

§ 206.120 [Corrected]

6. On page 61459 on the 37th line from the top of the third column, correct "(vii) Processing for retention of records" to read "(viii) Process for retention of records".

Dated: October 3, 2002.

John R. D'Araujo, Jr.,

Assistant Director, Response and Recovery Directorate.

[FR Doc. 02-25681 Filed 10-8-02; 8:45 am]

BILLING CODE 6718-02-P

DEPARTMENT OF TRANSPORTATION**National Highway Traffic Safety Administration****49 CFR Part 594****Schedule of Fees Authorized by 49 U.S.C. 30141**

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final Rule; correction.

SUMMARY: The final rule adopting fees beginning on page 60596 in the **Federal Register** of Thursday, September 26, 2002, contains errors that need correction.

DATES: This correction is effective October 1, 2002.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Chief Counsel, NHTSA (202-366-5238).

SUPPLEMENTARY INFORMATION: NHTSA published a final rule on September 26, 2002 (67 FR 60596) adopting fees for Fiscal Year (FY) 2003, and until further notice, as authorized by 49 U.S.C. 30141, relating to the registration of importers and the importation of motor vehicles not certified as conforming to the Federal motor vehicle safety standards. This correction corrects that document.

1. On page 60599 in the first column, under Amendatory Instruction 2 to section 594.6, paragraph D is corrected to read as follows: "D. Revising the last sentence of paragraph (h)."

2. On page 60599 in the first column, under Amendatory Instruction 2 to section 594.6, the following paragraph is added: "F. Revising paragraph (d)."

3. On page 60599 in the second column, after paragraph (b), add paragraph (d) to read as follows:

* * * * *

(d) That portion of the initial annual fee attributable to the remaining activities of administering the registration program on and after October 1, 2002, is set forth in

paragraph (i) of this section. This portion shall be refundable if the application is denied, or withdrawn before final action upon it.

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Dated: October 4, 2002.

Jeffrey N. Runge,

Administrator.

[FR Doc. 02-25726 Filed 10-8-02; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****RIN 1018-AG92****Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for *Thlaspi californicum* (Kneeland Prairie Penny-cress)**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Thlaspi californicum* (Kneeland Prairie penny-cress). The critical habitat consists of one unit whose boundaries encompass a total area of approximately 30 hectares (74 acres) in Humboldt County, California. Section 7 of the Act requires Federal agencies to ensure that any actions they fund, authorize, or carry out do not result in the destruction or adverse modification of critical habitat. As required by section 4 of the Act, we considered economic and other relevant impacts prior to making a final decision on the size and configuration of the critical habitat unit.

DATES: This rule is effective November 8, 2002.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule are available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service Office, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521.

FOR FURTHER INFORMATION CONTACT: Bruce Halstead, Project Leader, Arcata Fish and Wildlife Office, at the above address (telephone 707/822-7201; facsimile 707/822-8411).

SUPPLEMENTARY INFORMATION:

Background

Thlaspi californicum (Kneeland Prairie penny-cress) is a perennial member of the mustard family (Brassicaceae). The species grows from 9.5 to 12.5 centimeters (3.7 to 4.9 inches) tall with a basal cluster of green to purplish, sparsely toothed leaves. Leaves borne along the stem are sessile (without a stalk) with entire to toothed margins. The white flowers have strongly ascending flower stalks. *Thlaspi californicum* flowers from April to June. The fruit is a sharply pointed silicle (a short fruit typically no more than two to three times longer than wide), and is elliptic to obovate, without wings, and with an ascending stalk.

Sereno Watson (1882) first described *Thlaspi californicum* based on a collection made by Volney Rattan from among rocks at Kneeland Prairie at 760 meters (m) (2,500 feet (ft)) elevation. Jepson (1925) later referred to it as *T. alpestre* var. *californicum*. Munz (1959) referred to the taxon as *T. glaucum* var. *hesperium*; however, he segregated it as *T. californicum* in his supplement (Munz 1968). Holmgren (1971) assigned the name *Thlaspi montanum* var. *californicum*. Finally, the taxon was returned to *T. californicum* in the current *Jepson Manual* (Hickman 1993, Rollins 1993).

Thlaspi californicum is endemic to serpentine soils in Kneeland Prairie, located in the outer north coast range of Humboldt County, California. Serpentine soils are derived from ultramafic rocks (rocks with unusually large amounts of magnesium and iron). The entire known distribution of *T. californicum* occurs on Ashfield Ridge at elevations ranging from 792 to 841 m (2,600 to 2,760 ft).

Plant communities in Kneeland Prairie include the following: California annual and introduced perennial grasslands; seasonal and perennial wetlands; and mixed oak/Douglas-fir (*Pseudotsuga menziesii*) woodlands (SHN 1997). Boulder outcrops in Kneeland Prairie form scattered knobs that protrude out of the grasslands. The majority of these outcrops are volcanic rock types such as greenstone pillow basalt, basalt, tuff, or agglomerates (State of California 1975). Along Ashfield Ridge and nearby side ridges, many of the outcrops are serpentine (State of California 1975). The serpentine outcrops exhibit a distinctive flora compared to the surrounding grassland (SHN 2001). In addition to *Thlaspi californicum*, serpentine outcrops on Ashfield Ridge support the following two special interest plants, both considered as rare by the California

Native Plant Society: *Fritillaria purdyi* (Purdy's fritillary) and *Astragalus rattanii* ssp. *rattanii* (Rattan's milk-vetch) (SHN 1997).

Little is known about the reproductive biology of *Thlaspi californicum*. Some members of the genus, such as *T. montanum*, are known to outbreed, while others, such as *T. alpestre*, primarily self-pollinate (Holmgren 1971). Due to its very close taxonomic relationship to *T. montanum*, *T. californicum* is almost certainly an outbreeder. Generalist bees and flies are the assumed principal pollinators (SHN 2001).

The only known occurrence of *Thlaspi californicum* includes five relatively distinct groups of plants all located within 300 m (980 ft) of each other on three small patches of serpentine. The species occupies an area which is fragmented by the Kneeland Airport and Mountain View Road. We do not know if genetic interchange occurs between plants in these separate groups; therefore, the five areas will be referred to as individual colonies. The location was described as consisting of three colonies in 1990 (Imper 1990, SHN 2001); a fourth colony was discovered in 1999 (SHN 2001), and one additional colony in 2001 (SHN 2001).

