

benefit for these species over that provided as a result of listing.

Protection of the habitat of these species will be addressed through the section 4 recovery process and the section 7 consultation process. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. For the reasons discussed above, the Service finds that the designation of critical habitat for these plants is not prudent.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery plans be developed all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act 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 proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

One occurrence of *Cordylanthus mollis* ssp. *mollis* occurs on land that is managed by the U.S. Navy. The USBR and the Corps would become involved with these plants through their funding of projects that may directly impact the plants' habitat or support development of areas that contain suitable salt or brackish marshes. The Corps also would

be involved as an authorizing agency for permits to dredge or fill wetlands and navigable waters of the United States. The Corps regulates dredging and filling of jurisdictional wetlands and navigable waters, including salt water marshes, under section 404 of the Clean Water Act. By regulation, nationwide permits may not be issued where a federally listed endangered or threatened species may be affected by the proposed project without first completing consultation pursuant to section 7 of the Act. The presence of a listed species would highlight the national importance of these resources. Highway construction and maintenance projects that receive funding from the Department of Transportation (Federal Highway Administration) also would be subject to review under section 7 of the Act.

Listing *Cirsium hydrophilum* var. *hydrophilum* and *Cordylanthus mollis* ssp. *mollis* as endangered would provide for development of a recovery plan (or plans) for them. Such plan(s) would bring together both State and Federal efforts for conservation of the plants. The recovery plan(s) would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan(s) would set recovery priorities and estimate costs of various tasks necessary to accomplish them. It also would describe site-specific management actions necessary to achieve conservation and survival of the two species. Additionally, pursuant to section 6 of the Act, the Service could grant funds to affected States for management actions promoting the protection and recovery of these species.

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. Most occurrences of both plants are either on private or non-Federal lands. One population of *Cordylanthus mollis* ssp. *mollis* occurs on land managed by the Department of Defense (U.S. Navy). Collection, damage or destruction of this species on public lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued to allow collection. Removal, cutting, digging up, damaging or destroying endangered plants on non-Federal lands would constitute a violation of section 9 if conducted in knowing violation of State law or

regulations or in violation of State criminal trespass law. The Service is not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9.

The Act and its implementing regulations found at 50 CFR parts 17.61, 17.62, and 17.63 for endangered plant species set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. With respect to the two plants from the San Francisco Bay area, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. Activities that would violate section 9 of the Act include the import, export, delivery, receipt, carrying, transporting, or shipping such species in interstate or foreign commerce in the course of a commercial activity; the sale or offer for sale of such species in interstate or foreign commerce; removal and reduction to possession of federally listed plant species from areas under Federal jurisdiction; the malicious damage or destruction of any such plant species on any area under Federal jurisdiction; or the removal, cutting, digging up, damage, or destruction of any such plant species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Activities that are unlikely to violate section 9 of the Act include animal grazing, waterfowl hunting, bird watching, and fishing. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR parts 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. The Service anticipates few permits would ever be sought or issued for the two species because the plants are not common in cultivation or in the wild.

Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE 11th Avenue, Portland, Oregon 97232-4181 ((503) 231-2063 or 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