

application and fee, and a valid instrument of financial responsibility in the form and amount prescribed under § 515.21. The qualifying individual of one active licensee shall not also be designated as the qualifying individual of an applicant for another ocean transportation intermediary license, unless both entities are commonly owned or where one directly controls the other.

4. In § 515.12, revise paragraph (a) to read as follows:

**§ 515.12 Application for license.**

(a) *Application and forms.*

(1) Any person who wishes to obtain a license to operate as an ocean transportation intermediary shall submit, in duplicate, to the Director of the Commission's Bureau of Tariffs, Certification and Licensing, a completed application Form FMC-18 Rev. ("Application for a License as an Ocean Transportation Intermediary") accompanied by the fee required under § 515.5(b). All applications will be assigned an application number, and each applicant will be notified of the number assigned to its application. Notice of filing of such application shall be published in the **Federal Register** and shall state the name and address of the applicant and the name and address of the qualifying individual. If the applicant is a corporation or partnership, the names of the officers or partners thereof shall be published.

(2) An individual who is applying for a license in his or her own name must complete the following certification:

I, (Name) , certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or state offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal benefits, either by court order or operation of law, pursuant to 21 U.S.C. 862.

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By the Commission.

**Ronald D. Murphy,**

*Assistant Secretary.*

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AF75**

**Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant *Hackelia venusta* (Showy Stickseed)**

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose endangered species status pursuant to the Endangered Species Act (Act) of 1973, as amended, for *Hackelia venusta* (Piper) St. John (showy stickseed). The species is a narrow endemic limited to one small population on unstable, granitic scree located on the lower slopes of Tumwater Canyon, Chelan County, Washington. The population has declined to the current size of less than 150 individual plants at the single location in Tumwater Canyon. Threats include competition and shading from native trees and shrubs, encroachment onto the site by nonnative, noxious plant species, wildfire and fire suppression, activities associated with fire suppression, and low seedling establishment. In the past, highway maintenance activities, such as the spreading of sand and salt during winter months and the application of herbicides, have threatened the species and may do so in the future. Reproductive vigor may be depressed because of the plant's small population size and limited gene pool. A single natural or human-caused random environmental disturbance could destroy a significant percentage of the population. This proposal, if made final, would implement the Federal protection and recovery programs of the Act for this plant.

**DATES:** We must receive comments from all interested parties by April 14, 2000. Public hearing requests must be received by March 30, 2000.

**ADDRESSES:** Send comments and materials concerning this proposal to the Manager, U.S. Fish and Wildlife Service, Western Washington Office, 510 Desmond Drive, Suite 102, Lacey, Washington 98503-1273. Comments and materials received will be available, by appointment, for public inspection during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ted Thomas, (see **ADDRESSES** section),

telephone 360/753-4327; facsimile 360/753-9518.

**SUPPLEMENTARY INFORMATION:**

**Background**

*Hackelia venusta* (showy stickseed) is a showy perennial herb of the Borage family (Boraginaceae). The plant was originally described by Charles Piper as *Lappula venusta*, based on a collection from Tumwater Canyon, Chelan County, Washington made by J. C. Otis in 1920 (Piper 1924). In 1929, Harold St. John reexamined the specimen and placed it in the related genus *Hackelia* upon recognizing that, being a perennial plant, it more properly fit with *Hackelia* than *Lappula*, a genus of annual plants (St. John 1929).

*Hackelia venusta* is a short, moderately stout species, 20 to 40 centimeters (cm) (8 to 16 inches (in)) tall, often with numerous, erect to ascending stems from a slender taproot. It has large, showy, five-lobed flowers that are white and reach approximately 1.9 to 2.2 cm (0.75 to 0.87 in) across. Basal leaves are 7 to 14 cm (2.8 to 5.5 in) long and 0.64 to 1.3 cm (0.25 to 0.5 in) wide, while the upper stem leaves are 2.5 to 5.1 cm (1 to 2 in) long and 0.38 to 0.64 cm (0.15 to 0.25 in) wide (Barrett *et al.* 1985). The fruit consists of a prickly nutlet, approximately 0.38 to 0.43 cm (0.15 to 0.17 in) long, and is covered with stiff hairs that aid in dispersal by wildlife. *Hackelia venusta* is morphologically uniform and is distinct from other species occurring in central Washington. It can be distinguished from other species in the genus, in part, by its smaller stature, shorter leaf length, fewer basal leaves, and the large size of the flowers. High-elevation *Hackelia* populations that have, in the past, been assigned to *Hackelia venusta* have distinct morphological features with the most obvious distinction being blue flowers. The Tumwater Canyon flowers are white, and on rare occasion, washed with blue. Other distinct morphological characteristics between the Tumwater Canyon and the high-elevation *Hackelia* populations are limb width, plant height, and radical leaf length (Harrod *et al.* 1998).