In 1997, the largest colony contained an estimated 10,840 plants (SHN 1997); this estimate was later corrected to 9,919 plants (SHN 2001). The sizes of the other two colonies known in 1997 were 140 and 40 plants (SHN 1997); therefore, the total revised estimate in 1997 was 10,999 plants. In 2001, the total number of *Thlaspi californicum* plants was estimated at approximately 5,293 (SHN 2001), with 5,142 plants at the largest colony, and 90 plants, 30 plants, 16 plants, and 15 plants at the four smaller colonies. In 2002, the total number of plants was estimated at approximately 8,954, with 8,851 plants at the largest colony, and 114 plants, 41 plants, 25 plants, and 23 plants at the four smaller colonies (Imper 2002). These data suggest a large annual turnover in the population and downplay the significance of the population decline noted between 1997 and 2001.

Historically, several land use activities probably altered the distribution and abundance of *Thlaspi californicum* colonies. These activities included construction of the county road in the 1800s (currently Mountain View Road), the Kneeland Airport in 1964, and the California Department of Forestry & Fire Protection (CDFFP) helitack base in 1980. Prior to 1964, suitable habitat for *T. californicum* on Ashfield Ridge consisted of two

serpentine patches (1.9 hectares (ha) (4.7 acres (ac)) and 0.6 ha (1.4 ac)) and scattered smaller patches of 0.01 ha (0.02 ac) to 0.2 ha (0.6 ac) in size. The two larger serpentine outcrops formed a semi-continuous ridgetop exposure covering more than 2.4 ha (6 ac), extending in an east-west direction along the top of the ridge in the area now occupied by the airstrip, county road, and helitack base (SHN 2001).

Construction of the county road, airstrip, and helitack base bisected and fragmented the two largest patches of suitable habitat into four relatively isolated patches and also reduced the total available habitat by approximately 50 percent. No data are available on the distribution or number of individuals prior to this habitat alteration. However, these colonies probably occupied a larger area or formed one large colony prior to these construction activities, based on anecdotal evidence. The impacts on population or community processes from this habitat loss and possible population reduction are unknown. In general, smaller serpentine outcrops support a higher number of alien species (Harrison 1999). Smaller outcrops may also be more vulnerable to recreational impacts, trampling, and modification of the unique serpentine soil chemistry as a result of enrichment from the surrounding meadow system (SHN 2001). Patch size influences fruit and flower production in *Calystegia collina* (serpentine morning glory) (Wolf and Harrison 2001). Small outcrops had fewer patches of *Calystegia collina*, patches with relatively low densities of flowers, and they attracted fewer insect visitors. These factors, in addition to a reduction and/or fragmentation of the site, increase the likelihood of extinction.

In 2001, all known colonies occupied an estimated 0.3 ha (0.8 ac), divided among five colonies as follows: 0.29 ha (0.72 ac); 0.02 ha (0.05 ac); 0.008 ha (0.02 ac); 0.004 ha (0.01 ac); and 0.002 ha (0.005 ac). The five known colonies occur on three separate serpentine outcrops, but they currently occupy only about 29 percent of the suitable habitat on these three outcrops (total area 1.1 ha (2.8 ac)). In addition to the three occupied outcrops, fourteen unoccupied serpentine outcrops occur on Ashfield Ridge, ranging in size from 0.01 ha (0.02 ac) to 0.2 ha (0.6 ac) (combined area of 0.9 ha (2.2 ac)). The distances between the outcrops range from 10 m to 85 m (33 ft to 279 ft). These patches are located within 400 m (1,312 ft) of the largest *Thlaspi californicum* colony. Serpentine soils contiguous with and in the vicinity of

the colonies are most likely to support *T. californicum* in the future.

Historic records for *Thlaspi californicum* refer to Kneeland Prairie and Ashfield Ridge as site locations (Watson 1882, Holmgren 1971). Over 99 percent of the serpentine soils in Kneeland Prairie occur on Ashfield Ridge. Two additional small serpentine outcrops are located on a ridge approximately 4.8 kilometers (km) (3 miles (mi)) southwest of Ashfield Ridge (State of California 1975). No historic records exist to show that *T. californicum* occupied these two outcrops. Similarly, no current records exist to indicate that they are occupied.

The next nearest known serpentine outcrops to Kneeland Prairie occur approximately 6.4 km (4 mi) southeast of Ashfield Ridge at Iaqu Buttes. The serpentine outcrops at Iaqu Buttes support the more widespread *Thlaspi montanum* var. *montanum*. No evidence of *T. californicum* or intergradation between *T. californicum* and *T. montanum* var. *montanum* was observed during surveys at the Iaqu Buttes site in 2001 (SHN 2001). *T. montanum* var. *montanum* also occurs on serpentine soils in the vicinity of Horse Mountain approximately 24 km (15 mi) northeast of Ashfield Ridge (SHN 2001). In 2001, serpentine outcrops on the western edge of the Six Rivers National Forest were surveyed for *T. californicum*. No populations of this species were located during these field visits (Jennings 2001). Service personnel surveyed the largest known serpentine exposure west of U.S. Highway 101 and south of Myers Flat (vicinity of Cedar Flat) in 2002; this survey also produced negative results. No evidence exists to show that the historic range of *T. californicum* ever extended beyond Kneeland Prairie (SHN 2001).

Previous Federal Action

Federal Government actions for *Thlaspi californicum* began when we published an updated notice of review (NOR) for plants on December 15, 1980 (45 FR 82480). This notice included *T. californicum* (referred to as *T. montanum* var. *californicum*) as a category 2 candidate. Category 2 candidates were those taxa for which data in our possession indicated listing might be appropriate, but for which additional biological information was needed to support a proposed rule. On November 28, 1983, we published a supplement to the 1980 NOR (48 FR 53640) as well as the subsequent revision on September 27, 1985 (50 FR 39526) which included *T. m.* var. *californicum* as a category 2 candidate.

We published revised NORs on February 21, 1990 (55 FR 6184) and September 30, 1993 (58 FR 511440). In both notices, we included *Thlaspi montanum* var. *californicum* as a category 1 candidate. Category 1 candidates are taxa for which we have on file sufficient information on biological vulnerability and threats to support preparation of listing proposals, but issuance of the proposed rules are precluded by other pending listing proposals of higher priority. In our February 28, 1996, **Federal Register** Notice of Review of Plant and Animal Taxa that are Candidates for Listing as Endangered or Threatened Species (CNOR) (61 FR 7595), we discontinued designation of multiple categories of candidates. Only taxa meeting the definition of former category 1 are now considered candidates for listing. *T. montanum* var. *californicum* was included as a candidate species in the February 28, 1996, notice. Our September 19, 1997, CNOR (62 FR 49397) included *T. californicum* as a candidate for listing.

