

flood control structures, roads, and recreational facilities such as campgrounds and off-highway vehicle parks, have caused many arroyo toad populations to be reduced in size or extirpated (eliminated). Threats to the species survival include loss of habitat, coupled with habitat modifications due to the manipulation of water levels in many central and southern California streams and rivers, as well as predation from introduced aquatic species, and habitat degradation from introduced plant species. Such threats have caused arroyo toads to be extirpated from about 75 percent of the previously occupied habitat in California. Pursuant to the Endangered Species Act of 1973, as amended (Act), the species was federally listed as endangered on December 16, 1994, due to habitat degradation, small population sizes, and predation (59 FR 64859). On June 8, 2000, we published in the **Federal Register** (65 FR 36512) a determination proposing critical habitat for the arroyo southwestern toad. Approximately 193,600 hectares (478,400 acres) fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Los Angeles, Monterey, Orange, Riverside, Santa Barbara, San Bernardino, and San Diego, San Luis Obispo, and Ventura counties, California, as described in the proposed determination.

Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available and after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for the arroyo southwestern toad and comments received during the previous comment period, we have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available at the above Internet and mailing address. We have reopened the comment period at this time in order to accept the best and most current scientific and commercial data available regarding the proposed critical habitat and the draft economic analysis. We will accept written comments during this reopened comment period. Previously submitted oral or written comments on this critical habitat proposal need not be resubmitted. The current comment period on this proposal closes on December 11, 2000. Written comments may be submitted to the Ventura Fish and Wildlife Office in the **ADDRESSES** section.

Author

The primary author of this notice is John Nuss, U.S. Fish and Wildlife Service, Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181 (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: November 2, 2000.

Donald W. Steffek,

Acting Manager, California/Nevada Operations Office.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AH70

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for *Polygonum hickmanii* (Scotts Valley polygonum)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose endangered status pursuant to the Endangered Species Act (Act) of 1973, as amended, for *Polygonum hickmanii* (Scotts Valley polygonum). *Polygonum hickmanii* is restricted to two sites in northern Scotts Valley, Santa Cruz County, California. The plant is threatened by alteration of habitat due to urban development and associated disturbances, displacement by nonnative grasses, and the increased chance of extinction due to the small numbers of individuals and limited amount of habitat occupied by this species. The effects of these threats are exacerbated by the inadequate design of preserves meant to protect the species. This proposed rule, if made final, would extend the Act's protection to this plant. **DATES:** All comments, including written and email from all interested parties must be received by January 8, 2001. Public hearing requests must be received by December 26, 2000. **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 to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003.

2. You may send comments by e-mail to svpolygonum@r1.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 Ventura Fish and Wildlife office at 2493 Portola Road, Suite B, Ventura, California.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Carl Benz, Assistant Field Supervisor, Listing and Recovery, Ventura Fish and Wildlife Office at the above address or telephone number 805/644-1766 or facsimile 805/644-3958.

SUPPLEMENTARY INFORMATION:

Background

Polygonum hickmanii (Scotts Valley polygonum) is a recently described endemic species from Scotts Valley, Santa Cruz County, California (Hinds and Morgan 1995). The species was named after James C. Hickman, editor of the Jepson Manual (1993) and author of the chapter on the genus *Polygonum* in the same reference. He concurred with Morgan's assessment that the taxon was distinct (J.C. Hickman, *in litt.* 1991), but died before coauthoring the publication of a name. Randy Morgan made the type collection in 1993 from a "grassland N of Navarra Drive, W of Carbonero Creek" (Hinds and Morgan 1995). The plant is a small, erect, taprooted annual in the buckwheat family (Polygonaceae). It grows from 2 to 5 centimeters (cm) (1 to 2 inches (in.)) tall, and can be either single stemmed or profusely branching near the base in more mature plants. The linear-shaped leaves are 0.5 to 3.5 cm (0.2 to 1.4 in.) long and 1 to 1.5 cm (0.4 to 0.6 in.) wide and tipped with a sharp point. The single white flowers consist of two outer tepals (petal-like structure) and three inner tepals and are found in the axils of the bracteal leaves (modified leaves near the flower). The plant flowers from late May to August. Seed production ranges from a few dozen seeds in a typical individual to as many as two hundred in a particularly robust individual (Randy Morgan, biological consultant, pers. comm. 1998). The nearest known location of a closely related species, *P. parryi*, is at Mount Hamilton, about 48 kilometers (km) (30 miles (mi)) inland. *Polygonum hickmanii* differs from *P. parryi* in its larger white flowers, longer leaves, larger anthers and achenes, and longer, straight stem sheath (Hinds and Morgan

1995). According to Harold Hinds, author for the genus *Polygonum* in an upcoming volume of the Flora of North America (Flora of North America Editorial Committee, in prep.), the distinctness of *P. hickmanii* as a species will continue to be recognized in that volume (Harold Hinds, University of New Brunswick, pers. comm. 1998).

