meadows and shrub/grasslands to agricultural crops, residential areas, and recreational facilities has also contributed to the eradication of local populations of squirrels.

The objective of this plan is to provided a framework for the recovery of the squirrel so that protection by the Act is no longer necessary. Recovery is contingent on protecting and managing the squirrel's habitat to maintain and enhance viable populations through a range of natural variability.

The squirrel will be considered for delisting when a total of 30 stable population sites are distributed throughout the historic range of the species. Each population site that has maintained a 5-year average size of 100 to 500 individuals will be considered stable. At least 20 of the 30 population sites must be protected. Additionally, genetic exchange between population sites should be occurring through dispersal or linkage corridors; a post-delisting monitoring program should be written and ready to be implemented; and ecological management of habitats should be initiated for all population sites.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: May 16, 2002.

Benito A. Perez,

Acting Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 02–17685 Filed 7–12–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI50

Endangered and Threatened Wildlife and Plants; Listing the Plant *Lepidium papilliferum* (slickspot peppergrass) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list *Lepidium papilliferum* (slickspot peppergrass) as endangered pursuant to the Endangered Species Act of 1973, as amended (Act). *Lepidium papilliferum* is endemic to sagebrush-steppe habitat in southern Idaho. This species is threatened by a variety of immediate factors including: habitat destruction and fragmentation from agricultural and urban development; activities associated with, and grazing by, domestic livestock; competition from nonnative vegetation; alterations of the natural fire cycle; and fire rehabilitation activities.

We solicit additional data and information that may assist us in making a final decision on this proposed action. We may revise this proposal to incorporate or address new information received during the comment period. This proposal, if made final, would extend the Federal protection and recovery provisions of the Act to this species.

DATES: We will accept comments from all interested parties until the close of business September 13, 2002. A public hearing has been scheduled for Thursday, August 29, 2002, from 1 p.m. until 3 p.m. and from 6 p.m. until 8 p.m in Boise, ID (*see* **ADDRESSES**).

ADDRESSES: *Comment submission:* If you wish to comment, you may submit your comments and materials by one of several methods.

1. You may submit written comments and information to the Supervisor, U.S. Fish and Wildlife Service, Snake River Basin Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709.

2. You may hand-deliver written comments to our Snake River Basin Office, at the address given above.

3. You may send comments by electronic mail (e-mail): *fw1srbocomment@fws.gov*. See the Public Comments Solicited section below for file format and other information on electronic filing.

Public Hearing: The public hearing will be conducted at the AmeriTel Inn/Boise Spectrum, 7499 W. Overland Road, Boise, Idaho 83709.

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 Snake River Basin Office. There are no limits to the length of written comments presented at the hearing or mailed to the Service.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink, Supervisor, Snake River Basin Office (*see* **ADDRESSES**) (telephone 208/378–5243; facsimile 208/378–5262). Information regarding this proposal is available in alternative formats upon request.

SUPPLEMENTARY INFORMATION:

Background

Lepidium papilliferum is a herbaceous annual or biennial plant that occurs in sagebrush-steppe habitats at approximately 670 meters (m) (2,200 feet (ft)) to 1,645 m (5,400 ft) elevation in southwestern Idaho. This species is found along the Snake River Plain and Owyhee Plateau in Ada, Canyon, Gem, Elmore, Payette, and Owyhee Counties.

Of 88 known occurrences of *Lepidium papilliferum,* 70 are currently extant (exist), 13 are considered extirpated (extinct), and five are historic (i.e., plants have not been relocated; location information is based on collections made between 1911 and 1974) (Moseley 1994; Mancuso 2000; Shelly Cooke, Idaho Conservation Data Center (ICDC), pers. comm., 2002, ICDC 2002). Occurrences of *L. papilliferum* can include one to several occupied slickspots within an area determined to be suitable habitat. The total amount of habitat containing interspersed slickspots that have extant occurrences of *L. papilliferum* is about 5,000 hectares (ha) (12,356 acres (ac)). Only 6 of the 70 extant occurrences are considered to be high-quality habitat and contain large numbers of the plants (ICDC 2002). The number of *L. papilliferum* individuals at each extant occurrence ranges from 1 to 3,000 (Mancuso 2000; ICDC 2002).

