

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97-162, RM-9112]

Radio Broadcasting Services; Hutchinson, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Gary L. Violet requesting the allotment of Channel 240A to Hutchinson, Kansas. Channel 240A can be allotted to Hutchinson in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 240A at Hutchinson are 38-04-54 NL and 97-55-42 WL.

DATES: Comments must be filed on or before September 15, 1997, and reply comments on or before September 30, 1997.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Gary L. Violet, 331 Lookout Point, Hot Springs National Park, Arkansas 71913 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MM Docket No.97-162, adopted July 16, 1997, and released July 25, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97-20167 Filed 7-30-97; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AD39

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule To List *Dudleya blochmaniae* ssp. *insularis*, *Dudleya* sp. nov. "East Point", and *Heuchera maxima* as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: The U.S. Fish and Wildlife Service (Service) withdraws the proposal to list *Dudleya blochmaniae* ssp. *insularis*, *Dudleya* sp. nov. "East Point", and *Heuchera maxima* as endangered species under the Endangered Species Act of 1973, as amended (Act). The Service finds that information now available, discussed below, justifies withdrawal of the proposed listings of these species as endangered. The National Park Service (NPS) has implemented measures that significantly reduce the risks to *Dudleya blochmaniae* ssp. *insularis* and *Dudleya* sp. nov. "East Point" and has sponsored field surveys that have identified a greater abundance and distribution for *Heuchera maxima*. Based on this information the Service concludes that listing of these species is not warranted.

DATES: This withdrawal notice is made July 31, 1997.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Ventura Field Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Ventura, California, 93003.

FOR FURTHER INFORMATION CONTACT: Tim Thomas, at the above address or by telephone (805) 644-1766.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1995 the Service published in the **Federal Register** (60 FR 37993) a proposal to list 16 plant species from the northern Channel Islands as endangered.

Included among these 16 taxa were *Dudleya blochmaniae* ssp. *insularis* (Santa Rosa Island dudleya), *Dudleya* sp. nov. "East Point" (munchkin dudleya), and *Heuchera maxima* (Island alum-root), the subject taxa of this notice of withdrawal. Santa Rosa Island dudleya (*Dudleya blochmaniae* ssp. *insularis*) was first described as *Hasseanthus blochmaniae* ssp. *insularis* by Reid Moran (1950a) based on a collection made at "Old Ranch Point" on Santa Rosa Island in 1950. Moran (1953) treated *Hasseanthus* as a subgenus of *Dudleya*; *Hasseanthus* had previously been segregated from *Dudleya* on the basis of stem characteristics and the presence of vernal (withering) leaves. In so doing, he published the new combination *Dudleya blochmaniae* ssp. *insularis* (Moran 1953). Though Thompson (1993) recently reseggregated *Hasseanthus* from *Dudleya* at the generic level, he provided no new evidence for this action. Moreover, given that the base chromosome number of *Hasseanthus* and *Dudleya* is the same ($n=17$) and that species of *Hasseanthus* and *Dudleya* are completely interfertile but will not cross with other family genera, splitting these taxa at the generic level is inappropriate. As a result, the taxon will be recognized in this notice of withdrawal under the name *Dudleya blochmaniae* ssp. *insularis*.

Dudleya blochmaniae ssp. *insularis* is a small succulent perennial in the stonecrop family (Crassulaceae). The plant has a corm-like root structure, and 15 to 30 oblanceolate leaves in a basal rosette, from which several flowering stems 3 to 7 centimeters (cm) (1.2 to 2.8 inches (in)) long arise. The white, five-petaled flowers and the resulting fruits are fused at the base and wide-spreading distally. This subspecies is distinguished from two other mainland subspecies of *D. blochmaniae* on the basis of the more numerous rosette leaves, shorter floral stems, more pronounced glaucousness of young floral stems and their leaves, and the size and shape of the lower bracts (Moran 1950a, Bartel 1993).

Dudleya blochmaniae ssp. *insularis* is only known from the type locality near Old Ranch Point, also known as Marsh Point, on the east end of Santa Rosa Island. The taxon occupies an area of less than 1 hectare (2 acres) of an

ancient marine terrace with a cobble surface, and associated with owl's clover (*Castilleja exserta*), goldfields (*Lasthenia californica*), and alien annual grasses, primarily *Bromus* and *Vulpia* species. The habitat is relatively open with low densities of non-native annual grasses. In 1993, the number of individuals was estimated to be 2,000 (Rutherford and Thomas, pers. obs. 1993). NPS and National Biological Survey (now Biological Resources Division of the U.S. Geological Survey) staff established demographic plots in 1994. In 1995 and 1996, the NPS erected an electric fence around Skunk Point, including all habitat occupied by *D. blochmaniae* ssp. *insularis* and a population of the federally threatened snowy plover, during the spring and summer seasons to eliminate potential damage from cattle. Cattle tracks and droppings inside the enclosure indicate that entry has occurred in both years (McEachern 1996). However, cattle were removed whenever found within the fenced area and were not present long enough to adversely affect *D. blochmaniae* ssp. *insularis* (Jim Hutton, Island Ranger, pers. comm. 1996). Breaks in the fence were repaired immediately.

