

FINDING OF NO SIGNIFICANT IMPACT
Designation of Critical Habitat for
***Ipomopsis polyantha* (Pagosa skyrocket), *Penstemon debilis* (Parachute beardtongue),**
and *Phacelia submutica* (Debeque phacelia) in Colorado

The U.S. Fish and Wildlife Service (Service) is designating critical habitat for *Ipomopsis polyantha* (Pagosa skyrocket), *Penstemon debilis* (Parachute beardtongue), and *Phacelia submutica* (DeBeque phacelia) in Colorado. Approximately 9,641 acres (ac) (3,902 hectares (ha)) across 4 units are being designated as critical habitat for *Ipomopsis polyantha*, with 2 occupied and 2 unoccupied units. Approximately 15,510 ac (6,217 ha) across 4 units are being designated as critical habitat for *Penstemon debilis*, with 2 occupied and 2 unoccupied units. Approximately 25,484 ac (10,313 ha) across 9 units are being designated as critical habitat for *Phacelia submutica*, all are occupied. In total, approximately 50,635 ac (20,432 ha) are being designated as critical habitat for the 3 species. The critical habitat is located in Archuleta, Garfield, and Mesa Counties, Colorado. The designated critical habitat is located on private as well as local, State, and Federal government lands. The final rule excludes all private lands (owned by OXY USA WTP LP and affiliates) that are included in a Colorado Natural Areas Agreement.

We have analyzed two alternatives, including—No Action and the Proposed Action (Designation of critical habitat as identified in the Final Rule). The Service has developed an Environmental Assessment for the designation of critical habitat for the three plants which analyzes each of these alternatives. Additionally, the potential economic impacts of critical habitat designation were evaluated in the draft and final economic analyses.

The Proposed Action, would have similar effects to the three plants as the No Action Alternative in that there may be minimal additional impacts resulting from critical habitat designation beyond those already considered in Section 7 consultation since the 2011 listing. However, these additional impacts would be more widespread under Alternative B, as it would designate critical habitat. Benefits to the three plants that may accrue from the designation of critical habitat, under Alternative B, would relate to the requirement under Section 7 of the Endangered Species Act (ESA) that Federal agencies review their actions to assess their effects on critical habitat. Designation of critical habitat may also provide some benefits to the three plants by alerting Federal agencies to situations when Section 7 consultation is required. Another potential benefit is that critical habitat designation may help to focus Federal, State, and private conservation and management efforts by identifying the areas of most importance to a species. Critical habitat also allows for long-term project planning for species conservation.

Section 7 of the ESA requires Federal agencies to ensure, through consultation with the Service, that action they fund, authorized, or carry out, will not likely jeopardize the continued existence of any endangered or threatened species or result in the destruction of adverse modification of critical habitat.

Our Environmental Assessment recognizes the difference between Section 7 consultations that result from the listing of the species (i.e., jeopardy) that would occur regardless of critical habitat designation and consultations that result from the presence of critical habitat (i.e., adverse modification). Separating the future Section 7 impacts into those that are attributable to the

listing of the species and those that are attributable to critical habitat designation yields a more accurate estimation of the actual impacts and cost of designating critical habitat, and also provides an estimate of the total cost of species conservation.

Aside from the added protection that may be provided under Section 7, the ESA does not provide other forms of protection to lands designated as critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Because consultation under Section 7 of the ESA does not apply to activities on private or other non-Federal lands that do not involve a Federal action, critical habitat designation would not result in any regulatory requirement for these actions.

This designation has been coordinated with all interested and/or affected parties. The Service published Notice of Availability and provided written notice to interested individuals including Native American Tribes, private landowners, county commissioners, congressional and State representatives, State and Federal agencies, and other potentially interested parties, of the draft Environmental Assessment and draft Economic Analysis, on March 27, 2012 (77 FR 18157) and provided 30 days for public review and comment. All comments received were analyzed and, where appropriate, were incorporated into the final Environmental Assessment, final Economic Analysis, and/or the Final Rule.

