

comments on or before December 18, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Maurice Salsa, 5616 Evergreen Valley Drive, Kingwood, TX 77345 (petitioner for Cherokee, OK); Jeraldine Anderson, 1702 Cypress Drive, Irving, TX 75061 (petitioner for Ballinger, TX; Crowell, TX; and Eldorado, TX); and Linda Crawford, 3500 Maple Ave., #1320, Dallas, TX 75219 (petitioner for Jayton, TX).

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01-291; MM Docket No. 01-292; MM Docket No. 01-293; MM Docket No. 01-294; and MM Docket No. 01-295, adopted October 3, 2001, and released October 12, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone (202) 863-2893.

In addition to the above, the Commission requests comments on a petition filed by Jeraldine Anderson proposing the allotment of Channel 238A at Ballinger, Texas, as that community's second local commercial FM service. Channel 238A requires a site restriction 12.8 kilometers southeast of the community, utilizing coordinates 31-38-03 NL and 99-53-13 WL. Additionally, as Ballinger, Texas, is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican government will be requested for this allotment.

The Commission further requests comments on a petition filed by Jeraldine Anderson proposing the allotment of Channel 250C3 at Crowell, Texas, as that community's potential second local FM transmission service. Channel 250C3 requires a site restriction 3.1 kilometers southwest of the community, utilizing coordinates 33-57-54 NL and 99-44-59 WL.

The Commission further requests comments on a petition filed by Jeraldine Anderson proposing the allotment of Channel 293A at Eldorado, Texas, as an additional local

commercial FM transmission service at that community. Channel 293A requires a site restriction 1.3 kilometers southwest of the community, utilizing coordinates 30-51-14 NL; 100-36-43 WL. Additionally, as Eldorado is located within 320 kilometers of the U.S.-Mexico border, concurrence of the Mexican government will be requested for this allotment.

The Commission further requests comments on a petition filed by Linda Crawford proposing the allotment of Channel 231A at Jayton, Texas, as that community's first local aural transmission service. Channel 231A can be allotted to Jayton at city reference coordinates 33-14-53 NL and 100-34-24 WL.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. §§ 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Cherokee, Channel 237C2.

3. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 238A at Ballinger; Crowell, Channel 250C3; Channel 293A at Eldorado; and Jayton, Channel 231A. Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AG92

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Thlaspi californicum* (Kneeland Prairie Penny-cress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Thlaspi californicum* (Kneeland Prairie penny-cress). Approximately 30 hectares (74 acres) in Humboldt County, California, are proposed for designation as critical habitat. If this proposal is made final, 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. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise this proposal prior to final designation to incorporate or address new information received during the comment period.

DATES: We will accept comments until December 24, 2001. Public hearing requests must be received by December 10, 2001.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to the Project Leader, Arcata Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, California 95521.

2. You may also send comments by electronic mail (e-mail) to FW1_kneelandpennycress@fws.gov. See the Public Comments Solicited section below for file format and other information about electronic filing.

3. You may hand-deliver comments to our Arcata Fish and Wildlife Office at the address given above.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT:

Bruce Halstead, Project Leader, Arcata Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, California 95521 (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 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* (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 be outbreeding, while others, such as *T. alpestre*, are primarily self-pollinating (Holmgren 1971). Due to its very close taxonomic relationship to *T. montanum*, *T. californicum* is almost certainly an outbreeder. The principal pollinators are believed to be generalist bees and/or flies (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. The area occupied by the species is divided 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 was estimated at 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. These data suggest the total number of plants has declined by about 48 percent since 1997, even though two new small colonies have been discovered (SHN 2001).

Historically, several land use activities may have 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 (CDFPP) 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 fragmented the two largest patches of suitable habitat into four relatively isolated patches. The construction 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, anecdotal evidence indicates that prior to this habitat loss these colonies occupied more area or formed one large colony. The impacts on population or community processes from this habitat loss and possible population reduction are unknown. In general, smaller serpentine outcrops are known to support fewer native species and more exotic species (Wolf and Harrison 2001). 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). All of these factors, in addition to a reduction and/or fragmentation of the site, increase the likelihood of extinction.

