

by email, please contact CEQ's Office of the General Counsel for assistance by calling 202-395-5750.

(b) Your request must describe the records that you want, in enough detail to enable CEQ to locate them with a reasonable amount of effort.

(1) You should name or describe the system of records you want CEQ to search.

(2) If you are not sure which system of records you are interested in, you may request that CEQ inform you which of its systems of records, if any, contain records about you.

(c) To protect the privacy of your records, CEQ will require you to verify your identity before processing your request. CEQ may require you to:

(1) Provide a statement that contains your name, your current address, and your date and place of birth, and sign the statement before a notary public;

(2) Verify your identity using an electronic authentication process; or

(3) Supply additional information as necessary in order to verify your identity.

(d) CEQ may deny your request if:

(1) CEQ prepared the records you are seeking in reasonable anticipation of a civil action or proceeding (that is, a lawsuit or a similar proceeding); or

(2) The Privacy Act exempts the system containing your records from the requirement that CEQ provide those records upon request.

(e) If CEQ grants your request, you may arrange to review your records in person, obtain a copy from CEQ, or both. If you choose to review your records in person, you may choose one person to accompany you, except that CEQ may first require you to authorize CEQ to discuss your records in that person's presence.

(f) If CEQ denies your request in whole or in part, CEQ will give you the reason for its decision in writing and explain how you can challenge the denial.

#### **§ 1516.5 How can I get information about how CEQ has used its records about me?**

You can request information about how CEQ has used its records about you—called an “accounting of disclosures”—using the same procedures you would use to make a request for access to your records under § 1516.4.

#### **§ 1516.6 How can I ask CEQ to correct my records?**

(a) You can request that CEQ correct or update its records about you using the same procedures you would use to make a request for access to your records under § 1516.4.

(b) In your request, you must explain exactly what change you are requesting and point out specific pieces of information in your CEQ records that are inaccurate, irrelevant, outdated, or incomplete.

(c) CEQ will review your request, decide whether to grant or deny it, and inform you of the decision within 10 working days (*i.e.*, excepting Saturdays, Sundays, and Federal holidays).

(d) If CEQ denies your request, CEQ will give you the reason for its decision in writing and explain how you can appeal the denial.

#### **§ 1516.7 How can I appeal CEQ's decision to deny my request to access or correct records about me?**

(a) If CEQ denies your request to access or correct CEQ's records about you, you can appeal the decision using the same procedures you would use to make a request for access to your records under § 1516.4.

(b) In your appeal, you must include a copy of CEQ's decision denying your request and explain exactly why you believe the decision was wrong.

(c) The General Counsel of CEQ (or the General Counsel's designee) will review your appeal, decide whether to grant or deny it, and inform you of the decision within 30 working days. If it is necessary to extend the time for making a decision, the Chair of CEQ (or the Chair's designee) will explain why in writing.

(d) If CEQ's General Counsel (or designee) denies your appeal, you may provide CEQ with a concise statement that explains your disagreement with the decision, and you may bring a civil lawsuit against CEQ.

(1) If CEQ subsequently discloses the disputed record under § 1516.4, we will clearly identify the disputed portion of the record and attach a copy of your statement of disagreement.

(2) For more information about filing a civil lawsuit, see 5 U.S.C. 552a(g)(1).

#### **§ 1516.8 Will CEQ charge me a fee for a copy of my records?**

If you request a copy of CEQ's records about you, CEQ may charge you a fee of no more than 10 cents per page, which you must pay before CEQ provides you with a copy of your records.

[FR Doc. 2024-28871 Filed 12-10-24; 8:45 am]

**BILLING CODE 3325-FA-P**

## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

[Docket No. FWS-R1-ES-2024-0005; FXES1113090FEDR-245-FF09E22000]

RIN 1018-BG68

#### **Endangered and Threatened Wildlife and Plants; Reclassification of the Rough Popcornflower From Endangered to Threatened With a Section 4(d) Rule**

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to reclassify the rough popcornflower (*Plagiobothrys hirtus*) from endangered to threatened (downlist) under the Endangered Species Act of 1973, as amended (Act). The proposed downlisting is based on our evaluation of the best available scientific and commercial information, which indicates that the species' status has improved such that it is not currently in danger of extinction throughout all or a significant portion of its range, but that it is still likely to become so within the foreseeable future. We also propose protective regulations under the authority of section 4(d) of the Act that are necessary and advisable to provide for the conservation of the rough popcornflower.

**DATES:** We will accept comments received or postmarked on or before February 10, 2025. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by January 27, 2025.

**ADDRESSES:** You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <https://www.regulations.gov>. In the Search box, enter FWS-R1-ES-2024-0005, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment.”

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R1-ES-2024-0005, U.S. Fish and

Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

**Availability of supporting materials:** This proposed rule and supporting documents, including the 5-year reviews, the Recovery Plan, and the species status assessment (SSA) report are available at <https://www.regulations.gov> at Docket No. FWS–R1–ES–2024–0005.

**FOR FURTHER INFORMATION CONTACT:**

Kessina Lee, State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266; telephone: (503) 231–6179. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. Please see Docket No. FWS–R1–ES–2024–0005 on <https://www.regulations.gov> for a document that summarizes this proposed rule.

**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

**Why we need to publish a rule.** Under the Act, a species warrants reclassification from endangered to threatened if it no longer meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range). The rough popcornflower is listed as endangered, and we are proposing to reclassify (downlist) the rough popcornflower as threatened. We have determined the rough popcornflower does not meet the Act's definition of an endangered species, but it does meet the Act's definition of a threatened species (likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range). Reclassifying a species as a threatened species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

**What this document does.** This rule proposes to downlist the rough popcornflower from endangered to

threatened, with a rule issued under section 4(d) of the Act (a “4(d) rule”), based on the species' current status, which has been improved through implementation of conservation actions.

**The basis for our action.** Under the Act, we may determine that a species is an endangered species or a threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We may reclassify a species if the best available commercial and scientific data indicate the species no longer meets the applicable definition in the Act. Based on the status review, the current threats analysis, and evaluation of conservation measures discussed in this proposed rule, we conclude that the rough popcornflower no longer meets the Act's definition of an endangered species and should be reclassified to a threatened species. The species is no longer in danger of extinction throughout all or a significant portion of its range, but it is likely to become so within the foreseeable future.

We have determined that rough popcornflower is a threatened species due to the following threats: destruction or alteration of habitat by development and hydrological changes, competition from native and nonnative plant species, and impacts due to climate change.

**Information Requested**

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) Reasons we should or should not downlist the rough popcornflower as a threatened species.

(2) New information on the historical and current status, range, distribution, and population size of the species.

(3) New information on the known and potential threats to the species, including habitat loss, habitat modification, competition, or climate change.

(4) New information regarding the life history, ecology, and habitat use of the species.

(5) Current or planned activities within the geographic range of the species that may have adverse or beneficial impacts on the species.

(6) Information to assist with applying or issuing protective regulations under section 4(d) of the Act that may be necessary and advisable to provide for the conservation of the rough popcornflower.

(a) In particular, information concerning the extent to which we should include any of the section 9 prohibitions in the 4(d) rule; or

(b) whether we should consider any additional or different exceptions from the prohibitions in the 4(d) rule.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via <https://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <https://www.regulations.gov>.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <https://www.regulations.gov>.

Our final determination may differ from this proposal because we will consider all comments we receive during the comment period, as well as any information that may become available after this proposal. Based on the new information we receive (and if relevant, any comments on that new

information), we may conclude that the species should remain listed as endangered instead of being reclassified as threatened, or we may conclude that the species no longer warrants listing as either an endangered species or a threatened species. In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions in the protective regulations under section 4(d) of the Act if we conclude it is appropriate in light of comments and new information received. For example, we may expand the prohibitions if we conclude that the protective regulation as a whole, including those additional prohibitions, is necessary and advisable to provide for the conservation of the species. Conversely, we may establish additional or different exceptions to the prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of the species. In our final rule, we will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

#### Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

#### Previous Federal Actions

Section 12 of the Act 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. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) of our acceptance of the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act and our intention to review the status of the plant species named in the report.

On June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to designate approximately 1,700 vascular plant species, including rough popcornflower, as endangered pursuant to section 4 of the Act. In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. On December 10, 1979, we 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.

On December 15, 1980, we published an updated notice of review for plants in the **Federal Register** (45 FR 82480) that included rough popcornflower as a category 1 candidate species. On November 28, 1983, we published a supplement to the December 15, 1980, notice of review in the **Federal Register** (48 FR 53640) in which we changed the status of rough popcornflower to a category 2 candidate species, and this species remained a category 2 candidate species until 1996. On January 20, 1984, we published a notice in the **Federal Register** (49 FR 2485) that the petitioned listing of this species was warranted but precluded by other pending listing actions. On February 28, 1996, we published a notice of review in the **Federal Register** (61 FR 7596) that discontinued the designation of category 2 species as candidates. In that notice of review, we retained rough popcornflower as a candidate species.

