

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine *Cupressus Abramsiana* To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine a plant, *Cupressus abramsiana* C.B. Wolf (Santa Cruz cypress), to be an endangered species. Only five small populations of this endemic species remain, occurring in groves on private and county land in the Santa Cruz Mountains, Santa Cruz and San Mateo Counties, California. Portions of each have been destroyed or are threatened by residential development, agricultural conversion, logging, and/or alteration of the natural frequency of fires that maintains the cypress groves. One population also faces a potential threat from oil and gas drilling. The issuance of the lease and the approval of the drilling are the responsibility of the Bureau of Land Management. Determination of *Cupressus abramsiana* as an endangered species would implement the protection provided under the Endangered Species Act of 1973, as amended. The Service seeks relevant data and comments from interested parties on this proposal.

DATES: Comments from all interested parties must be received by November 12, 1985. Public hearing requests must be received by October 28, 1985.

ADDRESS: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 N.E. Multnomah Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, (see ADDRESS above) (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:
Background

Cupressus abramsiana (Santa Cruz cypress) was first collected by M.E. Jones in 1881 and later described by C.B. Wolf (1948) based on specimens collected near "Bonnie Doon" in the Santa Cruz Mountains, Santa Cruz County, California. It is an erect, coniferous tree, approximately 10 meters (34 feet) tall, with a compact, symmetrical, pyramidal crown (Young, 1977). The scale-like foliage is a rich light green, while the bark is gray and fibrous (Wolf, 1948). Female cones, 20 to 30 millimeters (0.8 to 1.2 inches) long, are produced annually on the branches, where they remain for several years or until the supporting branch dies, generally as a result of fire (Bartel and Knudsen, 1982).

Habitat for *Cupressus abramsiana* consists of chaparral and closed-cone pine forest communities in sandstone- or granitic-derived soils, within an area of cool, wet winters and hot, dry summers with little to no coastal fog (Young, 1977). Cypress habitat ranges in elevation from 300 to 750 meters (1020 to 2550 feet). Associated species include *Pinus attenuata*, *Haplopappus ericoides* ssp. *blakei*, *Dendromecon rigida*, and *Arctostaphylos* spp. (Griffin and Critchfield, 1972).

This habitat type experiences periodic destruction by wildfire, a phenomenon upon which *Cupressus abramsiana* depends for its continued existence. Cypress trees are "obligate-seeders," that is, the trees fail to resprout from their stumps after fire and are thus totally dependent upon seed for post-fire regeneration. This, periodic fires at too short an interval to allow trees to reach seed-bearing age could lead to the extirpation of a given grove. Conversely, the absence of fire for too long a period can apparently result in lowered reproductive capability and a general increase in the probability of extirpation (Bartel and Knudsen, 1982).

The Santa Cruz cypress is presently limited to five small populations found in a two-county area of California. Groves are found on Butano Ridge, San Mateo County and in Santa Cruz County near Bonnie Doon, Eagle Rock, Bracken Brae Creek, and between Majors and Laguna Creeks. These populations occur almost entirely on privately owned land, except for a portion of the Butano Ridge grove, which is found on Pescadero Creek County Park. This land is under the jurisdiction of the San Mateo County Department of Parks and Recreation. The five groves are threatened by residential development, agricultural conversion, logging, and/or alteration of the natural frequency of fires that

maintain the cypress groves. An additional threat to the Butano Ridge grove may arise from oil and gas drilling. Some groves also exhibit signs of past disturbance by construction (Bracken Brae), logging (Butano Ridge), and fire (Bonny Doon) (Bartel and Knudsen, 1982). Protective and cooperative action by Federal, State, and private parties is needed to ensure the species' safety and provide for its recovery.

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 (House Document No. 94-51) was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice of review in the *Federal Register* (40 FR 27823) accepting this report 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). 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. *Cupressus abramsiana* was included in the Smithsonian report, the notice of review of July 1, 1975, and the proposal of June 16, 1976, as *C. goveniana* var. *abramsiana* (Wolf) Little.

The Endangered Species Act, as amended in 1978, required that all proposals over 2 years old be withdrawn, except that a 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired (44 FR 70796). In the *Federal Register* of December 15, 1980 (45 FR 82480), the Service published a revised notice of review. *Cupressus abramsiana* was included in this notice as a category-1 species, indicating that existing data warranted proposing to list the species as endangered or threatened.

The Endangered Species Act Amendments of 1982 require that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The deadline for making a finding on species covered by such petitions, including *Cupressus abramsiana*, was October 13, 1983. On October 13, 1983, and again on October 12, 1984, the petition finding was made that listing *Cupressus abramsiana* was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act.

Such a finding requires a recycling of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding must be made on or before October 13, 1985; this proposed rule constitutes the finding that the petitioned action is warranted in accordance with section 4(b)(3)(B)(ii) of the Act.

