DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB97

Endangered and Threatened Wildlife and Plants; Reclassification of Mirabilis Macfarlanei (MacFarlane's Four-O'clock) From Endangered to Threatened Status

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) makes a final determination to reclassify the plant *Mirabilis macfarlanei* (MacFarlane's four-o'clock) to threatened status. The species was listed as an endangered species in 1979. This action is due to improvement in the status of the species and the discovery of additional populations. *Mirabilis macfarlanei* now occurs in three geographically isolated units occupying approximately 163 acres in Idaho and Oregon. The Snake River unit has approximately 4,752 plants occupying about 25 acres. The Salmon River unit has approximately 1,660 plants occupying 68 acres. The recently discovered Imnaha River unit has approximately 800 plants on 70 acres. In addition, the species meets the minimum goals for reclassification identified in the *Mirabilis macfarlanei* Recovery Plan approved in 1985. The determination made under the Endangered Species Act of 1973 (Act), as amended, is based on a review of all information currently available for the species. The change in classification reflects an improvement in the species' status. Reclassification will not significantly alter the protection afforded this species under the Act.

EFFECTIVE DATE: April 15, 1996.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Dr. Robert L. Parenti, Botanist, at the above Boise address (208) 334–1931.

SUPPLEMENTARY INFORMATION:

Background

Mirabilis macfarlanei is a member of the four-o'clock family (Nyctaginaceae). It is a perennial plant with a stout, deep-seated taproot. The stems are freely branched, swollen at the nodes so that the plant forms hemispherical clumps 6 to 12 decimeters (24 to 47 inches (in.)) in diameter. The leaves are opposite, somewhat succulent, green above and glaucescent (with a whitish or bluish cast) below. Lower leaves are orbicular or ovate-deltoid in shape and become progressively smaller toward the top of the stem. The inflorescence is a four- to seven-flowered cluster subtended by an involucre. The flowers are striking due to their large size, up to 25 millimeters (mm) (1 in.) long and 25 mm (1 in.) wide, and showy magenta color. They are funnel-form in shape with a widely expanding limb. The flower is five-merous, with five stamens (male reproductive structures) generally exerted. Flowering is from early May to early June, with mid-May usually being the peak flowering period. *Mirabilis macfarlanei* is most closely related to *M. greenei* Wats. of the Klamath (Siskiyou) region of California and Oregon (Constance and Rollins 1936).

Mirabilis macfarlanei was named for Ed MacFarlane, a boatman on the Snake River, who pointed out the plant along the Oregon side of the Snake River to Rollins and Constance in 1936. These botanists described the species later that year (Constance and Rollins 1936). Records indicate MacFarlane's four-o'clock was collected along the Snake River (Hells Canyon area) in 1939. In 1947, a second population was discovered near the confluence of Skookumchuck Creek and the Salmon River in Idaho by R.J. Davis. The Salmon River plants are geographically isolated from the Snake River plants. Futile searches for *M. macfarlanei* from 1947 to the mid-1970's led botanists to consider that the species was possibly extinct. In May 1977, two plants were found within the Snake River unit along the Snake River near Cottonwood Landing on the Oregon side of the river. Within the Salmon River unit, 25 plants were rediscovered in 1979 on 10 acres of Bureau of Land Management (Bureau) land (Heidel 1979) at Skookumchuck and 700 plants were discovered in 1980 on 45 acres of Bureau land in the Long Gulch area above the Salmon River, Idaho County, Idaho.

Since 1983, 6,485 additional plants have been located on approximately 108 acres, bringing the total number to 7,212 plants inhabiting approximately 163 acres in three disjunct areas. The Snake River unit has about 4,752 plants occupying about 25 acres of habitat that occurs along 6 miles of Hells Canyon on the banks and canyonland slopes above the Snake River, Idaho County, Idaho and Wallowa County, Oregon. Known localities within the Snake River unit include Cottonwood Landing, Island Gulch, Kurry Creek, Kurry Creek-West Creek divide, Mine Gulch, Tyron Bar, and West Creek. The Salmon River unit has about 1,660 plants occupying approximately 68 acres along 18 miles of banks and canyonland slopes above the Salmon River, Idaho County, Idaho. Known localities within the Salmon River unit include Coddy Draw, Henry's Gulch, John Day Creek, Long Gulch, Lucas Draw, Lucile Caves, Skookumchuck Creek, and Slicker Bar. The third unit, the Imnaha, was discovered in 1983 and has approximately 800 plants on 70 acres of habitat along 3 miles of canyonland slopes above the Imnaha River, Wallowa County, Oregon. Within the Imnaha unit, only two localities, Fence Creek and Buck Creek, have been documented. The plants generally occur on talus slopes within canyonland corridors above the three rivers.

