

Paradoxes of Peyote Regulation in Mexico: Drug Conventions and Environmental Laws

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This chapter analyzes the history of peyote (*Lophophora williamsii*) regulation in Mexico. Peyote, a cactus native to Mexico and southern Texas, contains the hallucinogenic compound mescaline, a nationally and internationally controlled substance. Despite its controlled status, mechanisms have been put in place to protect traditional uses among indigenous groups.¹ Peyote is also internationally regulated for environmental reasons under the Convention on the International Trade in Endangered Species (CITES), which categorizes the cactus as a species liable to become endangered, while in Mexico peyote is classified as requiring “special protection.” In contrast to other controlled substances (e.g., coca, marijuana, heroin), the regulation of peyote occurs at a unique nexus of several policy objectives: drug control, indigenous interests, and environmental protection.

Determining how regulations advancing these diverse policy interests interact, and whether these opposing interests are appropriately balanced, is a key focus of this chapter. We begin with a brief discussion of the history of peyote use in Mexico, followed by an examination of international and national drug and environmental laws regulating its use. Next, we describe the mechanisms through which exemptions are given to indigenous groups, and provide a brief overview of legal cases involving peyote. Through an examination of peyote regulation, we will show that a broader dialogue between different actors and regulatory agencies may provide viable and beneficial alternatives to the narrow policy concerns of the international prohibitionist system and its limited outcomes.

HISTORICAL BACKGROUND

Archaeological evidence from southwestern Texas and Mexico suggests that the ritual use of peyote dates as far back as 5,700 years (El-Seedi,



Photo 11.1 Peyote growing under a clump of grass in San Luis Potosí, Mexico. (Beatriz Caiuby Labate)

De Smet, Beck, Possnert, & Bruhn, 2005; Terry, Steelman, Guilderson, Dering, & Rowe, 2006). Peyote use was documented by Spanish missionaries in Mexico as early as 1560 (Ott, 1993; Sahagún, Dibble, & Anderson, 2012) and was later prohibited in 1620 by an act of the Spanish Inquisition (Leonard, 1942). According to the Mexican National Archives, the Inquisition conducted at least 90 trials for peyote possession in 45 different localities over a 265-year period (Loizaga Pazzi, 2012), suggesting that the use of peyote was geographically widespread. As a result of these efforts, the ritual use of peyote was largely wiped out, although use is known to have persisted among a handful of indigenous groups, including the Cora, Huichol, Tarahumara, and some communities of Tepehuan (Beciolini, 2012; Diguët, 1992; Escohotado, 1989; Gandola, 1967).²

While ritual uses of peyote survived only among a few indigenous groups, peyote remained popular as a folk medicine among both indigenous and mestizo populations, and was listed as a remedy in the *Farmacopía Mexicana* during the 1800s (Schultes, 1938). Traditionally, peyote has been used to treat fevers, infections, muscle aches, cramps, rheumatism, and a variety of skin ailments. While fresh peyote buttons were reportedly available in markets as recently as the 1950s (Kelly, 1965; Schultes, 1938), currently, topical

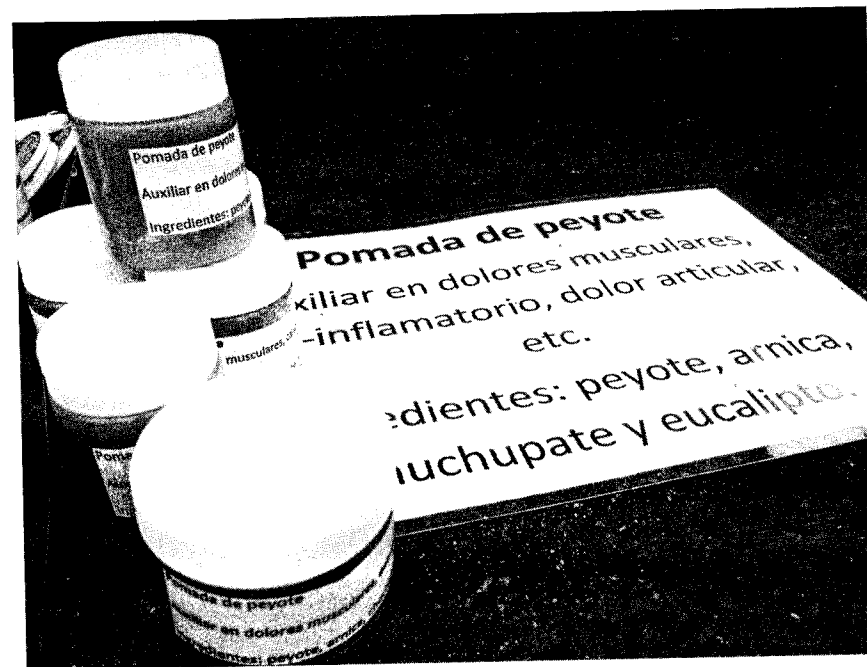


Photo 11.2 Pomadas (an oil-based preparation of peyote) for sale by a Huichol street vendor in Zacatecas, Mexico. (Beatriz Caiuby Labate)

preparations such as *pomadas* (creams) and tinctures are more commonly found (for the use of peyote as herbal medicine, see Loizaga-Velder & Loizaga Pazzi, 2012; Mendo, 2000; Terry, 2008).

During the nineteenth century, a new type of peyote ritual developed north of the Rio Grande, involving all-night ceremonies conducted in a tipi, the typical lodging among Plains Indians. This type of ceremony, referred to here simply as the tipi ceremony, is distinct in its focus on prayer and contemplation, and lacks the dancing and instrumentation common in Mexican varieties of peyotism.³ While religious use of peyote north of the Rio Grande is thought to have developed through cultural exchanges with Mexican groups, such as the Coahuilteicans, the tipi ceremony developed independently (Slotkin, 1956; Stewart, 1987). Eventually, American Indian tribes in Oklahoma banded together to form the Native American Church (NAC) in 1918, with the tipi ceremony being the dominant ceremonial form. While American Indians are believed to have adopted peyotism from Mexico, there is now evidence that the tipi ceremony is being introduced to nonindigenous populations in Mexico.