On November 20, 1997, we published a proposed rule in the **Federal Register** (62 FR 61953) to list this species as an endangered species under the Act, and on January 22, 1998, we announced a public hearing on, and reopened and extended the comment period for, that proposal (63 FR 3301). On January 25, 2000, we published a final rule in the **Federal Register** (65 FR 3866) to list the rough popcornflower as an endangered species without designating critical habitat.

On January 28, 2003, we published in the **Federal Register** (68 FR 4228) a notice of availability of the draft recovery plan for the rough popcornflower (hereafter “recovery plan”). We published the notice of availability for the final recovery plan on September 25, 2003 (68 FR 55410). On October 25, 2019, we published a notice of availability of a draft amendment updating the recovery criteria in the recovery plan (84 FR 57468), and that recovery plan amendment was signed on December 20, 2019.

On April 29, 2008, we published in the **Federal Register** (73 FR 23264) a

notice of initiation of a 5-year review for rough popcornflower. A 5-year review was completed on August 11, 2010, recommending no change in the plant’s endangered status. On February 12, 2016, we again published in the **Federal Register** (81 FR 7571) a notice of initiation of a 5-year review for rough popcornflower. In the most recent 5-year status review completed on April 14, 2021, we determined the species no longer met the Act’s definition of an endangered species and should be reclassified to a threatened species. The 2021 5-year status review is available at <https://www.regulations.gov> under Docket No. FWS–R1–ES–2024–0005 and at [https://ecosphere-documents-production-public.s3.amazonaws.com/sams/public\\_docs/species\\_nonpublish/949.pdf](https://ecosphere-documents-production-public.s3.amazonaws.com/sams/public_docs/species_nonpublish/949.pdf).

For additional details on previous Federal actions, see <https://ecos.fws.gov/ecp/species/2500> for the species profile for this plant.

#### Peer Review

A species status assessment (SSA) team prepared an SSA report for the rough popcornflower. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review in listing actions under the Act, we solicited independent scientific review of the information contained in the rough popcornflower SSA report. We sent the SSA report to three independent peer reviewers and received two responses. The peer reviews can be found at <https://www.regulations.gov>. In preparing this proposed rule, we incorporated the results of these reviews, as appropriate, into the SSA report, which is the foundation for this proposed rule.

#### Summary of Peer Reviewer Comments

As discussed above in Peer Review, we received comments from two peer reviewers on the draft SSA report. We reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the information contained in the SSA report. The peer reviewers generally concurred with our methods and provided additional information,

clarifications, and editorial suggestions. Two specific comments were to include a description of the role of natural disturbances in the species' habitat and to offer an explanation of the downlisting criteria as they relate to a minimum population size. We clarified these aspects in the SSA report. Otherwise, no substantive changes to our analysis and conclusions within the SSA report were deemed necessary, and

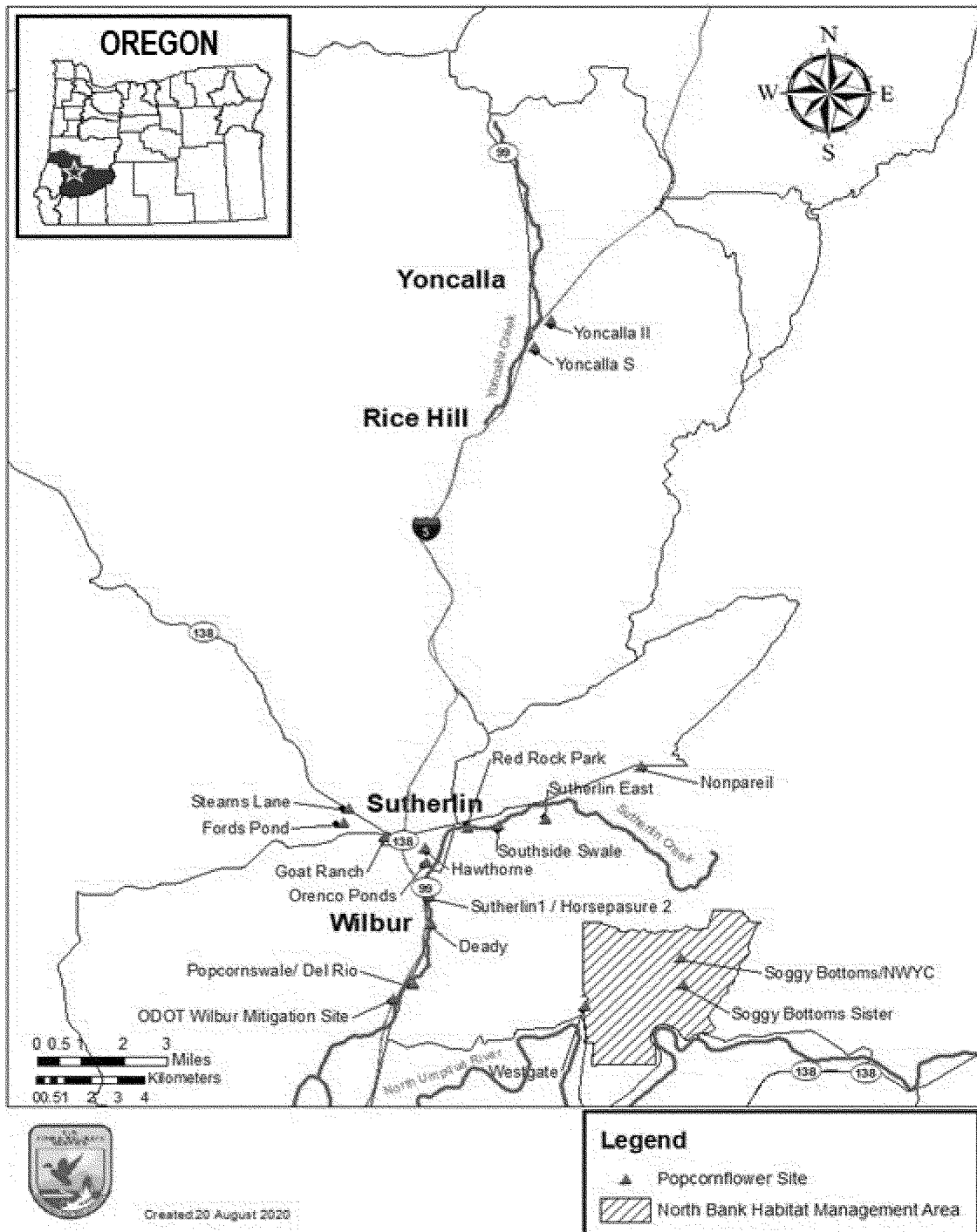
peer reviewer comments are addressed in version 1.0 of the SSA report (USFWS 2021, entire).

**Proposed Reclassification Determination**

*Background*

Rough popcornflower (*Plagiobothrys hirtus*) is an herbaceous plant in the borage or "forget-me-not" family

(Boraginaceae) and is endemic to the Umpqua River basin in Douglas County, Oregon. Rough popcornflower is closely associated with emergent wetlands within seasonally wet meadows or prairie and relatively level, open habitats formed from poor draining clay-loam soils, concentrated in the Sutherlin Creek sub-watershed in Oregon (see figure 1, below).



**Figure 1. Distribution of rough popcornflower in Douglas County, Oregon.**

Rough popcornflower can be either an annual or a short-lived perennial. Individual rough popcornflower plants are between 2.75 inches (in) (7 centimeters (cm)) and 23.6 in (60 cm) tall, with narrow, bright-green leaves. Their trumpet-shaped, non-fragrant flowers consist of five fused petals, and are mostly white with yellow centers. Rough popcornflower plants, whether annual or perennial, reach sexual maturity and produce fruits in their first year. The plants generally germinate in the fall, bloom in late spring and early summer, produce seed beginning in late June, and then senesce between July and November. The species is capable of either self-fertilization or cross-fertilization; however, generalist insect pollination appears to be the predominant vector enabling rough popcornflower reproduction (Amsberry and Meinke 2001, pp. 12–13). A thorough review of the taxonomy, life history, and ecology of the rough popcornflower is presented in the SSA report, version 1.0 (USFWS 2021, entire).

*Recovery Criteria*

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the Lists of Endangered and Threatened Wildlife and Plants.

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species, or to delist a species, is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that

information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and that the species is robust enough that it no longer meets the definition of an endangered species or a threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan. Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

We completed a final recovery plan for the rough popcornflower in 2003 (USFWS 2003, entire) and amended the plan in 2019 (USFWS 2019, entire). The objective of the original recovery plan for rough popcornflower was to reduce the threats and increase population viability to the point that the species could be downlisted to threatened status (USFWS 2003, p. 21). The original recovery plan assigned each known natural population to one of three recovery units (Calapooya Creek, Sutherlin Creek, and Yoncalla Creek). The recovery units each corresponded to a drainage basin within the Lower North Umpqua system and represented groups of populations which share phenotypic similarities and are potentially genetically similar to one another. The original recovery plan also established recovery criteria for downlisting (USFWS 2003, pp. 21–22). At that time, the information available was insufficient to identify recovery criteria for delisting. The 2019 recovery plan amendment evaluated the adequacy of existing recovery criteria, amended downlisting criteria, added delisting criteria, and presented rationale supporting the recovery plan modification (USFWS 2019, entire).

