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Director, Fish and Wildlife Service.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AE82

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant *Phlox hirsuta* (Yreka Phlox) From Northern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes endangered status pursuant to the Endangered Species Act (Act) of 1973, as amended for one perennial plant, *Phlox hirsuta* (Yreka phlox). *Phlox hirsuta* is known only from two locations on serpentine slopes in Siskiyou County, California. A third location, near Etna Mills, California, has been searched, but no plants or habitat have been found since 1930. Urbanization, inadequate State regulatory mechanisms, and extirpation from random events due to small number of populations and small range of the species threaten *Phlox hirsuta*. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for this plant species.

DATES: Comments from all interested parties must be received by June 1, 1998. Public hearing requests must be received by May 18, 1998.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 3310 El Camino Avenue, Suite 130, Sacramento, California 95821-6340. Comments and materials received, as well as the supporting documentation used in preparing the rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Diane Elam, Sacramento Fish and Wildlife Office (see **ADDRESSES** section) (telephone 916/979-2120; facsimile 916/979-2128).

SUPPLEMENTARY INFORMATION:

Background

Phlox hirsuta (Yreka phlox) is endemic to Siskiyou County, California

where it grows on serpentine slopes in the vicinity of the City of Yreka (California Native Plant Society (CNPS) 1985). Serpentine soils are derived from ultramafic rocks (rocks with unusually large amounts of magnesium and iron). Ultramafic rocks are found discontinuously throughout California, in the Sierra Nevada and in the Coast Ranges from Santa Barbara County, California to British Columbia. Soils produced from ultramafic rocks have characteristic physical and chemical properties, tending to have high concentrations of magnesium, chromium, and nickel, and low concentrations of calcium, nitrogen, potassium, and phosphorus. Serpentine soils alter the pattern of vegetation and plant species composition nearly everywhere they occur. While serpentine soils are inhospitable for the growth of most plants, some plants are wholly or largely restricted to serpentine substrates (Kruckeberg 1984).

In 1876, Edward Green collected the type specimen of *Phlox hirsuta* 8 kilometers (5 miles) southwest of Yreka, California (Wherry 1955). Elias Nelson described the species in 1899 (Abrams 1951, CNPS 1985). Willis Jepson (1943) reduced the species to varietal status, treating the taxon as *Phlox stansburyi* var. *hirsuta*. Edgar Wherry returned the taxon to full species status in his 1955 revision of the genus *Phlox*.

Phlox hirsuta is a perennial subshrub in the phlox family (Polemoniaceae). The species grows 5 to 15 centimeters (2 to 5.9 inches) high from a stout, woody base and is hairy throughout. Narrowly lanceolate to ovate leaves with glandular margins are crowded on the stem. The leaves are 1.5 to 3 centimeters (0.6 to 1.2 inches) long and 4 to 7 millimeters (0.2 to 0.3 inch) wide. Pink to purple flowers appear from April to June. The corollas of the flowers are 12 to 15 millimeters (0.5 to 0.6 inch) long and are smooth-margined at the apex (CNPS 1977, 1985). The 5 to 8 millimeters (0.2 to 0.3 inch) style is contained within the corolla tube (CNPS 1977, 1985; Hickman 1993). Several other phlox species may occur within the range of *P. hirsuta*. Of these, *P. speciosa* (showy phlox) has notched petal lobes and grows 15 to 40 centimeters (5.9 to 15.8 inches), considerably taller than *P. hirsuta*. *Phlox adsurgens* (northern phlox) is also larger than *P. hirsuta* (15 to 30 centimeters (5.9 to 11.8 inches)). In addition, *P. adsurgens* blooms later (from June to August) than *P. hirsuta* and is glabrous rather than hairy. Prostrate (lying flat on the ground) to decumbent (mostly lying on the ground but with tips curving up) stems and

herbage lacking glands separate *P. diffusa* (spreading phlox) from *P. hirsuta* (CNPS 1977, 1985). Although found at the same latitudes, *P. stansburyi* (Stansbury's phlox) occurs 112 kilometers (70 miles) farther to the east in Lassen and Modoc Counties (CNPS 1977).

Phlox hirsuta is found on serpentine soils at elevations from 880 to 1,340 meters (2,800 to 4,400 feet) in association with Jeffrey pine (*Pinus jeffreyi*), incense cedar (*Calocedrus decurrens*), and junipers (*Juniperus* sp.) (CNPS 1985; California Department of Fish and Game (CDFG) 1986; California Natural Diversity Data Base (CNDDB) 1997). The species is known from only two locations in the vicinity of Yreka, California. One occurrence is an open ridge in a juniper woodland within the City limits of Yreka (CNPS 1977, 1985; CNDDB 1997). Estimates of the area occupied by the occurrence range from approximately 15 hectares (37 acres) (Grant and Virginia Fletcher, *in litt.* 1995) to approximately 36 hectares (90 acres) (Nancy Kang, U.S. Fish and Wildlife Service, *in litt.* 1995a). Other extreme serpentine sites searched in the area do not support additional populations of *Phlox hirsuta* (Adams 1987). The second occurrence is about 8 to 10 kilometers (5 to 6 miles) southwest of Yreka along California State Highway 3 in an open Jeffrey pine forest (CNPS 1977, 1985; CNDDB 1997) and includes approximately 65 hectares (160 acres) of occupied habitat (USFWS maps on file). A third location, where the species was last reported in 1930, is in the vicinity of Mill Creek near Etna Mills. The area was searched, but no plants or appropriate habitat were identified (CNPS 1985), and the location may be erroneous (CDFG 1986, Adams 1987). Surveys have been conducted on 80 percent of the potential habitat (defined as the presence of suitable soils) on Klamath National Forest (Ken Fuller and Diane Elam, U.S. Fish and Wildlife Service, *in litt.* 1997) and Bureau of Land Management (Joe Molter, Bureau of Land Management, pers. comm. 1997) lands within the Redding Resource Area; no new populations of *P. hirsuta* have been discovered.

Land ownership of the two occurrences is a mixture of private land owners, the City of Yreka, and the U.S. Forest Service (CNDDB 1997). The City of Yreka occurrence is the more vigorous and dense of the two occurrences (Linda Barker, Klamath

National Forest, *in litt.* 1985; Adams 1987; CNDDDB 1997). Part of the *P. hirsuta* occurrence in the City of Yreka is owned by the City of Yreka; the remainder is privately owned (Larry Bacon, City of Yreka, pers. comm. 1997). The Highway 3 occurrence is partially on U.S. Forest Service lands on the Klamath National Forest, partially within a State highway right-of-way, and partially privately owned (CDFG 1986, CNDDDB 1997). Approximately 50 percent of occupied habitat at this occurrence and 25 percent of the occupied habitat of the species is on land administered by the Klamath National Forest (based on maps in USFWS files). *Phlox hirsuta* is threatened by urbanization at the City of Yreka location and by inadequate regulatory mechanisms throughout its range. The small number of populations and small range of the species also make it vulnerable to decline or extirpation due to random events throughout its range.

Previous Federal Action

Federal government actions on *Phlox hirsuta* began as a result of section 12 of the original Endangered Species Act of 1973, (Act) as amended (16 U.S.C. 1531 *et seq.*), 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 *Phlox hirsuta* as a threatened species. The Fish and Wildlife Service published a notice on July 1, 1975 (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention thereby to review the status of the plant taxa named therein. The July 1, 1975 notice included the above taxon. On June 16, 1976, the Fish and Wildlife Service published a proposal (41 FR 24523) to determine approximately 1,700 vascular plant species 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 Fish and Wildlife Service in response to House Document No. 94-51 and the July 1, 1975, **Federal Register** publication. *Phlox hirsuta* was included in the June 16, 1976, **Federal Register** document.

The Fish and Wildlife Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Phlox*

hirsuta as a category 1 candidate. Category 1 candidates were those taxa for which the Fish and Wildlife Service had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. In the November 28, 1983 supplement to the Notice of Review (48 FR 53640) as well as in the subsequent revision on September 27, 1985 (50 FR 39526), *Phlox hirsuta* was included as a category 2 candidate. Category 2 taxa were those for which data in the Service's possession indicate listing was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support proposed rules. In the February 21, 1990 (55 FR 6184) notice of review, *Phlox hirsuta* was returned to category 1 candidate status. The species was also included as a category 1 candidate in the September 30, 1993 (50 FR 51143) Notice of Review. *Phlox hirsuta* was listed as a candidate in the Notice of Review published on February 28, 1996 (61 FR 7596). Candidate species are those for which the Fish and Wildlife Service has on file sufficient information on biological vulnerability and threat(s) to support proposals to list them as threatened or endangered species.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Phlox hirsuta*, because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1982, the Fish and Wildlife Service found that the petitioned listing of the species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(I) of the Act. The finding was reviewed annually in October of 1983 through 1997. Publication of this proposal constitutes the final finding for the petitioned action. *Phlox hirsuta* has a listing priority number of 2. Processing of this rule is a Tier 3 activity under the current listing priority guidance (61 FR 64475, 62 FR 55268).

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424)

promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Phlox hirsuta* E. Nelson (Yreka Phlox) are as follows:

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

The *Phlox hirsuta* occurrence within the City of Yreka represents at least 18 percent, and possibly 45 percent, of occupied habitat for the species (calculated from USFWS records). The occurrence is threatened by development. The majority of the site is subdivided (CNPS 1985, CDFG 1986). Eight of the subdivision lots support *P. hirsuta*; seven have *P. hirsuta* on at least 75 percent of the lot (N. Kang, *in litt.* 1995a). Six of the eight lots are privately owned; two are owned by the City of Yreka. Another smaller piece of land in the same area supports *P. hirsuta* and is also owned by the city (N. Kang, *in litt.* 1995a; L. Bacon, pers. comm. 1997). The *P. hirsuta* occurrence within the City of Yreka has been disturbed by road construction associated with the subdivision (CNPS 1985, CDFG 1986). An unmaintained roadway bisects the occurrence and likely represents permanent destruction of habitat at the site (N. Kang, *in litt.* 1995a). Additional disturbance resulted from grading for a house pad on one lot in 1994; *Phlox hirsuta* has not reinvaded the disturbed area (N. Kang, *in litt.* 1995a, 1995b). For most of the lots, "the most favorable and likely for building is in *P. hirsuta* habitat" (N. Kang, *in litt.* 1995a, 1995b). Because *P. hirsuta* plants are fairly evenly distributed across the lots, strategic placement of development in occupied habitat would not necessarily minimize impacts to the species. Additionally, over the long-term private landowners may not maintain their properties in a manner consistent with protection of the plants and their habitat (N. Kang, *in litt.* 1995a). Formerly, some lots at the site were registered with The Nature Conservancy landowner contact program, but that program no longer exists (Lynn Lozier, The Nature Conservancy, pers. comm. 1997). While the Fish and Wildlife Service is unaware of specific development plans on any lots at this time, a "for sale" sign was posted on the private property in May 1997 (K. Fuller and D. Elam, *in litt.* 1997).

The only other occurrence of *P. hirsuta*, the one along California State

Highway 3, has been disturbed in the past by logging and road construction. Although selective logging (CNPS 1985, Adams 1987) resulted in roads and bulldozer trails through the site (Adams 1987), logging is not currently a threat to *P. hirsuta* (K. Fuller and D. Elam, *in litt.* 1997), and the Forest Service has no activities planned in this area that may pose a threat. Thirty years ago, the realignment of Highway 3 impacted part of this occurrence (Sharon Stacey, California Department of Transportation (Caltrans), pers. comm. 1996). The area has since been designated by Caltrans as an Environmentally Sensitive Area (S. Stacey, pers. comm. 1998), which provides limited protection in that it requires acknowledgment of a sensitive species occurrence in project planning. Although road maintenance crews are to be made aware that no new ground is to be disturbed along this stretch of highway (Bob Sheffield, Caltrans, pers. comm. 1997), the portion of the occurrence within the Caltrans right-of-way could be disturbed by road maintenance (Charlotte Bowen, Caltrans, *in litt.* 1991). The area within the right-of-way consists of 5 small subpopulations with approximately 100 plants, occupying less than 0.8 hectare (2 acres) along 4 kilometers (2.5 miles) of the California State Highway 3. While encroaching development has been considered to be a potential threat to the plants occurring on private lands at the Highway 3 site (CNPS 1985; CDFG 1986), the threat from development at this site does not appear imminent.

