

50 CFR Part 17

RIN 1018-AB83

Endangered and Threatened Wildlife and Plants; Final Rule To Delist the Plant *Hedeoma apiculatum* (McKittrick Pennyroyal) and Remove its Critical Habitat Designation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service removes the plant *Hedeoma apiculatum* (McKittrick pennyroyal) from the List of Endangered and Threatened Plants and removes its critical habitat. The species is endemic to the Guadalupe Mountains in northwestern Texas and southeastern New Mexico. Because of the range, the number of newly discovered populations, and the remote and inaccessible nature of the habitat, the Service determines that McKittrick pennyroyal is not in danger of extinction throughout all or a significant portion of its range now or in the foreseeable future.

EFFECTIVE DATE: September 22, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 3530 Pan American Highway, NE., suite D, Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Philip Clayton, at the above address (505/883-7877).

SUPPLEMENTARY INFORMATION:

Background

Hedeoma apiculatum (McKittrick pennyroyal) was first collected in 1882, but remained undescribed until 1939 (Epling and Stewart 1939). The plant is a perennial herb, 10-15 cm (4-6 in.) tall, with dense tufts of leaves growing from woody rootstocks. The showy pink flowers are about 2 cm (0.8 in.) long, solitary or in clusters, and emerge from among the leaves towards the tips of the stems (Irving 1980).

McKittrick pennyroyal is endemic to the Guadalupe Mountains in Eddy County, New Mexico, and Culberson County, Texas. It is found in fissures and weathered pockets in open limestone rock outcrops at elevations above 1,660 m (5,400 ft). The species prefers north facing cliffs and slopes, but can occur on any aspect of sheltered relatively moist outcrops (Irving 1980, Knight and Cully 1988, Sivinski and Lightfoot 1992).

McKittrick pennyroyal was listed July 13, 1982 (47 *FR* 30440) as a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). Threats to the species at the time of listing were described as limited distribution, low numbers, and low reproductive potential, which all made the species vulnerable to extinction from the effects of habitat disturbance. Since the listing, additional surveys in the Guadalupe Mountains in New Mexico and Texas have shown the plant to be more widespread and abundant than previously known.

Irving (1980), reported 7 known locations for McKittrick pennyroyal scattered from near Hunter Peak in Guadalupe Mountains National Park (GMNP), Texas, to Big Canyon, Guadalupe Mountains, New Mexico. Since 1980, the species' range has been extended north to Double Canyon, Guadalupe Mountains, New Mexico, with many new locations being discovered. New populations were reported by the National Park Service (NPS) in 1986 (Richard B. Smith, GMNP, *in litt.* 1986), New Mexico Energy, Minerals and Natural Resources Department (Knight and Cully 1988), U.S. Forest Service (Hayes 1988), the Bureau of Land Management (BLM) (Dunmire 1990), and other sources. This information is summarized in Sivinski and Lightfoot (1992). A total of 13 Texas and 23 New Mexico locations are known at this time in a 166 sq km (65 sq mi) area in the Guadalupe Mountains of New Mexico and Texas. At the time of listing in 1982, plant numbers were estimated at 1,100. Although accurate counts and estimates are difficult to make, about 5,000 counted plants now comprise the 36 known locations.

Approximately 5–10% of an estimated 5,700 ha (14,000 ac) of potential habitat has been surveyed for McKittrick pennyroyal, mostly along trails and canyon bottoms. Potential habitat is abundant, but very difficult to survey because of the steep broken terrain and the remoteness of the area. It is likely that numerous groups of plants remain undiscovered throughout the suitable habitat, and that additional surveys will continue to identify new locations for the species (Sivinski and Lightfoot 1992).

At the time of listing the Service perceived the species to be vulnerable because of its low numbers and limited distribution and because of the potential threats to the species in its known locations from trail development and the impact of hikers. Management for the species in GMNP has included the designation of special management

areas with limited public use, banning the use of horses on particular trails, and reducing levels of camping in certain sensitive areas (William P. Dunmire, Carlsbad Caverns and Guadalupe Mountains National Parks, *in litt.* 1984; Robin Wobbenhorst, GMNP, pers. comm. 1992). These management activities have reduced the human threats to McKittrick pennyroyal. The additional locations found since listing are in areas remote from human impacts, which provide a measure of security for the species.

Federal government actions on this species began with section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report (House Document No. 94–51), which included McKittrick pennyroyal in the threatened category, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 *FR* 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. McKittrick pennyroyal was included as threatened in this notice. McKittrick pennyroyal was proposed for listing as a threatened species with critical habitat on August 13, 1980 (45 *FR* 54682). The final rule listing McKittrick pennyroyal as a threatened species and designating its critical habitat was published July 13, 1982 (47 *FR* 30440). The McKittrick Pennyroyal Recovery Plan was completed in 1985 (U.S. Fish and Wildlife Service, 1985).

