

Federal Communications Commission.

**John A. Karousos,**

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 98-7360 Filed 3-20-98; 8:45 am]

BILLING CODE 6712-01-U

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AE75

#### Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant *Fritillaria gentneri* (Gentner's fritillary)

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

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the plant, *Fritillaria gentneri* (Gentner's fritillary (=Mission-bells)). It is endemic to Oregon and only found in two counties, Jackson and Josephine. This taxa is threatened by residential development, agricultural activities, silvicultural activities, road and trail improvement, off-road vehicle use, collection for gardens, and increased risk of extinction due to small numbers. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for this plant. The Service seeks data and comment from the public on this proposal.

**DATES:** Comments from all interested parties received by May 22, 1998 will be considered by the Service. Public hearing requests must be received by May 7, 1998.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, Oregon State Office, U.S. Fish and Wildlife Service, 2600 SE 98th Ave. Suite 100, Portland, OR 97266. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Andrew F. Robinson Jr., Botanist, (see ADDRESSES section) (telephone 503/231-6179; facsimile 503/231-6179).

#### SUPPLEMENTARY INFORMATION:

#### Background

*Fritillaria gentneri* was discovered by the Gentner family and was first named

by Helen M. Gilkey (1951). The original location was in the vicinity of Jacksonville, Jackson County, Oregon. It was previously considered a form of *Fritillaria recurva* but Guerrant (1992) identified *Fritillaria gentneri* as a separate species.

*Fritillaria gentneri* is in the family Liliaceae. It has a fleshy bulb, robust stem, is 5 to 7 decimeters (dm) (19.7 to 27.6 inches (in)) high, glaucous (having a coating of bluish cast), and sometimes purple mottled. The leaves are lanceolate (arrow shaped), sometimes linear, 7 to 15 centimeters (cm) (2.8 to 5.9 in) long, 0.7 to 1.5 cm (0.3 to 0.6 in) wide at the base, and they are often whorled. The flowers are solitary or in bracted racemes (simply branched flower stem with a small simple leaf at the base of each branch), one to five on long pedicels (the stalk supporting a single flower). The campanulate (bell shaped) corolla is 3.5 to 4 cm (1.4 to 1.6 in) long and is reddish purple with pale yellow streaks (Gilkey 1951, Peck 1961, Meinke 1982).

*Fritillaria gentneri* (Gentner's fritillary) is endemic to Oregon and known only from scattered localities in southwestern Oregon, along the Rogue and Illinois River drainages in Josephine and Jackson counties. *Fritillaria gentneri* occurs in rather dry open woodlands of fir or oak at elevations below approximately 1,360 meters (m) (4,450 feet (ft)). The species is highly localized in a 48 kilometer (km) (30 mile (mi)) radius of Jacksonville Cemetery. Seventy-three percent of the population of *Fritillaria gentneri* is distributed as a central cluster of individuals located within an 11 km (7 mi) radius of the Jacksonville Cemetery. The remaining plants occur as outliers of single individuals or occasional clusters of individuals sparsely distributed across the landscape.

To analyze the species' trend and status given this sparse distribution, *Fritillaria gentneri* has been documented within 53 macro plots, which cover all known occurrences within the species range. The macro plot grid is based on dividing the landscape up into blocks starting initially with the 7.5' quadrangle map grid developed by the U.S. Geological Survey (USGS). Each 7.5' quadrangle map is further divided up into 225 blocks that are 0.5 by 0.5 minutes of latitude and longitude and approximately 64 hectares (ha) (157 acres (ac)) in size. Each of the 64 ha blocks are further subdivided into 25 cells (macro plots) that are 6 by 6 seconds of latitude and longitude (0.1 minute of latitude or longitude or approximately 0.1 mi (2.56 ha (6.3 ac)

each). Each of the macro plots gets a unique code based on its latitude and longitude locations. Part of the code is based on USGS Ohio coding system for quadrangle maps. The rest of the code for identifying each of the 5,625 macro plots found within each USGS quadrangle map was developed by Dr. Andrew F. Robinson Jr. This system can be used any place in the United States to determine the macro plot code for a collection point based on the collection's point latitude and longitude. *Fritillaria gentneri* has been reported from all 53 of the identified macro plots but is extant in only 85 percent (45) of the macro plots. It has been extirpated from 2 of the 40 macro plots found within the central cluster, and nearly half (6) of the 13 occurrences outside of the central cluster of the species.