Below are the downlisting criteria for the rough popcornflower as amended in 2019 (USFWS 2019, pp. 4–6), and the progress made to date toward achieving each criterion.

*Criterion 1 for Downlisting*

Criterion 1 states that at least 9 reserves, containing a minimum of 5,000 plants each, are protected and managed to assure their long-term survival. A reserve refers to one or more patches of rough popcornflower located within 0.6 miles (mi) (1 kilometer (km)) of each other that are protected from development and managed for the continued existence of the species (USFWS 2019, p. 3). The minimum population size of 5,000 individuals per reserve is intended to provide sufficient resiliency to withstand stochastic events (Culotta 1995, pp. 31–32; Traill et al. 2007, p. 164). The number of reserves is intended to provide sufficient redundancy such that rough popcornflower is not at risk of extinction due to catastrophic events. The maximum distance between patches within a reserve provides connectivity for pollinator-mediated gene flow across the population (USFWS 2019, p. 4).

At the time of listing, our knowledge of rough popcornflower abundance and distribution was limited to roughly 7,000 known plants in 8 populations (USFWS 2021 p. 9). Since then, many conservation partners have made significant contributions to rough popcornflower recovery efforts. For example, the Oregon Department of Agriculture has collected seed, sown seed for use by multiple partners, augmented existing populations, conducted monitoring, and provided technical expertise. Other conservation partners, such as the Douglas County Soil and Water Conservation District, City of Sutherlin, and Bureau of Land Management, have entered into formal agreements to perform habitat restoration followed by seeding on a number of properties. Recent surveys (USFWS 2021, appendix 3; USFWS 2022, entire; USFWS 2023a, entire) documented a total of 12 rough popcornflower reserves. Eleven of those reserves are protected and managed while one reserve (a privately owned parcel containing over 700,000 plants) is currently adequately managed but is not protected (see table 1, below). Ten of the 12 reserves meet the minimum population size of 5,000 individuals per reserve to fully satisfy criterion 1. This number of plants and the distribution of populations is expected to enable rough popcornflower to withstand both stochastic and catastrophic events, and to maintain the capacity to adapt to future environmental changes. As such, we conclude that this downlisting criterion has been met and exceeded.

*Criterion 2 for Downlisting*

Criterion 2 states a minimum of 5,382 square feet (ft<sup>2</sup>) (500 square meters (m<sup>2</sup>)) is occupied by the rough popcornflower within each of the 9 reserves meeting criterion 1. The intent of this criterion is to have multiple populations large enough to maintain sufficient resiliency to withstand stochastic events.

Seven of the 10 reserves that meet criterion 1 contain at least 5,382 ft<sup>2</sup> (500 m<sup>2</sup>) of occupied habitat to meet the description of criterion 2. Two other populations (Deady and Southside Swale) also meet or exceed the area coverage parameter but do not satisfy the criterion as they are either not considered to be a protected population or do not meet the minimum number of plants to be considered a reserve (see table 1, below). Although this criterion is not fully met as identified in the recovery plan, there are nine populations that meet or exceed the area coverage parameter. We conclude that the intent of this criterion has been met because having 9 populations with 5,382 ft<sup>2</sup> (500 m<sup>2</sup>) occupied by rough popcornflower distributed across the species' range is expected to enable rough popcornflower to withstand both stochastic and catastrophic events, and to maintain the capacity to adapt to future environmental changes.

*Criterion 3 for Downlisting*

Criterion 3 states that a minimum of nine reserves, each meeting criteria 1 and 2, are distributed across the recovery units, with a minimum of five reserves in the Sutherlin Creek recovery unit and at least one reserve each in the Yoncalla Creek and Calapooya Creek recovery units. The remaining two reserves may be located within any of

the natural recovery units, or elsewhere within the watersheds containing the recovery units. The intent of this criterion is to provide sufficient redundancy of populations across the species' range to allow the species to withstand catastrophic events.

Of the seven reserves meeting criteria 1 and 2, four are in the Sutherlin Creek recovery unit, one is in the Yoncalla Creek recovery unit, and two are in the Umpqua Management Area, which includes introduced populations of rough popcornflower in the Bureau of Land Management (BLM)'s North Bank Habitat Management Area.

Criterion 3 has not been fully met because the number of reserves fully meeting both criteria 1 and 2 is not met. However, the distribution of 11 populations that exceed 5,000 plants (10 protected) across all recovery units and the Umpqua Management Area, and 9 populations that exceed 5,382 ft<sup>2</sup> (500 m<sup>2</sup>) occupied by rough popcornflower, demonstrate that relatively large populations are spatially distributed across the species' range such that rough popcornflower is expected to withstand both stochastic and catastrophic events, and to maintain the capacity to adapt to future environmental changes, lead us to conclude that the intent of this downlisting criterion has been met.

*Criterion 4 for Downlisting*

Criterion 4 states that over a 5-year period, with a minimum of 3 individual years of monitoring, demographic data indicate at least seven of the nine reserves referenced in criterion 1 have average population numbers that are stable or increasing, without decreasing trends lasting more than 2 years. Stable or increasing populations are an

indicator of resiliency. While some inter-annual variability is expected due to demographic and environmental stochasticity, this criterion is intended to provide sufficient confidence that large, sustained declines will not occur. Population monitoring, which entails taking a full plant census, takes place in late spring or early summer either annually or biannually. We monitor populations on private, city, or county land when authorized to do so. Alternatively, we provide funding through the Cooperative Endangered Species Conservation Fund to the Oregon Department of Agriculture to monitor populations. Conservation partners including the Bureau of Land Management, Oregon Department of Transportation, and The Nature Conservancy monitor populations on their lands biennially.

Five of the 10 rough popcornflower reserves that meet criterion 1 also currently meet this criterion (see table 1, below). Although the remaining five reserves meeting criterion 1 have not been monitored with sufficient frequency to satisfy all of the requirements of this criterion, they have maintained relatively stable population numbers between monitoring events from 2011 to 2023 (USFWS 2021 pp. 13–16; USFWS 2022, entire; USFWS 2023a, entire). Having all 10 of the reserve populations exhibiting stable or increasing numbers across the range of the species demonstrates that rough popcornflower has sufficient resiliency to respond to inter-annual environmental variability and is unlikely to experience sustained declines across its range. As such, we conclude that the intent of this downlisting criterion has been met.

TABLE 1—ROUGH POPCORNFLOWER DOWNLISTING CRITERIA AND STATUS BY RECOVERY UNITS/AREA, DOUGLAS COUNTY, OREGON  
[✓ = criterion met]

Population	Recovery unit	Downlisting criteria					
		#1			#2	#3	#4
		Plants >5,000 (# of plants)	Managed or protected	Patches within 1 km	Area >500 m <sup>2</sup> (size in m <sup>2</sup> )	DC #1 and #2 met <sup>4</sup>	3 survey yrs. w/in last 5 yrs.; no 2-yr decrease
1. Horsepasture 2 .....	Sutherland Creek ..	✓ (700,000)	✓	✓	✓ (10,700)	✓	.....
2. TNC <sup>1</sup> Oerding/ODOT <sup>2</sup> Del Rio .....	Sutherland Creek ..	✓ (29,681)	✓	✓	✓ (800)	✓	✓
3. ODOT <sup>2</sup> Wilbur Mitigation site .....	Sutherland Creek ..	✓ (42,511)	✓	✓	✓ (1,810)	✓	.....
4. Hawthorne .....	Sutherland Creek ..	✓ (250)	.....	✓	✓ (150)	.....	.....
5. Orengo Ponds .....	Sutherland Creek ..	✓ (14,380)	✓	✓	✓ (1,500)	✓	✓
6. Red Rock .....	Sutherland Creek ..	✓ (5,092)	✓	✓	✓ (372)	.....	✓
7. Southside Swale .....	Sutherland Creek ..	✓ (525)	✓	✓	✓ (550)	.....	✓
8. Deady .....	Sutherland Creek ..	✓ (6,000)	.....	✓	✓ (500)	.....	.....

