

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Rule To Determine *Hedeoma apiculatum* (McKittrick Pennyroyal) To Be a Threatened Species and To Determine Its Critical Habitat

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Hedeoma apiculatum* W. S. Stewart (McKittrick Pennyroyal), a native plant of Texas and New Mexico, to be a Threatened species and to determine its Critical Habitat. The number of existing individuals of this species is estimated to be less than 950 and their reproductive potential appears to be low. The populations occurring on Federal lands are threatened by the gradual destruction of habitat through long-term overuse or through park development (trails, campsites, etc.). The single known population on private land is potentially threatened by any major change in land use. This proposal would allow some Federal protection provided by the Endangered Species Act of 1973, as amended. The Service seeks comment on this species.

DATE: Comments from the public must be received by November 13, 1980. Comments from the Governors of Texas and New Mexico must be received by November 13, 1980. A public meeting on this proposal will be held at the Carlsbad Public Library, Halaqueno Park, Carlsbad, New Mexico on August 27, 1980, at 7 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 703-235-2771.

ADDRESSES: Comments and materials concerning this proposal, preferably in triplicate, should be sent to the Director (FWS/OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments and materials received will be available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, 1000 N. Glebe Road, Fifth Floor, Arlington, Va.

SUPPLEMENTARY INFORMATION: *Hedeoma apiculatum* W. S. Stewart (McKittrick Pennyroyal), a member of the mint family, was first collected in 1882, but remained undescribed until 1939. A long-lived perennial herb, this plant forms dense tufts of leaves from woody rootstocks and stands 10.0 to 15.0 cm in height. Its showy, pink flowers are

solitary or in two to three flower clusters, two (2) cm in length, and as with most mints, the flowers are axillary and crowded towards the apex (Irving, in press).

Endemic to open, limestone rock surfaces and outcrops in canyons and along streamways in the Guadalupe Mountains of Texas and New Mexico at elevations above 1600 meters, this species is particularly vulnerable to disturbance (Riskin, 1974; Brown and Lowe, 1977). The surrounding vegetation is sparse and offers no protection. The substrate in which these plants are found consists mostly of sand caught in rock fissures and in weathered pockets of limestone (U.S.D.A., 1974), thus there exists no natural protection. The continued existence of this plant and the fragile habitat in which it occurs are being threatened by trampling, area development and other factors. This rule proposes to determine *Hedeoma apiculatum* to be Threatened and if made final would implement the protection provided by the Endangered Species Act of 1973, as amended. The following paragraphs further discuss the actions to date involving this plant, the threats to the plant, and effects of the proposed action.

Background

In the June 24, 1977, Federal Register (42 FR 32373-32381), the Service published a final rule under 50 CFR Part 17 detailing the regulations to protect Endangered and Threatened plant species. This rule established prohibitions and a permit procedure to grant exceptions, under certain circumstances, to be prohibitions. These regulations would offer protection to *Hedeoma apiculatum*.

The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Summary of Factors Affecting the Species

Subsection 4(a) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) states that the Secretary of Interior shall determine whether any species is an Endangered species or a Threatened species due to one or more of the five factors described in that subsection. These factors and their application to *Hedeoma apiculatum* (McKittrick Pennyroyal) are as follows:

Hedeoma Apiculatum

Populations of *H. apiculatum* in Guadalupe National Park and adjacent Lincoln National Forest are relatively well protected from major modification

or destruction of habitat. The administration of Guadalupe National Park recognizes the fragile nature of the park's plant and animal communities (U.S. Department of Interior, 1973) and has implemented some protective management strategies. Moreover, a U.S. House of Representatives committee report recommended that there be close cooperation between the Forest Service and the National Park Service in preserving the environmental resources of the North McKittrick Canyon and other canyons in the Lincoln National Forest (U.S. Department of Interior, 1973). Yet, the populations of *H. apiculatum* are potentially threatened. Existing trails allow access to most of the localities of *H. apiculatum* and as trail users increase there is the danger of destruction of the local habitat. The plants are easily dislodged and the cumulative impact of hikers leaving the trail and climbing over the ledges and boulders that support colonies of *H. apiculatum* could be devastating to the small and slowly reproducing populations. Moreover, the showy and distinctive plants of *H. apiculatum* are highly visible from the trails and could be subject to increasing pressures from taking.

