

disposal. Therefore, no operation and maintenance activities are required.

Although the remedial action was completed in April of 1988, the monitoring wells installed and utilized during the RI had to be properly abandoned prior to deletion of the Site from the NPL. In the spring of 1995, the U.S. Army Corps of Engineers, Baltimore District was tasked under an interagency agreement with EPA to properly abandon all monitoring wells except those which Jefferson County chose to retain for use in monitoring the groundwater in the vicinity of its solid waste landfill. This work was completed in June of 1995. On August 24, 1995, EPA accepted the Corps of Engineers' report entitled "Closure Report: Abandonment of Monitoring Wells, Leetown Pesticides Superfund Site, Leetown West Virginia" as a final document.

EPA is required to review remedial actions every five years if hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unrestricted exposure and unlimited use. Since neither of these conditions exists at this Site, further five-year reviews are not warranted and will not be conducted.

### C. Conclusion

The NCP at 40 CFR 300.425(e)(ii) provides that EPA may delete a site from the NPL if "all appropriate Fund-financed response under CERCLA has been implemented, and no further action by responsible parties is appropriate." EPA, with the concurrence of the State of West Virginia, believes that this criterion for deletion has been met. Therefore, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available in the Site information repositories listed previously in this document.

Dated: June 4, 1996.

Stanley L. Laskowski,

Acting Regional Administrator, U.S. EPA Region III.

[FR Doc. 96-14911 Filed 6-13-96; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket 87-10; Notice 8]

### Federal Motor Vehicle Safety Standards; Power-Operated Window, Partition, and Roof Panel Systems; Correction

AGENCY: National Highway Traffic Safety Administration; DOT.

ACTION: Correction.

**SUMMARY:** In Docket 87-10, Notice 6, Notice of Proposed Rulemaking, beginning on page 28124 in the issue of Tuesday, June 4, 1996, make the following correction:

On page 28124 in the second column, 25th line, change the words "Notice 6" to "Notice 7."

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Atelsek, Office of the Chief Counsel, NCC-20, telephone (202) 366-2992.

Issued: June 10, 1996.

Barry Felrice,

Associate Administrator for Safety Performance Standards.

[FR Doc. 96-15069 Filed 6-13-96; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AD91

### Endangered and Threatened Wildlife and Plants; Proposed Rule To Remove the Plant *Echinocereus lloydii* (Lloyd's Hedgehog Cactus) from the Federal List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

**SUMMARY:** The Fish and Wildlife Service (Service) under the authority of the Endangered Species Act of 1973 (Act), as amended, proposes to remove the plant *Echinocereus lloydii* (Lloyd's hedgehog cactus) from the Federal List of Endangered and Threatened Plants. Lloyd's hedgehog cactus was listed as endangered on October 26, 1979, due to threats of collection and highway

projects. Recent evidence indicates that Lloyd's hedgehog cactus is not a distinct species but rather a hybrid. Therefore, Lloyd's hedgehog cactus does not qualify for protection under the Act.

**DATES:** Comments from all interested parties must be received by August 13, 1996. Public hearing requests must be received by July 29, 1996.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, Ecological Services Austin Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Hartland Bank Building, Austin, Texas 78758.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

#### FOR FURTHER INFORMATION CONTACT:

Kathryn Kennedy or Elizabeth Materna, (see ADDRESSES section) (telephone 512/490-0057; facsimile 512/490-0974).

#### SUPPLEMENTARY INFORMATION:

##### Background

*Echinocereus lloydii* (Lloyd's hedgehog cactus), a member of the cactus family, was first collected by F.E. Lloyd in 1922 and was named in his honor by Britton and Rose (1937). The first plants collected by Mr. Lloyd were from near Fort Stockton, Pecos County, Texas (Weniger 1970).

Lloyd's hedgehog cactus is a cylindrical cactus with one to several stems up to about 20 centimeters (cm) (8 inches (in)) long and 10 cm (4 in) in diameter. The flowers vary from lavender to magenta in color, are about 5 cm (2 in) in diameter, and form mature fruits that are green, tinged with pink or orange when ripe (Correll and Johnston 1979, Poole and Riskind 1987).

Lloyd's hedgehog cactus is known from Brewster, Culberson, Pecos, and Presidio Counties in Texas as well as from Eddy County in New Mexico. It has also been reported from the state of Chihuahua in Mexico. Currently fewer than 15 localities are known from the U.S., most occurring on private lands. These cacti occur in the shrub and brush rangeland of the Chihuahuan Desert, and are usually found associated with *Agave lecheguilla* (lechuguilla), *Prosopis glandulosa* (mesquite), *Larrea tridentata* (creosote bush), *Flourensia cernua* (tarbush), *Viguiera stenoloba* (skeleton-leaf goldeneye), and various cacti (*Opuntia* sp., *Echinocereus* sp., *Echinocactus* sp., and *Coryphantha* sp.) (Poole and Riskind 1987).

