

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**Endangered and Threatened Plants and Animals; Proposal To Determine *Eryngium constancei* (Loch Lomond Coyote-Thistle) To Be an Endangered Species**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to determine a plant, *Eryngium constancei* (Loch Lomond coyote-thistle) to be an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). The species is restricted to the bed of a 7-acre vernal lake in the community of Loch Lomond, southern Lake County, California. Potential dredging and filling of the lake and seasonal wetland threatens the species with extinction. To a lesser extent, off-road vehicle (ORV) use and trails used by hikers on the lake bottom also threaten the species. Determine whether *Eryngium constancei* is an endangered species would implement the provisions provided under the Act. The Service seeks relevant data and comments from interested parties on this proposal.

**DATES:** Comments from all interested parties must be received by March 31, 1986. Public hearing requests must be received by May 12, 1986.

**ADDRESS:** Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, N.E. Multnomah Street, Suite 1600, Portland, Oregon 97232.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 4444).

**SUPPLEMENTARY INFORMATION:****Background**

*Eryngium constancei* (Loch Lomond coyote-thistle), a perennial herb in the parsley family, annually produces slender, weak scapes (leafless, flowering stalks) up to 30 centimeters (12 inches) in height from its overwintering rootstock (Sheikh 1973, 1983). The basal leaves, divided into septa (internal partitions), range to 20 centimeters (4 to 8 inches) in length. Slender petioles, 8 to 12 centimeters (3 to 5 inches) in length, are usually longer than the leaf blades and bear minute spines. A dense covering of minute hairs, unique to *Eryngium*

*constancei*, covers the leaves and scapes. This character together with the species' sparse flowers distinguish *Eryngium constancei* from its closest relative, *Eryngium aristulatum* var. *aristulatum*, and all other species of western North American *Eryngium* (Sheikh 1978 and 1983).

This species was first collected by Robert Hoover in 1941. M. Yusuf Sheikh and Lincoln Constance recollected *Eryngium constancei* from the vernal lake near the community of Loch Lomond in southern Lake County, California in 1973. Later Sheikh (1983) described *Eryngium constancei* along with two other *Eryngium* taxa. Sheikh, as part of his doctoral study completed in 1978, intensively searched for and failed to discover additional populations of the plant at other localities. Subsequent searches made in 1984 by two botanists employed by the State of California did not reveal any new populations of the plant.

*Eryngium constancei* is abundant within the borders of the meadow-like bed of the Loch Lomond lake at an elevation of 2,800 feet (853 meters). Cabins and paved roads (State Route 175) encircle most of the southern and eastern sides of the lake bed. A forest of ponderosa pine (*Pinus ponderosa*) and California black oak (*Quercus kelloggii*) surrounds the periphery of the lake. Plants associated with the coyote-thistle on the vernal lake bed include *Eleocharis* (spikerush), *Downingia* (downingia), *Plagiobothrys* (allocarya) and two Federal candidate species, *Navarretia pauciflora* (few-flowered navarretia) and *Navarretia plieantha* (many-flowered navarretia). The latter species is listed as endangered by the State of California Department of Fish and Games. The soil of the lake bed consists of a fine, powdery, volcanic, silty clay. Terrain immediately to the south and west of the lake generally faces northeast and attains an elevation of 3,300 feet (990 meters). The unusual combination of edaphic topographic, and hydrologic features of this vernal lake and its basin may explain the unique presence of the species at Loch Lomond.

On December 15, 1980, the Service published a revised notice of review for plants in the Federal Register (45 FR 82508). *Eryngium constancei*, an unpublished new species (see Sheikh 1978), was included in this notice as a category 1-species. Category 1 includes taxa for which the Service now has sufficient biological information to support proposing to list as endangered or threatened. After Sheikh (1983) published the description of this plant,

the Service reevaluated the biological information supporting the listing of *Eryngium constancei*. The species was moved into category 2 (includes species for which information indicates that listing is possibly appropriate, but for which further information is required to support a proposal) in 1983 (48 FR 53650) due to the absence of any perceived threat to the species at the time, and because data from outside sources had not yet been fully analyzed. In the Federal Register of August 1, 1985 (50 FR 31187), the Service published an emergency rule listing *Eryngium constancei* as endangered species because: (1) Significant portions (15%) of this species' only known habitat had been modified, (2) protection provided under laws and regulations did not preclude modification of the remainder of the vernal lake, and (3) field searches in 1984 confirmed no new populations of this plant at other sites within the area. This emergency rule expires on March 29, 1986.