In the United States, peyotism among American Indians is legally protected, and both Texas and the U.S. government strictly regulate the purchase

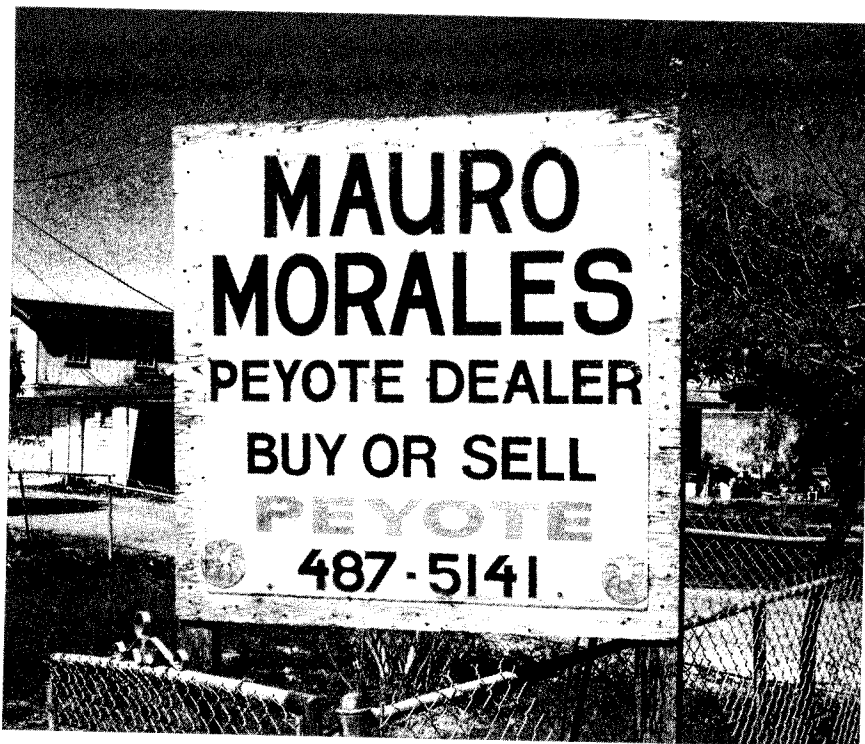


Photo 11.3 Sign advertising peyote sales by a licensed dealer in the Rio Grande Valley of South Texas, United States. (Kevin Feeney)

and sale of peyote harvested from the South Texas peyote gardens. Despite the legal protections, however, many American Indians are excluded from the legal exemption due to a lack of federal recognition for tribes who never entered treaties with the U.S. government, or due to tribes having been stripped of their federally recognized status during the Termination Era of the 1950s. Many American Indian groups are also heavily divided on issues of race, and who can and cannot participate in religious ceremonies, often resulting in the exclusion of “mixed” families and of children who do not meet a particular threshold of “Indianness” (Feeney, 2014).

Peyote was popularized in the twentieth century by books such as Aldous Huxley’s *The Doors of Perception* (1954), which recounted the author’s experiences with mescaline, and Carlos Castaneda’s *The Teachings of Don Juan* (1968), which purported to be an ethnographic (nonfiction) account of the author’s apprenticeship to a Yaqui shaman.⁴ These accounts brought peyote into the popular imagination and, along with R. Gordon Wasson’s accounts of Maria Sabina’s mushroom ceremonies, sparked great interest among



Photo 11.4 Tipi erected for a peyote ceremony in Central Mexico (Beatriz Caiuby Labate)

foreigners and mestizos in the use of Mexico’s native hallucinogens. As a result, use of peyote has expanded beyond the traditional uses of indigenous groups.

According to initial fieldwork observations,⁵ there are currently a range of practices involving the ritual use of peyote that extend beyond the traditionally recognized customs of the Huichol and other indigenous peyote-using groups. Within this spectrum, one can find: (1) Huicholes who conduct ceremonies for nonindigenous people (Guzmán, 2014); (2) peyote tours and ceremonies targeted toward tourists visiting communities near Wirikuta, in San Luis Potosí (Basset, 2011); (3) a wide range of spiritual and therapeutic ceremonies combining elements of the NAC tipi ceremony with other traditions, including Mexican indigenous rituals (reinvented “neo-Mexican” Nahuatl songs, elements of the *danzas concheras* and *azteca*), spiritual practices of American Indians (including sweat lodge and Sun Dance ceremonies), and elements of the Brazilian ayahuasca religion Santo Daime; and (4) use among indigenous groups not previously known to use peyote.

The consumption of peyote outside of traditional peyote-using communities, and these newer modalities of use, however, appear to be minimal. According to the National Addiction Surveys in Mexico (Secretaría de

Salud, 2012), the substance most consumed by individuals between the ages of 12 and 65 years is marijuana, followed by cocaine and crack. The hallucinogens, including LSD, magic mushrooms, and peyote, are consumed by only 0.1% of the population.⁶ This suggests that the actual numbers of people using peyote outside of the contexts described in this chapter are limited. However, it is important to note that there are no systematic quantitative studies to assess the number of users in either traditional or hybrid contexts.

INTERNATIONAL LEGISLATION

As in many countries, Mexico's Constitution is at the heart of its legal system, providing the foundation upon which all other laws and regulations are based. Importantly, the Constitution includes a declaration (Article 133) that international treaties, along with the Constitution and laws passed by Congress, shall be the "supreme law of the land" and shall take precedence over the laws of the individual states. Consequently, an understanding of international treaties to which Mexico is a signatory is necessary to help contextualize rights and regulations pertaining to the use of peyote in Mexico.

Treaties important to traditional and contemporary uses of peyote are those that address drug use and trafficking, human rights, and indigenous rights. The most significant treaty, in this regard, is the United Nations Convention on Psychotropic Substances (CPS), adopted in 1971 and ratified by Mexico in 1975. The CPS was drafted as a companion treaty to the 1961 Single Convention on Narcotic Drugs, a treaty that created a framework for international regulation of specific psychoactive plants: cannabis, coca, and the opium poppy. The CPS was designed to extend this regulatory framework to include a variety of psychoactive compounds that had become increasingly common both in medical practice and on the black market. Among the compounds covered by CPS is mescaline, the primary psychoactive agent found in peyote.

