

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

FART 17—[AMENDED]

(1) The authority citation for 50 CFR part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

(2) 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) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asteraceae—Aster family:						
<i>Helianthus schweinitzii</i>	Schweinitz's sunflower.....	U.S.A. (NC, SC).....	E	424	NA	NA

Dated: April 10, 1991.
Richard N. Smith,
Acting Director, Fish and Wildlife Service.
[FR Doc. 91-10740 Filed 5-6-91; 8:45 am]
BILLING CODE 4310-55-M

50 CFR Part 17
RIN 1018-AB52

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Scirpus ancistrochaetus* (Northeastern Bulrush)

AGENCY: Fish and Wildlife Service, Interior.
ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines *Scirpus ancistrochaetus* Schuyler (Northeastern bulrush), a perennial herb of the sedge family (Cyperaceae) to be an endangered species pursuant to the Endangered Species Act of 1973 (Act), as amended. Thirteen extant populations of *Scirpus ancistrochaetus* are found in open shallow ponds, wet depressions, and marshes in Virginia, West Virginia, Maryland, Pennsylvania, Massachusetts, and Vermont; the species is also known historically from New York. Eight of the thirteen extant populations are extremely small, each having less than 70 flowering culms. The species is threatened by habitat loss and modification through residential, agricultural and recreational development. This listing implements protection and recovery provisions afforded by the Act to *Scirpus ancistrochaetus*. Critical habitat has not been determined.

EFFECTIVE DATE: June 6, 1991.
ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business

hours at the New England Field Office, U.S. Fish and Wildlife Service, 22 Bridge St., Concord, New Hampshire 03301.
FOR FURTHER INFORMATION CONTACT: Susanna L. von Oettingen at the above address (telephone: 603/225-1411 or FTS 834-4411).

SUPPLEMENTARY INFORMATION:

Background

Scirpus ancistrochaetus (Northeastern bulrush), a perennial member of the sedge family (Cyperaceae), was described as a new species by A.E. Schuyler in 1962. Though *Scirpus ancistrochaetus* is closely related to *Scirpus atrovirens* Willd. and *Scirpus hattorianus* Mak., Kartesz and Kartesz (1980) also acknowledged *S. ancistrochaetus* as a distinct species. The Northeastern bulrush is a tall, leafy plant, generally 80 to 120 cm (30 to 47 inches) in height. Flowering culms (stems) are produced from short, woody, underground rhizomes. The lower leaves are 40 to 60 times as long as wide; the uppermost leaves are 30 to 50 times as long as wide (Schuyler 1962). A distinctive field characteristics that aids in separating this species from other bulrushes is the arching rays of the inflorescence. The flowers have six, small, rigid perianth bristles each covered to the base with thick-walled, sharply pointed barbs projecting downward. The yellow-brown achenes (fruits) are mostly ovate, and thickened and tough at the top. *S. ancistrochaetus* flowers from mid-June to July, and sets fruit between July and September (Crow 1982).

The reproductive mechanism of *S. ancistrochaetus* is not clearly understood. It appears to most often reproduce vegetatively, with new plants developing from the nodes and culms of recumbent stems. The absence of isolated individuals suggests that sexual recruitment may not be occurring

(Bartgis, Maryland Natural Heritage Program, pers. comm., 1990). Seeds of *S. ancistrochaetus* can be easily germinated *in vitro*, an experimental evidence indicates that seeds will remain viable for many years (W. Brumback, New England Wildflower Society, Inc., *in litt.*, 1991; A Schuyler, Academy of Natural Sciences of Philadelphia, *in litt.*, 1991).

