

simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v US EPA*, 427 US 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: November 6, 1997.

**William J. Muszynski,**

*Acting Regional Administrator.*

[FR Doc. 97-30521 Filed 11-19-97; 8:45 am]

BILLING CODE 6560-50-P

#### ENVIRONMENTAL PROTECTION AGENCY

##### 40 CFR Parts 141 and 142

[FRL-5923-6]

##### Notice of Public Meeting on the Ground Water Disinfection Rule

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule; notice of meeting.

**SUMMARY:** Notice is hereby give that the Environmental Protection Agency (EPA) is holding a public meeting concerning the Ground Water Disinfection Rule (GWDR). The objective of this meeting is to provide the public with data summaries to support the GWDR development; ask for comments on the data; solicit further data if available; discuss the EPA's next steps for the rule development and data analysis; as well as to identify parties who may be interested in further meetings.

**DATES:** The meetings will be held on December 18 and 19, 1997.

**ADDRESSES:** The meetings will be held at the Ana Hotel at 2401 M street, NW, Washington, D.C. 20037. The hotel's phone number is (202) 429-2400.

**FOR FURTHER INFORMATION CONTACT:** EPA will provide a copy of the data summaries a few weeks prior to the meeting to anyone who requests it. To

register for the meeting and for the data summaries please contact the Safe Drinking Water Hotline (800) 426-4791 or Marty Kucera at US EPA (202) 260-7773, kucera.martha@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** The Safe Drinking Water Act as amended in 1996 directs EPA to promulgate regulations requiring disinfection "as necessary" for ground water systems. The intention of the GWDR is to reduce microbial contamination risk from public water sources relying on ground water. To determine if treatment is necessary, the rule will establish a framework to identify public water supplies vulnerable to microbial contamination and to develop and implement risk control strategies including but not limited to disinfection. This rulemaking will apply to all public water systems that use ground water, which includes noncommunity systems.

Dated: November 17, 1997.

**William R. Diamond,**

*Acting Director for Office of Ground Water and Drinking Water.*

[FR Doc. 97-30556 Filed 11-19-97; 8:45 am]

BILLING CODE 6560-50-P

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 73

[MM Docket No. 97-232, RM-9191]

##### Radio Broadcasting Services; Eureka, MT

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by William G. Brady d/b/a KHJ Radio proposing the allotment of Channel 228C3 at Eureka, Montana, as that community's first local FM broadcast service. The channel can be allotted to Eureka without a site restriction at coordinates 48-52-54 and 115-02-54. Although it is not necessary to site restrict the allotment, we will request concurrence from the Canadian Government for Channel 228C3 as a specially negotiated short-spaced allotment. Channel 228C3 at Eureka is short spaced to vacant Channel 226C, Cranbrook, British Columbia, Canada.

**DATES:** Comments must be filed on or before January 5, 1998, and reply comments on or before January 20, 1998.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the

petitioner, as follows: William G. Brady d/b/a KHJ Radio, 746 Shadow Lane, Kalispell, MT 59901.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 97-232, adopted November 5, 1997, and released November 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800, facsimile (202) 857-3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

##### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

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

[FR Doc. 97-30414 Filed 11-19-97; 8:45 am]

BILLING CODE 6712-01-P

#### DEPARTMENT OF THE INTERIOR

##### Fish and Wildlife Service

##### 50 CFR Part 17

RIN 1018-AE44

##### Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant *Plagiobothrys Hirtus* (Rough Popcornflower)

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

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) proposes endangered

species status pursuant to the Endangered Species Act of 1973, as amended (Act) for the plant *Plagiobothrys hirtus* (rough popcornflower). This species is restricted to wet swales and meadows in Douglas County, Oregon, where only 10 occurrences are known. Most populations are small with few individuals. The total estimated number of plants is 3,000 within a combined area of about 4 hectares (ha) (10 acres (ac)). Threats to this species include destruction and/or alteration of habitat by development and hydrological changes (e.g., wetland fills, draining, construction); spring and summer grazing by domestic cattle, horses, and sheep; roadside maintenance; and competition from native and alien plant species. This proposal, if made final, would implement the Federal protection and recovery programs of the Act for this plant.