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

Overutilization is not known to be a threat to *Phlox hirsuta* although it has been suggested that the species may be of interest to rock garden enthusiasts (CNPS 1977).

C. Disease or Predation

There is no known threat to *Phlox hirsuta* from disease. Parts of the Highway 3 site have been grazed in the past, perhaps by trespass cattle (CNPS 1985, Adams 1987). However, grazing is probably not a threat to *P. hirsuta* at this time (K. Fuller and D. Elam, *in litt.* 1997).

D. The Inadequacy of Existing Regulatory Mechanisms

The State of California Fish and Game Commission has listed *Phlox hirsuta* as an endangered species under the California Endangered Species Act (CESA) (Chapter 1.5 § 2050 *et seq.* of the California Fish and Game Code and Title 14 California Code of Regulations

670.2). Although the "take" of State-listed plants has long been prohibited under the California Native Plant Protection Act (CNPPA), Chapter 10 § 1908 and California Endangered Species Act, Chapter 1.5 § 2080, in the past these statutes have not provided adequate protection for such plants from the impacts of habitat modification or land use change. For example, under the CNPPA, after the California Department of Fish and Game notifies a landowner that a State-listed plant grows on his or her property, the statute requires only that the land owner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such a plant" (California Native Plant Protection Act, Chapter 10 § 1913). Under recent amendments to CESA, a permit under Section 2081(b) of the California Fish and Game Code is required to "take" State listed species incidental to otherwise lawful activities. The amendments require that impacts to the species be fully mitigated. However, these requirements have not been tested and several years will be required to evaluate their effectiveness. State lead agencies, such as Caltrans, are also required to consult with the California Department of Fish and Game to ensure that actions authorized, funded, or carried out by these agencies will not jeopardize the continued existence of State-listed endangered or threatened species (California Endangered Species Act, Chapter 1.5 § 2090). However, according to the California Environmental Quality Act (CEQA), which requires full disclosure of potential environmental impacts of proposed projects, protection of State-listed species is dependent upon the discretion of the lead agency involved, and projects may be approved that cause significant environmental damage, such as loss of sites supporting State-listed species. Mitigation requirements are optional, and are at the discretion of the lead agency. When mitigation plans are required, they often involve transplantation of the plant species to an existing or artificially created habitat, followed by destruction of the original site. Therefore, if the mitigation effort fails, the resource has already been lost. Further, CEQA does not guarantee that such conservation efforts will be implemented. In addition, the CEQA guidelines are being proposed for revisions that, if made final, may weaken protections for threatened, endangered, and other sensitive species (U.S. Department of Interior, *in litt.* 1997). Final CEQA guidelines are forthcoming.

In order to proceed with development of private and City of Yreka lands where *Phlox hirsuta* grows, the City of Yreka would require California Environmental Quality Act (CEQA) review (L. Bacon, pers. comm. 1997). The California Environmental Quality Act requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the California Environmental Quality Act Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State or Federal governments. Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects that cause significant environmental damage, such as destruction of endangered species, may be approved. Protection of listed species through the California Environmental Quality Act is, therefore, dependent upon the discretion of the agency involved.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Phlox hirsuta is known from only two small occurrences, which occupy fewer than 121 hectares (300 acres) in a restricted habitat type (serpentine soils) over a very small range (approximately 65 square kilometers (25 square miles)). The combination of only two populations, small range, and restricted habitat makes the species highly susceptible to extinction or extirpation from a significant portion of its range due to random events such as fire, drought, disease, or other occurrences (Shaffer 1981, 1987; Meffe and Carroll 1994). Such events are not usually a concern until the number of populations or geographic distribution become severely limited, as is the case with the species discussed here. Once the number of populations or the plant population size is reduced, the remnant populations, or portions of populations, have a higher probability of extinction from random events (Primack 1993).

