

which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

The Service finds that designation of critical habitat is not prudent at this time for *Cercocarpus traskiae*. All known populations of this species are on privately owned lands with little or no Federal involvement. The additional protection of critical habitat is achieved through Federal agency consultation under section 7 of the Act. The Santa Catalina Island Conservancy is aware of the presence of the species, supports the proposal to list the species, and is currently working to protect the population. Therefore the designation of critical habitat for *C. traskiae* would not appreciably benefit the species. Additionally, maps published in the **Federal Register** giving precise locations of populations of *C. traskiae*, as required for designation of critical habitat, may increase incidents of vandalism or collection of this species by collectors or curiosity seekers.

The Service also determines that designation of critical habitat is not prudent for *Sibara filifolia* or *Lithophragma maximum*. Extant populations of these two species occur on Federal lands managed by the Navy and are subject to section 7 consultation and recovery planning under the Act. San Clemente Island is owned by the Navy and contains the only known populations of these two species (with the exception of one mainland individual of *Lithophragma maximum*). The present range of *Sibara filifolia* is within the ship to shore bombing area on San Clemente Island. Section 7 consultation (50 CFR 402 subpart B) requires that Federal agencies confer with the Service to evaluate the potential impacts of any federally executed, funded, or authorized actions on listed and proposed species or critical habitat. Listing of these two species as endangered would ensure that consultation occurs and potential impacts to the species are considered.

Due to the limited, insular range of *Sibara filifolia* and *Lithophragma maximum*, designation of critical habitat would not provide any additional benefit to them.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery plans be developed 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 with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing 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 the species or 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 consultation with the Service.

The U.S. Army Corps of Engineers would be involved through their permitting authority under section 404 of the CWA. The Navy owns San Clemente Island and administers lands containing *Sibara filifolia* and *Lithophragma maximum* and authorizes, funds, or otherwise conducts activities that may affect these species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All 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 in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions 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 plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued for these species since they are not in cultivation or common in the wild.

It is the policy of the Service, published in the **Federal Register** (59 FR 34272) on July 1, 1994, to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. *Sibara filifolia* and *Lithophragma maximum* are known to occur on lands under the jurisdiction of the Navy. Collection, damage, or destruction of listed species on these lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. Such activities on non-Federal lands, as would be the case for *Cercocarpus traskiae*, would constitute a violation of section 9, if activities were conducted in knowing violation of State law or regulations or in violation of State criminal trespass law. The Service is not aware of any otherwise lawful activities currently being conducted or proposed by the public that would be affected by this listing and result in a violation of section 9.

Questions regarding whether specific activities would constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Carlsbad Field Office (see **ADDRESSES** section). Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S.