

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination That *Sclerocactus glaucus* is a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The service determines *Sclerocactus glaucus* (Uinta Basin hookless cactus) to be a Threatened species. This plant occurs in Utah and Colorado. *Sclerocactus glaucus* is being commercially exploited by nurserymen and private collectors. Approximately 15,000 individuals are found on eight sites. A determination that *Sclerocactus glaucus* is a Threatened species implements the protection provided by the Endangered Species Act of 1973 as amended.

EFFECTIVE DATE: This rulemaking becomes effective on November 13, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Harold J. O'Connor, Acting Associate Director—Federal Assistance, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202/343-4646.

SUPPLEMENTARY INFORMATION:

Background

The Secretary of the Smithsonian Institution, in response to Section 12 of the Endangered Species Act, presented his report on plant species 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 to be endangered, threatened, or extinct. On hearing on the June 16, 1976 proposal was held on July 22, 1976, in El Segundo, California. In the June 24, 1977, **Federal Register**, the Service published a final rulemaking (42 FR 32373-32381, codified at 50 CFR) detailing the permit regulations to protect Endangered and Threatened plant species. These rules establish certain prohibitions and a permit procedure to grant exceptions to the prohibitions under certain circumstances. The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis under Executive Order 12044 and CFR 14.

Summary of Comments and Recommendations

Section 4(b)(1)(C) of the Act requires that a summary of all comments and recommendations received be published in the **Federal Register** prior to adding any 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). The Governors of Utah and Colorado were both notified of the proposed action. The Governors themselves submitted no comments on

the proposed action, nor did the conservation agencies of either State. Two comments were received concerning *Sclerocactus glaucus*. In a letter dated February 17, 1977, Dr. Lyman Benson of Pomona College commented that all species of *Sclerocactus* are rare and known from only a few localities, and that the species is really endangered.

The other comment was from Gary Lyons, chairman of the Cactus and Succulent Society of America Conservation Committee, who wrote concerning distribution of the cactus and possible threats to its habitat.

After a thorough review and consideration of all the information available, the Director has determined that *Sclerocactus glaucus* (K. Schum) L. Benson (Uinta Basin hookless cactus; synonyms: *Echinocactus glaucus*, *E. subglaucus*, *E. whipplei* var. *glaucus*, *Sclerocactus franklinii*, *Pediocactus* 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 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 species to be Endangered 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 above mentioned **Federal Register** publication.

Sclerocactus glaucus was included in both the July 1, 1975, notice of review and the June 16, 1976, proposal. A public

glaucus) is in danger of becoming extinct within the foreseeable future 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 *Sclerocactus glaucus* are as follows:

(1) *Present or threatened destruction, modification, or curtailment of its habitat or range.* *Sclerocactus glaucus* is known from 8 sites in a five-county area of eastern Utah and western Colorado. It is found at an elevation range of approximately 1400 to 2100 meters in alluvial deposits of the Colorado Plateau. Individuals within populations are widely scattered in open rocky areas.

Ninety percent of the total population occurs on lands under the jurisdiction of the Bureau of Land Management. The remaining 10 percent is found on State of Utah land and private land. The general region where the species occurs is potentially subject to future development of oil shale deposits or gold mining. Off-road vehicles related to these possible activities could be another future threat. These potential activities are currently too ill-defined to anticipate the possible extent of threats to the cactus.

(2) *Overutilization for commercial, sporting, scientific or educational purposes.* *Sclerocactus glaucus* is prized for its beautiful purplish-red flowers and is sought by professional and amateur cactus growers. This cactus, being very rare and highly endemic, has been, and will continue to be, a particular prize among collectors and therefore is very threatened by unregulated commercial trade from specimens of wild origin. Severe overcollection has already occurred. In addition, collecting might increase because of the Dominguez Project, a dam and pumphack reservoir which has been proposed on the Gunnison River at Whitewater, Colorado. Although no known populations of *Sclerocactus glaucus* occur within the proposed reservoir basin, scattered populations do occur on the hills above the proposed basin. The major impact on these populations could be new recreational and probable collecting pressure at formerly remote sites.

(3) *Disease and predation* (including grazing). Limited grazing of its habitat appears to be beneficial for this species. Greatly increased or decreased grazing could contribute to the decline of the species.