*Hackelia venusta* is shade-intolerant (Robert Carr, Eastern Washington University, pers. comm. 1998) and grows in openings within ponderosa pine (*Pinus ponderosa*) and Douglas-fir (*Pseudotsuga menziesii*) forest types. This vegetation type is described as the Douglas-fir zone by Franklin and Dyrness (1973, updated in 1988). *Hackelia venusta* is found on open, steep slopes (minimum of 80 percent inclination) of loose, well-drained,

granitic weathered and broken rock fragmented soils at an elevation at about 486 meters (m) (1,600 feet (ft)). The type specimen for *Hackelia venusta* was collected at a site between Tumwater and Drury in Tumwater Canyon approximately 9.6 kilometers (km) (6 miles (mi)) west of Leavenworth, Washington. *Hackelia venusta* is restricted to this single population in Tumwater Canyon. The population is found in an area designated as the Tumwater Canyon Botanical Area by the Wenatchee National Forest. This designation was originally established in 1938 to protect a former candidate plant, *Lewisia tweedyi* (Tweedy's lewisia), that is more widespread than previously considered (F.V. Horton, U.S. Forest Service, *in litt.* 1938; U.S. Forest Service 1971). The designation for the botanical area remains because of the presence of *Hackelia venusta* and *Silene seelyi* (Seeley's catch-fly), a potential candidate for listing.

Three other locations within 20 km (12 mi) of the type locality were thought to harbor *Hackelia venusta*. One location near Crystal Creek Cirque was relocated in 1986 after not having been seen since 1947 (Gamon 1988a). A second location near Asgard Pass was not discovered until 1987 (Gamon 1988a). The Asgard Pass population was apparently extirpated by a major landslide during 1994 or 1995 (Richy Harrod, U.S. Forest Service, pers. comm. 1996). A third location was discovered on Cashmere Mountain in August 1996 (Richy Harrod, U.S. Forest Service, pers. comm. 1996). The Crystal Creek and Cashmere Mountain locations occur about 10 km (6 mi) apart and are both within the Alpine Lakes Wilderness Area of the Wenatchee National Forest. Elevations for these populations range from 1,920 to 2,255 m (6,300 to 7,400 ft). Recent information indicates these two high-elevation locations are a distinct taxon, different from the *Hackelia venusta* found in the Tumwater Canyon population (Harrod *et al.* 1998). The Tumwater Canyon plants have a larger white corolla, a taller habit, remote lower leaves, and in general, the leaves are less stiff and leathery. The Crystal Creek and Cashmere Mountain populations, in contrast, have small, blue flowers and are more compact. The population at Tumwater Canyon does not have individuals that are intermediate in these characters. Also, the Tumwater Canyon population is geographically and reproductively isolated from the Crystal Creek and Cashmere Mountain populations. The Crystal Creek and Cashmere Mountain populations are temporally isolated

from the Tumwater Canyon population in relation to their local seasons and climatic zones. The Tumwater Canyon population flowers in May, while the Crystal Creek and Cashmere Mountain populations are under several meters of snow and normally flower in July. Since the Crystal Creek and Cashmere Mountain populations are distinct from *Hackelia venusta*, they are not the subject of this proposed rule and will not be further discussed.

