The section 202 and 205 requirements do not apply to today's action because it is not a ''Federal mandate'' and because it does not impose annual costs of $100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector because the requirements of the West Virginia program are already imposed by the State and subject to State law. Second, the Act also generally excludes from the definition of a ''Federal mandate'' duties that arise from participation in a voluntary Federal program. The State of West Virginia's participation in an authorized UST program is voluntary.

Even if today's rule did contain a Federal mandate, this rule will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the West Virginia program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, section 203 of the UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may own and/or operate USTs, they are already subject to the regulatory requirements under existing State law which are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act

EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which own and/or operate USTs are already subject to the regulatory requirements under existing State law which are being authorized by EPA. EPA's authorization does not impose any additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act.

Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 9004 of the Resource Conservation and Recovery Act as amended 42 U.S.C. 6991c.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Dated: July 24, 1997.

W. Michael McCabe,

Regional Administrator.

[FR Doc. 97–20178 Filed 7–31–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE32

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for a Plant in the Wenatchee Mountains of Washington

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes endangered species status pursuant to the Endangered Species Act of 1973, as amended (Act), for *Sidalcea oregana* var. *calva* (Wenatchee Mountains checker-mallow). This plant is endemic to meadows that have surface water or saturated soil in the spring and early summer at middle elevations in the Wenatchee Mountains of Chelan County, Washington. Although five populations of this plant are known, three of these have very few individuals. The estimated total number of plants is about 3,300. The primary threats to *S. oregana* var. *calva* include alterations of hydrology, rural residential development and associated activities, competition from native and alien plants, recreation, fire suppression, and activities associated with fire suppression. To a lesser extent, the taxon 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. This proposal, if made final, would implement the Federal protection and recovery programs of the Act for this plant.

DATES: Comments from all interested parties must be received by September 30, 1997. Public hearing requests must be received by September 15, 1997.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Supervisor, U.S. Fish and Wildlife Service, Western Washington State Office, 510 Desmond Drive SE, Suite 102, Lacey, WA 98503. Comments and materials received will be available by appointment for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ted Thomas (see **ADDRESSES** section), (telephone 360/753–4327, facsimile 360/534–9331).

SUPPLEMENTARY INFORMATION:

Background

Although the species *Sidalcea oregana* (Oregon checker-mallow) is widespread throughout much of the western United States, *S. oregana* var. *calva* (Wenatchee Mountains checker-mallow) is known only from the Wenatchee Mountains of central Washington. Specimens assignable to var. *calva* were first collected from Icicle Creek near Leavenworth, Chelan County, and from wet meadows near Peshastin, Chelan County, by Sandberg and Leiburg on July 25, 1893. Occasional collections were made over subsequent decades until the type specimen was collected by Hitchcock on June 21, 1951, from Camas Land in Chelan County. The taxon was first recognized as a distinct variety named *S. oregana* ssp. *oregana* var. *calva* by Hitchcock and Kruckeberg (1957). Hitchcock and Cronquist (1973) reduced *S. oregana* ssp. *spicata* to varietal status (*S. oregana* var. *spicata*), thereby eliminating the need to include the subspecies *oregana* as part of the scientific name for this taxon. No further taxonomic revisions have been made for this taxon. In recent

discussions, knowledgeable individuals confirmed the distinctness of this variety (Arthur Kruckeberg, Emeritus Professor of Botany, University of Washington, pers. comm. 1995; John Gamon, Botanist, Washington Natural Heritage Program, pers. comm. 1996).

