Dated: October 22, 1979.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

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50 CFR Part 17

Determination that Echinocereus reichenbachii var. albertii is an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Echinocereus reichenbachii* (Terscheck) Haage f. var. *albertii* L. Benson (Black lace cactus), a native plant of Texas, to be an Endangered species. Known populations of this cactus have been reduced fifty percent (from six sites to three) by brush clearing for range improvement programs. Remaining populations are seriously threatened by further brush clearing of the brush communities in the South Texas Coastal Bend.

Another threat to this cactus is over-collecting. This cactus is in world-wide demand by collectors of rare cacti, especially for show specimens. Past commercial and private exploitation has caused a serious decline in its natural population level so that not more than 4,000 plants remain in the wild. This determination that *Echinocereus reichenbachii* var. *albertii* is an Endangered species implements the protection provided by the Endangered Species Act as well as mechanisms to assist in management and recovery of surviving populations.

DATE: This rulemaking becomes effective on November 28, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. John Spinks, Chief, Office of Endangered Species, Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 703/235-2771.

SUPPLEMENTARY INFORMATION:

Background

Echinocereus reichenbachii var. *albertii* is an endemic member of the Gulf Coast Plain brush community of the South Texas Coastal Bend. It is found on the ecotone between the Gulf coastal plain and the more rolling interior mesquite-chapparal country. It is highly salt tolerant. This cactus is presently known from only three sites, one in each of the following three counties: Refugio, Kleberg and Jim Wells. The combined area of all sites for this taxon is about seven hectares. Not more than 4,000 plants are known to remain in the wild.

The Secretary of the Smithsonian Institution, in response to Section 12 of the Endangered Species Act, presented his report on plant species 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 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 to list these species under 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 reichenbachii var. *albertii* was included in both the July 1, 1975, notice of review and the June 16, 1976, proposal. Public hearings on the June 16, 1976, proposal were held on July 22, 1976, in El Segundo, California and on July 28, 1976, in Kansas City, Missouri. Another public hearing was held on July 9, 1979, in Austin, Texas for the seven Texas cacti proposed as Endangered species, including *Echinocereus reichenbachii* var. *albertii.*

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. These rules establish prohibitions and a permit procedure to grant exceptions to the prohibitions under certain circumstances.

The Department has determined that this is not a significant rule and does not require the preparation of a regulatory analysis, under Executive Order 12044 and 43 CFR Part 14.

SUMMARY OF RECOMMENDATIONS: In keeping with the intent of section 4(b)(1)(C) of the Act, a summary of all comments and recommendations received are here published in the Federal Register prior to adding this 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 cacti conservation. Additionally, many comments on the cactus trade were received in response to the June 7, 1976, proposed rule (41 FR 22915) 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, final prohibitions and permit provisions (42 FR 32374-32381).

No comments dealing specifically with *Echinocereus reichenbachii* var. *albertii* were received during these official comment periods. The Governor of Texas was notified of this proposed action. The Governor submitted no comments on the proposed action, nor did the State Conservation Agency. Botanists have submitted information on this species since the close of the official comment period.

On July 9, 1979, a public hearing was held in Austin, Texas, and the comment period was officially reopened (July 2 through July 23, 1979). The Governor of Texas was notified of the proposal to list *Echinocereus reichenbachii* var. *albertii* as an Endangered species. The Governor submitted no comments on the proposed action.

One written comment specific to *Echinocereus reichenbachii* var. *albertii* was received in the July, 1979, comment period. The El Paso Cactus and Rock Club favored listing this species as Endangered.

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At the July 9, 1979, public hearing in Austin, Texas, Del Weniger, Chairman of the Biology Department at Our Lady of the Lake University in San Antonio, commented on the natural history and distribution of *Echinocereus reichenbachii* var. *albertii*. He recommended it be final-listed as Endangered because "it is very limited and endangered from brush clearing." He detailed these threats to the species from habitat destruction and collecting.