Preliminary isozyme analysis currently being conducted by the U.S. Forest Service indicates a clear separation between the Tumwater Canyon and high-elevation populations (Carol Aubry, U.S. Forest Service, pers. comm. 1998). This analysis measures the differences in plant proteins (usually an enzyme) and can be used to detect genetic differences among populations. Dr. Robert Carr, Professor of Botany, Eastern Washington University, attempted specific and intraspecific crosses with 18 species of North American *Hackelia* over a 3-year period but has yet to produce viable seed from these crosses in the greenhouse. Dr. Carr indicated that he has not attempted to cross the Tumwater Canyon and Crystal Creek/Cashmere Mountain populations, primarily because of the difficulty of growing *Hackelia* from seed in the greenhouse and the temporal differences in the two populations' flowering. Dr. Carr, an expert on the genus *Hackelia*, confirms that the Tumwater Canyon and high-elevation populations are two distinct taxa (R. Carr, pers. comm. 1998).

An occurrence of *Hackelia venusta* was originally found in 1948 in Merritt, Washington in Chelan County, but recent attempts to relocate the site have failed. Changes in land use do not support growth of this species in this area anymore. The current element occurrence records of the Washington Natural Heritage Program designate this site as historic.

In Tumwater Canyon, *Hackelia venusta* occurs primarily on unstable soils on steep rocky slopes and outcrops, though scattered individuals also occur along a State highway roadcut on Federal land. *Hackelia venusta* appears to be somewhat adapted to natural and possibly human-caused substrate disturbance. Although potential habitat for this species is widespread in Tumwater Canyon, the plant is scattered throughout an area of less than 1 hectare (ha) (2.5 acres (ac)). In 1968, the taxon appeared "limited to a few hundred acres" (Gentry and Carr 1976), and in 1981, the population was estimated to have 800 to 1,000 plants. In

1984, and again in 1987, fewer than 400 individuals were found over an area of approximately 5 ha (12 ac) (Gamon 1988a). Personal observations by Ted Thomas (U.S. Fish and Wildlife Service) (in cooperation with Richy Harrod, U.S. Forest Service, and Paul Wagner, Washington Department of Transportation (WDOT)) using an intensive search and count method on May 11, 1995, revealed less than 150 individuals growing on less than 1 ha (2.5 ac) of suitable habitat. According to Dr. Carr, the area occupied by *Hackelia venusta* is greatly reduced, and the number of individual plants has seriously declined since he first visited the Tumwater Canyon population in the early 1970s (R. Carr, pers. comm. 1996). Even though earlier counts were conducted by different workers using different techniques, the population size shows a clear downward trend.

The remaining known population is at risk of extirpation due to a variety of threats. From personal observation of the site, the suitable habitat for *Hackelia venusta* is threatened by plant succession in the absence of fire, and competition with nonnative, Washington State-listed noxious plants (Ted Thomas, pers. obs. 1998; Washington Administrative Code 17.10, Ch. 16-750). Other threats include the mass-wasting or erosion of soil on these unstable slopes and highway maintenance activities. The species occurs in the road right-of-way (ROW), which is Federal land, but the ROW is maintained by WDOT. In the past, road salting and herbicide spraying were probable factors in reducing the vigor of *Hackelia venusta*. Currently, WDOT maintenance crews rarely apply road salt and, when they do, they apply it at a 20:1 ratio with road sand (Luther Beaty, WDOT, pers. comm. 1996). Herbicides have been applied in the past and may have contributed to the reduced number of plants in the population. WDOT has discontinued the use of herbicides in Tumwater Canyon (L. Beaty, pers. comm. 1996). In the narrow confines of Tumwater Canyon, automobile emissions may continue to be a cause for reduced vigor to the *Hackelia venusta* population because ozone and oxides of sulphur and nitrate emitted from vehicle tailpipes negatively affect photosynthesis of the plants. In addition, several individual plants occur on level ground at the roadside turnoff and are threatened with trampling and collecting.

