of a bench mark to measure river levels, surveying of the well locations, and development of the wells.

ARCO has conducted fifteen (15) rounds of groundwater surveys, overseen by EPA and OEPA. With the exception of cyanide and arsenic, contaminants of interest established for this site have been meeting their respective cleanup criteria since 1999. The last three rounds of monitoring (May, August, and October of 2000) indicated that cyanide and arsenic have now achieved cleanup goals.

Cleanup Standards

In the ROD and UAO groundwater was to be monitored until cleanup standards were met. The cleanup standards were risk-based as follows: concentrations of site-related contaminants that also appear in background wells shall be reduced to their respective background concentrations, unless one of the following conditions results in a higher cleanup concentration. In no case shall contaminant concentrations be required to be reduced below background concentrations. Site-related contaminants with an existing MCL shall be reduced to a concentration at or below the MCL. Carcinogenic site-related contaminants shall be reduced to levels that pose a cumulative carcinogenic risk of no greater than 1×10^{-6}. Concentrations of noncarcinogenic site-related contaminants shall be reduced to levels that pose a cumulative HI no greater than one for any specific toxicological category.

Operation and Maintenance

Operation and maintenance (O &M) plans developed and implemented for this site have been sufficient to maintain effectiveness of the remedy. The O & M work required for the Site consisted of maintaining the gate and fence which surrounds the Site in order to prevent unauthorized entry. Excavation and off-site disposal of site contaminants to levels that met RCRA clean closure requirements were completed in 1995, therefore, additional O & M measures were not needed. For the GWOU, O & M involved groundwater monitoring. Now that cleanup standards have been met, there is no further need to continue this work. In addition, institutional controls implemented for this site have prevented the potentially affected population from being exposed to hazards posed by the during Site remediation activities. Now that clean-up standards have been met these institutional controls are no longer necessary.

Five-Year Review

A five-year review of the GWOU was conducted by Region 5 in the summer of 1997. The report recommended that groundwater monitoring continue until cleanup standards for all site related contaminants were met. Now that cleanup standards have been met, the need to conduct another five-year review, scheduled for 2002, is no longer necessary. The site is available for unlimited use and unrestriced exposure, therefore, another Five-Year review is no longer necessary.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion on this Site from the NPL are available to the public in the information repositories.

V. Deletion Action

The EPA, with concurrence of the State of Ohio, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be non-controversial and routine, EPA is taking it without prior publication. This action will be effective November 5, 2001 unless EPA receives adverse comments by October 9, 2001. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect. EPA will prepare a response to comments and as appropriate continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 28, 2001.

Norman Niedergang,

Acting Regional Administrator, Region V.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p.193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended under Ohio ''OH'' by removing the entry for ''Alsco Anaconda'' and the city ''Gnadenhutten.''

[FR Doc. 01–22368 Filed 9–5–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH05

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for *Sidalcea oregana* var. *calva* (Wenatchee Mountains checker-mallow)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the plant *Sidalcea oregana* var. *calva* (Wenatchee Mountains checker-mallow), pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 2,484 hectares (6,135 acres) in Chelan County, Washington, is designated as critical habitat.

Critical habitat identifies specific areas that have the physical and biological features that are essential to the conservation of a listed species, and that may require special management considerations or protection. The primary constituent elements for *Sidalcea oregana* var. *calva* are those habitat components that are essential for its primary biological needs such as reproduction and dispersal. Critical habitat for *Sidalcea oregana* var. *calva* includes those areas possessing one or more of the primary constituent elements.

Located on Federal, State, and private lands, this critical habitat designation provides additional protection under section 7 of the Act with regard to activities that require Federal agency action. Section 7 of the Act requires Federal agencies to ensure that actions

they authorize, fund, or carry out are not likely to destroy or adversely modify designated critical habitat. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of the proposed rule and economic analysis.

DATES: This rule becomes effective on October 9, 2001.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Western Washington Office, Ecological Services, 510 Desmond Drive SE, Lacey, WA 98503.

FOR FURTHER INFORMATION CONTACT: Ken Berg, Manager, Western Washington Office (see **ADDRESSES** section) (telephone 360/753–9440; facsimile 360/753–9518).

SUPPLEMENTARY INFORMATION:

Background

Sidalcea oregana var. *calva*, the Wenatchee Mountains checker-mallow, is known to occur at six sites (populations) only in the mid-elevation wetlands and moist meadows of the Wenatchee Mountains of central Washington. The plant was first collected in 1893 by Sandberg and Leiburg from the Icicle Creek area, near Leavenworth, and from wet meadows near Peshastin, both in Chelan County. The type specimen collected by Hitchcock in 1951 was from Camas Land in Chelan County (Gamon 1987). The plant communities where the species is found are usually associated with meadows that have surface water or saturated soils during the spring and early summer. The species may also be found in open conifer forests dominated by *Pinus ponderosa* (ponderosa pine) and *Pseudotsuga menziesii* (Douglas-fir), and on the margins of shrub and hardwood thickets adjacent to seeps, springs, or small drainages. Soils are primarily composed of silt loams and clay loams, with a high percentage content of organic material, that are poorly drained.

A member of the mallow family (Malvaceae), *Sidalcea oregana* var. *calva* is a herbaceous perennial with a stout taproot that branches at the root crown giving rise to several stems. Plants range in height from 20 to 150 centimeters (cm) (8 to 60 inches (in.)). Plants vary from glabrous (lacking hairs and glands) to pubescent (hairy) or stellate (with star-shaped hairs) below, and finely stellate above. Flower clusters with one to many stalked flowers are arranged singly along a common stem. The flowers have pink petals 1 to 2 cm (0.4 to 0.8 in.) long, and are borne on stalks ranging from 1 to 10 millimeters (mm) (0.04 to 0.4 in.) in length. The calyx (outer whorl of floral parts) ranges from uniformly finely stellate, to bristly with a mixture of longer, simple to four-rayed, spreading hairs. These hairs are sometimes as long as 2.5 to 3 mm (0.1 to 0.12 in.) (Hitchcock and Cronquist 1961).

