

both anti-lock and regenerative system, the letters and background of each separate indicator lamp shall be of contrasting colors, one of which is red. The letters and background of a separate lamp for an anti-lock system, a regenerative system, or a lamp displaying both an anti-lock and a regenerative system shall be of contrasting colors, one of which is yellow.

§ 571.135 [Amended]

- 3. Section 571.135 is amended by:
a. Revising S5.5.1(g);
b. Revising S5.5.5(d)(6);
c. Adding S5.5.5(d)(7);
d. Amending S7.7.1 to add a second sentence;
e. Revising S7.7.3(h); and
f. Removing S7.11.3(n).

The revisions, additions, and amendments read as follows:

§ 571.135 Standard No. 135; Passenger car brake systems.

\* \* \* \* \*

S5.5.1. Activation. \* \* \*

(g) For an EV with a regenerative braking system that is part of the service brake system, failure of the RBS.

\* \* \* \* \*

S5.5.5. Labeling. \* \* \*

(d) \* \* \*

(6) If a separate indicator is provided for the condition specified in S5.5.1(g), the letters and background shall be of contrasting colors, one of which is yellow. The indicator shall be labeled with the symbol "RBS." RBS failure in a system that is part of the service brake system may also be indicated by a yellow lamp that also indicates "ABS" failure and displays the symbol "ABS/RBS."

(7) If a separate indicator is provided for any other function, the display shall include the word "Brake" and the appropriate additional labeling.

\* \* \* \* \*

S7.7 \* \* \*

S7.7.1 General information. \* \* \*

This test is also for EVs.

\* \* \* \* \*

S7.7.3. \* \* \*

(h) For an EV, this test is conducted with no electrical power supplied to the vehicle's propulsion motor(s), but with the RBS and brake power or power assist still operating, unless cutting off the supply of electrical power to the propulsion motor(s) also disables those systems.

Issued on: January 19, 2000.

Frank Seales, Jr.,

Acting Administrator.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AE55

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Plant Thlaspi californicum (Kneeland Prairie Penny-Cress) From Coastal Northern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for Thlaspi californicum (Kneeland Prairie penny-cress). Thlaspi californicum is known only from Kneeland Prairie in Humboldt County, California, where it grows in coastal prairie on serpentine outcrops. We consider 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 action implements the protection of the Act for this plant species.

DATES: This rule is effective on March 10, 2000.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Suite W2605, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Kirsten Tarp or Jan Knight, Sacramento Fish and Wildlife Office (see ADDRESSES section) (telephone number 916/414-6645; facsimile 916/414-6710).

SUPPLEMENTARY INFORMATION:

Background

The single known population of Thlaspi californicum (Kneeland Prairie penny-cress) is found on serpentine soils at a coastal prairie in Humboldt County, California. Serpentine soils are derived from ultramafic rocks (rocks with unusually large amounts of magnesium and iron) 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). Serpentine soils alter the pattern of vegetation and plant species composition nearly everywhere they occur. While serpentine soils are inhospitable for the growth of most plants, some plants are wholly or largely restricted to serpentine substrates (Kruckeberg 1984).

Sereno Watson (1882) described Thlaspi californicum based on a collection made 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 cluster of leaves that develops at the base of the plant prior to the flowering stage. 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 as 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. Smith and Wheeler (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 David 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 and Rogers (1991) did not find any *T. californicum* in their 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; David Isle, botanist, Mendocino National Forest, pers. comm., 1997; L. Host and K. Tarp, pers. comms., 1997).

The California Natural Diversity Database (CNDDDB) 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 Prairie Airport. Both colonies occur on private land immediately adjacent to the Kneeland Prairie Airport. At Kneeland Prairie, the habitat for *T. californicum* has been reduced by approximately 60 to 70 percent within the past 33 years through development of the site for the Kneeland Prairie Airport, a county road realignment, and a helitack base (CNDDDB 1997, Meyer 1991, Imper 1997). This population is currently threatened by the proposed expansion of the County airport and potential additional 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 (CNDDDB 1997).

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 Iaqua Buttes on BLM lands (Jennifer Wheeler, botanist, BLM, Arcata Resource Area, pers. comm., 1997).

#### Previous Federal Action

Federal Government action on *Thlaspi californicum* began when we published an updated Notice of Review (NOR) for plants on December 15, 1980 (45 FR 82480), that identified those plants currently being considered for listing as endangered or threatened. We included *T. californicum* (then known as *T. californicum* var. *montanum*) as a category 2 candidate for Federal listing in this document. Category 2 candidates were those taxa for which data on biological vulnerability and threats in our possession indicated that listing was possibly appropriate but was not sufficient to support proposed rules. Our November 28, 1983, supplement to

the NOR (48 FR 53640) as well as the subsequent revision on September 27, 1985 (50 FR 39526), included *T. californicum* as a category 2 candidate.

