

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Proposal To Determine *Lespedeza leptostachya* (Prairie Bush-Clover) To Be a Threatened Species****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

SUMMARY: The Service proposes to determine *Lespedeza leptostachya* Engelmann (Prairie bush-clover) to be a threatened species. *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 about 24 sites. This proposal, if made final, will implement the protection provided by the Endangered Species Act of 1973, as amended, for *L. leptostachya*. Critical habitat is not being proposed at this time.

The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by February 4, 1986. Public hearing requests must be received by January 21, 1986.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Endangered Species Coordinator, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT: James M. Engel, Endangered Species Coordinator (see **ADDRESSES** above) (612-725-3276 or FTS 725-3276).

SUPPLEMENTARY INFORMATION:**Background**

Lespedeza leptostachya is an 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 flowing spikes with 15-30 flowers each. 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 to mesic native prairies in northern Illinois, northern and south-central Iowa, southern Minnesota, and western Wisconsin. Such prairies are usually well-drained, and 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 counties (DuPage, 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. *L. leptostachya* is listed officially as threatened by the Illinois Department of Conservation.

In Iowa the historically known range of *L. leptostachya* included 23 counties in the northern and south-central sections of the State. There are currently nine extant populations in six counties (Clarke, Dickinson, Emmet, Howard, Lucas, and Winnishiek (Watson 1983)), and the species is listed officially as endangered by the Iowa Conservation Commission.

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. One site contains more than 2,000 plants and is 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, Sauk, and Pierce

(Alverson 1981)). Three historic populations are known to have been 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. On July 1, 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)) 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 species.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been submitted on that date. The deadline for a finding on those species, including *L. leptostachya*, was October 13, 1983. On October 13, 1983, and again on October 12, 1984, the petition finding was made that listing *L. leptostachya* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Notice of the 1983 finding was published on January 20, 1984 (49 FR 2485), and of the 1984 finding on May 10, 1985 (50 FR 19761). Such a finding requires a reevaluation of the petition with 12 months, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made; this proposed rule constitutes the new finding that the petitioned action is warranted, and proposes to implement the action in accordance with Section 4(b)(3)(B)(ii) of the Act.

Status reports compiled by Alverson (1981), Bowles and Kurz (1981), Smith (1981), and Watson (1983), as well as other pertinent literature (see "Literature Cited," below), provide the biological basis for this proposed rule. The data demonstrates low numbers of

plants and continuing threats to the species.

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 (codified at 50 CFR Part 424; see 49 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. 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 *L. leptostachya* 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 the former range. Agricultural activity has eliminated most of the species' suitable prairie habitat. Moreover, many of the 25 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 (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 are threatened by quarrying, residential development, and agricultural activities (Smith 1981). In Wisconsin, one of the three extant sites 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 be adversely impacting *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. *Lespedeza 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 the Federal and 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 State 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*, of about 2,000 plants, is located within the boundaries of the Kilen Wood State Park. Two sites in Wisconsin are on land owned by either The Nature Conservancy or Wisconsin Department of Natural Resources. The Natural 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. None known.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this taxon, in determining to propose this rule. Based on this evaluation, the preferred action is to list *L. leptostachya* as a threatened species, because of the known losses of local populations of this rare species. For reasons detailed below, it is not considered prudent to propose designation of 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 any habitat of a species that is considered to be critical habitat at the time the 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 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. When a species is 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 an activity 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 planned in the range of *L. 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, 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. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions would 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. International and interstate commerce in *L. leptostachya* is not known to exist. 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.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species in areas under Federal jurisdiction. Section 4(d) allows for the provision of such protection to threatened species through regulations. *L. leptostachya*, however, is not known to occur on Federal lands.

If this species is listed under the Act, the Service will review it to determine whether it should be considered for placement upon one of the appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which is implemented through Section 8A of the Act, and whether it should be considered for other appropriate international agreements.

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 *L. leptostachya*;

(2) The location of any additional populations of *L. leptostachya* and the reasons why any habitat of this species 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 *L. leptostachya*.

Final promulgation of the regulation on *L. leptostachya* 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, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments, 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** (48 FR 49244) on October 25, 1983.

Literature Cited

- Alverson, W.L. 1981. Status report of *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 *Lespedezas*. *Tall Timbers Res. Stat. Bull.* 6. 39 pp.
- . 1966c. Identification of the *Lespedeza* 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 of *Lespedeza leptostachya* Engelm. in Iowa. Iowa Conservation Commission. Unpubl. ms. 24 pp.

Authors

The authors of this proposed rule are John G. Sidle and 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).*

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. 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 Fabaceae, 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					
Fabaceae—Pea family:						
<i>Lespedeza leptostachya</i>	Praine brush-clover	U.S.A. (IA, IL, MN, WI)	T		NA	NA

Dated: November 13, 1985.

William P. Horn,
Assistant Secretary for Fish and Wildlife and Parks.

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