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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**Endangered and Threatened Wildlife  
and Plants; Determination of  
Threatened Status for *Lespedeza  
leptostachya* (Prairie Bush-Clover)**

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

**ACTION:** Final rule.

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**SUMMARY:** The Service determines threatened status for *Lespedeza leptostachya* Engelmann (prairie bush-clover). *L. leptostachya* has been extirpated from much of its historic range in northern and south-central Iowa, northern Illinois, southern Minnesota, and western Wisconsin. Construction and agricultural activities, livestock trampling, and unfavorable vegetational changes are threatening the species. However, the plant is extant at 26 sites. This measure implements the protection provided by the Endangered Species Act of 1973, as amended, for this plant.

**DATE:** The effective date of this rule is February 9, 1987.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business

hours at the Service's Regional Office of Endangered Species, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

**FOR FURTHER INFORMATION CONTACT:** James M. Engel at the above address (612/725-3276 or FTS 725-3276).

**SUPPLEMENTARY INFORMATION:**

**Background**

*Lespedeza leptostachya* is a herbaceous perennial member of the pea family (Fabaceae) endemic to the Midwest. It is one of about 40 species of *Lespedeza* worldwide. Clewell (1966a) recognized 12 species of *Lespedeza* in North America. *L. leptostachya*, with woody rhizomes, grows to about 40 inches (1 meter) in height, has narrow, linear, compound leaves with silvery-white hairs, and slender terminal flowering spikes with 15-30 flowers. The corolla is white to light purple. Clewell (1966c) presented a detailed description of the species, noting that *L. leptostachya* flowers from late July through mid-September and inhabits dry of mesic native prairies in northern Illinois, northern and south-central Iowa, southern Minnesota, and western Wisconsin. Such prairies are usually well-drained, are often gravelly, and occur on slopes of kames or eskers (hills of glacially deposited material), and river terraces. *L. leptostachya* is a colonizer of open habitats. Clewell (1966c) observed that *Lespedeza* species are shaded or crowded in habitats invaded by perennial grasses and woody species. *Lespedeza* species, however, are adapted to frequent fires and increase in response to fire.

*Lespedeza leptostachya* has always been rare and local throughout its four-state range. Formerly known from eight Illinois counties, there were approximately 370 plants at four sites in four Illinois counties (Du Page, Lee, Ogle and Winnebago) in 1980. Only 66 individual plants could be located at the four sites in 1981, but it is not known whether a real population decline has taken place (Bowles and Kurz 1981). Each site totals less than one acre (0.4 Hectare). *L. leptostachya* is listed officially as threatened by the Illinois Department of Conservation.

In Iowa, the historically known range of *L. leptostachya* included 22 counties in the northern and south-central sections of the State. There are currently eleven extant populations in eight counties (Clarke, Dickinson, Emmet, Howard, Lucas, Osceola, Story and Winneshiek (Watson 1983, Wilson, Iowa Conservation Commission, pers. comm. Dec. 31, 1986)). The species is listed officially as endangered by the Iowa

Conservation Commission. The total number of plants in Iowa is estimated at approximately 1,850 (Watson 1983, Wilson pers. comm.)

In Minnesota, *L. leptostachya* is extant at eight sites in four southern counties (Cottonwood, Jackson, Goodhue, and Renville (Smith 1981)). Over 4,500 plants have been estimated on less than 50 acres (20 hectares). One site contains more than 2,000 plants, the largest known extant population. The species is listed officially as threatened by the Minnesota Department of Natural Resources.

In Wisconsin, there are three extant populations of *L. leptostachya* in three counties (Dane, Pierce, and Sauk (Alverson 1981)). Three historic populations are known to be extirpated. The species is listed officially as threatened by the Wisconsin Department of Natural Resources.

Section 12 of the Endangered Species Act of 1973 (Act) 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, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of this report as a petition within the context of Section 4(c)(2) of the Act (petition acceptance is now governed by Section 4(b)(3) of the Act, as amended), and of its intention to review the status of the plant taxa named within. *L. leptostachya* was named in the Smithsonian report as threatened and was included in the Service's 1975 notice of review.

*Lespedeza leptostachya* was also included as a category-1 species in an updated notice of review for plants published in the December 15, 1980, **Federal Register** (45 FR 82480). Category 1 comprises taxa for which the Service presently has sufficient biological information to support their being proposed to be listed as endangered or threatened.