Within the Snake River unit, all of the plants occur on Nez Perce and Wallowa/Whitman National Forests lands. A majority of the plants along the Snake River are within the Hells Canyon National Recreation Area. Within the Salmon River unit, 935 plants (56 percent) inhabit 13 acres of private lands with the remaining plants and 55 acres of habitat managed by the Bureau (Coeur d'Alene District). Within the Imnaha unit, approximately 300 plants (37 percent) are located on 10 acres of private lands. The remaining 500 plants occur on 60 acres of Wallowa/Whitman National Forest lands above Fence Creek, Wallowa County, Oregon.

No other species of *Mirabilis* occurs in Hells Canyon and no member of the regional flora resembles MacFarlane's four-o'clock. This large plant is easily recognized by its large, green, succulent leaves that are oppositely arranged on the stem. The cluster of large, magenta flowers is unlike anything else in the flora of the northwest (Moseley, Idaho Department of Fish and Game, pers. comm. 1992). The generic name, *Mirabilis*, in Latin means wondrous.

Mirabilis taxa in the United States are mainly restricted to the southwest. It is unusual for *Mirabilis macfarlanei* to exist as far north as west-central Idaho and northeast Oregon. It is conjectured that the genus expanded northward during a period of warmer climate. As regional climates cooled, the species or its predecessor was, in essence, ''trapped'' (Stebbins 1979). The Salmon River and Snake River canyonland areas in northeastern Oregon and west-central Idaho provide some of the longest growing seasons and mildest winter conditions of the intermountainous region east of the Oregon Cascades. *Mirabilis macfarlanei* is found on talus slopes in canyonland corridors where

the climate is regionally warm and dry with precipitation occurring mostly in a winter-to-spring period. If *M. macfarlanei* originated in northern areas during a warmer period and its path of retreat with cooling climate was cut off by less favorable conditions, the warmer climate (such as near Riggins, Idaho, in the Salmon River Canyon) would explain the restricted distribution of the species.

Mirabilis macfarlanei generally occurs as scattered plants on open, steep (50 percent) slopes of sandy soils, generally having west to southeast aspects. However, during the 1984 season, a locality was discovered having an east aspect. Talus rock underlies the soil in which the plants are rooted. There are a variety of soils that support this plant throughout its range. Sandy soils support some of the Long Gulch populations of *M. macfarlanei* and are quite susceptible to displacement by wind and water erosion.

The plant community is in a transition zone between *Agropyron spicatum-Poa sandbergii* and *Rhus glabra-Agropyron spicatum,* consisting of *Agropyron spicatum* (bluebunch wheatgrass), *Bromus tectorum* (cheatgrass), *Sporobolus cryptandrus* (sand dropseed), *Phacelia heterophylla* (scorpion weed), *Lomatium dissectum* (desert parsley), *Celtis reticulata* (hackberry), *Rhus glabra* (smooth sumac), *Achillea millefolium* (yarrow), and *Chrysothamnus nauseosus* (rabbit bush) (Daubenmire 1970, Franklin and Dyrness 1973). Near Long Gulch, Idaho, an *Agropyron spicatum-Poa sandbergii* community existed. The latter species have, however, been replaced by the alien *Bromus tectorum* (Johnson 1984).

From 1936 to 1979, *Mirabilis macfarlanei* was known only from two localities with approximately 27 individual plants. Subsequently, *M. macfarlanei* was added to the Federal List of Endangered and Threatened Plants on October 26, 1979 (44 FR 61912), as an endangered species.

At the time *Mirabilis macfarlanei* was listed as endangered, estimates of population size (number of plants) were based upon sparse data. Prior to listing, several professional and amateur botanists actively searched for the plant in several canyonlands in Idaho and Oregon without success. Many botanists believed that the plant was extremely rare and perhaps extirpated from likely habitat in Idaho and Oregon.

The 1985 *Mirabilis macfarlanei* Recovery Plan includes the following primary sub-objective for delisting the species:

Mirabilis macfarlanei may be considered recovered when a total of 10 colonies (5 colonies, or any combination of 10, in each of 2 geographically distinct and isolated populations) are protected and managed to assure their continued existence * * *

Specific criteria for reclassifying from endangered to threatened:

Mirabilis macfarlanei may be considered for reclassification to threatened when four of the colonies in each population meet the above criteria. The objectives will be reevaluated should new colonies be discovered.

