

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Cereus eriophorus* var. *fragrans* (Fragrant Prickly-Apple)**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: The Service determines the fragrant prickly-apple (*Cereus eriophorus* var. *fragrans* (Small) L. Benson) to be an endangered species under provisions of the Endangered Species Act of 1973, as amended (Act). Critical habitat has not been designated for this species. This cactus occurs only within a limited area of St. Lucie County, Florida, where it is subject to threats from habitat destruction and potential collecting for horticultural purposes. This final rule provides the fragrant prickly-apple with the protection of the Act.

DATES: The effective date of this rule is December 2, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

FOR FURTHER INFORMATION CONTACT: Dr. Michael M. Bentzien (904/791-2580 or FTS 946-2580); see **ADDRESSES** section above.

SUPPLEMENTARY INFORMATION:**Background**

Cereus eriophorus var. *fragrans* (fragrant prickly-apple) is a columnar species of the cactus family, Cactaceae, which is now only known from St. Lucie County, Florida (Austin, 1984). It has cane-like stems which measure 1-5 meters (3-16 feet) long, and sprawl over surrounding vegetation as they become larger. The cylindrical succulent stems measure 2.5-5 centimeters (1-2 inches)

in diameter and have numerous spines. The nocturnal flowers are scented, white or pink in color, and 7.5-10 centimeters (3-4 inches) in diameter.

The orange-red fruits measure 5-6 centimeters (2 inches) long. This cactus is endemic to the east coast of Florida and occurs in coastal hammock vegetation types. These native vegetation types have largely disappeared from coastal Florida due to increasing urbanization which has taken place in recent years.

The fragrant prickly-apple was collected first by John K. Small in 1917 on sand dunes south of Ft. Pierce, St. Lucie County, Florida, and was described as *Harrisia fragrans*. Subsequently, the cactus has been reported from a number of additional localities along the Florida east coast, but as Austin (1984) points out, this is the result of confusion in the botanical literature between *Cereus eriophorus* var. *fragrans* and *Cereus gracilis*. Benson (1982) describes the distribution of *Cereus eriophorus* var. *fragrans* as the Florida Atlantic coast and two sites in Monroe County, Florida. Florida botanists recently searched the two Monroe County sites, but no *Cereus eriophorus* was located, and it is speculated that earlier accounts of *Cereus eriophorus* at these sites may have been due to misidentification of *Cereus gracilis*. Based on recent field work by Florida botanists, the only population of *Cereus eriophorus* known to exist today is the St. Lucie County population. *Cereus eriophorus* var. *fragrans* is only positively known historically from two populations, the one near Port St. Lucie, St. Lucie County, and a now extirpated population near Malabar, Brevard County, Florida.

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on 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(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act), and of its intention thereby to review the status of

the plant taxa named 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 taxa to be endangered species pursuant to section 4 of the Act. The 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. *Cereus eriophorus* var. *fragrans* was included in the Smithsonian Institution's report, the 1975 notice of review, and the 1976 proposal. General comments on the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication, which also determined 13 plant species to be endangered or threatened species (43 FR 17909).

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 proposals already over two years old. On December 10, 1979, the Service published a notice withdrawing the June 16, 1976, proposal along with four other proposals that had expired.

The July 1, 1975, notice of review was replaced on December 15, 1980, by the Service's publication in the **Federal Register** (45 FR 82480) of a new notice of review for plants which included *Cereus eriophorus* var. *fragrans*. No comments on this taxon have been received in response to the 1980 plant notice.

On February 15, 1983, the Service published a notice in the **Federal Register** (48 FR 6752) of its prior petition finding that sufficient information existed to show that the listing of this taxon may be warranted, in accord with section 4(b)(3)(A) of the Act as amended in 1982. On October 13, 1983, and October 12, 1984, petition findings were made that listing *Cereus eriophorus* var. *fragrans* was warranted but precluded by other listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such a finding requires recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. In the **Federal Register** of March 6, 1985 (50 FR 9089), the Service published a proposal to list *Cereus eriophorus* var. *fragrans* as an endangered species. Publication of the proposal constituted the finding.

required by October 13, 1985, that the petitioned action was warranted.

In August 1984, personnel from the Service's Vero Beach Office conducted a survey of the then known sites for this species. The field notes of Dr. Daniel Austin of Florida Atlantic University were used to compare the distribution as of 1980 with the present distribution (also see Austin *et al.*, 1980). Plants were observed at two of the three sites reported by Austin; and additional locality was also discovered. All three localities were within approximately 300 meters of one another, and probably constitute one biological population. Only 14 plants were located.

The area where the three groups of cactus were found in a high sandy ridge approximately 5 hectares (13 acres) in area. All plants are on private land, although in proximity to lands owned by the Florida Department of Natural Resources. There are no roads into the area and thus access is somewhat limited; however there is a evidence that off-road vehicles use the area.

Summary of Comments and Recommendations

In the March 6, 1985, proposed rule (50 FR 9089) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the Fort Pierce, Florida, *News Tribune* on March 23, 1985. Six comments were received and are discussed below.