**DATES:** Comments from all interested parties must be received by January 20, 1998. Public hearing requests must be received by January 5, 1998.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the State Supervisor, U.S. Fish and Wildlife Service, Oregon State Office, 2600 S.E. 98th Ave., Suite 100, Portland, Oregon 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 Robinson, Botanist, at the above address or by telephone (503/231-6179).

**SUPPLEMENTARY INFORMATION:**

**Background**

*Plagiobothrys hirtus* was first collected by Thomas Howell in 1887 and described the following year as *Allocarya hirta* (Greene 1888). Subsequent taxonomic treatments included *A. scouleri* var. *hirta*, *P. scouleri* var. *hirtus*, *A. calycosa*, and *P. hirtus* (Gamon and Kagan 1985). Johnston recognized two varieties of the species, *P. hirtus* var. *hirtus* and *P. hirtus* var. *collaricarpus* (Gamon and Kagan 1985). Later, Chambers (1989) considered the material included in the variety *collaricarpus* to be a variety of *P. figuratus*, which elevated the material assigned to *P. hirtus* var. *hirtus* to a full species.

A member of the borage family (Boraginaceae), *Plagiobothrys hirtus* is an annual herb on drier sites or perennial herb on wetter sites (Amsberry and Meinke 1997). It reaches 30–70 centimeters (cm) (1–2 feet (ft)) in

height and has a fairly stout stem with widely spreading, coarse, firm hairs on the upper part. The leaves of the main stem are opposite (paired) and the racemes are paired and without bracts. The individual flowers are 1–2 millimeters (0.4–0.6 inches (in)) wide, and white in color (Gamon and Kagan 1985). It grows in scattered groups and reproduces largely by insect-aided cross-pollination and partially by self-pollination. The species is distinguished from other *Plagiobothrys* species by coarse, sparse hairs on the stem and branches (Gamon and Kagan 1985).

*Plagiobothrys hirtus* grows in open, seasonal wetlands in poorly-drained clay or silty clay loam soils (Gamon and Kagan 1985). The taxon is considered dependent on seasonal flooding and/or fire to maintain open habitat and to limit competition with invasive native and alien plant species such as Himalayan blackberry (*Rubus discolor*), Oregon ash (*Fraxinus latifolia*), teasel (*Dipsacus fullonum*), and pennyroyal (*Mentha pulegium*) (Gamon and Kagan 1985, Almasi and Borgias 1996). *Plagiobothrys hirtus* occurs in open microsites within the one-sided sedge (*Carex unilateralis*)—meadow barley (*Hordeum brachyantherum*) community type within interior valley grasslands. Other frequently associated species include tufted hairgrass (*Deschampsia cespitosa*), American slough grass (*Beckmannia syzigachne*), great camas (*Camassia leichtlinii* var. *leichtlinii*), water foxtail (*Alopecurus geniculatus*), baltic rush (*Juncus balticus*), wild mint (*Mentha arvensis*), Willamette downingia (*Downingia yina*), and bentgrass (*Agrostis alba*) (Gamon and Kagan 1985).

*Plagiobothrys hirtus* is endemic to the interior valley of the Umpqua River in southwestern Oregon. The species was collected only four times between 1887 and 1961, all at sites within Douglas County (Gamon and Kagan 1985). The taxon was considered possibly extinct (Meinke 1982) until it was rediscovered in 1983 as a result of intensive field surveys (Jimmy Kagan, Oregon Natural Heritage Program (ONHP), pers. comm. 1997). The location of the first specimen, collected by Howell on June 25, 1887, was given only as the Umpqua Valley (Greene 1888). The sites of collections from 1932 and 1939, were from 16 kilometers (km) (10 miles (mi)) east of Sutherlin and 3 km (2 mi) north of Yoncalla, respectively (Siddall and Chambers 1978). Both sites were surveyed in 1983, but no plants were found (Gamon and Kagan 1985). At the time, the sites were heavily grazed by sheep, which lead the botanists to speculate that grazing was the probable

cause of extirpation at these sites (Gamon and Kagan 1985). In 1961, a collection was made adjacent to Interstate 5 south of Yoncalla, a site which remains extant today (J. Kagan, pers. comm. 1997).