Recovery objectives have been reevaluated based on additional information developed since 1985. For example, extant colonies (defined as localities currently occupied by plants) that are being protected and managed meet the criteria for reclassification from endangered to threatened. An updated Recovery Plan will be prepared reflecting data obtained since the plant was listed in 1979.

Previous Federal Action

Federal action on this plant taxon began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document *Mirabilis macfarlanei* was considered to be endangered.

On July 1, 1975, the Service published a notice in the Federal Register (40 FR 27823) of its acceptance of this report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the Federal Register (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant taxa including *Mirabilis macfarlanei.* The list of 1,700 species was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, Federal Register publication. General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, Federal Register publication (43 FR 17909). On October 26, 1979, the Service published a final rule listing *M. macfarlanei* as an endangered species (44 FR 61912). A recovery plan was developed and approved for *M. macfarlanei* on March 27, 1985.

Summary of Comments and Recommendations

In the August 26, 1993, proposed rule to reclassify the species from endangered to threatened (58 FR 45085) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final decision. Appropriate State agencies, county governments, city governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comments were published in the Idaho Statesman on October 11, 1993, and in the Portland Oregonian and the Lewiston Tribune on October 12, 1993.

One written comment was received during the 60-day comment period following publication of the proposed rule. The comment was submitted by the U.S. Forest Service. They were in favor of the reclassification of the species to threatened status and provided information considered in developing this rule.

Summary of Factors Affecting the Species

After a through review and consideration of all information available, the Service has determined that *Mirabilis macfarlanei* should be reclassified from an endangered to a threatened 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 reclassifying species on the Federal lists. A species may be listed or reclassified as endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Mirabilis macfarlanei* Const. and Roll. (MacFarlane's four-o'clock) are as follows:

A. *The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.* During a 1991 plant survey, threats identified in the Hells Canyon National Recreation Area portion of the Snake River unit included resumed prospecting or mining near the ''Mine Gulch'' population of *Mirabilis macfarlanei.* Habitat destruction due to vehicular travel along with surface disturbance associated with mining could contribute to degradation of *M. macfarlanei* habitat. For example, the widening of Road No. 493 in the vicinity of the Kurry Creek population

has caused surface disturbance with talus material falling on plants.

Livestock damage was also observed during the 1991 survey, but appeared to minimally impact the species. There was increased weedy invasion in many areas because of previous grazing activity (Mancuso and Moseley 1991). At the present time, all of the populations of *Mirabilis macfarlanei* within the Snake River unit are on habitat managed by the U.S. Forest Service and are directly or indirectly protected through the section 7 consultation process.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Increased collecting pressure is a foreseeable problem if the sites become known. The collection of plant material could easily cause extirpation from many of the localities, especially those with small numbers of plants. Other species of *Mirabilis* are cultivated and prized as garden ornamentals. *Mirabilis macfarlanei* is an attractive plant with a very showy magenta flower. For example, Hitchcock *et al.* (1973) recommended that the ''rather attractive'' plants are worth a try in the wild garden. Statements such as this could invoke actions that place the species in further jeopardy. The Cottonwood Landing population occurs adjacent to a hiking trail along the Snake River in Hells Canyon. Although the population is still unprotected from casual collecting, there has been no apparent decline of the species at this location. Because Hells Canyon is designated as a National Recreation Area, there is a potential for increased recreational use of the river trail and potential collecting.

C. *Disease or Predation.* Mule deer prefer forbs and some utilization of *Mirabilis macfarlanei* has been observed (Johnson 1984). In the West-Kurry Divide 3 location, some feeding has apparently been done by deer and rabbits, but the plant population is not particularly threatened by this use (Mancuso and Moseley 1991).

Studies were conducted by the Bureau between 1981 and 1983 to determine the effect of domestic grazing on *Mirabilis macfarlanei* in the Long Gulch and John Day sites of Idaho (Johnson 1984). The study included both ''cattle grazing'' and ''no cattle grazing'' treatments. The no cattle grazing treatment utilized a 45-acre exclosure at Long Gulch. The grazing treatment was on Bureau land between Long Gulch and John Day Creek. Both of these areas were historically used for fall and spring range by sheep and cattle, with the primary grazing period during spring from late March to early June. This coincides with the peak flowering time for *M. macfarlanei* from mid-May to early June. Bureau studies indicate that *M. macfarlanei* can be adversely affected by high grazing pressure and concentrations of livestock (Johnson 1984). However, moderate to light grazing has caused no detrimental impact to the plant (Johnson, pers. comm. 1992). Tueller and Tower (1979) observed that exclosure sites previously subjected to heavy livestock grazing and now provided protection produce high yields of native forbs and grasses.