This species is threatened by a variety of activities including urbanization, gravel mining, irrigated agriculture, habitat degradation due to cattle and sheep grazing, fire and fire rehabilitation activities, and continued invasion of habitat by non-native plant species (Moseley 1994; Mancuso and Moseley 1998). As a result of habitat loss and degradation, the documented extirpation rate of *Lepidium papilliferum* populations is the highest known of any Idaho rare plant species (Moseley 1994). The historical (undocumented) loss of *L. papilliferum* may have been even higher during the early 1900s (Mancuso *et al.* 1998) due to the widespread loss and degradation of sagebrush-steppe habitat in southwestern Idaho as a result of urbanization, livestock grazing, and irrigated agriculture (Moseley 1994).

Lepidium papilliferum was originally described as *L. montanum* var. *papilliferum* in 1900 by Louis Henderson. It was included as a distinct species in a recent review of taxa in the mustard family (Brassicaceae) (Rollins 1993). Rollins (1993) based his justification on physical features that *L. papilliferum* possesses and *L. montanum* does not, such as: (1) Trichomes (hairlike structures) occurring on the filaments of stamens (part of flower that produces pollen), which is unique among all North American *Lepidium* species; (2) all the leaves on *L. papilliferum* are pinnately divided, whereas *L. montanum* has

some leaves that are not divided; and (3) the shape of the silique (seed capsule) is different from that of *L. montanum,* and it has no wings, or even vestiges of wings, at its apex (end of the capsule), which also differs from that of *L. montanum* (Moseley 1994).

Lepidium papilliferum is an annual or biennial plant that reaches 10 to 30 centimeters (cm) (4 to 12 inches (in)) in height. Leaves and stems are pubescent (covered with fine, soft hairs), and the divided leaves have linear segments (Moseley 1994). Numerous small, white, 4-petalled flowers terminate the branches. This species produces small, orbicular (spherical) fruits (siliques), which are approximately 3 millimeters (0.1 in) long. *Lepidium papilliferum* is mainly pollinated by bees (Apidae, Colletidae, and Halictidae families), flies (Syrphidae family), and some beetle species (Dermestidae and Cerambycidae families (Robertson 2001). The primary seed dispersal mechanism is probably gravity, although wind and water may have a minor role (Moseley 1994). *Lepidium papilliferum* seeds may be viable in the soil for up to 12 years (Dana Quinney, *in litt.,* 2002).

Lepidium papilliferum occurs in semi-arid sagebrush-steppe habitats on the Snake River Plain, Owyhee Plateau, and adjacent foothills in southern Idaho. Associated native species include *Artemisia tridentata* ssp. *wyomingensis* (Wyoming big sagebrush), *A. tridentata* ssp. *tridentata* (basin big sagebrush), *Agropyron spicatum* (bluebunch wheatgrass), *Stipa thurberiana* (Thurber's needlegrass), *Poa secunda* (Sandberg's bluegrass), and *Sitanion hystrix* (bottlebrush squirreltail). Non-native species frequently associated with *L. papilliferum* include *Bromus tectorum* (cheatgrass), *Sisymbrium altissimum* (tumble mustard), *Ranunculus testiculatus* (bur buttercup), *Lepidium perfoliatum* (clasping pepperweed), and *Agropyron cristatum* (crested wheatgrass) (Moseley 1994; Mancuso and Moseley 1998).

Lepidium papilliferum is restricted to small areas, similar to vernal pools, known as slickspots (also called mini-playas or natric sites). Slickspots range from less than 1 square meter (m^2) (10 square feet (ft^2)) to about 10 m^2 (110 ft^2) within communities dominated by other plants (Mancuso *et al.* 1998). *Lepidium papilliferum* is limited to slickspots covering a relatively small area. These sparsely vegetated microsites are very distinct from the surrounding shrubland vegetation, and are characterized by relatively high concentrations of clay and salt (Fisher *et al.* 1996). The microsites also have reduced levels of organic matter and nutrients due to the lower biomass production compared to surrounding habitat areas. The restricted distribution of *L. papilliferum* is likely a product of the scarcity of these extremely localized, specific soil conditions, and the loss and degradation of these habitat areas throughout southwestern Idaho.