The listing proposal was supported by three official comments: the Florida Department of Agriculture and Consumer Services, the Florida Game and Fresh Water Fish Commission, and the Florida Natural Areas Inventory. The statewide organization and a local chapter of the Florida Native Plant Society also supported the proposal. A private landowner reported a previously unknown site for the fragrant prickly-apple cactus. The new locality is near the other known sites, and is considered to represent the same population.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Cereus eriophorus* var. *fragrans* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations

promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Cereus eriophorus* var. *fragrans* (Small) L. Benson (fragrant prickly-apple) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Cereus eriophorus* var. *fragrans* is known from one extremely limited area in east-central Florida. At the time this species was proposed as an endangered species, only 14 individual plants were known. The discovery of an additional site has increased the known number to about 200 individuals. While access to these areas is somewhat restricted, the Service's August 1984 survey showed tracks from off-road vehicles within 15 meters (49 feet) of the cactus at one locality. An additional locality was only 4 meters (13 feet) from a recently graded railroad right-of-way, and thus could easily be affected by routine maintenance. The cactus is known to have been extirpated from its other known population near Malabar, Florida, and one of Austin's localities from 1980 at the Port St. Lucie population could not be located in 1984. Because of the low number of plants and their clumped distribution at the Port St. Lucie population, this cactus is very susceptible to inadvertent destruction or modification of its habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* This species is not known to be in commercial trade. However, many species of cacti are commercially exploited, and it is likely that, because of rarity and the attractive nature of this species, it could be subject to collection if the exact location of the remaining plants became known. Near one of the three localities of the Port St. Lucie population, there is an area that has been extensively dug up by shovel. While there is no proof, it is a possibility that some individual plants could have been removed.

C. *Disease and predation.* Not known to be a problem with this species.

D. *The inadequacy of existing regulatory mechanisms.* *Cereus eriophorus* var. *fragrans* is listed as threatened under the Preservation of the Native Flora of Florida Law, section 581.185 of the Florida Statutes. This statute includes prohibitions concerning taking, transport, and the sale of listed plants, but provides no habitat protection such as that afforded by section 7 of the Act.

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 this plant, but does not regulate interstate trade in the cactus, or habitat destruction. No other Federal protective laws currently apply to this species. The Endangered Species Act would offer needed additional protection.

E. *Other natural or manmade factors affecting its continued existence.* Restriction to specialized habitats and small geographically limited ranges tend to intensify any adverse effects upon the populations or the habitats of any rare plant. This is certainly true for *Cereus eriophorus* var. *fragrans* and is intensified by the loss of habitat which has already taken place.

The small remaining population of this cactus is also threatened by natural factors such as powerful storms. Small (1917) describes the destruction and damage of similar species due to windthrow after a hurricane passed over the Keys. The growth habit of *Cereus* makes it particularly vulnerable to this natural phenomenon. As more of the natural vegetation of coastal Florida is destroyed, the buffering against storms by nearby vegetation will decrease and the vulnerability of the remaining cacti will increase.

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 make this rule final. Based on this evaluation, the preferred action is to list *Cereus eriophorus* var. *fragrans* as endangered. Only about 200 individual plants in a single population are known, and the remaining habitat is extremely limited. The decision not to designate critical habitat for *Cereus eriophorus* var. *fragrans* is discussed in the following section.

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 which is considered to be critical habitat at the time the species is determined to be endangered or threatened. Designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). In the present case, the Service finds that the designation of critical habitat is not prudent because no benefit to the taxon can be identified that would outweigh the potential threat of collection or

malicious destruction, which might be increased by the required publication of a critical habitat description and map. The Service is aware of the land ownership of all known colonies of *Cereus eriophorus* var. *fragrans*. Landowners will be contacted as appropriate in order to develop conservation measures for 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. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). 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 a listed species or result in the destruction or adverse modification of 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. No Federal actions affecting *Cereus eriophorus* var. *fragrans* are known at this time. The species is currently known only from private lands.

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 plant species. With respect to *Cereus eriophorus* var.

fragrans 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, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Cereus eriophorus* var. *fragrans* is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition now applies to this cactus. Permits for exceptions to this prohibition are available through regulations published September 30, 1985 (50 FR 39681), to be codified at 50 CFR 17.62. *Cereus eriophorus* var. *fragrans* does not occur on Federal lands; it is anticipated that few collecting permits for the fragrant prickly-apple will ever be requested.

In March 1973, all members of the family Cactaceae were included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The effect of this listing is that an export permit is required before international shipment may occur. Such shipment is strictly regulated by CITES member nations to prevent it from being detrimental to the survival of the species. If plants are certified as artificially propagated, international shipment requires export documents under CITES, and commercial shipments may be allowed.

Requests for copies of the regulations on plants, and inquiries regarding them, may be addressed to the Federal Wildlife Permit Office, Rm. 600-Broyhill Building, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

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).

Literature Cited

- Austin, D.F. 1984. Resume of the Florida taxa of *Cereus* (Cactaceae). *Florida Scientist* 47(1):68-72.
- Austin, D.F., C.E. Nauman, and B.E. Tatje. 1980. Endangered and threatened plant species survey in southern Florida and the National Key Deer and Great White Heron National Wildlife Refuges, Monroe County, Florida. Final report on contract 14-16-004-78-105 to U.S. Fish and Wildlife Service.
- Benson, L. 1982. The cacti of the U.S. and Canada. Stanford University Press, Stanford, California.
- Small, J.K. 1917. The tree cactus of the Florida Keys. *J. New York Bot. Garden* 18:199-203.

Author

The primary author of this final rule is Dr. Michael M. Bentzien, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (904/791-2580 or FTS 946-2580).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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. 96-158, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.12(h) for plants by adding the following, in alphabetical order under Cactaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

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(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Cactaceae—Cactus family:
<i>Cereus enophorus</i> var. <i>fragrans</i>	Fragrant prickly-apple.....	U.S.A. (FL).....	E	208	NA	NA

Dated: October 8, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

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