of impacts from heavy grazing or unsustainable concentrations of livestock has been noted at 4 of the 27 occurrences.

The petitioners characterize the species as one that appears to tolerate moderate levels of habitat disturbance, but may not be able to tolerate it in any long-term sense. The petitioners cite Goodrich (2001a, p. 1) as indicating that ephemeral surface water and a high percentage of bare ground and rock are important elements for the species in its

habitat, and that "soil compaction is also a common feature to the habitat occupied by the plant at this site [a population on the Ashley National Forest]." Goodrich (2001a, p. 1) predicted that as drainage bottoms become more stable and achieve a higher percentage of ground cover, *Oenothera acutissima* could be displaced by grasses. The petitioners conclude that the sandy or gravelly microhabitat essential for the species may not continue to be available over the life of a given meadow or drainage bottom.

##### Evaluation of Information in the Petition and Information Available to Us at the Time of Petition Review

Documentation by Goodrich (2001a, p. 1; 2001b), which is cited in the petition, is inconsistent with the petitioners' assumptions about the impacts of cattle on *Oenothera acutissima*. In addition to the statement cited above regarding soil compaction, Goodrich (2001a, p. 1) indicates that "ungulate grazing is indicated to be compatible with this plant, and at some levels can be expected to increase populations of this plant." In 1988, 1997, 2001, 2004, 2005, and 2006, Goodrich (2006a) revisited several *O. acutissima* occurrences. In 1988, he photographed unusually large plants growing in a highly disturbed drainage within a private pasture that had been grazed since the late 1800s. He again found numerous plants at the same site in 2006 (2006a, file # 339-1). Goodrich (2006b, p. 1) concluded from these examples that livestock grazing is actually compatible with these plants.

Wagner (1981, p. 157) described a site that was heavily grazed in 1966, where *Oenothera acutissima* was found growing in rock crevices and *Oenothera flava* was growing 15 m (49 ft) away in clayey soil along the shore of a reservoir. Wagner found no plants in the drainage below this heavily grazed site from 1973 to 1978, but in 2000, 100 plants were found (CNHP 2007, EO ID 3602). This observation supports the conclusion that cattle trampling is not a substantial threat to the species, and illustrates the resilience of the species in grazed areas. Additionally, in Colorado, Culver surveyed seven occurrences where plants were present in 2006. She reported some trampling of plants at only one occurrence, where she found 500-1,000 plants (CNHP 2007, EO ID 4727).

The petitioners' assumptions that *Oenothera acutissima*, an opportunistic species, will not persist long term in conditions of continued grazing and trampling, and that stabilization of

eroded ground will result in too much competition from other plants, are not supported by the literature. Goodrich's (2001a, p. 1; 2006b, p. 1) field work documented that trampling may help maintain habitat for the species. He concludes that persistence of abundant plant populations in areas with a long history of grazing indicates compatibility with grazing.

The petition relies on general assumptions about the effects of livestock grazing, but does not provide data relevant to this species. The petition does not consider the results of field research documenting the 100-year co-occurrence of the species with livestock grazing, or that trampling by cattle may play a beneficial role in maintaining the unique habitat for this particular species, which thrives in open areas of bare ground (Goodrich 2001a, p. 1; 2001b; 2006b, p. 1).

Based on our evaluation of the information provided in the petition and information available to us at the time of petition review, we have determined that the petition does not present substantial information to indicate that listing of *Oenothera acutissima* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range due to livestock trampling.

##### Dirt Bikes and Other Off-Road Vehicles

The petition states that off-road vehicles (ORVs) damage and destroy *Oenothera acutissima* plants, change runoff patterns causing eroded soils and changed community composition of mesic habitats, and cause dust to cover plants. The petitioners indicate that several *O. acutissima* occurrences have been impacted by damage, and that one area of habitat supporting plants has been observed with ORV tire tracks running through it. They indicate that off-road and cross-country travel is allowed in almost all occurrences of *O. acutissima*, and that ORV use is increasing dramatically on public lands of the West.

##### Evaluation of Information in the Petition and Information Available to Us at the Time of Petition Review

The petitioners cite one observation of ORV tracks in plant habitat; no information is given to indicate direct impact on plants, nor is there any documentation of direct or indirect ORV impacts to *Oenothera acutissima* plants in our files. The petition includes generally accepted descriptions of potential threats to plants and habitats from ORV use, but does not show that these potential threats may result in

impacts to more than one occurrence of *O. acutissima*. Again, the petitioners have provided general information on a potential threat, but not provided any evidence on actual impacts from ORV use.