The available information suggests that *Polygonum hickmanii* has always been limited in distribution to the northern Scotts Valley area in Santa Cruz County, California. Two bodies of evidence support this theory. First, none of the herbarium collections of other *Polygonum* species that were checked in preparation of the publication of the name for *P. hickmanii* matched those collected from Scotts Valley. Herbaria that were searched included the Dudley Herbarium at Stanford University, the Jepson and University of California (UC) herbaria located at UC Berkeley, and the herbarium at the Missouri Botanic Garden (H. Hinds, *in litt.* 1998; R. Morgan, pers. comm. 1998). Secondly, predictive searches of other potentially suitable habitat in Santa Cruz County (based on soil type, local climate, and associated species) have failed to locate any additional colonies of *P. hickmanii* (R. Morgan, pers. comm. 1998).

Polygonum hickmanii is known from two sites about 0.6 km (1 mi) apart at the northern end of Scotts Valley. The plant is found on gently sloping to nearly level fine-textured shallow soils over outcrops of Santa Cruz mudstone and Purisima sandstone (Hinds and Morgan 1995). It occurs with the endangered *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower) (59 FR 5499) and other small annual herbs in patches within a more extensive annual grassland habitat. These small patches have been referred to as "wildflower fields" because they support a large number of native herbs, in contrast to the adjacent annual grasslands that support a greater number of nonnative grasses and herbs. While the wildflower fields are underlain by shallow, well-draining soils, the surrounding annual grasslands are underlain by deeper soils with a greater water-holding capacity, and therefore more easily support the growth of nonnative grasses and herbs. The surface soil texture in the wildflower fields tends to be consolidated and crusty rather than loose and sandy (Biotic Resources Group (BRG) 1998). Elevation of the sites is from 215 to 246 meters (m) (700 to 800 feet (ft)) (Hinds and Morgan 1995). The climate in the city of Santa Cruz, 13 km (8 mi) to the south, is characterized by an average of 77 cm (30 in.) of rain per year, and an

average temperature of 14 degrees Celsius (57 degrees Fahrenheit), while the city of Los Gatos, 16 km (10 mi) to the north, averages 120 cm (51 in.) of rain per year, with an average temperature of 15 degrees Celsius (58 degrees Fahrenheit) (Worldclimate 1998).

Polygonum hickmanii is associated with a number of native herbs including *Chorizanthe robusta* var. *hartwegii*, *Lasthenia californica* (goldfields), *Minuartia douglasii* (sandwort), *Minuartia californica* (California sandwort), *Gilia clivorum* (gilia), *Castilleja densiflora* (owl's clover), *Lupinus nanus* (sky lupine), *Brodiaea terrestris* (brodiaea), *Stylocline amphibola* (Mount Diablo cottonweed), *Trifolium grayii* (Gray's clover), and *Hemizonia corymbosa* (coast tarplant). Nonnative species present include *Filago gallica* (filago) and *Vulpia myuros* (rattail) (California Natural Diversity Data Base (CNDDB) 1998; R. Morgan, pers. comm. 1998). In many cases, the habitat also supports a crust of mosses and lichens (BRG 1998).

Morgan observed a sphecid wasp (family Sphecidae) visitation to an individual *Polygonum hickmanii* (R. Morgan, pers. comm. 1998). Other potential pollinators have not been identified at this time, and the degree to which *P. hickmanii* depends on insect pollinators (rather than being self-pollinated) has not been determined.

For purposes of this rule, a cluster of individuals of *Polygonum hickmanii* will be referred to as a "colony." Because of the close proximity of many of the clusters to each other (less than 0.4 km (0.2 mi) apart), it is uncertain whether these clusters are patches within a metapopulation (population consisting of interconnected subpopulations), true colonies, or separate populations. The approximate area occupied by any one colony ranges from the smallest at 1.5 m by 1.5 m (5 ft by 5 ft) to the largest at 15 m by 9 m (50 ft by 30 ft). There are approximately 11 colonies of *P. hickmanii* in total, which together occupy less than 0.4 hectare (ha) (1 acre (ac)).

The *Polygonum hickmanii* colonies are split between two sites. The first site is located north of Casa Way and west of Glenwood Drive in northern Scotts Valley. Referred to as the Glenwood site, it contains five colonies on two parcels of land. One of these colonies is situated within a 3.6 ha (9 ac) preserve on a 19.4 ha (48 ac) parcel that is owned by the Scotts Valley Unified School District and is referred to as the "School District" colony (Denise Duffy and Associates 1998). The other four colonies at the Glenwood site are

located approximately 0.21 km (0.13 mi) to the west of the School District colony, on a parcel of land owned by the Salvation Army (CNDDB 1998). These four colonies are referred to as the "Salvation Army" colonies.