#### Previous Federal Action

Federal action on this species began when we published a Notice of Review in the **Federal Register** for plants on

December 15, 1980 (45 FR 82480). In this notice, *Hackelia venusta* was included as a category 1 candidate species. Category 1 candidates were those species for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals, but for which listing proposals had not been prepared due to other higher priority listing actions. The plant notice of review was revised on September 27, 1985 (50 FR 39525); in that notice *Hackelia venusta* was included as a category 2 candidate. At that time, a category 2 species was one that was being considered for possible addition to the Federal Lists of Endangered and Threatened Wildlife and Plants but for which conclusive data on biological vulnerability and threats were not available to support a proposed rule. Pending completion of updated status surveys, the status was changed to category 1 in the February 21, 1990 (55 FR 6183), Notice of Review. In the September 30, 1993, Notice of Review (58 FR 51144), *Hackelia venusta* remained a category 1 candidate. In the February 28, 1996, Notice of Review (61 FR 7596), *Hackelia venusta* was removed from the candidate list due to questions regarding the species' taxonomic status. Also, beginning with the 1996 Notice of Review, we discontinued the use of multiple categories of candidates, and only those taxa meeting the definition of former category 1 are now considered candidates. A status review was completed in June 1997 to reflect new information regarding the taxonomy of the species. The status review recognized *Hackelia venusta* as a valid taxon of which only a single population was extant.

The processing of this proposed rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudence and determinability decisions) and proposed

or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. The processing of this proposed rule is a Priority 2 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. The Service may determine a species 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 *Hackelia venusta* (showy stickseed) are as follows:

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

The range of *Hackelia venusta* has been reduced to a scattered distribution occupying less than 1 ha (2.5 ac) in the Tumwater Canyon; this restricted population consists of less than 150 individuals and constitutes the sole population of *Hackelia venusta*.

The primary loss of habitat for *Hackelia venusta* has resulted from changes in habitat due to plant succession in the absence of fire. Fire suppression has been a factor in reducing the extent of the Tumwater Canyon population and in the apparent loss of the Merritt population (Gamon 1988a; Gamon 1988b). Wildfires play a role in maintaining open, sparsely vegetated sites as suitable habitat for *Hackelia venusta*, as the plant appears to be shade-intolerant (R. Carr, pers. comm. 1998). The species prefers habitat that has been burned, have little competing vegetation, and have little soil-organic matter (R. Carr, pers. comm. 1998). The species has been seen in canopy openings created by a wildfire in 1994 where they were not previously found (T. Thomas, pers. obs. 1998). These plants are within 50 m (165 ft) of the original population and are probably offspring of the existing population. Seeds were likely carried to the open substrate by wind, and germination was likely aided by the increase in light and moisture within the canopy gap.

Two nonnative, Washington State-listed noxious weeds (Ch 16, WAC 1997) occur within the habitat of *Hackelia venusta* within Tumwater Canyon. *Linaria dalmatica* (dalmatian toadflax) and *Centaurea diffusa* (diffuse knapweed) are present along the roadside, have increased in numbers and distribution, and have encroached

into the population of *Hackelia venusta*. Each of these species has the ability to outcompete and replace native vegetation and are a threat to *Hackelia venusta* (Jane Wentworth, Washington Department of Natural Resources, pers. comm. 1998). During visits to the population site in 1995, 1996, and 1997, Ted Thomas (pers. obs. 1995, 1996, and 1997) noted that the cover and distribution of the noxious weeds had increased over time. Without intervention, these species have the ability to completely outcompete *Hackelia venusta* and dominate the area.

Highway maintenance activities are an ongoing threat. The highway is sanded during winter months, and occasionally a mixture of sand and salt is applied, affecting the immediate roadside habitat where *Hackelia venusta* is found. Highway maintenance activities involving the clearing of landslide material from the highway right-of-way resulted in the destruction of 20 to 30 *Hackelia venusta* individuals several years ago (R. Harrod, pers. comm. 1997). Although the roadsides have not been sprayed with herbicides in recent years, spraying did occur for a considerable period of time prior to 1980. The residual effect of herbicide spraying on *Hackelia venusta* is unknown. Some herbicides are known to be resident in the soil for long periods of time, affecting the plants that persist there.

