

reopened from October 31, 2002, to December 2, 2002 (67 FR 66378), to allow for additional comments on the proposed designation, and comments on the draft economic analysis of the proposed critical habitat.

We contacted all appropriate Federal, State, and local agencies, elected officials, scientific organizations, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of legal notices in the Tulare Advance Register and the Fresno Bee on June 27, 2002. We provided notification of the draft economic analysis to all interested parties. This was accomplished through letters and news releases faxed and/or mailed to affected elected officials, media outlets, local jurisdictions, and interest groups. We also posted the proposed rule and draft economic analysis and associated material on our Sacramento Fish and Wildlife Office internet site following their release on June 19, 2002, and October 31, 2002, respectively.

We received individually written letters from two parties, including one peer reviewer. Both comments were neutral regarding the designation of critical habitat. We reviewed both comments received for substantive issues and new information regarding critical habitat and *Sidalcea keckii*. The comments were either incorporated directly into the final rule or are addressed in the following summary. We received no comments regarding the draft economic analysis.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited independent opinions from three knowledgeable individuals with expertise in one or several fields, including familiarity with the species, familiarity with the geographic region that the species occurs in, and familiarity with the principles of conservation biology. One of the three peer reviewers responded, and provided us with comments which were summarized in the following section and incorporated into the final rule.

Issue 1: Critical habitat identified at the Mine Hill Unit may be misplaced. John Stebbins and Karen Kirkpatrick, the two individuals who found the population, mapped the population in slightly different locations, one of which was mapped much closer to the Centerville clay soils. In addition, John Stebbins' collection notes stated the soil type was Centerville clay. This commenter recommended that the population be visited in the spring and

mapped with a Geographic Positioning System (GPS) unit to precisely map the occurrence. If the landowner will not allow access to the property, it is recommended that the critical habitat boundary be extended to include the adjacent Centerville clay soils.

Our Response: Because we are under a settlement agreement to complete a final rule by March 10, 2003, we do not have the option of postponing the designation of critical habitat in order to determine the location of the *Sidalcea keckii* population more precisely with a GPS unit. We disagree with extending the critical habitat boundary to the adjacent Centerville clay soils because most of the adjacent Centerville clay soils are already in agricultural fields or orchards and would be unlikely to contribute to the conservation of *S. keckii*.

The Mine Hill Unit we proposed incorporates both the area mapped by John Stebbins and the area mapped by Karen Kirkpatrick. Although it is true that the area mapped by Karen Kirkpatrick is closer to the boundary of the Centerville clay, it is still within the area mapped as Coarsegold Series soils.

Issue 2: Both commenters mentioned that the population of *Sidalcea keckii* at the Mine Hill Unit may have been extirpated by citrus groves. One of the commenters stated that, considering the very limited range of the species, none of the three sites is expendable, and there is a good possibility that areas of natural land may remain on the appropriate soil types within or adjacent to the boundaries of the proposed critical habitat.

Our Response: Our information about the status of the population at the Mine Hill site is inconclusive. The standing population at Mine Hill may have been extirpated by conversion of the habitat to an orange grove. We do not know how much habitat may have been converted. We believe that much of the habitat around the original population at Mine Hill remains potentially viable and may contain a seed bank or standing plants.

Issue 3: The location of the population mapped at White River may be misplaced. The CNDDDB gives the elevation as 427 m (1,400 ft); however the original description of the site gives the elevation as 380 m (1,247 ft). Given the uncertainty of the precise location of any remaining seed bank, the boundary of the critical habitat proposed at White River should extend all the way to the edge of the Cibo soils.

Our Response: We had originally included the referenced Cibo soil area as critical habitat, but a small portion of the Cibo soil area (less than

approximately 2 ha (5 ac)) was inadvertently eliminated when the final proposed critical habitat boundaries were delimited using the Universal Transverse Mercator (UTM) grid. Under the Act and the Administrative Procedure Act (5 U.S.C. 553), we are required to allow the public an opportunity to comment on the proposed rulemaking. Therefore, because this new area was not included in the proposed rule, we are not including it in the final rule. Although this area was not included in the critical habitat proposal, it may be important to the recovery of *Sidalcea keckii* and could be included in recovery activities in the future.

Summary of Changes From the Proposed Rule

Based on a review of the comments received on the proposed determination of critical habitat, we reevaluated our proposed designation and made minor changes to the text in the background section of the rule. No changes were made to the unit boundaries delimiting the areas determined to be essential for the conservation of *Sidalcea keckii*. The unit boundaries as depicted in this final rule encompass 438 ha (1,085 ac).

Critical Habitat

Section 3 of the Act defines critical habitat 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 considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. “Conservation” means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat.

In our regulations at 50 CFR 402.02, we define destruction or adverse modification as “a direct or indirect alteration that appreciably diminishes