

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Proposal to Determine *Penstemon Haydenii* To Be an Endangered Species**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to determine *Penstemon haydenii* (blowout penstemon) to be an endangered species under the authority of the Endangered Species Act of 1973, as amended. The blowout penstemon is known from small populations in Cherry (230 individuals), Hooker (60 individuals), and Garden (660 individuals) Counties, Nebraska. Approximately 25 percent of the plants are located on private and State lands, and 75 percent are located on U.S. Fish and Wildlife Service lands. The stabilization of blowout complexes leads to declining numbers of the species. The low probabilities of seed fertilization, maturation, and dispersal and seedling establishment may also be contributing factors to the decline of the species. This proposal, if made final, would implement protection provided by the Endangered Species Act. The Service is requesting comments on this action.

**DATES:** Comments from all interested parties must be received by June 30, 1986. Public hearing requests must be received by June 13, 1986.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. Comments and materials received will be available for public inspection, by appointment, during normal business hours of the Service's Regional Endangered Species Division at 134 Union Boulevard, fourth floor, Lakewood, Colorado.

**FOR FURTHER INFORMATION CONTACT:** Dr. James L. Miller, Regional Botanist, at the above address, (303/236-7398 or FTS 776-7398).

**SUPPLEMENTARY INFORMATION:****Background**

*Penstemon haydenii* (blowout penstemon) was described by Sereno Watson (1891), based on a collection by H.L. Webber near the Dismal River in Thomas County, Nebraska. The plant

was also found there in 1889 by Webber, and perhaps earlier by F.V. Hayden.

*Penstemon haydenii* is a member of the snapdragon family. It is a hairless perennial that grows 1 to 2 feet high. The stems are often decumbent, simple or branched, and very leafy. The stem leaves are linear to lanceolate, entire, 3 to 5 inches long by 1 to 3 inches wide, sessile and clasping. The inflorescence is a compactly crowded thyrse. Floral bracts are ovate to lanceolate, nearly equaling the flower. The corolla is blue and 1.5 to 2 inches long. *Penstemon haydenii* can be distinguished from *P. angustifolia* by its larger and lighter blue flowers. The species flowers from mid-May to late June. The flowers have a strong persistent fragrance that lures several kinds of bees and other pollinators.

Historically, *Penstemon haydenii* probably was widely scattered throughout the central part of the sandhills of Nebraska. All herbarium specimens and most literature citations indicate that it has never been collected outside of Nebraska. A purported Wyoming collection of Hayden was reported as being from Nebraska by Pennell (1935, p. 269), while reports of the species from Kansas are believed to be based on misidentifications (Craig Freeman, University of Connecticut, personal communication) and are not accepted in the *Atlas of the Flora of the Great Plains* (Barkley 1977).

The species is restricted to active blowouts in the sandhills of Cherry, Hooker, and Garden Counties Nebraska, and many historic locations do not support the species today because of elimination of the habitat due to stabilization of the sand dunes as a range-management practice.

The known sites of the blowout penstemon have population sizes that vary from 50 to 600 individuals. All the sites are well-developed blowouts in dune complexes with active sand and accompanying environmental extremes in wind, temperature, evapotranspiration, and soil moisture stress. *Penstemon haydenii* is found most frequently in microsites that are, or recently have been, zones of sand accumulation. The plant appears to be successional; it is not a primary invader and does not last when a blowout becomes completely vegetated (Pool 1914). The species survives burial in sand by sending off shoots at successively higher nodes. It withstands initial erosion, but does not have the rhizomatous system or extensive lateral roots to survive erosion that uncovers much more than a few inches of root length.

On December 15, 1980, Service published a notice of review for plants in the **Federal Register** (45 FR 82480); *Penstemon haydenii* was included. No comments on this species have been received in response to the notice. All taxa in the 1980 notice are treated as under petition (48 FR 53641). On February 15, 1983, the Service published a notice in the **Federal Register** (48 FR 6752) of its prior finding that the petitioned action on this species may be warranted in accord with section 4(b)(3)(A) of the Endangered Species Act of 1973 as amended (Act).

On October 13, 1983, October 12, 1984, and October 11, 1985, petition findings were made that listing *Penstemon haydenii* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires a recycling of the petition pursuant to a section 4(b)(3)(C)(i) of the Act. The Service now finds that the petitioned action is warranted and hereby publishes a proposed rule to implement the action, in accord with section 4(b)(3)(B)(ii) of the Act.