The second site contains six colonies and is referred to as the "Polo Ranch" site. Located just east of Highway 17 and north of Navarra Road in northern Scotts Valley, the Polo Ranch site is approximately 1.6 km (1 mi) east of the Salvation Army and School District colonies. These six colonies are situated within 0.2 km (0.1 mi) of one another, and all of these colonies occur on a parcel owned by Greystone Homes (Kathleen Lyons, BRG, *in litt.* 1997).

Being a short-lived annual species, the total number of individuals can vary from year to year. In 1998, the total number of individuals found at the Glenwood site was 153 on the School District parcel and approximately 2,000 on the Salvation Army parcel (K. Lyons, pers. comm. 1998). In 1997, the total number of individuals on the Polo Ranch site was approximately 2,140 (K. Lyons *in litt.* 1997).

Polygonum hickmanii is threatened with extinction by habitat alteration due to secondary impacts of urban development occurring within close proximity. Urban development includes the proposed construction and operation of a high school; installation and maintenance of water delivery pipelines, access roads, and water tanks; and currently existing and proposed housing. Results of a field survey conducted on the School District colony identified that the *P. hickmanii* may occur in the vicinity of the alternative access routes to the tank sites and that potential impacts from the construction activities may be significant (Service, *in litt.* 1998).

The kinds of habitat alterations expected to impact *Polygonum hickmanii* as a result of development include changes in hydrologic conditions; soil compaction; increased disturbance by humans, pets, and bicycle traffic; the inadvertent application of herbicides and pesticides; dumping of yard wastes; and the introduction of nonnative species. These habitat alterations are substantial enough that they are even destabilizing the proposed preserves and open space areas intended to protect *P. hickmanii* and making these areas inadequate for maintaining viable populations of this species (Service, *in litt.* 1998). Studies on habitat fragmentation and preserves established in urbanized settings have shown that these preserves gradually become destabilized from external forces (*i.e.*, changes in the hydrologic

conditions, soil compaction, etc.), resulting in preserves that are no longer able to support the species they were established to protect (Kelly and Rotenberry 1993).

The chance of random extinction for *Polygonum hickmanii* is also increased due to the small numbers of individuals and limited area occupied by the species (Shaffer 1981).

Previous Federal Action

We first became aware of *Polygonum hickmanii* in the course of proposing to list *Chorizanthe robusta* var. *hartwegii* for Federal listing in 1992. At that time, however, a name for the taxon had not formally been published, and so it could not be considered for listing under the Act. Once the name, *P. hickmanii*, was published by Hinds and Morgan (1995), we reviewed information in our existing files, in the California Natural Diversity Data Base, and new information on proposed projects being submitted to us for our review, and determined that sufficient information existed to believe that listing might be warranted. *Polygonum hickmanii* was included in the list of candidate species published in the **Federal Register** on October 25, 1999 (64 FR 57534).

The processing of this proposed rule conforms with our current Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarified the order in which we process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being. Second priority is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists (such as this proposed rule for *Polygonum hickmanii*). The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Polygonum hickmanii* H. R. Hinds and R. Morgan are as follows:

A. *The present or threatened destruction, modification, or*

curtailment of its habitat or range. In addition to the colonies of *Polygonum hickmanii* at the Glenwood and Polo Ranch sites, other colonies of *P. hickmanii* may have occurred in Scotts Valley prior to publication of the species name in 1995. An existing housing development bordering the south side of the Glenwood site (Glen View) was built in the mid-1980s, and one development bordering the south side of the Polo Ranch site (Navarra Drive) was built in the 1970s. The environmental analyses done at those times would not have recognized *P. hickmanii* as a distinct taxon.

None of the occupied habitat for *Polygonum hickmanii* is targeted for direct destruction; however, all occupied habitat will be subject to habitat alteration resulting from current and proposed projects. At the Glenwood site, construction of a high school was initiated in June 1998. The colony of *P. hickmanii* on this site is within an area designated as a grassland preserve intended to protect a number of sensitive plant species, including *P. hickmanii*, *Minuartia californica* (California sandwort), *Plagiobothrys diffusus* (San Francisco popcorn flower), and the endangered *Chorizanthe robusta* var. *hartwegii*. The preserve is 2 ha (4 ac) in size, and is adjacent to a wetland preserve of slightly smaller size. The two preserves combined form a 3.6 ha (9 ac) area, linear in shape, sandwiched between high school playing fields to the north and the existing Glen View development to the south. The colony of *P. hickmanii* is 18 m (60 ft) away from the edge of the preserve nearest to the playing field. A management plan for the grasslands preserve includes prescriptions for boundary protection, habitat enhancement, control of nonnative plant species, and a 10-year monitoring program (BRG 1998). Although the effectiveness of this management plan has not been demonstrated yet, *P. hickmanii* will likely still be subject to habitat alteration due to the small size of the preserve and its proximity to other land uses. Problems with managing small preserves within urban areas have been documented previously (Jensen 1987; Clark *et al.* 1998; Howald 1993; Service 1995). See Factor E for additional discussion on the failure of preserve design to provide for long-term conservation.