Lloyd's hedgehog cactus is usually found on limestone with occasional weathered metamorphic rock. The cacti grow on sandy, gravelly, or rocky soils

on slopes and hillsides, on bare rock ledges (Benson 1982, Weniger 1979), and on fine-textured alluvial soils (Poole and Zimmerman 1985). Elevation of known localities is between 900 and 1650 meters (2950 and 5410 feet) (Benson 1982). Lloyd's hedgehog cactus typically grows on open, fully exposed sites with very scattered forbs, grasses, and brush (Weniger 1979). However, it also occurs in dense mesquite scrub among tall grasses (Poole and Zimmerman 1985).

Lloyd's hedgehog cactus was listed as an endangered species on October 26, 1979 (44 FR 61916) under the authority of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). At the time of listing, Lloyd's hedgehog cactus was considered to be a distinct species, and to be threatened by overcollection, habitat loss or alteration due to highway construction and maintenance, and potentially by overgrazing by livestock.

It has long been recognized that the physical characteristics of Lloyd's hedgehog cactus are intermediate between those of *Echinocereus dasyacanthus* (Texas rainbow cactus) and *Echinocereus coccineus* (a species of claret-cup cactus). There were several ideas about how such intermediacy could have arisen. One theory was that Lloyd's hedgehog cactus represented a primitive ancestral evolutionary lineage, which diversified over time giving rise to two new lineages producing *E. dasyacanthus* and *E. coccineus*. Another theory was that Lloyd's hedgehog cactus was of hybrid origin, the result of ancient hybridization between *E. dasyacanthus* and *E. coccineus*, but now an independent taxon recognizable as a species.

While interspecific hybridization between members of the genus *Echinocereus* had been reported, hybridization between *E. coccineus* and *E. dasyacanthus* seemed highly unlikely as the two species differ greatly in morphology, have different predominant pollinators (one hummingbird pollinated, the other bee pollinated), and generally grow in different habitats (one a more mesic species and the other typical of more open desert). In addition, anywhere they had been grown or found together they had been observed to bloom at different times with little if any overlap. While many hybrids are sterile, plants of Lloyd's hedgehog cactus were known to be fertile and able to reproduce. Wild populations were known to have persisted for some time, and treatment as a distinct species was generally accepted.

Steve Brack (U.S. Fish and Wildlife Service 1985) reported that in his field examination of Lloyd's hedgehog cactus he had located plants only in proximity to *E. dasyacanthus* and *E. coccineus*. This apparent lack of isolation combined with the intermediate appearance of the plants raised questions about the taxonomic interpretation of Lloyd's hedgehog cactus as a distinct species. It suggested the possibility that Lloyd's hedgehog cactus might be the result of recent and sporadic hybridizations, and simply represent relatively unstable hybrid swarms that were not evolving independently and should not be recognized as a species. The Service determined that the potential hybrid status of Lloyd's hedgehog cactus should be investigated.

Powell, Zimmerman, and Hilsenbeck (1991) conducted experimental crosses, morphological analyses, pollen stainability studies, chromosome counts, and phytochemical studies on the progeny from experimental crosses between *E. dasyacanthus* and *E. coccineus* and on naturally occurring Lloyd's hedgehog cacti. They demonstrated that hybrids between *E. dasyacanthus* and *E. coccineus* could be easily produced, closely resembled naturally occurring Lloyd's hedgehog cacti, and were interfertile and able to backcross to the parental species to produce another generation of plants. If such fertile hybrids were produced in the wild, they could presumably multiply and backcross to the parental species forming the sort of persistent intermediate populations of high variability that are found naturally. Their work suggested that Lloyd's hedgehog cactus could have arisen as a result of hybridization between these other two species of *Echinocereus*, both of which are common and not protected by the Act.

The probability that Lloyd's hedgehog cactus arose through hybridization rather than representing a persistent ancestral condition was heightened by Powell *et al.*'s (1991) finding that naturally occurring Lloyd's hedgehog cacti have tetraploid chromosome numbers, as do *E. dasyacanthus* and *E. coccineus*. Tetraploid chromosome numbers are considered an advanced or recently derived characteristic in the cactaceae, rather than a primitive one. Zimmerman (1992) made additional observations on pollinators and other ecological and phenological isolating mechanisms. He also did cladistic analyses of the primitive and advanced species of the rainbow cacti and claret-cup cacti taxonomic groups and Lloyd's hedgehog cactus. He agreed that Lloyd's

hedgehog cactus is not primitive and probably arose through hybridization.

