

this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

*E. Executive Order 12866*

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

**List of Subjects in 40 CFR Part 70**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. sections 7401–7671q.

Dated: February 2, 1998.

**Felicia Marcus,**

*Regional Administrator.*

[FR Doc. 98–3581 Filed 2–11–98; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

RIN 1018–AE55

**Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant *Thlaspi Californicum* (Kneeland Prairie Penny-Cress) From Coastal Northern California**

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

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) proposes endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the plant *Thlaspi californicum* (Kneeland Prairie penny-cress). *Thlaspi californicum* is known from Kneeland Prairie in Humboldt County, California, where it grows in coastal prairie on serpentine outcrops. The Service considers the occurrences of *T. californicum* reported from Mendocino County to be *T. montanum*, a widely distributed species. Habitat loss, potential road realignment, and proposed airport expansion activities imperil the continued existence of *T. californicum*. The restricted range of this species, limited to a single population, increases the risk of extinction from naturally occurring

events such as fire. This proposed rule, if made final, would extend Federal protection under the Act to this plant species.

**DATES:** To ensure consideration in the development of a final decision-making document for this species, comments from all interested parties should be received by April 13, 1998. Public hearing requests must be received by March 30, 1998.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 3310 El Camino Avenue, Sacramento, California 95821–6340. Comments and materials received, as well as the supporting documentation used in preparing the rule, will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Kirsten Tarp, Sacramento Fish and Wildlife Office (see **ADDRESSES** section) (telephone 916/979–2120; facsimile 916/979–2128).

**SUPPLEMENTARY INFORMATION:**

**Background**

*Thlaspi californicum* is found on serpentine soils at a coastal prairie in Humboldt County, California. Serpentine soils are derived from ultramafic rocks such as serpentinite, dunite, and peridotite, which are found in discontinuous outcrops in the Sierra Nevada and Coast Ranges of California from Santa Barbara County to Humboldt County. The chief constituent of the parent rock is a variant of iron-magnesium silicate. Most serpentine soils are formed in place over the parent rock, and are therefore shallow, rocky, and highly erodible. Serpentine soils, because of the parent material, tend to have high concentrations of magnesium, chromium, and nickel, and low concentrations of calcium, nitrogen, potassium, and phosphorus (Kruckeberg 1984). These characteristics make serpentine soil inhospitable for the growth of most plants, but some plants have adapted to serpentine substrates.

Sereno Watson (1892) described *Thlaspi californicum* based on material collected by Volney Rattan from Kneeland Prairie at 760 meters (m) (2,500 feet (ft)) elevation in Humboldt County, California. Payson (1926) maintained it as a full species in his monograph of the genus, whereas it was referred to as *T. alpestre* var. *californicum* in Jepson's (1925) manual, and *T. glaucum* ssp. *californicum* by Munz (1959). Holmgren (1971) assigned the name *Thlaspi montanum* var.

*californicum* and gave its range as Kneeland Prairie (including a 1952 specimen from a "serpentine rockpile toward Ashfield Butte"). She noted that the plant had last been collected in 1962. Rollins (1993a, 1993b) has elevated it to a full species: *Thlaspi californicum*.

*Thlaspi californicum* is a perennial herb in the mustard family (Brassicaceae) that grows from 9.5 to 12.5 centimeters (cm) (3 to 6 inches (in)) tall, with a basal rosette. The margins of the basal leaves range from entire to toothed. The white flowers have strongly ascending pedicels (flower stalks). The fruit is a sharply pointed silicle (a short fruit typically no more than 2 to 3 times longer than wide). *Thlaspi californicum* flowers from May to June. Characteristics that separate *T. californicum* from *T. montanum* include the orientation of the pedicel, shape and notching of the fruit, and length/width ratio of the fruit. *Thlaspi montanum* has pedicels perpendicular to the stem, not strongly ascending, and the silicles are either truncate or shallowly notched, but not acute at the apex as they are in *T. californicum* (Meyers 1991).