On February 12, 1998 (63 FR 7112), we published a proposal to list *Thlaspi californicum* as endangered. Our October 25, 1999, CNOR (64 FR 57533) included *T. californicum* as a taxon proposed for listing as endangered. The final rule listing *T. californicum* as an endangered species was published on February 9, 2000 (65 FR 6332).

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species; or (2) such designation of critical habitat would not be beneficial to the species. At the time *Thlaspi californicum* was proposed, we determined that designation of critical habitat for *T. californicum* was not prudent because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of this species to incidents of collection and vandalism. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as endangered.

A series of court decisions for a variety of species overturned our determinations that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council v. U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii v. Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we reexamined the question of whether designation of critical habitat for *Thlaspi californicum* was prudent. At the time *T. californicum* was listed, we found that designation of critical habitat was prudent.

On June 17, 1999, our failure to issue final rules for listing *Thlaspi californicum* and nine other plant species as endangered or threatened, and our failure to make a final critical habitat determination for the 10 species was challenged in *Southwest Center for Biological Diversity and California Native Plant Society v. Babbitt* (Case No. C99-2992 (N.D.Cal.)). On May 19, 2000, the U.S. District Court for the Northern District of California issued an order setting the timetable for the promulgation of the critical habitat designations. We agreed to complete the proposed critical habitat designations for the 10 species by September 30, 2001. However, in mid-September 2001, plaintiffs agreed to a brief extension of this due date until October 19, 2001.

On October 24, 2001, we published a proposed rule to designate critical habitat for *Thlaspi californicum* (66 FR 53756). The proposed critical habitat consisted of one unit whose boundaries encompassed a total area of approximately 30 ha (74 ac) in Humboldt County, California. The public comment period was open for 60 days until December 24, 2001. We did not receive any requests for public hearings during the comment period, and we did not hold any public hearings. On May 7, 2002, we published a notice announcing reopening of the public comment period and availability of the draft economic analysis for the proposed critical habitat designation for *T. californicum* (67 FR 30643). The comment period was open for an additional 30 days until June 6, 2002. In mid-May 2002, the plaintiffs agreed to extend the completion date of the final rule until September 30, 2002.

Summary of Comments and Recommendations

In the proposed rule published on October 24, 2001 (66 FR 53756), we requested that all interested parties submit comments that might contribute to the development of the final rule. The first comment period closed on

December 24, 2001 (66 FR 53756). Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. An announcement was posted on the Service website October 24, 2001, and an article was published in the Times-Standard newspaper on October 29, 2001, inviting general public comment. We reopened the comment period on May 7 to June 6, 2002, to allow for comments on the draft economic analysis of the proposed critical habitat (67 FR 30643).

We received a total of seven written comments during the two comment periods, including three from designated peer reviewers. Of the four comments from private individuals, three opposed and one was neutral on the proposed action. We reviewed all comments received for substantive issues and new information regarding critical habitat and *Thlaspi californicum*. Public comments are grouped into two general issues relating specifically to (1) procedural and regulatory issues and (2) biological issues. Comments have been incorporated directly into the final rule or addressed in the following summary.

Issue 1: Procedural and Regulatory Issues

(1) *Comment*: Two commenters requested that all or a portion of their lands be removed from the critical habitat designation.

Service Response: Section 4(b)(2) of the Act states "The Secretary shall designate critical habitat, and make revisions thereto, under subsection (a)(3) on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat." Absent a finding by us that the economic or other relevant impacts of a critical habitat designation would outweigh the benefits of designation, the Act does not provide for the exclusion from critical habitat of private lands essential to the conservation of listed species. The boundaries of the critical habitat unit were delineated with a 100-m grid. We attempted to exclude areas from the boundary that did not contain primary constituent elements; however, we did not map the unit in sufficient detail to exclude all such areas. The lands owned by one of the commenters (commenter A) is such an area. This land, less than 2.5 ha (1 ac), is located in the northwest corner of the unit boundary and does not contain any primary constituent elements. Therefore, by definition this

commenter's land is not critical habitat. The other commenter's (commenter B) land does contain primary constituent elements. We believe that this parcel of land contains components essential to the conservation of *Thlaspi californicum* because it includes one of the fourteen unoccupied serpentine outcrops on Ashfield Ridge. We believe that the designation of these lands (commenter B) in this final rule as critical habitat outweigh the benefits of their exclusion from being designated as critical habitat. The possible removal of these lands from the designation is also addressed in the Exclusions Under Section 4(b)(2) section of this rule.

(2) *Comment*: One commenter was concerned about the impacts of the designation on private landowners and wanted to know if private landowners would be compensated for the loss of use of their lands because of protective measures. Another noted generally that the Constitution does not give plants rights over citizens.

Service Response: Designation of critical habitat, by itself, does not require private landowners to undertake any management activities or otherwise restrict the use of private lands. Critical habitat applies only to actions carried out, funded, or permitted by the Federal Government. The Act provides that Federal actions may not destroy or adversely modify critical habitat. Critical habitat designation will not affect any uses of private land unless actions on the land are carried out, funded, or require authorization from the Federal Government. If a Federal nexus does exist for a particular activity on private lands, the activity may still proceed unless the Service concludes that the action would destroy or adversely modify critical habitat. In that event, the Act provides for the development of reasonable and prudent alternatives to the proposed activity that meet its intended purposes and would avoid the destruction or adverse modification of critical habitat. Given the nature of activities currently occurring on the designated private lands and likely to occur in the future as described below, the likelihood of a future federal nexus is remote and the likelihood of any future section 7 consultation under the Act resulting in compensable restrictions on private land uses is even more unlikely.

Issue 2: Biological Concerns

(1) *Comment*: One commenter questioned the information provided on population numbers and whether *Thlaspi californicum* is growing in other places.

Service Response: The current population sampling design involves a complete count of plants in the four small colonies and uses a statistical-based sampling protocol to estimate the number of plants in the largest colony. In 2001 and 2002, surveys were conducted in an attempt to locate new populations of *Thlaspi californicum*. These surveys occurred in the following locations: (1) Iaqua Buttes which is the nearest known serpentine outcrop to Kneeland Prairie; (2) suitable habitat located on the Six Rivers National Forest within 16 km (10 mi) north and south of the Kneeland Prairie site; and (3) the largest known serpentine exposure west of U.S. Highway 101 and south of Myers Flat. No new *T. californicum* sites were located during any of these surveys. As stated by one of the peer reviewers, the data show that this plant is restricted to one location on Ashfield Ridge.