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 (50 CFR Part 424, revised October 1, 1984, see 49 FR 38900) set forth the procedures for adding species to the Federal lists. 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 *Cupressus abramsiana* C.B. Wolf (Santa Cruz cypress) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Santa Cruz cypress now occurs in a very limited range comprising five small groves in the Santa Cruz Mountains of California. All the groves are threatened by residential development, agricultural conversion, logging, and/or alteration of the natural fire frequency that maintains the groves. About one-third of the Bracken Brae Grove was destroyed in 1975 by a residential development project (Libby, 1979). Two further phases of the project threaten to destroy the remainder of the grove. The largest grove, at Bonny Doon, is being threatened by a proposed vineyard development. Over one-half of the cypress habitat at Bonny Doon could be lost as a result of this development. The Majors Creek and Eagle Rock groves are threatened by logging and residential development. The privately owned section of the Butano Ridge grove is subject to logging, and faces a potential threat from oil and gas drilling.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* No such threats are experienced by *Cupressus abramsiana* at this time.

D. *The inadequacy of existing regulatory mechanisms.* *Cupressus abramsiana* currently receives no specific protection under California State law.

E. *Other natural or manmade factors affecting its continued existence.* Areas where groves of *Cupressus abramsiana* occur are subject to periodic wildfire; the species is dependent on this phenomenon for its continued existence.

Cypress are "obligate seeders" and thus totally rely upon seed for post-fire regeneration. Fires at too short an interval could lead to the extirpation of a given grove. Conversely, the absence of fire for too long a period apparently results in lower grove vitality, reduced cone production, reduced seedling establishment, and a general increase in the probability of extinction of the affected grove. The natural fire frequency is estimated at between 50 and 100 years, with a minimum of 20 years between fires necessary to avoid extinction (Keeley 1981, summarized in Bartel and Knudsen, 1982). It appears that the natural intervals between fires in the habitat of the Santa Cruz cypress has been altered by encroaching human inhabitation and utilization.

The largest tree in the Bonny Doon population was recently cut down. Similar threats of vandalism are faced by the remaining cypress trees.

The Service had carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Cupressus abramsiana* as endangered. Only five small populations of this species remain, and these face current or potential threats from residential development, agricultural conversion, logging, and/or disruption of the natural frequency of fires that maintain the cypress groves. Given these conditions, the determination of endangered status for the Santa Cruz cypress is warranted because the species is in danger of extinction throughout its range and may soon disappear unless appropriate protection is extended. Critical habitat is not being designated for the species at this time for the reasons discussed below.

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. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species," *Cupressus abramsiana* is subject to acts of vandalism. Publication of critical habitat descriptions in the Federal Register would expose the species and its habitat to a greater number of people, thus increasing the risk of further incidents of vandalism. Therefore, it would not be prudent to

designate critical habitat for *Cupressus abramsiana* at this time.

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 for 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, if any is being designated. 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)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of its proposed critical habitat. If a species is listed subsequently, 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 such a species or to destroy or adversely modify 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. The only known Federal action that could possibly affect the Santa Cruz cypress involves an oil and gas lease on Butano Ridge. The issuance of the lease and the approval of the drilling are the responsibility of the Bureau of Land Management. If the Santa Cruz cypress is likely to be affected by drilling activities, final approval of the drilling would require consultation with the Service pursuant to section 7 of the Act.

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 *Cupressus abramsiana*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 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 can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. No trade in this species is known to occur and it is anticipated that few trade permits involving the species will ever be requested.

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 provision would apply to *Cupressus abramsiana* should it be found on Federal land. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this new prohibition were published on July 8, 1983 (48 FR 31417). Presently, the Santa Cruz cypress is only found on county and private land not under Federal jurisdiction. Few, if any, requests for collecting permits are expected. 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, DC 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, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning the following:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Cupressus abramsiana*;
- (2) The location of any additional populations of *Cupressus abramsiana* and the reasons why any habitat 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 species; and
- (4) Current or planned activities in the subject area and their possible impacts on *Cupressus abramsiana*.

Final promulgation of the regulation on *Cupressus aframsiana* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of 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 (see ADDRESS section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by 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

Bartel, J., and M. Knudsen. 1982. Status review of the Santa Cruz cypress. U.S. Fish

and Wildlife Service, Sacramento, California. 7 pp.
 Griffin, J.R., and W.B. Critchfield. 1972. The distribution of forest trees in California. USDA Forest Service Research Paper PSW-82.
 Libby, J. 1979. *Cupressus aframsiana* goes to court. *Fremontia* 7(3):15.
 Wolf, C.B. 1948. A New World cypress. I. Taxonomic and distributional studies on the New World cypresses. *Aliso* 1:1-250.
 Young, P.G. 1977. Rare plant status report, *Cupressus aframsiana* C.B. Wolf. California Native Plant Society, Santa Cruz Chapter, Santa Cruz, California. 2 pp.

Authors

The primary authors for this proposed rule are Jim A. Bartel and Monty Knudsen, Sacramento Endangered Species Office, U.S. Fish and Wildlife Service, 1230 "N" Street, 14th Floor, Sacramento, California 95814 (916/440-4935 or FTS 468-4935).

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 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. 96-159, 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 Cupressaceae, 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					
Cupressaceae—Cypress family:						
<i>Cupressus abramsiana</i>	Santa Cruz cypress	U.S.A. (CA)	E		NA	NA

Dated: August 27, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

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