On the basis of a review of the information provided by the petitioners and that readily available in our files, we have determined that the petition does not provide substantial information, nor does the Service have information, to indicate that listing *Oenothera acutissima* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range due to the use of dirt bikes and other ORVs.

#### Noxious Weeds and Seeding

The petitioners state that noxious weeds and seeding may constitute a threat to *Oenothera acutissima* because they could eliminate or alter the bare ground microhabitat of the species by changing flow patterns of water in ephemeral stream channels or by anchoring more soil within stream channels. The petitioners indicate that weed species have been seen occupying many of the *O. acutissima* occurrences, and therefore noxious weeds are known to be a problem. They indicate that at least 3 of the 27 *O. acutissima* occurrences have been invaded by noxious weeds.

#### Evaluation of Information in the Petition and Information Available to Us at the Time of Petition Review

The petition provides no information to substantiate that noxious weeds and seeding are impacting, or are likely to impact, *Oenothera acutissima* occurrences. CNHP records describe weeds growing in and around springs at two of the three occurrences cited in the petition (CNHP 2007, EO IDs 4727, 502). No impacts to the plants are noted in CNHP data, and noxious weed species are not mentioned or identified. Occurrence records often mention varieties of grasses and forbs growing with *O. acutissima*, but cheatgrass (*Bromus tectorum*) is the only weed species mentioned (CNHP 2007, all records).

On the basis of a review of the information provided by the petitioners and that readily available in our files, we have determined that the petition does not present substantial information to indicate that listing *Oenothera acutissima* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range by noxious weeds and seeding.

#### Roads

The petitioners state that most *Oenothera acutissima* occurrences are near roads, and that many occurrences are bisected by roads. They indicate that at least seven *O. acutissima* sites are immediately adjacent to roads or trails that provide recreationists with either restricted access across *O. acutissima* habitat or unrestricted open access into the habitat. The petitioners indicate that habitat could be impacted by soil compaction, fine particle deposition on the plants, alterations in hydrologic flow above the plants, spread of invasive plants, increased ORV access and use, and destabilization of the drainages where the plants are found.

#### Evaluation of Information in the Petition and Information Available to Us at the Time of Petition Review

Roads near or through *Oenothera acutissima* habitat exist, but no available information indicates that roads result in negative effects to *O. acutissima* or its habitat. Available information indicates that this species actually takes advantage of ground disturbance associated with roads. Goodrich (2006a, files 3–14A2, 3–14RS) compared photographs taken in 1997 and 2006 of a roadside occurrence of *O. acutissima* on open range. Plants were monitored and appeared to be increasing along a roadside transect between the hardened surface of the road and the adjacent sagebrush community. Another pair of photographs (Goodrich 2006a, file 339–1) showed unusually large *O. acutissima* plants in the highly disturbed down-drainage side of a road culvert in 1988, and numerous plants could still be seen in the 2006 photograph of the same drainage.

On the basis of a review of the information provided by the petitioners and that readily available in our files, we have determined that the petition does not present substantial information to indicate that listing *Oenothera acutissima* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range by roads and associated access.

#### Other Threats

The petitioners also state that some occurrences are threatened by other activities, including water diversions and meadow channeling; recreational activities including camping, firewood gathering, and hunting; logging; dense housing and infrastructure development; changes in habitat due to ecological succession; and flooding. The

petitioners describe four sites where some of these other potential threats are present, and these are the same sites that support the highest number of plants.

#### Evaluation of Information in the Petition and Information Available to Us at the Time of Petition Review

The petitioners provided no specific information, nor do we have any information in our files, to substantiate the extent of these activities and their potential impacts on *Oenothera acutissima*. Once again, the question of speculative, generic potential threats has been raised, but no evidence on actual impacts from these potential threats has been documented.

On the basis of a review of the information provided by the petitioners and readily available in our files, we determined that the petition does not present substantial information to indicate that listing *Oenothera acutissima* may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range by other threats, including water diversions and flooding, recreational activities, logging, housing and infrastructure development, or ecological succession.

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

The petitioners provide no information, nor do we have any information in our files, pertaining to Factor B. Therefore, we have determined that the petition does not present substantial information to indicate that listing *Oenothera acutissima* may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes.

#### C. Disease or Predation

The petitioners cite a conversation with Goodrich indicating that herbivory is not a serious threat to *Oenothera acutissima*, because no species seems to seek it out for foraging. They note one occurrence record of heavily grazed plants.

#### Evaluation of Information in the Petition and Information Available to Us at the Time of Petition Review

One observation of herbivory by cattle and horses is noted in occurrence records, where the tips of the plants were grazed along with comingled grasses and forbs (CNHP 2007, EO ID 4727). However, one observation at one plant occurrence (out of 27) does not present substantial information to

indicate that herbivory is a threat to the species. Therefore, we have determined that the petition does not provide substantial information to indicate that listing *Oenothera acutissima* may be warranted due to herbivory or other forms of predation.