(2) *Comment*: One peer reviewer suggested that the potential impacts of herbivory should be addressed.

Service Response: Cattle grazing has occurred in Kneeland Prairie for at least a century. The current level of grazing appears relatively low. Unique serpentine soils in Kneeland Prairie support low total plant cover (typically less than 40 percent) and do not support many of the desirable forage species available in the prairie. Impacts of cattle grazing are not quantified, but available evidence suggests they are minimal at the current low stocking level. Recent data suggest that herbivory by rabbits or other small mammals may be significant in some colonies, but no quantitative data have yet been collected on the magnitude of this impact.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from five knowledgeable individuals with expertise in botany. Three of the five peer reviewers provided comments that are summarized in the previous section and incorporated in the final rule; all three reviewers supported the proposal. None of the reviewers provided new information about the biology or distribution of *Thlaspi californicum* or about additional areas considered essential to its conservation.

One peer reviewer stated that the methods and criteria used in the proposed rule are “* * * sound in light of current conservation biology theory and the information known about the taxonomy and ecology of the species”. The reviewer also stated that the “* * * inclusion of unoccupied habitat * * *

on the serpentine outcrops and adjunct prairie is needed to ensure ecological functions of the species” and “the definition of primary constituent elements * * * is comprehensive and well planned.”

A second peer reviewer stated that the “proposed actions, were, even without complete data, reasonable and based on solid scientific assumptions.” The reviewer recommended a monitoring strategy that includes establishment of permanent plots and marking individuals. In 2002, we established permanent grids and mapped individual plants in order to monitor life history and species composition.

The third peer reviewer suggested that herbivory on the known population and the survey of potential habitat on Six Rivers National Forest lands should be discussed. Discussions of these issues were added to the final rule. The reviewer also stated that the “* * * inclusion of unoccupied habitat and primary constituent elements * * *” was supported by the literature.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Areas outside the geographic area currently occupied by the species shall be designated as critical habitat only when a designation limited to its present range would be inadequate to ensure the conservation of the species.

Conservation is defined in section 3(3) of the Act as the use of all methods and procedures which are necessary to bring any endangered or threatened species to the point at which listing under the Act is no longer necessary. Regulations under 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species.

Habitat included in a critical habitat designation must first be “essential to the conservation of the species.” Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat

areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

When we designate critical habitat at the time of listing, as required under section 4 of the Act, or under short court-ordered deadlines, we may not have the information necessary to identify all areas which are essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

We will designate only currently known essential areas. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If information available at the time of designation does not show an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. We will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species.

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Accordingly, we do not designate critical habitat in areas outside the geographic area occupied by the species unless the best scientific and commercial data demonstrate that the unoccupied areas are essential for the conservation needs of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation

plans developed by States and counties, scientific status surveys and studies, and biological assessments, unpublished materials, and expert opinion or personal knowledge.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best available scientific information in determining which areas were essential for the conservation of *Thlaspi californicum*. This information included data from the following sources: 1993 United States Geological Survey (USGS) 1:24,000 scale, 3.75', infrared, color digital, orthophotographic, quarter quadrangle images; geologic map of the Van Duzen River Basin (State of California 1975); 1962 panchromatic, 1:12,000 scale, aerial photograph HCN-2 22-17; ownership parcels from the Humboldt County Planning Department, updated as of August 2000; recent biological surveys and reports; and discussions with botanical experts. We also conducted or contracted for site visits, either cursory or more extensive, at locations on private lands where access was obtained, on State lands managed by CDFFP, and on public lands managed by Six Rivers National Forest and the Bureau of Land Management, including Iaqua Buttes and Board Camp Mountain.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to: space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for germination, or seed dispersal; and habitats protected from disturbance or which are representative of the historic geographical and ecological distributions of a species.

The long-term probability of conservation of *Thlaspi californicum* is dependent upon a number of factors, including protection of serpentine sites containing existing colonies; protection of adequate serpentine sites on Ashfield Ridge to allow for recolonization or expansion; preservation of the connectivity between serpentine sites to allow gene flow between the colonies through pollinator activity and seed

dispersal mechanisms; and protection and maintenance of proximal areas for the survival of pollinators and seed dispersal agents. In addition, the small, fragmented distribution of this species makes it especially vulnerable to edge effects from adjacent activities, such as the spread of non-native species; nearby uses of herbicides and pesticides; livestock grazing; and erosion due to natural or diverted flow patterns.

Based on our knowledge of this species to date, the primary constituent elements of critical habitat for *Thlaspi californicum* consist of, but are not limited to:

- (1) Thin rocky soils that have developed on exposures of serpentine substrates (SHN 2001);
- (2) Plant communities that support a relatively sparse assemblage of serpentine indicator or facultative-serpentine indicator species, including various native forbs and grasses but not trees or shrubs, such that competition for space and water (both above and below ground), and light is reduced, compared to the surrounding habitats (SHN 2001). Known associated species include: *Festuca rubra* (red fescue), *Koeleria macrantha* (junegrass), *Elymus glaucus* (blue wildrye), *Eriophyllum lanatum* (woolly sunflower), *Lomatium macrocarpum* (large-fruited lomatium), and *Viola hallii* (Hall's violet) (SHN 2001);

- (3) Serpentine substrates that contain 15 percent or greater (by surface area) of exposed gravels, cobbles, or larger rock fragments, which may contribute to alteration of factors of microclimate, including surface drainage and moisture availability, exposure to wind and sun, and temperature (SHN 2001); and

- (4) Prairie grasslands and oak woodlands located within 30 m (100 ft) of the serpentine outcrop area on Ashfield Ridge. Protection of these habitats is essential to the conservation of the *Thlaspi californicum* in that it will provide connectivity among the serpentine sites, help to maintain the hydrologic and edaphic integrity of the serpentine sites, and support populations of pollinators and seed dispersal organisms.

Criteria Used To Identify Critical Habitat

In our delineation of the critical habitat unit, we selected areas to provide for the conservation of *Thlaspi californicum* at the only location it is known to occur. Adult individuals of the species currently only grow on approximately 0.3 ha (0.8 ac) of land on Ashfield Ridge in Kneeland Prairie. However, the area essential for the conservation of the species is not

restricted solely to the area where the plant is physically visible. It must include an area large enough to maintain the ecological functions upon which the species depends (e.g., the hydrologic and edaphic conditions).

