

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination That *Arctomecon humilis* Is an Endangered Species**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: The Service determines *Arctomecon humilis* (dwarf bearpoppy), a native plant of Utah, to be an Endangered species. Habitat destruction through land development and off-road vehicle use threatens the plant in various parts of its range. Removal of the plants by private collectors continues to deplete populations even though the species will not survive in cultivation. This action will extend to this species the protection provided by the Endangered Species Act of 1973, as amended.

DATE: This rule becomes effective on December 6, 1979.**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 703/235-2771.**SUPPLEMENTARY INFORMATION:****Background**

Arctomecon humilis was discovered in 1874, and described as a new species in 1892. It is known only from one geological formation in southwestern

Utah, in the vicinity of St. George and Bloomington. It is threatened by general land development and collecting for home gardens, even though it does not survive in cultivation because of its exacting soil requirements. An old report of the plant's presence in Arizona has not been confirmed by recent field work.

The Secretary of the Smithsonian Institution, in response to Section 12 of the Endangered Species Act, presented his report on plant taxa to Congress on January 9, 1975. This report, designated as House Document No. 94-51, contained lists of over 3,100 U.S. vascular plant taxa considered by the Smithsonian Institution to be Endangered, Threatened, or extinct. On July 1, 1975, the Director published a notice in the *Federal Register* (40 FR 27823-27924) of his acceptance of the report of the Smithsonian Institution as a petition to list these species under Section 4(c)(2) of the Act, and of his intention thereby to review the status of the plant taxa named within, as well as any habitat which might be determined to be critical.

On June 16, 1976, the Service published a proposed rulemaking in the *Federal Register* (41 FR 24523-24572) to determine approximately 1,700 vascular plant taxa to be Endangered species pursuant to Section 4 of the Act. This list of 1,700 plants 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 above mentioned *Federal Register* publication. *Arctomecon humilis* was included in both the July 1, 1975, notice of review

and the June 16, 1976, proposal. Public hearings on this proposal were held on July 22, 1976, in El Segundo, California and on July 28, 1976, in Kansas City, Missouri.

In the June 24, 1977, *Federal Register*, the Service published a final rule (42 FR 32373-32381, codified at 50 CFR Part 17) detailing the permit regulations to protect Endangered and Threatened plant species. The rule established prohibitions and permit procedures to grant exceptions to the prohibitions under certain circumstances.

The Department has determined that this listing rule does not meet the criteria for significance in the Department regulations implementing Executive Order 12044 (43 CFR Part 14) or require the preparation of a regulatory analysis.

Summary of Comments and Recommendations

In keeping with the general intent of Section 4(b)(1)(C) of the Act, a summary of all comments and recommendations received is published in the *Federal Register* prior to adding any plant species to the List of Endangered and Threatened Wildlife and Plants.

Hundreds of comments on the general proposal of June 16, 1976, were received from individuals, conservation organizations, botanical groups, and business and professional organizations. Few of these comments were specific in nature, in that they did not address individual plant species. Most comments addressed the program or the concept of Endangered and Threatened plants and their protection and regulation. These comments are summarized in the April 26, 1978, *Federal Register* publication which also determined 13 plant species to be Endangered or Threatened species (43 FR 17909-17916).

Additionally, many comments were received in response to the June 7, 1976, proposed rule (41 FR 22915) on prohibitions and permit provisions for plants under Sections 9(a)(2) and 10 of the Act. These comments are summarized in the June 24, 1977, *Federal Register* final rule (42 FR 32373-32381) on plant trade prohibitions and permit provisions. Requests for copies of these final trade regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, 703/235-1903.

The Governors of Utah and Arizona were notified of the proposal to list *Arctomecon humilis* as an Endangered species. No reply regarding the species has been received from either State government. In March 1978, Dr. Stanley Welsh, of Brigham Young University,

published in the *Great Basin Naturalist* that Endangered status for *Arctomecon humilis* is correct. In August 1978, Dr. Duane Atwood of the U.S. Forest Service, published in *Mentzelia* that "unless steps are taken to protect the species and its habitat it will become extinct."

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Arctomecon humilis* Coville (dwarf bear-poppy; synonym: Coville Bearclaw poppy) is 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 Act.

These factors and their application to *Arctomecon humilis* are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The entire range of *Arctomecon humilis* is restricted to the southwestern corner of Washington County, Utah. There is an old record from adjacent Mohave County, Arizona, but this report is probably not accurate. The limited habitat of this bear-poppy is threatened by housing and industrial development. The building of the city of Bloomington, Utah eliminated about a third of the known habitat. A potential threat is strip mining of gypsum deposits. Commercially valuable deposits occur at or near the surface of much of the habitat of the species. In addition, all existing habitat has heavy use by motor bikes and other off-road vehicles. The Warner Valley Power Project calls for the routing of roads and powerlines through the general area where this species occurs; the main proposed access road is adjacent to habitat of the species.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* This plant is taken by persons for ornamental use in their own gardens. However, because of its specialized habitat, and in particular its exacting soil requirements, the species does not survive long when transplanted. Removal of plants from the wild continues to result in the depletion of natural populations. Attempts to propagate the species from seed have also proved futile.