TABLE 1—ROUGH POPCORNFLOWER DOWNLISTING CRITERIA AND STATUS BY RECOVERY UNITS/AREA, DOUGLAS COUNTY, OREGON—Continued  
 [✓ = criterion met]

Population	Recovery unit	Downlisting criteria					
		#1			#2	#3	#4
		Plants >5,000 (# of plants)	Managed or protected	Patches within 1 km	Area >500 m <sup>2</sup> (size in m <sup>2</sup> )	DC #1 and #2 met <sup>4</sup>	3 survey yrs. w/in last 5 yrs.; no 2-yr decrease
9. Sutherland East .....	Sutherland Creek ..	(1,000)	.....	✓	(6)	.....	.....
10. Ford's Pond .....	Callapooya Creek ..	✓ (5,082)	✓	✓	(450)	.....	✓
11. Stearns Lane .....	Callapooya Creek ..	(0)	.....	✓	(0)	.....	.....
12. Nonpareil .....	Callapooya Creek ..	(0)	.....	✓	(0)	.....	.....
13. Goat Ranch .....	Callapooya Creek ..	(75)	.....	✓	(5)	.....	.....
14. ODOT <sup>2</sup> Yoncalla South .....	Yoncalla Creek .....	✓ (5,800)	✓	✓	(350)	.....	.....
15. ODOT <sup>2</sup> Yoncalla 2 .....	Yoncalla Creek .....	✓ (5,595)	✓	✓	(800)	✓	.....
16. Soggy Bottoms Patch .....	Umpqua Mgmt. Area <sup>3</sup> .	(3,363)	✓	✓	(108)	.....	.....
17. Middle Barn/Soggy Bottoms Sister .....	Umpqua Mgmt. Area <sup>3</sup> .	✓ (11,222)	✓	✓	(1,000)	✓	✓
18. Westgate .....	Umpqua Mgmt. Area <sup>3</sup> .	✓ (6,000)	✓	✓	(600)	✓	.....
Total .....	.....	836,576 plants	.....	.....	19,701 m <sup>2</sup>	.....	.....

<sup>1</sup> TNC means The Nature Conservancy.

<sup>2</sup> ODOT means the Oregon Department of Transportation.

<sup>3</sup> The Umpqua Management Area is not an official recovery unit. This area is an additional recovery management area that includes introduced populations of rough popcornflower in the Bureau of Land Management (BLM)'s North Bank Habitat Management Area.

<sup>4</sup> Downlisting Criterion 3 states that a minimum of nine reserves, each meeting the requirements in Downlisting Criteria 1 and 2, are distributed with at least one reserve each in the Calapooya Creek and Yoncalla Creek recovery units, and a minimum of five reserves in the Sutherlin Creek recovery unit.

**Regulatory and Analytical Framework**

*Regulatory Framework*

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for threatened and endangered species.

The Act defines an “endangered species” as a species that is in danger of extinction throughout all or a significant portion of its range, and a “threatened species” as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; or
- (E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species’ continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects. We consider these same five factors in downlisting a species from endangered to threatened.

We use the term “threat” to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term “threat” includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term “threat” may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an “endangered species” or a “threatened species.” In determining whether a species meets either definition, we must evaluate all identified threats by considering the species’ expected response and the effects of the threats—in light of those

actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an “endangered species” or a “threatened species” only after conducting this cumulative analysis and describing the expected effect on the species.

The Act does not define the term “foreseeable future,” which appears in the statutory definition of “threatened species.” Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis which is further described in the 2009 Memorandum Opinion on the foreseeable future from the Department of the Interior, Office of the Solicitor (M-37021, January 16, 2009; “M-Opinion,” available online at <https://www.doi.gov/sites/doi.opengov.ibmcloud.com/files/uploads/M-37021.pdf>). The foreseeable future extends as far into the future as the U.S. Fish and Wildlife Service and

National Marine Fisheries Service (hereafter, the Services) can make reasonably reliable predictions about the threats to the species and the species' responses to those threats. We need not identify the foreseeable future in terms of a specific period of time. We will describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species' life-history characteristics, threat-projection timeframes, and environmental variability. In other words, the foreseeable future is the period of time over which we can make reasonably reliable predictions. "Reliable" does not mean "certain"; it means sufficient to provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the Act.

#### *Analytical Framework*

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be reclassified as a threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess the rough popcornflower's viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated individual

species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report (USFWS 2021, entire) can be found on <https://www.regulations.gov> under Docket No. FWS–R1–ES–2024–0005.

#### **Summary of Biological Status and Threats**

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability. In addition, the SSA report (USFWS 2021, entire) documents our comprehensive biological status review for the species, including an assessment of the potential threats to the species.

The following is a summary of this status review and the best available information gathered since that time that have informed this decision.

#### *Ecological Needs*

Rough popcornflower typically occupies seasonally wet meadows or prairie, seasonally-ponding mudflats, and Oregon ash (*Fraxinus latifolia*) swale openings dominated by native wetland-associated plants in valley lowlands where the ground is moist well into the summer season. Rough popcornflower requires early seral habitat and is not associated with dense tree or shrub canopies. Periodic disturbance (e.g., flooding, fire, mowing, or grazing) is necessary to control nonnative and native plant competitors and maintain the early seral and open habitat conditions in which rough popcornflower populations thrive. Several insects are known to pollinate rough popcornflower: honey bees (*Apis* spp.); bumble bees (*Bombus* spp.); halictid and megachilid bees; Hemiptera (true bugs); bombyliid, syrphid, and tachinid flies; and red-shouldered ctenucha moths (*Ctenucha rubroscapus*). These insects require

diverse native vegetation and minimal pesticide exposure.

Resilient rough popcornflower populations need enough individuals to withstand stochastic events and disturbances. The minimum viable population size for rough popcornflower has not been identified. However, the recovery plan characterizes 500 plants as an effective population size and expanded that effective population size by a factor of 10 to determine a minimum population size estimate of 5,000 plants. This number represents the population size resilient to most disturbances and capable of resisting inbreeding depression (USFWS 2003, p. 17; USFWS 2019, p. 4). Though some current populations may have fewer than 5,000 plants, taking into consideration other factors such as habitat quantity, habitat quality, connectivity, management, protection, reproduction, they may still be considered to have high resiliency (USFWS 2021, p. 31).

For rough popcornflower to be considered viable as a species, it must be able to withstand catastrophic events and adapt to environmental changes. This can be achieved with enough resilient populations distributed across the species' geographic range, representing the range of ecological settings in which the species is known to exist. The minimum number of populations required for rough popcornflower has not been determined. However, distribution and abundance goals laid out in the recovery plan (USFWS 2003, pp. 21–22; USFWS 2019, pp. 4–8) and described above under Recovery Criteria provide a benchmark for evaluating the species' condition.

#### *Factors Influencing the Species*

When we listed rough popcornflower as endangered (65 FR 3866; January 25, 2000), the primary threats included habitat alteration by wetland filling and development, livestock grazing (or herbivory), and competition from native and nonnative species. Small, isolated populations were identified as making the species more vulnerable to these threats. Overcollection for scientific or horticultural purposes, vandalism, the inadequacy of regulatory mechanisms, road maintenance, fire, and flooding were also identified as potential threats (65 FR 3866 at 3870–3872; January 25, 2000), but the available information does not indicate that these factors pose a threat to the species (USFWS 2003, p. 13; USFWS 2023b, entire). Climate change was recognized as an additional threat in 2010 (USFWS 2010, p. 28).



### Habitat Loss and Fragmentation

In the final listing rule (65 FR 3866 at 3869; January 25, 2000), we described how rough popcornflower populations had become fragmented due to draining and filling of wetlands from properties being developed. At the time of listing, only five populations of rough popcornflower were protected from detrimental land-use activities. Currently, 11 of the 18 known populations are under Federal, State, municipal, or land trust protections; one is not protected but is on adequately managed land. Education efforts have increased recognition of rough popcornflower habitat, as well as avoidance, minimization, or mitigation of development impacts. Because 11 of the 18 known populations are now protected, the threat posed by detrimental land use activities has been significantly reduced since the time of listing. However, because formal commitments for the long-term beneficial management of rough popcornflower have not been secured for 7 populations (approximately 84 percent of the total number of individuals rangewide) this threat may increase in the future.

### Small Population Size

In the final listing rule (65 FR 3866 at 3869–3870; January 25, 2000), we described the distribution of the rough popcornflower as 17 small patches of 1 to 3,000 plants (8 populations with approximately 7,000 plants total) that were threatened by natural (*i.e.*, flood) and/or anthropogenic (*e.g.*, herbicide treatment) events. At that time, the species' small population size was considered a threat because a single natural or human-caused event could have the potential to extirpate rough popcornflower patches.

Since that time, rough popcornflower occurrences have expanded to 18 populations and more than 800,000 plants (see table 1, above). Twelve of the 18 current individual populations have 3,000 or more plants, 11 of which have more than 5,000 plants. Although small populations occur that remain vulnerable to extirpation, individual populations are broadly distributed and the likelihood of a large-scale event affecting them collectively is unlikely. During years with below average precipitation, drought, or fires, seed set could fall short of what is needed to maintain population stability. However, with a large amount of seed produced by plants, it is likely that any periodic depletion of seed bank will be short-term and the seed bank will be replenished (USFWS 2021, p. 7). One

population thought to be extirpated for several years was documented flowering after 3 years of species absence (Amsberry and Meinke 2008, p. 14).

At the time of listing, data also indicated that small, isolated populations may not be able to sustain adequate genetic variation, and that a lack of connectivity between isolated patches and populations would limit pollinator-mediated gene flow. Our current analysis of connectivity for the 18 rough popcornflower populations ranked 11 populations as having high connectivity (within 950 meters (m) (3,117 feet (ft)) or less) and 3 populations as having medium connectivity (between 950 and 1,500 m (3,117 and 4,921 ft)) (USFWS 2021, p. 35), indicating that rough popcornflower populations are less isolated than at the time of listing. Overall, while the connectivity of small populations is still of some concern, the species is much less vulnerable to the effects of small population size and genetic isolation than when it was listed in 2000.

