

50 CFR Part 17

Endangered and Threatened Wildlife and Plants, Determination That *Coryphantha ramillosa* and *Neolloydia mariposensis* Are Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final Rule.

SUMMARY: The Service determines *Coryphantha ramillosa* (bunched cory cactus) and *Neolloydia mariposensis* (Lloyds Mariposa cactus) to be Threatened species. Both of these cacti are native plants of Texas and their ranges overlap into Mexico. Until

recently the ranges of these two cacti had remained undeveloped and very remote. However, future development currently threatens these species and their habitats and will make these cacti more accessible to collectors. Over-collection is the other primary threat to the continued existence of these cacti. This action will extend to these plants the protection provided by the Endangered Species Act of 1973, as amended.

DATE: This rulemaking becomes effective on December 6, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Chief—Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C., 20240, 202/235-2771.

SUPPLEMENTARY INFORMATION: These cacti are both native to Texas.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* As with many other cacti, both of these species are in world-wide demand by collectors of rare cacti. Removal of plants from the wild has occurred and has resulted in the depletion of natural populations. The remoteness and inaccessibility of their ranges have offered some protection to these two species. However, if the range of these cacti becomes further developed and more accessible, the pressure from over-collection would increase. *Coryphantha ramillosa* is not commonly found in the cactus trade at present, but this will change once it is more accessible. *Neolloydia mariposensis* is currently found in the trade (especially local trade), which will increase as the plants become more accessible.

3. *Disease or predation* (including grazing). Current ranching operations within the range of these two species have not adversely affected these species. However, modern range management practices and an increased use of the area for grazing could threaten these species.

4. *The inadequacy of existing regulatory mechanisms.* Texas has no state laws protecting Endangered and Threatened plants as yet. Both of these cacti occur primarily on privately owned lands but also on National Park Service lands. The taking or vandalism of plants on private lands is not prohibited by the Endangered Species Act of 1973. National Park Service regulations prohibit the possession, destruction, injury, defacement, removal or disturbance of any plant in natural, historic, and/or recreational areas (36 CFR 2.20). *Coryphantha ramillosa* also occurs on a State owned wildlife preserve where the removal of plants is also restricted without a permit. All these regulations, however, are difficult to enforce, since law enforcement officers for these agencies cover large areas. Taking and vandalism remain threats to Endangered and Threatened plant species occurring on these lands.

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 cacti and, therefore, does not regulate interstate or intrastate trade in the cactus or habitat destruction. No other Federal protective laws currently apply specifically to these species. The Endangered Species Act will now offer additional protection for these cacti.

5. *Other natural or manmade factors affecting its continued existence.* Low total population levels intensify the

adverse effects of threats to these two plants and their habitats.

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 this section.

Provisions for Interagency Cooperation are codified at 50 CFR Part 402. These regulations are intended to assist Federal agencies in complying with Section 7(a) of the Act. New regulations are being developed to implement the 1978 Amendments at this time. This rulemaking requires Federal agencies to satisfy these statutory and regulatory obligations with respect to this species.

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 Threatened species. The regulations which pertain to Threatened plant species, are found at §§ 17.71-17.72. Section 9(a)(2) of the Act, as implemented by § 17.71 would apply. With respect to any species of plant listed as Threatened, 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; with the exception of seeds of cultivated specimens which are exempt from these provisions. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 10 of the Act and regulations codified at 50 CFR Part 17 provide for the issuance of permits under certain

circumstances to carry out otherwise prohibited activities involving Threatened plants.

Effect Internationally

In addition to the protection provided by the Act, all native cacti are on Appendix II of the Convention of International Trade in Endangered Species of Wild Fauna and Flora which requires a permit for export of these plants from the U.S. or an export document from Mexico, depending on where the specimens originated. 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 Services'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 by regulation, to the maximum extent prudent, specify any habitat of such species which is then considered to be Critical Habitat.

Coryphantha ramillosa and *Neolloydia mariposensis* are both threatened by taking (see discussion under factors 2 and 4 in the conclusion section of this rule) and the taking of plants is not prohibited by the Endangered Species Act of 1973. Publication of Critical Habitat maps would make this species more vulnerable to taking and therefore it would not be prudent to determine Critical Habitat.

The Service now proceeds with the final rulemaking to determine these species to be Threatened under the authority contained in the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543).

The primary author of this rule is Ms. E. LaVerne Smith, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20204, (703/235-1975). Status information for these species was

compiled by Dr. Del Wengier (Our Lady of the Lake Univ., San Antonio, Texas).

Regulation Promulgation

Accordingly, § 17.12 of Part 17 of

Chapter I 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.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion endangered			
Cactaceae—Cactus family:						
<i>Coryphantha ramillosa</i>	Bunched cory cactus.	U.S.A. (TX), Mexico (Coahuila).	Entire	T	77	NA
<i>Neolloydia mariposensis</i>	Lloyds Mariposa cactus.	U.S.A. (TX)	Entire	T	77	NA