Mexico played a crucial role in the CPS proceedings, helping to carve out an exemption for the traditional use of psychoactive substances such as peyote and hallucinogenic mushrooms, both plants with long-standing traditional uses in the country. The issue was first raised by the Mexican delegate Barona Lobato, who expressed concern that the treaty might be misconstrued as applying to psychoactive plants used in the "magic or religious rites" of "certain indigenous ethnic groups," and not just the specifically prohibited compounds; in this case, mescaline and psilocybin (United Nations, 1973, p. 106). Lobato stated that such an interpretation would be at odds with protections for religious freedom enshrined in the Mexican Constitution (Articles 24 and 130) and that Mexico would be unable to ratify a treaty at odds with its own Constitution and national laws. Consequently, an amendment was

offered to allow signatory states to make reservations for the traditional use of plants known to contain prohibited compounds (United Nations, 1973). The amendment, as eventually adopted, reads:

A State on whose territory there are plants growing wild which contain psychotropic substances from among those in Schedule I and which are traditionally used by certain small, clearly determined groups in magical or religious rites, may, at the time of signature, ratification or accession, make reservations concerning these plants, in respect of the provisions of article 7, except for the provisions relating to international trade. (CPS, 1971, Article 32[4]).

Upon ratification in 1975, Mexico became the first of five states that would claim a reservation for traditional indigenous use under the stated provision.

The significance of CPS is clear, but other treaties addressing both human and indigenous people's rights are often overlooked. One prominent treaty is the Indigenous and Tribal Peoples Convention (ITPC) of 1989, ratified by Mexico in 1990. The ITPC requires governments to work with indigenous populations to safeguard natural resources. If the government retains mineral or other rights to resources on indigenous lands, it is required to consult with indigenous groups, "with a view to ascertaining whether and to what degree [indigenous] interests would be prejudiced, before undertaking or permitting any programs for the exploration or exploitation of such resources pertaining to their lands" (International Labor Organization, 1989, Article 15[2]).⁷ Although the Convention does not prohibit governments from extracting resources from indigenous lands, the consultation requirement provides indigenous communities with an opportunity to organize and respond to any federal actions that might be against their interests.

Protections for religious freedom have also been iterated and reiterated among a number of international treaties. The Universal Declaration of Human Rights (1948) was one of the first international documents to espouse the value of religious freedom (Article 18). The International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966, Article 13) later advocated tolerance for different religious and cultural beliefs and practices. The International Convention on Civil and Political Rights (ICCPR, 1966), however, was the first international treaty to suggest specific parameters for balancing interests of religious groups with interests of the state: "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others" (ICCPR, 1966, Article 18[3]).

A similar standard was later adopted by the American Convention on Human Rights in 1969 (Article 12). This Convention, however, allows signatory states a great deal of latitude in striking the proposed balance and may not necessarily protect traditional uses of psychoactive plants. The issue of religious and ritual use of psychoactive plants, and the lack of legal protections for such traditions, was specifically taken up in 1985 during the Ninth Inter-American Indian Congress. The Congress, recognizing that indigenous groups in the Americas continue to face prosecution for traditional use of sacred plants, passed a resolution urging the Organization of American States (OAS) to convene a convention that would pass protections for the religious practices of indigenous peoples, including psychoactive plant use. Although the import of each of these treaties varies, and the language is often advisory rather than compulsory, the ratification of each treaty renders it a part of federal law in accordance with Mexico's Constitution (Article 133). These treaties provide grounds for the government to be challenged on a number of issues, including human rights, religious freedom, and access to traditional resources.

NATIONAL LEGISLATION

Since colonial times, moral objections have been used to justify the regulation and prohibition of psychoactive substances, and have remained the primary basis for such bans until the twentieth century. In criminal matters, what we now know as "delitos contra la salud" (health crimes)⁸ first appeared in the 1931 Penal Code and included the use and possession of "narcotic drugs," as defined by the Sanitary Code (Código Sanitario) of 1926 (Alonso Aranda, 2014). The Sanitary Code expressly prohibited coca, marijuana, and opium, as well as their compounds and derivatives, including cocaine, heroin, and morphine. Peyote was not included in this list, but under Article 199 of the Code, the General Wellness Council (Consejo de Salubridad General)⁹ retained the right to add to the list "those substances, which, in their opinion, should be included in the category of narcotic drugs, if discovered to have similar properties [to listed narcotics] and which, when used as a vice, can poison the individual or degenerate the race" (Official Journal of the Federation of Mexico, 1926, our translation).

In 1928, the Board of Wellness (Consejo Superior de Salubridad) determined that the peyote plant was not narcotic or poisonous, but possessed special "pharmacodynamic" properties. Based on its investigations, the Board came to the following conclusions:

1. The peyote plant is not narcotic (*enervante*).
2. Peyote has special pharmacodynamic properties that influence heart function in a manner similar to digitalis,¹⁰ properties that deserve further study.

3. Peyote has not led to any known poisonings (*intoxicaciones*).
4. The ingestion of peyote produces visual hallucinations and other psychological changes (*manifestaciones de orden psíquico*) (Martínez, 1944, p. 217, our translation, citing Oficio 9 12880, April 27, 1928).

However, 2 years later the Public Wellness Department (Departamento de Salubridad Pública)¹¹ created a special commission to review the regulation of narcotics in the Sanitary Code. This commission convened in 1930 to examine the definition and scope of the term "narcotic substances" as outlined in the Sanitary Code. At the end of its investigations, three natural products were added to the list of prohibited substances: *Amanita* (sp.), peyote, and yerba mate (*Ilex paraguariensis*). Of these three substances, only peyote remains on the list (Pérez Montfort, 2000).

In 1984, the General Health Law (Ley General de Salud) was published (Diario Oficial de la Federación, 1984), replacing the previous Wellness Codes, along with a new classification system for narcotic and psychotropic (*estupefacientes y psicotrópicas*) drugs that prevails today. Under the Health Law, psychoactive substances are separated into five categories, or schedules, of control. Substances are placed into schedules based on two primary considerations: a drug's alleged degree of therapeutic value and its potential for abuse (Article 245). Both the peyote cactus and mescaline are grouped in the first and most restrictive schedule, which includes substances believed to have little or no therapeutic value and a high potential for abuse and to pose a threat to public health. It is interesting to note that mescaline alone is listed in the 1971 UN Convention and that no mention is made of the peyote cactus. In this sense, one could say that Mexican law is more stringent than international regulation.

This Schedule I classification is at odds with scientific literature, according to which there are no such harms associated with peyote use (Bergman, 1971; Carstairs & Cantrell, 2010; Halpern, Sherwood, Hudson, Yurgelun-Todd, & Pope, 2005). It is also contrary to the customs and practices of some Mexican indigenous groups, who use peyote as a medicine in the treatment of both physical and spiritual ailments. Perhaps adding to the irony is the fact that the General Health Law (Article 6, VI Bis.) seeks to promote, as one of its national health goals, the knowledge, preservation, and development of traditional indigenous medicines.¹²

Sentencing tables for each schedule are to be found in the Penal Code (Código Penal Federal, 2013), which is to be read as a companion document to the General Health Law with regard to illicit substances. In the case of peyote or mescaline possession, as with other Schedule I substances, the sentences range from 4–7 years and 6 months' imprisonment (Article 195 Bis.).