Schuyler (1963, 1967) investigated the relationship between *Scirpus ancistrochaetus* and two closely related species, *S. atrovirens* and *S. hattorianus* and observed that *S. ancistrochaetus* will hybridize with both species, generally producing a sterile hybrid. When in its vegetative form, *S. atrovirens* is very similar in appearance to *S. ancistrochaetus*, while hybrids between these two species are morphologically intermediate, both in vegetative and reproductive forms. The ancestral relationship of *Scirpus ancistrochaetus* to *S. atrovirens*, as well as its scarcity and scattered occurrence in isolated wetlands in areas where the flora has been well researched, suggests that *S. ancistrochaetus* is a relict species (Schuyler, pers. comm., 1990).

The Northeastern bulrush is found at the unshaded water's edge of acidic to circumneutral natural ponds, wet depressions or shallow sinkholes. The ponds are often clustered and separated by a few hundred feet or yards. *S. ancistrochaetus* may be found in one or more ponds within a wetland complex, though rarely, if ever, occurring in all of the ponds. These wetlands, generally less than one acre in size, appear to occur primarily in low-lying areas in hilly country (Schuyler 1962) and have seasonally variable water levels, ranging from inundation to desiccation (Rawinski 1990). The ponds and depressions where *S. ancistrochaetus* may be found are considered unusual habitats, especially in the southern

portion of its range. Though the habitat does not appear to have distinctive characteristics, many statewide rare plants such as *Potamogeton pulcher* Tuckerm., *Scirpus torreyi* Olney, and *Glyceria acutiflora* Torr. are often found in association with *S. ancistrochaetus*, indicating that there may be subtle, and as yet unknown properties of the habitat (T. Rawinski, The Nature Conservancy, pers. comm., 1990). Schuyler (in litt., 1991) states that *Scirpus ancistrochaetus* is rarely found in human-disturbed habitats and it may be adapted to naturally fluctuating water regimes and subject to elimination and replacement by competing species if the habitat becomes consistently drier or wetter. Other members of the genus *Scirpus* found with *S. ancistrochaetus* are *S. atrovirens*, *S. cyperinus* (L.) Kunth, *S. pedicellatus* Fern., *S. hattorianus* and *S. atrocinctus* Fern.

Schuyler (1962) first discovered *S. ancistrochaetus* in Rockingham, Windham County, Vermont, which is considered the type locality. Emergence of the plant at a location may be unpredictable from year to year. Nonetheless, historical records of leafy *Scirpus* species are useful in indicating whether *S. ancistrochaetus* is more common than believed. In Schuyler's (1963, 1967) extensive review of *Scirpus* herbaria specimens, few misidentified *S. ancistrochaetus* were documented and only five historical localities were identified. In 1986 and 1989 the Fish and Wildlife Service (Service) contracted with The Nature Conservancy's Eastern Regional Office to conduct status surveys for *Scirpus ancistrochaetus* (Rawinski 1986, 1990). All extant and historic sites, and a majority of the sites identified as potential habitat were surveyed in Virginia, West Virginia, Maryland, Pennsylvania, New York, Massachusetts, and Vermont. At present, there are 13 extant populations and nine historical localities. Four of the historical populations were confirmed to have been destroyed or have failed.

Approximately half of the suitable habitat in Virginia has been surveyed; of the twenty-one ponds identified as potential habitat and surveyed for *S. ancistrochaetus* in 1989, only one was found to be a new occurrence. There are now four extant populations known in Rockingham, Bath, Alleghany and Augusta Counties. One of the sites has fewer than 25 plants. The plants are found in shallow, oligotrophic sinkholes overlying sandstone in the Blue Ridge Mountains. A number of rare and unusual species occur in association with *S. ancistrochaetus* on the Virginia sites, including *Helenium virginicum*

Blake, a Category 1 Federal candidate species (a candidate for which the Service has sufficient information to support a proposal to list), and *Glyceria acutiflora* and *G. septentrionalis* Hitchc., two species diagnostic of this habitat type (Rawinski 1990). Three of the occurrences are on privately owned land, the fourth is located in the George Washington National Forest.