Like many short-lived plants growing in arid environments, the above-ground number of *Lepidium papilliferum* individuals at any one site can fluctuate widely from one year to the next depending on seasonal precipitation patterns (Mancuso and Moseley 1998; Mancuso 2001). Flowering individuals represent only a portion of the population, with the seed bank contributing the remainder, and apparently the majority, in many years (Mancuso and Moseley 1998). For annual plants, maintaining a seed bank (a reserve of dormant seeds, generally found in the soil) is important for year-to-year and long-term survival (Baskin and Baskin 1978). A seed bank includes all of the seeds in a population and generally covers a larger area than the extent of observable plants seen in a given year (Given 1994). The number and location of standing plants (the observable plants) in a population varies annually due to a number of factors, including the amount and timing of rainfall, temperature, soil conditions, and the extent and nature of the seed bank. The extent of seed bank reserves is variable from population to population, and large fluctuations in the number of standing plants at a given site may occur from one year to the next. Depending on the vigor of the individual plant and the effectiveness of pollination, dozens, if not hundreds of seeds could be produced.

For example, in 1998, approximately 16,000 *Lepidium papilliferum* plants were counted along 45 transects situated within 40 occurrences monitored by Mancuso (2000). In 1999, only 3,060 *L. papilliferum* plants were counted along these same transects and two additional ones. Mancuso (2001) continued his monitoring of these transects in 2000, and tallied about 7,100 *L. papilliferum* plants. Much of the slickspot habitat for *L. papilliferum* occurs within a complex of the larger sagebrush-steppe habitat described above.

The displacement of native plants by nonnative species is a major problem in sagebrush-steppe habitats of the Intermountain region (Rosentreter 1994; Ann DeBolt, Bureau of Land Management (BLM), pers. comm., 1999). Widespread grazing by livestock in the late 1800s and early 1900s severely degraded sagebrush-steppe habitat, enabling introduced annual species (especially cheatgrass) to become dominant over large portions of the Snake River Plain (Yensen 1980; Moseley 1994). The invasion of cheatgrass has shortened the fire frequency of the sagebrush-steppe from between 60 to 110 years, to less than 5 years as it provides a continuous, highly flammable fuel through which a fire can easily spread (Whisenant 1990; Moseley 1994; Mancuso and Moseley 1998). The result has been the permanent conversion of vast areas of the former sagebrush-steppe ecosystem into nonnative annual grasslands. An estimated 2 to 2.43 million ha (5 to 6 million ac) of sagebrush-steppe in the western Snake River basin has been converted to nonnative annual vegetation dominated by cheatgrass and *Taeniatherum caput-medusae* (medusahead) (Noss *et al.* 1995), primarily due to continued overgrazing and fire. The continued cumulative effects of overgrazing and fire suppression permit the invasion of nonnative plant species into slickspot habitats (Rosentreter 1994). *Lepidium papilliferum* populations typically decline or are extirpated following the replacement of sagebrush-steppe habitat by nonnative annuals.

Another problem has been the use of nonnative perennial species, such as *Agropyron cristatum* and *A. intermedium* (intermediate wheatgrass), to restore or rehabilitate shrub-steppe habitat after a fire event. Although some *Lepidium papilliferum* may temporarily persist in spite of these restoration seedings, most occurrences support small numbers of plants (fewer than five per slickspot) and long-term persistence data are unavailable (Mancuso and Moseley 1998). Habitat degradation, fragmentation, and loss of sagebrush-steppe vegetation have occurred throughout the range of *L. papilliferum.* Popovich (2001) found in his surveys for *L. papilliferum* in the Inside Desert area on BLM land in 2000 that, generally, slickspots dominated by nonnative vegetation had fewer *L. papilliferum* plants than slickspot sites with greater native vegetation retention.

In 1997, an effort was initiated by the ICDC to develop an ecological integrity index for assessing and monitoring *Lepidium papilliferum* habitat in southwestern Idaho (Mancuso and Moseley 1998). This monitoring includes the following components: (1) an Integrity Condition Rating to assess the overall habitat condition, which includes those attributes associated with the slickspot microsite and the shrub-steppe habitat. Integrity Condition Ratings are ranked as ''good'', ''fair'', or

''poor''; and (2) an Occurrence Viability Rank which provides a scale to assess the prospects that an occurrence will persist over time, and includes factors affecting the viability and defensibility of the occurrence (Mancuso 2001). The four Occurrence Viability Rankings are: (1) A-ranked occurrences are those sites found in the highest quality communities; these occurrences generally have not been burned and are not dominated by nonnative annuals; (2) B-ranked occurrences typically consist of good to high quality habitat; (3) C-ranked occurrences are generally in fair to low-quality habitat; some of these occurrences are highly disturbed and are not expected to remain viable; and (4) D-ranked occurrences are in degraded habitats; these occurrences are not expected to remain viable (Moseley 1994).

