

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**Endangered and Threatened Wildlife and Plants; Proposal To Determine *Argemone pleiacantha* ssp. *pinnatisecta* (Sacramento prickly poppy) To Be an Endangered Species**

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

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service proposes to determine *Argemone pleiacantha* ssp. *pinnatisecta* (Sacramento prickly poppy) to be an endangered species, under the authority contained in the Endangered Species Act of 1973, as amended. The Sacramento prickly poppy is endemic to several canyons in the Sacramento Mountains, Otero County, New Mexico. Known populations consist of fewer than 200 plants, which occur on National Forest, New Mexico State Park, New Mexico and Otero County Highway rights-of-way, and private lands. This species is threatened by livestock grazing, pipeline construction, flooding, and road construction and maintenance. A final determination that *Argemone pleiacantha* ssp. *pinnatisecta* is endangered will implement the protection provided by the Act. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from all interested parties must be received by September 11, 1987. Public hearing requests must be received by August 27, 1987.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, 500 Gold Avenue, SW., Room 4000, Albuquerque, New Mexico.

**FOR FURTHER INFORMATION CONTACT:** Sue Rutman, Endangered Species Botanist, Albuquerque, New Mexico

(see ADDRESSES above) (505/766-3972 or FTS 474-3972).

**SUPPLEMENTARY INFORMATION:****Background**

*Argemone pleiacantha* ssp. *pinnatisecta* (Sacramento prickly poppy) is a robust perennial known only from several canyons in the Sacramento Mountains of Otero County, south-central New Mexico. The Sacramento prickly poppy was first collected in 1953 by Mr. G.B. Ownbey and Mr. Findley on the western slopes of the Sacramento Mountains. Mr. Ownbey described the taxon in a monograph of the genus *Argemone* for North America and the West Indies (Ownbey 1958).

This member of the Poppy family (Papaveraceae) has 3-12 prickly stems branching from the base, and commonly grows to a height of 5-15 decimeters (20-60 inches) (Soreng 1982). The pale lemon to nearly white milky sap steadily distinguishes this subspecies from the typical subspecies, which has yellow-orange sap. The attractive flowers have numerous yellow stamens and six white petals that are 3-4 centimeters (1.2-1.6 inches) long and as wide. Leaves are long, relatively narrow, and have box-shaped sinuses between spine-tipped lobes.

The Sacramento prickly poppy occurs at 1400-2100 meters (4,600-6,900 feet) elevation. At lower elevations, the surrounding vegetation is Semi-Desert Grassland; at the upper elevations the vegetation is Great Basin Conifer Woodland (Brown 1980). The Sacramento prickly poppy occurs in open, disturbed, or relatively undisturbed areas within these plant communities. The species grows in limestone canyons, or roadsides, fields, grassy flats, steep slopes, and floodplain and channel deposits. Populations are usually found where there is enhanced, but not wet, soil moisture conditions. These conditions are met on north-facing slopes, in canyon bottoms, along roadsides, and near leaks in pipelines.

About half of the plants are located on New Mexico State and Otero County highway rights-of-way. The rest of the plants occur on private, State Park, and Lincoln National Forest lands.

Soreng (1982) estimated that three populations of *Argemone pleiacantha* ssp. *pinnatisecta* contained fewer than 170 plants in 1982, and suggested that these populations were declining. Flash floods are one of the reasons for this decline: one population decreased from 100 plants to six after a flash flood scoured the canyon in 1978 (Soreng 1982). The probability of such flooding has been increased by overgrazing from livestock, which disturbs topsoil and

reduces plant cover. Soreng suggested that regeneration was insufficient to maintain population numbers.

Section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) directed the Secretary of the Smithsonian Institution to prepare a report of 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 the report of the Smithsonian Institution as a petition within the context of section 4 of the Act and of its intention to review the status of the plant taxa names within. On June 16, 1976, the Service published a proposed rule in the *Federal Register* (41 FR 24523) to determine approximately 1,700 vascular plant species pursuant to section 4 of the Act.

This list of 1,700 plant taxa 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. *Argemone pleiacantha* ssp. *pinnatisecta* was included in the July 1, 1975, notice of review and in the June 16, 1976, proposal.