A number of new trail alignments are planned within the range of *H. apiculatum*. These do not appear to threaten the known localities and may actually reduce visitor pressure in some areas. However, Guadalupe National Park is a relatively new park and in all likelihood will attract an increasing number of visitors in the years ahead. During 1979 the park experienced approximately 29,000 backcountry user days compared to 26,258 user days in 1978. Trail counts of hikers into the South McKittrick biological area, a locality of *H. apiculatum*, totaled 323 in 1978 and more than 520 in 1979. Future increases, as well as the construction of additional trails, shelters or camping areas to accommodate them, could potentially threaten the survival of *H. apiculatum*.

Dr. Robert Irving, a botanist at the University of Nebraska at Omaha, has noted that some small populations in the South McKittrick fork have disappeared since the late 1960's. This could be due to human disturbance, flooding or a combination of both threats.

The population on private ranch land could potentially be threatened by increased grazing or major changes in land use.

1. *Overutilization for commercial, sporting, scientific or educational purposes.* Although no evidence exists, there is the potential of taking this

showing species for cultivation in rock gardens or for other purposes.

2. *Disease or predation (including grazing).* Grazing has occurred on the privately owned site for this species. This grazing does not appear to threaten the species.

3. *Inadequacy of existing regulatory mechanisms.* *Hedeoma apiculatum* is not protected by State law. Existing Federal Regulations in 36 CFR 2.25 and 36 CFR 261.9 prohibit takings of this species in the Lincoln National Forest and the Guadalupe Mountains National Park, however, these regulations are difficult to enforce in a comprehensive fashion. Guadalupe Mountains National Park recognizes the fragile nature of this plant and its habitat and has implemented some protective management strategies. The Endangered Species Act will offer added protection for the species.

4. *Other natural or manmade factors affecting its continued existence.* Any human pressure on this species may exaggerate the possibility of small populations going extinct through natural population fluctuations. The restricted distribution of *Hedeoma apiculatum* and the small numbers of known individuals will intensify any adverse impacts. In addition to man-induced threats, field work between 1966 and 1979 indicates that periodic and severe floods can reduce the populations of *H. apiculatum* in streambeds. Any potential disturbance is likely to have a severe impact on this species; reproductive potential is low and few young plants have been observed in the wild.

Critical Habitat

The Act defines "Critical Habitat" as (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of Section 4 of this Act, 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 (ii) specific areas outside the geographic area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Subsection 4(f)(4) of the Act requires, to the maximum extent practicable that any proposal to determine Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such

habitat if undertaken, or may be impacted by such designation.

Any activity which would result in increased trampling or disturbance of the fragile substrate where *Hedeoma apiculatum* occurs would probably adversely modify the Critical Habitat. The long term solution on how to best protect *Hedeoma apiculatum* may be to greatly reduce the human traffic in the area where this plant occurs. In this respect, Critical Habitat designation may effect Federal activities by prohibiting the development of new trails in areas where the plant occurs, relocating old trails, or other steps by the National Park Service and the Forest Service to protect this species.

Critical Habitat for *Hedeoma apiculatum* is being determined to include the three areas in Texas where the three largest and best known populations of this species occur. Critical Habitat is not being proposed for the smallest population in Guadalupe Mountains National Park, the population in Lincoln National Forest or for the population located on private land. These three populations were not included in Critical Habitat at this time because they are very small populations which are not well studied or understood at the present, in contrast to the three larger populations which are being proposed as Critical Habitat. These populations may be proposed as Critical Habitat when they are better known. Therefore, the Critical Habitat delineated does not necessarily include the entire area necessary for the survival of *Hedeoma apiculatum* throughout its range, and modifications of this Critical Habitat may be proposed in the future.

The Endangered Species Act Amendments of 1978 added the following provision to subsection 4(a)(1) of the Endangered Species Act of 1973:

At the time any such regulations (to determine whether a species is endangered or threatened) is proposed, the Secretary shall also by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be Critical Habitat.

In addition, the section 4 regulations of February 27, 1980, (45 FR 13007-13026) state that:

If the Director determines that the designation of Critical Habitat is not prudent, he will state the reasons for such determination in the proposed and final rules listing a species.