Federal involvement with McKittrick pennyroyal subsequent to listing has included surveys for new locations, monitoring of known populations, protection from human impacts through limiting use in sensitive areas, and inclusion in the development of the U.S. Environmental Protection Agency's (EPA) pesticide labeling program for protection of endangered species. The species has been included in all section 7 consultations over Federal projects occurring in suitable habitat in Eddy County, New Mexico, and Culberson County, Texas. Except for consultation with EPA on pesticide labeling, there have been no formal section 7 consultations involving this species. On September 22, 1992 (57 *FR* 43673), the Service proposed to delist the McKittrick pennyroyal and remove its critical habitat designation.

Summary of Comments and Recommendations

In the September 22, 1992, proposed rule (57 *FR* 43673) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate state agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *Carlsbad Current Argus* on October 9, 1992, and the *El Paso Times* on October 8, 1992, which invited general public comment. Six comments were received within the comment period.

Timely comments on the proposal were received from the State of New Mexico (Energy, Minerals and Natural Resources Department), the U.S. Forest Service (Southwestern Region), the Bureau of Land Management (New Mexico State Office), the Botanical Research Institute of Texas, Inc., the Texas Wildlife Association, and one professional botanist. All commentors supported the proposal. A specific concern raised in one comment is discussed below.

Concern: Is the overall population trend increasing, decreasing, or remaining stable?

Response: Surveys of Hunter's Peak, Upper Bear Canyon, and Devil's Den by the National Park Service (1987) and of Lonesome Ridge by The Nature Conservancy (1990) documented increases within several populations of McKittrick pennyroyal. Populations located on vertical limestone cliffs are inaccessible to monitoring and there is no demographic data available for these sites. However, surveys of several accessible populations clearly demonstrate overall population increases. The NPS, Forest Service, and BLM will continue to monitor McKittrick pennyroyal populations on lands under their jurisdiction.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that McKittrick pennyroyal should be removed from the List of Threatened and Endangered Plants, and that its critical habitat designation should be removed. Section 4(a)(1) of the Endangered Species Act 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 of threatened

and endangered species. The same procedures apply to reclassifying species or removing them from these lists. A species may be determined to be an endangered or threatened species based on the best scientific and commercial information available regarding one or more of the five factors described in section 4(a)(1). These factors and their application to *Hedeoma apiculatum* W.S. Stewart (McKittrick pennyroyal) are as follows:

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

McKittrick pennyroyal populations are scattered throughout a 166 sq km (65 sq mi) range. Surveys since listing have increased the known distribution and abundance of the species. At the time of listing, most of the few known populations were located adjacent to hiking trails. Management actions to protect the species and the discovery of a significant number of populations that are remote from human activity have significantly reduced the threat from recreational activities.

Potential threats to this species from modification or destruction of habitat included exploratory drilling for natural gas or other resources, and wildfire. Exploratory drilling is excluded from most McKittrick pennyroyal habitat because of the steepness of the outcrops upon which the species occurs. Little was known about the response of McKittrick pennyroyal to fire until 1990, when 13,000 ha (33,000 ac) of habitat burned on the Lincoln National Forest. In 1991, these areas were surveyed and numerous healthy plants were observed on canyon walls. Lack of fuel in these locations had apparently protected the McKittrick pennyroyal and associated plant species. Thus, it appears that wildfire is not a serious threat to the long-term survival of this species (Sivinski and Lightfoot 1992).

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

The final rule listing McKittrick pennyroyal identified collection for garden cultivation as a potential threat. No evidence for this kind of activity has come to light since the species was listed. Because of the increase in distribution and known plant numbers, the potential threat from this activity has been reduced.

C. Disease or Predation

In the final listing rule, grazing was noted to have occurred at one location. However, livestock are excluded from most of the habitat because of the

steepness of the slopes. Other predators or disease organisms are not known at this time.

D. The Inadequacy of Existing Regulatory Mechanisms

McKittrick pennyroyal is on the New Mexico State List of Endangered Plant Species (9-10-10 NMSA 1978; NMFRCD Rule No. 91-1) and the Texas List of Endangered, Threatened or Protected Native Plants (Chapter 88, Texas Parks and Wildlife Code). It is considered a sensitive species by the Forest Service, and has received special management consideration by the NPS. All States and agencies will have the option of retaining this species on their various lists when it is removed from the Federal List of Endangered and Threatened Plants. The Forest Service will monitor the populations on the Lincoln National Forest for at least 5 years following delisting. Management actions taken by the NPS to protect the species will be left in place in the Guadalupe Mountains National Park, and the status of the populations there will be monitored. The BLM will place McKittrick pennyroyal on its sensitive species list and monitor populations on lands under its jurisdiction for a 5-year period.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Long-term climate changes from the more mesic Pleistocene to the present-day xeric conditions may have caused McKittrick pennyroyal to retreat from a more widespread distribution to the moist protected habitats of canyon walls and cliff faces. Further drying trends may pose a serious threat to the relictual habitats of this species. However, the rate of climatic change is sufficiently slow (and uncertain) that this threat is not expected to occur in the foreseeable future (Sivinski and Lightfoot 1992).

