
50 CFR Part 17**Endangered and Threatened Wildlife and Plants; Proposed Rule To Determine That *Phacelia formosula* is an Endangered Species****AGENCY:** U.S. Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

summary: The Service proposes the plant, *Phacelia formosula*, to be an Endangered species, under the authority of the Endangered Species Act. Historical and extant populations of this plant occur at only one known location in Colorado. Ownership of the site is shared by Jackson County and a private cattle company. Motorcycle traffic on the county property has altered that

habitat and endangers the existence of the species. The proposed determination that *Phacelia formosula* is an Endangered species, if finalized, would extend to this plant the protection provided by the Endangered Species Act of 1973, as amended. The Service seeks comment on this species.

DATES: Comments from the public must be received by November 3, 1980. Comments from the Governor of Colorado must be received by December 1, 1980.

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 North Glebe Road, Fifth Floor, Arlington, Virginia.

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

SUPPLEMENTARY INFORMATION: *Phacelia formosula* was discovered in 1918 and described the following year. It is an annual, herbaceous plant in the waterleaf family (Hydrophyllaceae), having a much-branched habit, glandular leaves, and attaining a height of 1.5-2.2 dm. The violet flowers are borne in clusters measuring up to five centimeters in length (Atwood, 1975). *Phacelia formosula* is known from only one population in North Park, Jackson County, Colorado, localized on a semi-arid sandstone bluff open to direct sunlight and winds. The area is sparsely vegetated. The continued existence of this plant and its habitat are being threatened by excessive motorcycle traffic (Wiley, 1979). This rule proposes to determine *Phacelia formosula* to be Endangered, which, if finalized, 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 the effects of the proposed action.

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 27823-27924) of his acceptance of this report 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. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523-24572) to determine approximately 1,700 vascular plant taxa to be Endangered species. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, **Federal Register** publication. *Phacelia formosula* was included in the July 1, 1975, notice and the June 16, 1976, proposal. General comments on the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909-17916.)

The Endangered Species Act Amendments of 1978 (P.L. 95-632) required that all proposals over two-years old be withdrawn. On December 10, 1979, the Service published a notice of the withdrawal of the June 16, 1976, proposal along with other proposals which had expired (44 FR 70796-70797). At this time, the Service has sufficient new information to warrant reproposing *Phacelia formosula*.

The Service has fully evaluated a comprehensive status report on the species. The Service has also consulted a number of biologists with expertise in this plant and knowledge of its habitat and received very recent information on its status. On July 25, 1980, Susan Tabar, a professor of botany at The Colorado College and employed this summer by the Bureau of Land Management, conducted a field survey of the plant's habitat. Despite the fact that conditions were excellent for the plant this growing season, she found only 117 mature specimens and 3 seedlings in four small patches. This information indicates that *Phacelia formosula* is in danger of extinction.

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 the 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 *Phacelia formosula* Osterhout are as follows:

1. *Present or threatened destruction, modification, or curtailment of its*

habitat or range—*Phacelia formosula* has been known from only one location near Walden in Jackson County, Colorado, since its discovery in 1918. At one time, the species was thought to occur also in Grand County, but that specimen is now considered a misidentification. The location of *Phacelia formosula* is a sandstone bluff above the Michigan River. The population occupies about ¼ mile of the bluff. In 1979 there were about ten adult plants and a few dozen seedlings; in 1980, in response to a particularly wet spring, there were 117 mature plants and three seedlings clustered in about four patches. Botanists have searched for other suitable habitat without success. Ownership of this habitat is shared by Jackson County and the Brownlee Cattle Company. Dr. N. Duane Atwood, a botanist with the U.S. Forest Service, noted that in 1969 there were 30 to 40 mature individuals of *Phacelia formosula* in this area and a possible location of a second population nearby. Plants at this second location are now totally absent. The area at that time also suffered from motorcycle activity.

The limited habitat of this species is being destroyed through heavy use by off-road motorcyclists on the county-owned land. Local motorcycle trails, which are restricted to the bluff, run through the population. This activity is continuing at present. This sparsely vegetated hillside offers no obstacle to motorcyclists. Plants can be dislodged or crushed and the fragile habitat is subject to erosion from continual disturbance. Once disturbed, these fragile plant communities take many years to recover.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable to this species.

3. *Disease or predation* (including grazing)—Grazing has occurred on the species' habitat. This grazing does not appear to threaten the species.

4. *The inadequacy of existing regulatory mechanisms*—There currently exist no State or Federal laws protecting this species or its habitat. The Endangered Species Act offers possibilities for protection of this species.