Thirteen of the macro plots are on lands managed by the Medford District of the Bureau of Land Management (BLM); 2 plots are on an Oregon State Highway right-of-way, District 8; 3 plots are on lands managed by Southern Oregon University; 7 plots are on lands managed by the City of Jacksonville; and the other 25 plots are on lands under private ownership. Approximately half of the species' current distribution (20 out of 45 macro plots) is on private lands.

Plant number estimates from the 45 extant sampling units varied from a low of 1 to a high of 100 (Pelton Road) individual plants within a macro plot. Estimated species population size from the 45 macro plots is 340 flowering plants, with 12 of the macro plots having only one plant each. The amount of habitat occupied within the macro plot varied from 1 square meter (10.75 square feet) to 1.2 hectares (3 ac).

*Fritillaria gentneri* ranges from approximately 180 to 1,360 m (600 to 4,450 ft) in elevation. *Fritillaria gentneri* is found in three habitat types: oak woodlands that are dominated by Oregon white oak (*Quercus garryana*); a mixed hardwood forest type dominated by California black oak (*Quercus kelloggii*), Oregon white oak, and madrone (*Arbutus menziesii*); and coniferous forested areas dominated by madrone and Douglas-fir (*Pseudotsuga menziesii*) (J. Kagan, Oregon Natural Heritage Program, Portland, Oregon, pers. comm. 1997).

*Fritillaria gentneri* typically grows in or on the edge of open woodlands with Oregon white oak and madrone as the most common overstory plants. Western yellow pine (*Pinus ponderosa*) and Douglas-fir are also frequently present. White-leaved manzanita (*Arctostaphylos viscida*), buckbrush

(*Ceanothus cuneatus*), snowbrush (*C. velutinus*), plume tree (*Cercocarpus betuloides*), Sadler oak (*Quercus sadleriana*), and poison oak (*Rhus diversiloba*) are commonly encountered understory shrub species. Herb and forb layers are typical of those found in the Rogue Valley foothills: ashy rock cress (*Arabis subpinnatifida*), Rouge River milkvetch (*Astragalus accidens hendersoni*), fringed brome (*Bromus ciliatus*), Henderson's shootingstar (*Dodecatheon hendersoni*), California fescue (*Festuca californica*), Idaho fescue (*F. idahoensis*), woods strawberry (*Fragaria vesca bracteata*), mission bells (*Fritillaria lanceolata*), scarlet fritillaria (*F. recurva*), lewisia (*Lewisia* spp.), fineleaf biscuit-root (*Lomatium utriculatum*), Sandberg's bluegrass (*Poa sandbergii*), western buttercup (*Ranunculus occidentalis*), Suksdorf's romanzoffia (*Romanzoffia suksdorfii*), groundsel (*Senecio* spp.), checker-mallow (*Sidalcea* spp.), Lemmon's needle grass (*Stipa lemmonii*), and American vetch (*Vicia americana*). *Fritillaria gentneri* can also grow in open chaparral/grassland habitat, which is often found within or adjacent to the mixed hardwood forest type, but always where some wind or sun protection is provided by other shrubs. It does not grow on extremely droughty sites. For unknown reasons, much apparently suitable habitat within the species range is unoccupied.

Rolle (1988e) stated that *Fritillaria gentneri* often grows in places that have experienced human disturbance and eventually became revegetated (e.g., old road cuts, alongside trails, bulldozer routes, old mounds left from past mining or other earth moving activities). At least 50 percent of the sites Rolle (1988e) has seen exhibited signs of previous disturbance. Earth-moving activity could spread bulblets and increase populations, but this has not been documented. The species seems to require some infrequent but regular level of disturbance such as would have occurred under the historic pattern of fire frequency in the Rogue and Illinois River valleys. *Fritillaria gentneri* is not an early colonizer of these sites but eventually takes advantage of the opening or edge effect created. It appears to be a mid-successional species in that it establishes in areas after other plants have colonized a disturbed area, but before taller more mature vegetation types become established and shade it out.

*Fritillaria gentneri* is a perennial species that reproduces asexually by bulblets. The bulblets break off and form other plants. *Fritillaria gentneri* can reproduce sexually as well (Guerrant,

Berry Botanic Garden Portland, Oregon, pers. comm. 1997). Guerrant believes that the pollinators are hummingbirds or bumble bees. Guerrant (1992) sampled eight clusters and found a few plants that had seeds but there were not any obvious embryos. He stated that *Fritillaria gentneri* may possibly be sterile, that the plant is largely reproducing asexually, and that the sexual reproduction of the plant needs to be better documented.