The regulations at 50 CFR 424.11(d) state that a species may be delisted if (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error. The Service concludes the data supporting the original classification were incomplete, and new data show removing *Hedeoma apiculatum* from the List of Endangered and Threatened Plants is warranted. The Service after conducting a review of the species' status determines the species is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become an endangered or threatened species within the foreseeable future throughout all or significant portion of its range. Given the expanded range, number of newly discovered locations and individuals,

remote habitat, and protection provided by that remoteness and difficulty of access, the Service concludes, on the basis of the best scientific and commercial information, that *Hedeoma apiculatum* does not warrant the protection of the Act.

In accordance with 5 U.S.C. 553(d), the Service has determined that this rule relieves an existing restriction and good cause exists to make the effective date of this rule immediate. Delay in implementation of this delisting would cost government agencies staff time and monies on conducting formal section 7 consultation on actions which may affect a species no longer in need of the protection under the Act. Relieving the existing restriction associated with this listed species will enable Federal agencies to minimize any further delays in project planning and implementation for actions that may affect the McKittrick pennyroyal.

Effect of Delisting

This final rule removes the McKittrick pennyroyal from the List of Endangered and Threatened Plants, and removes the areas designated for it as critical habitat. Federal agencies no longer need to consult with the Service to insure that any action authorized, funded, or carried out by them is not likely to jeopardize the continued existence of McKittrick pennyroyal or result in destruction or adverse modification of its critical habitat.

The 1988 amendments to the Act require that all species which have been delisted due to recovery be monitored for at least 5 years following delisting. The McKittrick pennyroyal is being delisted primarily because the original listing information was in error, not because of recovery. Nevertheless, the Forest Service, NPS, and BLM have all indicated they will monitor the status of McKittrick pennyroyal for at least 5 years following delisting. The Service will work with these agencies to coordinate the monitoring effort.

National Environmental Policy Act

The 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 (48 FR 49244).

References Cited

- Dunmire, W.W. 1990. Biological inventory of Lonesome Ridge ACEC, Carlsbad Resource Area, Bureau of Land Management: An investigation of biological resources focusing on plant and animal communities with recommendations for future management actions. U.S.D.I. Bureau of Land Management, Carlsbad Resource Area, Carlsbad, New Mexico. 52 pp.
- Epling, C. and W.S. Stewart. 1939. A revision of *Hedeoma* with a review of allied genera. Report. Spec. Nov. Regni. Veg. Beihefte 115:1-49.
- Hayes, F.A. 1988. Report on a *Hedeoma* survey. U.S.D.A. Forest Service, Albuquerque, New Mexico. 9 pp.
- Irving, R.S. 1980. Status report on *Hedeoma apiculatum*. U.S. Fish and Wildlife Service, Office of Endangered Species, Albuquerque, New Mexico. 16 pp.
- Knight, P.J. and A.C. Cully. 1988. Endangered plant study: Monitoring endangered plants, Project Number E-9-1. *Hedeoma apiculatum*. U.S. Fish and Wildlife Service, Division of Endangered Species, Albuquerque, New Mexico. 9 pp.
- Sivinski, R. and K. Lightfoot. 1992. Status summary for the McKittrick pennyroyal (*Hedeoma apiculatum*). U.S. Fish and Wildlife Service, Ecological Services Field Office, Albuquerque, New Mexico. 31 pp.
- U.S. Fish and Wildlife Service. 1985. McKittrick pennyroyal (*Hedeoma apiculatum* W.S. Stewart) Recovery Plan. U.S.D.I. Fish and Wildlife Service, Albuquerque, New Mexico. 46 pp.

Author

The primary author of this final rule is Philip Clayton (See ADDRESSES).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, and Transportation.

Regulations Promulgation

Accordingly part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

§ 17.12 [Amended]

2. Amend § 17.12(h) by removing the entry "*Hedeoma apiculatum*" under "Lamiaceae—Mint family:" from the List of Endangered and Threatened Plants.

§ 17.96 [Amended]

3. Amend § 17.96(a) by removing the critical habitat entry for "*Hedeoma apiculatum*" under "Family Lamiaceae"

Dated: September 1, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

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