During the period of human settlement, much of the Salmon River area was heavily grazed by domestic livestock, with a decline in overall range condition and climax vegetation. Within the Salmon River evolutionary unit, grazing is no longer a threat to populations of *Mirabilis macfarlanei.* The Bureau has reduced grazing on Bureau lands to a point where the plant species is not adversely affected. In the John Day locale, one private landowner has reduced grazing in a cooperative effort to protect *M. macfarlanei* plants and habitat (Riley, Bureau of Land Management, pers. comm. 1992).

In the Snake River evolutionary unit, the Forest Service has two grazing allotments in the vicinity where *Mirabilis macfarlanei* plants are found. However, one allotment in the Tyron Bar area has not been grazed for 12 years. The Hells Canyon National Recreation Area is currently soliciting scoping comments on a proposal to stock portions of the allotment. The proposal will exclude that habitat in the vicinity of the Tyron Bar *M. macfarlanei* populations. In the second allotment, the area in the vicinity of the West-Kurry Divide 1, 2, and 3, *M. macfarlanei* populations are not suitable for grazing due to the lack of water. The Forest Service has also initiated a policy that requires removing domestic livestock from *M. macfarlanei* sites before the plant starts to grow in April (Stein, pers. comm. 1992). Currently, general range improvement has taken place in the canyonlands in the Snake River evolutionary unit where *M. macfarlanei* occurs, due primarily to improved livestock grazing management.

As described in the 1979 final rule that listed *Mirabilis macfarlanei* as an endangered species, at least two species of fungi had been observed on the vegetative parts of the plants in Idaho. Current information neither mentions nor references fungi species affecting plant parts. The fungus identified as a threat in the 1979 listing has not since been reported.

Insect depredation has also been shown to be detrimental to *Mirabilis macfarlanei.* A lepidopteran (*Lithariapteryx spp.*) has been discovered feeding on the buds and leaves of *M. macfarlanei* (Baker 1983). Examination of some of the nearly opened flowers revealed ovaries, as well as other floral and vegetative parts, eaten away. In addition, a second group of depredating insects, including at least two species of spittle bugs, was so abundant on certain plants as to cause the complete dieback of all emergent plant parts (Baker 1983). In many cases, there was significant plant stunting where sizeable numbers of spittle bugs were observed (Baker 1983, 1984). However, these effects have not been observed at all sites.

D. *The inadequacy of existing regulatory mechanisms.* Habitat Management Plans (HMP's) have been developed and implemented for *Mirabilis macfarlanei* for three populations on Bureau lands in the Salmon River unit to provide protection and quality habitat for the species. The three HMP's are for the Long Gulch, Skookumchuck, and Lucile Caves areas in Idaho County, Idaho, along the Salmon River. The Long Gulch HMP area, which includes 45 acres, was fenced in 1981 to exclude cattle grazing. Monitoring studies that began in 1983 used the fenced area to evaluate and compare an ungrazed area with nearby grazed lands. The Skookumchuck HMP, which includes 28 acres located between Highway 95 and the old highway, was developed primarily as a protection mechanism against herbicide use in the immediate area. In addition, seasonal monitoring of *M. macfarlanei* is conducted within the Skookumchuck HMP to determine the trends of the small population. The Lucile Caves HMP was developed to monitor the success of transplanting plants in the area and for use as a research area. Monitoring of the Lucile Caves transplant project indicates that the transplanted population has remained static.

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 *Mirabilis macfarlanei* as endangered (OAR 603–73–070). The Oregon statute contains prohibitions against the ''take'' of State-listed plants, but there are exceptions and significant enforcement difficulties. Some private landowners in Idaho and Oregon have cooperated with the Bureau and the Forest Service to assist in the conservation of *M. macfarlanei.*

Currently, Idaho has not passed legislation to protect endangered or

threatened plants or developed an official State list of such plants.

E. *Other natural or manmade factors affecting its continued existence.* In Bureau studies conducted between 1981 and 1983, no *Mirabilis macfarlanei* plants were noted on moderately sloped areas (less than 20 percent) that were historically used by livestock for loafing and concentration areas (Johnson 1984). Cattle trampling damage to plants was observed in the grazed area, but appeared limited. The presence of livestock trampling the ground and causing soil erosion is also a potential hazard. However, minimal erosion was noticed in the Hells Canyon population locales, even though there was some grazing (Mancuso and Moseley 1991).