In 2001, all the known colonies occupied an estimated 0.3 ha (0.8 ac), divided among the five colonies as follows: 0.29 ha (0.72 acre); 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 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). All of these patches are located within 400 m (1,312 ft) of the largest *T. californicum* colony. Serpentine soils contiguous with and in the vicinity of the colonies are the 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). We do not have any historic records to show that these two outcrops were once occupied by *T. californicum* or current records 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 laqua Buttes. The serpentine at laqua Buttes supports the more widespread *T. montanum*. No evidence of *T. californicum* or intergradation between *T. californicum* and *T. montanum* was observed during surveys at the laqua Buttes site in 2001 (SHN 2001). *Thlaspi montanum* also occurs on serpentine soils in the vicinity of Horse Mountain approximately 24 km (15 mi) northeast of Ashfield Ridge (SHN 2001). Evidence that the historic range of *T. californicum* ever extended beyond Kneeland Prairie does not currently exist (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 those 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 those taxa meeting the definition of former category 1 are now considered candidates for listing.

Thlaspi 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. We will make our final critical habitat determinations no later than May 1, 2002.

Critical Habitat

Critical habitat is defined in section 3(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.

In order to be included in a critical habitat designation, the habitat 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 the information available at the time of designation does not show that 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 in the **Federal Register** 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 our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to 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 are 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-222-17; 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 had been obtained, on State lands managed by CDFPP, 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 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 breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The long-term probability of survival and recovery of *Thlaspi californicum* is dependent upon a number of factors, including protection of serpentine sites containing existing colonies; protection of all 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 are currently only growing 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 the known *T. 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 which have the highest likelihood of future occupancy (Murphy *et al.* 1990). Protection of these outcrops will provide a range in 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 provide protection of 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 deemed necessary for the conservation of the species. Inclusion of the grasslands and oak woodlands will also minimize impacts to the serpentine outcrops resulting from external peripheral influences, such as erosion, grazing, or the spread of exotic species.

At this time, we do not propose to designate as critical habitat any serpentine outcrops within Kneeland Prairie, other than the outcrops on Ashfield Ridge. Serpentine outcrops not located on Ashfield Ridge, however, may also be necessary for the conservation of *Thlaspi californicum*. Since *T. californicum* has an extremely restricted range, establishment at new locations may be necessary to provide insurance against stochastic events. A draft recovery plan for this species has not been completed. The recovery plan may provide additional guidance regarding areas essential for the conservation of the species. If necessary, we will reexamine our critical habitat designation after completion of the recovery plan.

We considered ownership status in proposing areas as critical habitat. *Thlaspi californicum* is known only to occur on State, county, and private lands. We could not depend on Federal lands for critical habitat designation because we are not currently aware of

any Federal lands occupied by this taxon. We are not aware of any Tribal lands in or near our proposed critical habitat unit for *T. californicum*. However, should we learn of any Tribal lands in the vicinity of the critical habitat designation subsequent to this proposal, we will coordinate with the Tribes before making a final determination as to whether any Tribal lands should be included as critical habitat for *T. californicum*.

We used a geographic information system (GIS) to facilitate the identification of proposed critical habitat. We used information from recent biological surveys and reports; discussions with botanical experts; and locations of serpentine soils to create GIS data layers. The 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 the data layers to map the primary constituent elements. We defined the boundaries for the proposed 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 areas of proposed critical habitat, 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, airports, and other paved areas will not contain one or more of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Special Management Considerations

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 proposed area may require special management considerations or protection because *Thlaspi californicum* occupies an extremely localized range and the number of individuals may be declining. 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 is provided by a legally operative plan/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 *T. californicum*.

Proposed Critical Habitat Designation

The proposed 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 being proposed for *Thlaspi californicum* at the only location it is known to occur. We are not proposing any critical habitat units that do not contain the species.

We propose 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 five known colonies and all other serpentine outcrops in close proximity to the colonies. All of the proposed critical habitat 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 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 proposed critical habitat unit. This species is not currently known to occur or to have occurred historically on Federal lands.