A member of the mallow family (Malvaceae), *Sidalcea oregana* var. *calva* is a perennial plant with a stout taproot that branches at the root-crown and gives rise to several stems that are 20 to 150 centimeters (cm) (8 to 60 inches (in)) tall. Plants vary from glabrous (lacking hairs and glands) to pubescent (hairy) or stellate (with star-shaped hairs) below, finely stellate above, and have simple to compound racemes of flowers with pink petals 1 to 2 cm (0.4 to 0.8 in) long. The flowers are borne on stalks ranging from 1 to 10 millimeters (mm) (0.1 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 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 middle to end of July. Fruits are ripe by August. *Sidalcea oregana* var. *calva* is similar morphologically to *S. oregana* var. *procera*, which occurs in the same general region but with a more southerly distribution. *Sidalcea oregana* var. *calva* can be distinguished from var. *procera* by the type and degree of pubescence on the stems and calyx and its large, fleshy, basal leaves, which are smooth to the touch on both surfaces (Gamon 1987).

The site of the 1893 collection at Peshastin and three other early (pre-1940) collections in the Peshastin area have not been relocated. The location given for each of these early collections was too vague to allow for relocation. Because much of the Peshastin and Leavenworth area has been converted to orchards or other agricultural uses and urban development, *Sidalcea oregana* var. *calva* likely has been extirpated from this area. Three other occurrences thought to be *Sidalcea oregana* var. *calva* were resurveyed and found to be *S. oregana* var. *procera* (Gamon 1987). At three sites of *S. oregana* var. *calva* discovered in 1984, no plants were found in 1987, possibly because the one to three plants reported in 1984 went undetected (Gamon 1987).

Sidalcea oregana var. *calva* is known to occur at five sites. The largest population, at Camas Land, occurs on private land and on State of Washington land managed as a natural area by the Department of Natural Resources (DNR). Based on a recent inventory, about 2,470 individuals occur on 36 hectares (ha) (90 acres (ac)) of DNR land (Washington Natural Area Program 1997); these plants are thought to represent about 75 percent of the Camas Land population (David Wilderman, DNR, pers. comm. 1997). The second largest population, discovered in 1987 on private land at Mountain Home Meadow, consists of about 100 plants within a few hectares. Two other populations on Forest Service lands have a total of seven plants. The fifth population, on private land, has fewer than 30 plants. The estimated total number of plants at the five sites is 3,300. The total area of the five sites is about 50 ha (125 ac).

Sidalcea oregana var. *calva* is most abundant in moist meadows that have surface water or saturated upper soil profiles during spring and early summer, but it also occurs in open conifer stands dominated by *Pinus ponderosa* (ponderosa pine) and *Pseudotsuga menziesii* (Douglas-fir), and on the margins of shrub and hardwood thickets. Extant populations of the taxon are found at elevations ranging from 600 to 1,000 meters (m) (1,900 to 4,000 feet (ft)). Soils are typically clay-loams and silt-loams with low moisture permeability. Associated species include *Populus tremuloides* (quaking aspen), *Crataegus douglasii* (black hawthorn), *Symphoricarpus albus* (common snowberry), *Amelanchier alnifolia* (serviceberry), *Lathyrus pauciflorus* (few-flowered peavine), *Wyethia amplexicaulis* (northern mule's-ear), *Geranium viscosissimum* (sticky purple geranium) and *Veratrum californicum* (California false hellebore). Sixty percent of the *S. oregana* var. *calva* populations are found in association with *Delphinium viridescens* (Wenatchee larkspur), a former Federal candidate plant species.

Previous Federal Action

Federal action on *Sidalcea oregana* var. *calva* began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *S. oregana* var. *calva*. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (now section 4(b)(3) of the Act) and of its intent thereby to review the status of *S. oregana* var. *calva*. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species. This list, which included *S. oregana* var. *calva*, was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *S. oregana* var. *calva* as a category 1 candidate species. Category 1 candidates were defined as taxa for which the Service had on file substantial information on biological vulnerability and threats to support preparation of listing proposals.

The notice of review 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 information in possession of the Service indicated that proposing to list the taxa as endangered or threatened was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support a listing proposal. This species was designated as a category 2 candidate in the September 27, 1985, notice of review because of improper identification and mistaken beliefs regarding distribution at three locations in Kittitas County. Subsequent notices of review published on February 21, 1990 (55 FR 6185), and September 30, 1993 (58 FR 51144), identified the plant as a category 1 candidate species. *Sidalcea oregana* var. *calva* was included as a candidate in the February 28, 1996, notice.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Sidalcea oregana* var. *calva* because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983, the Service found that the petitioned listing of this species was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed annually in October of 1984 through 1996. Publication of this proposal constitutes

the final finding for the petitioned action.