Currently, only 6 (9 percent) of the 70 extant *Lepidium papilliferum* occurrences are A-ranked; 9 (13 percent) are B-ranked; 2 (3 percent) are B/C-ranked; 20 (29 percent) are C-ranked; 1 (1 percent) is C/D-ranked; and 17 (24 percent) are D-ranked (ICDC 2002). Fifteen occurrences are not ranked (21 percent) due to a lack of information on habitat characteristics (S. Cooke, pers. comm., 2002).

Previous Federal Action

Federal Government actions for the plant began in 1990 when this species (as *Lepidium montanum* var. *papilliferum*) was designated as a category 2 candidate in the February 21, 1990 (55 FR 6184) Notice of Review. Category 2 candidates were those for which information in our possession indicated that proposing to list as endangered or threatened was possibly appropriate, but sufficient data to support proposed rules were not currently available. This taxon was retained as a category 2 candidate in the September 30, 1993 (58 FR 51144) Notice of Review. Upon publication of the February 28, 1996 Notice of Review (61 FR 7596), we ceased using candidate category designations. *Lepidium papilliferum* was not included as a candidate species in this notice. We reinstated the species as a candidate species, with a listing priority number of 2, in the October 25, 1999, Notice of Review (64 FR 57534). The species was again listed as a candidate in the October 30, 2001, Notice of Review (66 FR 54808).

On April 9, 2001, we received a petition dated April 4, 2001, from the Committee for Idaho's High Desert, the Western Watersheds Project, the Wilderness Society, and the Idaho Conservation League (Petitioners) asking us to list *Lepidium papilliferum* as threatened or endangered, and on an emergency basis. The petition submitted information stating that this species is threatened by competition with nonnative and woody vegetation, improper livestock grazing practices, improper herbicide application, inbreeding depression, and fire suppression. We responded to the Petitioners with a letter dated April 27, 2001, stating that the species was already identified as a candidate, and we do not publish petition findings on candidate species since we have already determined that their listing is warranted (Service 2001). We also stated that our initial review of their petition did not indicate an emergency situation existed.

On November 6, 2001, the Petitioners filed a complaint for our failure to emergency list *Lepidium papilliferum* as threatened or endangered, and our failure to proceed with a proposed rule to list *L. papilliferum* as endangered or threatened on a non-emergency basis (*Committee for Idaho's High Desert and Western Watersheds Project* v. *Anne Badgley, et al.* (Case No. CV 01–1641–AS)). On April 2, 2002, based on a settlement agreement between us and the Petitioners, the court signed an order requiring us to submit for publication in the **Federal Register** a proposal to list the species by July 15, 2002. This proposed rule complies with the settlement agreement.

Summary of Factors Affecting the Species

Section 4 of the Act 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). These factors, and their application to *Lepidium papilliferum,* are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Most sagebrush-steppe habitat that has not been converted to cropland in southwestern Idaho has been degraded by wildfire, livestock grazing and trampling, the invasion of nonnative plant species, and off-road vehicle use; these factors continue to threaten all remaining habitat for *Lepidium papilliferum* (Moseley 1994; Mancuso and Moseley 1998; ICDC 1999; Mancuso 2000). The conversion of the original sagebrush-steppe to annual grasslands has reduced suitable remaining habitat for, and destroyed some, *L. papilliferum,* in addition to fragmenting and isolating extant occurrences (Moseley 1994). Subsequent increased frequency of fire, and the associated invasion of weedy annual plants, are serious range-wide threats to the long-term integrity of *L. papilliferum* habitat and population viability (M. Mancuso, *in litt.,* 1998).

To illustrate the pattern of ongoing habitat degradation for this species, in 1994, 12 *Lepidium papilliferum* occurrences were given a ''B'' rank (Moseley 1994). By 1998, eight of these occurrences (67 percent) had declined in quality to either a ''C'' or ''D'' rank due to the effects of habitat degradation and fragmentation (M. Mancuso, *in litt.,* 1998). Lower quality (*i.e.*, C- and D-ranked) occurrences are not likely to persist in the future. Examples of decline in habitat quality include two *L. papilliferum* occurrences near Kuna Butte on BLM lands. *Lepidium papilliferum* habitat at one site south of Kuna (Initial Point) that received an A-rank in 1994 had declined to a D-rank by 1998. Recent wildfires in the area destroyed the original sagebrush vegetation which has now been largely replaced by nonnative species. Mechanical fire rehabilitation efforts also adversely affected the slickspots; less than 0.04 ha (0.1 ac) of occupied habitat now exists at this site (M. Mancuso, *in litt.,* 1998; ICDC 1999). Another *L. papilliferum* occurrence south of Kuna (Kuna Butte) declined from an A-rank in 1994 to a C-ranking in 1998 due to habitat degradation from fire, post-fire rehabilitation efforts, and the invasion of nonnative species which now dominate the vegetation; occupied *L. papilliferum* habitat at this occurrence is also restricted to less than 0.04 ha (0.1 ac) (ICDC 1999). Both occurrences are now considered to have poor habitat quality.