There are fewer than 10 individuals in the population at Pine Top in Guadalupe Mountains National Park. The population in Lincoln National Forest is located on a fragile talus slope which

could be destabilized by foot traffic. If the exact locality of these populations were published in the Federal Register and in local newspapers, *Hedeoma apiculatum* might be additionally threatened by taking and vandalism. The population in Eddy County, New Mexico, is located on private property and is afforded no current Federal protection. Section 9 of the Endangered Species Act does not restrict the taking of Endangered or Threatened plants and publication of Critical Habitat maps may make these populations more vulnerable. After management and recovery plans have been developed for this plant and after these populations are better known, Critical Habitat may be beneficial and may also be proposed for these three additional populations.

Subsection 4(b)(4) of the Act requires the Service to consider economic and other impacts of specifying a particular area as Critical Habitat. The Service has prepared a draft impact analysis and believes that economic and other impacts of this action are not significant in the foreseeable future. As previously stated, only minimal impacts upon the National Park Service and the Forest Service are expected. The Fish and Wildlife Service has notified and is working with the U.S. Forest Service and the National Service, the two agencies which have jurisdiction over the land and water under consideration in this proposed action. The U.S. Forest Service, National Park Service, other Federal agencies, and other interested organizations were requested to submit information on economic or other impacts of the proposed action and this information was utilized in completing this analysis. The Service will prepare a final impact analysis prior to the time of final rulemaking. The Service's draft economic impact analysis was used as part of the basis for the Service's decision as to whether or not to exclude any areas from Critical Habitat for *Hedeoma apiculatum*.

Effects of this Proposal

In addition to the effects discussed above, the effects of this proposal would include, but would not necessarily be limited to, those mentioned below.

Subsection 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species which is proposed or listed as Endangered or Threatened. This proposed rule requires Federal agencies to satisfy their statutory obligations with respect to this species, that is, as a proposed Threatened Species, agencies are required under section 7(a)(3) to confer with the Service on any action that is likely to jeopardize the species. If

published as a final rule, this action would require Federal agencies to insure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of this species, and to insure that their actions are not likely to result in the destruction or adverse modification of its Critical Habitat which has been determined by the Secretary.

The Act and implementing regulations published in the June 24, 1977, Federal Register set forth a series of general trade prohibitions and exceptions which apply to all endangered plant species. All of those prohibitions and exceptions also apply to any Threatened plant species, excluding seeds of cultivated plants treated as Threatened, unless a special rule pertaining to that Threatened species has been published and indicates otherwise. The regulations which pertain to Threatened plants are found at 50 CFR 17.71 and are summarized below.

With respect to *Hedeoma apiculatum* all prohibitions of section 9(a)(2) of the Act, as implemented by 50 CFR 17.71, would apply except for certain exemptions with respect to seeds. These prohibitions, in part, would make it illegal for any persons subject to the jurisdiction of the United States to import or export, transport in interstate of foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions would apply to agents of the Service and State conservation agencies. The Act of 50 CFR 17.72 also provides for the issuance of permits to carry out otherwise prohibited activities involving Threatened species, under certain circumstances.

If listed as Threatened under the Act, the Service will review this species to determine whether it should be considered for the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere for placement upon its Annex, and whether it should be considered for other appropriate international agreements.

Public Comments Solicited

The Director intends that the rule finally adopted will be as accurate and effective as possible in the conservation of any Endangered or Threatened species. Therefore, any comments or suggestions from the public, other

concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

1. Biological or other relevant data concerning any threat (or the lack thereof) to the species included in this proposal.
2. The location of any other populations of *Hedeoma apiculatum* and the reasons why any habitat of this species should or should not be determined by Critical Habitat as provided for by the Act.
3. Additional information concerning the range and distribution of this species.
4. Current or planned activities in the subject and the probable impacts of such activities on the area designated as Critical Habitat.
5. The foreseeable economic and other impacts of the Critical Habitat designation on Federal activities.

Final promulgation of this rule on *Hedeoma apiculatum* will take into consideration the comments and any additional information received by the Director, and such communications may lead him to adopt a final rule that differs from this proposal.

Public Meeting

The Service hereby announces that a public meeting will be held on this proposed rule. The public is invited to attend this meeting and to present opinions and information on this proposed rule. Specific information to the public meeting is set out below:

Place: Carlsbad Public Library, Halaqueno Park, Carlsbad, New Mexico.
 Date: August 27, 1980.
 Time: 7:00 p.m.
 Subject: Threatened Status, for *Hedeoma apiculatum*.

