

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 formal consultation with the Service.

Federal agencies expected to have involvement with section 7 regarding these species include the Forest Service through its management activities, and the U.S. Army Corps of Engineers and the Environmental Protection Agency, through their permit authority under section 404 of the Clean Water Act. The Federal Housing Administration may be affected through funding of housing loans where these species or their habitat occurs. The Federal Highway Administration may be affected through potential funding of future highway construction that could affect these species. The Federal Energy Regulatory Commission may be involved through its permitting authority for utility projects that might potentially affect these taxa.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR parts 17.61 or 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 any such species in interstate or foreign commerce, or to remove and reduce to possession the species 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. This protection may apply to these 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 17.62 and 17.63 for endangered plants and Part 17.72 for threatened plants also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered and 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, educational purposes, or special purposes consistent with the purposes of the Act. It is anticipated that few permits would ever be sought or issued because these species are not in cultivation or 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. Six of the seven species in this rule are known to occur on lands managed by the Forest Service. Collection, damage or destruction of these species on Forest Service lands is prohibited although in appropriate cases a Federal endangered species permit may be issued to allow collection. Removal, cutting, digging up, damaging or destroying endangered plants on non-Federal lands would constitute a violation of section 9 of the Act if conducted in knowing violation of California State law, including State criminal trespass law. The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9.

Questions regarding activities that may constitute violations 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. 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 these taxa;

(2) The location of any additional populations of these taxa 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, distribution, and population size of these taxa; and

(4) Current or planned activities in the subject area and their possible impacts on these taxa.

The Service specifically solicits opinion from independent specialists regarding pertinent scientific or commercial data and assumptions relating to taxonomy, population models, and supportive biological and ecological information.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to the Field Supervisor of the Carlsbad Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments or Environmental Impact Statements, 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 Act. A notice outlining the Service's 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 Carlsbad Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Edna Rey Vizgirdas, Carlsbad