Rollins (1993a, 1993b) and Holmgren (1971) considered *Thlaspi californicum* to occur only at Kneeland Prairie. Wheeler and Smith (1991), in their "Flora of Mendocino County," reported two additional occurrences of *T. californicum* located on Mendocino National Forest in Mendocino County. These sites have been examined by Dave Isle, Mendocino National Forest botanist; Dave Imper, Environmental Specialist with SHN Consulting Engineers and Geologists; and Service staff. In addition, all of the herbarium specimens for *T. californicum* and *T. montanum* at Humboldt State University, including those collected in Mendocino County, have been examined by Imper and Service staff. The only collections considered by Imper and the Service to be *T. californicum* are from Kneeland Prairie in Humboldt County (Imper 1997; Larry Host and Kirsten Tarp, U.S. Fish and Wildlife Service (USFWS), pers. comms., 1997). Plants from Blue Banks and near the Spruce Grove campground on the Mendocino National Forest have pedicels that are perpendicular to the stem and silicles that are truncate and notched, characteristic of *T. montanum*. Additionally, the habitat and elevation are different from Kneeland Prairie. Other herbarium specimens, housed at the Humboldt State University herbarium and collected from Blue Banks and from Spruce Grove campground, are identified as *T. montanum*. McCarten (1991) did not

find any *T. californicum* in his habitat management study of rare plants and communities associated with serpentine soils on the Mendocino National Forest. The Mendocino National Forest botanist and the botanical consultant for Humboldt County concurred with this conclusion (Imper 1997; Dave Isle, botanist, Mendocino National Forest, pers. comm., 1997; L. Host and K. Tarp, pers. comms., 1997).

The California Natural Diversity Database (CNDDB) includes one occurrence for *Thlaspi californicum* based on Constance & Rollins' collection #2877 from 1942 ("5 mi s of Hoopa Valley"), housed at the Humboldt State University herbarium. The specimen had been annotated as *T. californicum* in 1976 by T. Nelson, then the herbarium's curator. A duplicate of this specimen, housed at another herbarium, had been assigned to *T. montanum* var. *montanum* by Patricia Holmgren in her 1971 biosystematic study of North American *T. montanum* and its allies. The specimen has since been examined by Imper and Service staff, who concur that it is *T. montanum* (Meyers 1991, Imper 1997).

The only known population of *Thlaspi californicum* is scattered within an area of 0.25 hectare (ha) (0.6 acre (ac)), with a total of about 11,000 individuals at Kneeland Prairie in Humboldt County (Dave Imper, Environmental Specialist, SHN Consulting Engineers and Geologists, pers. comm., 1997). The Kneeland Prairie population is bisected into two colonies by the Kneeland Airport. Both colonies occur on private land immediately adjacent to the Kneeland Airport. At Kneeland Prairie, the habitat for *T. californicum* has been reduced by approximately 60 to 70 percent within the past 33 years (CNDDB 1990, Meyer 1991, Imper 1997). This population is currently threatened by the proposed expansion of the County airport and potential realignment of the adjacent road. Because of its extremely restricted range, the plant is also vulnerable to extinction from naturally occurring events such as fire (CNDDB 1997).

In order to assess the significance of the Kneeland prairie population to the species, Imper (1997) inspected potentially suitable habitat for *Thlaspi californicum* in other areas near Kneeland Prairie and to the south. He found no other occurrences. Additionally, *T. californicum* has been targeted for surveys by the Bureau of Land Management (BLM) and U.S. Forest Service staff. The Six Rivers National Forest has no documented occurrences (Lisa Hoover, botanist, Six Rivers National Forest, pers. comm.,

1997). A search for the species has not revealed any *T. californicum* on the serpentine at Iaqu Buttes on BLM lands (Jennifer Wheeler, botanist, BLM, Arcata Resource Area, pers. comm., 1997).

#### Previous Federal Action

Federal government action on this species began on December 15, 1980 (45 FR 82480), when the Service published a revised Notice of Review of native plant taxa considered for listing under the Act. *Thlaspi californicum* (then known as *T. californicum* var. *montanum*) was included as a category 2 candidate. Category 2 candidates were formerly defined as taxa for which data on biological vulnerability and threats in the Service's possession indicated that listing was possibly appropriate, but was not sufficient to support proposed rules. The taxon remained a category 2 candidate in the revised plant notices of review published in the **Federal Register** on November 28, 1983 (48 FR 53640), and September 27, 1985 (50 FR 39526). The plant was listed as a category 1 candidate in the February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144), revised notices of review. Category 1 candidates were defined as those taxa for which the Service had on file sufficient information on biological vulnerability and threats to support the preparation of listing proposals, but issuance of the proposed rule was precluded by other pending listing proposals of higher priority. On February 28, 1996, the Service published a notice of review in the **Federal Register** (61 FR 7596) that discontinued the designation of category 2 candidates. *Thlaspi californicum* was listed as a candidate in that notice of review. This species has been given a listing priority assignment number of 2, due to the high magnitude, imminent threats to its continued existence.