The kinds of habitat alteration that are anticipated to result from the high school project include changes in surface hydrologic conditions due to the increased watering of the ballfield up slope from the preserve; changes in

surface water quality due to the application of fertilizers, herbicides and pesticides on the ballfield and adjacent areas up slope from the preserve; an increase in the number of nonnative plant species that will likely invade from adjacent newly altered areas; and an increase in the amount of soil disturbance and soil compaction caused by the increased numbers of students, pets, and bicycles coming into the preserve from adjacent areas. The nature of the thin soils and the crusts of mosses and lichens they support make them particularly vulnerable to any form of surface disturbance (Belknap 1990).

The Scotts Valley Water District recently approved the construction of a series of pipelines, maintenance roads, and tanks to distribute recycled water in the northern Scotts Valley area (EMC Planning Group 1998; Scotts Valley Water District 1998). One pipeline and an all-weather maintenance road pass through the southwestern corner of the preserve, then continue to the north and west onto a parcel owned by the Salvation Army where a water tank would be installed. As originally proposed, this route was to come within 23 m (75 ft) of the colonies of *Polygonum hickmanii* on the Salvation Army parcel, and within 18 m (60 ft) of the endangered *Chorizanthe robusta* var. *hartwegii* (K. Lyons, pers. comm. 1998). However, when road grading was initiated in July 1999, grading plans were not followed closely. Moreover, measures to minimize and mitigate impacts to sensitive resources included in the approved project were not implemented. As a result, road grading came to within 3 m (10 ft) of *P. hickmanii*, and to within 6 m (20 ft) of *C. r.* var. *hartwegii* (Vince Cheap, California Native Plant Society, *in litt.* 1999).

The kinds of habitat alteration that are anticipated to impact *P. hickmanii* from the Water District's project include changes in surface hydrology due to the placement of the road upslope from the colonies; changes in surface water quality due to the application of herbicides, pesticides, and tackifiers (dust reducing substances) on the road and roadsides upslope from the colonies; an increase in the amount of soil siltation from the up slope roadbank; soil compaction and disturbance; and an increase in the number of nonnative plant species that will likely invade from the road.

A recent visit to the Glenwood site confirmed that the nonnative plant *Cytisus scoparius* (Scotch broom) has invaded to within a few feet of one of the colonies of *Polygonum hickmanii* in the last few years (Carole Kelley,

Friends of Scotts Valley, per. comm. 1998). If not controlled, this invasive plant could quickly eliminate habitat for the *P. hickmanii*. The California Department of Food and Agriculture has declared *Cytisus scoparius* and *Cytisus monspessulanus* (French broom) pest species, which in some places forms impenetrable thickets that displace native vegetation and lower habitat value for wildlife (Habitat Restoration Group, no date).

A housing development proposed for the Polo Ranch site includes 74 housing units clustered on 7.3 of 47.0 ha (18 of 116 ac), with the remaining 38 ha (95 acres) kept as open space (City of Scotts Valley 1998). The development, as currently proposed, places houses and roadways within 18 m (60 ft) or closer to five out of six colonies of *Polygonum hickmanii*. Moreover, not only will the development then separate the colonies from each other, three of the six colonies will be isolated on all sides either by existing or proposed dwellings and roadways.

Alterations of habitat for *Polygonum hickmanii* that are likely to occur as a result of the Polo Ranch development are changes in surface hydrologic conditions due to the grading of roads and lots; soil compaction and disturbance by humans, pets, and bicycle traffic; inadvertent (i.e., aerial drift) and intentional application of herbicides, pesticides, and fertilizers on roadsides and yards; inadvertent introduction of nonnative species (both weedy and ornamental), and dumping of yard wastes. Examples of alteration of habitat that have occurred on grasslands north of the backyards of existing housing along Navarra Drive (along the south edge of the Polo Ranch property) include gates and pathways leading from backyards onto the grassland, ivy creeping over fences and onto the grassland, oaks (*Quercus* sp.) planted within the grassland, and shade created by planted backyard trees (K. Lyons, pers. comm. 1998).

Although two of the projects (high school and recycled water distribution system) include plans for conservation of *Polygonum hickmanii* through development-related mitigation, and the third project (Polo Ranch) would be expected to do so as well, the successful implementation of these mitigation plans has not been demonstrated. In particular, the size and characteristics of preserve areas, open spaces, and management actions prescribed through the environmental review process (see Factor D) are unlikely to be biologically adequate to meet the goal of long-term conservation of *P. hickmanii* and its habitat. In addition, since *P. hickmanii*

colonies will be in preserves or open spaces that are small in area, support small numbers of individuals, whose habitat is degraded, or that continue to receive secondary effects of adjacent human activities, they become more vulnerable to extirpation from naturally occurring events (see Factor E).