### Herbivory

Herbivory by Columbian white-tailed deer (*Odocoileus virginianus leucurus*), black-tailed deer (*Odocoileus hemionus columbianus*), rodents, and livestock has been documented and was identified as a threat to rough popcornflower (65 FR 3866 at 3871; January 25, 2000). Although high densities of white-tailed and black-tailed deer overlap with the distribution of rough popcornflower, the best available information does not indicate that deer herbivory is adversely impacting rough popcornflower populations (USFWS 2021, p. 23).

Grazing by livestock may or may not be consistent with rough popcornflower conservation. Grazing of rough popcornflower during its growing period can be detrimental to the species. However, grazing can help control native and nonnative plant competitors and provide a measure of disturbance that maintains the preferable early seral and open habitat conditions for rough popcornflower. Four rough popcornflower populations with more than 5,000 plants are on privately-owned grazing lands; the largest single population (more than 700,000 plants) is on a private horse ranch where grazing is managed in a manner compatible with the long-term survival of rough popcornflower (USFWS 2021, p. 16). Depending on how grazing is managed, it can adversely impact or benefit individual populations of rough popcornflower. With 12 of the 18 populations considered protected or on

adequately managed land, livestock herbivory is not currently considered a threat to the species overall. However, because formal commitments for long-term management of livestock grazing for the benefit of rough popcornflower have not been secured for some populations (including the largest population of over 700,000 plants), this threat may increase in the future.

### Native and Nonnative Plant Encroachment

Native and nonnative plants, including pennyroyal (*Mentha pulegium*), teasel (*Dipsacus spp.*), creeping thistle (*Cirsium arvense*), and reed canary grass (*Phalaris arundinacea*), are a primary threat to the establishment and maintenance of rough popcornflower due to their encroachment of habitat and elimination of bare ground, which popcornflower seeds require to germinate. Pennyroyal is present at many rough popcornflower sites, and teasel and creeping thistle control require constant conservation efforts at the North Bank Habitat Management Area (NBHMA), Yoncalla South and TNC Popcorn Swale Preserve populations.

Rough popcornflower is conservation reliant, and when natural disturbance events are lacking, active management (*e.g.*, manual weeding, herbicide application, mowing, and strategic grazing) is necessary to control competing vegetation and maintain early seral habitats to help maintain many of the rough popcornflower populations into the future (USFWS 2010, p. 27). Invasive plants appear to be less of a concern on private lands due to livestock grazing (USFWS 2020, p.2). Strategic grazing by livestock, in terms of seasonal grazing periods and intensity, when closely monitored, can benefit rough popcornflower populations by reducing plant competition and creating open ground that facilitates seed germination and enables population expansion (USFWS 2021, p. 24).

While competition with native and nonnative plants remains an ongoing threat to rough popcornflower, this threat can be successfully managed through continued investments in the adaptive management practices that have resulted in flourishing populations across the species' range (USFWS 2021, appendices 3 and 4).

### Fire

At the time of listing, fire was considered a natural event key to the formation and maintenance of rough popcornflower habitat (65 FR 3866 at

3867; January 25, 2000). In late September 2003, an accidental fire burned across the North Bank/Soggy Bottoms rough popcornflower population at moderate intensity. The year following the burn, staff noted that individual rough popcornflower plants were much larger and robust, and the population had increased. The population dropped significantly during the following 5 years, although that was considered likely due to changed site hydrology. While the effects of fire in rough popcornflower habitat restoration are still unknown (USFWS 2010, p. 27), data collected after the 2003 fire suggest that low- to moderate-intensity fire can have at least short-term beneficial effects to the species.

Climate Change

The likely impacts of climate change on rough popcornflower’s ecological processes are closely connected to the availability of water. Due to their shallow and ephemeral nature, wet swales in southwestern Oregon are particularly sensitive to increases in evaporation or reductions in rainfall. Strong climate variability is likely to persist in the Pacific Northwest, owing in part to the annual and decadal climate variability associated with the Pacific Ocean (May et al. 2018, p. 1039). Models project periods of prolonged drought interspersed with years featuring heavy rainfall driven by powerful atmospheric rivers and strong El Niño winters (May et al. 2018, p. 1039). Even modest temperature increases could result in more water

runoff in winter and less in spring and summer, more winter flooding, and drier summer soils, thereby altering the seasonality and duration of wetland hydration (Field et al. 2017, p. 18). Reduced soil moisture due to evaporation and transpiration may exacerbate drought effects (Field et al. 2017, p. 18). Drought-mediated decreases in water depth and inundation periods could increase the frequency at which wetlands dry before rough popcornflower has completed its flowering and fruiting stages. However, Southern Oregon, along with other areas in the western United States, has been experiencing a prolonged drought for several years (Fleishman 2023, p. 52) and rough popcornflower continued to demonstrate stable or increasing population trends. Climate change could also cause temperatures to exceed those suitable for growth of the species (USFWS 2010, p. 28).

The impact of climate change on rough popcornflower will likely vary depending on site-specific conditions and annual precipitation variation. Rough popcornflower individuals are naturally adaptive to fall and winter inundation and depend on soil moisture until their seed has matured. An earlier warming trend may result in a limited seed set because the soil will dry out quicker and may benefit nonnative plants. Habitat management using herbicides and prescribed burning would likely increase with an increase in nonnative plants. However, if climate change in Oregon results in wetter

winters and springs as predicted (Fleishman 2023, pp. 11–12), then the additional precipitation may lengthen seed set and favor popcornflower survival over competitors unable to adapt to saturated soils.

Current Condition

Resiliency

Resiliency, the ability of populations to withstand stochastic events, is commonly determined as a function of metrics such as population size, growth rate, or habitat quality and quantity. We evaluated the current resiliency of rough popcornflower populations based on the population size, habitat quantity, connectivity, habitat quality, management frequency, reproductive success, and the degree of protection afforded to each population (see tables 2 through 8, below). Populations with over 5,000 mature plants were determined to be in high condition based on the downlisting criteria outlined in the species’ recovery plan. Populations of over 1,000 plants were considered to be in medium condition, and those with under 200 plants were considered to be in low condition. We then assigned numerical values to each of those condition category rankings in order to categorize the current overall resiliency of each rough popcornflower population (see table 9, below). A complete description of our analytical approach to current condition is available in the SSA report (USFWS 2021, pp. 34–37).

TABLE 2—POPULATION SIZE RANKINGS OF ROUGH POPCORNFLOWER POPULATIONS FROM THE SSA REPORT AND SUBSEQUENT SURVEYS

Population size (# of plants)	Number of populations in 2021	Number of populations in 2023
High (≥5,000)	13	11
Medium (1,000–4,999)	2	2
Low (1–999)	3	5

TABLE 3—HABITAT QUANTITY RANKINGS OF ROUGH POPCORNFLOWER POPULATIONS FROM THE SSA REPORT AND SUBSEQUENT SURVEYS

Habitat quantity (amount)	Number of populations in 2021	Number of populations in 2023
High (>5,382 ft²/1640 m²)	7	9
Medium (820–5,382 ft²/250–1640 m²)	3	3
Low (<820 ft²/250 m²)	8	6

TABLE 4—CONNECTIVITY RANKINGS OF ROUGH POPCORNFLOWER POPULATIONS FROM THE SSA REPORT AND SUBSEQUENT SURVEYS

Connectivity (proximity to next population)*	Number of populations in 2021	Number of populations in 2023
High (<3,117 ft/950 m) .....	11	No change reported.
Medium (3,120–4921 ft/950–2000 m) .....	3	No change reported.
Low (>6,562 ft/2000 m) .....	4	No change reported.

\* Scores are not strictly distance-based if populations are separated by barriers such as development, roads, or expanses of unsuitable habitat.

TABLE 5—HABITAT QUALITY RANKINGS OF ROUGH POPCORNFLOWER POPULATIONS FROM THE SSA REPORT AND SUBSEQUENT SURVEYS

Habitat quality (presence of invasive species)	Number of populations in 2021	Number of populations in 2023
High (no invasive species) .....	5	No change reported.
Medium (1–2 invasive species) .....	8	No change reported.
Low (dominated by invasive species) .....	5	No change reported.

TABLE 6—MANAGEMENT FREQUENCY RANKINGS OF ROUGH POPCORNFLOWER POPULATIONS FROM THE SSA REPORT AND SUBSEQUENT SURVEYS

Management frequency (interval)	Number of populations in 2021	Number of populations in 2023
High (continuous, annual, or biennial) .....	10	No change reported.
Medium (3–5 years) .....	5	No change reported.
Low (5 years) .....	3	No change reported.

TABLE 7—REPRODUCTIVE SUCCESS RANKINGS OF ROUGH POPCORNFLOWER POPULATIONS FROM THE SSA REPORT AND SUBSEQUENT SURVEYS

Reproductive success (measures)	Number of populations in 2021	Number of populations in 2023
High (>5,000 plants and 100 percent seed production) .....	15	No change reported.
Medium (3,000–5,000 plants, 75–99 percent seed production) .....	1	No change reported.
Low (<3,000 plants, 0–74 percent seed production) .....	2	No change reported.