Sidalcea oregana var. *calva* has a listing priority number of three. The processing of this rule conforms with the Service's final listing priority guidance published on December 5, 1996 (61 FR 64475). The guidance clarifies the order in which the Service will process rulemakings following two related events, the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6), and the restoration of significant funding for listing through passage of the omnibus budget reconciliation law on April 26, 1996, following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. The guidance calls for giving highest priority to handling emergency situations (Tier 1), second highest priority to resolving the listing status of the outstanding proposed listings (Tier 2), and third highest priority to resolving the conservation status of candidate species and processing administrative findings on petitions to add species to the lists or to reclassify threatened species to endangered status (Tier 3). This proposed rule falls under Tier 3.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their applications to *Sidalcea oregana* (Nutt) var. *calva* C.L. Hitchcock (Wenatchee Mountains checker-mallow) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range.

All known sites and habitats for *Sidalcea oregana* var. *calva* have undergone various alterations. Conversion of land to orchards or other agricultural uses and residential development are thought to have extirpated historical populations (Gamon 1987). Numerous houses already exist at Camas Land, the site of the largest population of the taxon; two houses have been built since 1987 (Ted Thomas, Service, pers. obs. 1995). Current threats to this population are posed by further subdivision for residences and associated habitat modifications such as alterations in hydrology, increased nutrient loads into the meadow from septic systems, introduction of non-native grasses, conversion of portions of the meadow to agricultural uses including pastureland and gardens, access road construction, and trampling by people and off-road vehicles (Gamon 1987; T. Thomas, pers. obs. 1995; David Wilderman, DNR, pers. comm. 1997).

Natural drainage channels at Camas Land have been altered to direct water away from the meadow for agricultural purposes (Gamon 1987; Richy Harrod, U.S. Forest Service, pers. comm. 1996; D. Wilderman, pers. comm. 1997). Alterations in hydrology threaten the species by changing the amount, timing, duration, and/or frequency of the water supply to the habitat for the taxon. Most individuals of *Sidalcea oregana* var. *calva* in the Camas Land meadow are associated with the drainage channels or areas which retain moisture longer (Gamon 1987).

Sheep, horses, and cows trample vegetation, compact soils, and serve as vectors for introducing non-native plant seeds either directly or through their feed. Portions of the meadow have also been seeded to non-native grasses to increase forage for livestock. *Sidalcea oregana* var. *calva* is generally absent from these areas except for occasional individuals along the periphery, suggesting that the introduced species have the ability to displace the taxon through competition for nutrients or water (Gamon 1987; R. Harrod, pers. comm. 1996). Sod-forming, non-native grasses have also been planted near residences from which they are encroaching into the meadow (T. Thomas, pers. obs. 1995).

Recreational use of the meadow has had significant local impacts and continues to impact the population of *Sidalcea oregana* var. *calva* at Camas Land (Gamon 1987; D. Wilderman, pers. comm. 1997). A variety of recreational activities occur including trailbike riding, bowhunting competitions, and camping. These activities contribute to the decline of the species by causing trampling of plants and compaction of the soil.

Timber harvest has occurred throughout the general Camas Land area (R. Harrod, pers. comm. 1996). Local ground disturbance associated with timber harvest, such as log yarding and slash disposal, probably poses a greater threat than tree removal (Gamon 1987). Timber harvest may also have long-term effects on hydrology in the small watershed.