Erosional landslides of the unstable slope where the population is located are also a threat to the species. The steepness of the slope exceeds 100 percent (45 degree) inclination in some places, and the slope's instability constitutes a significant threat as a major landslide could bury the population (Gamon 1997). The potential for slumping has increased since 1994, when fires burned through the forest directly adjacent to the *Hackelia venusta* population. Water uptake by trees and other vegetation that were killed by the 1994 fire has decreased, and as tree roots begin to decompose, their binding action in the soil will also decrease. This factor increases the potential for slumping and destruction of the site and population.

Although there are no data regarding the effects of automobile emissions on this species, such emissions should be considered a threat, given the proximity of the road to the population. The highway is heavily used, with 3,900 to 5,200 automobiles traveling daily through Tumwater Canyon, which is very narrow (WDOT 1996). According to population projections, 100,000 people will move into the State of Washington

each year. Trends for Chelan County indicate an increase from the current human population of 52,250 (1995) to more than 86,000 people in the year 2020, a 39 percent increase (Washington Office of Financial Management 1995). A larger human population will increase the demands for recreational activities and bring more people to central Washington. Automobile emissions are likely to increase along this heavily traveled corridor. These emissions, containing ozone and sulphur and nitrate oxides, negatively affect photosynthesis of coniferous and herbaceous plants.

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

Wildflower collecting does pose a threat, and future collecting could increase, especially if the site becomes known to the general public. The Tumwater Canyon population is accessible to the public because it is located near a highway with a turnout directly across the road. Amateur and professional botanists know of the location of the population; their collecting activities may affect the species (Gamon 1997).

Representatives from the Service, the Forest Service, and Eastern Washington University witnessed an instance of a person collecting the plant as they inspected the *Hackelia venusta* site (T. Thomas, pers. obs. 1998). That episode indicates that the species, when in bloom, is eye-catching and sufficiently attractive to cause someone to stop and remove the plant, presumably for personal use. Not only does the removal of plants cause a loss of reproductive potential, but trampling the site to access the plants could have a devastating effect on the remaining plants.

#### C. Disease or Predation

Disease is not currently known to be a threat to this species. No livestock or wildlife are known to graze on *Hackelia venusta*.

#### D. Inadequacy of Existing Regulatory Mechanisms

Although the known population of *Hackelia venusta* is located in an area designated as a special management area, the species remains vulnerable to threats. The Tumwater Canyon Botanical Area was designated by the Wenatchee National Forest in 1938 because of the occurrence of *Lewisia tweedyi*. *Lewisia tweedyi* has since been found to be more widespread than previously known and is no longer a species of concern for the area. The Wenatchee National Forest has

maintained the Botanical Area designation because of the presence of *Hackelia venusta* and *Silene seelyi*, a potential candidate. *Silene seelyi* grows in rock outcrop crevices near where *Hackelia venusta* is located, but it does not occupy the talus habitat that *Hackelia venusta* does. Management activities in the Botanical Area should emphasize botanical values (Terry Lillybridge, Wenatchee National Forest, pers. comm. 1998); however, there is no specific, completed management guide for *Hackelia venusta* or *Silene seelyi*. This Botanical Area is also managed as part of a designated late-successional reserve under the Northwest Forest Plan, which permits some silvicultural and fire hazard reduction treatments. The populations of both species are listed on the U.S. Forest Service Regional Forester's Sensitive Species List. The Forest Service is required to maintain or enhance the viability of species on this list by considering the species in their project biological evaluations and mitigate actions that adversely impact the species. The Forest Service prohibits the collection of native plants without a permit.

The Washington Natural Heritage Program developed management guidelines for *Hackelia venusta* in 1988 (Gamon 1988b), with recommendations that certain actions be taken to protect the plant on National Forest land. These guidelines included the recommendation that managers of the Wenatchee National Forest develop a Species Management Guide to provide management direction for the habitat of this species. The Wenatchee National Forest developed a draft management guide several years ago, but has not yet finalized it (T. Lillybridge, pers. comm. 1997). The Washington Department of Natural Resources designated *Hackelia venusta* as endangered in 1982, and the species designation was retained in subsequent updates of the State's endangered species list. The State of Washington does not have a State Endangered Species Act and therefore, has no law that provides protection for *Hackelia venusta* or other species designated as endangered or threatened.