TABLE 8—PROTECTED STATUS RANKINGS OF ROUGH POPCORNFLOWER POPULATIONS FROM THE SSA REPORT AND SUBSEQUENT SURVEYS

Protected status	Number of populations in 2021	Number of populations in 2023
Yes .....	12	No change reported.
No .....	6	No change reported.

TABLE 9—OVERALL RESILIENCY RANKINGS OF ROUGH POPCORNFLOWER POPULATIONS FROM THE SSA REPORT AND SUBSEQUENT SURVEYS

Overall resiliency	Number of populations in 2021	Number of populations in 2023
High .....	11	10
Moderate .....	3	3
Low .....	4	5

As shown above in table 9, at the time of the SSA report in 2021, 11 (61 percent) of the 18 rough popcornflower populations scored high for resiliency, 3 (17 percent) scored moderate, and 4 (22 percent) scored low. Changes in condition category rankings as a result of additional surveys conducted from 2021–2023 (USFWS 2022, entire;

USFWS 2023a, entire) resulted in overall resiliency rankings of 10 (55 percent) high, 3 (17 percent) moderate, and 5 (28 percent) low. These results demonstrate relatively high resiliency across the range of the rough popcornflower.

#### Redundancy

Redundancy is a species' ability to withstand catastrophic events and is a function of the number and resilience of populations, as well as their distribution and connectivity. At the time of listing, there were eight known rough popcornflower populations. Currently, there are 18 known populations. Some of this increase is due to newly discovered populations; however, since the time of listing, habitat restoration, reintroductions, and habitat protection have collectively improved the status of the species. Of the 18 known populations, 10 populations score high for overall resiliency and are distributed across the range of the species, with 6 in the Sutherlin Creek recovery unit, 2 in the Yoncalla Creek recovery unit, and 2 in the Umpqua Management Area. The eight populations with moderate or low resiliency contribute to the species' redundancy to a lesser degree and are distributed across the Calapooya Creek and Sutherlin Creek recovery units and the Umpqua Management Area. The distribution of 10 populations with high resiliency across two of the three recovery units and the management area demonstrates good redundancy for the species.

#### Representation

Representation refers to the ability of a species to adapt to change, and is assessed using geographic, genetic, ecological, and niche diversity data. Ecological diversity and genetic variation based on habitat differences, differences in annual and biennial life histories, and differences in growth forms may be inferred from the rough popcornflower's distribution across different sub-watersheds. Multiple populations with high resiliency throughout the species' range, along with populations of lesser resiliency, facilitate the preservation of the genetic diversity present within each recovery unit. Although populations with fewer than 5,000 plants may have lower genetic variation, rough popcornflower's wide variety of possible pollinators (Amsberry and Meinke 2001, pp. 12–13) assists in gene transfer and could boost the genetic variation of these populations.

Natural and reintroduced rough popcornflower populations are currently distributed in multiple sub-

watersheds across the species' historical range, and plants demonstrate diversity within and between populations, including different growth forms and flowering times. Additionally, rough popcornflower seeds do not all germinate every year, and a portion of the seed bank likely remains in the ground. The presence of a long-term seed bank allows rough popcornflower to persist through periods of adverse environmental conditions. In combination, these factors indicate that the species has the capacity to adapt to a variety of environmental conditions and has good representation.

#### Future Condition

To assess the future viability of rough popcornflower, we considered the factors that will influence the species within the foreseeable future. We define the foreseeable future as 30 years, as we consider this a reasonable timeframe to make reliable predictions about the threats to this species and its response to those threats due to this plant's reproductive strategy as an annual or short-lived perennial. Our viability assessment is characterized in terms of the resiliency, redundancy, and representation of the species as projected under various plausible future conditions (Shaffer and Stein 2000 pp. 306–310; Wolf et al. 2015, entire; Smith et al. 2018, pp. 304, 306–307). We projected the viability of rough popcornflower from 2020 to 2050 under three plausible future scenarios based on potential trends with conservation partners, climate patterns, and population demographics. Scenario A represented improvements over current conditions. Scenario B represented the most likely conditions if current trends continue. Scenario C represented conditions that are worse than current conditions.

Scenario A assumes continued conservation support for the rough popcornflower, including from private landowners throughout the species' range, as well as additional funding for outplanting and invasive vegetation control. Scenario B is the most likely scenario for the rough popcornflower based on current agency commitments, outplanting successes, the current ability to place conservation agreements, and species' population demographic trends. We discuss Scenario B further below. Scenario C assumes diminished habitat conditions and management actions (e.g., mowing, manual or chemical control of non-native herbaceous plants, prescribed burning), falling short of what is needed, resulting in the reduction of the species' resiliency, redundancy, and

representation over the next 30 years. For further details on all three scenarios, see the SSA report (USFWS 2021, pp. 41–47).

We determined that rough popcornflower is expected to continue to be influenced by the factors that have historically influenced and are currently influencing the species, at rates most closely associated with Scenario B. Scenario B represents the most likely conditions if current trends continue (USFWS 2021, pp. 44–45).

In Scenario B, we made several assumptions about ongoing conservation support within the foreseeable future. Several conservation partners (government agencies, nonprofit conservation organizations, academic institutions, and private landowners) have made significant contributions to recovery efforts for rough popcornflower. We assume that these partners will continue to collaborate and contribute conservation resources to rough popcornflower and its habitat based on current regulations and agency commitments, outplanting successes, and our ability to obtain conservation agreements. Continued outreach efforts are likely to support awareness of the species among private landowners and the public and to generate support for conservation. We also assume that development projects will continue to be evaluated and modified by the Service, the Oregon Department of State Lands, and the Oregon Department of Agriculture, to minimize or mitigate impacts to rough popcornflower and its habitats.

Under a continually increasing greenhouse gas emission scenario, Oregon's annual average temperature is projected to increase by 5 degrees Fahrenheit (°F) (2.8 degrees Celsius (°C)) by the 2050s (Fleishman 2023, p. 11). In this scenario, the amount of annual precipitation is projected to be highly uncertain. Summers are expected to warm more than the annual average and are likely to become drier. Extreme heat and precipitation events are expected to become more frequent (Dalton et al. 2017, p. 8). The effects of climate change on rough popcornflower populations are expected to be relatively moderate. Most rough popcornflower plants are expected to adjust to warmer temperatures by dispersing to moister habitats (via ungulates, other mammals, or birds), flowering earlier, and shortening their flowering period (USFWS 2021, p. 42). Climate change may limit rough popcornflower's growing season and habitat as well as moisture availability, though the species would continue to maintain viability within the three recovery units and the

introduced populations at the Umpqua Management Area (USFWS 2021, p. 45). We acknowledge that some populations may fare better than others under future conditions.

For species resiliency in Scenario B, we expect there will be a total of 20 rough popcornflower populations. At

least 10 of those populations are anticipated to be in protected areas (reserves), contain populations that meet or exceed 5,000 plants, and exhibit stable or increasing population counts in 7 out of 10 years (see table 10, below).

In terms of redundancy, protected rough popcornflower populations are

expected to continue to be distributed in all three recovery units. With a total of 20 populations distributed across the species' range, we conclude that the rough popcornflower will be able to withstand catastrophic events.

TABLE 10—FUTURE VIABILITY OF ROUGH POPCORNFLOWER UNDER THE MOST LIKELY SCENARIO, FUTURE SCENARIO B

Viability elements	Expected condition
Population Resilience .....	Protected populations ( $\geq 10$ ) meet or exceed criterion of $\geq 5,000$ individual stems and show stable or positive demographic trends. The total population number is 20. Stable or increasing population counts occur 7 out of 10 years.
Species Redundancy .....	Redundancy is provided by having 20 populations present across the range to withstand catastrophic events.
Species Representation .....	20 populations, distributed across the range of the species, would provide genetic and ecological diversity for the species. No evidence of inbreeding depression.
Overall Viability .....	Moderate: The species is able to adapt to climate change, and species receives adequate monitoring to inform management needs. Species requires continued management.

For species representation, rough popcornflower populations are expected to be well distributed across all three recovery units and the Umpqua Management Area. We expect genetic diversity to be maintained in the foreseeable future because there has been no evidence of inbreeding depression or genetic drift detected in any of the populations (Amsberry and Meinke 2017, p. 2).

Collectively, our analysis of the resiliency, redundancy, and representation under this scenario indicates that the viability of the rough popcornflower is not likely to be significantly reduced over the next 30 years.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed the cumulative effects of identified threats and conservation actions on the species. To assess the current and future condition of the species, we evaluate the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative-effects analysis.

*Conservation Efforts and Regulatory Mechanisms*

Rough popcornflower is a conservation-reliant species, meaning that the species will require continued conservation efforts to survive due to continuous encroachment from natural seral succession (USFWS 2010, p. 30).

Since listing the species in 2000, we have coordinated with local, State, and Federal stakeholders on conservation actions for the species, some of which we supported with funding.