Flowering begins in the middle of June and peaks in the last half of July. Fruits are ripe in August. The species reproduces only from seed and, based on examination of seed capsules, the production of seed appears to be high (Gamon 1987). The somewhat clumped distribution of mature *Sidalcea oregana* var. *calva* plants suggests that seed dispersal is restricted to the areas near mature plants, unless the seeds are moved by animals or transported by water.

The physical and biological habitat features essential to the conservation of *Sidalcea oregana* var. *calva* include open meadows with surface water or saturated upper soil profiles in the spring and early summer and maintaining the hydrologic processes on which these areas depend; open conifer forests dominated by ponderosa pine and Douglas-fir; and the margins of shrub and hardwood thickets. All of these habitats have surface water or saturated soils well into the early summer. Elevations range from 488 to 1,000 meters (m) (1,600 to 3,300 feet (ft)). The species is generally found on flats or benches, but may also occur in small ravines and occasionally on gently sloping uplands.

Concentrations of *Sidalcea oregana* var. *calva* are found in the wetter portions of open-forest moist-meadow habitat, in slight topographic depressions, on the perimeter of shrub and hardwood thickets dominated by quaking aspen (*Populus tremuloides*), and along permanent or intermittent streams in sparsely forested draws. Frequently associated plant species include quaking aspen, black hawthorn (*Crataegus douglasii*), common snowberry (*Symphoricarpos albus*), serviceberry (*Amelanchier alnifolia*), few-flowered peavine (*Lathyrus pauciflorus*), northern mule's-ear (*Wyethia amplexicaulis*), sticky purple geranium (*Geranium viscosissimum*), western bistort (*Polygonum bistortoides*), leafy aster (*Aster foliaceus*), Watson's willow-herb (*Epilobium watsonii*), false hellebore (*Veratrum californica*), and rudbeckia (*Rudbeckia occidentalis*) (Washington Department of Natural Resources (WDNR) 2000). One-half of the *Sidalcea oregana* var. *calva* populations are found in association with *Delphinium viridescens* (Wenatchee larkspur), a former Federal category 1 candidate plant species. The latter species was removed from candidate status on February 28, 1996 (61 FR 7610), because it was found to be more abundant or widespread than previously believed.

During the summer of 1999, a sixth population was discovered on private property in Pendleton Canyon, an area burned and opened up by the Tyee Fire of 1994. This location is less than 8 kilometers (km) (5 miles (mi)) from the Camas Meadow population. While the discovery of the population occurred prior to the December 22, 2001 (64 FR 71680), listing of the species, we did not become aware of the discovery until after the publication date. This newly discovered population is included in the designation of critical habitat for the species.

The wetland and moist meadow complex at Camas Meadows, an area managed as a Natural Area Preserve (NAP) by the WDNR, contains the largest population of *Sidalcea oregana* var. *calva*. The Camas Meadow NAP includes approximately 539 hectares (ha) (1,333 acres (ac)) (WDNR 2000), and is located in the rural/wildland interface about 16 km (10 mi) south of Leavenworth, Washington. An estimated 3,300 *Sidalcea oregana* var. *calva* individuals occur there. Low-density, rural residential home sites have been developed adjacent to the NAP. Also, the Camas Meadows Bible Camp has occupied the southern perimeter of the meadow since the late 1940s, and the U.S. Forest Service (Forest Service) administers properties surrounding the NAP.

Another population is located north of the Camas Meadow NAP, on land administered by WDNR, and has approximately 30 individual plants. At the time the final listing rule was published (64 FR 71680), this population occurred on private land. The private landowners have since traded this land to the State of Washington.

In addition to these two populations of *Sidalcea oregana* var. *calva*, two other populations of *Sidalcea oregana* var. *calva* are known to be present on private lands. One population, of about 200 individuals, is located at the Mountain Home Resort. The second population is located in Pendleton Canyon, and consists of about 60 plants. The other two known populations are located on Forest Service lands,

containing less than 10 individual plants combined. The combined number of individual plants for all six populations is approximately 3,600.

The primary threats to *Sidalcea oregana* var. *calva* include habitat fragmentation and destruction due to alterations of hydrology, rural residential development and associated impacts, conversion of native wetlands to orchards and other agricultural uses, competition from native and non-native plants, recreation, seed and plant collection, and fire suppression and associated activities. To a lesser extent, the species is threatened by livestock grazing, road construction, and timber harvesting and associated impacts including changes in surface runoff in the small watersheds in which the plant occurs.

Previous Federal Action

Federal action on *Sidalcea oregana* var. *calva* began when we published an updated Notice of Review (NOR) for plants, published in the **Federal Register** on December 15, 1980 (45 FR 82480). This notice included *Sidalcea oregana* var. *calva* as a category 1 candidate species. Category 1 candidates were defined as those taxa for which we had sufficient information on the biological vulnerability and threats to support preparation of listing rules. The NOR, published on September 27, 1985 (50 FR 39526), included *Sidalcea oregana* var. *calva* as a category 2 candidate species. Category 2 candidates were defined as taxa for which available information indicated that a proposal to list as endangered or threatened was possibly appropriate, but for which persuasive data on biological vulnerability and threats were not sufficient to support a proposed rule.

Notices of Review published on February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144), identified *Sidalcea oregana* var. *calva* as a category 1 candidate species. Upon publication of the February 28, 1996, Notice of Review of Plant and Animal Taxa that are Candidates for Listing as Endangered or Threatened Species (61 FR 7596), we stopped using the category designations and simply included *Sidalcea oregana* var. *calva* as a candidate species. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered.

On August 1, 1997, we published the proposed rule to list *Sidalcea oregana* var. *calva* as an endangered species (62 FR 41328). The final determination to list *Sidalcea oregana* var. *calva* as an endangered species was published in the **Federal Register** on December 22, 1999 (64 FR 71680). In the final rule, we found that designation of critical habitat for the species was prudent. However, due to insufficient funding in our listing budget, critical habitat designation was deferred in order to focus our resources on higher priority critical habitat, including court-ordered designations, and other listing actions (64 FR 71685), while still allowing us to put in place protections needed for the protection of *S. oregana* var. *calva* through the listing process.