TABLE 1.—APPROXIMATE AREAS AND PERCENT OF PROPOSED 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

Habitat is often dynamic, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the applicable prohibitions of section 9, as determined on the basis of the best available information at the time of the action. If *Thlaspi californicum* is discovered outside of the designated critical habitat area, it is possible that federally funded or assisted projects affecting plants outside of the designated critical habitat area may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires Federal agencies to confer with the Service on any actions that are likely to result in the destruction or adverse modification of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as “* * * a direct or indirect alteration that appreciably

diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.” Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

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 survival and recovery 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, including the Service, 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 Federal agencies in eliminating conflicts that may be caused by their proposed

action(s). The conservation measures in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that actions 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 we 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. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate 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 reinitiation 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.

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

If *Thlaspi californicum* is discovered on Federal lands, those activities on Federal lands that may affect *Thlaspi 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 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 and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe within 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 are those that appreciably reduce the value of critical habitat for both the survival and recovery of *Thlaspi californicum*. We note that such activities may also jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 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 both 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.

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 prescribed fires that are too frequent or poorly timed;
- (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.

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 Federal Aviation Administration, 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 will likely 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, Oregon 97232-4181 (503/231-6131, facsimile 503/231-6243).

Relationship to Habitat Conservation Plans and Other Planning Efforts

Currently, no habitat conservation plans (HCPs) exist that include *Thlaspi californicum* as a covered species. However, we believe that, in most instances, the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. In the event that future HCPs covering *T. 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 would provide an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *T. californicum*. The process would also enable 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* and appropriate management for those lands. The take minimization and mitigation measures provided under such HCPs would be expected to protect the essential habitat lands proposed as critical habitat in this rule.

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. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day public comment period on the draft economic analysis and proposed rule at that time.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of *Thlaspi californicum* habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in

particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for *T. californicum* such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values", and reductions in administrative costs); and

(6) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

If you wish to comment on this proposed rule, you may submit your comments and materials by any one of several methods (see **ADDRESSES**). Please submit electronic mail comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: 1018-AG92" and your name and return address in your electronic message. Please note that the electronic address FW1_kneelandpennycress@fws.gov will be closed out at the termination of the public comment period. If you do not receive a confirmation from the system that we have received your electronic message, contact us directly by calling our Arcata Fish and Wildlife Office at phone number 707/822-7201.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert

opinions of three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed listing and designation of critical habitat.

We will consider all comments and information received during the public comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final determination may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made within 45 days of the date of publication of this proposal within the **Federal Register**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days before the first hearing is held.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make this proposed rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to the Field Supervisor, Arcata Fish and Wildlife Office (see **ADDRESSES**).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant

rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing a draft analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments.

(a) While we will prepare an economic analysis to assist us in considering whether areas would be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal communities. Therefore, we do not believe a cost benefit and economic analysis pursuant to EO 12866 is required.

Thlaspi californicum was listed as endangered on February 9, 2000. As needed, we will conduct, formal and informal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of *Thlaspi californicum*. Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a

Federal agency. Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based on our experience with the species and its needs, we believe that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as jeopardy to the species under the Act in areas occupied by the species.

Accordingly, we do not expect the designation of occupied areas as critical habitat to have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation, may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. We will evaluate any impact through our economic analysis (under section 4 of the Act: see Economic Analysis section of this rule). Non-federal persons who do not have a Federal sponsorship of their actions are not restricted by the designation of critical habitat.

(b) This rule is not expected to create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of *Thlaspi californicum* since its listing in 2000.

The prohibition against adverse modification of critical habitat is expected to impose few, if any, additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands. We will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agencies' actions.

(c) This proposed rule, if made final, is not expected to significantly affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition resulting from critical habitat designation will have any incremental effects in areas of occupied habitat on any Federal entitlement, grant, or loan programs. This conclusion is based on the small acreage and number of entities affected by this proposal. We will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis.