Within the Snake River unit, most of the natural communities in the Pittsburg portion of Hells Canyon have been degraded by the invasion of alien weedy plant species, many of them annuals. Most of this degradation has been aggravated by many years of intensive domestic grazing pressures (Mancuso and Moseley 1991). Undesirable plants, especially *Bromus tectorum,* have increased as a result of grazing (Johnson 1984). Because of alien species invasion, the germination, growth, and development of native plants are often impeded. Continued invasion by weedy alien species has been an ongoing problem for *Mirabilis macfarlanei* and many other native plant species. As a result, the inhibition of *M. macfarlanei* growth and development has been noted (Baker 1983).

The Service initiated a study to determine the allelopathic (interference) effects of *Bromus tectorum* on *Mirabilis jalapa* (Peruvian four-o'clock). Preliminary studies indicate that *B. tectorum* inhibits the germination, growth, and development of *M. jalapa* plants. Other selected plants used in laboratory studies showed inhibition similar to *M. jalapa* (Owen 1984). Field studies indicate *M. macfarlanei* is adversely affected when growing with dense stands of *B. tectorum* (Baker 1983; Johnson, pers. comm. 1992). This is especially true during the earlier stages of growth.

To date, low seed viability for *Mirabilis macfarlanei* has been reported; therefore, viable sexual propagation may be very low (Johnson 1984). Low seed viability reduces genetic variability within the species. Primary reproduction of *M. macfarlanei* is rhizomatous and plants are long-lived. Because *M. macfarlanei* plant populations appear to be static after 12 years of data collection, ''natural'' increases are probably very slow or non-existent.

Past indiscriminate herbicide spraying has had adverse effects on the small number of *Mirabilis macfarlanei* plants located within the Salmon River unit downslope from Highway 95. In addition, using insecticides for insect control is detrimental to many of the known pollinators of this species, including several genera of bees. Species of the *Bombus* genus are apparently the most effective pollinators.

Remaining localities of *Mirabilis macfarlanei* with small numbers of plants are subject to elimination from stochastic events. Species that are reduced to very small numbers may also be subject to the additional threat of poor genetic viability. Small numbers may reduce the ability of *M. macfarlanei* to adapt to environmental changes or events that may cause their extirpation. However, the smaller populations reported at several localities in recent surveys have been characterized as vigorous to extremely vigorous.

In summary, this species has been the focus of a 12-year recovery program, and has benefitted from management and research accomplishments. The amount of occupied habitat that has been located in Idaho and Oregon since listing represents a three-fold increase due to new discoveries. In addition, the number of known individuals has increased two hundred sixty-fold from 27 plants, when listed, to approximately 7,212 plants by 1991.

In 1990 and 1991, permanent plots for monitoring population trends of *Mirabilis macfarlanei* were established at Tyron Bar above the Snake River in Oregon, at Fence Creek on the Imnaha River in Oregon, and West Creek on the Snake River in Idaho. A population model to determine population viability will be developed (Kaye *et al.* 1990). Specific parameters monitored in Idaho and Oregon include: (1) numbers at each census plot, (2) cover, (3) average height, (4) flowering plants, (5) phenology, (6) climatic data, (7) deer-, elk-, and cattle-use days, and (8) other vegetation trend data. Permanent photo trend plots, belt transects, and permanent plots have also been established.

Further recovery efforts for *Mirabilis macfarlanei* will depend on cooperation with private landowners. The Service is exploring opportunities for land exchanges to acquire private lands for public ownership to further protect the species.

The discovery of additional localities on public lands, better grazing management, and the static condition of existing populations in both the Salmon River and the Snake River evolutionary units have reduced the degree of threat to this species. The Service is encouraged by the discovery of the third *Mirabilis macfarlanei* unit, with the possibility of more locales being found within each of these evolutionary units. The commitment by the Forest Service to monitor and evaluate *M. macfarlanei* population trends on their lands has benefited the species. The Forest Service has revised livestock grazing practices at locations within the Snake River unit containing *M. macfarlanei,* so that the plants can germinate and develop. Continued monitoring, research, and revised grazing management activities by the Bureau at locations containing *M. macfarlanei* in the Salmon River evolutionary unit has also provided the Service with valuable information on *M. macfarlanei.* The cooperation between the land management agencies and private landowners has also added to the effort to conserve *M. macfarlanei* plants and habitat.