Livestock effects on unique habitats such as slickspots are magnified in areas where nonnative plant invasions and altered fire regimes occur. Arid soils with inorganic crusting are more susceptible to impacts when soils are wet (Belnap *et al.* 1999). Slickspots are characterized by a near-surface distribution of soluble sodium salts, thin vesicular (small cavity) surface crusts, and shallow well-developed argillic (relating to clay mineral) horizons (Fisher *et al.* 1996). Slickspots often contain some surface water in the winter, spring, and after thundershowers (Fisher *et al.* 1996; James Klott, BLM, pers. comm., 2000). Water that is present for more than a day often will attract livestock to slickspots (J. Klott, pers. comm., 2000).

Livestock trampling of slickspots is one of the main disturbances to slickspot microsites (Mancuso 2001), especially in the spring (approximately April through June) when the soils are moist. Trampling by livestock can physically damage the vegetation that exists there and compact the soil, which greatly accelerates desertification processes (becoming more like a desert) through increased soil loss and water runoff (Moseley 1994; D. Quinney and Jay Weaver, Idaho Army National Guard (IDARNG), pers. comm., 1998; J. Klott, pers. comm., 2000; Popovich 2001). This can also lead to the loss of slickspot integrity, particularly from winter through spring when standing water remains for a longer period of time after a rainfall (Belnap *et al.* 1999; BLM *et al. in litt.,* 1999; Air Force 2000). A majority (78 percent) of *Lepidium papilliferum* occurrences had evidence of livestock trampling and grazing in a study conducted by Mancuso (2000) that monitored 40 extant sites.

Livestock trampling of slickspots can also lead to the invasion or increase of nonnative annual species such as *Bromus tectorum, Sisymbrium altissimum, Ranunculus testiculatus,* and *Lepidium perfoliatum* into shrub-steppe habitats through transport of the seeds of these species by animals in their feces or hides (Ellison 1960; Pyke 1999). The majority of the 40 extant *Lepidium papilliferum* occurrences being monitored (92 percent of the 40) had invasive annual grasses that either dominated or co-dominated the herbaceous vegetation (Mancuso 2000).

Slickspots are small areas of habitat that are relatively free of organic debris and nutrients. The presence of livestock in an area with slickspots generally results in increases in organic debris, such as livestock feces, especially when the slickspots have standing water. As organic debris is increased, the incidence of nonnative species invasion also increases (J. Klott, pers. comm., 2000), leading to the loss of suitable habitat for *Lepidium papilliferum.* Heavily grazed and trampled locations may favor species such as bur buttercup (Pyke 1999). Once the integrity of the slickspot has been disrupted, invasion by nonnative species will be enhanced (J. Klott, pers. comm., 2000). Invader species (such as those indicated above) can also encroach onto a site from adjacent sites in later stages of deterioration (in fair to poor range conditions) (Holechek *et al.* 1998).

As a result of numerous fires and reseeding efforts associated with fire rehabilitation with non-native perennial grasses, the BLM has granted Temporary Non-Renewable (TNR) livestock grazing permits to permittees in the Jarbidge Resource Area. A TNR is a permit that increases a livestock permittee's allotted Animal Unit Months (AUMs) in a permitted grazing area, based on the estimated amount of forage available for livestock. An increase in livestock grazing pressure increases the likelihood of trampling of *Lepidium papilliferum* plants, soil compaction, and the introduction of nonnative vegetation in slickspots. Until 1995, TNR permits were granted on a yearly basis without environmental review or surveys for sensitive plant species. In 1996, the BLM prepared an environmental assessment analyzing the potential impacts of authorizing TNR permits, and provided a framework for managing the TNR program (Martha Hahn, BLM, *in litt.*, 2000). Beginning in 1999, a TNR permit was denied if *L. papilliferum* was observed in the allotment for that year; if L. papilliferum was not observed, the TNR permit was granted (John Biar, BLM, pers. comm., 2000; J. Klott, pers. comm., 2000). However, since 2000, while some BLM pastures may be closed to grazing use if *L. papilliferum* is present, this does not necessarily always occur (J. Klott, pers. comm., 2000), and the decision to allow grazing is based mainly on how close slickspots containing *L. papilliferum* are to water sources.