Subsequent to the final rule listing the species as endangered, the Southwest Center for Biological Diversity filed suit to compel us to designate critical habitat for several species, including *Sidalcea oregana* var. *calva* (*Southwest Center for Biological Diversity et al.* v. *Babbitt-Civil*, No. 99–D–1118). We entered into a settlement agreement with the plaintiff and agreed to propose critical habitat with a final determination to be made no later than August 31, 2001. The proposed rule to designate critical habitat for the species was published in the **Federal Register** on January 18, 2001 (66 FR 4783). In the proposal, we determined that it was prudent to designate approximately 2,484 ha (6,135 ac) of lands in Chelan County as critical habitat. The publication of the proposed rule opened a 60-day public comment period, which closed on March 19, 2001. On May 15, 2001, we published a notice announcing the reopening of the comment period on the proposal to designate critical habitat for *Sidalcea oregana* var. *calva*, and a notice of availability of the draft economic analysis on the proposed determination (66 FR 26827). This second public comment period closed on June 14, 2001.

Summary of Comments and Recommendations

We contacted appropriate Federal and State agencies, scientific organizations, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of a notice in the *Wenatchee World* on May 20, 2001.

On April 4, 2001, we held an informal public workshop in Leavenworth, Washington, to consider economic and other relevant impacts of designating critical habitat for *Sidalcea oregana* var. *calva.* Eleven individuals from the local community attended the workshop. The meeting was also attended by representatives from WDNR, the Forest Service, and The Nature Conservancy. No formal comments were accepted at this meeting; however, we encouraged the local community to provide written comments during the time when the comment period was reopened in May. All individuals who attended the meeting, in addition to all the landowners who live in the vicinity of the designated critical habitat, were notified by letter at the time the comment period was reopened.

We received two comments regarding the designation of critical habitat for the Wenatchee Mountains checker-mallow. One comment was received from the WDNR, Southeast Region, while the second comment was received from the Conservation Chair, Washington Native Plant Society. Both letters supported the designation of critical habitat. The letter from the Washington Native Plant Society raised several points that merit consideration. The letter concurred with our decision to exclude one of the six known populations for *Sidalcea oregana* var. *calva*, a disjunct population occurring on private property, as critical habitat. We had determined that this occurrence of the plant was not essential to the conservation of the species. Additionally, the letter recommended that although this occurrence was not ''critical to the taxon's survival'', it may represent an important genotype for the species and contribute to the species' genetic variability, and that seed should be collected from the population and maintained in an appropriate seed bank. We concur with this recommendation and, after getting permission from the landowners, will plan for seed collection, seed banking, and genetic testing of all known populations of the species, which will contribute to information requirements for the recovery of the species. Finally, because several populations of the species were adversely affected by wildfire during the summer of 1994, the commenter recommended developing protocols for fighting fires specific to areas with endangered plants where critical habitat has been designated. The Federal Wildland Fire Policy (1985) was developed by the Departments of Agriculture and the Interior to provide a common approach to wildland fire management that is consistent with public health and environmental considerations. The policy states that the protection priorities are; (1) human life, and (2) property and natural/cultural resources. We concur with the comment and, consistent with the policy, a recovery plan for this species will be developed with these considerations in mind.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited independent expert opinions from three knowledgeable plant ecologists and/or botanists who are familiar with *Sidalcea oregana* var. *calva.* We received comments from only one of the peer reviewers on the proposed critical habitat designation. Those comments were incorporated into this final rule.

Summary of Changes From the Proposed Rule

There are no significant changes from the proposed rule to this final rule.

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.

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 the listed species.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. 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. Within the geographic area occupied by the species, 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, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

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.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (Vol. 59, p. 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires Service 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 or other unpublished materials.

Methods

In determining areas that are essential to conserve *Sidalcea oregana* var. *calva,* we used the best scientific information available to us. This information included habitat suitability and site-specific species information, as well as discussions with Wenatchee National Forest and WDNR scientists about the management and conservation of this species. We have emphasized areas of current and historical *Sidalcea oregana* var. *calva* occurrences; maintenance of the genetic interchange necessary for the viability of a regional metapopulation; and maintenance of the integrity of the watershed hydrologic processes on which the wetlands and moist meadows that support the species depend. A metapopulation is a group of spatially separated populations that occasionally exchange genes. Individual populations may go extinct, but are later recolonized from another population. Linking the known populations provides pathways for gene flow, as well as opportunities for colonization by the species of areas where it may be extirpated. We believe that the maintenance of a viable regional metapopulation, as well as the integrity of the hydrologic processes that control the wetland and moist meadow habitat are essential to the conservation of *Sidalcea oregana* var. *calva.*

We used data on known and historic locations and soil maps to identify areas essential to the conservation of the species. We mapped critical habitat based on orthoquads and aerial photos available from WDNR, and ground-checked these areas. We included areas with wetland vegetation communities dominated by native grasses and forbs and generally free of woody shrubs, hardwood trees, or conifers that would produce shade and/or compete with *Sidalcea oregana* var. *calva.* Seeps, springs, and riparian corridors that have clay loam and silt loam soils were included because of their importance to maintaining the hydrologic processes that are essential to the conservation of the species. Inclusion of these areas also allows for the natural expansion of *Sidalcea oregana* var. *calva* populations that is essential for the conservation of the species.

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 must consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species. These include, but are not limited to, the following: space for individual and population growth, and for normal behavior; food, water, air, light, minerals or nutrients, 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 distribution of a species.

The area we are designating as critical habitat provide the primary constituent elements for the species, which include: surface water or saturated upper soil profiles; a wetland plant community

dominated by native grasses and forbs, and generally free of woody shrubs and conifers that would produce shade and competition for *Sidalcea oregana* var. *calva;* seeps and springs on fine textured soils (clay loams and silt loams), which contribute to the maintenance of hydrologic processes necessary to support meadows which remain moist into the early summer; and elevations of 488–1,000 m (1,600–3,300 ft).