In 2009, however, both the Penal Code and the Health Law received substantive revisions affecting the regulation of illicit substances (Diario Oficial de la Federación, 2009; Hernández, 2010). Importantly, the Penal Code was revised to provide an exception for indigenous uses of peyote “when, by the quantity and circumstances of the case, it can be presumed that they [peyote or hallucinogenic mushrooms] will be used in the ceremonies, uses, and customs of indigenous peoples and communities, as so recognized by their own authorities” (Código Penal Federal, 2013, Article 195 Bis. II, our translation).

The language used is ambiguous and requires a degree of interpretation on the part of law enforcement to determine whether the “circumstances” are suggestive of ceremonial intent and whether the amount of peyote conforms to “custom” or is indicative of intent to traffic. The law also suggests that the determination of the authenticity or legitimacy of “intent” should be made in consultation with the indigenous communities affected (“as so recognized by their own authorities”). It is important to note that ethnic identification in Mexico is not based, as in the United States, on “blood quantum” criteria (see Feeney, 2014), but on self-identification as well as linguistic and territorial criteria. Note also that the assessment, presumably, allows for some variation in customary use among traditional communities.

The law gives no indication which indigenous groups may have a claim under the exemption. Four indigenous groups are widely known to use peyote in the country—Cora, Huichol, Tarahumara, and Tepehuan—as mentioned above, and according to our fieldwork, these are frequently mentioned as the “only” groups that have legal permission to use peyote (see also *Ecología Cultura*, 2013; Loizaga Pazzi, 2012; Loizaga-Velder & Loizaga Pazzi, 2012). A search of the literature and pertinent legal documents, however, failed to uncover any sources that corroborate claims that the exemption is limited to these groups. Because traditional peyote use by these four groups is well documented, they should easily qualify for the legal exemption; however, the existence of this legal exemption has not entirely prevented such individuals from arrest (Camino, 2008; Guzmán, 2014; Loizaga Pazzi, 2012).¹³ It remains possible that other indigenous groups could avail themselves of this exemption if they are able to show a pattern of traditional peyote use within their communities.

The main limitation of the exemption appears to be a lack of recognition of mestizo folk uses, as well as of contemporary hybrid ceremonies. Considering Mexico’s long history of colonization, of the hybridization between different indigenous ethnicities, and of Christian and European traditions, it is unfortunate that the law appears to discriminate between pre-conquest indigenous traditions and post-conquest mestizo cultural forms (cf. Loizaga Pazzi, 2012). It is also ironic that Mexicans are allowed to practice different sorts of

religions, but not traditions with deep historical and indigenous roots in the nation (Villalobos Díaz & Gutiérrez Nájera, 2000).

The General Health Law, as revised in 2009, provides guidelines for exempting personal use of some substances, such as marijuana and cocaine (Article 479). Under the revised law, possession of “personal” amounts of controlled substances is to be treated as a nonpunishable offense and not subject to prosecution or incarceration.¹⁴ While this was arguably a progressive step in Mexico’s drug laws,¹⁵ the distinction between personal and nonpersonal use does not extend to all illicit substances. Neither peyote nor mescaline is recognized under this “personal use” exception. Interestingly, substances recognized as having “personal” uses are subject to lesser penalties when possessed in excess of “personal” amounts than substances that do not qualify for the personal use exception. For example, if someone is caught with more than 0.015 mg of LSD, he or she will be sentenced from 10 months to 3 years in prison (General Health Law, Article 477),¹⁶ but if one is caught with 0.015 mg of peyote, he or she will be sentenced from 4 to 7 years of prison (Penal Code, Article 195 Bis.). This means that a person caught with any amount of peyote, unless for traditional ceremonial purposes, will be judged by the Penal Code instead of the General Health Law. So, even though peyote and LSD are listed in the same drug schedule, the sentencing is incommensurate. The addition of peyote to the list of substances recognized as having “personal uses” would provide some protection to nonindigenous individuals who use peyote as a folk medicine or for spiritual purposes. Without the “personal use” exception, there remains a substantial gap between the protections offered to indigenous populations and the punishments meted out to other practitioners.

ENVIRONMENTAL LEGISLATION

Peyote, in addition to being a controlled substance, is also subject to environmental protections. This means that use of peyote, unlike other drugs, faces two potential impediments: criminal law and environmental regulations.¹⁷ In this section, we examine the environmental controls concerning peyote use in Mexico and discuss how these regulations may affect both traditional uses of peyote as well as emerging ritual practices.

In the 1990s, Mexico began taking significant legal steps toward protecting its natural resources, including joining the CITES in 1991 and the Convention on Biological Diversity (CBD) in 1993 and, finally, adopting its own national legislation for the protection of endangered species in 1994 (NOM-059-SEMARNAT, 2010). Mexico’s legislation established four categories of protected species, which include: (1) species that are likely extinct in the wild, (2) species in danger of extinction, (3) threatened species, and

(4) species subject to special protection. Peyote is currently recognized as a species requiring “special protection,” which is considered the least vulnerable of the four categories (NOM-059-SEMARNAT, 2010). Peyote, as a member of the *Cactaceae* family, is also covered under Appendix II of CITES (1973), where it is considered a species liable to become endangered.¹⁸ The International Union for Conservation of Nature (IUCN) recently upgraded the categorization of peyote on the Red List of Threatened Species (Fitz Maurice & Fitz Maurice, 2009) from a species of “least concern” to “vulnerable” (Terry, 2013). Unfortunately, studies on the range and health of peyote populations in Mexico are limited, though preliminary research suggests that existing environmental evaluations of peyote have overstated the vitality of natural populations, while simultaneously understating the present risks (Martin Terry, personal communication, June 28, 2013).¹⁹

While the various protected statuses of peyote tend to be among the least stringent of assignable categories, some of the classifications are beginning to be revisited, and peyote is clearly recognized as a species requiring close observation. As a counterpoint to environmental protections, however, treaties aimed at protecting indigenous rights also contemplate that indigenous peoples may have a special claim to traditional natural resources and suggest that traditional uses should be safeguarded in spite of environmental risks and regulations. One such example can be found in the CBD, which encourages signatory states to “respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity” (CBD, 1992, Article 8[j]).