We first mapped all known *Thlaspi californicum* occurrences. Due to the historic loss and fragmentation of the largest patches of suitable habitat, we also mapped all suitable habitat in proximity to the known occurrences. Maintaining the number and distribution of serpentine outcrops on Ashfield Ridge will help to ensure the long-term viability of *T. californicum*, as high-quality habitat patches in close proximity to a source population have the highest likelihood of future occupancy (Murphy *et al.* 1990). Protection of these outcrops will provide a range of habitat conditions, for example, moisture availability, temperature, and wind exposure, which will optimize the opportunities for recolonization or expansion and reduce the likelihood of extinction due to stochastic events. They will also protect undetected *T. californicum* colonies and seed banks.

We also mapped grasslands and oak woodlands surrounding the serpentine outcrops. These areas provide connectivity between all serpentine outcrops; maintain the hydrologic and edaphic integrity of the serpentine sites; and support biological agents of pollination and seed dispersal necessary for the conservation of the species. Inclusion of the grasslands and oak woodlands will also minimize impacts to serpentine outcrops resulting from external peripheral influences, such as erosion, grazing, or the spread of exotic species.

At this time, we are not designating as critical habitat any serpentine outcrops within Kneeland Prairie, other than the outcrops on Ashfield Ridge. A draft recovery plan is in preparation, which does not call for establishment of *Thlaspi californicum* beyond Ashfield Ridge. However, since *T. californicum* has an extremely restricted range, establishment at new locations may be determined necessary to provide insurance against stochastic events. In that case, critical habitat may be reevaluated based on recommendations in the final recovery plan.

We considered ownership status in delineating areas as critical habitat.

Thlaspi californicum is known only to occur on State, county, and private lands. We are not aware of any Tribal lands in or near our designated critical habitat unit for *T. californicum*.

We used a geographic information system (GIS) to facilitate identification of critical habitat areas. We used information from recent biological surveys and reports; discussions with botanical experts; and locations of serpentine soils to create GIS data layers. Serpentine soil sites were derived from a geologic map, infrared color digital orthophotos, and global positioning system data collected in the field during 2000 and 2001. These data layers were created on a base of 1:24,000 scale USGS 3.75', infrared, color digital, orthophotographic, quarter quadrangle images. We used these data layers to map the primary constituent elements. We defined boundaries of the designated critical habitat unit by overlaying this map with a 100-m Universal Transverse Mercator (UTM) North American Datum of 1927 (NAD27) grid and removing all NAD27 grid cells that did not contain the primary constituent elements.

In selecting the critical habitat area, we attempted to avoid developed areas and other lands unlikely to contribute to the conservation of *Thlaspi californicum*. However, we did not map the critical habitat unit in sufficient detail to exclude all such areas. Existing features and structures within the critical habitat unit boundary, such as buildings, roads, and other paved areas will not contain one or more of the primary constituent elements and, hence, are not considered critical habitat. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species or primary constituent elements in adjacent critical habitat.

Special Management Considerations or Protections

As noted in the Critical Habitat section, "special management considerations or protection" is a term that originates in the definition of critical habitat. We believe the critical habitat area may require special management considerations or protection because *Thlaspi californicum* occupies an extremely localized range. Potential threats to the habitat of *T. californicum* include: expansion of

Kneeland Airport and CDFFP helitack base; road realignment; fires caused by airplane or vehicular accidents; contaminant spills; erosion; application of herbicides and pesticides; livestock grazing; and introduction and spread of exotic species.

Additional special management is not required if adequate management or protection is already in place. Adequate special management considerations or protection are provided by a legally operative plan or agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. Currently, no plans meeting these criteria have been developed for *Thlaspi californicum*.

Critical Habitat Designation

The critical habitat area described below includes all the primary constituent elements discussed above, and constitutes our best assessment at this time of the areas needed for the species' conservation. Critical habitat is designated for *Thlaspi californicum* at the only location it is known to occur.

We are designating one unit of critical habitat, comprising 30 ha (74 ac), surrounding Kneeland Airport and roughly bisected by Mountain View Road. The unit includes all 5 known colonies and all other serpentine outcrops in close proximity to the colonies. All of the critical habitat unit for *Thlaspi californicum* is located on Ashfield Ridge in Kneeland Prairie, Humboldt County, California. This ridge separates the Van Duzen and Mad River basins near the community of Kneeland in central Humboldt County.

The unit contains approximately 2 ha (5 ac) of serpentine soils. Approximately 16 percent (0.3 ha (0.8 ac)) of the serpentine soils are known to be occupied. However, undetected colonies may exist on the serpentine soils within the unit. The approximate area, by land ownership, of this unit is shown in Table 1. Approximately 5 percent (2 ha (4 ac)) of this area consists of State lands, while County lands comprise approximately 11 percent (3 ha (8 ac)), and private lands comprise approximately 84 percent (25 ha (62 ac)). No Federal lands are within the critical habitat unit. This species is not known to occur or to have occurred historically on Federal lands.

TABLE 1.—APPROXIMATE AREAS AND PERCENT OF CRITICAL HABITAT OF *Thlaspi californicum* IN HECTARES (HA) (ACRES (AC)) IN HUMBOLDT COUNTY, CALIFORNIA, BY LAND OWNERSHIP. ESTIMATES REFLECT THE TOTAL AREA WITHIN CRITICAL HABITAT UNIT BOUNDARIES.

Ownership	Hectares	Acres	Percent
State	2	4	5
Private	25	62	84
County	3	8	11
Federal	0	0	0
TOTAL	30	74	100

Effects of Critical Habitat Designation Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, permit, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat were designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (50 CFR 402.10 (d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not jeopardize the species or destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project.

Regulations at 50 CFR 402.16 require Federal agencies to reinstate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinstitution of consultation or conference with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat.