All habitat for *Polygonum hickmanii* is also threatened in general by the encroachment of nonnative grasses from the surrounding grasslands. Although several species of nonnative grass (e.g., *Vulpia myuros*) grow within the wildflower fields, these patches for the most part do not support the abundant growth of nonnative grasses (*Bromus* sp.) that occur on the adjacent, more mesic grassland habitat. These nonnative grasses on the mesic grasslands do not compete with *P. hickmanii* in the classic sense (competition for light, water, nutrients). However, the tall culms (stems) of nonnative grasses can physically drape over patches of wildflower field habitat, particularly the smaller patches, and deposit a mat of litter (thatch) that physically prohibits the species within the wildflower field from appearing. Because nonnative grasses and herbs produce more biomass than their native counterparts, they also produce more litter. Although decomposition rates for nonnative species are likely no slower than those of native species, their faster rate of biomass production results in a greater accumulation of litter. Other cases of native species being overtaken by litter accumulation produced by nonnatives have been noted in desert ecosystems (Jayne Belknap, Biological Resources Division, pers. comm. 1998) and on the California Channel Islands (Rob Klinger, The Nature Conservancy, pers. comm. 1998).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization or vandalism are not known to be threats to this species.

C. *Disease or predation.* We found no evidence that disease is a factor affecting this species. Predation by cattle, livestock, or other wildlife species is not known to occur.

D. *The inadequacy of existing regulatory mechanisms.* *Polygonum hickmanii* currently receives no protection under Federal law, and it is not currently listed by the State of California.

Chorizanthe robusta var. *hartwegiana*, an endangered species, occurs within the same wildflower field habitat as *Polygonum hickmanii*. Although *C. r.* var. *hartwegiana* is listed, it remains vulnerable to all the same threats that face *P. hickmanii*. Therefore, the

association of *P. hickmanii* with the *C. r.* var. *hartwegiana* in the same wildflower field habitat confers little regulatory protection on the *P. hickmanii*. However, there may be some benefit to *P. hickmanii* through the California Environmental Quality Act (CEQA) process described below.

The CEQA requires a full disclosure of the potential environmental impacts of proposed projects. The lead agency is the public agency with primary authority or jurisdiction over the project, and is responsible for conducting a review of the project and consulting with other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project potentially "reduce(s) the number or restrict(s) the range of a rare or endangered plant or animal." Species eligible for State listing as threatened or endangered, but not listed, are given the same protection as those species officially listed by State or Federal governments. The Rare Plant Scientific Advisory Committee for the California Native Plant Society has determined that *Polygonum hickmanii* meets the criteria for being included on CNPS' "List 1B." The plants on List 1B meet the definitions of sec. 1901, chapter 10 of the California Department of Fish and Game Code, and are therefore eligible for State listing. It is mandatory that plants on List 1B be fully considered during preparation of environmental documents relating to CEQA. Once significant effects are identified, the lead agency may require mitigation for effects through changes in the project or alternatively, the lead agency may decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of listed species. Therefore, the protection of listed species through CEQA depends upon the discretion of the lead agency involved.

CEQA approval for the construction of the Polo Ranch development falls under the purview of the City of Scotts Valley. However, the Scotts Valley Unified School District was the lead CEQA agency for approval of the Glenwood High School project, while the Scotts Valley Water District acted as the lead CEQA agency for approval of the recycled water distribution project. With at least three local agencies separately approving development proposals, a consistent, appropriate approach to managing such small preserves and adequately mitigating project impacts may be very difficult to develop and maintain.

Inclusion of mitigation measures in a project approved through the CEQA process does not guarantee that such measures are implemented. The recycled water distribution project approved by the Scotts Valley Water District included measures to avoid and mitigate impacts to sensitive resources, including those for *Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii*. However, grading for this project was initiated without implementing those measures, which resulted in a much narrower buffer zone left between the plant populations and the grading activity (Carl Wilcox, California Department of Fish and Game, *in litt.* 1999).

Certain local agencies are exempt from city and county regulations in accordance with chapter 1, paragraphs 53094 and 53096 of the State of California regulations on planning, zoning, and development laws (Governor's Office of Planning and Research 1996). In the case of the High School project, the Scotts Valley Unified School District is exempt from local permitting requirements; therefore, no permits or approvals were required from the City of Scotts Valley. In the case of the recycled water distribution project, the Scotts Valley Water District is similarly exempted; therefore, no permits or approvals are required from either the City of Scotts Valley or the County of Santa Cruz. In July 1999, the Water District proceeded with road and tank pad grading for this project. This activity was initiated without fulfilling mitigation measures that called for sensitive areas to be flagged and fenced ahead of time, and resulted in grading that went beyond the scope of work for the project. Although the County of Santa Cruz notified the Water District that the additional grading was not exempted from applicable regulations, the only consequence is that the county has requested that the damaged areas are satisfactorily restored (Alvin James, County of Santa Cruz, *in litt.* 1999).