Similarly, Article 15 of the ITPC of 1989, to which Mexico is also a party, states: “The rights of the peoples concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management, and conservation of these resources.”

Mexico has also specifically recognized the importance of balancing indigenous rights with environmental protection. In 2006, Mexico passed its Wildlife Act (*Ley General de Vida Silvestre*), which included guidelines for the ritual use of protected species by rural and indigenous communities (Diario Oficial de la Federación, 2006). Under these guidelines, ritual use is to be regulated by the Secretary of Environment and Natural Resources (Secretaría de Medio Ambiente y Recursos Naturales [SEMARNAT]), who may also introduce measures to restrict or stop such practices if shown to be a detriment to the species in question. Unlawful possession, trafficking, or destruction of protected species is subject to a penalty of 1–9 years’ imprisonment under the Penal Code (Código Penal Federal, 2013, Articles 420 and 422).

Given the severity of the penalty, it is necessary that indigenous communities understand their rights to natural resources and that they be notified when regulations change. In order to avoid prejudicial treatment, the Mexican Supreme Court recently published an action protocol to guide criminal courts when dealing with indigenous populations (Suprema Corte, 2013). This document directs judges to account for cultural particularities and to ensure that defendants have access to an attorney who speaks their native tongue.

LICENSING FOR PEYOTE USE AND POSSESSION

Currently, those who wish to harvest peyote are expected to obtain a permit detailing where and when they will harvest, and how much. Through our fieldwork, we have attempted to trace the bureaucratic route that indigenous people have to pursue in order to obtain the appropriate papers. The steps can be broken down as follows: Interested parties must sign a document known as a *Permiso de Aprovechamiento para fines de Subsistencia* (subsistence harvest permit) and attach it together with a letter signed by the Health Secretary (Secretaría de Salud) for submission to SEMARNAT, or, alternatively, they can request a *salvoconducto* (transport permit) from the National Commission on Indigenous Development (CDI, Comisión Nacional para el Desarrollo de Pueblos Indígenas). A *salvoconducto* is required to contain the following information: (a) a statement that ritual pilgrimages to harvest will be made; (b) identification of the indigenous community seeking permission to harvest and transport peyote (with supporting documents from local authorities); (c) location of the intended harvest; (d) identities of all party members; (e) dates of harvest and return travel; and (f) means of transportation. Either set of documents can be shown to the authorities in case members of the harvesting party are stopped by the police.

CDI, a decentralized agency of the federal government, is one of the main agencies responsible for monitoring indigenous uses of peyote. CDI’s mission is to guide “federal public policies for the development and preservation of indigenous peoples and communities” in a manner that “guarantees respect for their cultures, enforcement of their rights, and the achievement of a full life” for indigenous peoples (CDI, 2008). Some of the constitutionally protected rights that CDI helps indigenous communities to realize include the right to religious freedom (Constitución, 2013, Articles 24 and 130), the right to communal ownership of land (Article 27, VII), and the right to preserve and continue traditional cultural practices (Article 2, [A] IV).

Interviews were conducted with offices of the CDI located in states with indigenous communities believed to maintain traditional uses of peyote, specifically the Cora, Huichol, Tarahumara, and Tepehuan. According to the

CDI (2006), communities from these four ethnic groups can be found in the states of Chihuahua, Durango, Jalisco, Nayarit, Sonora, and Zacatecas. Among these states there are different procedures for obtaining licenses, and in some states (Chihuahua and Durango) no licenses are available, suggesting that the licensing process is highly discretionary. In the state of Nayarit, CDI notifies the police about authorized parties directly in order to prevent arrests, while in the state of Durango, a similar informal arrangement exists with the military for groups that will pass through military zones. In the remaining states, the document is simply carried by the permitted group.

The CDI license, according to agency representatives, is provided to every indigenous group who requests one, so long as they can prove a history of ritual peyote use within their community. Although this is a seemingly flexible standard, it may prove difficult, depending on what type of “proof” the CDI will accept. Presumably, even well-known peyote-using groups would have had to submit proof of their cultural practices to the CDI at some point. Despite our efforts, however, we were unable to discover any CDI documents discussing or confirming traditional peyote use among any indigenous groups.

When indigenous people are arrested for carrying peyote during their pilgrimage, the CDI may intervene and assist the group, providing free legal services. Even so, arrests mainly occur when nonindigenous people are involved in the religious pilgrimage. According to our interviews, indigenous people are freed, almost always without a trial, while the situation of mestizos and nonindigenous people is more complicated. The CDI does not intervene in such cases, even if nonindigenous people are involved in traditional rituals or other emerging peyote circles and practices. The CDI also provides an anthropological analysis (*peritaje antropológico*) when trials involve the necessity of proving ritual use. Nevertheless, we were unable to access information regarding any instances where this occurred. Requests for data about arrests involving peyote and indigenous people were also submitted to CDI. The agency responded that they knew about several cases, but had not kept records on any specific incidents (CDI, 2013).

It is necessary to note that the licensing system implemented by CDI is preventative. The law does not specifically contemplate the use of licenses—and theoretically they should not be necessary—in contrast to the environmental permit issued by SEMARNAT, which is required by law. We also submitted an information request regarding the application for, and use of, environmental permits by indigenous peoples for the harvest and use of peyote (*L. williamsii*) and the related species *L. diffusa*. According to SEMARNAT (2013), no applications for permits have been received in the last 10 years. The results of our investigation cause us to conclude that the reforms of 2009 have not been entirely adopted by the competent authorities; neither does it appear

that indigenous people are fully aware of the availability of permits, or of their rights, or obligations, under this recent legislation.

LEGAL CASES

Official data and estimates on arrests involving peyote in Mexico have proven difficult to find. Nevertheless, we have been able to acquire some data on arrest rates over the last 20 years and have also uncovered a number of media reports that help contextualize the circumstances surrounding many of the incidents involving the detention and arrest of individuals found in possession of peyote.