The BLM has taken some steps to mitigate grazing impacts to *Lepidium papilliferum* on land it manages. It has moved a few water troughs that attracted livestock into an area that contained *L. papilliferum,* and also fenced an area containing the species to protect it from the livestock. Also, the BLM has changed the season of grazing use from spring to fall, although this does not generally protect the biennial form of *L. papilliferum.* Large areas that have not been surveyed are still grazed, and many areas at less than 1,524 m (5,000 ft) in elevation are permitted to be grazed the entire year. Although surveys are conducted yearly, funds are insufficient for the BLM to cover all of the grazing allotments throughout the species' range (J. Klott, pers. comm., 2002).

In 1998, the Air Force acquired BLM land to establish the Juniper Butte Enhanced Training Range (ETR), under the Juniper Butte Range Withdrawal Act (Pub. L. 105–261), which provided for the withdrawal and management of this area by the Air Force for military activities (Air Force 2000). Juniper Butte ETR is approximately 4,856 ha (12,000 ac) in size, and the landscape is a mosaic of shrub-steppe and nonnative plant communities. Numerous fires in this area resulted in a conversion from the native sagebrush-perennial grassland vegetation to nonnative perennial or annual grasslands (Air Force 2000). Slickspot habitat and *Lepidium papilliferum* are distributed throughout the entire Juniper Butte ETR area. A total of 597 slickspots or complexes of varying sizes were located in a 1998 Air Force survey on the Juniper Butte ETR, and totaled approximately 0.9 ha (2.2 ac) of potential *L. papilliferum* habitat. This figure did not include the 121 ha (300 ac) primary ordnance (bomb) impact zone. Slickspot habitat on the Juniper Butte ETR is currently considered low ranking (C-rank) (Mancuso 2002).

Under BLM management, this land was permitted to be grazed by livestock for many years as part of the Juniper Draw allotment (Air Force 2000). At the present time, the Juniper Butte ETR area continues to be grazed by a BLM permittee (Angelia Martin, Air Force, pers. comm., 2002). The Air Force has recently completed its Integrated Natural Resource Management Plan (INRMP) for the Juniper Butte ETR, which was prepared to provide mitigation and monitoring for lands affected by military activities, and to provide management guidance for this area (Air Force 2000).

Under the INRMP, the Air Force proposes to utilize grazing throughout the entire Juniper Butte ETR to reduce the amount of standing grass biomass for wildfire control (Air Force 2000). Currently, the permittee is required to graze his permitted 1,806 AUMs for 60 days (2 months) sometime between April 1 and June 30 (during a 90-day window) each year. In the early spring, Air Force staff begin to check a number of slickspots, and if there is standing water in them, grazing may be delayed until after April 1 with the potential of having grazing delayed until May 1. However, at that time, whether the slickspots are wet or not, the cattle must be turned out to graze the 60 days until the end of June. Outside of the primary ordnance impact area, the Juniper Butte ETR is divided into three pastures. During the spring, the Air Force (2000) proposes to suspend training in the primary ordnance impact area in order to clean up inert training ordnance dropped from jets during training exercises in this impact zone and one of the pastures. It is anticipated that a small amount of ordnance will be dropped outside the primary ordnance impact area, but we consider this impact on *Lepidium papilliferum* to be minor. Livestock will be allowed to graze during this time. Soil and vegetation disturbance due to this activity would be greatest at this time of year, and

would likely damage *L. papilliferum* and its habitat throughout the Juniper Butte ETR, especially at the INRMP proposed grazing intensity level, which is to graze 2,470 AUMs for 60 days (Air Force 2000). The Air Force is currently preparing a Vegetation Management Environmental Assessment (EA) that would address how the area is grazed by livestock and the necessary conservation measures needed for *L. papilliferum.* It is anticipated that the INRMP will be updated with information from the final EA.

Wildfire is a threat to all known *Lepidium papilliferum* occurrences throughout its range. Frequent fires are likely to degrade remaining *L. papilliferum* habitat in the future. For example, 29 of the 40 monitored (73 percent) *L. papilliferum* occurrences have been completely burned, have a mosaic burn pattern, or have distinct burned and unburned segments (Mancuso 2000). Increased sedimentation after a fire may also allow weedy species to invade slickspots (DeBoldt 1999 cited in Air Force 2000).

