

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination that *Coryphantha sneedii* var. *sneedii* is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Coryphantha sneedii* var. *sneedii* (Sneed pincushion cactus), a native plant of New Mexico and Texas, to be an Endangered species. The plants are in demand by cactus collectors, and removal by commercial suppliers and private collectors has caused a severe decline in the natural populations, even though it is available in cultivation. A major population was destroyed some years ago with the construction of the highway through Anthony Pass, between Las Cruces and El Paso. Other populations are subject to potential destruction from general urban growth and the use of the Organ Mountains on the Army's Fort Bliss as an artillery impact area. This determination will extend to this cactus the protection provided by the Endangered Species Act of 1973, as amended.

DATE: This rulemaking becomes effective on December 7, 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**

Coryphantha sneedii var. *sneedii* is known from the northern Chihuahuan Desert east of Las Cruces, New Mexico and north of El Paso, Texas. It was discovered in 1921, and has been sought by collectors since that time, even though the plant can be propagated in cultivation. Habitat destruction from past highway construction and from general urban growth have also reduced it in numbers and range. Military restrictions in access to Fort Bliss have presumably halted collecting in the Organ Mountains, but use of that area for weapons-testing is a possible threat of unknown magnitude. Existence of the military reservation has increased pressure on those populations outside it. All populations are located in Doña Ana and El Paso Counties, New Mexico and Texas, respectively.

Section 12 of the Endangered Species Act of 1973 required the Smithsonian

Institution to prepare a report on plants which might qualify for listing under the Act. The Secretary of the Smithsonian Institution, in response to Section 12, 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 their report as a petition within the context of 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 rule 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.

Coryphantha sneedii var. *sneedii* 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. Public hearings were again held on July 9, 1979, in Austin, Texas and July 12, 1979, in Albuquerque, New Mexico for twelve Texas and New Mexico cacti proposed and Endangered species, including this *Coryphantha*. 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). Some of these comments had addressed the general problems of conservation of cacti.

Additionally, many comments on the cactus trade 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. Several persons at the recent public hearing in New Mexico indicated lack of familiarity with these 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.

With the July 2, 1979, *Federal Register* notice (44 FR 38611) for the recent public hearings on certain proposed southwestern cacti comments on the taxon were again solicited, with an official comment period of July 2 through July 23, 1979. The Governors of New Mexico and Texas were notified of the proposal to list *Coryphantha sneedii* var. *sneedii* as an Endangered species.

No reply regarding this taxon has been received from the State of Texas. Although the Governor of New Mexico himself submitted no comment on the proposed action, the New Mexico Natural Resources Department recommends the taxon to be listed as Endangered, without Critical Habitat, indicating that collectors are the most serious threat. The New Mexico Department of Agriculture briefly reported on the survival status of the cactus and also indicated specific areas for the taxon should not be designated. It indicated that before listing the cactus as Endangered, the possible inadequacy of the laws and their implementation should be considered, and that listing might increase threats to the taxon. The Service is aware that listing under the

Act might be harmful; however, in balance it considers that providing the provisions of the Act to this taxon is more likely to prove beneficial than allowing continued inadequate management for the cactus.

Seven other written comments were received concerning this taxon. The U.S. Forest Service, Region 3, recommend the cactus be listed as Endangered. The Southwest Region Office of the Bureau of Reclamation indicated concern that there was a lack of supporting data for the listing, and a lack of detailed information on Critical Habitat for the cactus. Extensive information on the cactus is on file and available in the Service's Albuquerque Regional Office and Washington Office of Endangered Species; it is not prudent to determine Critical Habitat for the cactus because it would increase threats to it, as explained further below. The USDA Soil Conservation Service's State Conservationist, Temple, Texas, indicated they had reviewed the list of seventeen southwestern cacti indicated in the July 2, 1979, Federal Register, but that they had no specific comments to make. Two professional botanists have written in concurrence with contracted status information received by the Service, which also recommended Endangered status. A private citizen, in a statement endorsed by the Conservation Committee of the Cactus and Succulent Society of America, recommended the taxon be listed as Endangered because of severe over-collecting. The El Paso Cactus and Rock Club members wrote that they favor listing *Coryphantha sneedii* var. *sneedii* as an Endangered species.

At the July 9, 1979, public hearing in Austin, Texas, no one made comments regarding this cactus. One person inquired regarding the meaning of the term species in the Act and the level of taxonomic precision necessary for effective conservation. Section 3(16) of the Act defines the term species to include subspecific categories, and the use of this term to include taxonomic plant varieties is explained in detail in the April 26, 1978, final rule mentioned above (43 FR 17912-17913). The other variety of this species, *Coryphantha sneedii* var. *leei*, which is found only in Carlsbad Caverns National Park, was listed as a Threatened species on October 25, 1979 (44 FR 61554). At the July 2, 1979, public hearing in Albuquerque, New Mexico, three persons knowledgeable on New Mexico cacti expressed support for listing this cactus, two of them stating that it is Endangered; none opposed the listing. Two of those commenting recommended