Prior to 1988, *Scirpus ancistrochaetus* had not been found in Maryland or West Virginia. Using aerial photographs to identify potentially suitable habitat, all potential habitat in Maryland and approximately ninety percent of the potential habitat in West Virginia was surveyed. Three populations were discovered, two in West Virginia and one in Maryland. These populations are found relatively close together in the Appalachian Mountains. West Virginia's two extant populations are located in Berkeley County, both on privately owned land. They are found in shallow, centripetally-drained sinkholes perched atop flat ridges and are part of wetland complexes containing three or more ponds. One site consists of two ponds in a cluster of seven, with stands totaling over 1400 stems. The second site has over 400 stems in three discrete patches within one pond (Bartgis 1989). Maryland's occurrence, in Washington County, consists of a very small stand of approximately 100 stems. The small, shallow, successional pond is located on private property lying within the acquisition boundary of a State Wildlife Management Area (Bartgis 1989).

All but one of the historical *S. ancistrochaetus* sites and much of the potential habitat in Pennsylvania have been surveyed for *S. ancistrochaetus*. The two occurrences in Lackawanna and Clinton Counties are still recorded as "extant", although three years of surveys have been unable to reconfirm the plants' presence. The Lackawanna County site, a bog lying between sandstone ridges on private land, had one plant in 1985 and was severely burned in 1988. The Clinton County site, lying within the Bald Eagle State Forest, was reported to have had two plants in 1985. A newly discovered third population is located in a privately owned, shallow, kettle lake in the Ridge and Valley province in Monroe County. The Monroe County site has between 25 and 50 clumps of *S. ancistrochaetus* growing at the edge of the lake.

Most of the potential habitat for *Scirpus ancistrochaetus* has been surveyed in Massachusetts; no new sites have been discovered, though one historical population was confirmed extant in 1989. The extant population of

four plants in Franklin County, Massachusetts is found in a shallow, bowl-shaped depression, which is part of a privately owned wetland complex. The depression is inundated with water during periods of ample rainfall and dries out during droughts (Rawinski 1990).

The two Vermont occurrences are both in Windham County. One is an emergent marsh in an alluvial meadow of the Connecticut River. Sixty-nine plants were observed in 1985; 10 plants were observed in 1989. Currently, The Nature Conservancy holds a management agreement with the landowner. The second site, also located on privately owned land, is part of a wetland complex consisting of natural depressions and abandoned beaver ponds. In 1985, 12 plants were observed, while no plants were observed in 1989 (Thompson 1990). All suitable habitat within the Connecticut River drainage in Vermont was surveyed; no new occurrences of *Scirpus ancistrochaetus* were found.

Five historical collections of *Scirpus ancistrochaetus* are known from New York (Washington County) and Pennsylvania (Blair, Lehigh, Monroe and Northampton Counties). The Nature Conservancy and Natural Heritage Program botanists undertook extensive surveys of these states in 1989, including all historical sites and a significant portion of the suitable habitat. Surveys have not relocated *S. ancistrochaetus* at any of the historical localities in New York and Pennsylvania.

Scirpus ancistrochaetus and its habitat are highly vulnerable to destruction and disturbance. The majority of the occurrences are in wetlands that currently have little State or Federal protection. Of the 13 existing populations, two are located on Federal lands and one population is located on State land. The remaining populations situated on private lands are subject to obliteration or degradation through filling and dredging activities for development, agriculture and recreation purposes. Other adverse impacts to the species can occur through direct physical damage to the plants by recreational vehicles or through water quality degradation from non-point source pollution.

There is little available information on the life history of this species. It is not known how the water regime affects *Scirpus ancistrochaetus* and what specific ecological factors are required for the establishment of new populations. Extremely high water levels may be responsible for the lack of reproduction in a given year, while drier

conditions may be conducive to good reproductive output (Rawinski, pers. comm., 1990). There is no data on the impact of fire on *Scirpus ancistrochaetus*. The site of one extant population was completely burned in 1988 and plants have not been observed subsequently.

