

governments may choose to directly or indirectly implement actions that may have property implications, they would do so as a result of their own decisions, not as a result of this policy. This policy has no provision that would take private property rights.

Federalism. In accordance with Executive Order 13132, this draft policy does not have significant Federalism effects.

Civil Justice Reform. In accordance with Executive Order 12988, this draft policy does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. With the guidance provided in the draft policy, requirements under section 4 of the Endangered Species Act will be clarified to entities that voluntarily develop formalized conservation efforts.

National Environmental Policy Act. We have analyzed this draft policy in accordance with the criteria of the National Environmental Policy Act (NEPA) and the Department of the Interior Manual (318 DM 2.2(g) and 6.3(D)). This draft policy does not constitute a major Federal action significantly affecting the quality of the human environment. The Service has determined that the issuance of the draft policy is categorically excluded under the Department of the Interior's NEPA procedures in 516 DM 2, Appendix 1 and 516 DM 6, Appendix 1. The National Oceanic and Atmospheric Administration (NOAA) has determined that the issuance of this policy qualifies for a categorical exclusion as defined by NOAA 216-6 Administrative Order, Environmental Review Procedure.

Section 7 Consultation. The Service has determined that issuance of this draft policy will not affect species listed as threatened or endangered under the Endangered Species Act, and, therefore, a section 7 consultation on this draft policy is not required.

Government-to-Government Relationship With Tribes. In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, this draft policy does not directly affect Tribal resources. The effect of this draft policy on Native American Tribes would be determined on a case-by-case basis with individual evaluations of formalized conservation efforts. Under Secretarial Order 3206, the Service will, at a minimum, share with the entity that developed the formalized conservation effort any information provided by the Tribes, through the public comment period or formal submissions, and advocate the

incorporation of conservation efforts that will restore or enhance Tribal trust resources. After consultation with the Tribes and the entity that developed the formalized conservation effort and after careful consideration of the Tribe's concerns, the Service must clearly state the rationale for the recommended final decision and explain how the decision relates to the Service's trust responsibility. Accordingly:

a. We have not yet consulted with the affected Tribe(s). This requirement will be addressed with individual evaluations of formalized conservation efforts.

b. We have not yet treated Tribes on a government-to-government basis. This requirement will be addressed with individual evaluations of formalized conservation efforts.

c. We will consider Tribal views in individual evaluations of formalized conservation efforts.

d. We have not yet consulted with the appropriate bureaus and offices of the Department about the identified effects of this draft policy on Tribes. This requirement will be addressed with individual evaluations of formalized conservation efforts.

Dated: April 9, 2000.

Jamie Rappaport Clark,
Director, Fish and Wildlife Service.

Dated: May 19, 2000.

Penelope D. Dalton,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.
[FR Doc. 00-14731 Filed 6-12-00; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding for Petitions To List *Horkelia hendersonii* (Henderson's horkelia) and *Lupinus aridus* ssp. *ashlandensis* (Ashland lupine) as Threatened or Endangered and Commencement of Status Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the Fish and Wildlife Service (Service), announce a 90-day finding on two petitions to list *Horkelia hendersonii* (Henderson's horkelia) and *Lupinus aridus* ssp. *ashlandensis* (Ashland lupine) as endangered or threatened species throughout their ranges under the Endangered Species

Act of 1973, as amended (Act). We find that the petitions presented substantial information indicating that listing of both species may be warranted. We are initiating a status review to determine if listing of either or both species is warranted.

DATES: The finding announced in this document was made May 31, 2000. To be considered in the 12-month finding for this petition, information and comments should be submitted to us by September 11, 2000.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the State Supervisor, Oregon State Office, U.S. Fish and Wildlife Service, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266. The petition finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

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

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species, or to revise a critical habitat designation, presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and we are to publish the finding promptly in the **Federal Register**. If the finding is that substantial information was presented, we are also required to promptly commence a review of the status of the involved species and to disclose its findings within 12 months (12-month finding).

We received two separate formal petitions from the Rogue Group Sierra Club of Ashland, Oregon, both dated September 9, 1999, to list *Horkelia hendersonii* (Henderson's horkelia) and *Lupinus aridus* ssp. *ashlandensis* (Ashland lupine) as endangered or threatened throughout their ranges, and to designate critical habitat. Accompanying the petitions was supporting information relating to taxonomy, ecology, threats, and past and present distribution of *H. hendersonii* and *L. aridus* ssp. *ashlandensis*.