Status survey reports document a declining population of *Hackelia venusta* that will continue to decline unless conservation efforts are implemented (Barrett *et al.* 1985; Gamon 1997). At present, there is no management of the habitat where *Hackelia venusta* occurs. The recent survey conducted by Ted Thomas (U.S. Fish and Wildlife Service), Richy Harrod (U.S. Forest Service), and Paul Wagner (WDOT) in May 1995 further supports the observed decline in the

population and that the species is at risk of extinction if protection and recovery efforts are not implemented.

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

Low seed production, as well as low genetic variation, are factors in the decline of *Hackelia venusta*. At the Tumwater Canyon site, an estimated high proportion (60 to 70 percent) of *Hackelia venusta* seeds did not develop in 1984 (Barrett *et al.* 1985). Fruit development was poor on many plants; only a few individuals exhibited mature fruit development. It is unknown why this occurred, but low genetic variation may have contributed to poor reproduction success. This reduced reproductive potential may be a major factor in the reduction of plants at the type locality and the extirpation of the historic Merritt population. The age structure of the extant population at Tumwater Canyon, poor seed output, and historical estimates of population size indicate that the population is declining (Barrett *et al.* 1985; Gamon 1997).

The small size of the *Hackelia venusta* population is a major problem. Seedling establishment is most critical, and trampling may significantly affect seedlings occurring on flat ground near the road (R. Carr, pers. comm. 1998). Human activities along the roadside turnout at the Tumwater Canyon site represent a significant threat to plants nearest the turnout. Motorists use the area to view the Wenatchee River, often venturing over the guardrail and along the bank below the road. Plants on this bank are damaged by trampling, burial by loose rock, and root exposure as a result of human traffic on the unstable slopes (Gamon 1997).

Fire suppression during this century is likely a factor in the reduced extent of the Tumwater Canyon population and may have also contributed to the extirpation of the historic Merritt population. Historically, fuels in the forest type where *Hackelia venusta* is found were rarely at high levels because of the frequent fires that consumed forest floor fuels and pruned residual trees (Agee 1991). In the past, fires suppressed the encroachment of woody vegetation and maintained open areas more conducive to *Hackelia venusta* reproduction and growth. Continued suppression of fires in this forest type could bring about additional habitat loss (Barrett *et al.* 1985; Gamon 1997).

Competition from *Linaria dalmatica* (dalmatian toadflax) and *Centaurea diffusa* (diffuse knapweed) is a threat to *Hackelia venusta*. Both of these noxious weeds outcompete many native plant

species through uptake of water and nutrients, interference with photosynthesis and respiration of associated species, and production of compounds that can directly affect seed germination and seedling growth and development. These noxious plants co-occur with *Hackelia venusta* at the Tumwater Canyon site and have become more widespread on the available habitat.

The small number of individuals (less than 150 plants) remaining in the sole population located in Tumwater Canyon makes *Hackelia venusta* vulnerable to extinction due to random events such as slope failure (mass-wasting) or drought. A single random environmental event could extirpate a substantial portion or all of the remaining individuals of this species and cause its extinction. Also, changes in gene frequencies within small, isolated populations can lead to a loss of genetic variability and a reduced likelihood of long-term viability (Franklin 1980; Soule 1980; Lande and Barrowclough 1987).

We have carefully assessed the best scientific and commercial information available concerning the past, present, and future threats as well as the decline faced by this species in developing this proposed rule. Currently, only one known population of *Hackelia venusta* exists. Habitat modification associated with fire suppression, competition and shade from native shrubs and trees and nonnative noxious weeds, maintenance of the highway located near the population, poor seed development, low reproductive capacity, human collection, and incidental loss from human trampling, threaten the continued existence of this species. Also, the single, small population of this species is particularly susceptible to extinction from random environmental events. Because of the high potential for these threats to cause extinction of the species, the preferred course of action is to list *Hackelia venusta* as endangered.

#### Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the

conservation of the species.

“Conservation” 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.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. 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 a listed species or destroy or adversely modify its critical habitat.

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, we designate critical habitat at the time the species is determined to be endangered or threatened. Our 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—(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.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states, the processing of critical habitat determinations (prudence and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year. As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act.