In an effort to map areas that have the features essential to the conservation of the species, we used data on known *Sidalcea oregana* var. *calva* locations. We attempted to avoid developed areas, such as towns and other similar lands, that are unlikely to contribute to *Sidalcea oregana* var. *calva* conservation. However, mapping limitations did not allow us to exclude all developed areas, such as towns, or housing developments, or other lands unlikely to contain the primary constituent elements essential for conservation of *Sidalcea oregana* var. *calva.* Existing features and structures within the boundaries of the mapped unit, such as buildings, roads, aqueducts, railroads, airports, other paved areas, lawns, and other rural residential landscaped areas, will not contain one or more of the primary constituent elements and are, therefore, not critical habitat. Federal actions limited to those areas would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Critical Habitat Designation

We are designating critical habitat for one unit, comprised of 2,484 ha (6,135 ac). The approximate area, by land ownership, of this unit is shown in Table 1.

TABLE 1.—APPROXIMATE AREA OF DESIGNATED CRITICAL HABITAT IN HECTARES (HA) AND ACRES (AC)[1] IN CHELAN COUNTY, WASHINGTON, BY LAND OWNERSHIP

[Area estimates reflect the critical habitat unit boundaries; however, existing features and structures, such as buildings, roads, aqueducts, railroads, airports, other paved areas, lawns, and other rural residential landscaped areas not containing one or more of the primary constituent elements are not designated as critical habitat for *Sidalcea oregana* var. *calva*.]

Federal	Local/state	Private	Total
Areas Known To Be Currently Occupied			
0.5 ha (1 ac)	38 ha (94 ac)	0.5 ha (1 ac)	39 ha. (96 ac).
Areas of Suitable Habitat of Unknown Occupancy			
830 ha (2,050 ac)	540 ha (1,334 ac)	1,075 ha (2,655 ac)	2,445 ha. (6,039 ac).
Total			2,484 ha. (6,135 ac).

[1] Approximate acres have been converted to hectares (1 ha = 2.47 ac). Hectares and acres greater than 1 have been rounded to the nearest 5, except for totals which are sums of rows or columns.

Lands are designated under private, State, and Federal ownership. All of the designated critical habitat for *Sidalcea oregana* var. *calva* is in Chelan County, Washington, and includes Camas Creek and the adjacent Pendleton Canyon sub-basin. The area designated for critical habitat includes all of the lands that have the primary constituent elements below 1,000 m (3,300 ft) within the Camas Creek watershed, and in the small tributary within Pendleton Canyon before its confluence with Peshastin Creek, and includes: (1) The entire area encompassed by the Camas Meadow Natural Area Preserve, which is administered by the WDNR; (2) two populations located on Forest Service land; (3) the small drainage north of the Camas Land, administered by the WDNR; and (4) the population on private property located in Pendleton Canyon; (5) the wetland complex of these watersheds necessary for providing the essential habitat components on which recovery and conservation of the species depends.

Portions of the designated critical habitat are presumably unoccupied by *Sidalcea oregana* var. *calva* at present, although the entire area has not been recently surveyed. Soil maps indicate that the entire area provides suitable habitat for the species, and there may be additional, but currently unknown, populations present here. Wetlands and moist meadow habitats (native grassland and forb-dominated vegetation) suitable for *Sidalcea oregana* var. *calva* are generally surrounded by upland areas, which are dominated by ponderosa pine and Douglas-fir forests. While these upland areas are less suitable as habitat for the species, because protection of the hydrological processes is necessary to ensure the viability of the wetland habitat of the species, we consider the entire area essential to the survival, eventual recovery, and delisting of *Sidalcea oregana* var. *calva*.

Pursuant to the definition of critical habitat in section 3 of the Act, any area so designated must also require ''special management considerations or protections.'' Some areas essential to the conservation of the species may not be designated critical habitat if they already have adequate special management. Adequate special management or protection is provided by a legally operative plan that addresses the maintenance and improvement of the essential elements and provides for the long-term conservation of the species. We consider a plan adequate when it meets all of the following three criteria: (1) The plan provides a conservation benefit to the species (i.e., the plan must maintain or provide for an increase in the species' population or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the management plan will be implemented (i.e., those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule and/or have adequate funding to implement the management plan); and (3) the plan provides assurances the conservation plan will be effective (i.e., it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives). If an area is covered by a plan that meets these criteria, it does not constitute critical habitat as defined by the Act.

The Camas Land NAP is managed by the WDNR, and a final Management Plan (Plan) for the area was approved in June 2000. The NAP was established in 1989 to protect the large populations of *Sidalcea oregana* var. *calva* and *Delphinium viridescens* (Wenatchee larkspur) that occur at Camas Meadow. The general management policy described in the Plan applies to all NAPs managed by the WDNR. These include: (1) Protection of outstanding examples of rare or vanishing terrestrial or aquatic ecosystems, rare plant and animal species, and unique geologic features; (2) the role of NAPs as a baseline to compare with similar ecosystems that are under the influence of human activities; and (3) areas that are important to preserving natural features of scientific or educational value. However, the Plan does not provide a specific management plan or prescription designed to conserve *Sidalcea oregana* var. *calva*, beyond permitting natural ecological and physical processes to continue (WDNR 2000). The Plan does call for management actions to enhance wet meadow habitat, which will benefit *Sidalcea oregana* var. *calva* by removing competing vegetation, including controlling noxious weeds; thinning ponderosa pine in the uplands; and improving and replacing culverts. However, these actions have not yet been implemented, and it is too early to assess their effectiveness.

Although the species is listed as endangered by the WDNR's Natural Heritage Program (1994), there is no State Endangered Species Act in the State of Washington for plants. The WDNR designation provides no legal protection for *Sidalcea oregana* var. *calva*, and there are no State laws that specifically protect plants on State lands. Therefore, we believe that this management plan alone does not provide sufficient protection for *Sidalcea oregana* var. *calva*, and have included the Camas Land NAP within the critical habitat designation.

Developed areas on the periphery of the Camas Land NAP and the Camas Meadow Bible Camp located on the south side of the Camas Land, within the area designated as critical habitat, are not considered as essential to the conservation of the species. These developed areas have been altered by the planting of lawns, installation of septic systems, and horse pastures and, therefore, do not contain the primary constituent elements necessary for the long-term protection and conservation of *Sidalcea oregana* var. *calva*.