The processing of the petitions 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 this petition finding is a Priority 4 action and is being completed in accordance with the current Listing Priority Guidance.

Horkelia hendersonii, a member of the rose family, is a perennial, mat-forming, rhizomatous herb with several stems arising from a branching, woody crown, approximately 10–15 centimeters (cm) (3.9–5.9 inches (in.)) high. Leaves are silky, 4–6 cm (1.6–3.3 in.) long with 11–19 leaflets arranged pinnately. Flowers are white to pink with petals 4 millimeters (mm) (0.16 in.) long in a somewhat clustered terminal inflorescence. The species occurs in alpine areas between 1,829–2,286 meters (m) (6,000 to 7,500 feet (ft)) elevation, in habitat that includes open granitic gravels, alpine forblands, and dwarf shrublands.

Lupinus aridus ssp. *ashlandensis* is an erect perennial herb forming clumps 15–20 cm (5.9–7.9 in.) in diameter and 7–12 cm (2.8–4.7 in.) tall. The leaves are palmately compound with 5 to 7 leaflets that are up to 3 cm (1.2 in.) long. Leaves are numerous and crowded from the basal crown, with pubescent (downy) undersurfaces and glabrous (smooth) upper sides. Flowers are blue with petals 10–12 mm (0.39–0.47 in.) long. The banner is glabrous and the keel ciliate (fringed with hairlike processes) on the margin. *L. a.* ssp. *ashlandensis* grows on gravelly, granitic soils on the south to southwest slopes near the summit at elevations from 2,100 m (6,900 ft) to 2,280 m (7,480 ft). The lupine will not grow in dense brush.

Federal action on *Lupinus aridus* ssp. *ashlandensis* began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94–51) was presented to Congress on January 9, 1975, and included *L. aridus* ssp. *ashlandensis* as threatened. We published a notice in the July 1,

1975, **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3)) of the Act, and our intention to review the status of the reported plant species.

Both *Horkelia hendersonii* and *Lupinus aridus* ssp. *ashlandensis* were included as category 2 candidates in a Notice of Review (NOR) published on December 15, 1980 (45 FR 82510). Category 2 formerly included species for which information in our possession indicated that proposing to list as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support a proposed rule. The plant NOR was again revised on September 27, 1985 (50 FR 39526). In this notice, *Horkelia hendersonii* and *L. aridus* ssp. *ashlandensis* remained category 2 candidates. Another revision of the plant notice was published on February 21, 1990 (55 FR 6184), which again included *H. hendersonii* as a category 2 candidate. However, *L. aridus* ssp. *ashlandensis* was upgraded to category 1 status. Category 1 candidates were formerly defined as species for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals, but issuance of proposed rules was precluded by other listing activities of higher priority. On February 28, 1996, we published an NOR in the **Federal Register** (61 FR 7596) that discontinued the designation of category 2 species as candidates. In response to the decision to discontinue the category 2 designation, *H. hendersonii* and other former category 2 candidates were not retained as candidates. In addition, *L. aridus* ssp. *ashlandensis* was dropped from the candidate list based on our interpretation of data supplied by the U.S. Forest Service (USFS) (Rolle 1993).

The petitions contained substantial amounts of information relating to the distribution of and threats to *Horkelia hendersonii* and *Lupinus aridus* ssp. *ashlandensis*. Both species occur within about 1.6 kilometers (1 mile) of the summit on the western slope of Mt. Ashland, Oregon, on the Rogue River and Klamath National Forests. In addition, *H. hendersonii* is found in both National Forests, along the Siskiyou Crest in the Dutchman Peak-Jackson Gap area, at Observation Peak, and on and near McDonald Peak in Oregon, and at Dry Lake Lookout in the Klamath National Forest in California. *L. aridus* ssp. *ashlandensis* occurs as a single population on the top and

western ridge of Mount Ashland. Time-series monitoring studies were started by the Forest Service in 1995, but the results are not available to us at this time (Kagan 1995). *Horkelia hendersonii* has been found in 16 habitat patches, but population trends are not known.