The Fish and Wildlife Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Phlox hirsuta* in determining to propose this rule. Urbanization, inadequate State regulatory mechanisms, and extirpation from random events due to the small number of populations and small range of the species threaten *P. hirsuta*. The two occurrences of *P. hirsuta* total fewer than 121 hectares (300 acres) of occupied habitat in the vicinity of the City of Yreka, Siskiyou County, California. The site within the City of Yreka is already subdivided, has been disturbed by activities associated with urbanization in the past, is situated in an area that is suitable for development, and is unprotected from this threat. In addition, both occurrences are at risk due to inadequate State regulatory mechanisms and due to potential extirpation of all or part of the occurrences due to random events. Therefore, the preferred action is to list *P. hirsuta* as endangered.

Alternatives to listing were considered before publication of this proposed rule. The other alternatives were not preferred because they would not provide adequate protection and would not be consistent with the Act. Listing *Phlox hirsuta* as endangered would provide Federal protection for the species and result in additional protection as outlined under the Available Conservation Measures section.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection, and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. “Conservation” as it is defined in section 3(3) of the Act means the use of all methods and procedures needed to bring the species to the point at 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

listed. Fish and Wildlife 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 threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency. Federal involvement is most likely in two situations—(1) where the species occurs on Federal lands and (2) when a Federal agency is involved in authorizing or funding actions on non-Federal lands. Under section 7 of the Act, Federal agencies are required to ensure that their actions do not jeopardize the continued existence of a species or result in adverse modification of critical habitat. However, both jeopardizing the continued existence of a species and adverse modification of critical habitat have similar standards, and thus similar thresholds for violation of section 7 of the Act.

The Fish and Wildlife Service finds that designation of critical habitat is not prudent for *Phlox hirsuta* as it would provide no additional benefit to the species beyond listing. There are only two known sites of *P. hirsuta*. No other sites containing *P. hirsuta* have been identified, and no historic locations are known (CNDDDB 1997). One site sits on both City of Yreka and private lands, and the other site is partially on private land, partially on Caltrans right-of-way, and partially on Klamath National Forest land. Designation of critical habitat may affect non-Federal lands only where a Federal nexus exists, such as 404 permitting under the Clean Water Act. As it is an upland species facing the threat of private development, the designation of critical habitat on private or State lands provides no additional benefit for *P. hirsuta* over that provided as a result of listing since there are no Federal nexus actions taking place. Furthermore, due to the limited distribution of *P. hirsuta*, any action that would adversely modify critical habitat would also jeopardize the species. Critical habitat designation for known populations on private lands and the City of Yreka lands would confer no benefit beyond that of listing as there is no Federal nexus, and potentially could present significant threats to the species' continued existence. The publication of maps and precise locations of plant occurrences could contribute to the

further decline of the species by facilitating trespassing and hindering recovery efforts.

The other site is on a mixture of a Caltrans right-of-way, private lands and Klamath National Forest land. Section 7 of the Act requires that Federal agencies refrain from contributing to the destruction or adverse modification of critical habitat or jeopardizing the continued existence of a listed species. Designation of critical habitat would provide no benefit where the *P. hirsuta* occurs on Federal land or Caltrans right-of-way because any adverse modification of the occupied habitat would likely jeopardize the continued existence of the species. Additionally, modification of habitat is unlikely to occur without consultation under section 7 of the Act because the presence of *P. hirsuta*, and its specific locations, are known to the managers of the Klamath National Forest (K. Fuller and D. Elam, *in litt.* 1997) and to Caltrans personnel (S. Stacey, pers. comm. 1996, 1998). Protection of the habitat of *Phlox hirsuta* will be addressed through the section 4 recovery process and the section 7 consultation process. For the reasons discussed above, the Fish and Wildlife Service finds that the designation of critical habitat for *P. hirsuta* is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered 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 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 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 Fish and Wildlife 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 Fish and Wildlife Service.

