

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Fragrant Prickly-Apple as an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to determine 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. Critical habitat is not being proposed. This cactus occurs only within a limited area of St. Lucie County, Florida, where it is subject to threats from habitat destruction and the potential for collecting for horticultural purposes. The proposal seeks to provide protection to this plant; public comments, as well as additional biological information concerning its status and threats, are hereby solicited.

DATES: Comments from all interested parties must be received by May 6, 1985. Public hearing requests must be received by April 22, 1985.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the address above.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Bentzien (904/791-2580; FTS 8/946-2580); 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 not only known from St. Lucie County, Florida (Austin, 1984). It has cane-like stems which measure 1-5 m. long, and sprawl over surrounding vegetation as they become larger. The cylindrical succulent stems have numerous spines and measure 2.5-5 cm. in diameter. The nocturnal flowers are scented, white or pink in color and measure 7.5-10 cm. in diameter.

The orange-red fruits measure 5-6 cm. 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, Florida, and 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 *C. eriophorus* var. *fragrans* and *C. gracilis*. Benson (1982) in his recently published *The Cacti of the U.S. and Canada* describes the distribution of *Cereus eriophorus* var. *fragrans* as the Florida Atlantic coast and two sites in Monroe County, Florida. Florida botanists have 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 known to exist today is the St. Lucie county population. *Cereus eriophorus* var. *fragrans* is only positively known historically from two populations, the St. Lucie locality and a since extirpated population near Malabar.

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'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 which 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 82479) 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, the petition finding was 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; notification of the finding was published in the January 20, 1984, **Federal Register** (49 FR 2485). Such a

finding requires recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made; we find that the petitioned action is warranted and hereby publish the proposed rule to implement the action in accord with section 4(b)(3)(B)(ii) of the Act.

In August 1984, personnel from the Service's Vero Beach Office conducted a survey of the only presently 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; an additional locality was also discovered. All three localities were within approximately 300 meters and thus probably constitute one biological population. Only 14 plants were located.

The area where the three groups of cactus were found is a high sandy ridge approximately 12 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 evidence that off-road vehicles (ORVs) use the area.

Summary of Factors Affecting the Species

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 (codified at 50 CFR Part 424; revised at 49 FR 38900, October 1, 1984) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or a threatened species due to one or more of the five factors described in that Section. 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 only 14 plants in an extremely limited amount of habitat in east-central Florida. While access to the area is somewhat restricted, the Service's August 1984 survey showed tracks from off-road vehicles within 50 feet of the cactus at one locality. An additional locality was only 12 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, 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 thus 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 at least 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 offered protection under Florida Law, Chapter 65-426, section 865-06, which includes prohibitions concerning taking, transport, and the sale of plants listed under this law. *Cereus eriophorus* var. *fragrans* is included as threatened under the general category, Cacti. However, there is no habitat protection under Florida statutes, such as that provided under 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 additional protection for the taxon.

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 in the form of 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 careful assessment of the best scientific and commercial information available, as well as the best assessment of the past, present, and future threats faced by this taxon, were considered in determining the preferred action of this rule. Based on this evaluation, the preferred action is to list *Cereus eriophorus* var. *fragrans* as an endangered species. With only 14 individuals known, endangered status, seems an accurate assessment of the taxon's condition. Critical habitat is currently not prudent to propose for this species because doing so would increase risk to it, as detailed above under factor B. The attractive nature of this cactus coupled with rarity and very limited regulations against take make the species vulnerable to collecting, especially if maps were published in the Federal Register pinpointing exact locations.

Critical Habitat

The Endangered Species Act in section 4(a)(3), as amended, requires that to the maximum extent prudent and determinable, the secretary must designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The 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 designation of critical habitat is not prudent because no benefit to the taxon can be identified that would outweigh the potential threat of collection, which might be exacerbated by the required publication of a detailed critical habitat map.

The Service knows the land ownership of all areas where this species is found. Landowners will be contacted so that the Service may develop appropriate conservation measures to ensure the survival of 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 can result in conservation actions by Federal, State, and private agencies,

groups, and individuals. The Endangered Species Act provides the possibility for 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 by Federal agencies and applicable prohibitions 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. Provisions for interagency cooperation implementing this section are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29990; June 29, 1983). Section 7(a)(4) requires Federal agencies to informally confer with the Service on any of their actions that are likely to jeopardize the continued existence of a proposed species. When a species is listed, section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund or carry out are not likely to jeopardize the continued existence of the species or adversely modify its critical habitat. If an action may affect such a species, the Federal agency must enter into a formal consultation with the Service.

At present, all plants of the Port St. Lucie population of the fragrant prickly-apple are known only from private lands, and no Federal agencies are known to have involvement. If Federal activities are identified in the future that may affect *Cereus eriophorus* var. *fragrans*, consultation could be initiated as appropriate.

The Act, and its implementing regulations published in the June 24, 1977, **Federal Register** (42 FR 32373), set forth a series of general trade prohibitions and exceptions which apply to all endangered plant species. The regulations pertaining to endangered plants are found at §§ 17.61, 17.62, and 17.63 of 50 CFR and are summarized below. With respect to *Cereus eriophorus* var. *fragrans* all prohibitions of section 9(a)(2) of the Act, as implemented by § 17.61, would apply. These prohibitions, in part, would 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 could 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. No such trade in *Cereus eriophorus* var. *fragrans* is known. It is not anticipated that many trade permits would ever be issued since this plant is very rare in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, states that it is unlawful to remove and reduce to possession endangered plant species from areas under Federal jurisdiction. This prohibition would apply to this cactus. Permits for exceptions to this prohibition for scientific purposes or to enhance the propagation or survival of the species are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and these will be finalized following public comment. *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, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any appropriate party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Cereus eriophorus* var. *fragrans*;

(2) The location of any additional populations and the reasons why any habitat of this taxon should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this taxon; and

(4) Current or planned activities in the subject area and their possible impacts on the cactus.

Final promulgation of the regulations on *Cereus eriophorus* var. *fragrans* will take into consideration any comments and additional information received by the Service and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303.

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. 1962. *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. N.Y. Bot. Garden* 18:199-203.

Author

The primary author of this proposed rule is Dr. C. Kenneth Dodd, Jr., Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-1975; FTS 8-235-1975).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for Part 17 reads 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. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order, under the Family 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>Careus exophorus</i> var. <i>fragrans</i>	Fragrant prickly-apple	U.S.A. (FL)	E		NA	NA

Dated: February 13, 1985.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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