

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of *Hedeoma apiculatum* (McKittrick pennyroyal) To Be a Threatened Species and Determination of Its Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines a plant, *Hedeoma apiculatum* W. S. Stewart (McKittrick pennyroyal), to be a Threatened Species and hereby designates its Critical Habitat under the authority contained in the Endangered Species Act. This plant occurs in Texas and New Mexico. The number of existing individuals is estimated to be less than 1,100 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 and need to be considered in plans for park development such as trails, campsites, and visitor facilities.

The single known population on private land would be potentially threatened by any major change in land use. This determination of *Hedeoma apiculatum* to be a Threatened Species with Critical Habitat implements the protection provided by the Endangered Species Act of 1973, as amended.

DATES: This rule becomes effective on (August 14, 1982).

ADDRESSES: Questions concerning this action may be addressed to the Director (FWS/OES), U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

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

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 to 15 cm in height. Its showy pink flowers are solitary or in two to three-flowered clusters, two (2) cm in length, and as with most mints, the flowers are axillary and crowded towards the apex (Irving, in 1980).

Hedeoma apiculatum is 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 1660 meters, and is particularly vulnerable to disturbance (Riskind, 1974; Brown and Lowe, 1977). The surrounding vegetation is sparse. 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 from physical events, either natural or man-made. The continued existence of this plant and the fragile habitat in which it occurs could be threatened by trampling and unplanned development in the area.

Background

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Director published a notice in the *Federal Register* (40 FR 27832-27924) of his acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within. *Hedeoma apiculatum* was included in the July 1, 1975, Notice of Review. On August 15, 1980 (45 FR 45682), the Service proposed *Hedeoma apiculatum* to be Threatened species and proposed to determine its Critical Habitat.

Rules contained in 50 CFR Part 17, Subpart G, detail the regulations to protect Threatened plant species. These rules describe the prohibitions and permit procedure to grant exceptions, under certain circumstances, to such prohibitions.

The Department has determined that this document is not a major rule under E.O. 12291. Since this rule was proposed before January 1, 1981, a Determination of Effects on Small entities is not required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507).

Summary of Comments and Recommendations

In the August 15, 1980, *Federal Register* proposed rule (45 FR 54682) and associated notifications and press releases, all interested parties were

requested to submit factual reports or information which might contribute to the development of a final rule. Letters were sent to the Governors of Texas and New Mexico notifying them of the proposed rule and soliciting their comments and suggestions. Only two comments were received during the comment period from August 15, 1980, through November 13, 1980, and they are discussed below.

The Superintendent of Guadalupe Mountains National Park in Texas commented through the Southwest Regional Director of the National Park Service on the proposed Critical Habitat for *Hedeoma apiculatum*. He stated that "The current proposal presents management problems for us with regard to at least one area proposed—that on McKittrick Ridge * * * The route of the upper McKittrick Canyon trail goes through the middle of the now proposed McKittrick Ridge Critical Habitat area. This trail is an essential route for hikers traveling from the canyon to the park high country * * * In that the park population of *Hedeoma apiculatum* is fairly widespread and not restricted to the three proposed Critical Habitat sites, we strongly recommend that the McKittrick Ridge site be deleted from this proposal." The Fish and Wildlife Service response: The population on McKittrick Ridge is one of the three major populations of this species and therefore should appropriately be included as part of *Hedeoma apiculatum's* Critical Habitat, which is defined as that area which is considered to be critical and necessary to the species' continued survival. Based on our current biological understanding of *Hedeoma apiculatum*, the population above Turtle Rock on McKittrick Ridge must be considered as critical to the survival of this species. Moreover, it is not anticipated that declaring this population part of the Critical Habitat will have an adverse impact on use of the new McKittrick trail. Declaring this area Critical Habitat will not close it to use by hikers. At this time, it is appropriate only to monitor the status of this population to see what impact, if any, recreationists are having on it. Recent conversations between the National Park Service and the Fish and Wildlife Service have reached an understanding on the meaning of this Critical Habitat designation and its implications for park management which are predicted to be minimal. The National Park Service now supports the listing of *Hedeoma apiculatum* as Threatened.

The Texas Organization for Endangered Species commented on the

shortness of time between the publication of the proposal (August 15, 1980) and the date set for the public meeting (August 27, 1980). The Service response: Due to an oversight, this proposal was not published with the other plant proposal (*Eriogonum gypsophilum*) which together were the subject of the public meeting which had already been arranged for August 27, 1980, in Carlsbad, New Mexico. Service personnel were aware of the short lead time between the publication of the proposal in the *Federal Register* and the public meeting. However, the decision was made to proceed based on organizational and financial factors. It was an unusual situation which is not indicative of normal Service procedures.

No comments were received from the governors of Texas and New Mexico.

There was only one oral comment at the public meeting on this proposal, and it was made by a representative from the National Park Service. The Park Service spokesman was concerned about the effect of designating Critical Habitat on park hiking trails, especially the McKittrick Ridge trail. The Service responded that it was extremely unlikely that they would request that the trail be moved, but that it was impossible to predict the results of any biological consultation beforehand. The Service said that at this time it is appropriate to monitor the impacts of hikers on this population. The National Park Service also submitted a written comment on this action which was previously addressed.

Conclusion

After a thorough review and consideration of all available information, the Director has determined that *Hedeoma apiculatum* (McKittrick pennyroyal) is a Threatened species throughout all or a significant portion of its range due to one or more of the factors described in section 4(a) of the Endangered Species Act.

The Director has determined that *Hedeoma apiculatum* is primarily affected by factor numbers 1, 2, 4, and 5. All five factors and their application to *Hedeoma apiculatum* are as follows:

(1) *Present or threatened destruction, modification, or curtailment of its habitat or range.* Populations of *Hedeoma apiculatum* in Guadalupe Mountains National Park and adjacent Lincoln National Forest are relatively well protected from major modification or destruction of habitat. The administration of Guadalupe Mountains 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 *Hedeoma apiculatum* are potentially threatened. Existing trails allow access to most of the localities of *Hedeoma apiculatum* and as the number of trail users increases 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 *Hedeoma apiculatum* could be devastating to the small and slowly reproducing populations. Moreover, the showy and distinctive plants of *Hedeoma 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 *Hedeoma apiculatum*. These do not appear to threaten the known localities and may actually reduce visitor pressure in some areas. However, Guadalupe Mountains 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 *Hedeoma apiculatum*, totaled 323 in 1978 and more than 520 in 1979. Future increases, as well as construction of additional trails, shelters or camping areas to accommodate them, could potentially threaten the survival of *Hedeoma apiculatum*. Proper park management plans for this species should be prepared.

Dr. Robert Irving, of R. S. Irving & Associates, Little Rock, Arkansas, 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.

(2) *Overutilization for commercial, sporting, scientific or educational purposes.* Although no evidence exists, there is the potential of taking this showy species for cultivation in rock gardens or for other purposes.

(3) *Disease or predation.* Grazing has occurred on the privately-owned site where this species occurs. This grazing does not presently appear to threaten the species.

(4) *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 taking 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 additional protection for this species.

(5) *Other natural or manmade factors affecting its continued existence.* Any human pressure on this species may increase the possibility of small populations going extinct through natural population fluctuations. The restricted distribution of *Hedeoma apiculatum* and the small number of known individuals will intensify any adverse impacts. In addition to man-induced threats, field work between 1966 and 1979 indicated that periodic and severe floods can reduce the populations of *Hedeoma apiculatum* in and adjacent to streambeds. Any such disturbance is likely to have a severe impact on this species as the 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, 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 affect 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. Initially, only monitoring of the impact of hikers is recommended. New trails could be located in such a way to minimize impact on *Hedeoma apiculatum* and still provide park visitors with access to the concerned areas. As stated earlier, the National Park Service supports the listing.

