

new SOR and when the new SOR becomes effective.

As required by Executive Order 12866, it has been determined that this proposed rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis. The regulation will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule does not have federalism implications under Executive Order 13132. Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that this rule will not significantly affect a substantial number of small entities. The proposed rule imposes no duties or obligations on small entities. In accordance with the provisions of the Paperwork Reduction Act of 1995, it has been determined that this proposed rule would not impose new record keeping, application, reporting, or other types of information collection requirements.

#### List of Subjects in 45 CFR Part 5b

##### Privacy.

For reasons set out in the preamble, the Department's Privacy Act Regulations, Part 5b of 45 CFR Subtitle A, is proposed to be amended as follows:

#### PART 5b—PRIVACY ACT REGULATIONS

1. The authority citation for part 5b continues to read as follows:

**Authority:** 5 U.S.C. 301, 5 U.S.C. 552a.

2. Section 5b.11 is amended by adding paragraph (b)(2)(ii)(G) to read as follows:

##### § 5b.11 Exempt systems.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(ii) \* \* \*

(G) Investigative materials compiled for law enforcement purposes for the Program Information Management System, HHS/OS/OCR are exempt under (k)(2) of the Privacy Act.

\* \* \* \* \*

Dated: August 29, 2002.

**Richard M. Campanelli,**  
Director, Office for Civil Rights.

Dated: August 29, 2002.

**Tommy G. Thompson,**  
Secretary.

[FR Doc. 02–22516 Filed 8–30–02; 8:45 am]

BILLING CODE 4153–01–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018–AH47

#### Endangered and Threatened Wildlife and Plants; Proposal To Delist the California Plant *Berberis* (= *Mahonia*) *sonnei* (Truckee barberry)

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to delist or remove *Berberis* (= *Mahonia*) *sonnei* (Truckee barberry) from the List of Endangered and Threatened Plants. We propose this action based on a review of all available data, which indicate that this plant is not a discrete taxonomic entity and does not meet the definition of a species (which includes subspecies and varieties of plants) as defined by the Endangered Species Act of 1973, as amended (Act). *Berberis sonnei* has been synonymized with *B. repens*, a common and widespread taxon with a distribution from California northward to British Columbia and Alberta, and eastward to the Great Plains. If made final, this proposed rule would eliminate Federal protection for *Berberis sonnei* under the Act. Comments from the public regarding this proposal are sought. **DATES:** Comments from all interested parties must be received by November 4, 2002. Public hearing requests must be received by October 18, 2002.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials concerning this proposal to delist or remove *Berberis* (= *Mahonia*) *sonnei* (Truckee barberry) from the List of Endangered and Threatened plants by any one of several methods:

You may submit written comments and information to Wayne White, Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room W–2605, Sacramento, California 95825.

You may send electronic mail (e-mail) to [barberry@fws.gov](mailto:barberry@fws.gov). See the Public

Comments Solicited section below for file format and other information about electronic filing.

You may hand-deliver comments to our Sacramento Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

#### FOR FURTHER INFORMATION CONTACT:

Kirsten Tarp or Jim Browning, at the above address (telephone 916/414–6600; facsimile 916/414–6710).

#### SUPPLEMENTARY INFORMATION:

##### Background

*Berberis* (= *Mahonia*) *sonnei* (Truckee barberry) is a small colonial evergreen shrub known only from a 250-meter (m) (280-yard (yd)) section of Truckee River flood plain in the town of Truckee, Nevada County, California. *Berberis* (= *Mahonia*) *sonnei* (Truckee barberry) is a small colonial evergreen shrub known only from a 250-meter (m) (280-yard (yd)) section of Truckee River flood plain in the town of Truckee, Nevada County, California. LeRoy Abrams described *Berberis sonnei* as *Mahonia sonnei* in 1934. McMinn (1939) transferred *Mahonia sonnei* to the genus *Berberis*. Separation of *Berberis* and *Mahonia* at the generic level is in dispute among taxonomists. The generic name *Berberis* will be used throughout this discussion following Yoder-Williams (1985, 1987).

The collections amateur botanist Charles Sonne made between 1884–1886 from around the Truckee River in Nevada County, California, provided the material from which the *Berberis sonnei* type later was taken. Sonne placed his collections in *B. aquifolium*, which at the time was the only suitable name to which he could refer his specimens (Roof 1974).

LeRoy Abrams (1934) determined that Sonne's specimens were not *Berberis aquifolium* and recognized them as a new species, *B. sonnei*, in his revision of the western barberries. Abrams distinguished the new species from *B. aquifolium* by the numerous small teeth on the leaf margins, dull color of underside leaf surfaces, and presence of papillae (small round or conic projections), concluding that these characters indicated a closer relationship with *B. repens*.