5. *Other natural or man-made factors affecting its continued existence*—Any human pressure on this species may exaggerate the possibility of small populations going extinct through natural population fluctuations. Reproductive success of the present population is reported as very poor, with low vigor. Vandalism, facilitated by expanding local awareness of the plant and its habitat, could destroy the species.

Critical Habitat

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 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.

In addition, the Section 4 regulations of February 27, 1980 (45 FR 13009-13026) 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.

If the exact locality of the species were published in the *Federal Register* and local newspapers at this time, the extremely rare *Phacelia formosula* might be additionally threatened by taking and vandalism, activities not directly prohibited for plants by the Endangered Species Act of 1973, as amended [see Subsection 9(a)(2), 16 U.S.C. 1538(a)(2)]. Since publication of Critical Habitat maps would make this species more vulnerable, it is not prudent to designate Critical Habitat in this case. After management and recovery plans have been developed for this plant, Critical Habitat may be beneficial and may be proposed in the future.

Effects of This Proposal if Published as a Final Rule

In addition to the effects discussed above, the effects of this proposal if published as a final rule 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. Provisions for Interagency Cooperation implementing this subsection are codified at 50 CFR Part 402. New regulations to accommodate amendments to Section 7 are in preparation. This proposed rule requires Federal agencies to confer with the Director on any of their actions which are likely to jeopardize this proposed species, and if published as a final rule Federal agencies would be required to insure that actions they authorize, fund or carry out are not likely to jeopardize the continued existence of this species. No such Federal involvement or impact is foreseen at this time.

The Act and implementing regulations published in the June 24, 1977, *Federal Register* (42 FR 32373-32381) set forth a series of general trade prohibitions and exceptions which apply to all Endangered plant species. The regulations which pertain to Endangered plants are found at Section 17.61 of 50 CFR and are summarized below. With respect to *Phacelia formosula* all prohibitions of Section 9(a)(2) of the Act, as implemented by Section 17.61, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to import or 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 Sections 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered species, under certain circumstances. No such trade in *Phacelia formosula* is known. It is anticipated that few permits involving the species would ever be requested.

If this plant is listed as an Endangered species, certain conservation authorities would become available and protective measures may be undertaken for it. These could include increased management of the species and its habitat, the possibility of land acquisition if necessary, the provision of two-thirds Federal (and one-third State) funds for the species should Colorado qualify for and enter into a cooperative agreement under Subsection 8(c)(2) of the Act, and the development of a recovery plan for the species as specified in Subsection 4(g).

No significant impact on State or local governments is expected as a result of this action. Jackson County, Colorado and a private individual share ownership of the sandstone bluff habitat of *Phacelia formosula*. Motorcycle use of the county property endangers this species. Protection of the species by habitat management might require interference with recreational use of the bluff. The county officials and private landowner are favorably disposed toward conservation of this species.

No significant economic impacts are expected. Cattle grazing occurs on the private portion of the *Phacelia formosula* habitat but does not appear to threaten the species. The reduction or elimination of the motorcycle use on the portion of the bluff where this species occurs would entail no permanent economic burden. At this time it appears that the proposed action would not

constitute a significant economic impact on landowners, the local economy, the regional economy, or on local governments. This species is not known to be the subject of any commercial activities.

If listed as Endangered 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.

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 the final rule whether this is a major Federal action which significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Public Comments Solicited

The Director intends that any rules finally adopted will be as accurate and effective as possible in the conservation of Endangered or Threatened species. Therefore, 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 solicited. Comments particularly are sought concerning:

1. Biological, commercial, or other relevant data concerning any threat (or the lack thereof) to the species included in this proposal.
2. The reasons why any habitat of this species should or should not be determined to be Critical Habitat as provided for by the Act.
3. Additional information concerning the range and distribution of this species.

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

The proposal is 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 primary authors

of the proposed rule are Barry S. Mulder and Bruce MacBryde, Office of Endangered Species, Washington, D.C. (703-235-1975). K. M. Mutz of Meiji Resource Consultants and J. L. Miller of the U.S. Fish and Wildlife Service prepared provisional documents, and Karen L. Wiley, Bureau of Land Management, Craig, Colorado, prepared the status report on this species.

References Cited

Atwood, N. D., 1975. A revision of the *Phacelia crenulatae* group (Hydrophyllaceae) for North America.

Great Basin Naturalist, Vol. 35, No. 2, pp. 161-162.

Wiley, K. L., 1979. Status report on *Phacelia formosula* Osterhout. Prepared by the Bureau of Land Management and submitted to U.S. Fish and Wildlife Service. Report dated October 18, 1979.

Regulation 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					
Hydrophyllaceae—Waterleaf family:						
<i>Phacelia formosula</i>	None.....	U.S.A. (CO).....	E	NA	NA	NA

Dated: August 20, 1980.

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

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