

Jackson County and private on the other. This determination of *Phacelia formosula* to be an Endangered species implements the protection provided by the Endangered Species Act of 1973, as amended.

DATES: This rule becomes effective on October 1, 1982.

ADDRESS: The complete file for this rulemaking is available for inspection by appointment during regular business hours at the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. James L. Miller, Staff Botanist, Endangered Species Staff, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (303/234-2496).

SUPPLEMENTARY INFORMATION: *Phacelia formosula* was discovered in 1918 at North Park and published as a new species in 1919. It was collected a few times after that, but modern work on the species did not begin until 1969 when Dr. Duane Atwood, now with the U.S. Forest Service, reobserved the historical (type) locale and published an analysis of the species in this 1975 revision of the species group.

The North Park phacelia is a small biennial only 6 to 9 inches tall. In the first year, it produces a basal rosette of leaves. The following year, it sends up a flowering stem, usually branched at the base, with violet flowers in several coiled branches. This 2-year plant then sets seed and dies.

This historical population, the scientific baseline for the species, has been severely disturbed by heavy motorcycle use and some trampling by cattle; the area is between an airport and campground and picnic area and is quite degraded. Since the species is a biennial, it must have 2 favorable years to set seed. The first population has fluctuated from 22 plants in 1979 to perhaps a maximum of 200 in the very favorable season of 1981. Five miles away, a second population of the species was discovered in 1981. The population consists of five sites in 8 miles along the North Platte River; the major concentration of plants is at just one of these sites, consisting of perhaps 2,500 individuals in the very favorable 1981 season, while the other four sites consisted of only 3 to 15 plants each. The site of the North Platte population with the major concentration of plants is within a Known Recoverable Coal Resource Area (KRCRA), has been partially leased for oil and natural gas, and also is subject to cattle trampling. Thus, the North Park phacelia is

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Determination That *Phacelia Formosula* is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: *Phacelia formosula* (North Park phacelia) is highly vulnerable due to the small number of populations and their threats. Only two populations are known, five miles apart. They occur on the sides of sandy bluffs above rivers in Colorado. Threats includes motorcycle use on the hillside, potential oil and gas or coal exploration, and damage from cattle trampling. Both populations have dual land ownership: Bureau of Land Management and private on one and

endangered because its two limited populations are in jeopardy from motorcycle activity and cattle trampling; from the potential of coal, oil, and gas development, and from the potential intensification of a given year's damage because of the species' biennial life cycle. It is not protected under any Colorado law.

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 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* (40 FR 24523-24572) to determine approximately 1,700 vascular plant taxa to be Endangered species pursuant to Section 4 of the Act. 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 2 years old be withdrawn. On December 10, 1979, the Service published a notice of the withdrawal of the still applicable portions of the June 16, 1976, proposal along with other proposals which had expired (44 FR 70796-70797).

A status report on this species was compiled in October 1979 by Karen Wiley-Eberle, Bureau of Land Management (BLM) botanist in Craig, Colorado, and received by the Service shortly thereafter. March, April, and July 1980 consultations with a number of biologists with expertise on this plant and knowledge of its habitat, and a July 1980 field survey of the species, provided new biological and economic data on *Phacelia formosula*. As detailed in the proposed rule (45 FR 58168), only 117 mature specimens and 3 seedlings in 4 small patches were found in July 1980 at the historical site. Fresh motorcycle trails ran through the population. The

Service determined that sufficient new information was available to repropose *Phacelia formosula* as an Endangered species (45 FR 58168-58171) on September 2, 1980. Critical Habitat was not proposed for this species, since publication of and a public meeting on the plant's type location near a town would increase the risk of vandalism from motorcycle recreationists to this significant population.

Summary of Comments and Recommendations

In the June 18, 1980, *Federal Register* proposed rule (45 FR 58168) 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. A letter was sent to the Governor of Colorado notifying him of the proposed rule and soliciting his comments and suggestions. All comments received were considered, and are discussed below.

Comments were received from the Governor of Colorado, State of Colorado Natural Areas Program (Natural Heritage Inventory), BLM Craig District Manager, Garden Club of America, and 10 private citizens (one comment contained 18 signatures). All supported the proposal for listing this species. The Governor, the Natural Areas Program, and the BLM suggested that the known location data in the proposal was very complete and emphasized listing without Critical Habitat to lessen publicity about the plant's location. Two of the private citizens commented in favor of designating Critical Habitat because they felt this could provide more protection to the species. Since designating Critical Habitat would have required publishing a location map in the *Federal Register* and local newspapers, as is required by the Endangered Species Act, the extremely rare *Phacelia formosula* might have been additionally threatened by taking or vandalism. A greater management burden would thus have been created. Better protection as desired by the commentors is given *Phacelia formosula* by not designating Critical Habitat at this time. No public meeting was requested on this listing, nor were unfavorable comments received.

Conclusion

After a thorough review and consideration of all available information, the Secretary has determined that *Phacelia formosula* Osterhout (North Park phacelia) is an Endangered species (in danger of extinction 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. These factors and their application to *Phacelia formosula* are as follows:

(1) *Present or threatened destruction, modification, or curtailment of its habitat or range.* *Phacelia formosula* is known from two populations five miles apart in Jackson County, Colorado, growing on sandy bluffs above rivers. In 1981, the North Platte population contained about 2,500 individuals of the biennial. In recent years, the smaller population has been as low as 22 plants. It has been severely impacted by motorcycle use on the slopes of the bluff, which causes deterioration of the habitat as well as the actual destruction of the plants. Its viability is in great jeopardy. Since the second (North Platte) population was only discovered in 1981, trend data for it is now being developed. It lies within a Known Recoverable Coal Resource Area and partially within an oil and gas lease. If there is exploration for or extraction of these resources in the future, careful consideration of this species would be necessary to avoid inadvertent destruction. Both populations have been impacted by cattle trampling.