In reviewing the progress toward recovery that this species has made since listing, the Service concludes that *Mirabilis macfarlanei* is no longer in danger of extinction throughout all or a significant portion of its range. However, due to a lack of plant recruitment in some areas, insect predation, alien plant invaders, and several small populations, the Service finds that delisting this species is not warranted at this time. In light of the foregoing threats, *M. macfarlanei* may still be likely to become endangered in the foreseeable future without further site protection and improved recruitment.

The Service has carefully assessed the best scientific and commercial information available regarding past, present, and future threats faced by the species in finalizing this rule. Based on this evaluation, this rule reclassifies *Mirabilis macfarlanei* from endangered to threatened status. Critical habitat is not being designated for reasons discussed in the ''Critical Habitat'' section of this rule.

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, the Secretary designate critical habitat at the time a species is listed. The Service finds that designation of critical habitat is not prudent for *Mirabilis macfarlanei* at this time. 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.

As discussed under Factor B above, *Mirabilis macfarlanei* is vulnerable to taking and vandalism. Landowners have been alerted to the presence of the plant without the publication of precise maps and descriptions of critical habitat in the Federal Register, as required in a proposal for critical habitat. The publication of such precise maps and descriptions would increase the vulnerability of these plants to take or vandalism and, therefore, could contribute to their decline. As noted previously, *M. macfarlanei* is an attractive plant with beautiful magenta flowers. Protection of the species' habitat will continue to be addressed through the recovery process and through the section 7 consultation process. Therefore, the Service finds that designation of critical habitat for *M. macfarlanei* is not prudent at this time because such designation would increase the species' vulnerability to vandalism and collecting and because it is unlikely to aid in the conservation of the species.

Effects of the Rule

This rule changes the status of *Mirabilis macfarlanei* from endangered to threatened and formally recognizes that this species is no longer in imminent danger of extinction throughout a significant portion of its range. Reclassification to threatened does not significantly alter the protection afforded this species under the Act.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any listed species. The consultation and other requirements of section 7 apply equally to endangered and threatened species. Most populations of *Mirabilis macfarlanei* occur on Forest Service or Bureau lands. These agencies have been involved in recovery and section 7 consultation activities for this species since it was listed as endangered in 1979 and are likely to remain involved. Recovery activities are not expected to diminish since the primary objective of the recovery strategy is delisting of the species. The recovery plan will be revised to reflect information acquired since the original plan was approved in 1985.

Certain prohibitions that apply to endangered plants do not apply to plants listed as threatened. The removal and reduction to possession of *Mirabilis macfarlanei* from areas under Federal jurisdiction continues to be prohibited under section 9 of the Act and 50 CFR 17.71. However, the malicious damage or destruction of endangered plants on areas under Federal jurisdiction, and the removal, cutting, digging up or damage or destruction of endangered 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 will no longer constitute a violation of section 9. Take of *M. macfarlanei* will continue to be prohibited pursuant to the State of Oregon's Endangered Species Act. The import, export, and interstate and foreign commerce prohibitions of section 9 continue to apply to *M. macfarlanei.*

Pursuant to section 10 of the Act and 50 CFR 17.72, permits may be issued to carry out otherwise prohibited activities involving threatened plants. Such permits are available for scientific purposes and to enhance the propagation or survival of endangered and threatened species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes and policy of the Act. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (503/231–2063; FAX 503/231–6243).

This reclassification is not an irreversible commitment on the part of the Service. Reclassifying *Mirabilis macfarlanei* to endangered would be possible should changes occur in management, habitat, or other factors that alter the present threats to the species' survival and recovery.

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Boise Field Office (See **ADDRESSES** above).

Author: The primary author of this final rule is Dr. Andrew F. Robinson Jr., U.S. Fish and Wildlife Service, 2600 SE 98th Avenue, Suite 100, Portland, Oregon 97266 (503/231–6179).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended 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.

§ 17.12 [Amended]

2. Section 17.12(h) is amended by revising the entry in the ''Status'' column for *Mirabilis macfarlanei* under ''FLOWERING PLANTS'' to ''T'' instead of ''E'', and the entry in the ''When listed'' column to read ''66,581''.

Dated: November 9, 1995.

Mollie H. Beattie,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 96–6213 Filed 3–14–96; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 960129019–6019–01; I.D. 031196E]

Groundfish of the Bering Sea and Aleutian Islands Area; Pacific Ocean Perch in the Central Aleutian District

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific ocean perch in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the specification of Pacific ocean perch in this area.