Listing *Phlox hirsuta* would provide for development of a recovery plan for the species. The plan would bring together both State and Federal efforts for conservation of the species. The plan would establish a framework for agencies, local government, and private interests 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. The plan also would describe management actions necessary to achieve conservation and survival of *P. hirsuta*. Additionally, pursuant to section 6 of the Act, the Fish and Wildlife Service would be able to grant funds to an affected State for management actions promoting the protection and recovery of the species.

Federal activities potentially affecting *Phlox hirsuta* include issuance of special use permits and rights-of-ways. Approximately one-half of the Highway 3 occurrence of *Phlox hirsuta* occurs on lands managed by the U.S. Forest Service. The U.S. Forest Service would be required to consult with the U.S. Fish and Wildlife Service if any activities authorized, funded, or carried out by the U.S. Forest Service may affect *P. hirsuta*, for example, road maintenance and right-of-way authorizations for projects that include adjacent or intermixed private land. The Forest Service has been contacted regarding the presence of *P. hirsuta*, and has no planned activities that would require initiating consultation procedures.

Other Federal agencies that may become involved if this rule is finalized include the Federal Highways Administration through funding provided to Caltrans. In addition, Federal involvement may occur when the Fish and Wildlife Service issues permits for habitat conservation plans (HCPs) prepared by non-Federal parties.

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 for endangered plants, apply. These

prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any of the plants, transport or ship them in interstate or foreign commerce in the course of a commercial activity; sell or offer them for sale in interstate or foreign commerce; or remove and reduce any of the plants to possession from areas under Federal jurisdiction. In addition, the Act prohibits the malicious damage or destruction of endangered plants from 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 Fish and Wildlife Service and State conservation agencies.

It is the policy of the Fish and Wildlife 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 the listing on proposed and ongoing activities within a species' range. One of the two occurrences of *Phlox hirsuta* is on U.S. Forest Service lands. Section 9 of the Act prohibits removal and malicious damage or destruction of endangered plants on Federal lands. However, actions funded, authorized or implemented by a Federal agency that could result in the removal or destruction of such species on Federal lands, would not be in violation of the Act, provided the actions would not likely result in jeopardy to the species. The removal and reduction to possession of listed species on Federal lands for research activities may be authorized by the Fish and Wildlife Service under section 10(a)(1)(A) of the Act (see below). Activities that do not involve any Federal agency funding or authorization on private lands do not violate section 9 of the Act, unless such activities are carried out in knowing violation of State law or regulation or in the course of any violation of a State criminal trespass law. Moderate activities such as construction of fences, livestock-water ponds, and livestock grazing would not constitute a violation of section 9. Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

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 plant species under certain circumstances. Permits are available for scientific purposes and to enhance the propagation or survival of the species. Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE 11th Avenue, Portland, Oregon 97232-4181; telephone 503/231-2063 or FAX 503/231-6243. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget ordanance number 1018-0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.22.

Public Comments Solicited

The Fish and Wildlife 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. The Fish and Wildlife Service will follow its current peer review policy (59 FR 34270) in the processing of this rule. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Phlox hirsuta*;
- (2) The location of any additional populations of this species 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 this species; and
- (4) Current or planned activities in the subject area and their possible impacts on this species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Fish and Wildlife Service, and such communications may lead to a final regulation that differs from this proposal.

The 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. Such requests must be made in writing and addressed to the Field Supervisor, U. S. Fish and Wildlife Service, 3310 El

Camino Avenue, Suite 130, Sacramento, CA 95821-6340.

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 Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

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

Author

The primary author of this proposed rule is Diane Elam, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (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, the Fish and Wildlife Service hereby proposes 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.

2. Amend Section 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
<i>Phlox hirsuta</i>	Yreka phlox	U.S.A. (CA)	Polemoniaceae	E		NA	NA
*	*	*	*	*	*		*

Dated: March 17, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98-8516 Filed 3-31-98; 8:45 am]

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