Federal consideration of this plant for listing began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on the 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 and subsequently published (Ayensu and DeFilipps 1978). It recommended *Scirpus ancistrochaetus* for "endangered" status. Service acceptance of the Smithsonian report as a petition within the context of section 4 of the Act and its intention to review the status of plant taxa named within was published July 1, 1975 (40 FR 27823). The Service's subsequent actions in relation to the Smithsonian petition are explained in detail in the "Relationship to Petition Requirements" section of the February 21, 1990 (55 FR 6184) comprehensive plant notice of review.

On April 7, 1988, the Service received a second petition, submitted by The Vermont Natural Heritage Program, requesting that *Scirpus ancistrochaetus* be federally listed. In accordance with its established policy, the Service treated this second petition as a public comment to be considered in evaluating the original listing petition. The additional information about the status and threats to *S. ancistrochaetus* provided by this petition increased the species' priority for listing.

Additional petition findings involving *Scirpus ancistrochaetus* were published on January 20, 1984 (49 FR 2485), May 10, 1985 (50 FR 19761), January 9, 1986 (51 FR 996), June 30, 1987 (52 FR 24312), July 7, 1988 (53 FR 25511), December 29, 1988 (53 FR 52746), and April 25, 1990 (55 FR 17475). The November 8, 1990, (55 FR 43963) proposal to classify *Scirpus ancistrochaetus* as endangered constituted the final required petition finding for this species.

Summary of Comments and Recommendations

In the November 8, 1990 proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted

and requested to comment. During the period from November 19 through November 26, 1990, newspaper notices inviting general public comment were published in the Staunton, Virginia, Daily News Leader; the Waynesboro, Virginia, Waynesboro New-Virginian; the Martinsburg, West Virginia, Martinsburg Journal; the Frederick, Maryland, The News-Post; the Lock Haven, Pennsylvania, Lock Haven Express; the Scranton, Pennsylvania, Scranton Times; the Northampton, Massachusetts, Daily Hampshire Gazette; the Brattleboro, Vermont, Brattleboro Reformer; and the Springfield, Vermont, Springfield Reporter.

Sixteen written comments were received, including letters from five Federal agencies, six State agencies, three private organizations and two individuals. Twelve letters supported the proposal; the remaining four letters were from the U.S. Army Corps of Engineers acknowledging receipt of the proposal and the need to coordinate section 7 consultations on activities under Nationwide Permit 26. Minor comments regarding new species status information, life history observations and additional State protection were included in four letters. All additional data have been incorporated into the final rule as deemed appropriate.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Scirpus ancistrochaetus* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531-1544) 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 *Scirpus ancistrochaetus* Schuyler (Northeastern bulrush) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Ten of the thirteen extant populations occur in private lands. Residential development activities, particularly at the southern portion of its range, are responsible for extensive destruction and modification of *Scirpus ancistrochaetus* habitat. During the 1989 status survey in Virginia, nine of twenty-one ponds believed to be suitable habitat for *S. ancistrochaetus* were

found to be degraded from fill, partial excavation, and eutrophication due to non-point source discharges, or were destroyed by total excavation and diking activities (Rawinski 1990). The two extant populations in West Virginia are also located in areas of increasing residential development and may suffer degradation or destruction if not protected. Both occurrences are surrounded by subdivided lands currently being marketed for housing developments.

Construction or agricultural activities occurring near populations may indirectly impact the habitat unless specific measures to prevent or minimize siltation or contamination are implemented. Four of eight historical sites in eastern Pennsylvania have been destroyed or degraded, primarily by agricultural activities. Sedimentation of the wetlands, discharges of herbicides or fertilizers, and alteration of the hydrological regime of *Scirpus* wetlands are actions which can alter the physical and biological makeup of the habitat, creating an unsuitable environment for the continued existence of the species.