The Camas Land population was also adversely impacted by fire suppression activities associated with the Rat Creek Fire during the fall of 1994 (Harrod 1994; T. Thomas, pers. obs. 1995). Several hundred *Sidalcea oregana* var. *calva* plants were bladed by a bulldozer during construction of a fire safety zone in a small drainage flowing into Camas Land meadow. During a visit to the disturbed site in May of 1995, no sprouts or seedlings of *S. oregana* var. *calva* were observed (T. Thomas, pers. obs. 1995). The likelihood of recovery of S. oregana var. calva within the disturbed portion of the population appears low (R. Harrod, pers. comm. 1996).

A second population, at Mountain Home Meadow, was also adversely impacted by fire suppression activities associated with the Rat Creek Fire during 1994 (Harrod 1994). A fire safety area was constructed in the wetland supporting this population of *Sidalcea oregana* var. *calva*. Blading of the area by a bulldozer destroyed approximately 50 percent (more than 100 plants) of the population, disturbed the soil, and altered the hydrology of this wet meadow. One year after the disturbance, no *S. oregana* var. *calva* plants were observed at this location (T. Thomas, pers. comm. 1995). The likelihood of recovery of the destroyed portion of this population appears low (R. Harrod, pers. comm. 1996).

The potential for forest fires is high in the east side ponderosa pine and Douglas-fir forest type. Because fires that threaten private property and public structures will require suppression, the likelihood for further direct disturbance to *Sidalcea oregana* var. *calva* populations in the future remains high. In addition, fire may play a role in the maintenance of suitable habitat for *Sidalcea oregana* var. *calva* (Gamon 1987), and fire suppression has probably resulted in less suitable habitat (R. Harrod, pers. comm. 1996). In the absence of fire, conifer recruitment and woody plant invasion may reduce the amount of habitat suitable for *Sidalcea oregana* var. *calva* by increasing competition for light, nutrients, and/or water. A significant increase in vegetative growth due to fire suppression outside of the immediate habitat for *S. oregana* var. *calva* may also adversely affect habitat suitability for the species by reducing the surface-runoff within the small watersheds where it occurs.

Other current threats at Mountain Home Meadow, where the second largest known population of *Sidalcea oregana* var. *calva* occurs, include alteration of hydrology due to road construction, timber harvesting activities, and inadvertent trampling of the small population by guests at a

nearby resort lodge. The hydrology of the site may be altered by the main access road that borders the population on the west. Timber on the ridge immediately west of the main access road was harvested in 1987. This timber was within 50 m (164 ft) of the population and harvest temporarily modified the hydrology by increasing water flow from the hillside directly into the plant's habitat. Timber was harvested from the ridge directly above and east of Mountain Home Meadow during the summer of 1995 (R. Harrod, pers. comm. 1996). Construction activities and facilities maintenance at the lodge may also alter the site hydrology and adversely impact the *S. oregana* var. *calva* population at this location (Gamon 1987; T. Thomas, pers. obs. 1995).

B. Overutilization for commercial, recreational, scientific, or educational purposes

No evidence of over-collection of *Sidalcea oregana* var. *calva* by botanists and/or horticulturists for scientific and commercial purposes is known at this time. However, some populations are small enough that even limited collecting pressure could have adverse impacts. *Sidalcea oregana* var. *calva* is an attractive plant, and may be sought for collection if its rarity and population locations become well known. All perennial species in the genus are considered attractive, if not choice, plants with horticultural potential (Hitchcock and Cronquist 1961, Gamon 1987, Hill 1993). Wild-collected seed of the species, S. oregana (no variety given), is available through a seed exchange program offered by an international gardening society (North American Rock Garden Society (NARGS) 1996). Livestock, especially sheep, have grazed the Camas Land meadow complex, and the southeast portion of the meadow is currently grazed by horses. Whether herbivory by livestock or wildlife has adversely impacted the *S. oregana* var. *calva* population is unknown, as is the potential threat herbivory may currently pose.