#### Previous Federal Action

Federal government actions on *Fritillaria gentneri* began as a result of section 12 of the 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 *Fritillaria gentneri* as a threatened species. The Service published a notice on July 1, 1975, **Federal Register** (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.

*Fritillaria gentneri* was initially included as a Category 2 candidate in a Notice of Review published by the Service on December 15, 1980 (45 FR 82510). Category 2 candidate species were taxa for which data in the Service's possession indicated listing may be appropriate, but for which additional data on biological vulnerability and threats were needed to support a proposed rule. On September 30, 1993 (58 FR 51166), the Service published a Notice of Review upgrading this species to a Category 1 status. Category 1 candidates were those for which the Service had sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened species. Upon publication of the February 28, 1996 notice of review (61 FR 7596), the Service ceased using category designations and included *Fritillaria gentneri* as a candidate species. Candidate species are those for which the Service has on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered. *Fritillaria gentneri* was retained as a candidate species in the September 19,

1997, Review of Plant and Animal Taxa (62 FR 49398).

The processing of this proposed rule conforms with the Service's final listing priority guidance published in the **Federal Register** on December 6, 1996 (61 FR 64475) and extended on October 23, 1997 (62 FR 55268). The guidance clarifies the order in which the Service will process rulemakings. The guidance calls for giving highest priority to handling emergency situations (Tier 1), second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings, and third priority (Tier 3) to new proposals to add species to the list of threatened and endangered plants and animals. This proposed rule constitutes a Tier 3 action.

#### Summary of Factors Affecting the Species

Section 4 of the Act 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 the *Fritillaria gentneri* are as follows:

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

The term "development" used here includes housing construction, such as driveway placement, lots for sale, cemetery expansion, trail maintenance, road widening, power line maintenance, water system construction, and agricultural conversions.

*Fritillaria gentneri* is found only in the rural foothills of the Rogue and Illinois River valleys in Jackson and Josephine counties, Oregon. Within this range, the plant occurs as lone individuals or small clusters of individuals sparsely distributed across the landscape which together are thought to form one single population of approximately 340 plants. This species was originally documented to occur in 53 locations (referenced as "macro plots" in the BACKGROUND section of this notice). Between 1941 and today, the plant has been lost from eight of these sites. Three locations, Grants Pass, Medford, and Murphy, were vague locations and have never been relocated since the original collections by Gentner (1941, 1948-50) and Gilkey (1951). Those locations were probably destroyed by development. However, since 1982, Kagan and Rolle documented losses due to construction for homes and schools, associated roads, driveways, and agricultural conversions

which destroyed all the plants occurring within the following five locations: Lyman Mountain (Kagan 1982g and pers. comm. 1997; Rolle 1988f), Merlin (Kagan 1982a and pers. comm. 1997), Ramsey Road (Kagan 1982f and pers. comm. 1997), State Highway 238 (Gentner 1948, Kagan 1982c and pers. comm. 1997), and Winona (Kagan 1982b and pers. comm. 1997).

Habitat loss due to ongoing or future development threatens the central core area of this species. Habitat loss may occur in 42 percent (19) of the occupied sites (macro plots) within the foreseeable future. Ongoing development accounts for 13 percent (6 sites) of the anticipated habitat loss, while future development may include loss of habitat for the other 29 percent (13) of the occupied sites; most development will occur within the central core area.

Ongoing development is threatening populations of *Fritillaria gentneri* that occur in six locations. Rolle (1988b) noted that at Pelton Road, outside the core area, destruction of the habitat was taking place as he was sampling the cluster. On that site visit, Rolle (1988b) reported 60 flowering plants and 200 non-flowering plants, noting that it was the best example of *Fritillaria gentneri* that he had seen. During his observation, he noted that brush was being piled upon the plants for a road widening project. Of the 48 plants flagged, 23 individuals were missing when Rolle (1988d) returned to collect seeds. In 1990, Guerrant (1990) reported only 50 to 100 plants at the Pelton Road site. According to Rolle (U.S. Forest Service, Ashland, Oregon, pers. comm. 1997) one-quarter of the cluster has been destroyed as a result of road widening. It is not known what happened to the other missing plants. Within the core area, at the Jackson County Landfill, at least half of the *Fritillaria gentneri* plants in one of the five sites that occur at the dump was bulldozed as a result of road construction and dump expansion in 1988 (Rolle 1988d). Near the entrance to Jackson County Landfill, Rolle (1988a) reported four plants present. In 1988, Rolle (1988d) flagged three of these plants and reported that two of the plants were bulldozed. Guerrant (pers. comm. 1997) reported that the dump is still expanding and heading toward other *Fritillaria gentneri* plants, but destruction has stopped just short of destroying the rest of the plants.