Conclusion

After a thorough review and consideration of all the information available, the Director has determined that *Echinocereus reichenbachii* (Terscheck) Haage f. var. *albertii* L. Benson (Black lace cactus; synonyms: *Echinocereus melanocentrus* Lowry) 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 reichenbachii* var. *albertii* are as follows:

(1) *The present or threatened destruction, modification or curtailment of its habitat or range.* Historically, this cactus occurred in six scattered localities on flat Coastal plains in dense brush of east central Jim Wells County, northern Kleberg County, and southern Refugio County, Texas. Brush clearing and collecting have resulted in the loss of habitat for this cactus and a reduction in its range to only three remaining known locations, one in each county. One of these sites in Jim Wells County has already been reduced by brush clearing. These remaining sites are privately owned and are parts of large ranching operations. Habitat destruction as a result of brush control and range improvement programs is an immediate and serious threat to this cactus.

(2) *Overutilization for commercial, sporting, scientific, or educational purposes.* This species is a greatly desired show plant and collectors' item. Entire plants are collected by cactus dealers and amateur growers. Plants from one of the two originally known populations in Jim Wells County were taken years ago for commercial trade. No sign of that population has been reported since that time; it was apparently totaly extirpated by taking. Those few botanists knowing the whereabouts of the other site have been very careful not to reveal its exact location. This secrecy accounts for its continued existence in the face of this taking threat.

(3) *Disease or predation* (including grazing). This does not seem to be a factor threatening this cactus.

(4) *The inadequacy of existing regulatory mechanisms.* The State of Texas provides no protection for this cactus. The Endangered Species Act would offer the first protection for it.

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 taxon, and, therefore, does not regulate internal trade in the cactus or habitat destruction. No other Federal protective laws currently apply to this taxon. The Endangered Species Act of 1973, as amended, will now offer additional protection for the taxon.

(5) *Other natural or man-made factors affecting its continued existence.* Restriction to a specialized and localized ecotonal plant community with a low total population level consisting of small, scattered and disjunct populations and a resultant restricted gene pool are factors which tend to intensify the adverse effects of threats to this plant and its habitat.

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 were published on January 4, 1978, in the Federal Register (43 FR 870–876) and codified at 50 CFR Part 402. These regulations are intended 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 species.

Endangered species regulations in Title 50 of the Code of Federal Regulations set forth a series of general prohibitions and exceptions which apply to all Endangered species. The regulations which pertain to Endangered plant species are found at Section 17.61–17.63 (43 FR 32378–32381).

Section 9(a)(2) of the Act, as implemented by Section 17.61 would apply. With respect to any species of plant listed as Endangered, 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. Certain exceptions 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, also provide for the issuance of permits under certain circumstances to carry out otherwise prohibited activities involving Endangered plants.

Effect Internationally

In addition to the protection provided by the Act, all native cacti are on Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora, which requires a permit for export of the taxon. 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

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 significantly affects the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Endangered Species Act Amendments of 1978

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

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of such species which is then considered to be Critical Habitat.

Echinocereus reichenbachii var. *albertii* is threatened by taking 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 and therefore it would not be prudent to determine Critical Habitat.

Echinocereus reichenbachii var. *albertii* was proposed for listing as an Endangered plant on June 16, 1976. Since it has been determined to be imprudent to designate Critical Habitat for this species at this time, and all listing requirements of the Act have been satisfied, the Service now proceeds with the final rulemaking to determine this species to be Endangered under the authority contained in the Endangered Species Act of 1973, as amended (16 USC § 1531–1543).

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). Status information for this species was compiled by Del Weniger, Chairman, Biology Department, Our Lady of the Lake University, San Antonio, Texas, and author of *Cacti of the Southwest.*

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. 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			
Echinocereus reichenbachii var. *albertii.*	Black lace cactus	U.S.A. (TX)	Entire	E	65	NA

Dated: October 22, 1979.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

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