National Environmental Policy Act

A draft environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1000

North Glebe Road, Arlington, Virginia, and may be examined by appointment during regular business hours. A determination will be made at the time of final rule whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (40 CFR Parts 1500-1508).

This proposal is being published under the authority contained in the endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.; 87 Stat. 884, 92 Stat. 3751, 93 Stat. 1225). The authors of this proposed rule are Barry S. Mulder and Ms. Rosemary Carey, Washington Office of Endangered Species (703-235-2760). Dr. Robert s. Irving, University of Nebraska, Omaha, Nebraska, prepared the status report on this species.

References Cited

Brown, D. E. and C. H. Lowe, 1977. Map, Biotic communities of the Southwest (scale 1: 1,000,000). Rocky Mountain Forest and Range Exp., Sta U.S.D.A. Forest Service.
 Irving, R. S. In Press. Systematics of *hedeoma* (Labiatae). SIDA
 Risking, D. 1974. Report submitted to the National Park Service: The Rare and Endangered flora of Guadalupe Mountains National Park, Texas.
 U.S. Department of Agriculture, Soil Conservation Service. 1974. General Soil Map, Culberson Co., Texas.
 U.S. Department of the Interior, National Park Service. 1973. Master Plan, Guadalupe Mountains National Park, Texas.

Regulations Promulgation

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. It is proposed to amend § 17.12 by adding, in alphabetical order, the following to the list of plants:

§ 17.12 Endangered and threatened plants.

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Labiatae-Mint family:						
<i>Hedeoma apiculatum</i>	McKittrick pennyroyal.	U.S.A. (TX, NM)	T	17.96(a)	NA

2. Also, the Service proposes to amend 17.96(a) by adding the Critical Habitat of *Hedeoma apiculatum* after that of the *Erysimum capitatum* var. *angustatum* (Contra Costa wallflower) as follows:

Species

Hedeoma apiculatum

McKittrick Pennyroyal

Texas, Culberson County: 3 areas in Guadalupe Mountains National Park; 85 acres in Devil's Den Canyon; 60 acres above Turtle Rock on McKittrick Ridge and 180 acres in South McKittrick Canyon.

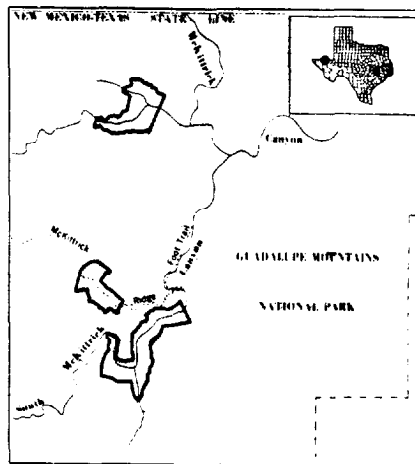
1. Devil's Den Canyon: from the 5,400 foot contour on the canyon floor (1.1 KM n.w. of Pratt Lodge) and along the sides of the canyon south-westward following the 6,000' contour on the north side of the canyon (beginning at Texas coordinates 19,892 m E., 39,169 m N.) and the 6,200' contour on the south side (beginning at Texas coordinates 19,699 m E., 38,651 m N.) to approximately the 6,000' elevation point of the canyon floor.

2. Above Turtle Rock on McKittrick Ridge: high ridge surrounding unnamed peak 2.65 km southwest of Pratt Lodge and located 19,073 m E., 36,439 m N. on the Texas coordinate system. The boundaries defined approximately by the 6,800' contour on the southeast, southwest, and northeast and by the 7,400' contour on the northeast. The 7,400' contour connected to the 6,800' contour by a line passing through Texas coordinates 18,699 m E., 36,530 m N., and 18,781 m E., 36,854 m N. on the southwest and coordinates 19,145 m E., 36,819 m N., and 19,000 m E., 36,952 m N. on the northeast.

3. South McKittrick Canyon: from the 5,400' on the canyon floor (2.2 km southwest of Pratt Lodge) and along the sides of the canyon southwesterly following the 5,800' contour on the northside of the canyon (beginning at Texas coordinates 20,169 m E., 36,434 m N.) and the 6,200' contour on the south side of the canyon (beginning at Texas coordinates 20,289 m E., 36,121 m N.) to the 5,800' elevation point of the canyon floor.

McKittrick Pennyroyal

Culberson, Texas



Dated: August 12, 1980.

Lynn A. Greenwalt,
Director, Fish and Wildlife Service.

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