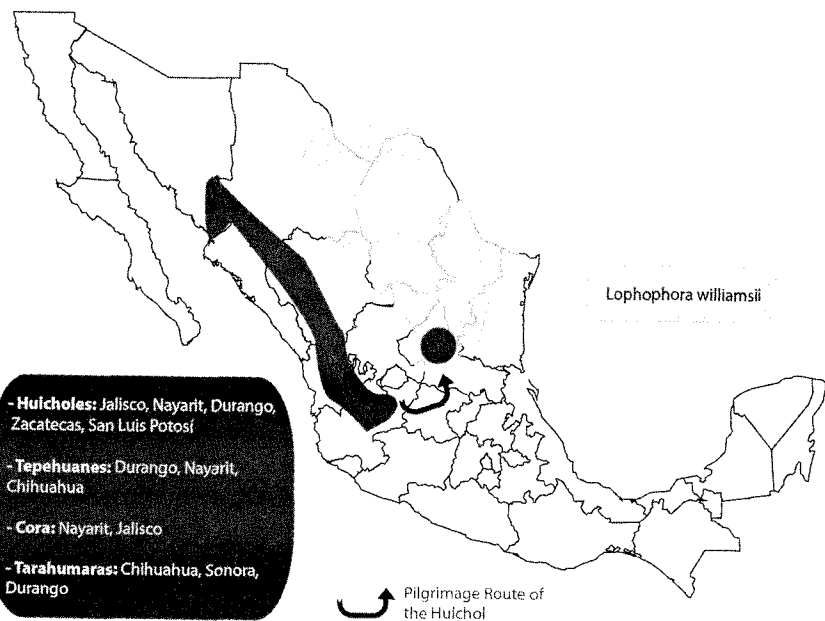
In order to obtain data regarding peyote arrests and prosecutions, an information request was submitted to the Office of the General Prosecutor (PGR, or Procuraduría General de la República, 2013) for the number of felony



Photo 11.5 A cluster of peyote tops, potentially sharing a single root, encountered in San Luis Potosí, Mexico. (Beatriz Caiuby Labate)

arrests involving the use or possession of peyote in states where traditional use is thought to occur. These states are not necessarily the same states where peyote grows (i.e., Chihuahua, Coahuila, Durango, Nuevo León, San Luis Potosí, Tamaulipas, and Zacatecas [Terry, 2008b, 2013]), although there is some overlap. San Luis Potosí, though not inhabited by any known peyote-using groups, is home to Wirikuta, the sacred land of the Huichol Indians as well as the destination of their religious pilgrimage to harvest peyote. Map 11.1 illustrates the geographical range of peyote's growth and traditional use.

In response to our request, the PGR reported a total of 69 arrests for the last 20-year period (see Table 11.1), with the majority of arrests occurring in the state of San Luis Potosí (40), the pilgrimage destination mentioned before. It would be logical to presume that the number of arrests would have declined after legislation protecting traditional use was passed in 2009; however, the data indicate an increase in arrests from 2009 to 2013, particularly in San Luis Potosí. The increased arrests during this period might reflect heightened tensions among peyote pilgrims, environmental activists, New Age practitioners, and the government over a controversial mining operation to be located in Wirikuta. In this case, the increased arrests would suggest targeted



Map 11.1 Traditional uses of peyote in Mexico, and areas where peyote grows naturally (Comisión Nacional para el desarrollo de los pueblos indígenas (2006). Regiones Indígenas en México. México: CDI; Terry, M. (2008). Stalking the wild *Lophophora*. Cactus and Succulent Journal, 80(6): 310–317.)

harassment of peyote pilgrims and their supporters, who are seen as standing in the way of economic development in the region. However, it is also possible that these arrests represent an increase in recreational use. Unfortunately, not enough information is available to determine whether law enforcement is continuing to target indigenous peoples with traditional uses or whether focus is shifting to illicit uses of peyote.

While the PGR report provides useful data, it lacks context. To fill in these gaps, we sought to identify media accounts of arrests that might provide additional details about who is being arrested, and why. We were able to identify

TABLE 11.1 Peyote Arrests in Selected States, 1993–2013

Year	State						Total
	Chihuahua	Durango	Jalisco	Nayarit	San Luis Potosí	Zacatecas	
1993	0	0	0	0	0	0	0
1994	0	0	0	0	0	0	0
1995	0	0	0	0	0	4	4
1996	NA	NA	NA	NA	NA	NA	NA
1997	0	0	0	0	0	0	0
1998	0	0	0	0	0	11	11
1999	0	0	0	0	0	0	0
2000	0	0	0	0	0	0	0
2001	0	0	0	0	0	0	0
2002	0	0	0	0	0	0	0
2003	0	0	0	0	0	0	0
2004	0	0	0	0	0	1	1
2005	0	0	0	0	1	0	1
2006	0	0	1	0	3	1	5
2007	0	0	2	0	8	0	10
2008	0	0	0	0	1	0	1
2009	0	0	2	0	3	0	5
2010	0	0	1	0	4	0	5
2011	0	0	1	0	4	0	5
2012	1	0	0	0	4	0	5
2013	0	0	4	0	12	0	16
Total	1	0	11	0	40	17	69

Source: Office of the General Prosecutor. (2013, October 7). Mexico City. Oficio con Folio 0001700248113: Response to information request. Copy on file with Beatriz Labate.

23 instances of arrest involving possession or transportation of peyote reported in the media since 1998. The media has reported arrests from around the country, but most of these have coincided with states where peyote is reported to grow naturally or where traditional use of peyote is known (see Map 11.1). The majority of the news items we found were reported in 2013, confirming data reported by the PGR.²⁰ It is important to note that, as corruption is widespread in Mexico, it is likely that some incidents with peyote are resolved through informal “financial transactions” between law enforcement and those involved. The general paucity of reports found in both the PGR report and the media suggests that arrests for possession or trafficking of peyote are minimal; however, interviews conducted during the course of our fieldwork suggest that harassment of indigenous groups by law enforcement continues to take place during ritual peyote pilgrimages.

The circumstances surrounding these arrests suggest a variety of motivations among those detained. The great majority of the reported cases involved simple “possession,” with a few exceptions where “possession with commercial intent” seemed evident (e.g., arrestees were in possession of guns or had criminal records). Possession cases were typically suggestive of either recreational use (e.g., arrestees in possession of alcohol or marijuana) or traditional use by indigenous peoples (e.g., individuals arrested collecting peyote as part of a traditional pilgrimage). The determination by the authorities of whether a case involved mere possession or possession with intent to sell appeared to be primarily influenced by the quantity of peyote involved, with reported quantities ranging from one button to 198 kg. Of the 23 cases we found, 7 involved suspicion of commercial intent. Of these, four included indigenous people who were likely gathering large amounts of peyote as part of their annual pilgrimage.