Future development may include loss of about 29 percent (13 locations) of the species from the central core area that include plants growing in the Bellinger Hill, Britt Grounds, Jacksonville Cemetery, Placer Hill Drive, and

Sterling Creek Road. Rolle (pers. comm. 1997) stated that part of the Bellinger Hill plants occurred in a private individuals' backyard. At the time of the sighting, that section of the backyard was not maintained, therefore allowing *Fritillaria gentneri* to grow. The other plants were in an area where housing development was occurring (Rolle pers. comm. 1997). On Britt Grounds, 110 plants of *Fritillaria gentneri* were documented in 1993 (Tomlins 1993) on 39 hectares (97 ac) of land managed by BLM or Southern Oregon University. Trail construction and construction of the city water line threaten the Britt Grounds plants. Maxxon (1985) reported that there were approximately 50 plants in the Jacksonville Cemetery area with approximately half of the cluster (18–24 plants) on private land east of the northeast corner of the cemetery property. Kagan (pers. comm. 1997) reported that the city is currently developed up to the eastern side of the cemetery, and probably those 18 to 24 plants have been lost. Within the cemetery proper, Maxxon (1985) mapped the location of 12 plants that occur on the cemetery lots. As the cemetery fills up, additional plants may be destroyed during the excavation; at least eight plants mapped by Maxxon (1985) currently grow on unused burial lots. West and uphill from the cemetery, Rolle (1988g) documented that there were 15 or so plants at scattered stations along the trail system. Any additional trail construction may destroy some of these plants. In 1988, Rolle (1988g) found six flowering plants of *Fritillaria gentneri* along Placer Hill Drive and flagged five of the plants. On returning, he discovered that a new driveway was scheduled to be constructed which would go through the Placer Hill Drive location (Rolle 1988d). In 1992, some plants remained on the site (Guerrant 1992), but today the property is for sale (Rolle, pers. comm. 1997, & Guerrant, pers. comm. 1997). Similarly, Rolle (pers. comm. 1997) reported that the Sterling Creek plants occur on 40.4 square meters (less than .01 acre) and that this area is threatened by development. The most threatened areas are on private lands where development poses an immediate threat to the population. Of the 45 extant locations, 25 occur on private lands and are unlikely to remain over the long term.

The threat of habitat loss to *Fritillaria gentneri* is evident when both the size and the state of the scattered clusters throughout the species range are examined. Cluster sizes range from 1 plant to 100. Of the 45 macro plots currently occupied by *Fritillaria*

*gentneri*, only 8 had occupied habitat that was equal to or greater than 0.4 ha (1 ac). Many are smaller than 0.04 ha (0.1 ac). With such limited area, a small amount of disturbance could extirpate all of the plants in a local area.

Activities that remove desirable habitat on public lands are still occurring. Joan Seevers (BLM, Medford, Oregon, pers. comm. 1997) confirmed that of the 13 sites containing plants on BLM lands, 7 were threatened with logging. Tomlins (1993) stated that salvage logging had disturbed some of the plants at Britt Grounds. Seevers (pers. comm. 1997) also reported that Britt Grounds and Sterling Mine ditch had trails near the cluster of plants. Hikers, bikers, and horseback riders use the trails and threaten the site by picking and trampling of *Fritillaria gentneri*. At Antioch Road 2, Henshel (1994c) noted that the plants were located on either side of a dirt bike trail.