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act 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 *Eryngium constancei* Sheikh (Loch Lomond coyote-thistle) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The predominant threat facing *Eryngium constancei* is the imminent action planned by the owner of the species' habitat to dredge and fill the Loch Lomond lake, the only known habitat for this species. The portion of the lake bed dredged and filled in 1984 contained only a few individuals of *Eryngium constancei* when it was inspected in the summer of 1985. This inspection occurred prior to the landowner's attempt to restore the lake bed to its pre-disturbance condition at the request of the State of California. Prior to 1984, the species was probably abundant in the area that was disturbed by the dredge-and-fill action. Similar activity planned for the remainder of the vernal lake basin likely would result in the extinction of the species. Although in the emergency rule the Service noted that approximately 85 percent of the lake bed remains suitable habitat for the plant, and inspection of the vernal lake

on September 16, 1985, revealed that off-road vehicle (ORV) use had impacted nearly all of this portion of the lake bed. Moreover, trash has been dumped on the lake bed, further impacting the species' habitat.

A shallow manmade ditch dug from the approximate center of the lake empties through the outflow of the lake, Cole Creek, to the north. This ditch may reduce the potential storage of the Loch Lomond lake, resulting in a more ephemeral, shallow body of water, which would otherwise flood the cabins and road surrounding the lake in the winter and spring. Although it is unknown whether the construction of this ditch directly impacted *Eryngium constancei* in the past, the presence of this ditch may reduce the size and quality of the habitat for the species.

Prior to the purchase of this site by the current owner, the Loch Lomond lake was used as a baseball field (Crane and Malloch 1985). The Service is uncertain what impacts baseball activities might have had on this plant or its habitat.

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

C. *Disease or predation.* Although it is unknown whether grazing by livestock occurs within the lake bed, the Service believes the effects of such grazing would be negligible.

D. *The inadequacy of existing regulatory mechanisms.* Although *Eryngium constancei* was listed as an endangered species on August 1, 1985, this status expires on March 29, 1986. The species is not listed as endangered by the State of California at this time. Moreover, because the species is restricted to privately-owned land, existing laws provide only limited protection for it.

E. *Other natural or manmade factors affecting its continued existence.* None known at this time.

The Service has 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 *Eryngium constancei* as endangered. Endangered, as opposed to threatened, status is appropriate because of the imminent threat of physical alteration of the lake bed, the only known habitat for the plant, which would likely result in the extinction of *Eryngium constancei*. In addition, ORVs continue to use the lake bed and trash dumping remains a problem. Critical habitat is not being designated 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 a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Eryngium constancei* at this time. Because this plant is highly vulnerable (see Factor A in "Summary of Factors Affecting the Species"), lacks Federal protection from taking on non-Federal lands, and is easily accessible, this finding is appropriate. Listing of the species as endangered publicizes its rarity and can make the plant attractive to collectors of rare plants, researchers, and vandals. Publication of precise maps and descriptions of critical habitat in the **Federal Register** would make this plant even more vulnerable, may increase law enforcement problems, and could contribute to the decline of the species.

### 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 of 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 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 Federal involvement anticipated with respect to the listing of *Eryngium constancei* is the issuance of dredge and/or fill permits (33 CFR 330.8(b)) by the U.S. Army Corps of Engineers.

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 plants. With respect to *Eryngium constancei*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, 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, sell, or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. 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. International and interstate trade in *Eryngium constancei* is not known to exist. The Service anticipates few trade permits will ever be sought or issued because the species is not common in cultivation or in the wild. 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, D.C. 20240 (703/235-1903).

### Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. 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 proposal are hereby solicited. Comments are particularly sought concerning the following:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;
- (2) The location of any additional populations of this species 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 this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a 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, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### References Cited

- Crane, N.L. and B.S. Malloch. 1985. A study of rare plants for the Geysers-Calistoga Known Geothermal Resources Area. Pacific Gas and Electric Report. 129 pp.
- Sheikh, M.Y. 1978. A systematic study of west North American *Eryngium* (Umbelliferae-Apiaceae). Ph.D. dissertation, Univ. California, Berkeley.
- Sheikh, M.Y. 1983. New taxa of western North American *Eryngium* (Umbelliferae). Madrono 30:93-101.

### Author

The primary author of this proposed rule is Mr. Jim A. Bartel, Sacramento Endangered Species Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E-1846, Sacramento, California 95825 (916/978-4866 or FTS 460-4866).

### 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 Apiaceae, to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

\* \* \* \* \*  
(h) \* \* \*

Scientific name	Species	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Apiaceae—Parsley family: <i>Eryngium conostachyoides</i>		Loch Lomond coyote-thistle	U.S.A. (CA)	E	194E	NA	NA

Dated: February 28, 1986.

**P. Daniel Smith,**  
Deputy Assistant Secretary for Fish and  
Wildlife and Parks.

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