

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine a plant *Spiranthes diluvialis* (Ute ladies'-tresses), to be a threatened species under the authority of the Endangered Species Act of 1973 (Act), as amended. *Spiranthes diluvialis* was historically found in riparian areas in Colorado, Utah, and Nevada. It is presently found in relatively undisturbed riparian areas in the greater Denver metropolitan area, Colorado (two populations), and in low elevation riparian areas in the Colorado River drainage in eastern Utah (five populations). The species' small populations are threatened by habitat disturbance. In addition, *S. diluvialis* is potentially vulnerable to collecting for horticultural purposes. A determination that *S. diluvialis* is a threatened species would protect it under the authority of the Act. The Service seeks data and comments on this proposal.

DATES: Comments from all interested parties must be received by January 14, 1991. Public hearing requests must be received by December 28, 1990.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England at the above address, telephone 801/524-4430 or FTS 588-4430.

SUPPLEMENTARY INFORMATION:**Background**

In 1981, live plants belonging to the genus *Spiranthes* were collected in Colorado by W.G. Gambill and W.F. Jennings and sent to C.J. Sheviak for examination. The following year, additional specimens were collected in mesic (i.e., moderately moist) to wet alluvial meadows along Clear Creek in Colorado, and from Utah. Examining these and other specimens from Colorado, Utah, and Nevada (some of which had been assigned in the past to other *Spiranthes* species), Sheviak (1984) found sufficient differences to justify formal designation of a new species, *Spiranthes diluvialis*. The type locality is along Clear Creek in Golden, Colorado. It should be noted that Welsh *et al.* (1987) leaves this species in synonymy with *S. porrifolia*.

Spiranthes diluvialis is a perennial, terrestrial orchid with stems 20–50 centimeters (cm) (8 to 20 in.) tall arising from tuberously thickened roots. Its narrow leaves are about 28 cm (11 in.) long at the base of the stem and become reduced in size going up the stem. The flowers consist of 3 to 15 small white or ivory colored flowers clustered into a spike arrangement at the top of the stem. These flowers have the distinctive bilateral symmetry of the species' genus and family. *S. diluvialis* is endemic to moist soils in mesic or wet meadows near springs, lakes, or perennial streams. The species occurs primarily in areas where the vegetation is relatively open and not overly dense, overgrown, or overgrazed (Coyner 1989, Jennings 1989).

Spiranthes diluvialis is endemic to relatively low elevation riparian meadows in three general areas in the interior western United States. The two eastern populations are located in mesic riparian meadows in relict tall grass prairie areas near Boulder Creek in the City of Boulder, Boulder County, Colorado, and in mesic meadows in the riparian woodland understory along Clear Creek in adjacent Jefferson County, Colorado. The Clear Creek population has one site in the City of Golden and a second in the City of Wheat Ridge (Jennings 1989). No other populations of the species are currently known from Colorado, though a historic collection was made from either Weld or Morgan County in the Platte River valley in 1856 by H. Engelmann of the Bryan expedition (Jennings 1989).

The central populations of *S. diluvialis* are in wet or mesic riparian meadows or in understory meadows of riparian woodlands in the Colorado River drainage of eastern Utah. Five separate populations are known: (1) Along the Green River in Browns Park in Daggett County; (2) in the Cub Creek drainage in Dinosaur National Monument; (3) along the Uinta River in the Uinta Basin in Duchesne and Uintah Counties; (4) along the Fremont River in Capitol Reef National Park in Wayne County; and (5) along Deer Creek in Garfield County. All these populations have been discovered since 1977 (Coyner 1989, Heil 1988, Jennings 1989).

The western populations of *S. diluvialis* were in riparian, lake and springside wet or mesic meadows in the eastern Great Basin of western Utah and adjacent Nevada. Five separate populations were known: (1) "Ogden" in Weber County, Utah—specimens from this population were collected in 1887 and have not been seen since; (2) wetlands in the Jordan River drainage in

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****RIN 1018-AB52****Endangered and Threatened Wildlife and Plants; Proposal to List the Plant *Spiranthes diluvialis* (Ute ladies'-tresses) as a Threatened Species**

AGENCY: Fish and Wildlife Service, Interior.