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

According to Gilkey (1951), *Fritillaria gentneri* was successfully grown in a garden and used in flower arrangements. Therefore, collection of the species is a concern. This native lily is an attractive plant which makes it noticeable and more likely to be collected. Its noted rarity also makes it susceptible to collection from horticulturists seeking to cultivate rare species. Furthermore, *Fritillaria gentneri* has a very poor viable seed set and much of the capsule is eaten by wildlife prior to seed maturation (Rolle 1988d). Thus, there is even greater pressure to dig the bulbs by collectors, since seed collection & germination may not be a feasible option. Twenty-two (43 percent) of the known sites had 3 or fewer individuals. Because the species occurs in small, isolated clusters, a collector could decimate an entire clump in one gathering, extirpating the plant from that area. Kagan (1982d), Rolle (1988c, pers. comm. 1997), and Guerrant (pers. comm. 1997) documented that 40 percent of the total estimated number of plants (136) have a good potential for roadside collection. The plants are visible from the road at Logtown Cemetery, Paradise Ranch Road, Pelton Road, Placer Hill Drive, Poorman's Gulch, Sailor Gulch, Sterling Creek Road, and Wagon Trail Drive and when flowering, could attract some attention (Guerrant pers. comm. 1997). Collecting has been documented in Britt Grounds (Tomlins 1993, Joan Seever pers. comm. 1997) along the trails.

### C. Disease or Predation

Disease and predation occur in *Fritillaria gentneri* plants, reducing their numbers and productivity. Secondary fungal infections were present at the Cady Road, Jacksonville Cemetery, Jackson County Dump, Pelton Road, Placer Hill Drive, and Wagon Trail Drive sites (Rolle 1988d). Many of the plants that were tagged for seed collection by Rolle had the capsules eaten by wildlife before the seed capsules matured (Rolle 1988d): of the 14 plants tagged at Wagon Trail Drive, 9 plants had no capsules; at Cady Road 4 of 4 flagged plants had the capsules bitten off; at the Jacksonville Cemetery 6 of 6 flagged plants had no mature capsules found on any part of the plant; at Pelton Road 19 of 48 flagged plants were knocked down, eaten or did not develop; and at Placer Hill Drive 1 of 5 flagged plants had the capsules bitten off.

### D. The Inadequacy of Existing Regulatory Mechanisms

In 1963, the protection of Oregon's natural botanical resources was initiated with the passage of the Oregon Wildflower Law (ORS 564.010–564.040). This law was designed to protect showy botanical groups such as lilies, shooting stars, orchids, and rhododendrons from collection by horticulturists interested in these species' domestication. The Oregon Wildflower Law prohibits the collection of wildflowers within 60.9 m (200 ft) of a State highway. Although protective in spirit, the Oregon Wildflower Law carries minimal penalties and is rarely enforced. As a means of protecting *Fritillaria gentneri*, it has minimal effectiveness.

In 1987, Oregon Senate Bill 533 (ORS 564.100) was passed to augment the legislative actions available for the protection of the State's threatened and endangered species, both plant and animal. This bill, known as the Oregon Endangered Species Act, mandated responsibility for threatened and endangered plant species in Oregon to the Oregon Department of Agriculture (ODA).

The Oregon Endangered Species Act directs the ODA to maintain a strong program to conserve and protect native plant species threatened or endangered with extinction. *Fritillaria gentneri* is State-listed as endangered, receiving protection on State-managed lands under the Oregon Endangered Species Act. Although the ODA is able to regulate the import, export, or trafficking of State-listed plant species (under ORS 564.120), their ability to protect plant populations is limited to

State-owned or State-leased lands. Private owners are not required to protect State-listed species. As a result, occurrences of *Fritillaria gentneri* on private lands receive no protection from their State status as endangered. Plants growing at the Log Town Cemetery are on an Oregon Department of Transportation right-of-way and this is the only site that falls under protection of the Oregon Endangered Species Act.

*Fritillaria gentneri* is classified by the Oregon Natural Heritage Program as a G1 category, which identifies taxa that are threatened with extinction throughout their entire range. This species category recognizes globally rare species, but provides no protection.

The primary inadequacy in the existing regulations pertains to plant sites located on private lands that currently receive no protection from threats to their existence. Privately-held sites constitute a significant portion of this species' range and play a substantial role in their continued existence.

### E. Other Natural or Manmade Factors Affecting its Continued Existence

Succession caused by fire suppression is allowing *Fritillaria gentneri*'s preferred open oak woodland habitat to close in and exclude the species, while the increase of homes in the area makes prescribed burning difficult. According to Rolle (pers. comm. 1997) and Kagan (pers. comm. 1997), *Fritillaria gentneri* grows best in forest openings and closure of the canopy due to successional occurrence can result in shading of the plants. The closure of the forest canopy by the encroachment of Douglas fir and madrone at the Wagon Trail site is currently occurring and threatens the continued occupancy of this macro plot by the 14 *Fritillaria gentneri* plants (Rolle, pers. comm. 1997).