Post-fire range restoration efforts also threaten *Lepidium papilliferum.* Some occupied slickspots have been lost following drill-seedings, but it is often not clear whether fire, seeding, or the combination of the two disturbances caused the disappearance of the species or the slickspot. Drill seeding is the process of seeding an area using a rangeland drill which plants and covers seed simultaneously in furrows. It is designed to give the seeds moisture and temperature advantages that will enhance their competitive fitness, and consequently, their success rate (Scholten and Bunting 2001). Slickspots may reform over time after being drilled (Moseley 1994; Noe 1999 cited in Air Force 2000), but it is not known if *L. papilliferum* populations will remain viable for as long as the slickspot takes to reform (Air Force 2000). In their study examining the effects of drill seeding on *L. papilliferum,* Scholten and Bunting (2001) found that the density of *L. papilliferum* individuals was lower on drilled slickspots than on non-drilled sites.

Fire rehabilitation is needed to reduce the invasion of nonnative vegetation to burned areas. Drill-seeding may have less severe impacts on slickspot habitat than disking the soil, but the success of fire rehabilitation efforts at maintaining slickspots and *Lepidium papilliferum* varies considerably. Drill-seeding tends to break the linkages between slickspots and can result in slickspots shrinking in size, particularly those that are relatively small (J. Klott, pers. comm., 2000). Seeding methods that cause minimal soil disturbance (e.g., ''no till'' drills) are available, but have not been regularly used in southwestern Idaho to date (R. Rosentreter, BLM, pers. comm., 1999). In some cases, not seeding burned areas can result in the loss of *L. papilliferum* occurrences due to nonnative weed invasion. In 2001, the BLM modified its rangeland drills used in fire rehabilitation to reduce the seeding depths so the drills would be less damaging to *L. papilliferum* habitat.

Seeding burned areas with *Agropyron cristatum,* a non-native forage species, or other non-native perennial grasses, has resulted in the destruction of at least one *Lepidium papilliferum* site (Moseley 1994). *Agropyron cristatum* is a strong competitor and its seedlings are better than native species at acquiring moisture at low temperatures (Lesica and DeLuca 1998). For example, on the Juniper Butte ETR, approximately 80 percent or 3,708 ha (9,163 ac) of this area is dominated by nonnative perennial plant communities as a result of fire rehabilitation efforts (Air Force 1998).

Other potential threats to this species resulting from fire prevention and rehabilitation measures include the use of Oust, a non-specific herbicide that is toxic to plants in the mustard family. Oust is a sulfometuron methyl herbicide and is successful at killing annual plants while having little impact on established perennials (Scholten 2000 cited in Scholten and Bunting 2001). It has been used over large areas of BLM lands that contain *Lepidium papilliferum* habitat. Also, the practice of ''green-stripping'' or converting native habitat to nonnative plant species that are not considered to be very flammable has occurred (Moseley 1994). Since wildfire prevention and control is a high priority for the BLM and other agencies in southwestern Idaho, potential threats to *L. papilliferum* habitat associated with these activities are expected to continue.

The long-term viability of *Lepidium papilliferum* occurrences on private land is questionable due to the continuing expansion of residential developments in and around Boise (Moseley 1994). Twenty-eight of the 88 known *L. papilliferum* occurrences (32 percent) occur either wholly or partially on private lands. Of these, 13 occurrences (46 percent) are known to have been extirpated within the past 50 years (Moseley 1994; ICDC 2002). Urbanization, agricultural conversion, and associated factors such as increased risk of damage or extirpation from fire, trampling, and off-road vehicle use, threaten all existing *L. papilliferum* occurrences on private land.

Development of adjacent private land also threatens at least four *Lepidium papilliferum* occurrences on BLM land (Mancuso 2000). For example, the Soles Rest Creek *L. papilliferum* occurrence is on BLM land adjacent to private property that is under construction for a residential development (A. DeBoldt, pers. comm., 2002). An all-season road has replaced a two-track road and spur roads now lead off the improved road. Due to this increased access, and the resulting potential for an increase in off-road vehicle use that would trample plants, fire hazard, and introduction of nonnative species, this *L. papilliferum* occurrence declined from an A-rank to a B-rank.