We have determined that the habitat supporting the population found at the Mountain Home Resort (Resort) is not essential to the conservation of the species. This population is disjunct from the remaining populations, and located in an area entirely surrounded with private residences, private timberlands, and a road administered by Chelan County. The habitat on this property that contains *Sidalcea oregana* var. *calva*, and the former candidate species *Delphinium virdescens*, is confined to a small linear area associated with a drainage ditch adjacent to the Mountain Home road and is bordered on the north and south by gravel access roads leading to residences. It is likely that the habitat resulted from the construction of the road and the creation of the drainage ditch. The habitat is now dominated by non-native, sod-forming grasses and forbs mixed with native vegetation (Dottie Knecht, Forest Service, pers. comm. 2000). The class-B Washington State noxious weed, *Potentiall recta* (sulfur cinquefoil) (Washington Administrative Code 16–750–011) is frequently encountered in monitoring plots at this site, although at low densities (D. Knecht, pers. comm. 2000). Moving out of the occupied habitat and up the hill towards the Resort, the vegetation is also dominated by sod-forming pasture and lawn grasses, including *Agrostis alba* (creeping bentgrass), *Alopecuris pratensis* (meadow foxtail), *Phleum pratense* (timothy grass), and *Bromus inermis* (smooth brome). These species are not consistent with the primary constituent elements.

Through observation of the adjacent properties along the Mountain Home road, it is evident that, if the Resort were not present and the land had not been cleared to create a vista, the marginal habitat where the small population is found at this site would be forested with conifers mixed with hardwood trees and shrubs. Such habitat does not contain the vegetative requirements and open conditions of the primary constituent elements.

The population at the Resort is also disjunct from the other populations of the species, which are more than 16 km (10 mi) distant. Because of fragmentation and the patchy distribution of habitat between this population and other populations of the species, the persistence of this population cannot be assured. We believe that the most appropriate conservation strategy for *Sidalcea oregana* var. *calva* is one that focuses on the protection and expansion of the core habitat of the species rather than the protection of isolated populations of doubtful viability. Except through artificial means, there is no opportunity for gene exchange between this population and the other populations. Although no genetic testing has been conducted for this species, a small population, such as that found at the Resort, is likely to have reduced genetic diversity, which can result in decreased population viability due to inbreeding (Schemske *et al.* 1994).

Although the ability to predict random environmental events (stochastic events) is low, events such as forest fires (e.g., the 1994 Rat Creek and Hatchery Creek Fires) and rain-on-snow flooding do occur. The effects of these stochastic events are most acute in small populations (Schemske *et al.* 1994). As a result of an increased importance of stochastic processes and changes in ecological interactions in declining populations, the probability of a population extirpation is expected to be negatively correlated with its size (Schemske *et al.* 1994).

The population found at Pendleton Canyon is on privately-owned land that has been included as critical habitat because it is essential to the conservation of *Sidalcea oregana* var. *calva*. It is located in a wildland setting with none of the modifications typically associated with a residence, unlike the private residences near Camas Meadow or the population of *Sidalcea oregana* var. *calva* at the Resort which lack the primary constituent elements and have been excluded from critical habitat designation.

The Recovery Team for *Sidalcea oregana* var. *calva* will be providing guidance on recovery planning for this species, and at that time, they may provide additional guidance regarding the areas designated as critical habitat. We will review any of the Recovery Team's recommendations and re-examine our critical habitat designation, if necessary, to provide for the conservation of the species.

Effects of Critical Habitat Designation

Section 7 Consultation

Habitat is often dynamic, and species 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 section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas 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 conferences on Federal 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 '' * * *the 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 that Federal agencies, including the Service, must ensure that actions they fund, authorize, 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.

Under section 7(a) of the Act, Federal agencies, including the Service, 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) and regulations at 50 CFR 402.10 requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

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

When a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the 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 consultation with us. Through this consultation, we would advise the agencies whether the permitted actions would likely jeopardize the continued existence of 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 the likelihood of jeopardizing the continued existence of listed species or resulting in the 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 conferencing 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.

Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), or a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (e.g., from the Federal Highway Administration or Federal Emergency Management Agency) are also subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation. While efforts were made to exclude existing features and structures, such as buildings, roads, and other such developed features not containing primary constituent elements, due to mapping constraints not all such features were excluded. Federal actions limited to these areas would not trigger a section 7 consultation, unless they affect the species and/or the primary constituent elements in adjacent critical habitat.

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 known to be occupied by *Sidalcea oregana* var. *calva,* and areas where the species is detected in surveys at the time of the action, is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. For some previously reviewed actions, in instances where critical habitat is subsequently designated, and in those cases where activities occur on designated critical habitat where *Sidalcea oregana* var. *calva* is not found at the time of the action, an additional section 7 consultation with the Service not previously required may be necessary for actions funded, authorized, or carried out by Federal agencies.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. When determining whether any of these activities may adversely modify critical habitat, we base our analysis on the effects of the action on the entire critical habitat area and not just on the portion where the activity will occur. Adverse effects on constituent elements or segments of critical habitat generally do not result in an adverse modification determination unless that loss, when added to the environmental baseline, is likely to appreciably diminish the capability of the critical habitat to satisfy essential requirements of the species. In other words, activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements (defined above) to an extent that the value of critical habitat for both the survival and recovery of the *Sidalcea oregana* var. *calva* is appreciably diminished.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and require that a section 7 consultation be conducted include, but are not limited to:

(1) Damming, water diversion, channelization, excess groundwater pumping, repair and replacement of culverts, or other actions that appreciably reduce the hydrologic function and surface area of rivers, streams, seeps or springs;

(2) Timber harvesting and road construction that directly or indirectly affects the hydrology of sites harboring the species;

(3) Rural residential construction that includes concrete pads for foundations or the installation of septic systems where a permit under section 404 of the Clean Water Act would be required from the Corps;

(4) Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural flooding regimes necessary to maintain natural, dynamic wetland communities. Such activities may include manipulation of vegetation through timber harvesting, road construction, maintaining an unnatural fire regime either through fire suppression, or too frequent or poorly-timed prescribed fires, residential and commercial development, and grazing of livestock that changes fire frequency or otherwise degrades watershed values;

(5) Activities that appreciably degrade or destroy native wetland communities, such as livestock grazing, land clearing, harvesting of trees or other forest products, introducing or encouraging the spread of non-native plant species; and

(6) Activities that appreciably alter stream channel morphology such as sand and gravel mining, road construction, channelization, impoundment, watershed disturbances, off-road vehicle use, and inappropriate recreational uses.