We revised the plant NOR again on February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144). In both notices, we included *Thlaspi californicum* as a category 1 candidate. Category 1 candidates were those taxa for which we had on file sufficient information on biological vulnerability and threats to support preparation of listing proposals, but issuance of the proposed rule was 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 (61 FR 7596), we discontinued designation of multiple categories of candidates, and only those taxa meeting the definition of former category 1 are now considered candidates for listing. *Thlaspi californicum* was included as a candidate species in the February 28, 1996, notice. We published a proposed rule on February 11, 1998, to list this species as endangered. We based the proposal on information supplied by reports to the CNDDDB and observations and reports by numerous botanists.

Based on all available information including comments received in response to the proposal (see the Summary of Comments and Recommendations section of this final rule), we have now determined *Thlaspi californicum* to be endangered. The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudence and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under Listing Priority Guidance. This final rule is a Priority 2 action. We have updated this rule to reflect any changes in information

concerning distribution, status, and threats since the publication of the proposed rule.

### Summary of Comments and Recommendations

In the proposed rule published February 11, 1998, in the **Federal Register** (63 FR 7112) and associated notifications, we requested all interested parties to submit factual reports or information that might contribute to development of a final rule. The public comment period closed on April 13, 1998. We contacted appropriate Federal agencies, State agencies, county and city governments, scientific organizations, and other interested parties and requested comments. We also sent copies of the proposed rule and the letter for request of comment to three local libraries for public display. We published a newspaper notice in the *Eureka Times-Standard* on February 25, 1998, which invited general public comment. We received no requests for a public hearing.

Six individuals or agencies submitted comments. Two commenters supported the listing, three commenters opposed the listing, and one commenter was neutral. We received supporting comments from the California Native Plant Society and BLM. We received opposing comments from the Washington Legal Foundation, Pacific Legal Foundation, and a private citizen. We organized opposing comments and other comments questioning the proposed rule into specific issues, grouped comments of a similar nature by issue, and summarized them as follows:

*Issue 1:* One respondent asserted that listing this species would exceed the scope of the Federal commerce power under the Commerce Clause of Article I, section 8 of the U.S. Constitution.

*Response:* We maintain that we do have the authority to list plants such as the one in this final rule pursuant to the Act. A recent decision in the United States Court of Appeals for the District of Columbia Circuit (*National Association of Home Builders of the U.S. v. Babbitt*, 130 F.3d 1041, D.C. Cir. 1997) makes it clear in its application of the test used in the United States Supreme Court case, *United States v. Lopez*, 514 U.S. 549 (1995), that regulation of species limited to one State under the Act is within Congress' commerce clause power. On June 22, 1998, the Supreme Court declined to accept an appeal of this case (118 S. Ct. 2340 1998). Therefore, our application of the Act to *Thlaspi californicum* is constitutional.

*Issue 2:* One respondent wanted to know the full economic impact of the listing of this plant.

*Response:* Under section 4(b)(1)(A) of the Act, a listing determination must be based solely on the best scientific and commercial data available. The legislative history of this provision clearly states the intent of Congress to "ensure" that listing decisions are "based solely on biological criteria and to prevent non-biological considerations from affecting such decisions," H.R. Rep. No. 97-835, 97th Cong. 2d Sess. 19 (1982). As further stated in the legislative history, "Applying economic criteria \* \* \* to any phase of the species listing process is applying economics to the determinations made under section 4 of the Act and is specifically rejected by the inclusion of the word "solely" in this legislation," H.R. Rep. No. 97-835, 97th Cong. 2d Sess. 19 (1982). Because we are specifically precluded from considering economic impacts in a final decision on a proposed listing, we have not examined such impacts and cannot respond to comments and requests concerning possible economic consequences of listing this plant.

*Issue 3.* One respondent stated that the Service does not have sufficient scientific data to support a determination of endangered and that the Service did not cite any studies that might question the validity of the proposal.

*Response:* The Act requires us to reach a decision based on the best scientific and commercial information available. We believe that botanical study of the appropriate habitats on public lands in Humboldt and nearby counties has been adequate to show that this plant is indeed extremely rare. The threats to this species discussed under the Summary of Factors Affecting the Species section of this rule are also based on the best information available and are well documented or reasonably foreseeable. By their nature, threats are descriptions of events that have not yet taken place but are likely to occur in the foreseeable future. All information received from all sources was carefully evaluated.

Criteria for what information may be considered are discussed in the Summary of Factors Affecting the Species section. We have attempted to check all substantive information for accuracy and believe that the information included in this rule is reliable.

*Issue 4:* One respondent asked a series of questions about the CNDDDB including its function, sources of information and funding, and review process.

*Response:* The CNDDDB is a computerized inventory with information on the location and condition of special status plants, animals, and natural communities. The CNDDDB receives funding through the State of California and receives its information from a variety of sources including consultants, academia, State and Federal agency biologists, and knowledgeable lay people. The information submitted to CNDDDB is reviewed by CNDDDB staff for general accuracy before it is entered into the database.

### Peer Review

We have routinely solicited comments from parties interested in, and knowledgeable of, species that have been proposed for listing as threatened or endangered. The July 1, 1994, Peer Review Policy (59 CFR 34270) established the formal requirement that a minimum of three independent peer reviewers be solicited to review our listing decisions. We received no responses to our requests for peer review of this listing action.

### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that *Thlaspi californicum* should be classified as an endangered species. We followed procedures found at section 4(a)(1) of the Act and regulations (50 CFR part 424) implementing the listing provisions of the Act. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Thlaspi californicum* 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 before 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 Prairie 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 Prairie 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 Airport 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 Prairie 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 Prairie 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 (R. Beeninga, pers. comm., 1997). In addition, exploratory soil boring is needed to determine how to stabilize the airport and to determine the cost of extending the runway (D. Dietz, pers. comm., 1997). *Thlaspi californicum* occurs on the slopes immediately adjacent to the airfield. Exploratory boring may affect individuals located immediately adjacent to airport lands (L. Host and K. Tarp, pers. obs. 1997). 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. The western colony of *T. californicum* occurs just downslope of the current road. Road realignment could result in impacts to habitat and individual plants.

For safety reasons, it is likely that Humboldt County will undertake straightening and/or widening 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 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. We anticipate that such roadwork would occur during airport construction 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.* We know of no threats 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 current levels of grazing do not appear to threaten the species.

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 also 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.

We have 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. A conservation agreement could not be negotiated with the private land owners (D. Imper, *in litt.*, 1994), and listing *T. californicum* as threatened 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

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by the 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 geographical 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. "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. The 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.

In the proposed rule, we indicated that designation of critical habitat was not prudent for *Thlaspi californicum* 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.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species 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 have reexamined the question of whether critical habitat for *Thlaspi californicum* would be prudent.

Due to the small number of populations, *Thlaspi californicum* is vulnerable to unrestricted collection, vandalism, or other disturbance. We remain concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for *Thlaspi californicum* and have not found specific evidence of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree

of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if a critical habitat designation would provide any benefits, then a prudent finding is warranted. In the case of this species, designating critical habitat may provide some benefits. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat (see Available Conservation Measures section). While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating critical habitat may also provide some educational or informational benefits. Therefore, we find that critical habitat is prudent for *Thlaspi californicum*.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states, the processing of critical habitat determinations (prudence and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year. As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for *Thlaspi californicum* has allowed us to concentrate our limited resources on higher priority critical habitat (including court ordered designations) and other listing actions, while allowing us to put in place protections needed for the conservation of *Thlaspi californicum* without further delay. However, because we have successfully reduced, although not eliminated, the

backlog of other listing actions, we anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for this species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for *Thlaspi californicum* as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations (like the one at issue in this case).

#### 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 us.

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 Prairie Airport and are proposed to be used for airport modifications. Private sector funding is not anticipated to be available for Kneeland Prairie 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.

Listing *Thlaspi californicum* would provide for development of a recovery plan for this plant. Such a plan would bring together both State and Federal efforts for conservation of the plant species. The plan would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and estimate costs of various tasks necessary to accomplish recovery. It also would describe site-specific management actions necessary to achieve conservation and survival of the plant. Additionally, under section 6 of the Act, we would be able to grant funds to the State for management actions promoting the protection and recovery of this species.

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 or in the course of any violation of a State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species 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 because this species is not common in cultivation or common in the wild. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018-0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.62. Requests for copies of the regulations concerning listed plants and general 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 (telephone 503/231-2063; facsimile 503/231-6243).

It is our policy, published in the **Federal Register** (59 FR 34272) on July 1, 1994, to identify to the maximum extent practicable those activities that would or would not be likely to 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 the species' listing on proposed and ongoing activities within its range. Collection of listed plants or activities that would damage or destroy listed plants on Federal lands are prohibited without a Federal endangered species permit. Such activities on non-Federal lands would constitute a violation of section 9 of the Act if they were conducted in knowing violation of California State law or regulation, or in the course of violation of California State criminal trespass law. Otherwise such activities would not constitute a violation of the Act on non-Federal lands.

Questions on whether specific activities would likely constitute a violation of section 9 should be directed to the Field Supervisor of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

**Regulatory Planning and Review**

This rule is not subject to review by the Office of Management and Budget under Executive Order 12866.

*National Environmental Policy Act*

We have determined that an environmental assessment and environmental impact statement, 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. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

*Paperwork Reduction Act*

This rule does not contain any information collection requirements for which Office of Management and Budget (OMB) approval under the

Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* is required. An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018-0094. For additional information concerning permits and associated requirements for endangered plants, see 50 CFR 17.62 and 17.63.

**References Cited**

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

**Author**

The primary author of this final 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.

**Regulation Promulgation**

Accordingly, we hereby 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 § 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						
FLOWERING PLANTS							
* <i>Thlaspi californicum</i>	* Kneeland Prairie penny-cress.	* U.S.A. (CA) .....	* Brassicaceae .....	* E	* 684	NA	* NA
*	*	*	*	*	*		*

Dated: January 13, 2000.  
**Jamie Rapport Clark,**  
 Director, U.S. Fish and Wildlife Service.  
 [FR Doc. 00–2950 Filed 2–8–00; 8:45 am]  
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