Sonne's material, and an 1881 collection by Marcus Jones at Soda Springs, Nevada County, California, were the only specimens of *Berberis sonnei* available to botanists for many

years. The actual location of Jones' collection has never been determined conclusively; it possibly was the same area later collected by Sonne (U.S. Fish and Wildlife Service 1984). Howard McMinn searched unsuccessfully for *B. sonnei* for his 1939 treatment of California shrubs. A 1944 collection from an unknown site on the Truckee River was placed in *B. repens* and went unnoticed by botanists for nearly 30 years. In 1965, an examination of Sonne's field notes revealed a reference to *B. aquifolium*, which likely could have been *B. sonnei*, from Deer Creek in Placer County, California but the locality is undocumented by a specimen (Roof 1974). *Berberis sonnei* was not relocated until a 1973 collection by Tahoe-Truckee high school student, Cathy Kramer, from the site presumably visited by Sonne nearly 90 years earlier (Roof 1974).

Taxonomic relationships between members of the *Berberis aquifolium* complex, which includes *B. repens* and *B. sonnei*, have long been confused. Abrams (1934) and McMinn (1939) both recognized a close relationship between *B. sonnei* and *B. repens*. McMinn (1939) first questioned the validity of *B. sonnei*, observing that *B. sonnei* perhaps was "only a more upright form of" *B. repens*. Yoder-Williams (1985, 1986, 1987) attributed frequent misclassification of herbarium specimens to the use of taxonomic characters incapable of consistently separating taxa of the group because they failed to account for variability throughout the range of the complex.

Yoder-Williams (1985, 1986, 1987) evaluated the diagnostic value of *Berberis* characters, including presence of papillae, glossiness of upper and lower leaf surfaces, plant height, and leaf tooth spination. As a result of his evaluation, Yoder-Williams concluded in several unpublished manuscripts that an analysis of possible characters to separate *Berberis sonnei* from both *B. repens* and *B. aquifolium* as treated by Abrams (1934) "failed to produce any clear distinctions," and that the taxon *B. sonnei* should be reduced to synonymy under *B. repens*. He recommended further field work and a comprehensive taxonomic revision of the entire group.

Michael Williams (1993) based his treatment of California *Berberis* on his taxonomic studies of selected members of the *B. aquifolium* complex (Yoder-Williams 1985, 1986, 1987). Williams' treatment of the California taxa followed earlier authors (Scoggan 1978) in placing *B. repens* as a variety of *B. aquifolium*, and additionally synonymized *B. sonnei* with *B. aquifolium* var. *repens*. The latter is a

widespread taxon with a distribution from the Peninsular Ranges of southern California northward to British Columbia and eastward to the Great Plains.

In the Flora of North America (Whittemore 1997), both *Berberis aquifolium* var. *repens* and *B. sonnei* are considered to be synonyms for *B. repens*. *Berberis repens* occurs in open forest, grassland, and shrubland. Whittemore (1997) notes that Sonne's collections from Truckee are considered to be an aberrant form of *B. repens*, and that subsequent collections from this population show the morphology typical of *B. repens* (Whittemore 1997). The range for *B. repens* is similar to that described for *B. aquifolium* ssp. *repens*.

#### Previous Federal Action

Federal government actions on *Berberis sonnei* began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975, and included *B. sonnei* as Endangered. We published a notice on July 1, 1975 (40 FR 27823), of our acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act (petition provisions are now found in section 4(b)(3) of the Act) and our intention thereby to review the status of the plant taxa named therein. *Berberis sonnei* was included in the July 1, 1975, notice. On June 16, 1976, we published a proposal (41 FR 24523) to determine approximately 1,700 vascular plant species, including *B. sonnei*, 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 our July 1, 1975, publication.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, publication (43 FR 17909). We published the final rule to list *Berberis sonnei* as an endangered species on November 6, 1979 (44 FR 64246).

On February 2, 1997, we received a petition to delist Truckee barberry ("*Mahonia sonnei*" *sic*) from the National Wilderness Institute. However, in April 1995, the enactment of Public Law 104-6 (Pub. L. 104-6) prohibited the Service from expending any of the remaining appropriated funds for the final determinations and listing of

plants and animals under the Act. Subsequent Listing Priority Guidance, published on December 5, 1996 (61 FR 64479), identified all delisting actions as Tier 4, and deferred action on all delisting packages until Fiscal Years 1998 and 1999. As a result of this guidance we were unable to address the petition to delist the species. In May 1998, the Final Listing Priority Guidance for Fiscal Years 1998 and 1999 (63 FR 25508) identified all delisting actions as Tier 2 priority actions. Beginning in 1999, funding for work on delisting actions was provided through the recovery program rather than the listing program (64 FR 57114, published October 22, 1999). The basis for the National Wilderness Institute petition was original taxonomic data error. This notice serves as our combined 90-day and 12-month findings on the petition and our proposal to delist *B. sonnei*.

#### Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) implementing the listing provisions of the Act set forth the procedures for listing, reclassifying, and delisting species on the Federal lists. A species may be listed if one or more of the five factors described in section 4(a)(1) of the Act threatens the continued existence of the species. A species may be delisted, according to 50 CFR 424.11(d), only if the best scientific and commercial data available substantiate that the species is neither endangered nor threatened because of (1) extinction, (2) recovery, and/or (3) because the original data for classification of the species were in error. We have carefully assessed the best scientific and commercial information available regarding the taxonomic classification of *Berberis* (= *Mahonia*) *sonnei* and have determined that the previous classification of the species is not taxonomically correct and therefore the species does not meet the definition of "species" as defined in the Act. Therefore, we propose to delist or remove *Berberis* (= *Mahonia*) *sonnei* from the List of Endangered and Threatened Plants.

The five factors affecting the species, as described in section 4(a)(1) of the Act, and their current application to *Berberis* (= *Mahonia*) *sonnei* (Abrams) McMinn (Truckee barberry) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Berberis sonnei* has been synonymized with *B. repens*, which ranges from California northward to British

Columbia and Alberta and eastward to the Great Plains (Whittemore 1997). This widespread taxon is not significantly threatened. The final rule that designated *B. sonnei* as an endangered species identified urbanization and further modification of streamside habitat of the one known Truckee River population as threats. Because *B. sonnei* is not a distinct taxon and does not meet the definition of "species" as defined in the Act, and the taxon with which it has now been combined is common and wide ranging and is not threatened by habitat destruction or modification, this threat does not apply.

*B. Overutilization for commercial, recreational, scientific, or educational purposes.* The final rule cited removal of plants from the one known population as a threat because *Berberis* species are widely used as ornamentals. This threat is not applicable to the wide ranging and common *Berberis repens*. Since *B. sonnei* is now combined with *B. repens*, the identified threat does not apply.

*C. Disease or predation.* Neither disease nor predation were cited as threats in the final rule to list *Berberis sonnei* as an endangered species, and they do not threaten the common and widespread taxon *B. repens*, to which *B. sonnei* has been combined.

*D. The inadequacy of existing regulatory mechanisms.* The common and widespread taxon *Berberis repens*, with which *B. sonnei* has been combined, does not require regulatory mechanisms to sustain it. The California Department of Fish and Game tentatively plans to prepare a proposal to delist *B. sonnei* sometime in the future (Kevin Shaffer, California Department of Fish and Game, pers. comm. 1994; Sandra Morey, California Department of Fish and Game, pers. comm. 2001).

*E. Other natural or manmade factors affecting its continued existence.* The final rule listing *Berberis sonnei* as an endangered species cited low seed set and seed viability as threats to the one known population. Neither of these factors threatens the common and widespread *B. repens*. No additional natural or manmade factors are known to threaten *B. repens*. Accordingly, there are no other natural or manmade factors affecting the continued existence of *B. sonnei* which has been combined with *B. repens*.

The regulations of 50 CFR 424.11(d) state that a species may be delisted if—(1) it becomes extinct, (2) it recovers, and/or (3) the original classification data were in error. We believe current scientific information demonstrates that

*Berberis sonnei* does not represent a valid taxonomic entity and, therefore, does not meet the definition of "species" as defined in section 3(15) of the Act. Therefore, *B. sonnei* no longer warrants listing under the Act.

#### Effects of the Rule

If finalized, the proposed action would remove *Berberis sonnei* from the List of Endangered and Threatened Plants. The endangered designation under the Act for this species would be removed. The prohibitions and conservation measures provided by the Act would no longer apply to this species. Therefore, interstate commerce, import, and export of *B. sonnei* would no longer be prohibited under the Act. In addition, Federal agencies no longer would be required to consult with us to insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of *B. sonnei*. The take and use of *B. sonnei* must comply with State regulations. There is no designated critical habitat for this species.

#### Future Conservation Measures

There are no specific preservation or management programs for this shrub that would be terminated. Section 4(g)(1) of the Act requires us to monitor a species for at least 5 years after it is delisted based on recovery. Because *Berberis sonnei* is being delisted due to new information that demonstrates that the original classification was in error, rather than due to recovery, the Act does not require us to monitor this plant species following its delisting.

#### Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning the taxonomic classification of *Berberis sonnei*.

Submit comments as indicated under **ADDRESSES**. If you wish to submit comments by e-mail, please submit these comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: [RIN 1018-AH47]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office at phone number 916-414-6600. Please

note that the e-mail address "fw1\_barberry@fws.gov" will be closed at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and other information received, as well as supporting information used to write this rule, will be available for public inspection, by appointment, during normal business hours at the above address.