3. *Disease or predation* (including grazing). Not applicable to this species.

4. *The inadequacy of existing regulatory mechanisms.* Although Bureau of Land Management regulations (43 CFR 6010.2) prohibit the removal, destruction, and disturbance of vegetative resources unless such activities are specifically allowed or

authorized, they do not address this bear-poppy directly. Further, the majority of the individuals of this species are not on BLM-administered land. The Endangered Species Act will now offer additional protection for the plant.

5. *Other natural or man-made factors affecting its continued existence.* Restriction to a specialized and localized soil type, and a low total population level consisting of about five small, scattered, disjunct populations with a resultant restricted gene pool, are factors which tend to intensify the adverse effects of threats to the plants.

Effects of the Rule

Section 7(a) of the Act, as amended, provides:

The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to Section 4 of this Act. Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") does not jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant to subsection (h) of this section.

Provisions for Interagency Cooperation were published on January 4, 1978, in the *Federal Register* (43 FR 870-876) and codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7 of the Act. This rule requires Federal agencies to satisfy these statutory and regulatory obligations with respect to this species. New rules implementing the 1978 Amendments to Section 7 are being prepared now by the Service. The Service and the Bureau of Land Management anticipate that conservation of *Arctomecon humilis* can be accomplished with the continued development of the Warner Valley Power Project.

Endangered and Threatened species regulations in Title 50 of the code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all such species. The principal regulations which pertain to

Endangered plant species are found at §§ 17.61-17.63 (42 FR 32378-32380).

Section 9(a)(2) of the Act, as implemented by § 17.61, will apply. With respect to any species of plant listed as Endangered, it is, in general, illegal for any person subject to the jurisdiction of the United States to import or export such species; deliver, receive, carry, transport, or ship such species in interstate or foreign commerce by any means and in the course of a commercial activity; or sell or offer such species for sale in interstate for foreign commerce. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 10 of the Act and regulations published in the *Federal Register* of June 24, 1977 (42 FR 32373-32381, codified at 50 CFR Part 17), provide for the issuance of permits, under certain circumstances, to carry out otherwise prohibited activities involving Endangered plants. Few permit requests for this species are anticipated.

When these plant regulations implementing Sections 9(a)(2) and 10 of the Act were proposed (41 FR 22915), many comments questioned the lack of any taking prohibition, and some suggested that the lack of such a prohibition may be a reason for keeping information on the localities of some taxa secret. When these regulations were made final on June 24, 1977, the summary of comments included the following (42 FR 32376):

The "taking" of plants is not prohibited by Section 9(a)(2) of the Act and, therefore, cannot be included within these regulations. However, the "taking" of plants is sometimes regulated by local, State, or Federal agencies under other legislation, and the Federal responsibilities under Section 7 apply if taking of individual plants would jeopardize the continued existence of the Endangered or Threatened species.

Effect Internationally

The Service will review the status of this species to determine whether it should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate appendix to that Convention, and whether it should be considered under the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere or other appropriate international agreements.

National Environmental Policy Act

A final Environmental Assessment has been prepared and is on file in the Service's Washington Office of

Endangered Species. The assessment is the basis for a decision that this determination is not 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.

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 a species to be an Endangered or Threatened species] 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.

Arctomecon humilis has been and is threatened by taking, and the taking of plants is not directly prohibited by the Endangered Species Act of 1973. A majority of the plants are not on land administered by the Bureau of Land Management, which does have general prohibitions on removal of plants but does not address this species directly. The proximity of the plants to urban areas intensify pressures on them. Publication of Critical Habitat maps

would make this species more vulnerable to taking and vandalism, and therefore it would not be prudent to determine Critical Habitat.

Arctomecon humilis was proposed for listing as an Endangered species on June 16, 1976 (41 FR 24556). Since it has been determined not to be prudent to designate Critical Habitat for this species at this time, the Service now proceeds with the final rule to determine this species to be Endangered under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.; 87 Stat. 884).

The primary authors of this rule are Drs. Bruce MacBryde and Ronald M. Nowak, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/235-1975). Status information for this species was prepared by Drs. Stanley L. Welsh, Brigham Young University, and N. Duane Atwood, U.S. Forest Service.

Regulation Promulgation

Accordingly, § 17.12 of Part 17 of Chapter I of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. Add in alphabetical order by family, genus, species, the following plant:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Papaveraceae—Poppy family:						
<i>Arctomecon humilis</i>	Dwarf bear-poppy.....	U.S.A. (UT).....	Entire.....	E	74	NA

Dated: October 31, 1979.
Robert S. Cook,
 Deputy Director, Fish and Wildlife Service.

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