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Penstemon haydenii* S. Watson, blowout penstemon, are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Successful control of unstable sand dunes has resulted in restriction of the required blowout habitats of *Penstemon haydenii*. The blowouts where the species grow are conical or irregularly shaped craters that are scooped out of sand by the swirling action of prevailing westerly winds. Because of successful dune stabilization programs that protect farmlands in the sandhills, the species does not have adequate habitat to invade. The decrease in extent of blowouts has also made dispersal of the species more difficult to the fewer remaining natural blowouts.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The species is attractive and has been cultivated. Horticultural collecting is a potential threat for such a species known from so few individuals.

C. *Disease of predation.* None known.

D. *The inadequacy of existing regulatory mechanisms.* *Penstemon haydenii* is not protected by any State laws or regulations. Approximately 75 percent of known populations are found on Fish and Wildlife Service refuge land and 25 percent on State and private lands. The Service provides, under the provisions of 50 CFR Parts 25 through 28 some protection for the species on refuge lands. The species has no protection on State or private lands. The Endangered Species Act offers possibilities for protection of this species through section 7 (interagency cooperation) requirements and through section 9, which prohibits removal and reduction to possession of listed plants on areas under Federal jurisdiction.

E. *Other natural or manmade factors affecting its continued existence.* *Penstemon haydenii* comprises several small populations that consist of a total of approximately 950 individuals. The small population size makes the species vulnerable to localized environmental changes. In addition, the species occupies a successional niche in the development and eventual revegetation of blowout habitats. As the vegetation cover in these areas increases, *P. haydenii* undergoes local extirpation. Not only is the species rare, but it does not appear vigorous at the known localities, possibly because these blowouts have reached a stage of revegetation that exceeds the optimum for the species.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Penstemon haydenii* as endangered. With only about 950 individuals known and control of sand dunes occurring at the known locales, endangered status seems an accurate assessment of the species' condition.

#### Critical Habitat

Section 4(a)(3) of the Act, as amended requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. *P. haydenii* depends on early successional stages in the revegetation of sandhill blowouts for its habitat. Such blowouts are transient features of the sandhill topography, and a critical habitat designation reflecting the

present habitat occupied by the species would quickly become inappropriate as present blowouts become stabilized and new ones develop. Even supposing that critical habitat could be kept in a state of revision to reflect the varying range of the species, such public identification of habitat would be inadvisable for such an attractive flowering plant, which could easily be exposed to vandalism or horticultural collecting. The Service thus concludes that designation of critical habitat for this species would be neither practical nor beneficial to its conservation and therefore is not prudent.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibition against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990: June 29, 1983). Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Some management actions, such as stabilization of sand dunes by the U.S. Fish and Wildlife Service and

the Soil Conservation Service, may adversely impact this species, since stabilization deprives the plant of suitable habitat on which to grow.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plant species. With respect to *Penstemon haydenii*, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell it or offer it for sale in interstate or foreign commerce, or remove it from land under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few permits would ever be sought or issued since the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

#### Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Penstemon haydenii*;

(2) The location of any additional populations of *Penstemon haydenii* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Penstemon haydenii*.

Final promulgation of a regulation on *Penstemon haydenii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

#### National Environmental Policy Act

The Fish and Wildlife 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

- Barkley, T.M., ed. 1977. Atlas of the Flora of the Great Plains. The Iowa State University Press. 578 pp.
- Pennell, F.W. 1935. Scrophulariaceae of East Temperate North America. Academy of Natural Sciences, Philadelphia Monograph. 1:267-289.
- Pool, R.J. 1914. A study of the vegetation of the Sandhills of Nebraska. Minnesota Botanical Studies. 3(4):189.
- Smyth, B. 1899. Additions to the Flora of Kansas. Proceedings and Transactions of the Kansas Academy of Science. 6:158-167.
- Watson, S. 1891. *Penstemon Haydenii*, n. sp. Botanical Gazette. 16:311.

#### Author

The primary author of this proposed rule is Dr. James L. Miller, Endangered Species Division, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225. A status report was prepared by Mr. Robert W. Lichvar of the Wyoming Heritage Program, Cheyenne, Wyoming.

#### List of Subjects in 50 CFR Part 17

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

#### Proposed Regulation Promulgation

#### PART 17—[AMENDED]

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. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following in alphabetical order under the family Scrophulariaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

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(h) \* \* \*

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Scrophulariaceae—Snapdragon family:						
<i>Penstemon haydeni</i>	Blowout penstemon	U.S.A. (NE)	E		NA	NA

Dated: March 28, 1986.

P. Daniel Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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