



*Building a healthy and sustainable global community for people
and the plants and animals that accompany us on Earth*

October 12, 2010

Public Comments Processing
Attn: [FWS-R8-ES-2010-0049]
Division of Policy and Directives Management
U.S. Fish and Wildlife Service
4401 N. Fairfax Drive, Suite 222
Arlington, VA 22203

RE: Comments on the 90-day finding on petition to list *Arctostaphylos franciscana*

Dear United States Fish and Wildlife Service (“the Service”):

I write on behalf of the Wild Equity Institute and the Center for Biological Diversity to provide comments on the Service’s 90-day finding on our petition to list *A. franciscana*, the Franciscan Manzanita. These comments are in addition to the materials we provided in our original petition, and are intended to inform the Service about the importance of designating critical habitat for the species concurrent with the species’ ultimate listing under the Endangered Species Act. Such a designation is not only required by law, but also warranted given the precarious state of the wild population of the species and the robust recovery opportunities that we must implement to help the species survive.

I. Introduction to the Endangered Species Act and Critical Habitat.

The Endangered Species Act (“ESA”) is a federal statute designed “to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, [and] to provide a program for the conservation of such endangered species and threatened species” 16 U.S.C. § 1531(b).

To achieve these objectives, the ESA requires that the Service protect such species by listing them as either “threatened” or “endangered,” and by designating “critical habitat” for each listed threatened or endangered species. 16 U.S.C. § 1533. Critical habitat is defined in the ESA as:

the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the [ESA], 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

specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 1533 of this title, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Brent Plater, Executive Director • P.O. Box 191695 • San Francisco, CA • 94119
O: 415-349-5787 • C: 415-572-6989 • bplater@wildequity.org • <http://wildequity.org>

16 U.S.C. § 1532(5)(A).

“Conservation” is defined as the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer required. 16 U.S.C. § 1532(3).

Designating critical habitat is an essential step in the recovery process for endangered species: in the absence of such designation, other regulatory controls simply cannot operate. For example, under the ESA federal agencies are required to engage in consultation with the Service to “insure that any action authorized, funded, or carried out by [federal agencies] is not likely to . . . result in the destruction or adverse modification of habitat of such species . . . determined . . . to be critical . . .” 16 U.S.C. § 1536(a)(2) (also known as “Section 7 consultation”). This Section 7 consultation process simply cannot function if the Service fails to designate critical habitat for the species in the first instance, greatly reducing the effectiveness of recovery efforts.

Indeed, recent studies have shown that endangered species that have critical habitat designated are twice as likely to be recovering compared to those species that do not have critical habitat designated. *See, e.g., Taylor et al., The Effectiveness of the Endangered Species Act: A Quantitative Analysis*, 55(4) *BioScience* 360 (2005). Thus, protecting critical habitat effectuates the ultimate goal of the ESA: the recovery of endangered species to the point where the ESA’s protections are no longer necessary.

II. The ESA Requires the Service to Designate Critical Habitat Concurrent with the Listing of a Species as Endangered or Threatened.

Because of the essential role critical habitat designations play in the ESA’s conservation and recovery strategy, Congress mandated that the Service designate critical habitat for each threatened or endangered species “concurrently” with listing the species to the maximum extent prudent and determinable. 16 U.S.C. § 1533(a)(3)(A). The Service “may, from time-to-time thereafter as appropriate, revise such designation.” 16 U.S.C. § 1533(a)(3)(B).

Under the Service’s regulations, a critical habitat designation is “not determinable” at the time a species is listed only when one or both of the following situations exist:

- (i) Information sufficient to perform required analyses of the impacts of the designation is lacking, or
- (ii) The biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

50 C.F.R. § 424.12(a)(2).

In those situations where critical habitat is “not determinable” at the time of listing, the Secretary may take up to one additional year to determine which areas constitute critical habitat for the species. However, “not later than the close of such additional year the Secretary must publish a final regulation, based on such data as may be available at the time, designating, to the maximum extent prudent, such habitat.” 16 U.S.C. § 1533(b)(6)(C)(ii).

III. Recovery of *A. franciscana* Requires the Service to Designate Critical Habitat for the species.

Until recently, *A. franciscana* was presumed extinct in the wild, and presently only one wild plant is known to exist. In order for the species to recover from its existing condition, it is a prerequisite that areas “outside the geographical area occupied” by the lone plant be protected, and individuals restored to those sites. Therefore, protecting these unoccupied areas are “essential for the conservation of the species;” that is, and as defined by the ESA, these areas are essential for species recovery efforts. The Service should conclude as much in its final rule protecting *A. franciscana* as endangered: there is simply no other alternative conclusion available to the Service when a species is reduced to the last individual of its kind in the wild.


Critical habitat is also determinable at this time. The best available science has already indicated what the essential physical and biological features are for *A. franciscana*, and it is also known that (a) these areas are essential to the conservation of the species because of their rarity and (b) are in need of special management considerations because of existing and ongoing threats to their continued existence. Indeed, the lone wild plant was nearly lost to a construction project, which should serve as evidence enough of the precarious nature of these remaining habitats.

Moreover, botanists associated with San Francisco State University and the National Park Service have already identified non-occupied critical habitat areas for the species for potential recovery efforts. For example, preliminary research based on geological, topographical, and current land use patterns indicate that the physical and biological features necessary for *A. franciscana* exist within the Presidio at the Inspiration Point grasslands, coastal bluffs near the Golden Gate, and an unmanaged “rough” area of serpentine soils within the Presidio Golf Course; at an area of ultramafic soils on Mount Davidson and Twin Peaks; and at areas of serpentine soils at McLaren Park, Bernal Hill, Bayview Hill, and Starr King Open Space. All of these areas should be considered critical habitat, as each site is essential to the conservation of the species and its overall recovery efforts. As additional research becomes available, specific reintroduction areas within these critical habitats can be identified and recovery actions implemented on these sites.

IV. Conclusion.

Based on the precarious status of the species, the requirement that critical habitat be designated, and the essential role critical habitat will play in the conservation and recovery of this species, the Wild Equity Institute and the Center for Biological Diversity requests that the Service designate critical habitat for *A. franciscana* concurrent with listing the species.

Sincerely,



Brent Plater