Despite the few pre-1961 collections, *Plagiobothrys hirtus* was probably widespread historically on the floodplains of the interior valleys of the Umpqua River. Because *P. hirtus* occurs in low-lying areas, seeds were likely dispersed by flood waters, resulting in a patchy clumped distribution on the floodplains (Gamon and Kagan 1985). Natural processes such as flooding and fire maintained open, wetland habitat (Gamon and Kagan 1985). Draining of wetlands for urban and agricultural uses and road and reservoir construction, however, has altered the original hydrology of the valley to such an extent that the total area of suitable habitat for *P. hirtus* has been significantly reduced. In addition, fire suppression has allowed the invasion of woody and herbaceous species into formerly open wetland habitats (Gamon and Kagan 1985).

*Plagiobothrys hirtus* is now limited to 10 known occurrences in the vicinity of Sutherlin and Yoncalla, Oregon (ONHP 1996). All extant populations of this species are small (i.e., fewer than 500 individuals) and occur in disjunct habitat. The 10 occurrences are estimated to have a total of about 3,000 individuals and a combined area of less than 4 ha (10 ac) (Amsberry and Meinke 1997).

All extant populations are at risk of extirpation due to a variety of threats (Almasi and Borgias 1996; J. Kagan, pers. comm. 1997; R. Meinke, Oregon State University, pers. comm. 1997). In addition to the ongoing threat of direct loss of habitat from conversion to urban and agricultural uses, hydrological alterations, and fire suppression, other threats to the species include spring and summer livestock grazing, and roadside mowing, spraying and landscaping (Gamon and Kagan 1985, J. Kagan, pers. comm. 1995). Six of the 10 extant occurrences are adjacent to highways. The other four occurrences are in urban or agricultural areas.

Nine of the 10 known occurrences are on private land. The other population is on public land owned by the Oregon Department of Transportation (ODOT). One of the private parcels is owned and managed for the species by The Nature Conservancy (TNC). The other eight occurrences on private lands have no protective management for the species and are at risk of extirpation from development, incompatible grazing practices, and recreational activities (J.

Kagan, pers. comm, 1997; R. Meinke, pers. comm., 1997)

### Previous Federal Action

Federal action on *Plagiobothrys hirtus* began when the Secretary of the Smithsonian Institute prepared a report on plants considered to be endangered, threatened, or extinct, pursuant to section 12 of the Act. That report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)(A)) of the Act. The notice further indicated the Service's intention to review the status of the plant species named therein. As a result of this review, the Service published a proposed rule in the **Federal Register** on June 16, 1976, (41 FR 24523), to determine approximately 1,700 vascular plant species to be endangered pursuant to section 4 of the Act. This list, which included *P. hirtus*, was assembled on the basis of comments and data received by the Smithsonian Institute and the Service in response to House Document No. 94-51 and the July 1, 1975 **Federal Register** publication. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) of the withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired.

The Service published an updated Notice of Review for plants on December 15, 1980 (50 FR 82480), including *Plagiobothrys hirtus* as a category 1 candidate species. Category 1 species were those for which the Service had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. This status was changed to category 2 in the November 28, 1983, supplement to the notice (48 FR 53657), and remained as such in the September 27, 1985, Notice of Review (50 FR 39527). Category 2 species were those for which conclusive data on biological vulnerability and threats were not currently available to support proposed rules. In the February 21, 1990, Notice of Review (55 FR 6185), this status was changed back to category 1. Upon publication of the February 28, 1996, Notice of Review in the **Federal Register** (61 FR 7596), the Service ceased using category designations and included *P.*

*hirtus* 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.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *P. hirtus* because of the acceptance of the 1975 Smithsonian Report as a petition. On October 13, 1983, the Service found that the petitioned listing of this species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notice of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled pursuant to section 4(b)(3)(C)(I) of the Act. The finding was reviewed annually in October of 1984 through 1995. Publication of this proposal constitutes the final 1-year finding for the petitioned action.