The processing of this proposed rule conforms with the Service's final listing priority guidance for fiscal year 1997, published in the **Federal Register** on December 5, 1996 (61 FR 64475). In a **Federal Register** notice published on October 23, 1997 (62 FR 55628), the guidance was extended beyond fiscal year 1997 until such time as the fiscal year 1998 appropriations bill for the Department of the Interior becomes law and new final guidance is published. The fiscal year 1997 guidance clarifies the order in which the Service will process rulemakings following two related events: (1) the lifting on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104-6), and (2) the restoration of significant funding for listing through passage of the Omnibus

Budget Reconciliation Act on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. Based on biological considerations, this guidance establishes a "multi-tiered approach that assigns relative priorities, on a descending basis, to actions to be carried out under section 4 of the Act" (61 FR 64479). The guidance calls for giving highest priority to handling emergency situations (Tier 1) and second highest priority (Tier 2) to resolving the listing status of the outstanding proposed listings. Tier 3 includes the processing of new proposed listings for species facing high magnitude threats. This proposed rule for *Thlaspi californicum* falls under Tier 3. The guidance states that "effective April 1, 1997, the Service will concurrently undertake all of the activities presently included in Tiers 1, 2, and 3" (61 FR 64480). The Service has thus begun implementing a more balanced listing program, including processing more Tier 3 activities. The completion of this Tier 3 activity (a proposal for a species with high-magnitude, imminent threats) follows those guidelines.

#### Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Thlaspi californicum* S. Watson (Kneeland Prairie penny-cress) are as follows:

##### A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range.

The habitat of *Thlaspi californicum* has been significantly reduced within the past 33 years. Just prior to 1964, an estimated 2.0 to 2.25 ha (5 to 6 ac) of habitat existed at Kneeland Prairie (Meyers 1991). Approximately 60 to 70 percent of the habitat at Kneeland Prairie has been lost since 1964, due to construction of the Kneeland Airport, realignment of the county road that runs through Kneeland Prairie, and construction of the California Department of Forestry (CDFFP) helitack base (Meyers 1991; Imper 1990; Imper, pers. comm., 1997). Additional habitat and plants are currently threatened by the proposed expansion

of the Kneeland Prairie Airport and potential road realignment.

The Kneeland Prairie Airport serves principally as the backup airport for Rohnerville, Murray, Eureka Municipal, and Arcata-Eureka airports. Small single-engine and occasionally twin-engine planes use Kneeland Airport. This airfield is especially important when airports at lower elevations are fogged in, a frequent occurrence in the region (Hodges & Shutt 1993). Kneeland Prairie is the only airport in the Humboldt Bay area that can be used when the bay is fogged in (Don Tuttle, Resource Specialist, Humboldt County Public Works, pers. comm., 1997). The airport is particularly important for commercial express mail and air freight carriers, as well as other couriers (Ray Beeninga, Airports Manager, Humboldt County, pers. comm., 1997).

Humboldt County contracted a study to evaluate its airports and prepare appropriate planning documents (Hodges & Shutt 1993). The study provided an assessment of Kneeland Airport's role and associated airfield requirements. The report also discussed land use compatibility issues and descriptions of capital projects, and provided documentation required to upgrade Kneeland Airport from temporary to permanent inclusion in the National Plan for Integrated Airport Systems. That designation allows the county to receive Federal funding for airport modifications through the Federal Aviation Administration (FAA). Recommendations in the report included development of a complete geotechnical study of specific engineering designs to stabilize the airport, and construction of a new parking area meeting FAA setback standards. The report discussed design constraints for placement of the new parking area. The location of the CDFFP helitack base limits the ability of the airport to expand the existing parking area to the northwest (Hodges & Shutt 1993). The recommended location for the new parking area is on the eastern side of the airport (Hodges & Shutt 1993), adjacent to the eastern colony of *Thlaspi californicum*. Construction of the parking facility at Kneeland Airport could adversely affect the habitat and individuals of the eastern colony due to the proximity of the plants to the potential site.