Among our sample of 23 cases, only 3 involved foreigners. No evidence was offered to suggest intent to export peyote in these cases. The ages of the accused ranged from 17 to 70 years old. In general, it seemed that the cases involving possession of small amounts (i.e., less than 5 kg) were associated with young adults, while cases with larger amounts and suspicion of commerce typically involved individuals over 35 years of age. Unfortunately, the news generally does not follow these cases past the initial arrest and detainment.

The most recent publicized arrest occurred on April 4, 2013, when a group of seven individuals were arrested with 198 kg of freshly harvested peyote in Wirikuta. Two of the group members were Huichol, but the remaining members were nonindigenous (Notimex, 2013). The arrests were probably based on the large amount of peyote harvested as well as the mixed nature of the group. Following this incident, an Internet campaign was launched in support of the arrestees, largely supported by individuals who appeared to be practitioners of current New Age peyote ceremonies. Charges of organized crime

were dropped, but the group remains accused of “transportation” under the General Health Law (Comunicados, 2013). According to our sources, all members of the arrested party were released after being detained for approximately 2 months. Whether charges will be pursued against any group members remains unclear. In the appendix we offer a summary of reported arrests that we hope will help to further illustrate and contextualize current attitudes and law enforcement practices regarding the possession and use of peyote.

CONCLUSIONS: CHALLENGES AND PARADOXES

The regulation of peyote in Mexico occurs at a complex intersection of environmental, human rights, public health, and religious and ethnic interests. The introduction of the exemption for indigenous use in the 2009 reform was an important step toward the recognition of indigenous rights. The broadly stated exemption recognizing customary use of peyote among indigenous communities provides some flexibility, perhaps allowing for some indigenous communities with “lost” peyote traditions to reclaim them, or for others with more secretive traditions to gain legal protection. It remains unclear, however, what standards the government will require to be met by groups claiming traditional use of peyote. If a cultural group has no written language, and if anthropologists or missionaries did not document historical practices, how will these groups be expected to demonstrate historical use to a satisfactory degree? Will oral histories suffice? Should communities with discontinued or “lost” peyote traditions be allowed to revive them? And how will the parameters of “tradition” be established? These are complex issues that have no easy answers, and which are increasingly important in the context of globalization.

One shortcoming of the current exemption is that it is limited to indigenous communities, excluding mestizo populations that developed at the social and cultural intersection of indigenous groups and colonial powers, and which now constitute the overwhelming majority of the Mexican citizenry. These populations, some of which maintain some indigenous customs and who also developed many of their own unique cultural practices, are as much a part of the culture and history of Mexico as are the indigenous groups whose cultures and traditions endured conquest and colonialism. It is at this intersection that we find use of peyote in folk medicine, *curanderismo*, and within emerging hybrid ceremonies and spiritual networks, all practices that remain unprotected in Mexico.

It is unclear how the Cora, Huichol, Tarahumara, and Tepehuan came to be recognized as groups with legitimate peyote traditions, and further investigation is required to understand how their practices came to be legally protected. A better understanding of these matters will be helpful to currently

unprotected groups in determining how best to establish their peyote traditions to the satisfaction of authorities. Newer peyote-using groups, who fall outside of the categories of "indigenous" and "traditional," have developed practices that are difficult to simply dismiss as recreational or abusive. More anthropological inquiry into the nature of these groups may be necessary to determine what, if any, legal protections should be provided.

Penalties for folk and other nonindigenous practices involving peyote could be mitigated through the personal-use exception, which allows individuals caught with minimal amounts of a drug to avoid prosecution and incarceration; however, peyote is not currently recognized as eligible for this exception under the General Health Law. As a result, individuals caught with peyote intended for nonindigenous spiritual circles, or with ointments, tinctures, or other medical preparations of peyote, will be treated more harshly under the law than individuals possessing "personal" amounts of marijuana, cocaine, or heroin. While folk and contemporary spiritual uses may not be indigenous, many are not only customary practices but also medical ones. That such practices should be treated more harshly than the recreational or problematic use of drugs, particularly when therapeutic and ceremonial uses of peyote are protected among certain indigenous groups, suggests a serious disconnect in the current state of the law.

Peyote's status as a species requiring "special protection" also demands attention. Although peyote is a limited resource, one on both national and international environmental radars, there is little research available documenting the vitality and scope of peyote populations, much less the potential risks to the species as a whole. Measuring the degree of threat to the cactus also poses difficulties, since there are multiple economic activities that affect wild populations in their natural habitat, and because only some uses of peyote are regulated. The permitting process is a positive development, but it is only the first step in protecting peyote populations and cultural practices involving the rare cactus. Uniformity in licensing and data collection is necessary to provide clear guidelines to indigenous communities and also to measure the successes and failures of the permitting system. Ultimately, additional conservation strategies may need to be explored.

There is a great contradiction between having the species considered under special environmental protection and also having it classified as a Schedule I drug, a status that limits the scope and type of potential conservation strategies. Because of peyote's prohibited status, it is not possible for the plant to be cultivated in order to meet demand or for purposes of reintroduction to depleted habitat, both measures that could partially address environmental concerns. This perverse circularity seems to be problematic both for the plants survival and for the cultural traditions that surround it.

The role and involvement of various government agencies, including CDI, SEMARNAT, the Federal Attorney for Environmental Protection (PROFEPA), and the Offices of the Health Secretary and the General Prosecutor in regulating peyote remain vague. Further research to elucidate the actual involvement and role of each agency in this process is necessary. A more comprehensive and transparent system of tracking peyote-related arrests and prosecutions would provide much-needed information.

Despite a history of use spanning several millennia, there is still much to be explored about ritual practices involving peyote and how they have evolved across cultures and through time. Although a foundation appears to be in place for protecting traditional uses of peyote, the scope of these protections is currently limited and does little to address practices that have developed or evolved since colonial times. While the regulatory issues are complex, and the interests various, further academic research and public debate is required in order to develop a system that protects both the interests of peyote-using communities in Mexico and also the habitat and survival of peyote as a species.

APPENDIX: MEDIA REPORTS OF ALLEGED PEYOTE USE AND COMMERCE

March 16, 1998: The Mexican army arrested 21 Huicholes near Huejuquilla on their peyote pilgrimage. The group, which included men, women, and children, was in possession of 50 kg of peyote. Everyone was released after 2 days, but authorities did not return all of the confiscated peyote, and several religious artifacts were withheld (Hammett, 1998).