(d) OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

TABLE 2.—IMPACTS OF *Thlaspi californicum* LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation ¹
Federal Activities Potentially Affected ² .	Activities conducted by the Army Corps of Engineers, the Federal Aviation Administration, the Department of Housing and Urban Development, and any other Federal Agencies, including, but not limited to, grading, construction, road building, hydrologic changes or other activities that alter surface drainage patterns, herbicide application, and recreational activities that would destroy habitat for this species or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, or fragmentation).	Activities identified in column one by these Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.
Private or other non-Federal Activities Potentially Affected ³ .	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for <i>Thlaspi californicum</i> by mechanical, chemical, or other means or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants, fragmentation of habitat).	Funding, authorization, or permitting actions by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation.

¹ This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.

² Activities initiated by a Federal agency.

³ Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

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 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. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that rule will not have a significant economic effect on a substantial number of small entities. The following discussion explains our determination.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation if they lack any Federal nexus. In areas occupied by *Thlaspi californicum*, Federal agencies funding, permitting, or implementing activities are already required, through consultation with us under section 7 of the Act, to avoid jeopardizing the continued existence of *Thlaspi californicum*. If this critical habitat designation is finalized, Federal agencies also must ensure, also through consultation with us, that their activities do not destroy or adversely modify designated critical habitat. However, for the reasons discussed above, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants.

In unoccupied areas, or areas of uncertain occupancy, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, and may result in additional requirements on Federal activities to avoid destroying or adversely modifying critical habitat. However, outside the existing developed areas, land use on the majority of the proposed critical habitat consists of homesteading, grazing, and unforested lands surrounding timber lands. The likelihood of future development in these areas is low, although the airport may expand in the future. Any development that lacked Federal involvement would not be affected by the critical habitat

designation. Should a 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. In addition, the area proposed as critical habitat is small, less than 75 acres, 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.

Therefore, we are certifying that the proposed designation of critical habitat for *Thlaspi californicum* is not expected to have a significant adverse impact on a substantial number of small entities. Thus, an initial flexibility analysis is not required.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 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.

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 proposed, will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorization. Any such activity will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

(b) This rule, as proposed, 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. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications, and a takings implication assessment is not required. This rule would not take private property. As discussed above, the designation of critical habitat affects only Federal agency actions; it does not provide additional protection for the species on non-Federal lands or regarding actions that lack any Federal involvement. Furthermore, the Act provides mechanisms, through section 7 consultation, to resolve apparent conflicts between proposed Federal actions, including Federal funding or permitting of actions on private land, and the conservation of the species, including avoiding the destruction or adverse modification of designated critical habitat. While we have not conducted any formal consultations on *Thlaspi californicum* since its listing, and we are not aware of any upcoming or proposed projects that would require consultation, we recognize that such Federal projects that also affect private property may be proposed in the future. We fully expect that, through section 7 consultation, such projects can be implemented consistent with both the conservation of the species; therefore, this rule would not result in a takings.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by *Thlaspi californicum* imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning

(rather than waiting for case-by-case section 7 consultation 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 does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species 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 collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose record-keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency 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

We have determined we do not need to prepare an Environmental

Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), E.O. 13175, and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized 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 *Thlaspi californicum* has not been designated on Tribal lands.

References Cited

A complete list of all references cited herein, as well as others, is available

upon request from the Arcata Fish and Wildlife Office (see **ADDRESSES** section).

Author

The author of this proposed rule 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.

Proposed Regulation Promulgation

Accordingly, we propose 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. 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—Musc-tard.	* E	* 684	* 17.96(b)	* NA
*	*	*	*	*	*	*	*

3. In § 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, add critical habitat for the Kneeland Prairie penny-cress (*Thlaspi californicum*) under paragraph (b) by adding an entry for *Thlaspi californicum* in alphabetical order under Brassicaceae to read as follows:

§ 17.96 Critical habitat—plants.

* * * * *

(b) Single-species critical habitat—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 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.