The petitions provided information regarding effects of habitat alteration and development activities on *Horkelia hendersonii* and *Lupinus aridus* ssp. *ashlandensis*. According to the petitions, the Mount Ashland populations of both species are threatened by the expansion of the ski facilities, the communication facilities, and parking lot, road widening, and maintenance; development of a cross-country ski corridor; and erosion, compaction, and invasion of roadside weeds caused by off-road vehicle activities. The Mount Ashland Bowl patch of *H. hendersonii*, with 15 plants, is located on a proposed ski area expansion site (U.S. Department of Agriculture 1991). A proposed cross-country ski corridor would cut through a large portion of the eastern edge of the Mount Ashland habitat patch and could affect up to 5,000 individual *H. hendersonii* and up to 4,500 individual *L. aridus* ssp. *ashlandensis* (Kagan and Zika 1987a,b). In addition to the proposed ski area expansion, 8 individual *H. hendersonii* and 13 individual *L. aridus* ssp. *ashlandensis* are growing in areas of potential disturbance for the expansion of the U.S. Weather Bureau Radar Station (SRI International 1994, 1995). An existing four-wheel drive track, leading west from the summit access road at the first switchback, provides an avenue for the introduction of roadside weeds into the meadow and flat area that supports a sizeable population (4,900 plants) of *H. hendersonii* and a small population (350 plants) of *L. aridus* ssp. *ashlandensis* (Kagan and Zika 1987a,b; Zika 1987; Kagan 1995).

Although both species occur in open gravelly soils, including the gravelly margins of the access road, neither will colonize the compacted soils of existing roads (even if vehicle use was reduced or eliminated). Neither *H. hendersonii* nor *L. aridus* ssp. *ashlandensis* was found on the gravelly fill around the ski area lift towers or building, and both are apparently restricted to natural undisturbed substrates (Kagan and Zika 1987a,b; Zika 1987).

In the Dutchman Peak-Jackson Gap area, road maintenance and construction and widening of firebreaks threaten three of the habitat patches that support *Horkelia hendersonii*. Construction of firebreaks could also involve disturbance of the loose,

granitic gravels on the ridges where *H. hendersonii* grows.

Livestock grazing has been observed in *Horkelia hendersonii* habitat at Observation Peak, south of McDonald Peak, and at Dry Lake. Cattle cause damage by trampling, and, although we have no direct evidence that cattle find *H. hendersonii* particularly palatable, some damage from foraging has been seen (Kagan and Zika 1987a). On the most northern habitat patch on McDonald Peak, 100 *H. hendersonii* plants were found in 1985, but only 22 in 1987 (Kagan and Zika 1987a). No cause was presented for the reduction in numbers.

In 1963, the passage of the Oregon Wildflower Law (ORS 564.010–564.040) established protection for Oregon's natural botanical resources. The law was designed to protect showy plants, such as lilies, shooting stars, orchids, and rhododendrons, from collection by horticulturists interested in these species' domestication. The law prohibits the collection of wildflowers from within 61 meters (200 feet) of a State highway. Although protective in spirit, the Oregon Wildflower Law carries minimal penalties and is rarely enforced. In addition, since there are no *Horkelia hendersonii* or *Lupinus aridus* ssp. *ashlandensis* populations close to State highways, this law provided very little protection for these species.

In 1987, Oregon Senate Bill 533 (ORS 564.100) was passed to augment the legislative actions available for the protection of the State's threatened and endangered species, both plant and animal. That bill, known as the Oregon Endangered Species Act (OESA), mandated responsibility for threatened and endangered plant species in Oregon to the Oregon Department of Agriculture (ODA). The OESA directs the ODA to maintain a strong program to conserve and protect native plant species threatened or endangered with extinction. Although the ODA is able to regulate the import, export, or trafficking of State-listed plant species (under ORS 564.120), their ability to protect plant populations is limited to State-owned or State-leased lands. *Lupinus aridus* ssp. *ashlandensis* is State-listed as endangered, receiving protection under OESA on State-managed lands. *Horkelia hendersonii* is a candidate for listing under OESA, but currently receives no protection on State-owned or State-leased lands. Currently, both species are considered sensitive species by the USFS, and may be afforded some protection during USFS project planning processes and implementation.