The Endangered Species Act Amendments of 1982 required that petitions, such as that of the Smithsonian, that were still pending as of October 13, 1982, be treated as having been received on that date. Section 4(b)(3) of the Act, as amended, requires that, within 12 months of the receipt of such a petition, a finding be made as to whether the requested action is warranted, not warranted, or warranted but precluded by other activity involving additions to or removals from the Federal Lists of Endangered and Threatened Wildlife and Plants. Therefore, on October 13, 1983, the

Service made the finding that listing of *Lespedeza leptostachya* was warranted but precluded by other pending listing activity. This finding was published in the **Federal Register** of January 20, 1984 (49 FR 2485). In the case of such a finding, the petition is recycled and another finding becomes due within 12 months. On October 12, 1984, another finding of warranted but precluded was made with respect to the listing of *Lespedeza leptostachya*. This finding was published in the **Federal Register** of May 10, 1985 (50 FR 19761). Still another finding was due by October 12, 1985, and that finding, to the effect that the petitioned action was warranted, was incorporated in a proposed rule to determine threatened status for *Lespedeza leptostachya*, issued in the **Federal Register** of December 6, 1985 (50 FR 49967).

**Summary of Comments and Recommendations**

In the proposed rule of December 6, 1985, 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 agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices, inviting general public comment, were published in the *Dixon Telegraph*, Peoria, Illinois, December 20, 1985; the *Ogle County Life*, Oregon, Illinois, December 23, 1985; the *Register-Star*, Rockford, Illinois, December 19, 1985; the *Daily Journal*, Wheaton, Illinois, December 23, 1985; the *Esterville News*, Esterville, Iowa, December 19, 1985; the *Herald-Patriot*, Chariton, Iowa, December 19, 1985; the *Times-Plain Dealer*, Cresco, Iowa, December 18, 1985; the *Decorah Journal*, Decorah, Iowa, December 19, 1985; the *Osceola Tribune*, Osceola, Iowa, December 26, 1985; the *Spirit Lake Beacon*, Spirit Lake, Iowa, December 19, 1985; the *Republican Eagle*, Red Wing, Minnesota, December 19, 1985; the *Jackson County Livewire*, Jackson, Minnesota, December 23, 1985; the *Times Journal*, Olivia, Minnesota, December 18, 1985; the *Cottonwood County Citizen*, Windom, Minnesota, December 18, 1985; the *Wisconsin State Journal*, Madison, Wisconsin, December 19, 1985; and the *Pierce County Herald*, Ellsworth, Wisconsin, December 19, 1985. No public hearing was requested or held.

Seven comments were received. One from the Department of the Army, Corps of Engineers (COE) noted that

*Lespedeza leptostachya* is not known to occur on COE lands, and that because of the localized distribution and dry prairie habitat requirements, it is unlikely that determining the plant to be a threatened species would have any impact on COE operations. The International Union for Conservation of Nature and Natural Resources, Minnesota's Departments of Natural Resources (DNR) and Transportation (DOT), the U.S. Forest Service and the Iowa Conservation Commission all supported the proposal. The Minnesota DNR advised that an area within Kilen Woods State Park, containing the largest population of *Lespedeza leptostachya* in public ownership, is designated as a Scientific and Natural Area. Minnesota has also initiated a long-term research project for management purposes. The Minnesota DOT noted that seeds of *Lespedeza leptostachya* are being commercially produced. The facility producing these seeds has been contacted and furnished information regarding permitted and lawful activities with the species. The Iowa Conservation Commission provided information on existing populations and identified two additional occurrences of *L. leptostachya* in Story and Osceola Counties. This new information has been incorporated into the appropriate sections of this rule. The Howard County, Iowa, Weed Commissioner requested a picture of the plant and stated that the county would comply with the proposed regulations when road-side spraying is done.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Lespedeza leptostachya* should be classified as a threatened 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 endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lespedeza leptostachya* Engelman (prairie bush-clover) are as follows:

**A. The present or threatened destruction, modification, or curtailment of its habitat or range.** Although *L. leptostachya* has always had a limited range, the current range is only a fraction of its former range. Agricultural activity has eliminated most of the species' suitable prairie habitat. Moreover, many of the 26 extant sites

are threatened by several factors. One population in Illinois could be destroyed by quarrying activities, although presently it is protected by the owner of the site (Bowles and Kurz 1981). The State's largest population, of 100 plants, is on a State highway roadside currently being studied for widening. In Minnesota, several sites supporting the species are threatened by quarrying, residential development, and agricultural activities (Smith 1981). In Wisconsin, one of the three extant populations is threatened by residential development and vehicle use (Alverson 1981).

**B. Overutilization for commercial, recreational, scientific, or educational purposes.** With any rare plant species there is the possibility wildflower collectors may reduce populations in more accessible sites. Although this species is not known to have been affected by collecting, a potential threat exists.

**C. Disease or predation.** No diseases are known to adversely affect *L. leptostachya*. Heavy livestock grazing may be detrimental to the species (Smith 1981). One site in Iowa is subject to intensive grazing (Watson 1983).

