

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**Determination that *Pediocactus knowltonii* is an Endangered Species**

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

**ACTION:** Final rule.

**SUMMARY:** The service determines *Pediocactus knowltonii* (Knowlton cactus), a native plant of New Mexico, to be an Endangered species. The plants are in demand by cactus collectors, and removal by commercial suppliers and private collectors has caused a decline in the natural populations. Much of the original habitat was destroyed by Navajo Reservoir. Offroad vehicle activity is also a threat to the species. This action will extend to this plant the protection provided by the Endangered Species Act of 1973, as amended.

**DATE:** This rulemaking becomes effective on November 28, 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**

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.

*Pediocactus knowltonii* was included in both the July 1, 1975, notice of review and the June 16, 1976, proposal. A public hearing on this proposal was held on July 22, 1976, in El Segundo, California. A second public hearing was held on July 12, 1979, in Albuquerque, New Mexico for five New Mexico cacti proposed as Endangered species, including this *Pediocactus*.

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 second public hearing on certain proposed southwestern cacti, comments on the species were again solicited, with an official comment period of July 2 through July 23, 1979. The Governors of New Mexico and Colorado were notified of the proposal to list *Pediocactus knowltonii* as an Endangered species. No reply regarding the species has been received from the State of Colorado. Although the Governor of New Mexico himself submitted no comment on the proposed action, the New Mexico Natural Resources Department recommends the species be listed as Endangered, without Critical Habitat. The New Mexico Department of Agriculture briefly reported on the survival status of the cactus, and also indicated specific areas for the species 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 species. 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 species is more likely to prove beneficial than allowing continued inadequate management for the cactus.

Five other written comments were received concerning this species. 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.

Three professional botanists comment that extinction is likely because of collectors and that the species should be listed as Endangered. In addition, the Service has received contracted status information indicating the species appears very near extinction, and a private citizen who has repeatedly visited the site indicates it is greatly threatened by collectors. The last

statement has been endorsed by the Conservation Committee of the Cactus and Succulent Society of America.

At the July 12, 1979, public hearing in Albuquerque, New Mexico, three persons knowledgeable on New Mexico cacti expressed support for listing this cactus as Endangered; none opposed the listing. One commented that the species' range extends barely across the border into Colorado, but another comment to the Service indicates the State line is difficult to determine in this area and that the report may be in error.

#### Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Pediocactus knowltonii* L. Benson (Knowlton cactus) is in danger of extinction throughout its limited range due to one or more of the factors described in Section 4(a) of the Act.

These factors and their application to *Pediocactus knowltonii* are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Reliably reported only from one general area in northeastern San Juan County, New Mexico, among sagebrush in pinyon-juniper woodland. The original report from adjacent Colorado is in error, and subsequent reports from nearby Colorado or from elsewhere in New Mexico with various attempts to confirm locations always have failed. Most of the original populations along the Los Piños River were flooded with the creation of Navajo Reservoir, and a portion has been destroyed by a parking lot. The species is also damaged by off-road vehicles, and there is the potential threat of general energy exploration and development in the area.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* This species has been heavily taken by commercial and private collectors, despite the fact that it is readily propagated from seed and available in cultivation. In May 1979 only several hundred specimens could be found in the wild. Wild plants have been and still are offered for sale nationally and internationally.

3. *Disease or predation* (including grazing). Cattle graze in the area, but it is not known whether they damage the species or its habitat.

4. *The inadequacy of existing regulatory mechanisms.* 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), although *Pediocactus* is not named directly. The protection includes limited prohibitions against destruction, mutilation or removal of living plants (except seeds) on State or private land, along a highway. Some of the existing plants may be within 400 yards along a county road.

Although the 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, the prohibitions do not address this cactus directly.

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

5. *Other natural or man-made factors affecting its continued existence.* This cactus retracts underground during the dry season, which may have allowed alteration of its habitat in ignorance of its presence. In cultivation, the plant is readily propagated, and therefore readily available; there is no sound reason for cactus hobbyists to seek wild plants.

#### Effect 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 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 rulemaking requires Federal agencies to satisfy these statutory and regulatory obligations with respect to this species. 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 Section 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, 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.

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

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:

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.

*Pediocactus knowltonii* has been 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 and the Bureau of Land Management would have an increased enforcement burden regarding their general prohibitions on removal of plants, if exact locations of the cactus were more generally known. Publication of Critical Habitat maps would make this species more vulnerable to taking and therefore it would not be prudent to determine Critical Habitat.

*Pediocactus knowltonii* was proposed for listing as an Endangered species on June 16, 1976 (41 FR 24536). 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 USC 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, the following plant:

**§ 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>Pediocactus knowltonii</i>	Knowlton cactus	U.S.A. (NM)	Entire	E	68	NA

Dated: October 23, 1979.  
**Robert S. Cook,**  
*Deputy Director, Fish and Wildlife Service.*