Dudleya sp. nov. "East Point" was collected by Reid Moran in 1950. In his dissertation on the genus *Dudleya*, he included it in the description of *D. greenei*, but remarked upon how it differed, and described it as "*forma nana*." Subsequent floras treated the form in synonymy with *D. greenei* (Munz and Keck 1973, Smith 1976). In 1993, Paul H. Thomson illegitimately published the name *D. nana*, based on the description of *forma nana* in Moran's dissertation. An article describing this new species has been submitted by Stephen McCabe to the journal *Madroño*. This manuscript has been peer reviewed, the description was found to meet the code requirements for valid publication, and the reviewers felt that it was a distinct taxon (Painter *in litt.* 1997).

Like *Dudleya blochmaniae* ssp. *insularis* described above, *Dudleya* sp. nov. "East Point" is a small succulent perennial in the stonecrop family (Crassulaceae). The plant has a short caudex-like stem, and small, gray, ovate to oblanceolate leaves in a cluster of up to 20 basal rosettes, from which several flowering stems 2.5 to 7 cm (1 to 2.75 in) long arise. The pale yellow, five-petaled flowers are fused at the base and spread only at the tips.

Dudleya sp. nov. "East Point" is known only from one population comprising three colonies near East Point on Santa Rosa Island. The

colonies occur on a low windswept ridge with a cobble soil surface, which is bereft of any other vegetation save scattered alien annual grasses, small-flowered iceplant (*Mesembryanthemum nodiflorum*), pineappleweed (*Ambylopappus pusillus*), and goldenbush (*Lasthenia californica*). The uppermost colony covers 26 square meters, the middle colony covers 88 square meters, and the lowermost colony covers 77 square meters (McEachern 1994). The total number of individuals in the three colonies has been estimated to be 3,200 (S. McCabe, pers. comm. 1994). In 1994, the NPS constructed a fence around the population to reduce browsing and trampling impacts, and to eliminate vehicle access to the middle colony. Observations by researchers indicate the following: the fencing has excluded cattle but not deer; the number of seedling plants was higher in late winter of 1995 than in May, a few months later, which may indicate a high seedling recruitment rate but a low seedling survivorship rate; and several inflorescences were clipped off by an unknown predator, possibly mice or insects (McEachern 1996). A low seedling survivorship rate is common among wild plants and is unlikely to pose a significant threat to a perennial species, which needs only to replace itself once over a period of many years to maintain a stable population size. A small fire burned vegetation surrounding the lower colony, but did not appear to damage the *dudleya* where the fuels are so light that fire cannot carry through the site.

Heuchera maxima (island alumroot) was described by E.L. Greene (1886a) based on collections from the "northward slope of Santa Cruz Island." This nomenclature was retained in the most recent treatment of the genus (Elvander 1993). *Heuchera maxima* is a perennial herb in the saxifrage (Saxifragaceae) family. The round basal leaves are up to 7 cm (2.8 in) broad on long petioles up to 25 cm (10 in) in length. The flowering stalks are up to 6.1 decimeters (dm) (2 ft) long and scattered with small white-petaled flowers (Hochberg 1980b). No other *Heuchera* species occurs on the islands; however, young plants of *H. maxima* can resemble species of *Jepsonia*, *Lithophragma*, or *Saxifraga* that occurs on the islands. *Heuchera maxima* can be distinguished from these other taxa by its larger size at maturity, and flowers with ten stamens rather than five.

Heuchera maxima grows primarily on moist, shady, north-facing canyon bottoms, walls, and sea cliffs, but occurs

in a few interior localities as well. Collections of *Heuchera maxima* were made from Santa Rosa Island by Hoffmann in 1929 and Dunkle in 1939; however, locality information for these collections is vague. More recently, the plant was collected from Cherry, Lobos, Ranch, and Windmill Canyons on Santa Rosa Island (Rutherford and Thomas 1994). It was relocated in three of those canyons during the 1994–1996 surveys, during which 27 additional populations with up to 150 plants in each were found (McEachern and Wilken 1996). *H. maxima* is also known from 11 locations on West Anacapa Island (Rutherford and Thomas 1994; S. Junak, *in litt.* 1984). On Santa Cruz Island, 16 populations with up to 170 plants per population have been reported from the west half of the northern shore (McEachern and Wilken 1996).