*Plagiobothrys hirtus* has a listing priority number of 2. Processing of this rule is a Tier 3 activity under the current listing priority guidance.

### Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Plagiobothrys hirtus* Greene (rough popcornflower) are as follows:

A. *The present or threatened destruction, modification, or curtailment of habitat or range.* *Plagiobothrys hirtus* is threatened by destruction and modification of its wetland habitat (R. Meinke, pers. comm. 1997). Although the species is believed to have been more abundant in the past throughout the interior valleys of the Umpqua River, it is now limited to 10 small, isolated occurrences. Direct loss of habitat from hydrological alterations, wetland filling, or conversion to other uses pose a threat to all 10 extant occurrences.

Two sites occur on private land within the urban boundary of the town of Sutherlin. When first discovered in

1983, these sites were the largest known occurrences (ONHP 1996). One site, with approximately 200 individuals in 1983, has since been destroyed and only 1 plant was found in 1996; development of this site is imminent (J. Kagan, pers. comm. 1997). The other site, estimated to have 300-500 plants when discovered in 1983, has been declining since that time. In 1994, a portion of the wetland at the site was filled, and the remaining area was observed to be significantly impacted by mountain bike recreation; only about 50-100 plants were present (J. Kagan, pers. comm. 1995). Urban development of this site is considered likely (J. Kagan, pers. comm. 1997, R. Meinke, pers. comm. 1997).

Three sites are known on private land about 1.6 km (1 mi) east of Sutherlin. One of these, when discovered in 1983, had about 30-35 plants within an area of about 200 square meters (m<sup>2</sup>) (2,200 square feet (ft<sup>2</sup>)). The site lies within the Sutherlin urban growth boundary and is slated for development (ONHP 1996). The other two sites were discovered in 1986. One of these had 200 plants in 1986, but by 1988 had only 30-40 plants scattered over an area of 25 m<sup>2</sup> (275 ft<sup>2</sup>). Habitat conditions on this site are described as marginal (ONHP 1996). The other site also had about 200 plants when first observed in 1986, but by 1988 had decreased to about 100 plants (ONHP 1996). During the most recent site survey in 1993, only 50-100 plants were seen (J. Kagan, pers. comm. 1997).

Four additional sites are known on private land several kilometers south of the town of Sutherlin. One of these, when discovered in 1983, consisted of about 150 plants growing in an area of about 50 m<sup>2</sup> (550 ft<sup>2</sup>). In 1996, only about 50 plants remained. Two other sites were both discovered in 1984. One consisted of 50-60 plants in a 30 m<sup>2</sup> (330 ft<sup>2</sup>) area, and the other had 200-300 plants (ONHP 1996). Both occurrences had generally decreasing numbers of individuals through the late 1980's. TNC acquired a portion of the larger of the two occurrences and began formal monitoring in 1995. Individuals were too numerous for a complete census in 1995 with the total population on the site estimated at over 16,000 individuals. In 1996, however, the population plummeted to only 394 plants, a drop attributed to an extensive period of standing water on the preserve that year due to a wet spring (Almasi and Borgias 1996). See Factor E discussion for further details on this population decline. The fourth site, when discovered in 1990, had fewer than 50 plants (J. Kagan, pers. comm. 1995).

The last site is on public land and private land about 22 km (14 mi) north of Sutherlin near the town of Yoncalla. This site is the locality of the 1961 collection that was relocated in 1983. About 200 plants were present in 1988, and the population size has continued to increase under management by ODOT. Although the population on public land appears vigorous, a portion of the population on the adjacent private land appears to have vanished (J. Kagan, pers. comm. 1997). Alterations in site hydrology pose the primary threat to the plants (R. Meinke, Oregon State University, pers. comm. 1997).

**B. Overutilization for commercial, recreational, scientific, or educational purposes.** No evidence of overutilization of this taxon for any purpose exists at this time. However, the plants are easily accessible by road, and the small population sizes make them vulnerable to overcollection by botanical enthusiasts.