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

The petitioners allege that no Federal, State, or other regulatory mechanisms adequately protect *Oenothera acutissima*, and that BLM fails to manage with sensitive species in mind. The petitioners could find no record of *O. acutissima* being considered in management decisions that would affect its habitat or occurrences. The petitioners assert that few restrictions regarding ORV use exist within the range of *O. acutissima*. They indicate that BLM has failed to designate six Areas of Critical Environmental Concern proposed in a working draft of a revised Resource Management Plan (RMP), and that BLM is highly unlikely to designate these areas given the typical patterns of RMP adoption. The petitioners state that the current condition of the plant's habitat is evidence that regulatory mechanisms at every level are inadequate.

#### Evaluation of Information in the Petition and Information Available to Us at the Time of Petition Review

*Oenothera acutissima* is, in fact, managed as a Sensitive Species by BLM in Colorado, as designated by the BLM State Director, with special management consideration. The BLM Manual 6840 provides policy direction that BLM sensitive plant species are to be managed as if they were candidate species for Federal listing, in order to preclude listing, while also fulfilling other Federal law mandates. BLM manages about 30 percent of the *O. acutissima* occurrences (UCDC 2006 and CNHP 2007, all records).

About 24 percent of the species' occurrences are located within Ashley National Forest in Utah, managed by the U.S. Forest Service (UCDC 2006, all records). The USFS decided in 1996 that *O. acutissima* did not meet its criteria for sensitive status due to: (1) A number of surveys that resulted in discovery of several populations and several hundreds of individuals, and (2) lack of threats, specifically little if any negative impacts due to cattle grazing (Goodrich 2006b, p. 1). The USFS continues to monitor the status of the species within its grazing allotments (Goodrich 2001a, 2001b, and 2006a, all pages).

Colorado and Utah do not have State regulatory mechanisms for protecting

rare plant species; however, the information in the petition and currently available in our files does not indicate that the species requires additional regulatory mechanisms to sustain it or that it is threatened by the lack of regulatory mechanisms necessary to address threats. All but 3 of the 27 *Oenothera acutissima* occurrences are completely or partially on Federal land, and are therefore protected from some forms of permanent habitat loss, such as residential development.

Further, as indicated in other portions of this finding, the petition has failed to present substantial information indicating that grazing and ORV use are a threat to *Oenothera acutissima* throughout the species' range. We find that the petitioners' claim that there are few restrictions regarding ORV use within the range of *O. acutissima* does not constitute an argument for inadequacy of existing regulations, because we do not find substantial evidence that ORV use is a threat.

Based on our evaluation of the information presented in the petition and readily available in our files, we have determined that the petition does not present substantial information to indicate that listing *Oenothera acutissima* may be warranted due to the inadequacy of existing regulatory mechanisms.

#### *E. Other Natural or Manmade Factors Affecting Its Continued Existence*

The petitioners indicate that its extremely narrow range and limited habitat type, small number of plants, and small number of populations make *Oenothera acutissima* vulnerable to anthropogenic impacts, environmental and genetic stochasticity, and climate change. They state that climate change is likely to affect the species because a warmer and drier trend has been recorded in the region.

#### Evaluation of Information in the Petition and Information Available to Us at the Time of Petition Review

No specific information was provided nor is available in our files to indicate that population size, range, and number of populations are so limited that other natural or manmade factors would substantially impact *Oenothera acutissima*. The petitioners' claims are not supported by data or by references that apply to the species or its habitat. The total number of plants estimated in Colorado (CNHP 2007, all records) and Utah (UCDC 2006, all records) is 188,360 plants scattered over a range of 145 by 48 km (90 by 30 mi). No recounts are available to precisely compare

population sizes and determine whether there has been a downward trend in the number of plants. Additionally, no data are available to show that a warmer and drier weather trend has negatively affected the water supply, habitat, or population sizes of *O. acutissima*.

In the absence of any data or other information, the petitioners' generalized statements regarding other factors that potentially threaten *Oenothera acutissima* are unsubstantiated. Based on our evaluation of the information presented in the petition and readily available in our files, we have determined that the petition does not present substantial information to indicate that listing *O. acutissima* may be warranted due to other natural or manmade factors affecting the species' continued existence.

#### Finding

We have reviewed the petition, literature cited in the petition, and information available in our files. After careful evaluation, we find that neither the petition nor information in our files presents substantial scientific or commercial information to indicate that listing *Oenothera acutissima* (narrowleaf evening-primrose) as endangered or threatened under the Act may be warranted.

