

consultation with the Service on virtually any federally-related project. Therefore, the Service finds that designation of critical habitat for this plant is not prudent at this time, because such designation would likely provide no benefit beyond that the species would receive by virtue of its designation as a threatened species. Further discussion of jeopardy opinions and consultation is included in the following section.

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 activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State 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 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) of the Act requires Federal agencies to confer 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 or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

None of the populations of *Arctostaphylos pallida* occur on Federal lands; however, some populations occur on protected non-Federal lands. The EBRPD owns and manages the land where both major populations of *A. pallida* occur. The EBRPD and CDFG jointly developed the Alameda Manzanita Management Plan in 1987. Although this plan was not adopted by

Alameda or Contra Costa County governments, portions of the plan are in use by the EBRPD where the species occurs (D. Amme, pers. comm. 1944; Ed Leong, EBRPD, pers. comm. 1994).

Listing this plant species would necessitate development of a recovery plan. Such a plan would bring together both State and Federal efforts for conservation of the plant. The plan would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also would describe site-specific management actions necessary to achieve conservation and survival of the plant species. Additionally, pursuant to section 6 of the Act, the Service would be able to grant funds to the State for management actions promoting the protection and recovery of the species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened species. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, 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. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. The protection may apply to this species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions 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 plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants,

permits are also available for botanical or horticultural exhibition, education purposes, or special purposes consistent with the purposes of the Act. It is anticipated that few trade permits would ever be sought or issued because the species is not common in the wild.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), 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. Collection, damage, or destruction of listed species on Federal lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. *Arctostaphylos pallida* is not known to occur on any Federal lands; however, such activities on non-Federal lands would constitute a violation of section 9, if 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 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 Sacramento 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. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181 (telephone 503/231-2063; facsimile 503/231-6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial, or other relevant data concerning any threat (or lack thereof) to *Arctostaphylos pallida*;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be