During droughts, the wetlands in which the populations are found dry out, allowing vehicular access to the habitat. Use of off-road and all-terrain vehicles may result in the degradation of the habitat through soil compaction, destruction of vegetation, and the direct loss of plants. Heavy off-road vehicle use was observed at one *Scirpus ancistrochaetus* site in West Virginia during a dry period in 1989, but actual destruction of this species was not observed.

B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Taking of the species for these purposes has not been documented as being a factor in its decline. In the past, scientific collections have been inadvertent. Relatively few specimens have been collected in recent years. However, future collections could seriously threaten populations, especially at those sites consisting of only a few plants or occupying a very small area.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of this species.

D. The Inadequacy of Existing Regulatory Mechanisms

In Virginia, *Scirpus ancistrochaetus* is listed as endangered and is protected under the Endangered Plant and Insect

Species Act of Virginia (1979, c. 372). This law prohibits taking without permits, except by private landowners. Virginia law also gives the Department of Agriculture and Consumer Services the authority to regulate the sale and movement of listed plants and to establish programs for the management of listed plants.

Scirpus ancistrochaetus receives protection in Pennsylvania as an endangered species under the regulations of the Wild Resources Conservation Act (25 Pa. Code, chapter 82). Permits are required to collect, remove, or transplant wild plants classified as threatened or endangered, though landowners are exempt from these requirements. Pennsylvania regulations also provide for the establishment of native wild plant sanctuaries on private lands where there is a management agreement between the landowner and the State Department of Environmental Resources.

Under the Vermont Endangered Species Law (10 V.S.A. chapter 123), *Scirpus ancistrochaetus* is listed as threatened and is afforded protection from taking, possession or transport by any person, unless exempted, or authorized by certificate or permit. Permits may be granted for scientific purposes, enhancement of survival of the species, economic hardship, educational purposes or special purposes consistent with the purposes of the Federal Endangered Species Act. Vermont is currently proposing to list *S. ancistrochaetus* as endangered; this change will provide a higher degree of protection.

Maryland is in the process of designating *Scirpus ancistrochaetus* as endangered. The endangered species designation of *S. ancistrochaetus* in Maryland will provide additional protection at the State level. Upon final listing the State will be able to regulate activities involving State funding and permitting, will regulate trade and commerce of the species and will prohibit taking without the written permission of the landowner.

Recently, the State of Massachusetts passed an Endangered Species Act (chapter 131A), though regulations have not been promulgated at this time. Under the Massachusetts Endangered Species Act, *Scirpus ancistrochaetus* is listed as endangered and will be protected from take, unless a permit has been issued by the Director of the Division of Fisheries and Wildlife. Additional protection may be afforded *S. ancistrochaetus* if the State designates significant habitat for this species. Under the new State law, there

may be no alteration of significant habitat.

There is no State endangered species legislation in West Virginia. New York has a law protecting State listed plants, but has not listed *Scirpus ancistrochaetus* since there are no extant populations. Upon the Federal listing of *S. ancistrochaetus*, the species will be automatically listed as a Protected Native Plant under State regulation and will be protected from take or destruction without the permission of the landowner.

Though the majority of the states with extant *Scirpus ancistrochaetus* populations have legislation protecting endangered plants from taking or transport, no protection is afforded the habitat. The primary threat to *S. ancistrochaetus* is from habitat degradation.

Under current Federal regulations, a Department of the Army permit is required for the discharge of dredged or fill material into waters of the United States including adjacent and isolated wetlands where the majority of *S. ancistrochaetus* populations occur. However, Nationwide Permit 26 exempts wetland fills smaller than 10 acres from the individual permit process provided they are (a) located above headwaters (5 cfs or less) and (b) not part of a surface tributary system to interstate waters or navigable waters. Deposit of up to one acre of dredge or fill material in such wetlands does not require the prior notification of the Army Corps of Engineers. Without Federal listing of the species, the 404 regulatory process provides very limited protection for the habitat of *S. ancistrochaetus*.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Six of the 13 known occurrences of *S. ancistrochaetus* consist of fewer than 25 plants. These isolated and critically small populations are highly vulnerable to extinction. Extreme isolation, whether by geographic distance, ecological factors or reproductive strategy, prevents the influx of new genetic material and can result in a highly inbred population with low viability and/or fecundity (Chesser 1983). In addition, current knowledge of the species biology and population dynamics is insufficient to assess whether *S. ancistrochaetus* is likely to persist following natural events such as drought, flooding and fire.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to make this rule final.