Humboldt County is also contracting an initial study to evaluate the geotechnical feasibility and cost of modifying Kneeland Prairie Airport. The study, currently in progress (D. Tuttle and D. Imper, pers. comms., 1997), is evaluating ways to solve problems involving subsidence of the

runway, slope stabilization, and the safety issue that the runway is too short (Dave Dietz, Project Manager, Shutt-Moen Associates, pers. comm., 1997). Possible options include leaving the airport configuration as is (i.e., repairing current subsidence, but not extending the runway), finding a different site for a new airport, or modifying the existing airport (D. Dietz, pers. comm., 1997). Financial constraints could influence the choice among the alternatives. In addition, exploratory soil boring is needed to determine how to stabilize the airport and to determine the cost of extending the runway. *Thlaspi californicum* occurs on the slopes immediately adjacent to the airfield. Exploratory boring may affect individuals located immediately adjacent to airport lands. Modification of the existing airport is anticipated to occur in the year 2000 (R. Beeninga, pers. comm., 1997).

The realignment of the county road adjacent to the airport could affect the western occurrence of *Thlaspi californicum* at Kneeland Prairie (D. Imper, pers. comm., 1997). The road currently runs along the southwest edge of the runway and serves areas beyond the airport. The aviation manager would not be authorized to modify the road except as necessary for slope stabilization or as the result of possible runway extension at the south end of the airport. The extension of the runway to the south is not expected to directly impact *T. californicum*. However, if the runway is extended 30 to 65 m (90 to 200 ft) (R. Beeninga, pers. comm., 1997), the runway will run through the current road. The road would then either need to go under the runway via a tunnel, or be realigned. Road realignment could result in impacts to the habitat and individual plants. The western colony of *Thlaspi californicum* occurs just downslope of the current road. For safety reasons, it is likely that Humboldt County will undertake straightening and/or widening of the road, either independent of or concurrent with runway expansion (L. Host, *in litt.*, 1997). The road adjacent to the airport is narrow; a blind, 90-degree curve in the road around the end of the runway limits safe speeds to only 10 to 15 miles per hour. These conditions could warrant a county decision to realign the road in order to achieve a safer curve radius at the end of the runway. Unless the approach to that portion of the road is moved outward beyond the plants (which would require extra length and expense), the realignment would cross the remaining serpentine habitat and eliminate about half of the remaining

plants in the western colony. The Service anticipates that such roadwork would occur during airport construction in order to avoid the expense of bringing necessary machinery to the site twice.

#### B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not known to be a threat for this plant.

#### C. Disease or Predation

There is no known threat to *Thlaspi californicum* from disease. Cattle grazing occurs throughout the prairie and the area surrounding the airport (Imper 1997). Cattle trails run through *T. californicum* habitat (Meyers 1991), but there does not appear to be any threat to the species from current levels of grazing.

#### D. The Inadequacy of Existing Regulatory Mechanisms

The California Environmental Quality Act (CEQA) (chapter 2, section 21050 *et seq.* of the California Public Resources Code) requires full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that are eligible for listing as rare, threatened, or endangered but are not so listed are given the same protection as those species that are officially listed with the State or Federal governments. Once significant effects are identified, the lead agency has the option of requiring mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is therefore dependent upon the discretion of the agency involved.

When the CDFFP constructed the Kneeland Helitack Base in 1980, a botanical assessment was required by the Humboldt County Planning Department for issuance of a conditional use permit. However, CDFFP did not include any analysis of potential impacts to *Thlaspi californicum*, although records of its California Native

Plant Society 1B status and CNDDDB documentation of the species' presence were available at that time (Imper 1990, Meyers 1991).

#### *E. Other Natural or Manmade Factors Affecting Its Continued Existence*

*Thlaspi californicum* has never been found anywhere other than at Kneeland Prairie, where the single population occupies 0.25 ha (0.6 ac), bisected by the Kneeland Airport. This plant occupies serpentine prairie habitat that is quite restricted in extent. The combination of a single population and restricted habitat makes *T. californicum* susceptible to destruction of all or a significant portion of its range from naturally occurring events such as fire, drought, or severe erosion (Shaffer 1981, Primack 1993). Chance events causing population fluctuations or even population extirpations are not usually a concern until the number of individuals or geographic distribution becomes as limited as with *T. californicum* (Primack 1993). The single known locality of the species makes the population at Kneeland Prairie particularly susceptible to extinction due to fire or an erosional event causing slope failure. Even one such event has the potential to seriously impact the sole population of the species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Airport expansion activities, potential road realignment, inadequate regulatory mechanisms, and naturally occurring events such as fire imperil the continued existence of this plant. The one known population of *Thlaspi californicum* includes approximately 11,000 individual plants scattered within a 0.25 ha (0.6 ac) area. The species is in danger of extinction throughout all of its known range. Based on this evaluation, the preferred action is to list *T. californicum* as endangered. Other alternatives to this action were considered but not preferred because they would not provide adequate protection and would not be consistent with the Act. Listing *T. californicum* as endangered would provide additional protection and is consistent with the Act's definition of endangered. Critical habitat is not being proposed for *T. californicum* for reasons discussed in the "Critical Habitat" section of this proposal.