If *Thlaspi californicum* is discovered on Federal lands, those activities on Federal lands that may affect *T. californicum* or its critical habitat would require a section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the Army Corps of Engineers under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (e.g., Federal Housing Administration, Federal Aviation Administration (FAA), or Federal Emergency Management Agency), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, as well as actions on non-Federal lands that are not federally funded, authorized, or permitted will not require section 7 of the Act consultations.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of *Thlaspi californicum* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

- (1) Ground disturbance of serpentine outcrops and grassland and oak woodland areas, including but not limited to grading, ripping, tilling, and paving;
- (2) Alteration of serpentine outcrops, including but not limited to removal of boulders, mining, and quarrying;
- (3) Removing, destroying, or altering vegetation in the critical habitat unit,

including but not limited to inappropriately managed livestock grazing, clearing, introducing or encouraging the spread of nonnative species, recreational activities, and maintaining an unnatural fire regime either through fire suppression or frequent and poorly timed prescribed fires;

(4) Hydrologic changes or other activities that alter surface drainage patterns resulting in erosion of serpentine outcrops or adjacent areas, including but not limited to water diversion, groundwater pumping, irrigation, and erosion control;

(5) Construction or maintenance activities that destroy or degrade critical habitat, including but not limited to road building, building construction, airport expansion, drilling, and culvert maintenance or installation;

(6) Application or runoff of pesticides, herbicides, fertilizers, or other chemical or biological agents; and

(7) Emergency response and clean-up of fuel or other contaminant spills.

To properly understand the effects of critical habitat designation, we must first compare the requirements pursuant to section 7 of the Act for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 of the Act prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on the survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. Designation of critical habitat in areas occupied by *Thlaspi californicum* is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. Designation of critical habitat in areas not occupied by *T. californicum* may result in an additional regulatory burden when a Federal nexus exists. However, we believe, and the economic analysis discussed below

illustrates, that the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Few additional consultations are likely to be conducted due to the designation of critical habitat.

Designation of critical habitat could affect the following agencies and/or actions: Development on private, State, or county lands requiring permits or funding from Federal agencies, such as the U.S. Army Corps of Engineers, the Department of Housing and Urban Development, the FAA, or the Federal Highway Administration; construction of communication sites licensed by the Federal Communications Commission; and authorization of Federal grants or loans. These actions would be subject to the section 7 process. Where federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans submitted by the applicant to secure a permit to take according to section 10(a)(1)(B) of the Act would be subject to the section 7 consultation process.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, contact the Project Leader, Arcata Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Region 1, Division of Endangered Species, 911 NE 11th Avenue, Portland, OR 97232-4181 (503/231-6131, facsimile 503/231-6243).

Exclusions Under Section 4(b)(2)

Subsection 4(b)(2) of the Act allows us to exclude areas from the critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in extinction of the species. As discussed in this final rule and our economic analysis for this rulemaking, we have determined that no significant adverse economic effects will result from this critical habitat designation. We believe the areas included in this designation are essential for the conservation of *Thlaspi californicum* because they protect the existing colonies, all suitable serpentine sites on Ashfield Ridge, connectivity between the serpentine sites, and the ecological functions upon which the species depends. We believe that the designation of the lands in this final rule as critical habitat outweigh the benefits of their exclusion from being designated as critical habitat. Consequently, none of the proposed

lands have been excluded from the designation based on economic impacts or other relevant factors pursuant to section 4(b)(2).

Relationship to Habitat Conservation Plans

No habitat conservation plans (HCPs) currently exist that include *Thlaspi californicum* as a covered species. However, the designated lands are covered lands in the Pacific Lumber Company's HCP. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. Although "take" of listed plants is not prohibited by the Act, listed plant species may also be covered in an HCP for wildlife species.

In most instances, we believe that the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. In the event that future HCPs covering *Thlaspi californicum* are developed within the boundaries of the designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of this species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *T. californicum*. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We will also provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of *T. californicum*. Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. Following the publication of the proposed critical habitat designation, a draft economic analysis was prepared by Economic & Planning Systems, Inc. for the Service. The draft analysis was made available for review on May 7, 2002 (67 FR 30643). The public comment on the draft analysis was open until June 6, 2002, however, we did not receive any comments.

Our economic analysis evaluated the potential future effects associated with the listing of *Thlaspi californicum* as an endangered species, as well as potential effects of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. To quantify the proportion of total potential economic impacts attributable to the critical habitat designation, the analysis evaluated a "without section 7" baseline and compares it to a "with section 7" scenario. The "without section 7" baseline represents the level of protection currently afforded to the species under the Act, absent section 7 protective measures, and includes protections afforded by other Federal, State, and local laws such as the California Environmental Quality Act. The "with section 7" scenario identifies land-use activities likely to involve a Federal nexus that may affect the species or its designated critical habitat, which accordingly may trigger future consultations under section 7 of the Act.

Upon identifying section 7 impacts, the analysis proceeds to consider the subset of impacts that can be attributed exclusively to the critical habitat designation. The upper-bound estimate includes both jeopardy and critical habitat impacts. The subset of section 7 impacts likely to be affected solely by the designation of critical habitat represents the lower-bound estimate of the analysis. The categories of potential costs considered in the analysis included costs associated with: (1) Identifying the effect of the designation on a particular parcel or land use activity (e.g., technical assistance, section 7 consultations); and (2) modification to projects, activities, or land uses resulting from the section 7 consultations.

The only reasonably foreseeable activity that will require consultation is the County's proposed Kneeland Airport

improvement project. The analysis estimates economic costs for two possible outcomes from this consultation. Both estimates conclude that the costs are attributable co-extensively to the listing of *Thlaspi californicum* due to the species limited distribution and suitable habitat. We are not aware of any future activities on State or private lands included in the designation would involve a Federal nexus.

Based on our economic analysis, we concluded that the designation of critical habitat would result in little additional regulatory burden or associated significant additional costs above and beyond those attributable to the listing of *Thlaspi californicum* due to the limited extent of the designation and the limited amount of reasonably foreseeable activity with a Federal nexus in the area.

The economic analysis concludes that the only existing or reasonably foreseeable activity that will require consultation is the proposed Kneeland Airport improvement project. The most likely outcome of the consultation would be approval of the proposal as presented or a recommendation to implement minor project modifications. The precise nature of any recommended project modifications is difficult to predict in advance of the actual consultation, however, the economic analysis estimates that the type of minor modification that may be associated with a consultation may cost around \$113,000. The analysis also estimated the potential cost to the economy under the extreme assumption that the improvement project was found to jeopardize the species or adversely modify critical habitat and that the Service is unable to identify any reasonable and prudent alternatives that would allow the project to proceed in another form. Cost associated with this scenario are estimated to range between \$169,000 and \$4.2 million depending on how the County's chooses to address the airport maintenance or whether or not they construct a replacement airport.

Because of *T. californicum's* extremely limited distribution and small amount of available suitable habitat, it is assumed that the Kneeland Airport improvement project would be subject to consultation on potential impacts to the species, regardless of critical habitat designation. Therefore, these potential costs are attributable co-extensively to the listing of the *Thlaspi californicum*. The designation of critical habitat is not expected to result in any significant additional regulatory protection.