Summary of Comments and Recommendations

In the July 25, 1995, proposed rule (60 FR 37933) and associated notifications, all interested parties were requested to submit factual reports or information to be considered in making a final listing determination. An initial 75-day comment period closed on October 9, 1995. A second 30-day comment period closed on February 21, 1997. Appropriate Federal and State agencies, local governments, scientific organizations, and other interested parties were contacted and asked to comment. In accordance with Service policy published on July 1, 1994 (59 FR 34270), three appropriate and independent specialists were solicited regarding pertinent scientific or commercial data and assumptions relating to the proposed rule. Legal notices of the availability of the proposed rule were published on August 5, 1995, in the *Santa Barbara News-Press* and on August 11, 1995, in the *Los Angeles Times*.

The Service received 14 letters concerning the proposed rule during the comment periods, including those of one State agency and 11 individuals or groups. Because of the two public comment periods, some individuals or groups commented twice. Because the proposed rule included 16 plant taxa, only those comments specific to the three taxa addressed in this notice are discussed here. Comments not specific to these three taxa and general comments relevant to the proposed rule are discussed in a separate final rule published in today's **Federal Register** (Vol. 62 No. 147, July 31, 1997).

The Service has reviewed all of the written comments received during both comment periods and status reports and

population surveys that occurred in between the comment periods. Four commenters supported the listing proposal for the three taxa, one opposed their listing, and seven stated no specific opinion on the three taxa considered herein. Several commenters provided additional information and other clarifications that have been incorporated into the "Summary of Factors" section of this notice. Several comments dealt with matters of opinion or legal history, which were not relevant to the listing decision. The Service carefully considered all comments and information submitted relevant to this decision to withdraw the proposed listing. The Service response to those commenters supporting listing of these taxa can be found in the "Summary of Factors" section. Comments submitted are available for review at the Ventura Field Office (see ADDRESSES).

Summary of Factors Affecting the Species

The Service must consider five factors described in section 4(a)(1) of the Act when determining whether to list a species. These factors, and their application to the Service's decision to withdraw the proposal to list *Dudleya blochmaniae* (Eastw.) Moran ssp. *insularis* (Moran) Moran, *Dudleya* sp. nov. "East Point" S. McCabe, and *Heuchera maxima* Greene, are as follows:

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

The single most important loss of resources to insular ecosystems is the loss of soils, as the soils are the foundation for the unique island ecosystems and the insular endemic species found within them. This loss of soils is the result of historic grazing and browsing by sheep, goat, cattle, deer, elk, and bison, and rooting by pigs on the various islands starting in the early 1800's, and in certain cases, continuing today. Fencing installed by the NPS to exclude cattle from the two *Dudleya* taxa populations has significantly reduced the threat of soil loss in the habitat of these species. Cattle trampling, previously known to remove large numbers of *Dudleya* sp. nov. "East Point" plants, is no longer a significant threat. No cattle have broken through the fence at East Point. Although cattle have on several occasions gained access to the fenced areas through breaks in the fence where *Dudleya blochmaniae* ssp. *insularis* occurs, NPS staff has immediately removed the cattle upon discovery with no adverse impacts. Although deer and elk are not excluded

by the fencing (Painter, *in litt.*, 1997), the Service believes that the impacts of these animals on the habitat for the two *Dudleya* species, in the absence of cattle, do not constitute a significant threat to the survival of these taxa. Both of the *Dudleya* populations occur on sites that are not favorable to either elk or deer utilization. If elk or deer do enter these areas, it is in limited numbers and for brief periods of time. Most of the habitat currently occupied by *Heuchera maxima* is out of reach of the effects of the trampling influence of the non-native mammals on the islands (McEachern and Wilken 1996).

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

In the horticultural trade, *Dudleya* have, in particular, been favorite collector species. *Dudleya* sp. nov. "East Point" was collected and introduced into the horticultural trade long ago as "white sprite." *Dudleya blochmaniae* ssp. *insularis* though not in the trade, has been cultivated by *Dudleya* enthusiasts. While the limited distribution of these two taxa makes them of interest to such enthusiasts, in the absence of the larger combined threats of cattle trampling, collection alone does not pose a significant threat to these species. *Heuchera maxima* is also found in cultivation. Although the extent of collection of this taxon is uncertain, the Service believes that the threat from overcollection is insignificant given the number of populations of the species that are now known.

C. Disease or Predation

Disease is not known to be a factor affecting the taxa considered in this rule. Grazing by cattle was identified as a threat in the proposed rule. Consumption of individual plants by grazing animals has been known to impact the reproduction of these plants and has had other effects, such as trampling, erosion (see Factor A) and the introduction of non-native species (see Factor E). The fencing constructed to protect *Dudleya blochmaniae* ssp. *insularis* and *Dudleya* sp. nov. "East Point" populations from cattle has reduced the level of herbivory on these two taxa to where it no longer constitutes a significant threat to the survival of these species. The majority of the *Heuchera maxima* occur out of the reach of the effects of most non-native mammals on the islands (McEachern and Wilken 1996).