As discussed in the March 27, 2012, notice announcing the availability of the draft Economic Analysis (77 FR 18157), the draft analysis estimated for the proposed potential future costs of designating critical habitat, were estimated to be between \$967,000 and \$14.8 million over 20 years using a 7% discount rate. Impacts to oil and gas development represent 90 to 99% of these costs.

After taking into consideration public comment on the proposal, the draft Economic Analysis and the draft National Environmental Policy Act (NEPA) document, we evaluated the benefits of conservation programs, plans, and partnerships relative to the regulatory benefits of critical habitat pursuant to Section 4(b)(2) of the ESA. As a result, we are finalizing the critical habitat designation for the three plants and have prepared a final Environmental Assessment available on the Service's website: <http://www.fws.gov/mountain-prairie/species/plants/3ColoradoPlants/index.html>.

Council on Environmental Quality Analysis of Significance

Under the Council on Environmental Quality (CEQ) 40 CFR Part 1508.27, the determination of "significantly" requires consideration of both context and intensity.

Context

Impacts of the action, although long-term, will not be national, only regional and mostly local in context; and any that occur are expected to be small.

Intensity

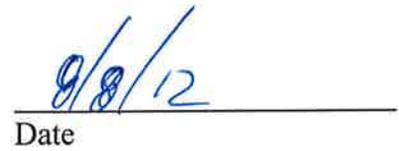
Intensity is defined by CEQ as referring to the severity of impact. The following 10 points identified by CEQ were considered in evaluating intensity:

1. We foresee minimal additional negative impacts beyond what we already consider through Section 7 consultation since the 2011 listing. There may be perceived negative impacts but we are carrying out a public outreach program, which should address and minimize most of those misconceptions. There may be some beneficial impacts to the environment.
2. This designation will not have a discernible impact on human safety.
3. Although several areas designated as critical habitat are in proximity to historic and cultural sites, parklands, farmland, wetlands, scenic rivers and ecologically critical areas, it is unlikely that adverse impacts will occur to these areas.
4. There is a perception by some segments of the public that critical habitat designation will severely limit property rights; however, critical habitat designation has no effect on private actions on private land that do not involve Federal approval or action.
5. The Service has designated critical habitat for other species in the recent past and we are familiar with the associated effects. Therefore, we anticipate minimal effects to the human environment and we are certain this action does not involve any unique or unknown risks.
6. This designation of critical habitat is not expected to set any precedents for future actions with significant effects or represent a decision in principle about a future consideration because critical habitat has been designated before for other species, as required by law.
7. This designation of critical habitat will be additive (cumulative) to critical habitat that has been, and will be, designated for other species. However, it is the Service's conclusion that the adverse impacts of any and all critical habitat designations are small, and, therefore, insignificant due to the existing impacts, both beneficial and adverse, already resulting from the listing of the species involved.
8. This designation will have minimal adverse effects to National Register of Historic Places or other cultural sites.
9. Most impacts from this designation of critical habitat will be beneficial to endangered and threatened species, particularly the three plants. Designation of critical habitat can help focus conservation activities for listed species by identifying areas essential to conserve the species. Designation of critical habitat also alerts the public, as well as land-managing agencies, to the importance of these areas. These benefits are minimal, as most occurred at the time of listing.
10. This designation of critical habitat will not violate any Federal, State, or local laws or requirements imposed for the protection of the environment.

Based on a review and evaluation of the information contained in the Environmental Assessment and the analysis above, it is my determination that the designation of critical habitat for *Ipomopsis polyantha* (Pagosa skyrocket), *Penstemon debilis* (Parachute beardtongue), and *Phacelia submutica* (Debeque phacelia) in Colorado does not constitute a major Federal action significantly affecting the quality of the human environment under the meaning of Section 102(2)(c) of the NEPA of 1969 (as amended). As such, an Environmental Impact Statement is not required.



Stephen D. Guertin
Regional Director, Region 6



Date