The petitioners state that nearly all *Oenothera acutissima* occurrences are on active grazing allotments, open to ORVs, and near roads, and cite generalized information about potential impacts that can occur due to these situations. However, few negative impacts to the plants have resulted or been documented from the potential threats cited in the petition. Little information is presented in the petition regarding the magnitude of potential impacts, or whether they may have population-level effects. The petitioners state that, when little information is available about population trends and impacts of threats to specific occurrences, the presence of alleged threats such as grazing, combined with scientific information available about the typical effects of grazing on such habitat, lead to the conclusion that plant occurrences are likely to be negatively affected. However, we find that speculation about potential threats and hypothetical impacts, without data supporting these claims, does not meet the criteria described in the Act on making a finding as to whether a petition presents substantial scientific or commercial information indicating that a petitioned action may be warranted.

Our regulations define "endangered species" as "a species that is in danger

of extinction throughout all or a significant portion of its range” (50 CFR 424.02(e)). Similarly, our regulations define a “threatened species” as “any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (50 CFR 424.02(m)). Our review of the available information indicates that the species appears to be maintaining its presence in known locations throughout its range from 1966 to the present. Despite several potential threat factors, the petition and the information in our files do not present substantial information indicating that any factor, or combination of factors, suggests that the petitioned action, listing as threatened or endangered with critical habitat, may be warranted for *Oenothera acutissima*.

Although we will not commence a status review in response to this petition, we will continue to monitor *Oenothera acutissima*'s population status and trends, potential threats, and ongoing management actions that might be important with regard to the conservation of the species across its range. We encourage interested parties to continue to gather data that will assist with the conservation of the species. If you wish to provide information regarding *O. acutissima*, you may submit your information or materials to the Field Supervisor, Western Colorado Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

#### References Cited

A complete list of all references cited in this document is available upon request from the Western Colorado Field Office (see **ADDRESSES** section).

#### Author

The primary authors of this document are the staff members of the U.S. Fish and Wildlife Service, Western Colorado Field Office (see **ADDRESSES** section).

#### Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 29, 2009.

#### Stephen Guertin,

Acting Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. E9-13313 Filed 6-8-09; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R7-ES-2008-0105; 92210-1117-0000-B4]

RIN 1018-AV92

#### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Southwest Alaska Distinct Population Segment of the Northern Sea Otter

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

**ACTION:** Proposed rule; extension of comment period, notice of availability of draft economic analysis, and amended required determinations.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the extension of the public comment period on the proposed designation of critical habitat for the southwest Alaska Distinct Population Segment (DPS) of the northern sea otter (*Enhydra lutris kenyoni*) under the Endangered Species Act of 1973, as amended. We also announce the availability of a draft economic analysis (DEA) and an amended required determinations section of the proposal. We are extending the comment period for an additional 30 days from the date of this notice to allow all interested parties an opportunity to comment simultaneously on the revised proposed rule, the associated DEA, and the amended required determinations section. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in preparation of the final rule.

**DATES:** We will consider comments received on or before July 9, 2009.

**ADDRESSES:** You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R7-ES-2008-0105; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

- *Public Hearing:* We will hold one public hearing on June 18, 2009, at the Z.J. Loussac Library in Anchorage, Alaska. In addition to having the opportunity to provide oral comments in person, telephone access will be provided for this hearing. Contact the Marine Mammals Management Office

(see **FOR FURTHER INFORMATION CONTACT**) for more information about this public hearing.

- *Public Comment Hotline:* We will also establish a toll-free public comment hotline at 877-577-6930. Callers will have an opportunity to record their comments at any time during the public comment period.

We will post all comments on <http://www.regulations.gov> (see the “Public Comments” section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Douglas M. Burn, Wildlife Biologist, U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, by telephone (907-786-3807), or by facsimile (907-786-3816). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Public Comments

We will accept written and oral comments and information during this extended comment period on the proposed rule to designate critical habitat for the southwest Alaska DPS of the northern sea otter (*Enhydra lutris kenyoni*) that was published in the **Federal Register** on December 16, 2008 (73 FR 76454), the draft economic analysis of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

- (1) The reasons why we should or should not designate habitat as critical habitat under section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether the benefit of designation would outweigh any threats to the species due to designation, such that the designation of critical habitat is prudent.

- (2) Specific information on:

- The distribution of the northern sea otter in southwest Alaska;

- The amount and distribution of habitat of the Southwest Alaska DPS of the northern sea otter; and

- What areas occupied at the time of listing that contain features essential for the conservation of the species we should include in the designation and why, and