The oak woodland habitat requires a frequent, low intensity fire management regime to maintain the open canopy. Southeastern Oregon averages 500 dry lightning strikes a month during drought conditions in the summer, creating a natural fire frequency of every 12 to 15 years. When the area became developed, 50 to 60 years of fire suppression began. This suppression essentially transformed the traditional oak woodlands with a grassy understory to oak woodlands with a shrub understory. With the current trend toward rural development, it has now become increasingly difficult to restore fire to the habitat. Therefore, although much of the species' habitat has not been developed, it has changed to densely closed woodland with a dry

shrub understory. However, prescribed fire would be a good tool in managing for *Fritillaria gentneri* on BLM lands. Given that fire suppression will likely continue, the effects of succession pose a threat to *Fritillaria gentneri* on both private and BLM lands.

Another threat to *Fritillaria gentneri* is the possibility of decreased vigor and viability due to the sparsely distributed clusters ranging from 1 plant to 100 plants. Small numbers and disjunct individuals increase the risk of stochastic loss through genetic or demographic factors. Small clusters may be genetically depauperate as a result of changes in gene frequencies, owing to founder effects or inbreeding. If a population suffers from inbreeding depression, then its short-term viability may be compromised. The effects of inbreeding in populations have been used to recommend a general effective minimal viable population (MVP) of 50 individuals (Falk and Hoslinger 1991). For long-term evolutionary flexibility a MVP of 500 is suggested. That means that any population below 50 is subject to genetic depression over the short-term and any population under 500 will suffer over the long-term. Even though the size at which a population begins to face severe genetic depression is still contested, the negative genetic effects of this to a small population of 340 plants become difficult to ignore.

With 44 of the 45 sites containing so few individuals of *Fritillaria gentneri* plants, the threat of extinction due to demographic and naturally occurring events can play a significant role in the viability of the species as a whole. Four of the sites had 11 to 34 flowering plants and only 1 had 100 flowering plants. The rest had 10 flowering plants or fewer. Due to the small area occupied by the majority of *Fritillaria gentneri*, naturally occurring environmental events could play a role in extirpation. Small clusters can disappear with one environmental event. The sites are small and isolated from each other due to habitat fragmentation. This isolation could inhibit re-colonization to other suitable areas and could result in a permanent loss of localized occurrences once they fall below a critical level.

Herbicide spraying could play an important role in extirpation of small, localized occurrences that are found along roadsides. Approximately 29 percent (13) of the plant occurrences are reported along roadsides and could be affected or potentially extirpated by spraying or other roadside maintenance activities.

The Service has carefully assessed the best scientific and commercial information available regarding the past,

present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the Service proposes to list the *Fritillaria gentneri* as endangered.

#### 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 the provisions of 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 considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. “Conservation” means the use of all methods and procedures that are necessary to bring the species to the point at which the measures provided pursuant to the Act are 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 a species is determined to be threatened or endangered. The Service proposes to find that designation of critical habitat is not prudent for *Fritillaria gentneri*. Service regulations (50 CFR 424.12 (a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (i) 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 (ii) such designation of critical habitat would not be beneficial to the species.

There would be little if any additional conservation benefit to the species from a critical habitat designation covering the 25 sites that occur on private lands, even if sometime in the future there is additional Federal involvement through permitting or funding, such as through Federal Department of Housing and Urban Development or the Federal Highway Administration. Federal involvement, where it does occur, can be identified without the designation of critical habitat because interagency coordination requirements as required by section 7 of the Act are already in place. The Fish and Wildlife Coordination Act (FWCA) for example, requires that any federally funded or permitted water resource development proposal or project be consulted on with

the Service and State conservation agencies. Designating critical habitat would not create a management plan for the plant, or establish numerical population goals for long-term survival of the species nor directly affect areas not designated as critical habitat.

There would be no benefit from critical habitat designation for those sites on BLM (i.e. Federal) land as BLM is currently aware of the plant's occurrence and would be subject to section 7 consultation as a result of the listing for any activity it authorized, funded, or carried out. The designation would not increase their commitment or management efforts. Protection of *Fritillaria gentneri* will most effectively be addressed through the recovery process and the section 7 consultation process.