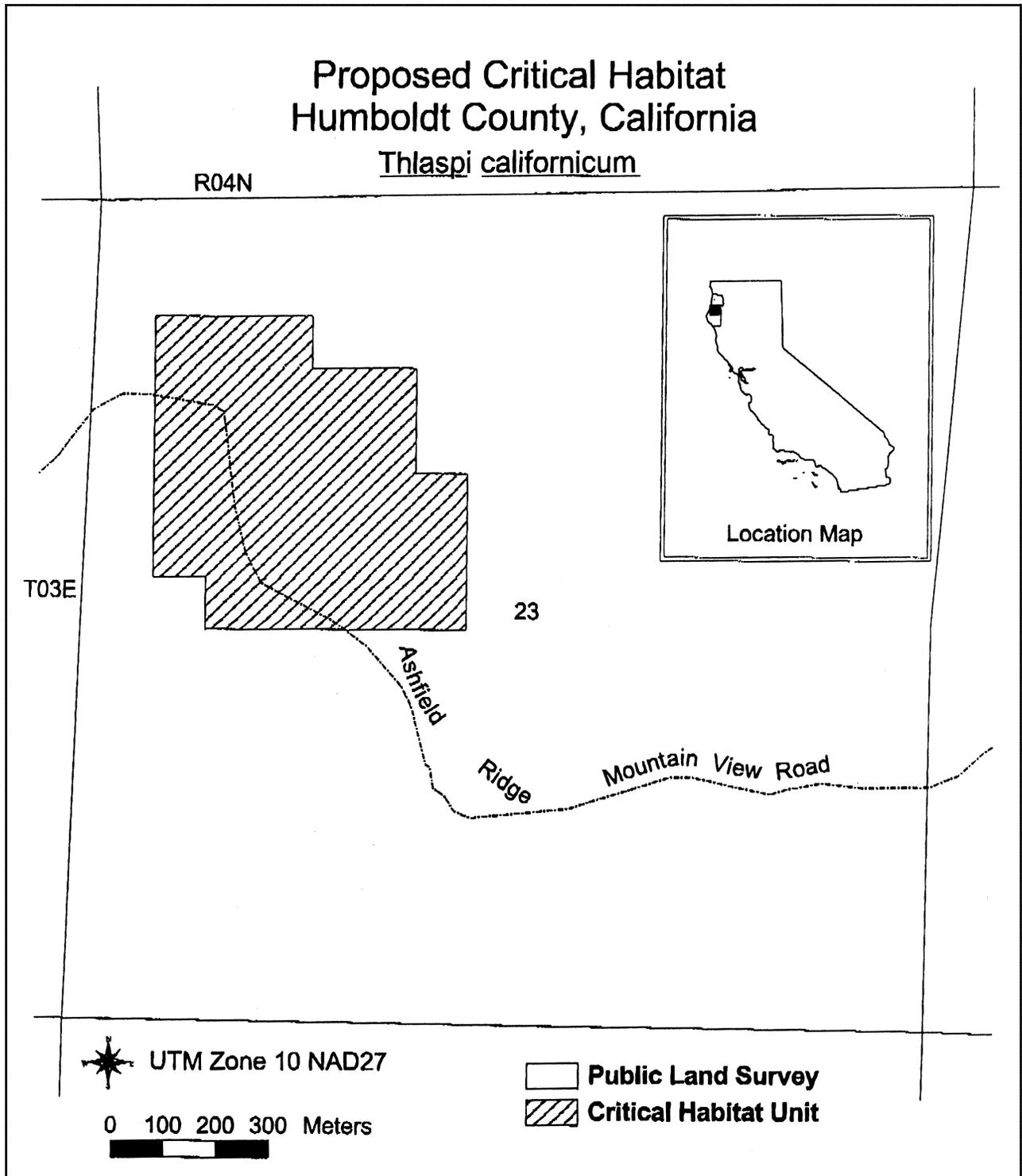
3. Existing features and structures within the boundaries of mapped critical habitat units, such as buildings, roads, airports, and other paved areas will not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation,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

4. Critical habitat unit. Humboldt County, California. From U.S.G.S.

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

Note: Map follows:

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Dated: October 17, 2001.
Joseph E. Doddridge,
*Assistant Secretary for Fish and Wildlife and
Parks.*
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