

determination that *Penstemon haydenii* is endangered implements the protection provided by the Act.

DATES: The effective date of this rule is October 1, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Nebraska Field Office, U.S. Fish and Wildlife Service, 2604 St. Patrick, Suite 7, Grand Island, Nebraska 68803.

FOR FURTHER INFORMATION CONTACT: Mr. Wally Jobman, Staff Biologist, Fish and Wildlife Enhancement Division, Endangered Species Office, at the above address (308/381-5571 or FTS 541-6571).

SUPPLEMENTARY INFORMATION:

Background

Penstemon haydenii (blowout penstemon) was described by Sereno Watson (1891), based on a collection by H. L. Webber near 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, a member of the snapdragon family, 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 equalling the flowers. The corolla is blue and 1.5 to 2 inches long. *Penstemon haydenii* can be distinguished from *P. angustifolius* 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 by Hayden was reported as being from Nebraska (Pennell 1935, p. 269), and reports of the species from Kansas are believed to be 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, Box Butte, Sheridan, 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.

All known 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 apparently is successional and is a primary invader that does not persist 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.

In the December 15, 1980, **Federal Register** (45 FR 82480), the Service published a notice of review for plants under consideration for listing as endangered or threatened, including *Penstemon haydenii*. A second notice of review for plants was published September 27, 1985, in the **Federal Register** (50 FR 39526) and included *Penstemon haydenii* as a category 1 species. All candidate taxa in the 1985 notice are treated as under petition (48 FR 53641).

On February 15, 1983, the Service published a notice (48 FR 6752) of its prior finding that substantial scientific information had been presented that indicates that the petitioned action on this species may be warranted in accordance with section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (the 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 Endangered Species Act. Such finding requires a recycling of the petition pursuant to a section 4(b)(3)(C)(i) of the Act. On April 29, 1986, the Service published a proposed rule (51 FR 15929) to list *Penstemon haydenii* as an endangered species, constituting the next required 1-year finding.

Summary of Comments and Recommendations

In the April 29, 1986, proposed rule (51 FR 15929) 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

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule to Determine *Penstemon Haydenii* (Blowout Penstemon) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Penstemon haydenii* (blowout penstemon), to be an endangered species under the authority of the Endangered Species Act of 1973, as amended. Critical habitat is not being designated. The blowout penstemon is known from small populations in Cherry (3 populations), Hooker (1 population), Garden (3 populations), Box Butte (2 populations), and Sheridan (1 population) Counties, Nebraska. The number of plants estimated in 1986 in all populations was $2,100 \pm 200$. The number of plants varies considerably from year to year.

Approximately 40 to 45 percent of the populations are located on private and State lands, and 55 to 60 percent are located on 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 contribute to the decline of the species. This

agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices that invited general public comment were published in the *Omaha World Herald* (May 29–31 and June 1) and in the *Valentine Newspaper, Garden County News, and Hooker County Tribune* on May 29 and on June 5, 12, and 19, 1986. Seven comments were received and are discussed below. No public hearing was requested or held.

The Ainsworth Irrigation District expressed concern that landowners will not be allowed to repair and control blowouts if this species is listed as endangered. The Service responds that private landowners are not subject to any taking prohibitions for plants listed under the Endangered Species Act. However, any Federal agency that funds, authorizes, or carries out an action in the area where the blowout penstemon may be present must ensure under section 7 of the Endangered Species Act that its action is not likely to jeopardize the continued existence of the species. Species management activities may be needed to protect and recover the species which may affect some local actions that receive Federal funds for land stabilization activities.

The Nebraska Game and Parks Commission supported the listing and agreed that designation of critical habitat would not be prudent. The Commission brought to our attention that the statement, under the Summary of Factors Affecting the Species, that *Penstemon haydenii* is not protected by any State laws or regulations, was in error. On January 8, 1986, the Commission took formal action and listed the blowout penstemon as an endangered species under the authority of the Nebraska Nongame and Endangered Species Conservation Act. The Commission suggested Box Butte County be added to the list of county occurrences and that only 55–60 percent of the populations occur on Federal lands. According to the Commission, justifying listing on the basis of the number of individuals may not be appropriate because of the large fluctuation in plant numbers from year-to-year. The Service has considered these corrections and suggestions and has made appropriate changes in this final rule.