Any of the above activities that appreciably diminish the value of critical habitat to the degree that they affect the survival and recovery of *Sidalcea oregana* var. *calva* may be considered an adverse modification or destruction of critical habitat. We note that such activities may also jeopardize the continued existence of the species.

If you have questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat resulting from a Federal action, contact Ken Berg, Manager, Western Washington 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, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, Oregon 97232 (telephone 503/231–2063; facsimile 503/231–6243).

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 the exclusions outweigh the benefits of specifying the areas as critical habitat. We cannot exclude the areas from critical habitat when the exclusion will result in the extinction of the species.

Economic effects caused by listing *Sidalcea oregana* var. *calva* as an endangered species and by other statutes are the baseline against which the effects of critical habitat designation are evaluated. The economic analysis must then examine the incremental economic effects and benefits of the critical habitat designation. Economic effects are measured as changes in national income, regional jobs, and household income. We made the draft economic analysis available for public review and comment as described in the ''Summary of Comments'' section of this document. The final analysis, which reviewed and incorporated public comments as appropriate, concluded that no significant additional economic impacts are expected from critical habitat designation above and beyond that already attributable to the listing of *Sidalcea oregana* var. *calva* under the Act and other statutes. The most likely economic effects of critical habitat designation are on activities funded, authorized, or carried out by a Federal agency.

We believe that any project that would adversely modify or destroy critical habitat for *Sidalcea oregana* var. *calva* would also jeopardize the continued existence of the species, and that reasonable and prudent alternatives to avoid jeopardizing the species would also avoid adverse modification of critical habitat. Thus, no significant additional regulatory burden or associated significant additional costs would accrue because of critical habitat above and beyond those attributable to the listing of *Sidalcea oregana* var. *calva*. Our economic analysis does recognize that there may be costs from delays associated with reinitiating completed consultations after the critical habitat designation is made final. There may also be economic

effects due to the reaction of the real estate market to critical habitat designation, as real estate values may be lowered due to perceived increase in the regulatory burden. We believe these impacts will be short-term, however.

The economic analysis concludes that, over the next 10 years the section 7 costs attributable to the listing are not expected to exceed $10,000, and result from a new consultation between us, the USFS, and WDNR. Costs attributable to critical habitat designation are not expected to exceed $2,000 and result from a re-initiated consultation between the USFS and us. Private landowners should incur no additional costs resulting from critical habitat designation. This estimate is based on the existing consultation history with agencies in this area and increased public awareness regarding the actual impacts of critical habitat designation on land values. Therefore, we conclude that no, or minimal, significant incremental costs are anticipated as a result of the designation of critical habitat for *Sidalcea oregana* var. *calva.*

A copy of the final economic analysis and a description of the exclusion process with supporting documents are included in our administrative record and may be obtained by contacting our Western Washington Office (see **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order (EO) 12866, this rule is a significant regulatory action and has been reviewed by the Office of Management and Budget (OMB).

(a) In the economic analysis, we determined that this rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. *Sidalcea oregana* var. *calva* was listed as endangered on December 22, 1999. Since that time we have conducted, and will continue to conduct, formal and informal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of *Sidalcea oregana* var. *calva.*

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 (see Table 2). 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.

Accordingly, we do not expect the designation of areas as critical habitat within the geographical range of the species 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. Non-Federal persons who do not have a Federal sponsorship of their actions are not restricted by the designation of critical habitat.

TABLE 2.—IMPACTS OF SIDALCEA OREGANA VAR. CALVA 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, U.S. Forest Service, Environmental Protection Agency, Federal Highway Administration, and any other Federal Agencies, including, but not limited to, actions that appreciably reduce the hydrologic function and surface area of rivers, streams, seeps, or springs, timber harvesting and road construction, rural residential construction that includes concrete pads for foundations or the installation of septic systems, and activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural flooding regimes to alter natural, dynamic wetland communities.	Activities 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 *Sidalcea oregana* var. *calva* habitat by mechanical, chemical, or other means (e.g., grading, discing, ripping, and tilling, water diversion, impoundment, groundwater pumping, irrigation, construction, road building, herbicide application, recreational use, etc.) or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat).	Funding, authorization, or permitting such actions by Federal Agencies in any unoccupied critical habitat areas.

[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.

(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 *Sidalcea oregana* var. *calva* since its listing in 1999. The prohibition against adverse modification of critical habitat is expected to impose few, if any, additional restrictions to those that currently exist. However, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This final rule will not significantly impact 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 designated critical habitat.

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

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect 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 an 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 a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains our determination.

We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action will not have a significant economic impact on a substantial number of small entities.

As discussed in the economic analysis for this rulemaking and the preamble above, this rule is not expected to result in any significant restrictions in addition to those currently in existence for areas occupied by *Sidalcea oregana* var. *calva* and designated as critical habitat. As indicated in Table 1 (see Critical Habitat Designation section), we designated critical habitat on property owned by Federal, State and local governments, and private property, and identified the types of Federal actions or authorized activities that are of potential concern (Table 2). If these activities sponsored by Federal agencies within the designated critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization, as discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any significant additional effects on these activities in areas of critical habitat occupied by the species. Designation of critical habitat in areas that are not known to be occupied by this species will also not likely result in a significant increased regulatory burden since the Corps of Engineers already requires review of projects involving wetlands because wetlands frequently contain listed species for which the Corps must consult with us under section 7. For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

Therefore, we are certifying that this final designation of critical habitat is not expected to have a significant adverse impact on a substantial number of small entities. Thus, no regulatory flexibility analysis is necessary.

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 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, will not produce a Federal mandate 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 rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of *Sidalcea oregana* var. *calva.* Due to current public knowledge of the species' protection, and the fact that critical habitat provides no additional incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. While real estate market values may temporarily decline following designation, due to the perception that critical habitat designation may impose additional regulatory burdens on land use, we expect any such impacts to be short term.

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 and Department of Commerce policy, we requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in Washington. The designation of critical habitat within the geographic range occupied by *Sidalcea oregana* var. *calva* imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making 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 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated 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 *Sidalcea oregana* var. *calva.*

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

This rule does not contain any information collection requirements for

which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB Control Number.