It is possible that *Horkelia hendersonii* and *Lupinus aridus* ssp. *ashlandensis* could be negatively affected by the expansion of brushfields and the establishment of trees onto open alpine on Mount Ashland due to fire suppression. The two species are not seen in dense herbaceous vegetation, brush, or the full shade of conifers (Zika 1987). The boundary of both populations on the southwest side of Mount Ashland corresponds closely to the brushfield boundary (Rolle 1993). Continued fragmentation of the populations by construction and widening of roads and other development can reduce genetic exchange between patches, reducing the viability of the populations.

Currently, we are working with the USFS to develop a conservation agreement for both species on Mount Ashland. The process was initiated in 1995 through a cooperative agreement with the Oregon Natural Heritage Program to develop conservation agreements for selected high-priority candidate species. On July 26, 1999, we provided a draft conservation agreement to the Klamath National Forest and Rogue River National Forest. The Rogue River National Forest is currently revising the draft conservation agreement to cover only Mount Ashland populations, but we have not received that draft for evaluation. If that draft conservation agreement is signed by all parties and implemented, it may remove some or all of the threats faced by *H. hendersonii* and *L. aridus* ssp. *ashlandensis* on Mount Ashland, but may not reduce threats faced by smaller, more isolated populations of *H. hendersonii* on McDonald Peak, an unnamed peak south of McDonald Peak, Dutchman's Peak, Observation Peak, and at Dry Lake Lookout.

We have reviewed the petitions, as well as other available information, including published and unpublished studies and reports, and agency files. Based on that information, we find that substantial information exists to indicate that listing of *Horkelia hendersonii* and *Lupinus aridus* ssp. *ashlandensis* as threatened or endangered throughout all of their ranges may be warranted. The petitions also requested designation of critical habitat for both species. However, designation of critical habitat is not petitionable under the Act. If the 12-month finding determines that listing *H. hendersonii* and *L. aridus* ssp. *ashlandensis* is warranted, then the designation of critical habitat would be addressed in the subsequent proposed rule.

Information Solicited

When we make a positive 90-day finding, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial data, we are soliciting information on *Horkelia hendersonii* and *Lupinus aridus* ssp. *ashlandensis* concerning the following: (1) Historic and current distribution; (2) conditions in each habitat patch; (3) basic biology including age-frequency distribution of the population(s) in each habitat patch; (4) ongoing efforts to protect *H. hendersonii* and *L. aridus* ssp. *ashlandensis* and their habitat; and (5) threats to either species and their respective habitats in each occupied habitat patch. Section 4(b)(3)(B) of the Act requires that we make a finding within 1 year from the date the petitions were received as to whether listing *H. hendersonii* and *L. aridus* ssp. *ashlandensis* as threatened or endangered is warranted (12-month finding).

References Cited

- Kagan, J. 1995. Monitoring of *Lupinus aridus* ssp. *ashlandensis*—general monitoring protocol and 1995 data. Unpublished report. 24 pp.
- Kagan, J. and P. Zika. 1987a. Species management guide for *Horkelia hendersonii*. Unpublished report, Oregon Natural Heritage Data Base. 18 pp.
- Kagan, J. and P. Zika. 1987b. Species management guide for *Lupinus aridus* ssp. *ashlandensis*. Unpublished report. Oregon Natural Heritage Data Base. 13 pp.
- Rolle, W. 1993. Documentation, results, and population estimates for *Lupinus aridus* ssp. *ashlandensis*, based on a partial census in August and September 1991. Unpublished report. 6 pp.
- SRI International. 1994. Mt. Ashland weather radar rare plant reassessment. Unpublished report. 5 pp.
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- United States Department of Agriculture. 1991. Final environmental impact statement, Mount Ashland Ski Area. Ashland Ranger District, Rogue River National Forest. 15 pp.
- Zika, P. F. 1987. *Lupinus aridus ashlandensis* and *Horkelia hendersonii* field survey. Unpublished report. 13 pp. + maps.

Author: The primary author of this document is Dr. Andrew F. Robinson, Jr. (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 31, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00-14497 Filed 6-12-00; 8:45 am]

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