

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Emergency Determination of Endangered Status for Loch Lomond Coyote-thistle (*Eryngium constancei*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The Service determines *Eryngium constancei* (Loch Lomond coyote-thistle) to be an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). The plant is restricted to the bed of a shallow 7-acre vernal lake near the community of Loch Lomond in southern Lake County, California. The species is in danger of extinction principally as a result of potential dredging and filling of this seasonal wetland. To a limited extent, disturbances within the watershed of the vernal lake, and off-road vehicle use and trampling by hikers on the lake bottom also threaten the species. This emergency rule will implement Federal protection for 240 days, as provided by emergency provisions of the Act.

DATES: This emergency rule is effective on August 1, 1985, and expires on March 29, 1986.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Division of Endangered Species, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE Multnomah Street, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:**Background**

Eryngium constancei (Loch Lomond coyote-thistle), a perennial herb of the parsley family, annually produces slender, weak scapes (leafless, flowering stalks) up to 30 centimeters (12 inches) in height, from its overwintering rootstock (Sheikh 1978 and 1983).

The basal leaves, divided by septa (internal partitions), range from 10 to 20 centimeters (4 to 8 inches) in length. Slender petioles, 8 to 12 centimeters (3 to 5 inches) in length and usually longer than the leaf blade, bear diminutive spines. A dense "down" 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, grows abundantly within the borders of the meadow-like basin of the Loch Lomond lake at an elevation of 2,800 feet. Cabins and a paved road (State Route 175) encircle much of the southern and eastern sides of the lake basin. 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 and growing on the vernal lake bed include members of the following genera: *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 Game (CDFG). The coyote-thistle is on the State's candidate list, and CDFG is now preparing documentation to list this species under State law as endangered. The soil of the lake bed consists of a fine, powdery, volcanic, silty clay. The terrain about the lake to the south and west generally faces the northeast and attains an elevation of 3,300 feet. This topography likely reduces overall solar exposure of the lake. The unusual combination of edaphic, topographic, and hydrologic features of the 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 82480). Included in this notice was *Eryngium constancei*, as a category-1 species. Category 1 includes taxa for which the Service has sufficient biological information to support listing as endangered or threatened. After Sheikh (1983) described the plant, the Service reevaluated the biological information supporting the listing of *Eryngium constancei*. Because of the absence of any perceived threat to the species at the time and due to the lack of time to consider fully all available data from outside sources, the Service included the species in category 2 (including species for which information indicates that listing is possibly appropriate, but for which further information is required to support a proposal) in a supplement to the 1980 notice, which was published November 28, 1983, in the *Federal Register* (48 FR 53650). Recent events regarding the potential alteration of this species' only known habitat provide conclusive evidence that it should be listed as endangered and prompt the Service to adopt an emergency rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Eryngium constancei*, should be classified as an endangered species. Procedures found at 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) were followed. 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 Loch Lomond lake, the only known habitat for this species. Although the Service notes that approximately 85 percent of the lake bed remains suitable habitat for the plant, the portion of the lake bed dredged and filled in 1984 contained no *Eryngium constancei* in the spring of 1985. Doubtlessly, this

disturbed portion of the lakebed contained the species prior to the 1984 dredge-and-fill action in similar densities as the undisturbed portion. Similar activity planned for the remainder of the vernal lake basin likely would result in the extinction of the species.

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 its being more ephemeral and shallower than it formerly was, when it could have flooded 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.

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. Currently, a predischage notice is needed prior to any fill of the vernal lake at Loch Lomond. Although the Corps may ultimately assert individual permit authority over this isolated wetland pursuant to the Clean Water Act, eventually the landowner still may receive an individual permit allowing for the fill of the vernal lake and thus the likely extinction of *Eryngium constancei*.

Eryngium constancei is not listed by the State of California at this time, although it may be shortly. Because the species is restricted to privately-owned land, existing laws provide limited protection for the plant.

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 issue this emergency rule. Based on this evaluation, the preferred action is to list *Eryngium constancei* as endangered under the emergency provisions of the Act. Endangered as opposed to threatened status is appropriate because of the imminent threat of physical alteration of the lake basin, the only known habitat for the plant, which

would undoubtedly result in the extinction of *Eryngium constancei*. Critical habitat is not designated in this rule for the reasons discussed below.

Reasons for Emergency Determination

The habitat of *Eryngium constancei*, including the watershed of the vernal lake, is privately owned. The present owner of the lakebed dredged and filled about an acre of the 7-acre vernal lake near its southern end of July 31, 1984. If the coyote-thistle was uniformly distributed in the lakebed, this action resulted in the probable loss of about 15 percent of the only known population of the species. Failure to secure necessary permits and approvals eventuated in a fine by Lake County and a halt to the dredge-and-fill operation in 1984. The owner of the lakebed, the only known habitat for the species, has expressed a desire to complete the dredge-and-fill activity for the remainder of the vernal lake.

Requests by the landowner for needed permits and approvals from CDFG and Lake County, and a meeting between the landowner and the Corps this spring underscore the imminent nature of this threat. If the Corps issues these permits in the future, this dredge-and-fill operation may proceed, thus threatening the species. No permits are required by the State that could prevent the destruction of this habitat. Should all of the vernal lake be affected by such physical modification, *Eryngium constancei* doubtlessly would become extinct.

The filling of isolated wetlands, like the vernal lake near Loch Lomond, pursuant to section 404 of the Federal Water Pollution Control Act (Clean Water Act), as amended, is authorized by general nationwide Corps permit (see regulations at 33 CFR 330.5 (a)(26)) as long as certain conditions are met. One such condition is that the "discharge will not jeopardize a threatened or endangered species as identified under the Endangered Species Act." Because of the need to preserve the physical integrity of the lake, the Service requested on April 3, 1985, that the U.S. Army Corps of Engineers (Corps) assert individual permit authority over the vernal lake near Loch Lomond pursuant to 33 CFR 330.8(b). On May 2, 1985, the Corps deferred any decision regarding the Service's request and reportedly advised the current landowner of the need to submit a "predischage notice" to the Corps prior to any fill activity. The need for this notice resulted from a settlement agreement (National Wildlife Federation *et al.* v. John O. Marsh, Jr., Secretary of the Army, *et al.*) pursuant

to the Clean Water Act. Even if the Corps were to assert individual permit authority over the vernal lake near Loch Lomond, the landowner could eventually acquire an individual permit from the Corps to fill the vernal lake. On July 7, 1985, the landowner's representative formally requested necessary authorization from the Corps to proceed with planned development of the lake. The securing of any necessary permits and approvals from the Corps would permit the complete destruction of the habitat of *Eryngium constancei*. Other disturbances affecting the hydrology of the lake and its watershed, and hiker and ORV use of the lake bottom also threaten *Eryngium constancei*, although these threats seem more remote and less serious.

These recent events and the negative results of the 1984 field searches prompted the Service to prepare this emergency rule due to the significant risk posed to the well-being of the species. CDFG, now preparing documentation to list the plant as endangered under State of California law, requested the Service to take emergency action to list *Eryngium constancei* as an endangered species on April 24, 1985.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that determination of critical habitat is not prudent for *Eryngium constancei* at this time. Because of the highly vulnerable status of the only known population of the species at Loch Lomond, the lack of Federal protection from taking on non-Federal lands, and easy accessibility of the lone population, this finding is appropriate. Listing of the species as endangered publicizes its rarity and can make the plant attractive to collectors of rare plants and to vandals. Publication of precise maps and descriptions of critical habitat in the **Federal Register** would make this species even more vulnerable, could 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 applicable prohibitions 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. 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)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service.

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 *Eryngium constancei*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, 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. 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.

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. The new prohibition now applies to *Eryngium constancei*. However, no populations are known to exist on Federal land at present. Permits for exceptions to this prohibition are available through section 10(a) of the Act, until revised regulations

are promulgated to implement the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following comment. Because the species grows on private land, the Service anticipates that few collecting permits will be requested for this species. 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).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under 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).

Literature Cited

- Sheikh, M.Y. 1978. A systematic study of west North American *Eryngium* (Umbelliferae-Apiaceae). Unpublished Ph.D. dissertation, University of California, Berkeley.
- Sheikh, M.Y. 1983. New taxa of western North American *Eryngium* (Umbelliferae). *Madrono* 30:93-101.

Author

The primary author of this rule is Mr. Jim A. Bartel, Sacramento Endangered Species Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, 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).

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, until March 29, 1986, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended 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. Amend § 17.12(h) by adding the following, in alphabetical order to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Apiaceae—Parsley family:						
<i>Eryngium conostaei</i>	Loch Lomond coyote-thistle	U.S.A. (CA)	E	191E	NA	NA

Dated: July 29, 1985.

Susan E. Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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