Based on this evaluation, the preferred action is to list *Scirpus ancistrochaetus* as an endangered species. Only thirteen occurrences are known, and plants were not found at three of these sites during the most recent status survey (Rawinski 1990). Due to the small number of populations and the continuing threats to its habitat, the plant is in need of protection if it is to survive. These factors support listing as an endangered species. Critical habitat is not being designated for reasons discussed in the following section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Scirpus ancistrochaetus* at this time. Most populations of this species are small to moderate in size, are widely scattered throughout its range and are located on private property, for which there is no regulation to prevent taking by the landowner or others, while collecting for scientific and educational purposes has not contributed to the decline of the species, taking due to vandalism or private collections could eliminate some populations if their locations are publicized. Publication of critical habitat descriptions and maps in the **Federal Register** could increase these threats to the survival of the species, overriding any protection that such designation might provide.

Designation of critical habitat primarily affects Federal agencies. Since the majority of the occurrences are on privately owned land, critical habitat designation would have little impact on the management or protection of this species. The designation of critical habitat would not provide additional benefits to populations that do not already accrue from listing through section 7 consultation and the recovery process. The Service will coordinate with the U.S. Army Corps of Engineers by providing locational information on *S. ancistrochaetus* in an effort to prevent destruction of existing sites under Nationwide Permit 26 activities. The U.S. Forest Service has been notified of the presence of *Scirpus ancistrochaetus* on its properties and of the section 7 requirements. The population located on State property is managed and protected by the State landowning agency.

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. Through *Scirpus ancistrochaetus* is not currently listed as endangered in New York State, Federal listing will result in the species being listed as a Protected Native Plant in New York. Listing will provide additional protection from collection or destruction throughout its range. The Nature Conservancy is currently working to protect all known populations and listing will enhance these efforts. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants 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 subsequently listed, 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.

Scirpus ancistrochaetus is a wetland plant, therefore, activities which involve filling of these wetlands (including filling authorized under Nationwide 28) would be regulated by the U.S. Army Corps of Engineers and would require section 7 consultation. The Service is not presently aware of any specific proposed projects that might affect

known populations of *Scirpus ancistrochaetus*.

Listing *Scirpus ancistrochaetus* will encourage research on critical aspects of its life history, ecology and population biology. Information is needed regarding the relationship of fertile culm production to the hydrologic regime of its habitat, reproduction strategies and population recruitment. These factors will be important for the development of recovery strategies and long-term management considerations for individual populations.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62 and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. 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, 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. In addition, for listed plants, the 1988 amendments (Pub. L. 100-478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of listed plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions 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. It is anticipated that 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 inquires regarding them may be addressed to the office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 N Fairfax Dr., Arlington, VA 22203-3507 (703/358-2104).

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).