Mowing in rough popcornflower habitat to control competing native and nonnative plant species, and subsequent outplanting of rough popcornflower, has occurred regularly at several sites. Other conservation actions include fencing to protect populations from anthropogenic disturbance; population introductions and augmentations; and stakeholder workshops in which species needs, recovery targets, and habitat conservation were discussed to raise landowner awareness. Agencies and property owners who have made commitments to protect or manage rough popcornflower and its habitat are the City of Sutherlin, Oregon; Douglas Soil and Water Conservation District, Oregon; Oregon Department of Agriculture (ODA), Native Plant Conservation Program; the BLM; the Native Plant Society of Oregon, Umpqua Valley Chapter; and The Nature Conservancy.

In the 2007 City of Sutherlin Conservation Agreement and Conservation Plan (ODA 2007, entire), the cooperators (the Service, the City of Sutherlin, ODA, the Umpqua Valley Chapter of the Native Plant Society of Oregon, the Sutherlin Stampede Association, and the Sutherlin Blackberry Festival, Inc.) agreed to the following measures:

- Prohibit activities that would disturb or destroy existing populations of rough popcornflower, or their habitat, on land owned or managed by the City of Sutherlin;
- Contract or coordinate appropriately timed surveys for new

populations of rough popcornflower on city-owned or -managed land prior to initiating ground-disturbing projects;

- Contact the ODA Native Plant Conservation Program if a new population of rough popcornflower is found during a pre-project survey; cooperate with the ODA Native Plant Conservation Program to develop conservation-based alternatives to proposed projects that would impact rough popcornflower populations or their habitat; and
- Cooperate with the ODA Native Plant Conservation Program to implement a management plan promoting the conservation of the populations of rough popcornflower at the Red Rock Park (formerly Timber Days Grounds).

Signatories of the agreement include the Service, the City of Sutherlin, ODA, the Umpqua Valley Chapter of the Native Plant Society of Oregon, the Sutherlin Stampede Association, and the Sutherlin Blackberry Festival, Inc. Since 2007, implementation of this agreement has provided fencing to protect rough popcornflower populations, reduced competitive and invasive species, and increased population numbers. This agreement was updated in 2023. In the updated agreement, entitled “Conservation Agreement for Rough Popcornflower,” the City of Sutherlin agreed to continue to protect the plant and to extend the protection to Ford’s Pond, a property acquired after the original signing in 2007. The 2023 agreement also allows introduction of the species at Ford’s Pond (USFWS 2023c, p. 8).

The biological opinion on the North Bank Habitat Management Area issued by the Service in 2001 evaluated the effects of proposed management actions

and conservation measures conducted by the BLM for three rough popcornflower populations occurring in the management area (USFWS 2001, p. 15). Proposed management actions included manual and mechanical removal of competitive vegetation and the use of integrated pest management techniques to control noxious weeds. Proposed conservation measures included retaining existing populations and introducing additional populations into suitable habitat. To date, the BLM has consistently implemented these management actions and conservation measures, and the BLM is expected to continue to maintain and enhance habitat for this species into the future.

The Oregon Department of Transportation (ODOT) has established the Special Management Areas program to protect State-listed and federally listed endangered and threatened plant species identified on ODOT rights-of-way (ODOT 2017, p. 4). Special Management Areas are marked with signs that instruct ODOT maintenance crews on allowable activities. ODOT entered a statewide habitat conservation plan (HCP) with the Service in 2017 (USFWS 2017, entire). Under the HCP, the Special Management Areas identify the known populations of rare plants along ODOT rights-of-way that they have agreed to avoid impacting. In most cases, only periodic maintenance is necessary in Special Management Areas, and site-specific restrictions have been developed to protect listed species.

All federally listed plants in Oregon are also protected by State law under the Oregon Endangered Species Act, and their protection and conservation are administered by the ODA. The Oregon Endangered Species Act protects many other plant species in addition to those protected under the Federal Endangered Species Act. All State and municipal agencies, including City of Sutherlin, Douglas County, Douglas Soil and Water Conservation Service, and ODOT, must consult with ODA when a proposed action on land owned or leased by the State, or for which the State holds a recorded easement, has the potential to appreciably reduce the likelihood of the survival or recovery of any listed plant species.

While we do not have a specific agreement in place with The Nature Conservancy that guarantees a commitment to future management, they have actively managed the rough popcornflower habitat at their property (the Popcornswale preserve) since 1995, by monitoring populations, controlling nonnative and invasive species, managing habitat by reducing tree cover, mowing, and augmenting the

population with seeding. The Nature Conservancy has continued to manage the Popcornswale preserve multiple times a year since 1995, and is expected to continue these efforts.

These and other conservation efforts have increased the number of protected sites and vastly improved the number of plants in the overall population (from 7,000 to over 800,000). Currently, 11 of the 18 known populations throughout the species' range are under Federal, State, municipal, or land trust protections offering indefinite protection from habitat conversion to other uses. The remaining 7 populations (approximately 84 percent of the total number of individuals) do not have formal commitments for the long-term beneficial management of rough popcornflower but are benefitting from voluntary management practices employed by land management agencies and private landowners.

#### **Determination of Rough Popcornflower's Status**

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an endangered species as a species "in danger of extinction throughout all or a significant portion of its range," and a threatened species as a species "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

#### *Status Throughout All of Its Range*

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we find that the primary threats to rough popcornflower, since the time of listing, have been the destruction and/or alteration of habitat by development and hydrological changes (e.g., wetland fills, draining, construction), competition from native and nonnative plant species, impacts due to climate change (e.g., winter flooding, drier summer soils, and

decreased fruit production), and lack of (or noncompliance with) regulatory mechanisms. The best available information does not indicate that overcollection (Factor B) or herbivory (Factor C) are threats to the viability of the rough popcornflower. Our current analysis also indicates that the habitat threats (Factor A) and threats from the inadequacy of regulatory mechanisms (Factor D) have decreased since the time of listing, while climate change (Factor E) related threats have increased.

Habitat-related threats (destruction and/or alteration of habitat and competition from native and nonnative plant species), identified as drivers of rough popcornflower's status, are still present on the landscape; however, their magnitude and scope have decreased from historical levels and have been offset by a variety of management and conservation measures by many conservation partners since the rough popcornflower was listed as an endangered species (see 65 FR 3866; January 25, 2000), and these conservation actions continue today (USFWS 2021, p. 25 and appendix 3). Improvements in habitat management practices and extensive habitat restoration have been implemented, which have improved population resiliency and redundancy at several sites. Increased public awareness of the species has resulted in increased stewardship across lands with rough popcornflower populations and improved regulatory compliance. Greater understanding and compliance along with improvements in habitat management practices and extensive habitat restoration have helped ameliorate threats to the species, resulting in population increases and greater distribution. A majority of the rough popcornflower population sites (12 of 18) are protected by public ownership or managed to benefit the species; with these site protections and increased public knowledge of the species, compliance with regulatory mechanisms has increased significantly.

At the time of listing, rough popcornflower was known to exist in only 8 populations totaling 7,000 plants. There are currently 18 known populations totaling more than 800,000 plants. Although a majority (700,000) of the plants are within a single population, there are 17 other populations comprising more than 100,000 rough popcornflower plants distributed across the range of the species. Although the plants and populations are not distributed precisely as identified in recovery plan downlisting criteria (USFWS 2019, pp. 4–6), the population size (both the

number of plants and the physical area covered) in two of the three recovery units and the additional recovery management area exceed the target population size by unit/area, and six of the populations have stable and/or increasing trends. Our viability analysis determined that the species currently has high resiliency, good redundancy, and sufficient representation (USFWS 2021, pp. 32–41). Thus, after assessing the best available information, we conclude that the rough popcornflower is not in danger of extinction throughout all of its range.

We therefore proceed with determining whether the rough popcornflower is likely to become endangered within the foreseeable future throughout all of its range.

The best available information indicates that, at the species level, the most influential factors affecting rough popcornflower into the future are habitat-related threats (destruction and/or alteration of habitat and competition from native and nonnative plant species) (Factor A) and climate change (Factor E), which will likely cause more winter flooding, drier summer soils, and decreased fruit production. In our analysis of future viability (USFWS 2021, pp. 41–47), under Scenarios A and B, we project the species' resiliency, redundancy, and representation to be stable or increasing within the next 30 years. While a continuation of current conservation efforts as modeled under Scenario B is most likely, 7 of the 18 known populations (approximately 84 percent of the total number of plants) do not have formal commitments for long-term beneficial management of rough popcornflower and continued beneficial management is not assured.

Additionally, under Scenario C, we project the species' resiliency, redundancy, and representation to diminish within the next 30 years. Although this scenario is considered the least likely to occur, diminished habitat conditions along with reduced management actions and agency commitments are plausible and would likely to lead to long-term demographic declines, reductions in the number of populations, and reduced genetic diversity.

Thus, after assessing the best available information, we conclude that rough popcornflower is not currently in danger of extinction but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

#### *Status Throughout a Significant Portion of Its Range*

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity v. Everson*, 435 F. Supp. 3d 69 (D.D.C. 2020) (*Everson*), vacated the provision of the Final Policy on Interpretation of the Phrase “Significant Portion of Its Range” in the Endangered Species Act’s Definitions of “Endangered Species” and “Threatened Species” (hereafter “Final Policy”; 79 FR 37578, July 1, 2014) that provided that if the Service determines that a species is threatened throughout all of its range, the Service will not analyze whether the species is endangered in a significant portion of its range.

Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the “significance” question or the “status” question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Everson*, we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.*, endangered). In undertaking this analysis for rough popcornflower, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify portions of the range where the species may be endangered.

We evaluated the range of the rough popcornflower to determine if the species is in danger of extinction in any portion of its range. The range of a species can theoretically be divided into portions in an infinite number of ways. We focused our analysis on portions of the species' range that may meet the definition of an endangered species. For rough popcornflower, we considered whether the threats or their effects on the species are greater in any biologically meaningful portion of the species' range than in other portions

such that the species is in danger of extinction now in that portion. As discussed above, we divided the range of the rough popcornflower in several ways (*e.g.*, populations, recovery units) for the purposes of our viability analyses. We divide the range into three recovery units (Sutherlin Creek, Yoncalla Creek, and Callapooya Creek) that correspond to drainage basins within the Lower North Umpqua system, and represent groups of populations which share phenotypic similarities and are potentially genetically similar to one another. This scale is appropriate for considering whether the species may be in danger of extinction in any portion of the range.

We examined the following threats: habitat loss and fragmentation, small population size, native and invasive plant encroachment, fire, and climate change, including cumulative effects. We considered the effects of these threats on the rough popcornflower within each of the three recovery units.

As discussed above, through recovery efforts from multiple stakeholders, the rough popcornflower has increased to over 883,154 plants in 18 populations. In each recovery unit there are at least two populations that meet or exceed the resiliency criterion size of 5,000 individuals exceeding a patch size of 5,382 ft<sup>2</sup> (500 m<sup>2</sup>), indicating they have a high probability of persistence over the next 30 years.

The rough popcornflower has a current distribution that is analogous to its historical range in all three recovery units (USFWS 2021, p. 39). Near-term threats are similar for all populations distributed throughout the recovery units. The rough popcornflower is a conservation reliant species, and in each recovery unit populations receive some form of habitat management in the form of mowing, grazing, prescribed burning, or invasive plant control to address the near-term threats (USFWS 2021, p. 38).

Given the distribution of resilient populations across recovery units, the uniformity of the near-term threats to the species within each unit and ongoing conservation measures addressing those threats, there is no one recovery unit that has a different status from its range-wide status. In summary, we found no portion of the rough popcornflower's range where threats are impacting individuals differently from how they are affecting the species elsewhere in its range, or where the biological condition of the species differs from its condition elsewhere in its range such that the status of the species in that portion does not differ from any other portion of the species' range.

Therefore, no portion of the species' range provides a basis for determining that the species is in danger of extinction in a significant portion of its range, and we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This does not conflict with the courts' holdings in *Desert Survivors v. U.S. Department of the Interior*, 321 F. Supp. 3d 1011, 1070–74 (N.D. Cal. 2018) and *Center for Biological Diversity v. Jewell*, 248 F. Supp. 3d 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not apply the aspects of the Final Policy, including the definition of "significant" that those court decisions held were invalid.

#### *Determination of Status*

Based on the best scientific and commercial data available, we determine that the rough popcornflower meets the Act's definition of a threatened species. Therefore, we propose to downlist the rough popcornflower as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

#### **Protective Regulations Under Section 4(d) of the Act**

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened species. Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. With these two sentences in section 4(d), Congress delegated broad authority to the Secretary to determine what protections would be necessary and advisable to provide for the conservation of threatened species, and even broader authority to put in place any of the section 9 prohibitions, for a given species.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld, as a valid exercise of agency authority, rules developed under section

4(d) that included limited prohibitions against takings (see *Alsea Valley Alliance v. Lautenbacher*, 2007 WL 2344927 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002 WL 511479 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, "once an animal is on the threatened list, the Secretary has an almost infinite number of options available to [her] with regard to the permitted activities for those species. [She] may, for example, permit taking, but not importation of such species, or [she] may choose to forbid both taking and importation but allow the transportation of such species" (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

The provisions of this species' proposed protective regulations under section 4(d) of the Act are one of many tools that we would use to promote the conservation of the rough popcornflower. The proposed protective regulations would apply only if and when we make final the reclassification of the rough popcornflower as a threatened species. Nothing in 4(d) rules change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the rough popcornflower.

Section 7(a)(2) states that each Federal action agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Each Federal agency shall review its action at the earliest possible time to determine whether it may affect listed species or critical habitat. If a determination is made that the action may affect listed species or critical habitat, formal consultation is required (50 CFR 402.14(a)), unless the Service concurs in writing that the action is not likely to adversely affect listed species or critical habitat. At the end of a formal consultation, the Service issues a biological opinion, containing its determination of whether the Federal action is likely to result in jeopardy or adverse modification.

Examples of discretionary actions for the rough popcornflower that may be subject to consultation procedures under section 7 are management of

Federal lands administered by the BLM, as well as actions that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or actions funded by Federal agencies such as the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency. Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation. Federal agencies should coordinate with the local Service Field Office (see **FOR FURTHER INFORMATION CONTACT**) with any specific questions on section 7 consultation and conference requirements.

These requirements are the same for a threatened species regardless of what is included in its 4(d) rule. Section 7 consultation is required for Federal actions that "may affect" a listed species regardless of whether take caused by the activity is prohibited or excepted by a 4(d) rule (under application of a "blanket rule" (for more information, see 89 FR 23919, April 5, 2024) or a species-specific 4(d) rule). A 4(d) rule does not change the process and criteria for informal or formal consultations and does not alter the analytical process used for biological opinions or concurrence letters. For example, as with an endangered species, if a Federal agency determines that an action is "not likely to adversely affect" a threatened species, it will require the Service's written concurrence (50 CFR 402.13(c)). Similarly, if a Federal agency determines that an action is "likely to adversely affect" a threatened species, it will require formal consultation and the formulation of a biological opinion (50 CFR 402.14(a)). Because consultation obligations and processes are unaffected by 4(d) rules, we may consider developing tools to streamline future intra-Service and inter-Agency consultations for actions that result in forms of take that are not prohibited by the 4(d) rule (but that still require consultation). These tools may include consultation guidance, online consultation processes via the Service's digital project planning tool (Information for Planning and Consultation; <https://ipac.ecosphere.fws.gov/>), template language for biological opinions, or programmatic consultations.



Exercising the Secretary's authority under section 4(d) of the Act, we are applying the protections for the rough popcornflower through our regulations at 50 CFR 17.71(a). In our April 5, 2024, final rule revising those regulations (89 FR 23919, at 23922–23923), we found that applying those regulations as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of threatened species. We have not identified any ways in which a protective regulation for this threatened species would need to differ from the regulations at 50 CFR 17.71(a) in order to contain the protections that are necessary and advisable to provide for the conservation of the rough popcornflower. Therefore, the regulations at 50 CFR 17.71(a) apply. This means that except as provided in a permit issued pursuant to 50 CFR 17.72, all of the provisions of 50 CFR 17.61 for endangered plants, except § 17.61(c)(2) through (4), apply to the rough popcornflower, and the provisions of 50 CFR 17.71(b) concerning exceptions for certain entities also apply to the species.

#### Required Determinations

##### Clarity of the Rule

We are required by E.O.s 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell

us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

##### *National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This includes listing, delisting, and reclassification rules, as well as critical habitat designations and species-specific protective regulations promulgated concurrently with a decision to list or reclassify a species as threatened. The courts have upheld this position (*e.g.*, *Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995) (critical habitat); *Center for Biological Diversity v. U.S. Fish and Wildlife Service*, 2005 WL 2000928 (N.D. Cal. Aug. 19, 2005) (concurrent 4(d) rule)).

##### *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), E.O. 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. In accordance with Secretary's Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not

subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We will continue to work with Tribal entities during the development of a final downlisting determination for the rough popcornflower.

#### References Cited

A complete list of references cited in this rulemaking is available on the internet at <https://www.regulations.gov> and upon request from the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Oregon Fish and Wildlife Office.

#### List of Subjects in 50 CFR Part 17

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

#### Proposed Regulation Promulgation

Accordingly, the U.S. Fish and Wildlife Service proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

#### **PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

- 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

- 2. Amend § 17.12(h) by revising the entry for “*Plagiobothrys hirtus*” under FLOWERING PLANTS on the List of Endangered and Threatened Plants to read as follows:

##### **§ 17.12 Endangered and threatened plants.**

\* \* \* \* \*

(h) \* \* \*

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
<b>Flowering Plants</b>				
* <i>Plagiobothrys hirtus</i> .....	* Rough popcornflower ....	* Wherever found .....	* T .....	* [Federal Register citation when published as a final rule];
*	*	*	*	*

Gary Frazer,  
 Acting Director, U.S. Fish and Wildlife  
 Service.  
 [FR Doc. 2024-28351 Filed 12-10-24; 8:45 am]  
**BILLING CODE 4333-15-P**