National Environmental Policy Act

We determined that 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 reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

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 recognized Federal Tribes on a government-to-government basis.

We have determined that there are no Tribal lands essential for the conservation of *Sidalcea oregana* var. *calva.* Therefore, critical habitat for *Sidalcea oregana* var. *calva* has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Western Washington Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Ted Thomas (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 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 *Sidalcea oregana* var. *calva* 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							
*	*	*	*	*	*		*
Sidalcea oregana var. *calva.*	Wenatchee Mountains checker-mallow.	U.S.A. (WA)	Malvaceae-(Mallow)	E	673	17.96(a)	N/A
*	*	*	*	*	*		*

3. In § 17.96, add critical habitat for the Wenatchee Mountains checker-mallow (*Sidalcea oregana* var. *calva*) under paragraph (a) by adding an entry for *Sidalcea oregana* var. *calva* after the entry for *Kokia drynaroides* under Malvaceae to read as follows:

§ 17.96 Critical habitat-plants.

(a) Flowering plants.

* * * * *

Family Malvaceae: *Sidalcea oregana* var. *calva* (Wenatchee Mountains checker-mallow).

(1) Critical habitat unit is depicted for Chelan County, Washington, on the map below.

(2) Washington, Chelan County. From USGS 7.5′ quadrangle maps Peshastin and Tip Top, Washington. T. 23 N., R 18 E., beginning at a point on Camas Creek in the NW¼ of NW¼ of section 35 at approximately 47°26′52″ N latitude and 120°38′57″ W longitude proceeding downstream (northwesterly), expanding in all directions to include the entire wetland complex that comprises the Camas Meadow Natural Area Preserve, to a point approximately 0.4 km (0.25 mi) from the confluence of Pendleton Creek and Peshastin Creek, located at 47°31′06″ and 120°37′18″ W longitude. From this last point, the western boundary of the designated critical habitat parallels Peshastin Creek to a point at the southwest of the designated area located at 47°28′46″ N latitude and 120°38′57″ W longitude. The maximum elevation of the designated critical habitat is 1,000 m (3,300 ft) and the lowest elevation is 488 m (1,600 ft). Critical habitat within this area includes watercourses and wetland habitat out to the beginning of upland vegetation.

(3) The known primary constituent elements of critical habitat for *Sidalcea oregana* var. *calva* include: surface water or saturated upper soil profiles; a wetland plant community dominated by native grasses and forbs, and generally free of woody shrubs and conifers that would produce shade and competition for *Sidalcea oregana* var. *calva*; seeps and springs on fine-textured soils (clay loams and silt loams), which contribute to the maintenance of hydrologic processes necessary to support meadows that remain moist into the early summer; and elevations of 488–1,000 m (1,600–3,300 ft).

Critical habitat does not include existing features and structures, such as buildings, roads, aqueducts, railroads, airports, other paved areas, lawns, and other rural residential landscaped areas, not containing one or more of the primary constituent elements.

Note: Map follows:

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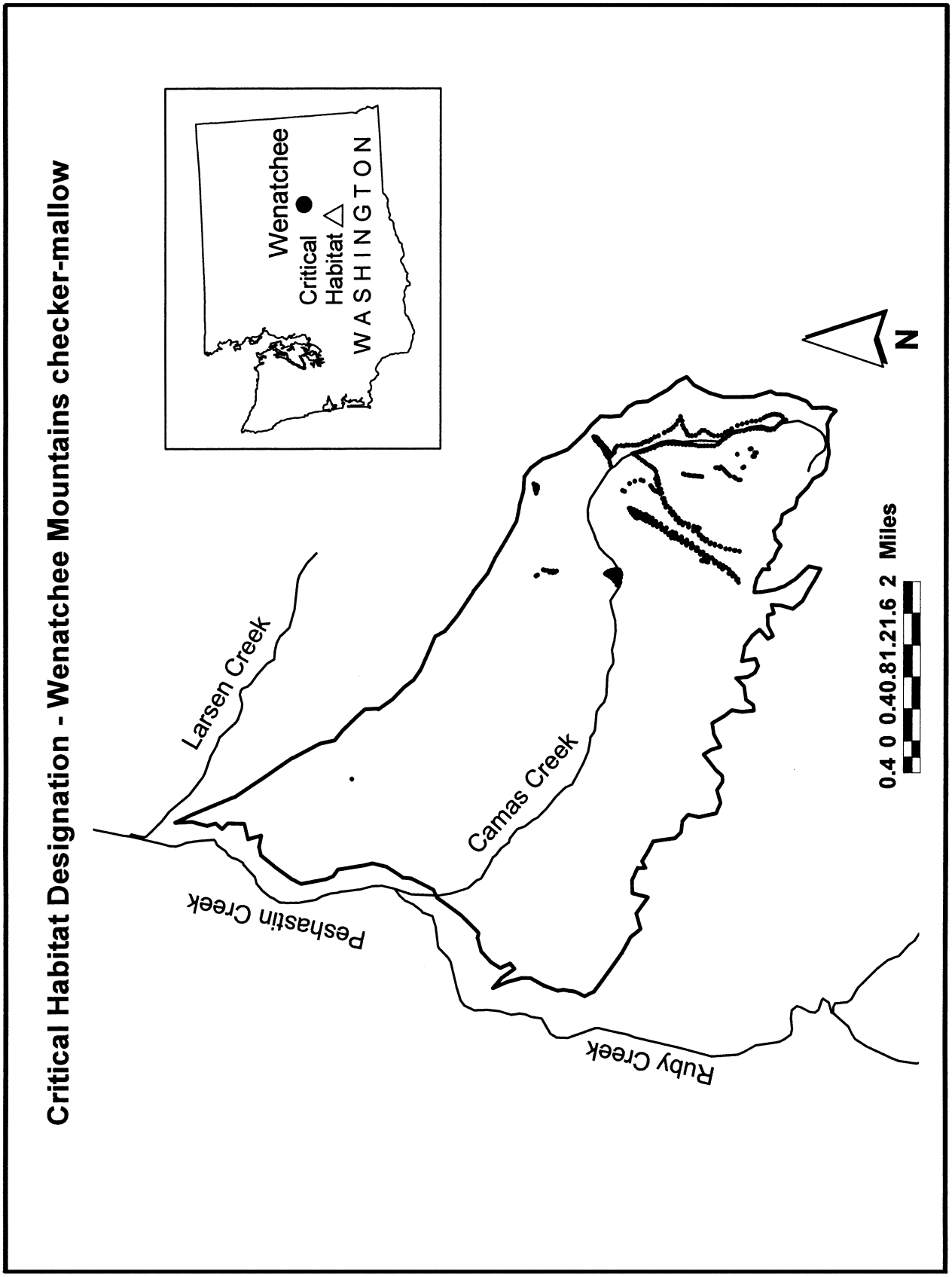
Critical Habitat Designation - Wenatchee Mountains checker-mallow
Wenatchee
Critical
Habitat
WASHINGTON
Larsen Creek
Camas Creek
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N
0.4 0 0.4 0.8 1 2 1.6 2 Miles