Section 7 of the Act requires that Federal agencies refrain from contributing to the destruction or adverse modification of critical habitat in any action authorized, funded or carried out by such agency (agency action). This requirement is in addition to the section 7 prohibition against jeopardizing the continued existence of a listed species, and it is the only mandatory legal consequence of a critical habitat designation. Implementing regulations (50 CFR part 402.02) define “jeopardize the continuing existence of” and “destruction or adverse modification of” in very similar terms. To jeopardize the continuing existence of a species means to engage in an action “that reasonably would be expected to reduce appreciably the likelihood of both the survival and recovery of a listed species.” Destruction or adverse modification of habitat means an “alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species.” Common to both definitions is an appreciable detrimental effect to both the survival and the recovery of a listed species. In the case of adverse modification of critical habitat, the survival and recovery of the species has been appreciably diminished by reducing the value to the species' designated critical habitat. An action resulting in adverse modification also would jeopardize the continued existence of the species concerned.

The Service acknowledges that critical habitat designation, in some situations, may provide some value to the species by identifying areas important for species conservation and calling attention to those areas in special need of protection. Critical habitat designation of unoccupied habitat may also benefit a species by

alerting permitting agencies to potential sites for reintroduction and allow them the opportunity to evaluate proposals that may affect these areas. However, in this case, the existing sites of *Fritillaria gentneri* are either currently known by the BLM and private landowners, or the appropriate landowners will be notified prior to publication of the proposed rule. If future management actions include unoccupied habitat, any benefit provided by designation of such habitat as critical will be accomplished more effectively and efficiently with the current coordination process.

Designation of critical habitat for this species would substantially increase the threat of collection. *Fritillaria gentneri* is a lily, which is attractive and noticeable and likely to be collected. Gilkey has documented that *Fritillaria gentneri* was successfully collected and grown in a garden and used in flower arrangements. More recent collection of this species on Britt Grounds, which is BLM land, also has been documented (Tomlins 1993, Joan Seever pers. comm. 1997). Hitchcock (1971) noted that *Fritillaria* species are rather attractive in the native garden but that digging of the bulbs should be discouraged as the species are fast disappearing from much of their range. The North American Rock Garden Society (NARGS 1998) publishes a seed list on the Internet which lists a multitude of *Fritillaria* species seed available for sale (both wild and garden collected). Although *Fritillaria gentneri* is not specifically on the list, the list demonstrates the demand for this genus by collectors. In addition, whether showy or not, a species' rarity also makes it susceptible to collection from horticulturists seeking to cultivate rare species (Mariah Steenson pers. comm. 1997). Disseminating specific, sensitive location records can encourage illegal collection (M. Bosch, U.S. Forest Service, in litt. 1997). The accessibility of this plant on public and private lands makes it susceptible to indiscriminate collection by rare plant enthusiasts and researchers. Plants, unlike most animal species protected under the Act, are particularly vulnerable to trespass because of their inability to escape when collectors arrive.

With the increased publicity of listed species, small roadside occurrences could face a higher incidence of vandalism and/or removal. Publication of precise maps and descriptions of critical habitat in the **Federal Register** would expose these sites to over-collection and loss of individuals, and subsequently loss of isolated populations, resulting in the further decline of the species. Due to their low

numbers, specifically 22 of the 45 known sites having three or fewer individuals, isolated clusters of *Fritillaria gentneri* could be severely threatened by taking, negatively affecting the species as a whole. Since this species has a very poor viable seed set and is predominantly reproducing asexually by bulblets (Guerrant 1992 and Rolle 1988d), collection of the bulbs could effectively eliminate the population at the collection site. Publication of critical habitat descriptions and maps would make *Fritillaria gentneri* more vulnerable to illegal collection and would increase enforcement problems.

The minimal benefit of designating critical habitat would be far outweighed by the increased threats to the species that would result from identification of critical habitat. All parties and principal landowners involved in the recovery of *Fritillaria gentneri* will be notified of the location and importance of protecting these species and their habitats prior to publication of the proposed rule.

#### 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 local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm of animals and 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 informally 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 a formal consultation with the Service.

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, 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 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 for endangered plants also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of the Oregon State Office (see ADDRESSES section). Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permits Branch, 911 NE 11th Ave., Portland, Oregon 97232-4181 (503/231-6241). 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 because the species is not common in cultivation or in the wild.