Salt Lake County, Utah—specimens from this population were last collected in 1953; (3) Powell's Slough adjacent to Utah Lake in Utah County, Utah—specimens from this population were last collected in 1978; (4) Willow Springs near the town of Callao in Tooele County, Utah—specimens from this population were last collected in 1956; and (5) wet meadow in the drainage of Meadow Valley Wash near the town of Panaca in Lincoln County, Nevada—specimens from this population were last collected in 1936. Recent searches for *S. diluvialis* in the Great Basin have failed to rediscover any of the species' historic populations, and recent rare plant inventories have not discovered any new populations (Coyner 1989, Jennings 1989).

Most of the populations in Colorado occur on city park and greenbelt areas owned by the Cities of Boulder and Wheat Ridge. Existing populations in Utah primarily occur on lands managed by the Bureau of Land Management and the National Park Service, with one population on Ute Indian Tribal land within the boundary of the Uintah and Ouray Reservation. Though all populations are relict in nature, the largest populations occur in Boulder County, Colorado, and along the Uinta River in Utah.

Federal action on this species began on September 27, 1985, when the Service published a notice of review of candidate plants for listing as endangered or threatened species, which included *S. diluvialis* as a category 2 species (50 FR 39526). Category 2 comprises taxa for which the Service has information indicating the appropriateness of a proposal to list the taxa as endangered or threatened but for which more substantial data are needed on biological vulnerability and threats.

After a review of status information acquired since 1985 (Coyner 1989, Heil 1988, and Jennings 1989), the Service upgraded *S. diluvialis* to category 1 in the plant notice of review published in the *Federal Register* on February 21, 1990 (55 FR 8184). Category 1 comprises those taxa for which the Service has on file substantial information on the biological vulnerability and threats to support the appropriateness of proposing to list them as endangered or threatened species.

In the 1990 notice, *S. diluvialis* was given the common name "plateau lady's tresses" to provide the public a convenient reference. However, the

Service proposes that "Ute ladies'-tresses" be used instead as the species' common name in recognition of the fact that the species' historic range was used largely by the Ute Indian Tribe.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Spiranthes diluvialis* Sheviak (Ute ladies'-tresses) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Spiranthes diluvialis* has been adversely affected by modification of its riparian habitat. Most of this riparian habitat along the Wasatch Front in Utah has been heavily modified by stream channelization and construction projects in and adjacent to the Jordan and Weber rivers and their tributaries and in wetlands and meadows adjacent to Utah Lake and the Great Salt Lake. All known historic populations of this species along the Wasatch Front in the populated north-central area of Utah are presumed extinct, as are all other known historic populations in the eastern Great Basin. It is believed that alteration of riparian habitat caused the extinction of these populations. Attempts in 1989 and 1990 to find the Nevada population were unsuccessful (Coyner 1989; Jim Coyner, State Arboretum of Utah, pers. comm., 1990). Extant populations in eastern Utah and Colorado are very small and potentially vulnerable to the same habitat changes that appear to have eliminated the Wasatch Front and eastern Great Basin populations. Fewer than 3,000 individual plants are known to exist in the 7 known populations.

The remaining populations are in areas that have not been overly degraded by agricultural activities, including farming and grazing. However, most of the current habitat of *S. diluvialis* is subject to livestock grazing and trampling. The full effects of livestock grazing and trampling are not known, but are thought to be detrimental to the species.

B. *Overutilization for commercial, recreational, scientific, or educational*

purposes. *Spiranthes diluvialis* is potentially vulnerable to commercial exploitation for horticultural purposes as a specimen plant for terrestrial orchid gardens.

C. *Disease or predation.* Livestock grazing is thought to be detrimental to the species. The plant is highly palatable and is preferentially grazed. All the known remaining populations are relict in nature, with most in small areas where livestock grazing has been less intense than in other riparian communities within the species' range.

D. *The inadequacy of existing regulatory mechanisms.* No Federal or State laws or regulations directly protect *S. diluvialis* or its habitat. Most of the species' Utah populations occur on lands managed by the Bureau of Land Management or the National Park Service, which offer varying, but incomplete, levels of protection. Populations located in the greenbelt areas in the City of Boulder are also provided some protection. However, all of these areas are subject to livestock grazing. International trade in all orchids is regulated by the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES).

E. *Other natural or manmade factors affecting its continued existence.* The species' low population numbers and restricted habitat makes it vulnerable to natural or human-caused disturbances. Localized catastrophic events have the potential to cause the extinction of individual populations. The rise of Utah Lake in the early 1980's may have caused the extirpation of the Powell Slough population (Sheviak 1984). It is not known if many of the species' smaller scattered populations are at levels that would ensure their continued existence over the long term, particularly the populations in Dinosaur National Monument and Capitol Reef National Park.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Spiranthes diluvialis* as a threatened species. With fewer than 3,000 known individuals in 7 known populations, collecting could lower its numbers significantly. Surface disturbances which eliminate or degrade the habitat in which the species occurs are likely to increase in the future.