The establishment and implementation of a management plan for the preserve at the High School site does not provide for enforcement authority to maintain the physical integrity of the preserve. Few regulatory mechanisms are available to assist in protection of the high school preserve. State law addressing trespass is found at California Penal Code Section 554 and 555 (California State Legislature 2000). To date, however, these regulations have not been enforced in cases of trespass at the preserve (Carole Kelley, Friends of Scotts Valley, pers. comm. 1999).

E. Other natural or manmade factors affecting its continued existence. The design of preserves and open spaces related to project mitigation is insufficient to provide for the long-term conservation of *Polygonum hickmanii* and other sensitive species that occur in the wildflower fields in Scotts Valley. Additionally, the threat of random extinction is increased in small populations of limited distribution.

Inadequate preserve design. The need for adequate preserve design has been discussed by many biologists (Jensen 1987; Shafer 1995; Rathcke and Jules 1993; Kelly and Rotenberry 1993). To increase the certainty that a species will persist over a given interval of time, adequate habitat needs to be protected and land uses adjacent to the preserve need to be compatible with maintaining the integrity of the preserve. Habitat is not restricted solely to the area actually occupied by the species. It must include an area that is large enough to maintain the ecological functions upon which the species depends, and have a ratio of edge to total area that minimizes fragmentation and edge effects.

Failure to protect sufficient habitat results in the eventual decline of the target species. Small preserves adjacent to urban areas have additional stress placed on them due to the need to manage a host of human-caused impacts. The increased stress urban wildland areas receive has been documented by many authors (Keeley 1983). Although little work has focused on the effects of habitat alteration and fragmentation on native grassland habitat in California, the effects would likely be similar to those documented for other native California habitats. Clark *et al.* (1998) discussed management problems encountered by small vernal pool preserves surrounded by an urban park and residential development in the Sacramento area, and they identified the following threats to the habitat—off-road motorized vehicle, foot, horse, and bicycle traffic; plant and animal collection; herbicides; changes in hydrology; garbage; invasive exotic plants; feral and domestic animals; vegetation management for fire control; and vandalism.

We previously listed serpentine-endemic species in the San Francisco Bay area, in part, due to the impacts these taxa were subjected to in urban wildland areas (Service 1995; 60 FR 6671). For example, *Cordylanthus tenuis* ssp. *capillaris* (Pennell's bird's-beak) is threatened with mowing and spraying along roadsides, illegal dumping of household trash, and disturbance that facilitates the invasion of nonnative species (60 FR 6671).

Calochortus tiburonensis (Tiburon mariposa lily) is threatened by bicycle, motorbike, and pedestrian traffic even though it occurs within a fenced preserve area; and *Cirsium fontinale* var. *fontinale* (Fountain thistle) is threatened by dumping of garden debris from households on a ridge above the plants (60 FR 6671). In the case of *Polygonum hickmanii* at the School District Preserve, the site has remained unfenced and unsigned, and has been subject to bicycle traffic, heavy equipment traffic, and served as a repository for yard waste (C. Kelley, *in litt.* 1999). In addition, a management plan for the preserve has not yet been completed.

Pentachaeta lyonii (Lyon's pentachaeta) is an endangered plant species that is restricted to less than 10 sites in western Los Angeles and eastern Ventura County. It is similar to *Polygonum hickmanii* in that its habitat consists of thin-soiled patches within a larger grassland community that has deeper soils. In the early 1990s, small patches of *Pentachaeta lyonii* were set aside as preserves as mitigation for a housing development and golf course in Westlake Village. At hole 10 on the golf course, a 1,394 square-meter (1,500 square-foot) area was set aside for a small population of the pentachaeta; however, the population dwindled over the next six years and finally disappeared (Carl Wishner, Envicom, pers. comm. 1998). Attempts to transplant bare root seedlings into the site resulted in the reappearance of the species the following year, but with numbers again dwindling in subsequent years. Habitat for the plant has been rendered unsuitable for several reasons including overspray from the sprinkler system that increased soil moisture, which in turn promoted the growth of weedy nonnative herbs and grasses that compete with the pentachaeta. Overspray also resulted in the mildew of pentachaeta flower heads, which then did not produce seed. Adjacent landscaped areas provide cover that harbors populations of rabbits, birds, snails and insects that were not previously present. In combination, these animals have consumed much of the vegetation along a 1.5 to 2.4 m (5 to 8 ft) wide swath of vegetation, including pentachaeta, on the perimeter of the preserve area.

Alberts *et al.* (1993) documented the effects of habitat fragmentation on coastal scrub in southern California. Surveys of native and introduced plant species conducted in 25 patches of coastal scrub found that plant species richness and the ratio of native species to nonnative species was correlated

with several variables—larger and more recently isolated patches supported more species; fragments with longer perimeters contained more weed species; and older fragments and those with artificially supplemented water sources supported higher numbers of escaped ornamentals. Human disturbance, including clearing of vegetation, addition of nonnatural water supplies, and disruption of fire regimes, has most likely contributed to the loss of native species and subsequent invasion of nonnative species into the patches.