**C. Disease or predation.** Grazing has likely been a contributing factor in declining *Plagiobothrys hirtus* numbers throughout its historic range (Gamon and Kagan 1985). Livestock graze in pastures containing four of the occurrences (ONHP 1996). The timing and intensity of grazing, however, determine the effects of grazing on the plant. Grazing during spring and early summer likely threatens *P. hirtus*. When herbivores eat the flower or seed head of the plant, the reproductive output for the year for that individual is destroyed. This activity may be more significant at sites where the species functions as an annual (Gamon and Kagan 1985). However, where fires and flooding no longer occur, grazing may benefit the species. Fall grazing, in particular, may be of benefit because the plant is dormant during at this time and grazing can keep the habitat open by reducing the growth of competing species (Gamon and Kagan 1985). By reducing vegetative growth, fall grazing or mowing (see factor E discussion) may also lower the suitability of the habitat for voles and, thereby, reduce herbivory on the plant.

**D. Inadequacy of existing regulatory mechanisms.** Under the Oregon Endangered Species Act (ORS 564.100–564.135) and pursuant regulations (OAR 603, Division 73), the Oregon Department of Agriculture has listed *Plagiobothrys hirtus* as endangered (OAR 603–73–070). This statute prohibits the “take” of State-listed plants on State, county, and city owned or leased lands. Most occurrences of *P. hirtus* occur on private land and are not subject to any current regulations. One site is adjacent to State Route 99 on

lands managed by ODOT and has been designated by the agency as a Special Management Area. Mowing and spraying practices have been modified to protect the species at this site where the plant appears to be stable or increasing (N. Testa, Oregon Department of Transportation, pers. comm. 1997).

**E. Other natural or manmade factors affecting its continued existence.** Nine of 10 extant sites of *Plagiobothrys hirtus* occur adjacent to major highways (Interstate 5 and/or State Route 99) or railroad beds. Herbicide spraying and highway landscaping has affected and reduced at least one *P. hirtus* population (J. Kagan, pers. comm. 1995). Mowing is also part of the routine maintenance of roadways. As with livestock grazing, mowing or pesticide spraying during the spring may reduce seed set and thereby negatively affect populations of the plant. Late season mowing has benefited the *P. hirtus* population at the ODOT site, probably by reducing competition from other plants and herbivory by voles (R. Meinke, pers. comm. 1997). With the exception of the *P. hirtus* populations in ODOT’s Special Management Area and The Nature Conservancy’s Popcorn Swale, none of the roadside occurrences are protected from herbicide spraying, landscaping or early season mowing. In addition, roadside occurrences are at risk of toxic chemical spills and runoff containing oil and grease (N. Testa, pers. comm. 1997). Vehicle accidents also increase the risk of fuel contamination or fire; such an accident recently occurred adjacent to the ODOT population, but the plant was not affected (N. Testa, pers. comm. 1997).

Encroachment by native and alien plant species increases when natural processes like fire or flooding are altered (J. Kagan, pers. comm. 1997; R. Meinke, pers. comm. 1997). After a 1985 fire at one of the sites in Sutherlin, the plants responded the following year with vigorous growth (J. Kagan, pers. comm. 1997). As with late season grazing or mowing, late season fire is likely to be of benefit, while fire which occurs prior to seed set may have negative consequences to *Plagiobothrys hirtus*. The encroachment of weedy, and especially woody, species may also alter site hydrology by capturing more of the available water, an alternative explanation for the dramatic collapse of the population at the TNC preserve between 1995 and 1996 (see Factor A; R. Meinke, pers. comm. 1997).

Because of the small, isolated nature of the occurrences and the few individuals present in most of them, *Plagiobothrys hirtus* is also more susceptible to random events, such as

fires during the growing season, insect or disease outbreaks, or toxic chemical spills. The rapid, and as yet unexplained, collapse of the population at the TNC preserve argues for the protection of all extant sites to shield the species from random events that could cause its extinction. Small, isolated populations may also have an adverse effect on pollinator activity, seed dispersal, and gene flow. The existence of both annual and perennial populations in *P. hirtus* suggests that some local genetic differentiation may already exist among populations of the species. Genetic drift within small, isolated populations can lead to a loss of genetic variability and a reduced likelihood of long-term viability (Soulé *in* Lesica and Allendorf 1992).