Concluding that plants recognized as Lloyd's hedgehog cactus arose through hybridization raised questions about the integrity or cohesiveness of populations and whether they were sufficiently distinct, isolated, and independently evolving genomes that they should be recognized as distinct species. Powell *et al.*'s (1991) phytochemical, morphological, and crossing studies detected no unique characters or reproductive isolation that would demonstrate any independent evolution had occurred. Though their study lacked comprehensive examination and interpretation of populations in the field and throughout the known range, they suggested that plants recognized as Lloyd's hedgehog cactus might represent mere sporadic hybrid swarms in areas of *E. dasyacanthus* and *E. coccineus* sympatry, and should probably be recognized only as a nothotaxon (a hybrid recognized nomenclaturally for purposes of identification). They designated their artificially produced hybrids as *Echinocereus X lloydii*.

Zimmerman (1992) examined geographical distribution, correlations with geographic variation across the range of Lloyd's hedgehog cactus and its parental species, and population characteristics at several sites in the wild. He found that Lloyd's hedgehog cactus was only found in areas of sympatry between *E. dasyacanthus* and *E. coccineus*. Further, sites with Lloyd's hedgehog cactus did not demonstrate populational integrity or cohesion. Populations were not uniform in appearance and exhibited great variation among individuals consistent with a pattern of backcrossing or introgression with the parental species. Zimmerman could find no evidence of reproductive isolation in the field. The blooming time of Lloyd's hedgehog cactus overlapped both parental species, and Lloyd's hedgehog cactus did not exhibit any habitat preference that would provide any significant physical separation from the parental species. He concluded that Lloyd's hedgehog cactus is not a legitimate species, but felt that plants generally recognized as Lloyd's hedgehog cactus were distinctive enough that for purposes of description and identification it would be convenient to formally designate them as a nothotaxon. His review of the nomenclature resulted in the recommendation that plants formerly recognized as *Echinocereus lloydii* should properly be referred to as the nothotaxon *Echinocereus X roetteri* var. *neomexicanus*.

### Previous Federal Action

Federal government action concerning Lloyd's hedgehog cactus began with section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report (House Document No. 94-51), which included Lloyd's hedgehog cactus, was presented to Congress on January 9, 1975, and accepted by the Service under section 4(c)(2), now section 4(b)(3)(A), of the Act as a petition to list these species. The report, along with a statement of the Service's intention to review the status of the plant taxa, was published in the Federal Register on July 1, 1975 (40 FR 27823). On June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered pursuant to section 4 of the Act. Lloyd's hedgehog cactus was included in this proposal. Four general hearings pertaining to this proposal were held in July and August of 1976, in the following cities—Washington, D.C.; Honolulu, Hawaii; El Segundo, California; and Kansas City, Missouri. A fifth public hearing was held on July 9, 1979, in Austin, Texas, for seven Texas cacti, including Lloyd's hedgehog cactus, and one fish. The final rule listing Lloyd's hedgehog cactus as an endangered species was published on October 26, 1979 (44 FR 61916). No critical habitat was designated.

The processing of this proposal to delist follows the Service's final listing priority guidance published in the Federal Register on May 16, 1996 (61 FR 24722). The guidance clarifies the order in which the Service will process rulemakings following two related events: 1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104-6), and 2) the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for prompt processing of draft listings, including proposed delistings, that were already in the Service's Washington office and already approved by the field and regional offices when the severe funding constraints were imposed in early fiscal year 1996. A draft of this rule was approved by the Service's Albuquerque Regional Director and transmitted to the Washington office on April 4, 1995, where processing was

postponed in favor of other, higher priority listing actions.

### Summary of Factors Affecting the Species

After a review of all information available, the Service is proposing to remove Lloyd's hedgehog cactus from the List of Endangered and Threatened Plants. Section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to or removing them from the Federal lists. The regulations at 50 CFR 424.11(d) state that a species may be delisted if (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error. Since the time of listing, additional study has shown that Lloyd's hedgehog cactus is not a distinct species, but a hybrid. The Service has concluded that the original taxonomic interpretation upon which the listing decision was based was incorrect, and Lloyd's hedgehog cactus does not qualify for protection because it does not fit the definition of a species as specified in the Act.

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). At the time of listing it was believed that Lloyd's hedgehog cactus was a distinct species and that several of these factors were present. These factors and their application to *Echinocereus lloydii* Britt. & Rose (Lloyd's hedgehog cactus) were discussed in detail in the final rule (44 FR 61916) and included:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Service was concerned that Lloyd's hedgehog cactus was vulnerable from past and potential habitat destruction due to highway construction and maintenance, and the potential destructive impacts of overgrazing in the rural rangeland habitat.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* At the time of the final rule and continuing today, Lloyd's hedgehog cactus is in world-wide demand by collectors of rare cacti. Removal of plants from the wild has depleted natural populations.