D. The Inadequacy of Existing Regulatory Mechanisms

The Service evaluated existing Federal, State, and local regulatory mechanisms prior to preparing the proposed rule for listing the two plant taxa. The Service found evidence of inadequacy of the existing regulatory mechanisms at that time. These regulatory mechanisms included: (1) Listing under the California Endangered Species Act (CESA); (2) the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA); (3) conservation provisions under section 404 of the Federal Clean Water Act and Section 1603 of the California Fish and Game Code; (4) occurrence with other species protected by the Federal Endangered Species Act; (5) land acquisition and management by Federal, State, or local agencies, or by private groups and organizations; and (6) local laws and regulations. The Service believes that actions taken by the NPS for the protection of *Dudleya blochmaniae* ssp. *insularis* and *Dudleya* sp. nov. "East Point" are sufficient to assure that regulatory mechanisms are adequate to protect these two plant taxa. *Heuchera maxima* is now known to be present in a sufficient number of populations (McEachern and Wilken 1996) so that any inadequacies of these regulatory mechanisms no longer pose a significant threat to this species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Introduced species of grasses and forbs have invaded many of California's plant communities. Such weedy species can displace the native flora by out-competing them for nutrients, water, light, and space. Weedy plant invasions are facilitated by disturbances such as grazing, developments, and various recreational activities.

Grazing by livestock typically changes the composition of native plant communities by reducing or eliminating species that cannot withstand trampling and predation (see Factors A and C), and enabling more resistant (usually alien) plant species to increase in abundance. Seed from non-sterile hay and animal feces increases the likelihood of invasion of exotic species and prevents re-establishment of native plants. Exotic species may flourish with grazing and may reduce or eliminate native plant species through competition for resources. The invasion of non-native species into the habitats of *Dudleya blochmaniae* ssp. *insularis* and *Dudleya* sp. nov. "East Point" was cited as a significant threat to these populations in the proposed rule.

primarily due to the ongoing effects of alien mammals on these habitats. Due to the fencing installed by the NPS, these impacts have been reduced to the point that they no longer pose a significant threat to the survival of these taxa. With over 50 recently reported populations, *Heuchera maxima* is now known to occur in greater abundance than was previously known and, due to the discovery of these additional populations, the Service believes that this species is no longer threatened with extinction.

Because *Dudleya blochmaniae* ssp. *insularis* and *Dudleya* sp. nov. "East Point" are both known only from single populations with few individuals, they remain vulnerable to extinction due to random events, such as drought, and storms. Neither taxon has ever been reported to occur at any locality other than the single sites to which it is currently restricted. Pro-active recovery efforts to lessen the threat of such random events typically involve the establishment of additional populations, but Service policy precludes the introduction of listed species outside their historic range without specific approval from the Director. To lessen the vulnerability of these taxa to random events, the NPS has proposed to establish a seed banking program (NPS 1997). Because of the low probability of such a random event taking place, the

significance of the threat from such an event in the absence of other factors, is insufficient to warrant listing of these species. *Heuchera maxima* is now known to occur in sufficient numbers that threats resulting from few, small populations are no longer of concern.

Finding and Withdrawal

After a thorough review and consideration of all information available the Service has determined that listing of *Dudleya blochmaniae* ssp. *insularis*, *Dudleya* sp. nov. "East Point" and *Heuchera maxima* as endangered is no longer warranted. The Service has carefully assessed the best scientific and commercial information available in the development of this withdrawal notice. Fencing installed by the NPS since the time of the proposed rule has sufficiently reduced the threats of soil loss, trampling and herbivory by cattle and non-native mammals, and the invasion of competitive alien weeds into habitat of the two dudleya species so that listing is no longer warranted. Other factors cited in the proposed rule, including overcollection, inadequate regulatory mechanisms, and extinction from random events, are of insufficient magnitude to warrant listing in the absence of any significant threat from other factors. *Heuchera maxima* is now known to occur in more than 50 populations and the Service now believes that this species is no longer

threatened with extinction. A final rule listing the other 13 plant taxa included in the original proposed rule is published in the **Federal Register** concurrently with this notice of withdrawal of the proposal to list *Dudleya blochmaniae* ssp. *insularis*, *Dudleya* sp. nov. "East Point" and *Heuchera maxima*.

References Cited

A list of all references cited herein is available upon request from the U.S. Fish and Wildlife Service Ventura Field Office (see **ADDRESSES** section).

Author: The primary author of this withdrawal notice is Tim Thomas, Ventura Field Office (see **ADDRESSES** section).

Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

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

Dated: July 24, 1997

John G. Rogers,

Director, U.S. Fish and Wildlife Service.

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