**D. The inadequacy of existing regulatory mechanisms.** *L. leptostachya* is listed officially as endangered or threatened by the States of Illinois, Iowa, Minnesota, and Wisconsin. Illinois law protects endangered and threatened plants found on State property; Iowa regulations prohibit removal, possession, and sale of any plant species on Federal or State lists; Minnesota statutes prohibit taking, transporting, and sale of State endangered and threatened plants from all lands, except ditches, roadways, and certain types of agricultural and forest lands; Wisconsin regulations prohibit any person from removing or transporting any endangered or threatened wild plant away from its native habitat on public property, or from property he or she does not own or control, except in the course of forestry or agricultural practices or in the construction and maintenance of a utility facility. Although *Lespedeza leptostachya* is offered various forms of protection under these States laws, monitoring and enforcement are difficult due to limited personnel. The Endangered Species Act offers possibilities for protection of this taxon through section 6 by cooperation between the States and the Service and through section 7 (interagency cooperation) requirements. Most of the Iowa populations of *L. leptostachya* are contained within State Preserves. One

site in Illinois is owned by the Illinois Department of Transportation. One site in Minnesota is on land owned by the Minnesota Historical Society; another site is owned by a private college. The largest population of *L. leptostachya* in Minnesota, of about 2,000 plants, is located within the boundaries of the Kilen Woods State Park. Portions of the park that contain *Lespedeza leptostachya* are designated as a State Scientific and Natural Area. Two sites in Wisconsin are on land owned by either The Nature Conservancy or the Wisconsin Department of Natural Resources. The Nature Conservancy also has cooperated with several private landowners to protect the species. The Endangered Species Act would afford additional protection to *L. leptostachya*.

**E. Other natural or manmade factors affecting its continued existence.** Because there are relatively few remaining populations of *Lespedeza leptostachya*, and these are small in size, the species could be jeopardized simply by natural fluctuations in numbers and inadvertent human disturbance.

In determining to make this final rule, the Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this taxon. Based on this evaluation, the preferred action is to list *L. leptostachya* as a threatened species, because of the known losses of local populations. For reasons detailed below, it is not considered prudent to designate critical habitat.

#### Critical Habitat

Section 4(a)(3) of the 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 designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). In the present case, the Service believes that designation of critical habitat would not be prudent because no benefit to the taxon can be identified that would outweigh the potential threat of vandalism or collection, which might be exacerbated by the publication of a detailed critical habitat description.

#### 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 land acquisition, if necessary, and cooperation with the States; it also requires that recovery actions be carried out for all listed species. These actions are initiated by the Service following listing. The protection required by Federal agencies and applicable prohibitions 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 (see revision at 51 FR 19926; June 3, 1986). 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. There are no known Federal activities, current or planned, that would affect *Lespedeza leptostachya*.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *L. leptostachya*, all trade prohibitions of section 9(a)(2) of the Act, as implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to

import or export this species, 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 an area under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of threatened plant species are exempt from those prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can 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. It is anticipated that few trade permits would ever be sought or issued, since this plant is not common in cultivation or in the wild. Requests for copies of the regulations on plants, and inquires 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. The reasons for this determination were published in the **Federal Register** of October 25, 1983 (48 FR 49244).

#### References Cited

- Alverson, W.L. 1981. Status report on *Lespedeza leptostachya*. Wisconsin Dept. of Natural Resources. Unpubl. ms. 12 pp.
- Bowles, M.L., and D.R. Kurz. 1981. Status report on *Lespedeza leptostachya*. Illinois Dept. of Conservation. Unpubl. ms. 7 pp.

- Clewell, A.F. 1966a. Native North American species of *Lespedeza*. *Rhodora* 68:359-405.
- . 1966b. Natural history, cytology, and isolating mechanisms of the North American *Lespedeza*. Tall Timbers Res. Stat. Bull. 6. 39 pp.
- . 1966c. Identification of the *Lespedeza*s in North America. Tall Timbers Res. Stat. Bull. 7. 29 pp.
- Smith, W.R. 1981. Status report on *Lespedeza leptostachya* Engelm. Minnesota Natural Heritage Program. Unpubl. ms. 8 pp.
- Watson, W.C. 1983. Status report on *Lespedeza leptostachya* Engelm. in Iowa. Iowa Conservation Commission. Unpubl. ms. 24 pp.

#### Author

The primary author of this final rule is William F. Harrison (see ADDRESSES section) (612/725-3276 or FTS 725-3276).

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

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

#### Regulation Promulgation

#### PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended 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. Amend § 17.12(h) by adding the following, in alphabetical order under the family Fabaceae, 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               |                               |        |             |                  |               |
| Fabaceae—Pea family: .              | .                         | .                             | .      | .           | .                | .             |
| <i>Lespedeza leptostachya</i> ..... | Prairie bush-clover ..... | U.S.A. (IA, IL, MN, WI) ..... | T      | 253         | NA               | NA            |
| .                                   | .                         | .                             | .      | .           | .                | .             |

Dated: November 28, 1986.

**P. Daniel Smith,**

*Acting Assistant Secretary for Fish and  
Wildlife and Parks.*

[FR Doc. 87-465 Filed 1-8-87; 8:45 am]

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