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Dated: August 29, 2001.

Marshall P. Jones, Jr.,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–22341 Filed 9–5–01; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH06

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the Kootenai River Population of the White Sturgeon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the Kootenai River population of the white sturgeon (*Acipenser transmontanus*). A total of 18 river kilometers (11.2 river miles) of the Kootenai River in Idaho is designated as critical habitat.

Section 7 of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to destroy or adversely modify designated critical habitat. State or private actions, with no Federal involvement, would not be affected by this rulemaking action. As required by section 4 of the Act, we considered economic and other impacts prior to making a final decision on what area to designate as critical habitat.

DATES: This rule becomes effective on October 9, 2001.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Upper Columbia Fish and Wildlife Office, 11103 East Montgomery Drive, Spokane, Washington 99206.

FOR FURTHER INFORMATION CONTACT: Bob Hallock, U.S. Fish and Wildlife Service, Upper Columbia Fish and Wildlife Office, see **ADDRESSES** section; telephone 509/891–6839, facsimile 509/891–6748.

SUPPLEMENTARY INFORMATION:

Background

The Kootenai River population of the white sturgeon (*Acipenser transmontanus*) is 1 of 18 land-locked populations of white sturgeon known to occur in western North America. The Kootenai River originates in Kootenay National Park in British Columbia, Canada, then flows south into Montana, northwest into Idaho, then north through the Kootenai Valley back into British Columbia, where it flows through Kootenay Lake and joins the Columbia River at Castlegar, British Columbia. Kootenai River white sturgeon occur in Idaho, Montana, and British Columbia, and are restricted to approximately 270 river kilometers (km) (168 river miles (mi)) of the Kootenai River extending from Kootenai Falls, Montana, located 50 river km (31 mi) below Libby Dam, Montana, downstream through Kootenay Lake to Corra Lynn Dam at the outflow from Kootenay Lake in British Columbia.

Bonnington Falls, a natural barrier downstream of Kootenay Lake, has isolated the Kootenai River population of white sturgeon since the last glacial advance roughly 10,000 years ago (Apperson 1992). Approximately 45 percent of the species' range, based on river kilometers, is located within British Columbia. Apperson and Anders (1991) found that at least 36 percent of the sturgeon tracked during 1989 over-wintered in Kootenay Lake. They further believe that sturgeon do not commonly occur upstream of Bonners Ferry, Idaho, which includes most of the Kootenai River watershed in the United States.

The Kootenai River population of white sturgeon is threatened by factors including hydropower operations, flood control operations, poor recruitment, loss of habitat, and possibly, contaminants (water quality impacts). For more detailed discussions of the ecology of the Kootenai River population of white sturgeon, see the September 6, 1994, **Federal Register** notice listing this population as endangered (59 FR 45989), and the September 30, 1999, ''Recovery Plan for the White Sturgeon (*Acipenser transmontanus*): Kootenai River Population'' (U.S. Fish and Wildlife Service 1999). The final listing rule and the recovery plan incorporate the best available biological information on Kootenai River white sturgeon.

Although the Service, in cooperation with other agencies, has gained important life history information during the 7 years since listing the species, considerable uncertainty remains in accurately delineating critical habitat for the Kootenai River population of white sturgeon. However, we rely on the best currently available information, including our 1999 recovery plan for the species, to designate critical habitat; we will now summarize the recent findings and remaining areas of uncertainty. Information being gathered now and in the future may require substantially amending this rule, the associated analyses of impacts, and any recommendations under section 7 of the Act.

In 1997, Paragamian *et al.* (1997) estimated that there may be 1,468 adult sturgeon remaining in the Kootenai River population, with a male-to-female ratio of 1.7:1, or about 539 females. With 7 percent of these females reproductively active in a given year (Apperson and Anders 1991), and an assumed average of 100,000 eggs per female, there may be as many as 3.8 million eggs released on average annually. To increase the probability of survival of fertilized eggs, the U.S. Army Corps of Engineers (COE) has provided various augmentation flows from Libby Dam. However, during the last 10 years of intensive monitoring, only one hatching fry has been found, and no free-swimming larvae or young-of-the-year have been captured. To date, only 17 juvenile sturgeon have been captured that can be associated with the experimental augmentation flows between 1991 and 1997. Because of sampling gear limitations, the success of sturgeon recruitment during the 1998 and 1999 augmentation flows cannot be assessed at this time. Considering the extent of occupied habitat in the United States and Canada, we believe that we have not yet accounted for other naturally recruited sturgeon from these same year classes that are present in the system. However, because of the high incidence of recapture of marked juvenile sturgeon in this system, the number of additional juvenile sturgeon is believed to be small.

There is evidence that very high levels of mortality of sturgeon eggs and sac fry are occurring annually. While we anticipate high levels of mortality at early life stages of a highly fecund species such as the Kootenai River white sturgeon, during 10 years of intensive monitoring we have never captured a free-swimming larvae or young-of-the-year sturgeon, and have captured a total of only 17 juveniles. This suggests exceptionally high levels of mortality are occurring at the sites now being used for spawning, egg incubation, and yolk sac fry development.

White sturgeon are broadcast spawners that release adhesive eggs which then sink to the river bottom (Stockley 1981, Brannon *et al.* 1984). In the lower Columbia River, most sturgeon eggs are sheltered by attaching