The Service adopted a policy on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is proposed for listing 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. The Service has determined, based upon the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, agricultural conversions, land use activities that would significantly modify the species' habitat, wetland and riparian habitat modification, flood and erosion control, housing development, recreational trail construction and maintenance, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, pipelines or utility line crossing suitable habitat, and logging) when such activity is conducted in accordance with any reasonable and prudent measures given by the Service according to section 7 of the Act; or when such activity does not occur in habitats suitable for the survival and recovery of *Fritillaria gentneri* and does not alter the hydrology or habitat supporting the plant.

(2) Activities on private lands (without Federal funding or involvement), such as grazing management, agricultural conversions, wetland and riparian habitat modification (not including filling of wetlands), flood and erosion control, housing development, road and dam construction, cemetery maintenance or expansion, pesticide/herbicide application, pipelines or utility line crossing suitable habitat, and routine residential landscape maintenance including the clearing of vegetation as a fire break around one's personal residence.

The Service has determined that the actions listed below may potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

- (1) Unauthorized collecting of the species on Federal lands;
- (2) Application of herbicides violating label restrictions;
- (3) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities, such as changes in land use, will constitute a violation of section 9 should be directed to the Service's Oregon State Office (see ADDRESSES section).

#### 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 trade, or other relevant data concerning any threat (or lack thereof) to this species;
- (2) the location of any additional occurrences 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 *Fritillaria gentneri*.

Final promulgation of the regulation(s) on this species will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of date of publication of

the proposal in the **Federal Register**. Such requests must be made in writing and addressed to State Supervisor, U.S. Fish and Wildlife Service, Oregon State Office (see **ADDRESSES** section).

**National Environmental Policy Act**

The Service has determined that Environmental Assessments and 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 Endangered Species Act of 1973, as amended. 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**

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

**References**

A complete list of all references cited herein, as well as others, is available upon request from the Oregon State Office (see **ADDRESSES** section).

*Author:* The primary author of this proposed rule is Andrew F. Robinson Jr. (see **ADDRESSES** section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

Accordingly, the 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 § 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>Fritillaria gentneri</i> .....	* Gentner's fritillary ....	* USA (OR) .....	* Liliaceae .....	* E	* .....	NA	* NA
* .....	* .....	* .....	* .....	* .....	* .....		* .....

Dated: March 6, 1998.  
**Jamie Rappaport Clark,**  
 Director, Fish and Wildlife Service.  
 [FR Doc. 98–7481 Filed 3–20–98; 8:45 am]  
 BILLING CODE 4310–55–P

**DEPARTMENT OF THE INTERIOR**  
**Fish and Wildlife Service**  
**50 CFR Part 17**  
**RIN 1018–AE84**  
**Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Northern Idaho Ground Squirrel**  
**AGENCY:** Fish and Wildlife Service, Interior  
**ACTION:** Proposed rule.  
**SUMMARY:** The U.S. Fish and Wildlife Service (Service) proposes to list the

northern Idaho ground squirrel (*Spermophilus brunneus brunneus*) as a threatened species throughout its range in western Idaho pursuant to the Endangered Species Act of 1973, as amended (Act). This subspecies is known from 21 sites in Adams and Valley Counties, Idaho. It is primarily threatened by habitat loss due to seral forest encroachment into former suitable meadow habitats. Seral forest encroachment results in habitat fragmentation, isolating northern Idaho ground squirrel colonies. The subspecies is also threatened by competition from the larger Columbian ground squirrel (*Spermophilus columbianus*), land use changes, recreational shooting and naturally occurring events. This proposal, if made final, would extend Federal protection provisions provided by the Act for the northern Idaho ground squirrel.

**DATES:** Comments from all interested parties must be received by May 22, 1998. The Service will hold a public hearing on the proposal in Council, Idaho on May 5, 1998, from 6:00–8:00 p.m., at the Council Elementary School Multi Purpose Room, 202 Highway 95.  
**ADDRESSES:** Comments and materials concerning this proposal should be sent to the U.S. Fish and Wildlife Service, Snake River Basin Office, 1387 South Vinnell Way, Room 368, Boise, Idaho 83709. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.  
**FOR FURTHER INFORMATION CONTACT:** Robert Ruesink, Supervisor, at the above address or (208) 378–5243.  
**SUPPLEMENTARY INFORMATION:**