(4) The inadequacy of existing regulatory mechanisms. There currently exist no State or Federal laws adequately protecting this species or its

habitat. The Bureau of Land Management has authority under the Federal Land Policy and Management Act of 1976 (the BLM Organic Act) to restrict taking of vegetative resources under certain circumstances. Present regulations state that removal of plants for commercial purposes may be done only where specifically authorized by law (43 CFR 6010.2). These regulations, however, are difficult to enforce, make no specific reference to Threatened or Endangered plant species, and provide no framework to allow an over-all program for management and protection of native plants. Because of these problems and because the Bureau of Land Management has only one law enforcement officer each for Utah and Colorado, additional protection is needed for Endangered and Threatened plant species occurring on Bureau of Land Management lands. Further, All native cacti are on Appendix II of the Convention or International Trade in Endangered Species of Wild Fauna and Flora. However, this Convention only regulates export of the species, and therefore does not regulate internal trade in the cactus, or habitat destruction. No other Federal protective laws currently apply to it.

(5) *Other natural or manmade factors affecting its continued existence.* Not applicable to this species.

Effect of the Rulemaking

Section 7(a) of the Act as amended in 1978 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 Section 7 of the Endangered Species Act Amendments of 1978."

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(a) of the Act. This rulemaking requires Federal agencies to satisfy these statutory and regulatory obligations with respect to this species.

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 regulations which pertain to Threatened plant species, are found in §§ 17.71 and 17.72 (42 FR 32380-32381) and are summarized below.

All provisions of Section 9(a)(2) of the Act, as implemented by § 17.71, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, or to deliver, receive, carry, transport or ship in interstate or foreign commerce in the course of a commercial activity, or to sell or offer for sale in interstate or foreign commerce, this plant. Certain exceptions would 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 in 50 CFR Part 17), provide for the issuance of permits under certain circumstances to carry out otherwise prohibited activities involving Threatened plants, such as trade in specimens of cultivated origin.

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 the species. The Service will review *Sclerocactus glaucus* to determine 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

An 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 would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Endangered Species Act Amendments of 1978

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 by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be critical habitat."

Sclerocactus glaucus is primarily threatened by an activity not prohibited by the Endangered Species Act of 1973 nor, completely, by the Bureau of Land Management. The Bureau of Land Management has authority under the Federal Land Policy and Management Act of 1976 (the BLM Organic Act) to restrict taking of vegetative resources under certain circumstances. Present regulations state that removal of plants for commercial purposes may be done only where specifically authorized by law (43 CFR 6010.2). Permitted activities include the collecting of plant parts in reasonable quantities for personal use, consumption or hobby collecting. These

regulations are difficult to enforce, make no specific reference to Threatened or Endangered plant species, and provide no framework to allow an overall program for management and protection of native plants. Because of these problems and because the Bureau of Land Management has only one law enforcement officer each for Utah and Colorado, additional protection is needed for Endangered and Threatened plant species occurring on Bureau of Land Management lands. Publication of critical habitat maps detailing locations of this species makes them even more vulnerable to illegal taking. Therefore, it would not be prudent to determine critical habitat.

Sclerocactus glaucus was proposed on June 16, 1976 (41 FR 24536), and since critical habitat is not being determined for this species, none of the other amended subsections are applicable. Accordingly, the Service is proceeding at this time with a final rulemaking to determine this species to be Threatened

pursuant to the Endangered Species Act of 1973, as amended. This rule is issued under the authority contained in the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884).

The primary author of this rule is Ms. Rosemary Carey, Office Of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240. (703/235-1975). The status report used as a major source in support of this listing was prepared by James Ratzloff, Botanist, Bureau of Land Management, Montrose District Office, Montrose, Colorado.

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. Section 17.12 is amended by adding, in alphabetical order by family, genus, species, the following plant:

§ 17.12 Endangered and threatened plants.

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Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion of range where threatened or endangered			
Cactaceae—Cactus family:						
<i>Sclerocactus glaucus</i>	Uinta Basin Hookless cactus.	U.S.A. (UT and CO)	Entire	T	NA

Dated: October 3, 1979.
Robert S. Cook,
 Deputy Director, Fish and Wildlife Service.
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