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

(3) *Disease or predation* (including grazing). Cattle grazing has occurred on the species' habitat. It is trampling rather than direct grazing that appears to impact the species.

(4) *The inadequacy of existing regulatory mechanisms.* There currently exist no specific State or Federal laws protecting this species or its habitat. However, the BLM has declared its portion of and containing the second population to be unsuitable for coal development in order to emphasize the need to conserve this species. The State of Colorado has strict regulations to maintain water quality in live water, and would have to evaluate any coal mining plan potentially affecting the North Platte River. Since the plant population along the bluff is within ½ mile of the river bank, it is possible that any coal mining in that immediate area would be severely limited by hydrological considerations.

(5) *Other natural or man-made factors affecting its continued existence.* Any human threats to this species would exaggerate the possibility of small populations going extinct through natural population fluctuations. Reproductive success of the historical population is reported as very poor, with low vigor. A given year's damage is potentially intensified because of the

species' biennial life cycle (2 years are needed to set seed).

Critical Habitat

Section 4(a)(1) of the Endangered Species Act of 1973, as amended, provides, in part:

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, in the Section 4 regulations of February 27, 1980 (45 FR 13009) and codified at 50 CFR 424.12(a) it is stated 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 a detailed map of Critical Habitat of the species had been published in the **Federal Register** and local newspapers as is required by the Endangered Species Act, the extremely rare *Phacelia formosula* might have been additionally threatened by taking or vandalism from motorcycle recreationists, 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 a Critical Habitat map and the subsequently required public meeting would have called general attention to this species and made it more vulnerable, it was not prudent to propose Critical Habitat in this case. After management and recovery plans have been developed for this plant, Critical Habitat might be beneficial and might be proposed in the future.

Information Sources

- Anderson, J. L. 1982. Update of the Status Report on *Phacelia formosula* by Karen Wiley of BLM (1979). U.S. Fish and Wildlife Service, Region 6, Endangered Species Staff, Denver, Colorado.
- 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.
- Baker, Wm. L. 1981. Site (Preserve) Summary for the North Platte Preserve. The Nature Conservancy, Colorado Field Office.
- 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.

Effects of this Rule

In addition to the effects discussed above, the effects of this rule include, but are not necessarily limited to, the following:

The Act and implementing regulations published in the June 24, 1977, **Federal Register** (42 FR 32373-32381) and codified in Title 50 of the Code of Federal Regulations set forth a series of general trade prohibitions and exceptions which apply to all Endangered plant species. The regulations are found at §§ 17.61-17.63 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 § 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, 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. The Act and §§ 17.62 and 17.63 provide for the issuance of permits to carry out otherwise prohibited activities involving Endangered species under certain circumstances. International and interstate commercial trade in *Phacelia formosula* does not exist and probably few permits ever would be requested.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species which is listed as Endangered. This protection will now accrue to *Phacelia formosula*. Provisions for Interagency Cooperation implementing Section 7 are codified at 50 CFR Part 402. These require Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of *Phacelia formosula*. Thus any habitat essential for its survival on BLM land can be protected. New rules implementing the amendments to Section 7 are in preparation.

This determination will have little, if any, economic impact on activities on Federal land. Priority for coal development in this area is low, the BLM has no plans to start coal leasing, and it has declared its portion of the site unsuitable for coal development to emphasize the need to conserve this species. Eighty acres of a 1,958-acre oil and gas lease overlap onto the edge of the bluffs where the major concentration of the second population occurs. The potential for exploratory drilling is considered medium to low and it is likely that the drill pad(s) would be located above and away from the bluff and the plants, where the land in the lease is more level.

Trampling damage to the plants and fragile soil on Federal land is not so severe as that at the first site. It is possible that a reduction in grazing or change in season of use is all that would be needed.

By listing this plant as an Endangered species, certain conservation authorities become available and protective measures may be undertaken for it. These could include the use of Federal and State funds for the species since Colorado has a plant cooperative agreement under section 6(c)(2) of the Act. A recovery plan for the species, as specified in section 4(g), also could be developed.

Effect Internationally

The Service will review whether this species should be considered for placement on the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, or other appropriate international agreements.

National Environmental Policy Act

An Environmental Assessment has been prepared in conjunction with this rule. It is on file in the Service's Denver Regional Office, and Washington Office of Endangered Species. 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 and 40 CFR Parts 1500-1508.

Note.—The Department of the Interior has determined that this rule is not a major rule under Executive Order 12291. This determination is based upon the assessment that only minimal costs for fencing would be associated with protecting the plant from motorcycles and that neither oil and gas leasing nor coal mining would be significantly affected by this listing. 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). 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. 3501 *et seq.*).

Authority and Authors

This rule 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 author of this rule is John Anderson, U.S. Fish and Wildlife Service, Endangered Species Staff, P.O. Box 25486, Denver, Colorado 80225 (303/234-2496). Dr.

Bruce MacBryde of the Service's Washington Office of Endangered Species served as editor (703/235-1975).

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 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as set forth below:

Amend § 17.12(h) by adding in alphabetical order under Hydrophyllaceae, the following plant:

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rule
Scientific name	Common name					
Hydrophyllaceae Waterleaf family:						
<i>Phacelia formosula</i>	North Park phacelia	U.S.A. (CO).....	E	120	N/A	N/A

Dated: August 18, 1982.
G Ray Arnett,
Assistant Secretary for Fish and Wildlife and Parks.
 FR Doc. 82-24025 Filed 8-31-82; 8:45 am]
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