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

At the time any such regulation (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.

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 was not proposed for the smallest population in Guadalupe Mountains National Park (Texas), the population in Lincoln National Forest (New Mexico) or the population located on private land. These three populations are not included in Critical Habitat at this time because they are very small populations which are not well studied or understood, in contrast to the three areas with the larger populations which are being determined to constitute the Critical Habitat. 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 an 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 Forest Service and the National Park Service, the two agencies which have jurisdiction over the land and water under consideration in this 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 final impact analysis. The Service's draft economic impact analysis was used as part of the basis for the Service's decision whether to exclude any area from Critical Habitat for *Hedeoma apiculatum*.

Effects of This Rule

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

The Act and implementing regulations published in 50 CFR Part 17, Subpart G set forth a series of general prohibitions and exceptions which apply to all 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, implemented by 50 CFR 17.71, would apply except for certain exceptions with respect to seeds. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import, export, transport in interstate or 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 and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving Threatened species, under certain circumstances. International and interstate commercial trade in *Hedeoma apiculatum* is not known to exist. It is not anticipated that many permits involving plants of wild origin would ever be requested.

Section 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 rule

requires Federal agencies to satisfy their statutory obligations with respect to this species. This action requires 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. Possible effects of this rule on the U.S. Park Service and the Forest Service have already been discussed. Park and National Forest management are likely to be affected but not in a major way (see discussion under Summary of Factors affecting the species). In a telephone conversation on April 14, 1982, Gerard Hoddenbach (National Park Service, Santa Fe, New Mexico) stated that the Park Service still agrees with this position (which was stated in the February 17, 1982, memorandum to the U.S. Fish and Wildlife Service from the Director, Southwest Region, National Park Service). A May 14, 1982, letter from the National Park Service further documents their support of the listing. In addition, there is no known or anticipated Federal involvement in activities on the private land on which this species occurs.

National Environmental Policy Act

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 1000 N. Glebe Road, Arlington, Virginia, and may be examined by appointment during regular business hours. This assessment forms the basis for a decision that this is not 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.

Authors

This final rule 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 rule are Barry S. Mulder, Washington Office of Endangered Species (703/235-2760), and Ms. Rosemary Carey, Ms. Sandra Limerick, and Dr. Russell Kologiski, Office of Endangered Species, Albuquerque, New Mexico (505/776-3972).

Literature Cited

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List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulation Promulgation

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as follows:

1. Amend § 17.12 paragraph (h) by adding, in alphabetical order under the family "Lamiaceae," the following to the list of plants:

§ 17.12 Endangered and threatened species.

* * * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Lamiaceae— <i>Hedeoma apiculatum</i> .	Mint Family—KcKittrick pennyroyal.	U.S.A. (TX, NM)	T.....	117	17.96(a)...	N/A.

§ 17.96 [Amended]

2. Also, amend § 17.96(a) by adding the Critical Habitat of *Hedeoma apiculatum* in alphabetical order as follows:

Critical Habitat for *Hedeoma apiculatum*

1. Family Lamiaceae: *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' contour on the canyon floor (1.1 km northwest of Pratt Lodge) and along the sides of the canyon southwestward 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:

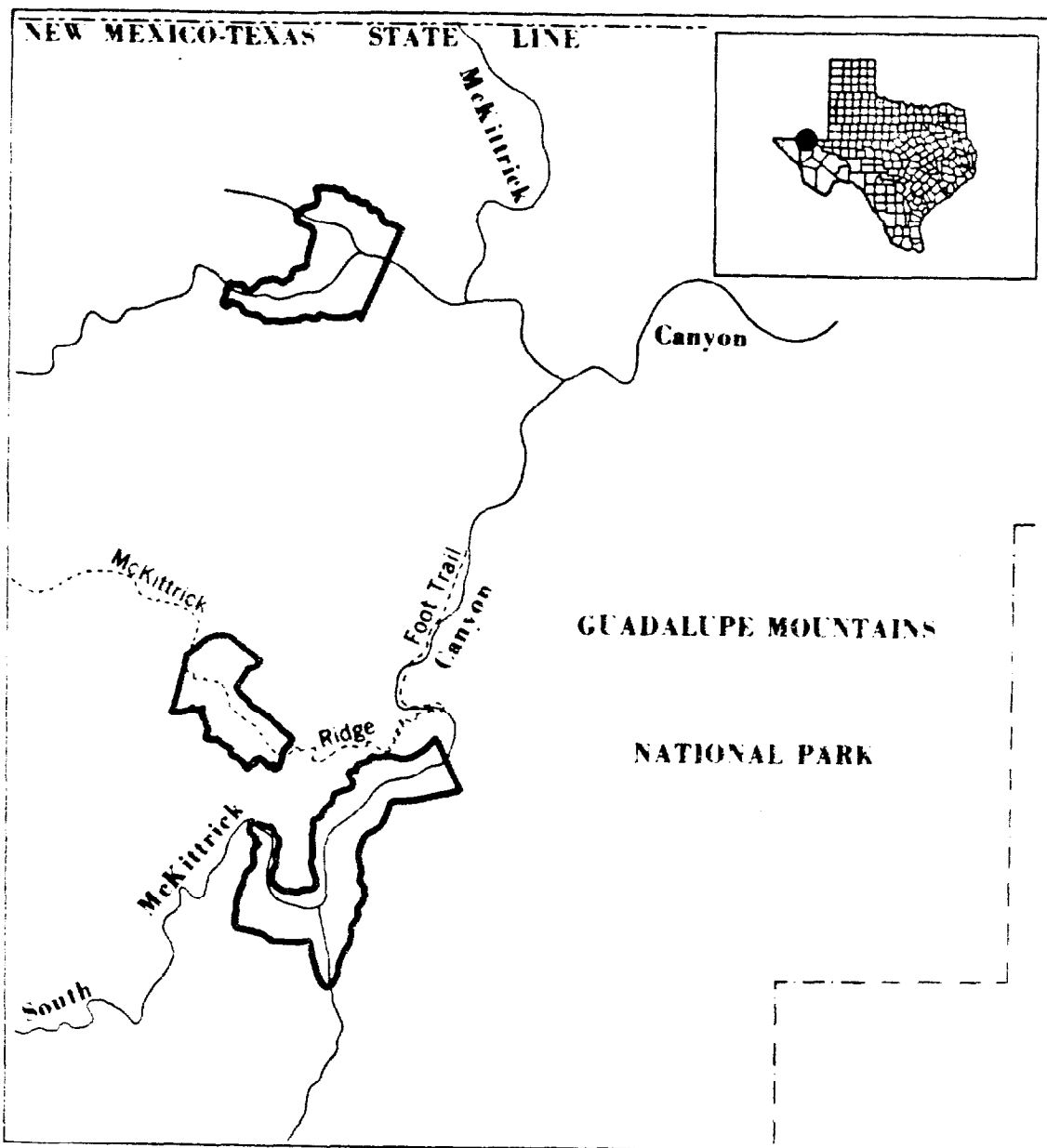
high ridge surrounding unnamed peak 2.65 km southwest of Pratt Lodge and located 19,073 m E., 36,439 m N. on the Texas coordinate system. The boundaries defined approximately by the 6,800' contour on the southeast, southwest, and northeast and by the 7,400' contour on the northwest. The 7,400' contour 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' contour on the canyon floor (2.2 km southwest of Pratt Lodge) and southwestward along the sides of the canyon following the 5,800' contour on the north side 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' contour of the canyon floor.

BILLING CODE 4310-55-M

McKITTRICK PENNYROYAL

Culberson County, TEXAS



Dated: June 19, 1982.

G. Ray Arnett.

Assistant Secretary for Fish and Wildlife and Parks.

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