Habitat fragmentation also affects plant-pollinator interactions in a number of ways. The abundance of specific pollinators may decline due to the elimination of nesting sites, decreases in food source plants due to changes in composition of the plant community, increases in competition from nonnative pollinators, and increases in the exposure to pesticides (Rathcke and Jules 1993; Jennersten 1988; Kearns and Inouye 1997). In plant species that are obligate outcrossers (those that require pollinators to effect seed development), reduced pollinator availability can result in limited seed production. Even if a plant species is not an obligate outcrosser, genetic variability within the plant population can be reduced with potentially deleterious long-term consequences (see discussion below on random extinction).

In the case of *Polygonum hickmanii*, ecological processes that would be important to maintain within preserve areas include, but are not limited to, the integrity of edaphic (soil) conditions, hydrologic processes (surface flows), the associated “wildflower field” plant community, plant-pollinator interactions, and seed dispersal mechanisms. Maintaining such processes will be severely compromised by the small size of the areas being set aside as preserves or open spaces, the extent of edge subject to external influences, and the particular kinds of adjacent land use to which the preserves will be subject. Threats resulting from alteration of habitat due to adjacent changes in land use (discussed in Factor A) are exacerbated by the small size of the preserves and the proximity of nearly all of the colonies to the edges of the preserves or open spaces, or to roads. Distances of less than 24 m (80 ft) are not considered to be highly effective at buffering from chemical pollutants (e.g., herbicides, pesticides, and other contaminants) (Conservation Biology Institute 2000). Depending on site configuration or circumstances, buffers of up to 91 m (300 ft) may not

be adequate to provide sufficient buffering from invasive animals and increased fire frequency (Conservation Biology Institute 2000).

Random extinction. Species with few populations and individuals are vulnerable to the threat of naturally occurring events, causing extinction through mechanisms operating either at the genetic level, the population level, or at the landscape level. The loss of genetic diversity may decrease a species’ ability to persist within the environment, often manifested as a decrease in reproductive success. At the population level, species with few populations or individuals may be subject to forces that affect their ability to complete their life cycles successfully. For example, the loss of pollinators may reduce successful seed set, or if the host plant is at least partially self-compatible, may reduce the degree of genetic variability within species. At the landscape level, random natural events, such as storms, drought, or fire could destroy a significant percentage of a species’ individuals or entire populations. The restriction of colonies to small sites increases their risk of extinction from such naturally occurring events.

The genetic characteristics of *Polygonum hickmanii* have not been investigated; therefore, the degree to which these characteristics contribute to the likelihood of *P. hickmanii* being vulnerable to extinction for these reasons is unknown. However, random events operating at the population and landscape levels clearly have the potential for increasing the chance of extinction for *P. hickmanii*.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this taxon in determining to propose this rule. Based on this evaluation, the appropriate action is to propose listing *Polygonum hickmanii* (Scotts Valley polygonum) as endangered. The species is threatened with extinction due to habitat alteration resulting primarily from urban development, inadequate preserve design, and vulnerability to naturally occurring events due to low numbers of individuals and occupied acreage of the entire taxon. All of the colonies are on private lands. Although conservation efforts have been prescribed as part of mitigation for two of the three projects (high school and recycled water distribution project), and are expected to be proposed for the third project (Polo Ranch development), the small extent of occupied habitat, small colony sizes, and imminent threats lessen the chance that such efforts will lead to

secure, self-sustaining colonies at these sites.

Critical Habitat

Critical habitat is defined in section 3 of the Act as 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 essential to the conservation of the species, and that may require special management consideration or protection, and specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. “Conservation” means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under Act is no longer necessary.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. 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 a listed species or destroy or adversely modify its critical habitat.

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, we 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 the 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.

Our Final Listing Priority Guidance for FY 2000 (64 FR 57114) states that the processing of critical habitat determinations (prudence and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**.

We believe that critical habitat is prudent for *Polygonum hickmanii*. In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council v. U.S. Department of the Interior*, 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii v. Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we believe that designation of critical habitat would be prudent for *P. hickmanii*.

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

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

We are deferring the proposed critical habitat designation for *Polygonum hickmanii* until a later date. The reason

for this is that *P. hickmanii* occurs in the same general areas as *Chorizanthe robusta* var. *hartwegii*. We intend to concurrently propose critical habitat for both of these species. Also, this deferral will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of *P. hickmanii* without further delay. We will also make the final critical habitat determination separately from the final listing determination for *P. hickmanii*.

Available Conservation Measures

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

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

Activities on private 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, would be subject to the section 7 consultation process.

Federal actions not affecting the species, as well as actions on non-Federal lands that are not federally funded or permitted would not require section 7 consultation.

