

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.

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.

Coryphantha sneedii var. *leei* has already been reduced in numbers and is threatened by taking. Publication of Critical Habitat maps would make this taxon more vulnerable to further taking and increase the enforcement burden of the Park Service. Therefore it would not be prudent to determine Critical Habitat.

Coryphantha sneedii var. *leei* was proposed on June 16, 1976 (41 FR 24570).

The Service is proceeding at this time with a final rule 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, as amended (16 U.S.C. 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 of range endangered			
Cactaceae—Cactus family:						
<i>Coryphantha sneedii</i> var. <i>leei</i>	Lee pincushion cactus	U.S.A. (New Mexico)	Entire	T	60	NA

Dated: October 15, 1979.

Robert S. Cook,
Deputy Director, Fish and Wildlife Service.

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50 CFR Part 17

Determination That *Echinocereus triglochidiatus* var. *arizonicus* Is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Echinocereus triglochidiatus* var. *arizonicus* (Arizona hedgehog cactus), a native plant of Arizona, to be an Endangered species. The taking of plants for collections and landscaping and the potential loss of habitat through mining activities are threats to the continued existence of this taxon in its native habitat. This action will provide protection under the Endangered Species Act of 1973, as amended (hereinafter referred to as the Act).

DATE: This rulemaking becomes effective on November 26, 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 (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 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 Institute 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 within the context of 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.

Echinocereus triglochidiatus var. *arizonicus* 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 11, 1979, in Phoenix, Arizona, for five Arizona cacti proposed as Endangered species, including this *Echinocereus*. 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. The rulemaking established prohibitions and a permit procedure to grant exceptions to the prohibitions under certain circumstance. The Department has determined that

this is not a significant rule and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

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, 1978, proposed rule (41 FR 2915) on prohibitions and permit provisions for plants under Section 9(a)(2) and 10(a) of the Act. These comments are summarized in the June 24, 1977, Federal Register final rule (43 FR 32373-32381) on plant trade prohibitions and permit provisions.

With the July 2, 1979, Federal Register notice (44 FR 38611) for the second public hearing on certain proposed southwestern cacti, comments were again solicited, with an official comment period of July 2 through July 23, 1979. The Governor of Arizona was notified of the proposal to list *Echinocereus triglochidiatus* var. *arizonicus* as an Endangered species. Although the Governor himself submitted no comment on the proposed action, the Arizona Commission of Agriculture and Horticulture concurred that *Echinocereus triglochidiatus* var. *arizonicus* be listed as an Endangered species.

Four written comments specific to this taxon were received in the 1979 comment period. The Southwest Regional Office of the Bureau of Reclamation indicated concern that there is 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 in the rulemaking. The Arizona State Office of the Bureau of Land Management commented that a new population of *Echinocereus triglochidiatus* var. *arizonicus* was recently found in the Mescal Mountains and that this population does not appear to meet the criteria of an Endangered or Threatened species because "there is no present or threatened destruction or modification of its habitat". Upon further Service inquiry to the BLM, doubts were raised as to the identification of the population in the Mescal Mountains. That population is not consistently distinctive enough for positive identification as variety *arizonicus*. Different varieties within the species *Echinocereus triglochidiatus* intergrade extensively with one another. Mixed populations showing extensive variation but with some affinities toward var. *arizonicus* are not to be considered classical var. *arizonicus* and therefore will not be subject to the protection and restrictions of the Endangered Species Act. Two letters from professional botanists were received, both strongly supported listing this variety as an Endangered species. In addition, the Service has received a detailed contracted status report from the Museum of Northern Arizona with their recommendation that this cactus be listed as Endangered. A provisional U.S. Forest Service status report has been received; it points out the variability of populations with var. *arizonicus* affinities and the resultant difficulty of practical identification in regards to management applications. Again, until further data is available (chromosome counts, etc.) only known populations of this variety will be subject to the Endangered Species Act.