C. *Disease or predation.* At the time of listing it was believed that Lloyd's hedgehog cactus, particularly young plants, could suffer possible adverse effects from trampling by grazing livestock. The final rule reported that light grazing did not seem to affect the species, however, intense grazing could threaten its continued existence.

D. *The inadequacy of existing regulatory mechanisms.* At the time Lloyd's hedgehog cactus was listed, the states of Texas and New Mexico had no laws protecting endangered and threatened plants. Since the listing, both states have enacted protective laws and regulations for plants. Lloyd's hedgehog cactus is on the New Mexico State List of Endangered Plant Species (9-10-10 NMSA 1978; NMFRCD Rule No. 91-1) and on the Texas List of Endangered, Threatened or Protected Plants (Chapter 88, Texas Parks and Wildlife Code).

On July 1, 1975, 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). CITES is an international treaty established to prevent international trade that may be detrimental to the survival of plants and animals. A CITES export permit must be issued by the exporting country before an Appendix II species may be shipped. CITES permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. However, CITES does not itself regulate take or domestic trade.

E. *Other natural or manmade factors affecting its continued existence.* Concern about a restricted gene pool due to a low number of populations was listed in the final rule as a factor that could intensify the adverse effects of other threats.

The Service's determination that Lloyd's hedgehog cactus should be proposed for delisting is based on evidence that it is a hybrid that does not qualify for protection under the Act, rather than on the control of threats.

The Service has carefully assessed the best scientific and commercial information available regarding the conclusion that Lloyd's hedgehog cactus is a hybrid that does not qualify for protection under the Act in determining to propose this rule. Based on this evaluation, the preferred action is to remove Lloyd's hedgehog cactus from the List of Endangered and Threatened Plants.

### Effects of the Proposed Rule

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply to Lloyd's hedgehog cactus. 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, sell or offer for sale in interstate or foreign commerce, or remove and reduce the cactus to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. If Lloyd's hedgehog cactus is removed from the List of Endangered and Threatened Plants, these prohibitions would no longer apply.

If Lloyd's hedgehog cactus is delisted, the requirements under section 7 of the Act would no longer apply. Federal agencies would not be required to consult with the Service on their actions that may affect Lloyd's hedgehog cactus.

The 1988 amendments to the Act require that all species delisted due to recovery be monitored for at least 5 years following delisting. Lloyd's hedgehog cactus is being proposed for delisting because the taxonomic interpretation that it is a species has been found to be incorrect; Lloyd's hedgehog cactus is an unstable hybrid rather than a distinct taxon. Therefore, no monitoring period following delisting is required.

Some protection for Lloyd's hedgehog cactus may remain in place. All cacti, including hybrids, are on Appendix II of CITES. CITES regulates international trade of cacti, but does not regulate trade within the United States or prevent habitat destruction.

#### Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning the taxonomic status or threats (or lack thereof) to this apparent hybrid;
- (2) The location and characteristics of any additional populations not considered in previous work that might have bearing on the current taxonomic interpretation; and
- (3) Additional information concerning range, distribution, and population sizes, particularly if it would assist in the evaluation of the accuracy of the current taxonomic interpretation.

The Service will take into consideration the comments and any additional information received and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the Federal Register. Such requests must be made in writing and addressed to Field Supervisor (see ADDRESSES section).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, 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).

#### References Cited

- Benson, L. 1982. The cacti of the United States and Canada. Stanford University Press, Stanford, California. 1044 pp.
- Britton, N.L. and J.N. Rose. 1937. The Cactaceae. Vol. III. 258:37-38.
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- U.S. Fish and Wildlife Service. 1985. Minutes of the Joint Meeting, Region 2 Plant Recovery Teams, January 10-11, 1985. Region 2, Albuquerque, New Mexico.
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Zimmerman, A.D. 1992. Systematics of *Echinocereus X roetteri* (Cactaceae), including Lloyd's hedgehog-cactus. Southwestern Rare and Endangered Plants; Proceedings of the Southwestern Rare and Endangered Plant Conference. Forestry and Resources Conservation Division of the New Mexico Energy, Minerals, and Natural Resources Department. Miscellaneous Publication 2:270-288.

#### Authors

The primary authors of this document are Elizabeth Materna and Kathryn Kennedy, Ecological Services Austin Field Office (see ADDRESSES section).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

#### Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

#### PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

#### § 17.12 [Amended]

2. Section 17.12(h) is amended by removing the entry for "*Echinocereus lloydii*" under "FLOWERING PLANTS" from the List of Endangered and Threatened Plants.

Dated: May 28, 1996.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 96-15124 Filed 6-13-96; 8:45 am]

BILLING CODE 4310-55-P

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 216

[Docket No. 960318084-6084-01; I.D. 031396E]

RIN 0648-AG55

#### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Naval Activities

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of a petition for regulations, and an application for a