Listing of this plant would authorize development of a recovery plan for it. However, in the case of *Polygonum hickmanii*, we included conservation recommendations for this species in a multi-species recovery plan we published, which also addressed recovery actions for two listed insects and three listed plants (including the endangered *Chorizanthe robusta* var. *hartwegii* that occurs with *P. hickmanii*) in the Santa Cruz Mountains (Service 1998). Should *P. hickmanii* become listed, we intend that the conservation recommendations included in this recovery plan will, in effect, become the recovery plan for this species. This plan identifies both State and Federal efforts for conservation of the plant and establishes a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan sets recovery priorities and describes site-specific management actions necessary to achieve conservation and survival of the plant. Additionally, pursuant to section 6 of the Act, we would be able to grant funds to the State of California for management actions promoting the protection and recovery of the species.

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

In accordance with our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), at the time a species is listed we identify to the maximum extent practicable those activities that would or would not

constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. Collection, damage, or destruction of endangered plants on Federal lands is prohibited, although in appropriate cases, a Federal endangered species permit may be issued to allow for collection. However, *Polygonum hickmanii* is not presently known to occur on Federal land. Removal, cutting, digging up, damaging or destroying endangered plants on non-Federal lands also constitutes a violation of section 9 of the Act if conducted in knowing violation of State law or regulations, including State criminal trespass law.

Questions regarding whether specific activities will constitute a violation of section 9 should be addressed to the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permits Branch, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181 (telephone 503/231-2063; facsimile 503/231-6243).

Public Comments Solicited

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

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Polygonum hickmanii*;

(2) The location of any additional populations of *Polygonum hickmanii* and the reasons why any habitat of this species should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Polygonum hickmanii*.

In making a final decision on this proposal, we will take into consideration the comments and any additional information we receive. Such communications may lead to a final regulation that differs from this proposal.

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.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final determination may differ from this proposal.

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. There also may be circumstances in which 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. 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.

If you would like to submit comments by e-mail (see **ADDRESSES** section), please submit e-mail comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1018-AH70" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by

calling our Ventura Fish and Wildlife Office at phone number 805/644-1766.

Public Hearings

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

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/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 office identified in the **ADDRESSES** section at the beginning of this document.

National Environmental Policy Act

We have determined that an Environmental Assessment and Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This proposed rule does not contain any new or revised information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is required. An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018-0094. For additional information concerning permits and associated requirements for endangered plants, see 50 CFR 17.62

and 17.63. We 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.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Constance Rutherford (see **ADDRESSES** section).

List of Subjects in 50 CFR part 17

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

Proposed Regulation Promulgation

Accordingly, 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. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened 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>Polygonum hickmanii</i>	Scotts Valley polygonum.	U.S.A. (CA)	Polygonaceae	E	NA	NA
*	*	*	*	*	*		*

Dated: October 17, 2000.

Jamie Rappaport Clark,
Director, Fish and Wildlife Service.

[FR Doc. 00–28698 Filed 11–8–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Designation of the Northern Sea Otter in the Aleutian Islands as a Candidate Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of designation of a candidate species.

SUMMARY: In this document, we present information on the recent addition of the northern sea otter (*Enhydra lutris kenyoni*) found in the Aleutian Islands to the list of candidates for listing under the Endangered Species Act of 1973, as amended. Identification of candidate taxa can assist environmental planning efforts by providing advance notice of potential listings, allowing resource managers to alleviate threats and thereby possibly remove the need to list taxa as endangered or threatened. Even if we subsequently list this candidate species, the early notice provided here could result in fewer restrictions on activities by prompting candidate

conservation measures to alleviate threats to this species.

We also announce the availability of the candidate and listing priority assignment form for this candidate species. This document describes the status and threats that we evaluated to determine that the northern sea otter in the Aleutian Islands warrants consideration for listing, and to assign a listing priority to this species.

We request additional status information that may be available for the northern sea otter. We will consider this information in evaluating, monitoring, and developing conservation strategies for this species.

DATES: We will accept comments on this document at any time.

ADDRESSES: Submit written comments and data regarding the northern sea otter to the Marine Mammals Management Office, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Douglas Burn, Wildlife Biologist, Marine Mammals Management Office at the above address, or telephone 907/786–3800 or facsimile 907/786–3816.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we list taxa of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial

information. As part of this program, we also identify taxa that we regard as candidates for listing. Candidate taxa are those taxa for which we have on file sufficient information to support issuance of a proposed rule to list under the Act. In addition to our annual review of all candidate taxa (64 FR 57534; October 25, 1999), we have an on-going review process, particularly to update taxa whose status may have changed markedly.

Section 3 of the Act generally defines an endangered species as any species which is in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

(B) Overutilization of the species for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation affecting the species;

(D) The inadequacy of existing regulatory mechanisms to protect the species; and

(E) Other natural or manmade factors affecting the species' continued existence.