At the July 11, 1979, public hearing in Phoenix, Arizona, Dr. Arthur Phillips recommended that *Echinocereus triglochidiatus* var. *arizonicus* be final-listed as Endangered based on its limited geographical distribution and threats from collecting and habitat destruction. Kent Newlin of the Central Arizona Cactus and Succulent Society and the Boyce-Thompson Arboretum in Superior, Arizona, also recommended listing this variety as Endangered due to collecting pressure and expansion of the Pinto Valley mining area, which could destroy a sizeable portion of this species' habitat. Elinor Lehto, an Arizona State botanist, also

recommended listing this taxon as Endangered.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Echinocereus triglochidiatus* Engelm. var. *arizonicus* (Rose ex Orcutt) L. Benson (Arizona hedgehog cactus; synonym: *Echinocereus arizonicus*) is in danger of becoming extinct 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 *Echinocereus triglochidiatus* var. *arizonicus* are as follows:

(1) *The present or threatened destruction, modification, or curtailment of its habitat or range.* This cactus is known from only a few locations near the boundary between Gila and Pinal counties, Arizona. The potential for habitat destruction through mining activities here is a possible threat to this taxon as there are active copper mines found throughout this district.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* This taxon is in demand by collectors, and taking is the main threat to its survival. Its bright red flowers are attractive, and, especially during the flowering period, plants are collected by private individuals and commercial suppliers for landscaping and cacti collections. Newland (1979) reports a recent attempt to relocate a specific plant; all he found was a hole where the plant had been dug up.

(3) *Disease or predation* (including grazing). Significant insect damage has been noted by several people, Phillips (1979) and Fletcher (1979).

(4) *The inadequacy of existing regulatory mechanisms.* All members of the Cactaceae (cactus family) are protected under Arizona law, A.R.S. Chapter 7, Sec. 3-901 et seq., which prohibits their collection without a permit. 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 cacti, and therefore does not regulate internal trade in cacti, or habitat destruction. Forest Service regulations prohibit the taking of endangered plants on Forest Service lands, 36 CFR 261.9(b), and that Service's Region III is beginning to implement a permit system, pursuant to 36 CFR 261.1a, for collecting rare plants. The Endangered Species Act will afford additional and broader protection.

(5) *Other natural or man-made factors affecting its continued existence.* None.

Effects 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 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, ensure 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 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 taxon. Rules implementing the 1978 amendments to Section 7 of the Act are now being prepared 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 Sections 17.61-17.63 and are summarized below.

All provisions of Section 9(a)(2) of the Act, as implemented by § 17.61 (42 FR 32373-32381), 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 cactus in interstate or foreign commerce. 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 Endangered plants, such as trade in specimens of cultivated origin. Under U.S. Forest Service rules in 36 CFR 261.9, this listing also makes it illegal to remove, destroy, or damage individual plants of this taxon occurring on U.S. Forest Service lands.

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. The Service will review *Echinocereus triglochidiatus* var. *arizonicus* 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.

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.

Echinocereus triglochidiatus var. *arizonicus* has already been reduced in numbers and is threatened by taking an activity not prohibited by the Endangered Species Act of 1973. Publication of Critical Habitat maps would make this taxon more vulnerable to further taking and, therefore, the Service determines that it would not be prudent to determine Critical Habitat.

Echinocereus triglochidiatus var. *arizonicus* was proposed on June 16, 1976 (41 FR 24536).

The Service is proceeding at this time with a final rulemaking to determine this species to be Endangered 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).

Dr. A. M. Phillips, III, Dr. Barbara G. Phillips, Mr. L. T. Green, III, Ms. Jill Mazzoni, and Ms. Elaine Peterson compiled the Status Report and other provisional documents for this taxon.

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, and species, the following plant:

§ 17.12. Endangered and threatened plants.

Species		Range		Status	When listed	Special rules
Scientific name	Common name	Known distribution	Portion of range endangered			
Cactaceae—Cactus family: <i>Echinocereus triglochidiatus</i> var. <i>arizonicus</i> .	Arizona hedgehog cactus.	U.S.A. (Arizona)	Entire	E	50	NA

Dated: October 15, 1979.

Robert S. Cook,
Deputy Director, Fish and Wildlife Service.

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