C. Disease or Predation

Individuals of *Sidalcea oregana* var. *calva* have been infested by large numbers of aphids at the Camas Land and Mountain Home Meadow populations (Gamon 1987). The effect of these aphids, or the relationship of the aphids to *Sidalcea oregana* var. *calva,* is not known. In 1987, weevils were observed to have eaten the majority of the seeds that were produced (Gamon 1987); herbivory has also been observed more recently (R. Harrod, pers. comm. 1996). Some grazing by horses and wildlife (deer and elk) has been observed, although the impact from grazing is unknown (Gamon 1987; R. Harrod, pers. comm. 1996).

D. The Inadequacy of Existing Regulatory Mechanisms

Sidalcea oregana var. *calva* is included on the Forest Service Region 6 Sensitive Plant List and is listed as endangered by the DNR's Natural Heritage Program (1994). There is no State Endangered Species Act in the State of Washington and, therefore, the DNR designation provides no legal protection for this species.

The Wenatchee National Forest has developed a draft conservation agreement for another sensitive plant species, *Delphinium viridescens*, which would indirectly provide some measures for conserving *Sidalcea oregana* var. *calva* where the two taxa occur together. Some protection mechanisms discussed in the draft agreement have been implemented and may serve to promote the recovery of *S. oregana* var. *calva* on Forest Service land. However, this agreement has not been finalized, does not address all of the threats to *S. oregana* var. *calva,* and is inadequate to protect and recover the species throughout its range (Gamon 1987; J. Gamon, pers. comm. 1996). Protection provided through this conservation agreement would not extend to private or state-owned land, nor would it protect the species from alteration of hydrology, residential development and associated impacts, competition from non-native plants, fire and/or fire suppression activities, insect outbreaks, and random events.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Fewer than five individuals are present at each of two sites on Forest Service land, and fewer than 30 individuals are present at one of the sites on private land. When populations reach such low numbers, their susceptibility to extirpation from deterministic and random events increases (Gilpin and Soulé 1986, Given 1994, Schemske *et al.* 1994). An outbreak of insects, soil disturbance from livestock grazing, or a fire during the growing season of *S. oregana* var. *calva* could extirpate these small populations or reduce the habitat suitability for this taxon. The small, isolated nature of these populations may also have an adverse effect on pollinator activity, seed dispersal, and gene flow. Small populations may lose a large amount of genetic variability because of genetic drift and therefore have a reduced likelihood of long-term viability (Soulé 1980 as cited in Lesica and Allendorf 1992). The Mountain Home Meadow population has fewer than 100 plants and is also susceptible to many of these same threats. An additional threat to the Mountain Home Meadow population is dust from an adjacent gravel road which may hinder pollination of the plants nearest the road (Gamon 1987).

The Service has carefully assessed the best scientific and commercial information available concerning the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred course of action is to list *Sidalcea oregana* var. *calva* as endangered. Alterations of hydrology, development of property for residential and agricultural use, habitat modification and/or destruction from fire suppression and fire-suppression activities, competition with native and non-native plant species, road construction and maintenance, and impacts from recreational activities imperil the continued existence of this species. The small populations of this species are particularly susceptible to extirpation from random events. *Sidalcea oregana* var. *calva* is known from only five populations. Two of these populations have fewer than five individuals each, while one population has fewer than 30 individuals. Another population has about 100 individuals remaining after being reduced 50 percent by fire suppression activities. The largest population has about 2,470 individuals. Because the taxon has been extirpated from numerous historical locations and is in danger of extinction, the preferred action is to list *S. oregana* var. *calva* as endangered. Other alternatives to this action were considered but not preferred; not listing the taxon or listing it as threatened would not be in accordance with the Act.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use

of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

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

As discussed under Factor B in the ''Summary of Factors Affecting the Species'' section, overutilization is not considered to be a threat to the *Sidalcea oregana* var. *calva* at this time. Almost all of the perennial taxa in the genus, however, are considered attractive, if not choice, plants of horticultural value when in bloom (Hitchcock and Cronquist 1961, Gamon 1987, Hill 1993). Although overutilization of *S. oregana* var. *calva* is not currently thought to be a threat, wild-collected seed of the species (no variety given) is available through the seed exchange program of an international gardening society (NARGS 1996). Some populations are small enough that even limited collecting pressure could have adverse impacts. The publication of precise maps and descriptions of critical habitat in the **Federal Register** would make these plants more vulnerable to incidents of collection and/or vandalism and, therefore, could contribute to the decline of this species and increase enforcement difficulties. The listing of this species as endangered would publicize its rarity which could make these plants more attractive to researchers or collectors of rare plants.