We propose that critical habitat is prudent for *Hackelia venusta*. In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council v. U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii*

*v. Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we believe that designation of critical habitat would be prudent for *Hackelia venusta*.

Due to the small number of populations, *Hackelia venusta* is vulnerable to unrestricted collection, vandalism, or other disturbance. We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, at this time we do not have specific evidence for *Hackelia venusta* of vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we propose that critical habitat is prudent for *Hackelia venusta*. However, the deferral of the critical habitat designation for *Hackelia venusta* will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of *Hackelia venusta* without further delay. We anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for

this species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will make the final critical habitat determination with the final listing determination for *Hackelia venusta*. If this final critical habitat determination is that critical habitat is prudent, we will develop a proposal to designate critical habitat for *Hackelia venusta* as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations.

#### 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 public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that the Service carry out recovery actions for all listed species. Together with our partners, we would initiate such actions following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this Interagency Cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing, or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not

likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat, if any has been designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal agencies, whose proposed actions may require conference and/or consultation as described in the preceding paragraph, include the Forest Service, Federal Highway Administration, and U.S. Army Corps of Engineers (Corps). State highway activity implemented by the State and partly funded by the Federal government, that may include highway maintenance activities, such as roadside vegetation control, may be subject to consultation under the Act. U.S. Forest Service activities that may require consultation under section 7 of the Act would include fire suppression, activities associated with fire suppression, timber harvest and habitat restoration activities. The Corps may be required to confer or consult with us on proposed actions planned on the Wenatchee River, which is adjacent and directly below the highway ROW. The distance from the base of the *Hackelia venusta* population and the Wenatchee River is less than 30 m (100 ft).

WDOT has proposed removing a large, dead tree and several live trees, as well as unstable, large boulders that pose a safety hazard to the highway and are adjacent to the *Hackelia venusta* population (P. Wagner, pers. comm. 1996). Tree removal may benefit the species by reducing shade from overstory trees, as well as reducing conifer seed production and establishment of conifer seedlings. However, if the large trees are felled and fall downslope onto the *Hackelia venusta* population, and then cabled down to the road, severe adverse effects on the population could result. To avoid such a situation, we are working with the Forest Service and WDOT to develop management guidelines to protect the population, such as falling the trees upslope and removing them from the site with a helicopter. The Forest Service is preparing the National Environmental Policy Act documents to analyze the action and may implement the project in the fall of 1999.

Listing of this plant would authorize development of a recovery plan for the plant. Such a plan would identify both State and Federal efforts for conservation of the plant and establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and describe site-

specific management actions necessary to achieve conservation and survival of the plant. Additionally, pursuant to section 6 of the Act, we would be able to grant funds to the State of Washington for management actions promoting the protection and recovery of the species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, would 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 the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction in areas under Federal jurisdiction and the removal, cutting, digging up, damaging, or destroying of such endangered plants in knowing violation of any State law or regulation, or in the course of any violation of a State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

Per our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), at the time a species is listed we identify to the maximum extent practicable 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.

Based upon the best available information, we believe that 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, wetland and riparian habitat modification, flood and erosion control, residential development, recreational trail development, road construction, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, and pipeline or utility line construction crossing suitable habitat), when such activity is conducted in accordance with any reasonable and prudent measures given by the Service



Dated: December 22, 1999.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 223

[I.D. 081699C, 092199A, 092799G]

#### Endangered and Threatened Species; Extension of Comment Periods and Notice of Additional Public Hearings for Proposed Rules Governing Take of West Coast Chinook, Chum, Coho and Sockeye Salmon and Steelhead Trout

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; extension of public comment periods; notification of public hearings.

**SUMMARY:** NMFS is extending the public comment periods and announcing additional public hearings for the following: Proposed Rule Governing Take of Seven Threatened Evolutionarily Significant Units (ESUs) of West Coast Salmonids; Proposed Rule Governing Take of Threatened Snake River, Central California Coast, South/Central California Coast, Lower Columbia River, Central Valley California, Middle Columbia River, and Upper Willamette River Evolutionarily Significant Units (ESUs) of West Coast Steelhead; and Limitation on Section 9 Protections Applicable to Salmon Listed as Threatened under the Endangered Species Act (ESA), for Actions Under Tribal Resource Management Plans. NMFS is extending the comment periods and holding additional public hearings for all three rules to avoid confusion and facilitate public participation in this regulatory process.