A copy of the final economic analysis and supporting documents are included

in our administrative record and may be obtained by contacting the Arcata Fish and Wildlife Office (see **ADDRESSES** section). Copies of the final economic analysis also are available on the Internet at <http://pacific.fws.gov/news/>.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), as OMB determined that this rule may raise novel legal or policy issues. The Service prepared an economic analysis of this action. The Service used this analysis to meet the requirement of section 4(b)(2) of the Endangered Species Act to determine the economic consequences of designating the specific areas as critical habitat. The draft EA was made available for public comment, and we considered comments on it during the preparation of this rule.

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. A "substantial number" of small entities is more than 20 percent of those small entities affected by the regulation, out of the total universe of small entities in the industry or, if appropriate, industry segment. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to prepare a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. For the reasons stated in the proposed rule, in addition to the reasons stated below, we certify that critical habitat designation for *Thlaspi californicum* will not have a significant effect on a substantial number of small entities.

According to the Small Business Administration, small entities include

small organizations, such as independent nonprofit organizations, and small government jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, the Service considered the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, the Service considered the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting, etc.). The Service applied the "substantial number" test individually to each industry to determine if certification is appropriate. The area designated as critical habitat is small, less than 30 ha (74 ac), and we have identified fewer than a half-dozen landowners. The small scale of the designation ensures that the "substantial number of small entities" threshold of the Regulatory Flexibility Act will not be met. The five primary landowners include the following: Humboldt County, which owns Kneeland Airport and Mountain View Road; State of California, which owns the Kneeland helictack base; Pacific Lumber Company, and two private landowners.

The economic analysis identified the Kneeland Airport improvement project as the activity most likely to be affected by this rulemaking. The analysis estimated that a future section 7 consultation could cost all involved parties a total of \$20,300 and that likely mitigation could cost about \$113,000. Kneeland Airport is owned by Humboldt County, which has a population of approximately 126,000. Because SBREFA defines a "small government jurisdiction" as "governments of cities, counties * * * with a population of less than fifty

thousand." (U.S.C. 601), Humboldt County was not considered a small entity for purposes of this analysis, even though the analysis did consider the potential effects of the airport improvement project. Similarly, the other private landowners are not considered small businesses under the scope of SBREFA.

The economic analysis did, however, consider whether the activities of these landowners have any Federal involvement because designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. No Federal lands occur within the designated critical habitat unit. Land use within the majority of the unit, outside of the existing developed areas, consists of livestock grazing and unforested lands surrounding timber lands. None of these activities is likely to trigger a future section 7 consultation. The likelihood of future development in these areas is low, with the exception of the future airport expansion under consideration. If the proposed airport expansion proceeds, the Federal Aviation Administration will likely be required to consult with the Service under section 7 of the Act on activities that agency funds, permits, or implements that may affect *Thlaspi californicum*. With this critical habitat designation, the Federal Aviation Administration will also be required to consult with the Service if its activities may affect designated critical habitat. However, the Service believes this will result in minimal additional regulatory burden on the agency and its applicant or because consultation would already be required due to the presence of the listed species. Consultation to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process and trigger only minimal additional regulatory impacts beyond the duty to avoid jeopardizing the species because of this species limited distribution and available habitat.

Should the airport expansion or another federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat. In our experience, the vast majority of such projects can be successfully implemented with at most minor changes that avoid significant economic impacts to project

proponents. The area designated as critical habitat is small, less than 30 ha (74 ac), and we have identified fewer than a half-dozen landowners. The scale of the designation ensures that the "substantial number of small entities" threshold of the Regulatory Flexibility Act will not be met.

Designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, the Service is unaware of any ongoing Federal activities that affect this species, and since *Thlaspi californicum* was listed (2000), the Service has not conducted any formal or informal consultations involving this species.

Therefore, we certify that the designation of critical habitat for *Thlaspi californicum* will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

As discussed above, this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act (SBREFA). This final designation of critical habitat: (a) does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed in the draft economic analysis, no small entities as defined by SBREFA will potentially be affected by the designation of critical habitat.

Proposed and final rules designating critical habitat for listed species are issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises are not affected by this action and will not be affected by the final rule designating critical habitat for this species. Therefore, we anticipate that this final rule will not place significant additional burdens on any entity.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply,

distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required. The primary land uses within designated critical habitat include small county airport facilities, CDFFP helitack base, grazing, and unforested lands surrounding timber lands. Significant energy production, supply, and distribution facilities are not included within designated critical habitat. Therefore, this action does not represent a significant action affecting energy production, supply, and distribution facilities; and no Statement of Energy Effects is required. Because of this species restricted range and the limited amount of suitable habitat, any consultation required pursuant to section 7 of the Act by a Federal agency undertaking an action in this area would likely be triggered by the listing of the species and not solely by this designation of critical habitat.

Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule, as designated, will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that they must ensure that any programs involving Federal funds, permits or other authorized activities will not adversely affect the critical habitat. In our economic analysis, we found the direct and indirect costs associated with critical habitat designation to be small in relation to any small governments potentially affected.

(b) This rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of \$100 million or greater in any year, that is, it is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630 (“Government Actions and Interference with Constitutionally Protected Private Property Rights”), we have analyzed the potential takings implications of designating 30 ha (74 ac) of lands in Humboldt County,

California, as critical habitat for *Thlaspi californicum*. The takings implications assessment concludes that this final designation of critical habitat does not pose significant takings implications for lands within or affected by the designation of critical habitat for *T. californicum*. A copy of this assessment is available by contacting the Arcata Fish and Wildlife Office (see **ADDRESSES** section).