The Service has carefully assessed the best scientific and commercial information available concerning the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Plagiobothrys hirtus* as endangered. Filling of its wetland habitat for development, livestock grazing during its growing season, invasion by competitive plant species as a result of hydrological alteration and fire suppression, and roadside spraying and mowing continue to reduce plant numbers and habitat. The small, isolated occurrences with few individuals make the species more vulnerable. In addition, continued decreases in the number of occurrences and individuals could result in decreased genetic variability. The varied and cumulative threats to *P. hirtus* indicate the species is in danger of extinction throughout its range. For these reasons, the Service believes that listing *P. hirtus* as endangered is the most appropriate action. Failure to list this species would likely result in extinction of the species. Threatened status is not appropriate because all of the extant occurrences of *P. hirtus* are small, and 8 of 10 occurrences have no protection from mowing, herbicide application, imminent urbanization, and grazing threats. In addition, one of the protected occurrences recently suffered a precipitous, and as yet unexplained, reduction in numbers. Not listing the taxon or listing it as threatened would not provide adequate protection and would not be consistent with the Act.

#### 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 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 needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *P. hirtus*. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Although overutilization is not considered to be a threat to *Plagiobothrys hirtus* at this time, listing of this species as endangered would publicize its rarity and, thus, can make it more attractive to researchers or collectors of rare plants. Most occurrences are small enough that even limited collecting pressure could have adverse impacts. The Service is also aware of a report that, after the species was listed by the State of Oregon, a landowner contacted by State botanists to discuss protective measures for a population on his property allegedly responded by blading the site and destroying the population (J. Kagan, pers. comm. 1997). The publication of precise maps and descriptions of critical habitat in the **Federal Register** would make this plant more vulnerable to incidents of collection and/or vandalism and, therefore, contribute to the decline of this species and increase enforcement problems.

Further, designation of critical habitat for *Plagiobothrys hirtus* is not prudent for lack of benefit. This plant does not occur on Federal land, and it is not believed to have historically occurred on Federal land. Although a potential nexus for Federal action exists for all occurrences within section 404 of the Clean Water Act and for some occurrences in which the Federal

Highway Administration may become involved (see "Available Conservation Measures" section below), any such Federal involvement would also require consultation under section 7 of the Act. Any action that would adversely modify critical habitat would also jeopardize the continued existence of the species. Most occurrences of this plants are of such small size that a wetland fill less than the 0.13 ha (0.34 ac) regulatory threshold (see "Available Conservation Measures" section below) would eliminate it. The designation of critical habitat would not provide additional benefits for this species beyond the protection afforded by listing.

The Service finds, therefore, that designation of critical habitat for this species is not prudent because such designation would likely increase the degree of threat to the species from vandalism and would provide no additional benefit to the species' protection. Protection of the species' habitat will be addressed primarily through the recovery process.

#### 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 practices. Recognition through listing 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 recovery actions be carried out for all listed species. The protection required by Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a 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 a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Because *Plagiobothrys hirtus* occurs in wetlands, regulatory mechanisms under the Clean Water Act apply to this species. Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill material into the waters of the United States, including wetlands. To be in compliance with the Clean Water Act, potential applicants are required to notify the Corps prior to undertaking any activity that would result in the fill of wetlands under the Corps' jurisdiction (e.g., grading, discharge of soil or other fill material, etc.). Nationwide Permit Number 26 (33 CFR 330.5 and 33 CFR 330, App. A) has been issued to regulate the fill of wetlands that are not larger than 1.2 ha (3 ac), nor cause the loss of waters of the United States for a distance of more than 150 linear m (500 linear ft) of streambed (61 FR 65874). Where fill would occur in a wetland less than 0.13 ha (0.34 ac) in size, no requirement exists to notify the Corps prior to fill activities. Where fill would occur in a wetland of 0.13 ha (0.34 ac) to 1.2 ha (3 ac) in size, the Corps circulates for agency comment a predischarge notification to the Service and other interested parties prior to determining whether or not the proposed fill activity qualifies under Nationwide Permit 26. Individual permits are required for the discharge of fill into wetlands that are greater than 1.2 ha (3 ac) in size. The review process for the issuance of individual permits is more extensive, and conditions may be included that require the avoidance or mitigation of environmental impacts. The Corps has discretionary authority and can require an applicant to seek an individual permit if the Corps believes that the resources are sufficiently important, regardless of the wetland's size. In practice, the Corps rarely requires an individual permit when a project would qualify for a Nationwide Permit, unless a federally threatened, endangered, or proposed species occurs on the site. If a federally threatened or endangered species or a proposed species may be affected by a proposed project, the Corps must ensure that it does not authorize, fund or carry out any action that is likely to jeopardize the species' continued existence, pursuant to section 7(a)(2) of the Endangered Species Act. Therefore, if an applicant's project site has one or more listed species on it, the Corps would be required to enter into