Portions of the species' population occur within Capitol Reef National Park, Dinosaur National Monument, and greenbelt areas in the City of Boulder, which offer some degree of protection. However, all of these areas are open to livestock grazing. Threatened status, which means that the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, would be an accurate assessment of the species' status. For the reasons given below, it would not be prudent to propose critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time a species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for *S. diluvialis*.

As discussed under Factor B in the "Summary of Factors Affecting the Species," as an orchid, *S. diluvialis* is potentially threatened by taking. Publication of critical habitat descriptions and maps would make *S. diluvialis* more vulnerable to take and increase enforcement problems. Protection of this species' habitat will be addressed through the section 7 jeopardy standard and recovery activities. Therefore, it would not now be prudent to determine critical habitat for *S. diluvialis*.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part

402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Much of the population of *S. diluvialis* is on Federal lands, managed by the Bureau of Land Management and the National Park Service. Both of these Federal agencies would be responsible for insuring that all activities and actions on lands they manage are not likely to jeopardize the continued existence of *S. diluvialis*. In addition, the Corps of Engineers, which issues Federal dredge and fill permits which can affect wetlands and riparian areas, would be required to insure permitted actions are not likely to jeopardize the continued existence of *S. diluvialis*.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers.

In addition, for endangered plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulations.

This protection may apply to threatened plants once revised regulations are promulgated.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. Because of horticultural interest in *S. diluvialis*, trade permits may be sought, but few, if any, trade permits for plants of wild origin would ever be issued since the species is not common in the wild. Plants of cultivated origin are available and permits may, under certain circumstances, be issued for trade in cultivated plants. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, Room 432, 4401 N. Fairfax Drive, Arlington, Virginia 22203 (703/358-2093; FTS 921-2093).

As a member of the family Orchidaceae, *S. diluvialis* is included on Appendix II of CITES. Species on Appendix II require a permit from the country of origin prior to export. International trade in this species is likely minimal.

Public Comments Solicited

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

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *S. diluvialis*;
- (2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provide by section 4 of the Act;
- (3) Additional information concerning the range, distribution, and population size of this species; and
- (4) Current or planned activities in the subject area and their possible impacts on this species.

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

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within

45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service (see **ADDRESSES** above).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (49 FR 49244).

References Cited

Coyner, J. 1989. Status check on reported historic populations of *Spiranthes diluvialis*. Memorandum, U.S. Fish and Wildlife Service, Salt Lake City, Utah. 9 pp.

Heil, K.D. 1988. Endangered, threatened, rare and other plants of concern at Capitol Reef National Park, Utah. Unpublished report. National Park Service, Torrey, Utah. 57 pp.

Jennings, W.F. 1989. Final report. Species studied: *Eustoma grandiflorum*, *Spiranthes diluvialis*, *Malaxis brachypoda*, *Hypoxis hirsuta*, *Physaria bellii*, *Aletes humilis*. Unpublished report prepared for The Nature Conservancy under the Colorado Natural History Small Grants Program. The Nature Conservancy, Boulder, Colorado. 48 pp.

Sheviak, C.J. 1984. *Spiranthes diluvialis* (Orchidaceae), a new species from the western United States. *Brittonia* 36(1):8-14.

Welsh, S.L., N.D. Atwood, S. Goodrich, L.C. Higgins. 1987. A Utah flora. Great Basin Naturalist Memoirs, Number 9. 894 pp.

Author

The primary author of this proposed rule is John L. England, botanist, U.S. Fish and Wildlife Service (see **ADDRESSES** above, telephone 801/524-4430 or FTS 588-4430).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

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

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

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 18 U.S.C. 4201-4245; Pub. L. 99-825, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Orchidaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

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(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Orchidaceae—Orchid family:						
<i>Spiranthes diluvialis</i>	Ute ladies-tresses	U.S.C. (CO, NV, UT).....	T		NA	NA

Dated: October 25, 1990.
Bruce Blanchard,
 Acting Director, Fish and Wildlife Service.
 [FR Doc. 90-26689 Filed 11-9-90; 8:45 am]
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