The Endangered Species Act Amendments of 1978 required that all proposals over two years old be withdrawn. A one-year grace period was given to those proposals already more than 2 years old. Subsequently, on December 10, 1979 (44 FR 70796), the Service published a notice of a withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with other proposals that had expired; this notice of withdrawal included *Argemone pleiacantha* ssp. *pinnatisecta*.

On December 15, 1980 (45 FR 82485), and September 27, 1985, (50 FR 39526), the Service published updated notices reviewing the native plants being considered for classification as threatened or endangered. *Argemone pleiacantha* ssp. *pinnatisecta* was included in these notices as a category 1 species. Category 1 is comprised of taxa for which the Service has sufficient biological data to support proposing them as endangered and threatened.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within one year of their receipt. Section 2(b)(1) of the Act's Amendments of 1982 further requires that all petitions pending on October 12, 1982, be treated as having

been newly submitted on that date. Because *Argemone pleiakantha* ssp. *pinnatisecta* was included in the 1980 notice, the petition to list this species was treated as being newly submitted on October 12, 1982. On October 13, 1983; October 12, 1984; October 11, 1985; and October 10, 1986, the Service made the required one-year findings that listing of *Argemone pleiakantha* ssp. *pinnatisecta* was warranted, but precluded by other listing actions of higher priority. Biological data, supplied by Soreng (1982), fully support the listing of *Argemone pleiakantha* ssp. *pinnatisecta*. The present proposal is based primarily on Soreng's biological data, and constitutes the next one-year finding required by of section 4(b)(3)(B) of the Act for this 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 (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species of 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 *Argemone pleiakantha* ssp. *pinnatisecta* G.B. Ownbey (Sacramento prickly poppy) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Sacramento prickly poppy habitat has been and continues to be destroyed or modified by livestock grazing, pipeline construction, flooding, and road construction and maintenance. Cattle grazing has both direct and indirect effects on the Sacramento prickly poppy. When cattle stocking rates are high, plants of this species are trampled and others are eaten (Soreng 1982). While trampling or grazing may not kill mature plants with an established tap root, these actions may kill seedlings and affect the reproduction of mature plants. Overgrazing has caused disturbance of topsoil and a reduction in plant cover throughout the range of the Sacramento prickly poppy (Soreng 1982). The poor condition of the watershed could increase the probability of flash floods. The Sacramento prickly poppy is particularly vulnerable to flooding because many plants occur in drainages. Fletcher noted that one population was nearly eliminated during a flash flood in 1978 (Soreng 1982).

The diversion of permanent spring water from drainages in the Sacramento Mountains to pipelines for human and

livestock uses has created artificially dry conditions in the areas where the Sacramento prickly poppies occur. Fletcher (U.S. Forest Service, Region 6, pers. comm., 1986) believes the installation of a pipeline in one canyon and subsequent drying was the cause of the greatest reduction in the numbers of Sacramento prickly poppy.

Road construction, widening, and maintenance pose a threat to the Sacramento prickly poppy because a number of plants occur along roadsides. These plants are subject to destruction by mechanical disturbance, herbicide application, and soil and gravel dumping.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Alkaloids present in the seed and juices of other species of *Argemone* have been used in the past as purgatives and as treatments for a wide variety of ailments, including ophthalmia. However, no medicinal use of the Sacramento prickly poppy is known.

C. *Disease or predation.* Although Soreng (1982) noted that the stems of some plants had been chewed by insects and Fletcher (1978) reported insect larvae boring into the stems, such damage to Sacramento prickly poppy plants appears to be insignificant. As indicated above, grazing by cattle may be causing reduction in recruitment rates.

D. *The inadequacy of existing regulatory mechanisms.* Presently, there is no Federal law protecting *Argemone pleiakantha* ssp. *pinnatisecta*. However, the taxon is protected by the New Mexico Native Plant Law. This law prohibits the collection of this species unless a permit is granted by the New Mexico Department of Natural Resources. The Forest Service has included *Argemone pleiakantha* ssp. *pinnatisecta* on its Sensitive Plant Species List. As a matter of policy, the Forest Service considers Federal candidate species in its environmental assessments and planning. The Endangered Species Act would provide additional protection for this species through section 7 (interagency cooperation) requirements and through section 9, which prohibits removal and reduction to possession of plants occurring on Federal lands.