consultation with the Service. Should *P. hirtus* become listed, the species may be afforded increased protection through consultation on Corps permits.

In addition, the Federal Highway Administration would become involved with *Plagiobothrys hirtus* when highway maintenance is funded, even in part, by the Federal government. Any State highway activity being implemented by ODOT that is partly funded by the Federal government would be subject to review under the Act. In addition, Department of Housing and Urban Development projects and Natural Resources Conservation Service projects in areas that presently support *P. hirtus* would also be subject to review under section 7 of the Act.

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

Two sites currently receive some protective management. The site owned and managed by ODOT has been designated as a Special Management Area. Mowing is restricted to late in the fall when *Plagiobothrys hirtus* is dormant (N. Testa, pers. comm. 1997). The other site in protective ownership is owned and managed by TNC. This site, which currently contains about 400 individual plants, is being actively managed for the protection and development of *P. hirtus* habitat (Almasi and Borgias 1996). Monitoring, life history studies, and transplantation experiments using field-collected seed have been initiated at these two sites. The objectives of these efforts are to increase population sizes, and establish protocols for seed collection, greenhouse propagation, and transplantation techniques (Amsberry and Meinke 1997).

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, apply. These prohibitions, in part, make it

illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Activities that would constitute a violation of section 9 of the Act include removing, damaging or destroying *Plagiobothrys hirtus* in violation of State law. In addition, collection on Federal lands without a permit and other actions considered to be malicious damage to the species on Federal lands would be prohibited, although *P. hirtus* is not currently known to occur on Federal lands. Activities that are not likely to violate section 9 of the Act include routine landscape maintenance, clearing of vegetation for firebreaks, and livestock grazing on privately-owned land. Questions regarding whether specific activities may constitute a violation of section 9 should be addressed to the State Supervisor of the Service's Oregon State Office (see **ADDRESSES** section).

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. Requests for copies of the regulations concerning listed plants and animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232-4181 (503/231-2063; FAX 503/231-6243).

## Public Comments Solicited

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

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Plagiobothrys hirtus*;

(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 pursuant to 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 *Plagiobothrys hirtus*.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to 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 the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to the State Supervisor, Oregon State Office (see **ADDRESSES** section).

## National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Impact 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 designation was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

## Required Determinations

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

**References Cited**

Almasi, K. and D. Borgias. 1996. Monitoring plan: *Plagiobothrys hirtus* ssp. *hirtus*. Unpublished report by The Nature Conservancy, Southwestern Oregon Office, Ashland, OR. 5 pp.

Amsberry, K. and R.J. Meinke. 1997. Restoring the Popcorn-flower. U.S. Fish and Wildlife Service Endangered Species Bulletin. 22(2):12-13.

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Authors: The primary authors of this proposed rule are Josh Millman and Cat Brown, U.S. Fish and Wildlife Service, Oregon State Office (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>Plagiobothrys hirtus</i> | Rough popcornflower. | U.S.A. (OR) ..... | Boraginaceae/borage. | E      | .....       | NA               | NA            |
| *                           | *                    | *                 | *                    | *      | *           |                  | *             |

Dated: October 22, 1997.  
**Jamie Rappaport Clark,**  
 Director, Fish and Wildlife Service.  
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