January 14, 2010: In Real de Catorce, five people were arrested on the road leading to the El Tecolote community, which sits along the path of the traditional Huichol pilgrimage route. The group possessed 900 peyote buttons, which weighed about 28 kg. Among the arrested were a 49-year-old British man; a 51-year-old German man; a 53-year-old woman from Puerto Vallarta, Jalisco; a 52-year-old woman from Michoacan; and a 30-year-old woman from Zapopan, Jalisco. The group was traveling with two children who reported consuming peyote provided to them by their mother, who was among those arrested. A marijuana cigarette was also found. The detainees were turned over to prosecutors, and the children were referred to the System for Integral Family Development (DIF in Spanish) (Redacción, 2010).

February 22, 2010: A group of Huichol from Tuapurie, Santa Catarina Cuexcomatitlán, Jalisco, were performing a ritual at Valentine Tank in San Luis Potosí when four state police patrols arrived and broke up the ceremony. The next day the police returned with cameras and threatened federal

sanctions under PROFEPA (Procuraduría Federal de Protección al Ambiente) for allegedly uprooting and damaging peyote plants. These events were later denounced by the Huichol community of Tuapurie as an abuse of police power and as an action taken in complete ignorance of protected Huichol custom (Del Castillo, 2010). This case stands out not only because it involved the interruption of a traditional ceremony but also for the peculiar fact that the authorities claimed to be enforcing (alleged aspects of) federal environmental law rather than drug laws.

October 13, 2011: Tourists were arrested in the Emeterio Tank in San Luis Potosí for possession of 225 peyote buttons with the intent to distribute. Among the arrested were six Mexicans (four from Guadalajara, one from Sinaloa, and one from Tecate, Baja California) and two foreigners (a Swiss national, who was accompanied by a small child, and a German national) (Plano Informativo, 2011; Redacción, 2011).

NOTES

1. There are several species within the genus *Lophophora* that are similar in appearance to *L. williamsii* and that are sometimes referred to as “peyote,” including *L. diffusa*, *L. fricii*, *L. koehresii*, and *L. alberto-vojtechii*. The term *peyote* is also applied to other cacti, such as *A. asterias*, which are not part of the *Lophophora* genera. When we use the term “peyote” we are referring specifically to *L. williamsii*. *L. diffusa* is also psychoactive, but this is due to the presence of pelotone, a sedative-hypnotic alkaloid. Mescaline is not known to occur in other species of *Lophophora*.

2. Although these ethnic groups are widely associated with the use of peyote, traditional practices are not necessarily followed uniformly throughout these groups, and cultural practices often vary from community to community.

3. *Peyotism* refers to the religious or ritual use of the peyote cactus.

4. There has long been controversy surrounding Castaneda’s work, which is considered by some critics to have been largely fabricated (see De Mille, 1976; Fikes, 1993).

5. Participant observation of contemporary hybrid peyote rituals was conducted by Beatriz Labate in Mexico in 2013 and 2014 and Brazil in 2008.

6. Another study in the same year (Colectivo por una Política Integral hacia las Drogas 2012) found rates of peyote use as high as 17.5%, but these results are questionable. The study used a process known as “snow-ball” sampling, which usually produces a fairly homogenous group of survey participants, and consequentially, there is little that can be inferred about the habits of the general public.

7. The Mexican Supreme Court recently cited the ITPC in a decision to enjoin government construction of an aqueduct on the Yaqui River after it was shown that the project would significantly impact the water rights of Yaqui Indians and that the government had failed to consult the Yaqui regarding the project (Supreme Court of Justice, 2013).

8. One of the first recognized health crimes was drug addiction, or “toxicomania.” This is a curious category, which implies that people with “drug problems” are afflicted with a pathological health condition (drug abuse/addiction) that compels them to criminal behavior. For a history of the appearance of “toxicomania” as a crime in the 1930s, see Pérez Montfort (2000), and for a history of drug regulation since the late nineteenth century, see Campos (2010).

9. The Spanish term “salubridad” directly translates to the obscure English word “salubrity,” meaning health promoting. For simplicity sake, we have translated the term as “wellness.”

10. Digitalis is obtained from foxglove (*Digitalis purpurea*) and compounds isolated from it are widely used in medicine in the treatment of heart conditions.

11. Note that this department is different from the Board of Wellness and the General Wellness Council, despite the similarities in name (for more information on Mexican agencies, see Instituto Nacional de Estudios Políticos, n/d).

12. Also important to this discussion is the fact that the Mexican Constitution provides its citizens with what are known as “individual guarantees” that are meant to protect both basic human and otherwise fundamental rights of citizenship (Constitución, 2013). Among these guarantees are specific protections pertaining to religious freedom, which can be found in Articles 24 and 130.

13. Indigenous persons may theoretically avoid arrest entirely by applying for a permit for the possession and transport of peyote (see *Licensing for Peyote Use and Possession*).

14. Though not technically punishable by jail time, individuals in possession of personal amounts are still considered offenders and may be subject to arrest, temporary detainment, and investigation in some cases.

15. Some have questioned how progressive these changes were, noting that the quantities established for some substances may be too restrictive to account for actual “personal use” amounts. For a discussion on drug regulation and sentencing in Mexico, see Madrazo Lajous (2014) and Pérez-Correa (2012).

16. As said before, the quantities recognized by the law are questionable. In the case of LSD, this is largely an empty gesture since the allowed amount for personal use, 15 micrograms, is less than one-third of what is generally considered to be a threshold dose (Ott, 1993).

17. Medical uses and preparations of peyote, such as ointments and tinctures, might also implicate health and medical regulations.

18. Under CITES, the trade in some protected species is allowed under a limited exemption for medicinal uses. Currently, *L. williamsii* is not included within the list of plants for which a medical exemption is available. Since the Mexican system is subjected to the provisions of this Convention (as explicitly mentioned in Mexico’s Wildlife Act), the trade in *L. williamsii* for medicinal purposes is not currently permitted. This applies not only to internal preparations but also to ointments.

19. We have also been informed that some Huicholes have previously made petitions to the CDI authorities requesting that seized peyote be returned to them after charges have been dropped. Confiscated peyote is typically burned, a practice

that has clear ecological implications for a species that already requires "special protection."

20. However, these searches were conducted online, and there may be a search engine bias toward more recent news items.

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