**DATES:** Written comments on the previously mentioned proposed rules must be received no later than 5 p.m. Pacific standard time, on March 6, 2000. See **SUPPLEMENTARY INFORMATION** for hearing dates.

**ADDRESSES:** Written comments on the proposed rules and requests for

reference materials should be sent to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232-2737. Comments will not be accepted if submitted via e-mail or the Internet. See **SUPPLEMENTARY INFORMATION** for hearing addresses.

**FOR FURTHER INFORMATION CONTACT:** Garth Griffin, (503) 231-2005; Craig Wingert, (562) 980-4021; or Chris Mobley, (301) 713-1401. Copies of the **Federal Register** documents cited herein and additional salmon-related materials are available via the Internet at [www.nwr.noaa.gov](http://www.nwr.noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Under section 4(d) of the Endangered Species Act (ESA), the Secretary of Commerce (Secretary) is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. On December 30, 1999 (64 FR 73479), NMFS issued a proposed rule under section 4(d) of the ESA which contains the regulations that, it believes, are necessary and advisable to conserve threatened Snake River, Central California Coast, South/Central California Coast, Lower Columbia River, Central Valley California, Middle Columbia River, and Upper Willamette River ESUs of West Coast Steelhead. The proposed rule applies ESA section 9(a)(1) prohibitions to the previously mentioned steelhead ESUs, but proposes not to apply the take prohibitions to 13 specific programs which limit impacts on listed steelhead to an extent that makes added protection through Federal regulation not necessary and advisable for the conservation of these ESUs (see 64 FR 73479).

On January 3, 2000 (65 FR 170), NMFS issued a proposed rule under section 4(d) of the ESA which was nearly identical to the December 30, 1999, proposal except that it applied to the following species of salmon: Oregon Coast Coho, Puget Sound, Lower Columbia and Upper Willamette Chinook, Hood Canal Summer-run and Columbia River Chum, and Ozette Lake Sockeye.

Also on January 3, 2000 (65 FR 108), NMFS issued a proposed rule under section 4(d) of the ESA that would not impose the section 9(a)(1) prohibitions on take when impacts on threatened salmonids result from implementation

of a tribal resource management plan, where the Secretary has determined that implementing that Tribal Plan will not appreciably reduce the likelihood of survival and recovery for the listed species. This proposal applies to threatened salmonids that are currently subject to ESA section 9(a)(1) take prohibitions: Snake River spring/summer chinook salmon; Snake River fall chinook salmon; Central California Coast (CCC) coho salmon; and Southern Oregon/Northern California Coast (SONCC) coho salmon. This proposed limitation on take prohibitions would also be available for all other threatened salmonid ESUs whenever final ESA section 9(a) are made applicable to that ESU.

NMFS has received a number of requests for additional public hearings to allow further opportunity for the public to participate in the exchange of information and opinion among interested parties and to provide oral and written testimony. NMFS finds that two of these requests are reasonable and has scheduled additional meetings accordingly.

Because these closely related rules have public comment periods that end on different dates (February 22, 2000, and March 3, 2000, for the steelhead proposal and for the other 2 proposals, respectively), NMFS is extending the comment period for all three rules to avoid confusion and facilitate public participation in this regulatory process.

NMFS is soliciting specific information, comments, data, and/or recommendations on any aspect of the December 30, 1999, and January 3, 2000, proposals from all interested parties. This information is considered critical in helping NMFS make final determinations on the proposals. NMFS will consider all information, comments, and recommendations received during the comment period and at the public hearings before reaching a final decision.

#### Public Hearings

Additional public hearings have been scheduled as follows:

(1) February 17, 2000, 6:00-9:00 p.m., Idaho State University, Wood River Dining Room, 1065 S. 8th Street, Pocatello, Idaho; and

(2) February 22, 2000, 6:00-9:00 p.m., Cowlitz County Administration