E. *Other natural or manmade factors affecting its continued existence.* Scarcity and limited distribution make this species vulnerable to both natural and man-caused threats. Any further reduction in plant numbers could reduce the reproductive capabilities and genetic potential of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Argemone pleiakantha* ssp. *pinnatisecta* as endangered without critical habitat. This status seems appropriate because the habitat of the few remaining populations is threatened by overgrazing, pipeline construction, flooding, and road construction and maintenance. The reasons for not designating critical habitat are discussed below.

#### 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 Service finds that designation of critical habitat is not prudent for the Sacramento prickly poppy at this time. Plants are vulnerable to taking or vandalism because of their immobility and accessibility. Any reduction in the small number of plants would be significant. Publication of critical habitat descriptions and maps would be detrimental, highlighting the easy accessibility of the plants. No benefit can be identified that would outweigh the threats of vandalism or taking that might result from such a publication. The Forest Service is aware of the locations of the Sacramento prickly poppy, has acknowledged the threats to these populations, and is considering the species during planning. All other involved parties and landowners will be notified of the location of populations and importance of protecting this species and its habitat. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for *Argemone pleiakantha* ssp. *pinnatisecta* at this time. No net benefit would accrue from designating critical habitat for the conservation of this species.

#### 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 possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal Agencies and the prohibitions against taking 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)(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. If a species is listed subsequently, 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 a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Some populations of the Sacramento prickly poppy occur on U.S. Forest Service lands. Forest Service actions such as trail and road construction and maintenance, and designation of water rights and grazing allotments may impact known populations and potential habitat. If this species is listed, section 7(a) of the Act would require the Forest Service to consult with the U.S. Fish and Wildlife Service prior to the initiation of planned activities that may affect this plant. Road construction or maintenance that is done by the State or County with Federal funds and that may affect Sacramento prickly poppy would also require that Federal Highways Administration to consult with the Service.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the act, implemented by 50 CFR 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 any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity; sell or offer it for sale in interstate or foreign commerce; or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. With regard to the subject of this proposal, it is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

#### Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions regarding any aspect of this proposal are hereby solicited from the public, other concerned governmental agencies, the scientific community, industry, or other interested parties. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Argemone pleiacantha* ssp. *pinnatisecta*;
- (2) The location of any additional populations and the reasons why any habitat 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 *Argemone pleiacantha* ssp. *pinnatisecta*; and
- (4) Current or planned activities in the subject area and their possible impacts on *Argemone pleiacantha* ssp. *pinnatisecta*.

Final promulgation of the regulation on this species 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 (see ADDRESSES section).

#### 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. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

#### References Cited

- Brown, D.E. 1980. Great Basin Conifer Woodland and Semidesert Grassland. In Brown, D.E. (ed.). Biotic Communities of the American Southwest—United States and Mexico. Desert Plants 4:52-57, 123-131.
- Fletcher, R. 1978. Forest Service status report for *Argemone pleiacantha* ssp. *pinnatisecta*. U.S. Forest Service, Region 3, Albuquerque.
- Ownbey, G.B. 1958. Monograph of the *Argemone* for North America and the West Indies. Memoirs of Torrey Botanical Club 21:1-159.
- Soreng, R.J. 1982. Status report on *Argemone pleiacantha* ssp. *pinnatisecta*. U.S. Fish and Wildlife Service, Albuquerque. 24 pp.

#### Author

The primary author of this proposed rule is Sue Rutman, Endangered Species Botanist, U.S. Fish and Wildlife Service, P.O. Box 1306 Albuquerque, New Mexico 87110 (505/766-3972 or FTS 474-3972). Status information was provided by Dr. Robert Soreng, New Mexico State University, Las Cruces, New Mexico.

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

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

#### Proposed Regulation Promulgation

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:

#### PART 17—[AMENDED]

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. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Papaveraceae, 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					
Papaveraceae—Poppy family:						
<i>Argemone pleiacantha</i> ssp. <i>pinnatisecta</i> .	Sacramento prickly poppy.....	U.S.A. (NM).....	E		NA	NA

Dated: June 18, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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