Furthermore, critical habitat designation for *Sidalcea oregana* var. *calva* is not prudent due to lack of benefit. Only two populations occur on Federal land, each with fewer than five individuals, and any action that would adversely modify critical habitat also would jeopardize the species. The designation of currently unoccupied habitat as critical habitat for this species is unlikely because historical sites at which the species is no longer found have either been converted to residential or agricultural uses, or the habitat at these sites has been altered to such an extent that conditions are no longer suitable for the species. Service policy precludes the introduction of the species into areas where it did not historically occur. The designation of critical habitat, therefore, would not provide additional benefit for this species beyond the protection afforded by listing.

Protection of the habitat of this species will be addressed through the recovery process and through sections 6 and 7 of the Act. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. Because the publication of precise maps and descriptions of critical habitat in the **Federal Register** would make these plants more vulnerable to incidents of collection and/or vandalism and because of lack of benefit, the Service finds that the designation of critical habitat for these plants is not prudent at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species 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 agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species.

Section 7(a) of the Act, as amended, 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) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing, or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the Federal agency must enter into formal consultation with the Service, pursuant to Section 7(a)(2) of the Act.

Two of five populations of *Sidalcea oregana* var. *calva* are found entirely on Federal lands managed by the Forest Service, while a third population may lie partially on Forest Service land. The Forest Service would be required to consult with the Service if any actions such as timber harvesting, road construction, or grazing activities may affect *S. oregana* var. *calva*. Other Federal agency actions that may require conference and/or consultation include Army Corps of Engineers authorization of projects affecting wetlands and other waters under section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*), Environmental Protection Agency authorization of discharges under the National Pollutant Discharge Elimination System (NPDES), Natural Resource Conservation Service projects, and Department of Housing and Urban Development and Veterans Administration mortgage programs (Federal Home Administration loans).

Listing of this plant would provide for development of a recovery plan for the plant. Such a plan would identify both State and Federal efforts for conservation of the plant and establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and describe site-specific management actions necessary to achieve conservation and survival of the plant. Additionally, pursuant to section 6 of the Act, the Service would be able to grant funds to affected states for management actions promoting the protection and recovery of this species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, 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 on areas under Federal jurisdiction and the removal, cutting, digging up, damaging, or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions

apply to agents of the Service and State conservation agencies.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed 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 these species on Federal lands is prohibited, although in appropriate cases a Federal endangered species permit may be issued for scientific or recovery purposes. Such activities on non-Federal land would constitute a violation of section 9 if conducted in knowing violation of Washington State law or regulations or in violation of State criminal trespass law.

Activities that are in areas not under Federal jurisdiction, that are in compliance with Washington State law, and that are in no way related to a commercial activity involving these plants are not likely to be violations of section 9. Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Western Washington 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 503/231–6241; facsimile 503/231–6243).

Public Comments Solicited

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

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat 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 this species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

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

National Environmental Policy Act

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

Required Determinations

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

References Cited

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

Authors: The primary author of this proposed rule is Ted Thomas, Western Washington Office of the North Pacific Coast Ecoregion (see **ADDRESSES** section).

List of subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under Flowering Plants, to the list of Endangered and Threatened plants:

§ 17.12 Endangered and threatened plants

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Flowering Plants.							
*	*	*	*	*	*	*	
Sidalcea oregana var. *calva.*	Wenatchee Mountains checker-mallow.	U.S.A. (WA)	Malvaceae	E		NA	NA
*	*	*	*	*	*	*	

Dated: July 7, 1997

John G. Rogers

Acting Director, Fish and Wildlife Service

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