In making a final decision on this proposal, we will take into consideration the comments and any additional information we receive. Such communications may lead to a final regulation that differs from this proposal.

#### Public Hearing

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Suite W-2605, Sacramento, California 95825.

#### Required Determinations

##### Executive Order 12866

Executive Order 12866 requires each Federal agency to write regulations that are easy to understand. We invite your comments on how to make this proposal easier to understand including answers to questions such as the following—(1) Is the discussion in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposal? (2) Does the proposal contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposal (grouping and order of

sections, use of headings, paragraphing, etc.) aid or reduce its clarity? What else could we do to make the proposal easier to understand?

Send a copy of any comments that concern how we could make this proposal easier to understand to Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also send the comments by e-mail to [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

This rule has been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

### Paperwork Reduction Act

OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act, require that Federal agencies obtain approval from OMB before collecting information from the public. Implementation of this rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act.

### National Environmental Policy Act

We have determined that an Environmental Assessment or Environmental Impact Statement, 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 as amended. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### References Cited

A complete list of all references cited herein is available upon request from the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

### Author

The primary author of this document is Kirsten Tarp, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

### List of Subjects in 50 CFR Part 17

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

### Proposed Regulation Promulgation

Accordingly, we hereby propose 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:** 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.

### § 17.12 [Amended]

2. Section 17.12(h) is amended by removing the entry for *Berberis sonnei* (= *Mahonia* s.), Truckee barberry, under “FLOWERING PLANTS,” from the List of Endangered and Threatened Plants.

Dated: August 15, 2002.

**Steve Williams,**

*Director, Fish and Wildlife Service.*

[FR Doc. 02–22300 Filed 8–30–02; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants: Notice of Intent To Prepare a Status Review for the Westslope Cutthroat Trout

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

**ACTION:** Notice of Intent.

**SUMMARY:** We, the Fish and Wildlife Service, announce initiation of a new status review for the westslope cutthroat trout (*Oncorhynchus clarki lewisi*) in the United States, pursuant to a recent Court order and the Endangered Species Act of 1973, as amended. We request additional data, information, technical critiques, and relevant comments that may be available for this species.

**DATES:** Data, information, technical critiques, and comments must be submitted by November 4, 2002 to be considered in the status review and 12-month finding.

**ADDRESSES:** Comments should be submitted to Westslope Cutthroat Comments, U.S. Fish and Wildlife Service, 2900 4th Avenue North, Room 301, Billings, MT 59102. The amended petition and its bibliography, our initial status review document and petition finding, related **Federal Register** notices, the recent Court Order and Judgement and Memorandum Opinion, and other pertinent information are available for inspection, during normal business hours and by appointment, at that address. The above information also may be obtained at our Internet Web site <<http://mountain-prairie.fws.gov/endspp/fish/wct/>>. Comments may be

submitted electronically to <[fw6\\_westslope@fws.gov](mailto:fw6_westslope@fws.gov)>.

### FOR FURTHER INFORMATION CONTACT:

Lynn R. Kaeding at e-mail ([Lynn\\_Kaeding@fws.gov](mailto:Lynn_Kaeding@fws.gov)) or telephone (406) 582–0717.

### SUPPLEMENTARY INFORMATION

#### Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires that within 90 days of receipt of the petition, to the maximum extent practicable, we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the requested action may be warranted. If the petition contains substantial information, the Act requires that we initiate a status review for the species and publish a 12-month finding indicating whether the petitioned action is—(a) not warranted, (b) warranted, or (c) warranted but precluded from immediate listing proposal by other pending proposals of higher priority. Notice of such 12-month findings are to be published promptly in the **Federal Register**.

On June 6, 1997, we received a formal petition to list the westslope cutthroat trout (*Oncorhynchus clarki lewisi*) as threatened throughout its range and designate critical habitat for this subspecies pursuant to the Act. The petitioners were American Wildlands, Clearwater Biodiversity Project, Idaho Watersheds Project, Inc., Montana Environmental Information Center, the Pacific Rivers Council, Trout Unlimited's Madison-Gallatin Chapter, and Mr. Bud Lilly.

The westslope cutthroat trout (WCT) is 1 of 14 subspecies of cutthroat trout native to interior regions of western North America (Behnke 1992). Cutthroat trout owe their common name to the distinctive red slash that occurs just below both sides of the lower jaw. Adult WCT typically exhibit bright yellow, orange, and red colors, especially among males during the spawning season. Characteristics of WCT that distinguish this fish from the other cutthroat subspecies include a pattern of irregularly shaped spots on the body that has few spots below the lateral line, except near the tail; a unique number of chromosomes; and other genetic and morphological traits that appear to reflect a distinct evolutionary lineage (Behnke 1992).

The historic range of WCT is considered the most geographically widespread among the 14 subspecies of inland cutthroat trout (Behnke 1992).