A professor at the University of Nebraska, Department of Agronomy, supported the listing and submitted his estimate of 2,100 \pm 200 plants as being the 1986 population. He estimated the population percentage on Federal land

to be between 25 and 50 percent. He also commented that population numbers tend to fluctuate greatly from year to year. The Service has incorporated these comments into the final listing.

Whiskey Basin Consultants commented that currently available information supports listing this species as endangered, but that additional surveys are needed to further document the occurrence of blowout penstemon. The Soil Conservation Service (SCS) questioned the advisability of listing the species without further survey of its range and pointed out that *Penstemon haydenii* is now listed as a State endangered species. However, no supporting biological information was received from these commenters, and the Service's decision to list the species is based on the best information currently available, which indicates a small number of populations.

A former part-owner of a site supporting *Penstemon haydenii* concurred that the species' numbers have decreased in the past 50 years and recommended methods to increase the blowout habitat.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Penstemon haydenii* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. 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* 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 also has made dispersal to the fewer remaining natural blowouts more difficult.

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 or Predation

None known.

D. The Inadequacy of Existing Regulatory Mechanisms

Penstemon haydenii is listed as endangered under the Nebraska Nongame and Endangered Species Conservation Act (sections 37–430 to 37–438, Nebraska Revised Statutes), which regulates possession, transportation, exportation from the State, processing, sale or offer for sale, or shipment of the species within the State. Under the provisions of 50 CFR Parts 25 through 28, the Service provides some protection for the species on refuge lands.

Approximately 55–60 percent of known populations are on Service refuge land and 40–45 percent are on State and private lands. The Endangered Species Act will provide additional protection of this species through section 7 (interagency cooperation) requirements and through section 9, which, among other things, 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 nine small populations that consist of a total of approximately 2,100 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 vegetational cover in these areas increases, *P. haydenii* undergoes local extirpation. The species is not only rare, but does not appear vigorous at the known localities, possibly because these blowouts have reached a stage of revegetation that exceeds the optimum habitat conditions for the species, and the number of new blowouts is decreasing.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Penstemon haydenii* as endangered. With only about 2,100 individuals known and stabilization of blowout complexes

causing further declines, endangered status seems an accurate assessment of the species' condition. For the reasons stated below, no critical habitat designation is included in this rule.

Critical Habitat

Section 4(a)(3) of the Endangered Species Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Penstemon haydenii* at this time. This species 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 and conspicuous flowering plant, which could easily be exposed to vandalism or horticultural collecting. All involved parties and landowners will be notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Thus, the Service 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 provided 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 prohibitions against collecting and trade 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 it is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. 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 a listed 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, might adversely impact this species, since stabilization deprives the plant of suitable habitat for growth and reproduction. There may be a need for consultation under section 7 regarding the Soil Conservation Service's partial funding of private erosion-control activities. The Fish and Wildlife Service will be responsible for assuring that management of the two National Wildlife Refuges on which this species occurs is consistent with maintaining its continued survival. The Service will also seek voluntary cooperation with private landowners in managing habitat suitable for this species, and may undertake re-establishment of populations within former range on Federal or other lands.

The Endangered Species Act and its implementing regulations found at 50 CFR 17.61 and 17.62 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, 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 or offer it for sale in interstate or foreign commerce, or remove it from areas 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 plant species under certain circumstances. With

respect to *P. haydenii*, few permits are expected to 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, DC 20240 (703/235-1903).

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 Cited

- Barkley, T.M., editor. 1977. Atlas of the Flora of the Great Plains. The Iowa State University Press. 578 pages.*
Pennell, F.W. 1935. Scrophulariaceae of East Temperate North America. Academy of Natural Sciences of Philadelphia Monographs, 1:267-269.
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 final rule is Mr. Wally Jobman, Nebraska Field Office, U.S. Fish and Wildlife Service, 2604 St. Patrick, Suite 7, Grand Island, Nebraska 68803. A status report was prepared by Mr. Robert W. Lichvar of Whiskey Basin Consultants, Cheyenne, Wyoming. Dr. James L. Miller of the Denver Regional Endangered Species Office served as editor.

List of Subjects in 50 CFR Part 17

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

Regulation 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: 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. Amend § 17.12(h) by adding the following, in alphabetical order under Scrophulariaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.
 * * * * *
 (h) * * *

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

Dated: August 3, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-20021 Filed 8-31-87; 8:45 am]

BILLING CODE 4310-55-M