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policies, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in California. We will continue to coordinate any future changes in the designation of critical habitat for *Thlaspi californicum* with the appropriate State agencies. Since *T. californicum* only occurs distributed over an extremely limited area, the designation of critical habitat imposes few, if any, additional restrictions to those currently in place and therefore has little incremental impact on State and local governments and their activities. The designation may provide some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While this does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning rather than having to wait for case-by-case section 7 consultations to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Thlaspi californicum*.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

This rule does not contain any new or revised information collections for

which Office of Management and Budget approval is required under the Paperwork Reduction Act. Information collections associated with Act permits are covered by an existing OMB approval, and are assigned clearance No. 1018–0094, with an expiration date of July 31, 2004. The Service may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

The Service has determined that it does not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 (NEPA) in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. The Service published a notice outlining its reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This final designation does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance Secretarial Order 3206, “American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act” June 5, 1997), with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), Executive Order 13175, and the Department of the Interior’s manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of *Thlaspi californicum* because they do not support the species, nor do they provide essential habitat. Therefore, critical habitat for *T. californicum* has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this final rule is available upon request from the Arcata Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this document is Robin Hamlin (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the

Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.12(h) revise the entry for *Thlaspi californicum* under “FLOWERING PLANTS” to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
* * * * *							
<i>Thlaspi californicum</i>	Kneeland Prairie penny-cress.	U.S.A. (CA)	Brassicaceae — Mustard	E	684	17.96(a)	NA
* * * * *							

3. Amend § 17.96(a) by adding an entry for *Thlaspi californicum* in alphabetical order under Brassicaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) Flowering plants.

* * * * *

Family Brassicaceae: *Thlaspi californicum* (Kneeland Prairie penny-cress)

(1) A critical habitat unit is depicted for Humboldt County, California, on the map below.

(2) The primary constituent elements of critical habitat for *Thlaspi californicum* are the habitat components that provide:

(i) Thin rocky soils that have developed on exposures of serpentine substrates;

(ii) Plant communities that support a relatively sparse assemblage of serpentine indicator, or facultative-serpentine indicator, species, including various native forbs and grasses, but not trees or shrubs, such that competition

for space and water (both above and below ground) and light is reduced, compared to the surrounding habitats. Known associated species include the following: *Festuca rubra* (red fescue), *Koeleria macrantha* (junegrass), *Elymus glaucus* (blue wildrye), *Eriophyllum lanatum* (woolly sunflower), *Lomatium macrocarpum* (large-fruited lomatium), and *Viola hallii* (Hall’s violet);

(iii) Serpentine substrates that contain 15 percent or greater (by surface area) of exposed gravels, cobbles, or larger rock fragments, which may contribute to alteration of factors of microclimate, including surface drainage and moisture availability, exposure to wind and sun, and temperature; and

(iv) Prairie grasslands and oak woodlands located within 30 m (100 ft) of the serpentine outcrop area on Ashfield Ridge. Protection of these habitats is essential to the conservation of *Thlaspi californicum* in that it will provide connectivity among the serpentine sites, help to maintain the hydrologic and edaphic integrity of the

serpentine sites, and support populations of pollinators and seed dispersal organisms.

(3) Existing features and structures within the boundaries of mapped critical habitat units, such as buildings, roads, airports, and other paved areas will not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

(4) Critical habitat unit. Humboldt County, California.

(i) From USGS. 1:24,000 scale Iaqua Buttes quadrangle, land bounded by the following UTM Zone 10 NAD27 coordinate pairs (East, North): 421800, 4507300; 422100, 4507800; 422100, 4507300; 422200, 4507600; 421700, 4507400; 421800, 4507500; 421600, 4507500; 421800, 4507900; 421800, 4507800; 421900, 4507900

(ii) Map follows:

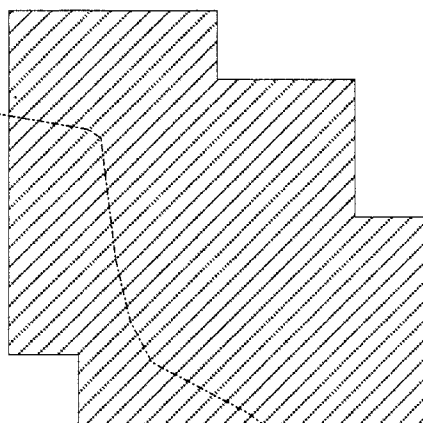
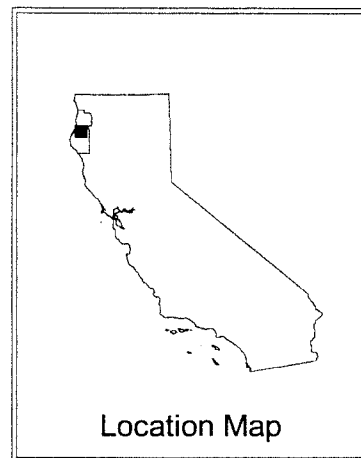
BILLING CODE 4310–55–P

Critical Habitat Humboldt County, California *Thlaspi californicum*

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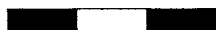
Ashfield
Ridge

Mountain View Road



UTM Zone 10 NAD27

0 100 200 300 Meters



-  Public Land Survey
-  Critical Habitat Unit

* * * * *

Dated: September 30, 2002.

Craig Manson,*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 02-25371 Filed 10-8-02; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 011218304-1304-01; I.D. 092602F]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.**ACTION:** Closure.**SUMMARY:** NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the D season allowance of the pollock total allowable catch (TAC) for Statistical Area 610 of the GOA.**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 5, 2002, until 2400 hrs, A.l.t., December 31, 2002.**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907-586-7228, or mary.furuness@noaa.gov.**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and

Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

Within any fishing year, underage or overage of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Administrator, Alaska Region, NMFS (Regional Administrator), provided that the sum of the revised seasonal allowances does not exceed 30 percent of the annual TAC apportionment for the Central and Western Regulatory Areas in the GOA (§ 679.20(a)(5)(ii)(C)). For 2002, 30 percent of the annual TAC for the Central and Western Regulatory Areas is 15,187 metric tons (mt). For 2002, the Regional Administrator has determined that within each area for which a seasonal allowance is established, any overage or underage of harvest from the previous season(s) shall be subtracted from or added to the seasonal allowance of the following season provided that the resulting sum of seasonal allowances in the Central and Western Regulatory Areas does not exceed 15,187 mt in any single season. The D season allowance of the pollock TAC in Statistical Area 610 of the GOA is 5,949 mt as established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002 and 67 FR 34860, May 16, 2002). The C season allowance in Statistical Area 610 was under harvested by 110 mt, therefore the Regional Administrator, in accordance with § 679.20(a)(5)(ii)(C), is increasing the D season pollock TAC in Statistical Area 610 by 110 mt to 6,059 mt.

In accordance with § 679.20(d)(1)(i), the Regional Administrator, has determined that the D season allowance of the pollock TAC in Statistical Area 610 will soon be reached. Therefore, the

Regional Administrator is establishing a directed fishing allowance of 6,009 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 4, 2002.

Virginia M. Fay,*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 02-25709 Filed 10-4-02; 3:21 pm]

BILLING CODE 3510-22-S