a different scientific name for the cactus. The Service has decided generally to use names from work resulting in the most comprehensive scientific treatment on the cactus family for the United States: L. Benson, *The Cacti of the United States and Canada*, Stanford University Press, *in press*. This choice is made to facilitate communication among those concerned with the conservation of cacti; it does not preclude other scientific opinions. The provisions of the Act apply to specimens of this cactus in the taxonomic circumscription represented by *Coryphantha sneedii* var. *sneedii*, or to specimens under any other name with that same circumscription. Known, but not necessarily all synonyms of this cactus, are indicated below.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Coryphantha sneedii* (Britton et Rose) Berger var. *sneedii* (Sneed pincushion cactus; synonyms: *Escobaria sneedii*, *Mammillaria sneedii*) is in danger of becoming extinct 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 *Coryphantha sneedii* var. *sneedii* are as follows:

(1) *The present or threatened destruction, modification, or curtailment of its habitat or range.* This cactus is reported from the southern Organ Mountains and Bishop's Cap east of Las Cruces, New Mexico, and from the Franklin Mountains north of El Paso, Texas. This range is in the northern Chihuahuan Desert, in portions of Doña Ana and El Paso Counties, in the southwestern shrubsteppe ecosystem. Most of the Anthony Pass population of this cactus was destroyed some years ago with construction of the highway between Las Cruces and El Paso. Populations in the Organ Mountains within the Fort Bliss Military Reservation are under possible threat from use of the area as an artillery impact area. Populations outside Fort Bliss are subject to damage from general urban expansion.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* This cactus has been heavily taken by commercial and private collectors since its original discovery in 1921, despite the fact that it is readily propagated and available in cultivation. Its proximity to the urban centers of El Paso and Las Cruces has intensified collection of it. It has been offered for national and international sale recently

from specimens probably removed from the wild.

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

(4) *The inadequacy of existing regulatory mechanisms.* Texas has no known plant conservation law which protects this cactus. New Mexico State Law, Chapter 76, Article 5, Section 21, requires an application to sell collected wild plants, and designation of the wild source area. Article 8 of that Law, Sections 1-4, affords limited protection within 400 yards of any highway to all plants (except noxious weeds), and mentions that all species of *Coryphantha* are among the protected plants. The protection includes limited prohibitions against destruction, mutilation or removal of living plants (except seeds) on State or private land. Some populations of this cactus may be within 400 yards along roads in Doña Ana County.

Those populations within Fort Bliss Military Reservation are not accessible to the public, and much of the habitat is also restricted from military personnel, but no particular plans have been developed regarding this cactus.

All native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. This Convention regulates export of the cactus, but does not regulate interstate or intrastate trade in the cactus, or habitat destruction. The Endangered Species Act, as amended, will now offer additional protection for the taxon.

5. *Other natural or man-made factors affecting its continued existence.* The cactus appears to be generally restricted to soil from a particular rock type in the area. In cultivation the plant is grown from seed and also readily propagated from offsets, and therefore readily available. It is tolerant of a wide range of conditions in cultivation. There is no sound reason for cactus hobbyists to seek wild plants of this variety. *Coryphantha sneedii* var. *sneedii* intergrades with *Coryphantha strobiliformis* in the Franklin Mountains, and its similarity to that species may cause some collectors to overlook it.

Effects of the Rulemaking

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, ensure 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 taxon. New rules implementing the 1978 Amendments to Section 7 of the Act are being prepared now by the Service.

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 or 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, such as trade in specimens of cultivated origin. The Service anticipates few permit requests involving wild specimens of this taxon.

When these regulations for plants 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

In addition to the protection provided by the Act, all native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which requires a permit for export of this plant. The Service will review 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:

§ 17.12 Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Cactaceae—Cactus family:						
<i>Coryphantha sneedii</i>	Sneed pincushion.....	U.S.A. (N. Mex.	Entire	E	78	NA
var. <i>sneedii</i>	cactus	Tex.)				

Dated: November 1, 1979.
 Robert S. Cook,
 Acting Director, Fish and Wildlife Service.
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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.

Coryphantha sneedii var. *sneedii* has already been reduced in numbers and is threatened by taking, and the taking of plants is not directly prohibited by the Endangered Species Act of 1973. The State of New Mexico has general but limited prohibitions on removal of *Coryphantha* species, and the cactus receives no definite protection under Texas State law or on some private land. The proximity of this cactus to urban centers increases collecting pressures on it. Publication of Critical Habitat maps would make this taxon more vulnerable to taking and therefore it would not be prudent to determine Critical Habitat.

Coryphantha sneedii var. *sneedii* was proposed for listing as an Endangered species on June 16, 1976 (41 FR 24570). Since it has been determined to be not prudent to designate Critical Habitat for this cactus at this time, and all other listing requirements of the Act have been satisfied, 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. 1531-1543; 87 Stat. 884).

The primary author of this rule is Dr. Bruce MacBryde, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240, (703/235-1975).

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, and variety, the following plant: