

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine *Hymenoxys acaulis* var. *glabra* (Lakeside Daisy) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list *Hymenoxys acaulis* var. *glabra* (Lakeside daisy), as a threatened species. This plant is known only from Manitoulin Island and the Bruce Peninsula in Ontario, Canada, where it is considered rare, and from one fragmented population in Ottawa County, Ohio. It has apparently been extirpated from three counties in Illinois. The Ohio population occurs on private land, where its continued existence is threatened by habitat alteration caused by limestone quarrying activities and the unmanaged succession of woody overgrowth. This proposal, if made final, would implement the protection provided by the Endangered Species Act of 1973, as amended, for this plant. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by October 19, 1987. Public hearing requests must be received by October 5, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Endangered Species Division, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James M. Engel, Endangered Species Coordinator (see **ADDRESSES** section) at 612/725-3276 or FTS 725-3276.

SUPPLEMENTARY INFORMATION:

Background

Hymenoxys acaulis var. *glabra* (Lakeside daisy) is a member of the family Asteraceae. It has previously been recognized as *Actinea herbacea* (Greene) Robins. and *Actinea acaulis* (Pursh) Spring. var. *glabra* (Gray) Parker. While conducting taxonomic research on the western species of *Actinea*, Parker (1950) demonstrated that *Hymenoxys acaulis* var. *glabra* is the correct name for this plant.

A perennial with a taproot and branching caudex, *Hymenoxys acaulis* var. *glabra* is characterized by densely tufted, thick spatulate to nearly linear basal leaves 1-8 centimeters (0.4-3.1 inches) long and up to 1 centimeter (0.4 inches) wide, strongly punctate, with a scape-like peduncle 5-25 centimeters (2-10 inches) high, which bears a solitary head with 10-30 radiating yellow rays. Most individuals in a population tend to bloom at the same time in late April to mid-May, producing a radiant mass of yellow flowers. After flowering the plants become light gray in color and quite inconspicuous and easily overlooked; in a few weeks the rich green color returns (R.E. Moseley, Ohio Department of Natural Resources, pers. comm. Sept. 1985).

In the United States *Hymenoxys acaulis* var. *glabra* is currently known from one fragmented population on the Marblehead Peninsula in Ottawa County Ohio, where it occurs on dry rocky prairie habitat, much of which has been altered by limestone quarrying activities (Weed 1890, Wunderlin 1971, Cusick and Burns 1984). The plant has also been recorded from Mason, Will, and Tazewell Counties in Illinois (Wunderlin 1971, John Schwegman, Illinois Department of Conservation, pers. comm. April 1986). The Illinois populations, however, are considered to be extirpated (Schwegman, pers. comm. April 1986). In Canada, where the plant is considered rare, it is known from four locations on the Bruce Peninsula, the largest scattered over about 10 acres, and approximately seven sites on Manitoulin Island (White and Maher 1983, Elliott 1984). Available records do not indicate a serious recent decline in the Canadian populations, but uncontrolled woody overgrowth always poses a threat.

Moseley (1930) raised a question about whether this plant is indigenous to Ohio, although Weed (1890) had pointed out that it had been found on the Marblehead Peninsula of Ottawa County as long as anyone then alive could remember. Cusick and Burns (1984) noted that the habitat in Ohio closely resembles the Canadian habitat, where the plant is considered indigenous. Allison Cusick (Ohio Department of Natural Resources, pers. comm. April 17, 1986) considers the plant native to the Marblehead Peninsula. Some additional research under provisions of the Endangered Species Act is needed regarding population genetics of this plant.

Federal actions on the Lakeside daisy began with section 12 of the Endangered Species Act of 1973 (Act), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2) (petition acceptance is now governed by section 4(b)(3) of the Act), and of its intention thereby to review the status of the plant taxa named within. On June 16, 1979, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, **Federal Register** publication.

Hymenoxys acaulis var. *glabra* was included in the July 1, 1975, notice of review and the June 16, 1976, proposal. General comments received in relation to the 1976 proposal were summarized in the **Federal Register** on April 26, 1978 (43 FR 17909). On December 10, 1979, the Service published a notice (44 FR 70796) withdrawing the portion of the June 16, 1979, proposal that had not been made final, along with four other proposals that had expired due to a procedural requirement of the 1978 Amendments. On December 15, 1980 (45 FR 82480), and September 27, 1985 (50 FR 39525), the Service published revised notices of review for native plants in the **Federal Register**; *Hymenoxys acaulis* var. *glabra* was included in those notices as a category 1 species. Category 1 species are those for which data in the Service's possession indicate that proposing to list is warranted.

The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been submitted on that date. The deadline for a finding on those species, including *Hymenoxys acaulis* var. *glabra*, was October 13, 1983. In October 1983, 1984, 1985, and 1986 the petition finding was made that listing *Hymenoxys acaulis* var. *glabra* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act.

Such a finding requires that the petition be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The present proposal constitutes a finding that the listing is warranted. The Service proposes to implement the petitioned action in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) set forth the procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Hymenoxys acaulis* (Pursh) Parker var. *glabra* (Gray) Parker (Lakeside daisy) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The most serious threat to the Lakeside daisy is habitat destruction. This plant is found in open, dry, rocky, prairie areas where active limestone quarrying occurs. The Marblehead Peninsula population consists of seven scattered sites within a 2-square-mile area, all on privately owned land in an area where active limestone quarrying is being conducted now, and has been conducted for 150 years. Quarrying activity has destroyed most of the original prairie habitat. Where quarrying activities are conducted, any existing Lakeside daisy plants are completely destroyed. Once quarrying has ceased on an area, the plant occasionally reappears after a period of 15–20 years, but not abundantly (Cusick pers. comm. 1986). Because the quarrying activities have moved from area to area, the "cycle" from destroyed habitat to subsequent reappearance of the plant years later has been continuous for 70–80 years on this small area of the Marblehead Peninsula (Cusick pers. comm. 1986). Cusick points out that while the Lakeside daisy is easily grown when transplanted into gardens, it does not seem to expand its natural range. In addition, the succession of overgrowth by woody species reduces the open sunny habitat necessary for the plant's survival (Cusick and Burns 1984). Cusick and Burns (1984) also noted that overcollecting for gardens is a hazard, because the plant is one of Ohio's more spectacular wildflowers. Populations have been extirpated in Mason, Tazewell and Will Counties in Illinois due to quarrying, grazing, and industrial

activities (Schwegman, pers. comm. 1986). Since all of the remaining Lakeside daisy plants are found on privately owned land, some form of land protection and management rights are needed in order to protect the existing population and manage the woody overstory. Provisions of the Endangered Species Act of 1973, as amended, will enhance and reinforce protection efforts.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* Commercial trade of this plant is not known to exist. However, because it is easily transplanted, wildflower collectors may reduce the population in more accessible sites. Because it is easily transplanted and has very showy flowers, the possibility for commercial trade is present.

C. *Disease or predation.* None known.

D. *The inadequacy of existing regulatory mechanisms.* *Hymenoxys acaulis* var. *glabra* is officially listed as endangered by the State of Ohio. Ohio law prohibits commercial taking of any State-listed plant from its native habitat. The law also prohibits the taking of any listed species for any purpose without either the written permission of the landowner, or a collecting permit from the Department of Natural Resources (DNR) and verbal permission of the landowner. These prohibitions on trade and collecting do not specifically provide for protection or management of the species' habitat. These regulations will be further strengthened by prohibitions of the Endangered Species Act. The Ohio DNR has attempted to purchase a site where the Lakeside daisy occurs, but so far has been unsuccessful. *Hymenoxys acaulis* var. *glabra* is not protected under the Ontario Endangered Species Law.

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

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species throughout its range in determining to propose this rule. Based on this evaluation, the preferred action is to list *Hymenoxys acaulis* var. *glabra* as threatened. In the United States only one fragmented population of this species is known to survive. It is on privately owned property and receives no protection or special management to enhance its likelihood of continued existence. Threatened status is appropriate for the species as a whole, because without protection and further research the present vulnerability of this species to become endangered will continue. For reasons detailed below, it

is not considered prudent to propose designation of critical habitat.

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 that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The designation of critical habitat is not considered to be prudent when such designation would not be of net benefit to the species involved (50 CFR 424.12). The Service believes that designation of critical habitat for *Hymenoxys acaulis* var. *glabra* would not be prudent because no benefit to the species can be identified that would outweigh the potential threat of vandalism or collection, which might be exacerbated by the publication of a detailed critical habitat description and map.

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, if necessary, and cooperation with the States. It also requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following the listing. Some actions may be undertaken prior to listing. Potential recovery activities include vegetation control of woody overstory and reintroduction into areas of its historic range. The protection required of Federal agencies and the prohibitions against collecting 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. 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, the responsible Federal agency must enter into formal consultation with the Service. Since the Lakeside daisy is not known to grow on Federal lands, little if any Federal involvement is anticipated.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. With respect to *Hymenoxys acaulis* var. *glabra*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. International and interstate commerce in *Hymenoxys acaulis* var. *glabra* is not known to exist. It is anticipated that few trade permits would ever be sought or issued, since this plant 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, DC 20240 (703/235-1903).

Public Comments Solicited

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation

of endangered and threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule, are hereby solicited. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Hymenoxys acaulis* var. *glabra*;
- (2) The location of any additional populations of *Hymenoxys acaulis* var. *glabra* 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 *Hymenoxys acaulis* var. *glabra*.

Final promulgation of the regulation on *Hymenoxys acaulis* var. *glabra* 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 Endangered Species Field Division (see ADDRESSES section).

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. The reasons for this determination were published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

Cusick, A.W. and J.F. Burns. 1984. *Hymenoxys acaulis* (Pursh) Parker var.

glabra (Gray) Parker. 2 pages In: R.M. McCance, Jr. and J.F. Burns, Eds. Ohio Endangered and Threatened Vascular Plants. Department of Natural Resources. Columbus, Ohio. n.p.

Elliott, V. 1984. New Stations of the Rare Plant *Hymenoxys acaulis* var. *glabra* (Stemless Rubberweed) on the Bruce Peninsula. The Plant Press 2(1):6-7.

Moseley, E.L. 1930. Some plants that were probably brought to northern Ohio from the west by Indians. Papers of the Mich. Acad. of Sci., Arts, and Letters 13:169-172.

Parker, K.F. 1950. New combinations in *Hymenoxys*. Madrono 10:59.

Weed, C.M. 1890. The Lakeside daisy. J. Columbus Horticultural Soc. 5:72-73.

White D.J. and R.V. Maher. 1983. *Hymenoxys acaulis* (Pursh) Parker var. *glabra* (Gray) Parker. 1 page In: G.W. Argus and D.J. White, Eds. Atlas of the Rare Vascular plants of Ontario. National Museum of Natural Sciences, Ottawa. n.p.

Wunderlin, R.P. 1971. Contributions to an Illinois Flora No. 4. Trans. Illinois Acad. Sci. 64:317-327.

Author

The primary author of this proposed rule is William F. Harrison (see ADDRESSES section) (612/725-3276 or FTS 725-3276).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants, (agriculture).
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:

PART 17—[AMENDED]

- 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 Asteraceae, 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
Asteraceae—Aster family.						
<i>Hymenoxys acaulis</i> var. <i>glabra</i>	Lakeside daisy	U.S.A. (OH,IL), Canada (ON)	T		NA	NA