#### **Critical Habitat**

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical 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 consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Thlaspi californicum*. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Service determines that designation of critical habitat for *Thlaspi californicum* is not prudent due to lack of benefit to the species. Critical habitat designation provides protection only on Federal lands or on private lands when there is Federal involvement through authorization or funding of, or participation in, a project or activity. Although this plant occurs only on private land, it may be affected by projects with Federal connections, including potential Federal funding of the county road realignment and airport expansion by the Federal Highway Administration and the FAA respectively. Section 7(a)(2) of the Act requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of a federally listed species, or to destroy or adversely modify designated critical habitat.

*Thlaspi californicum* has an extremely narrow distribution in a serpentine prairie, totalling about 0.25 ha (0.6 ac) in two parcels separated by the runway of Kneeland Airport, whose construction appears to have destroyed most of the plant's habitat. At the

present time, no other site is known to be occupied by or suitable for this plant. The private landowners at Kneeland are aware of the plant's presence and extremely limited habitat, as are the airport operators and others involved in management of the area. Therefore, designation of critical habitat would provide no benefit with respect to notification. In addition, given the species' narrow distribution and precarious status, virtually any conceivable adverse effect would very likely jeopardize its continued existence. Designation of critical habitat for *T. californicum* would therefore provide no benefit to the species apart from the protection afforded by listing the plant as endangered.

#### **Available Conservation Measures**

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

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

All of the occurrences of *Thlaspi californicum* are on privately owned

land. However, impacts of modifying the adjacent airport have the potential to adversely affect *T. californicum*, due to the proximity of the plants to the proposed parking apron. Funds from the FAA have been used to partially finance a planning document for the Kneeland Airport and are proposed to be used for airport modifications. Private sector funding is not anticipated to be available for Kneeland Airport (Hodges & Shutt 1993). Realignment of a county road adjacent to the airport may be required if the runway is extended. This work could be partially funded by Federal Highway Administration grants, thereby providing another avenue for section 7 consultation.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export an endangered plant, transport such a plant in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale an endangered plant in interstate or foreign commerce, or remove and reduce an endangered plant to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits malicious damage or destruction on areas under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act if a species is listed. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within a species' range. This species is not located on areas under Federal jurisdiction. Collection, damage or destruction of this species on Federal lands is prohibited (although in appropriate cases a Federal endangered species permit may be issued to allow collection for scientific or recovery purposes). Such activities on areas not under Federal jurisdiction would constitute a violation of section 9 if conducted in knowing violation of California State law or regulations, or in

violation of State criminal trespass law. Moderate livestock grazing and normal use of the existing airfield and road are among the activities that would be unlikely to violate section 9. Questions regarding whether specific activities would constitute a violation of section 9, should this species be listed, should be directed to the Field Supervisor of the Sacramento Field Office (see **ADDRESSES** section).

The Act and 50 CFR 17.62 and 17.63 provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued for *Thlaspi californicum* because it is not common in cultivation or in the wild. Requests for copies of the regulations regarding listed species and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181 (phone 503/231-2063; facsimile 503/231-6243).

#### Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. The Service will follow its peer review policy (59 FR 34270; July 1, 1994) in the processing of this rule. Comments are particularly sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Thlaspi californicum*;
- (2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;
- (3) Additional information concerning the range, distribution, and population size of this species; and
- (4) Current or planned activities in the subject area and their possible impacts on this species.

A final determination of whether to list this species will take into consideration the comments and any additional information received by the Service. Such communications may lead to a final decision-making document that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

#### National Environmental Policy Act

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

#### Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

#### References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

**Author.** The primary author of this proposed rule is Kirsten Tarp, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

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

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

#### Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to 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. Amend section 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

#### § 17.12 Endangered and threatened plants.

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*		*
<b>Flowering Plants</b>							
*	*	*	*	*	*		*
<i>Thlaspi californicum</i>	Kneeland Prairie penny-cress.	U.S.A. (CA) .....	Brassicaceae .....	E	.....	NA	NA
*	*	*	*	*	*		*

Dated: December 30, 1997.

**Jamie Rappaport Clark,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 98-3561 Filed 2-11-98; 8:45 am]

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