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Author

The primary author of this final rule is Susanna L. von Oettingen (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Exports, Imports, Reporting and record keeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, 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: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under

the family Cyperaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

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(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Cyperaceae—Sedge family:						
<i>Scirpus ancistrochaetus</i>	Northeastern bulrush (=Barbed bristle bulrush).	U.S.A. (VA, MD, WV, PA, NY, MA, VT).	E	425	NA	NA

Dated: April 10, 1991.
Richard N. Smith,
Acting Director, Fish and Wildlife Service.
[FR Doc. 91-10741 Filed 5-6-91; 8:45 am]
BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 901231-1099]

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.
ACTION: Notice of embargo and revocation of findings.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, (Assistant Administrator) announces that on March 26, 1991, the United States District Court for the Northern District of California ordered a prohibition on the importation of all yellowfin tuna and yellowfin tuna products harvested with purse seines in the eastern tropical Pacific Ocean (ETP) by any foreign nation whose vessels intentionally set purse seine nets on marine mammals, and the revocation of any certification for any foreign nation currently importing commercial yellowfin tuna or yellowfin tuna products harvested with purse seines in the ETP. Such certifications are therefore revoked and an embargo on such products has been implemented and will remain in effect unless and until the Secretary of Commerce (Secretary) makes a positive finding based upon documentary evidence provided by the government of the exporting nation that the average rate of the incidental taking by vessels of such foreign nation is no more than 1.25 times that of U.S. vessels during the

same period, or until the Secretary makes a positive finding that the government of the exporting nation has taken sufficient steps to prohibit the fishing vessels of such country from intentionally setting purse seine nets on marine mammals in the course of harvesting yellowfin tuna in the ETP.

DATES: This importation prohibition became effective on April 3, 1991, when it was directed by the U.S. customs service. The revocation of findings is effective as of the date of publication.

FOR FURTHER INFORMATION CONTACT: E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, CA 90731, Phone: (213) 514-6196.

SUPPLEMENTARY INFORMATION: On March 26, 1991, the District Court for the Northern District of California ordered an embargo of yellowfin tuna and yellowfin tuna products harvested with purse seines in the ETP. The embargo is to remain in effect unless and until the Secretary makes an affirmative finding based upon documentary evidence provided by the government of the exporting nation that the average rate of the incidental taking by vessels of such foreign nation is no more than 1.25 times that of U.S. vessels during the same period, or until the Secretary makes a positive finding that the government of the exporting nation has taken sufficient steps to prohibit the fishing vessels of such country from intentionally setting purse seine nets on marine mammals in the course of harvesting yellowfin tuna in the ETP.

The countries of Panama, Ecuador, Mexico, Vanuatu, and Venezuela harvest, or in the recent past have harvested, yellowfin tuna in the ETP by means of purse seines, and export yellowfin tuna or yellowfin tuna products to the United States. On November 15, 1990, and on March 15, 1991, the Secretary made affirmative

findings for Panama and Ecuador, respectively. The Secretary found that these countries have taken sufficient steps to prohibit their respective fishing vessels from intentionally setting purse seine nets on marine mammals in the course of harvesting yellowfin tuna in the ETP. At the time of the order the Court recognized that the Secretary made an affirmative finding on November 15, 1990, that Panama had taken sufficient steps to prohibit Panamanian fishing vessels from intentionally setting purse seine nets on marine mammals in the course of harvesting yellowfin tuna in the ETP. Therefore, Panama was not included in the Court's embargo order.

On March 15, 1991 (56 FR 12367), the Secretary announced that Ecuador submitted documentation that it is in compliance with the yellowfin tuna importation regulations for nations that have acted to ban purse seine sets on marine mammals in the ETP. Therefore, the Secretary has determined that yellowfin tuna and yellowfin tuna products from Ecuador are not embargoed pursuant to the court order of March 26, 1991.

The Assistant Administrator announces, therefore, that the comparability findings for Mexico, Venezuela, and Vanuatu, which were extended on December 27, 1990 (55 FR 53160) (effective on December 20, 1990), to May 31, 1991, are hereby revoked. As a result of the court order the interim final rule of December 27, 1990, has been invalidated, and the importation of yellowfin tuna and yellowfin tuna products harvested by purse seine in the eastern tropical Pacific Ocean is prohibited from any foreign nation, unless and until the Secretary makes a positive finding that the incidental taking of marine mammals by vessels of such foreign nation is no more than 1.25 times that of the United States vessels during the same period, or that the