In this same general area, a recent trespass occurred in which a private landowner bladed a 2.4 kilometer (km) (1.5 mile (mi)) road through BLM land to reach his private inholding. This individual bladed the road through slickspot habitat and a *Lepidium papilliferum* population. The BLM is now in the process of developing an environmental assessment to rehabilitate the land damaged during this incident and route a road away from slickspot habitat and *L. papilliferum* plants to accommodate this landowner as well as others (A. DeBoldt, pers. comm., 2002).

In another recent event, unauthorized blading of an existing roadway on BLM lands impacted at least six slickspots known to contain *Lepidium papilliferum.* The total number of slickspots impacted by the 84 km (52 mi) of blading is unknown as the blading may have removed all physical evidence of small slickspots (BLM 2001).

A recent assessment of the ecological status of *Lepidium papilliferum* indicates that the six remaining high-quality (A-ranked) *L. papilliferum* occurrences are threatened by fire, off-road vehicle use, habitat degradation and trampling resulting from livestock, powerline/pipeline maintenance activities, and illegal dumping (M. Mancuso, *in litt.,* 1998; Mancuso 2000). These six occurrences are located on mixed land ownerships consisting of BLM, State, and private land.

Military training activities and the development of the 4,856 ha (12,000 ac) Juniper Butte ETR in southwestern Idaho by the Air Force is also a threat to the species, and it is expected that direct impacts due to construction and training activities will result in the loss of *Lepidium papilliferum* within the 121 ha (300 ac) primary ordnance impact zone (Air Force 1998, 2000). The Juniper Butte ETR contains occupied and potentially suitable habitat for *L.*

papilliferum (A. DeBolt, *in litt.*, 1998; Air Force 1998; 1999; ICDC 1999); surveys conducted in June 1998 indicate that at least 1,000 plants were present (Air Force 1999). The Air Force constructed facilities within the 121 ha (300 ac) primary ordnance impact zone during 2000 and 2001, and to avoid impacts to some slickspots, the Air Force shifted the locations of several industrial complex buildings just prior to construction. Although fire protection has been made a priority, it is inevitable that fire will occur due to proposed training activities throughout the Juniper Butte ETR. The overall habitat quality in the Juniper Butte ETR ranges from moderate to low since portions of the area burned several years ago (A. DeBolt, pers. comm., 1999) and have been reseeded to nonnative perennial grasses.

An additional potential threat to *Lepidium papilliferum* on the Juniper Butte ETR within the primary ordnance impact area is the impact of dropping bombs on slickspots. Each bomb weighs approximately 11 kilograms (25 pounds) (Air Force 2000), and even though they are inert and will not explode, dropping them from planes onto slickspots could compact the soil and crush plants. Because the slickspots are relatively small, it would be difficult to avoid them on the bombing range. However, this threat is considered minimal as the Air Force intends to use only 121 ha (300 ac) or 2.5 percent of the entire Juniper Butte ETR as the actual bombing impact area (Air Force 2001), and because this area contains only 3 percent of the total occupied L. *papilliferum* habitat.

Lepidium papilliferum occurs on BLM lands called the Orchard Training Area, where the IDARNG has been conducting its military training exercises since 1953 under a Memorandum of Understanding between the two agencies (Quinney 2000). Over the past 12 years, IDARNG has implemented actions to meet the conservation needs of *L. papilliferum*, while still providing for military training activities. These actions include intensive fire suppression efforts, and restricting ground operated military training to where the plants and its habitat are not found.

Gravel or cinder mining threatens at least two occurrences of *Lepidium papilliferum* on State and Federal lands (M. Mancuso, *in litt.*, 1998; A. DeBolt, pers. comm., 1999). These occurrences, located at Tenmile Creek and Fraser Reservoir, currently support high-quality (A-ranked) habitat for this species (M. Mancuso, *in litt.*, 1998). Ongoing mining activity and off-road vehicle use are present at the Fraser Reservoir site, which is on both BLM and State land. The Tenmile Creek site has been affected by recent, apparently illegal mining activity (A. DeBolt, pers. comm., 1999); this site is on BLM and private land. Gravel deposits located near Boise are considered to be especially valuable for mining since the gravel does not have to be shipped long distances to market (A. DeBoldt, pers. comm., 2002).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The plant is not a source for human food, nor is it currently of commercial horticulture interest. Therefore, overutilization is not considered to be a threat to this species at the present time.

C. Disease or Predation

The effects of overgrazing by livestock (generally defined as greater than 45 percent use of the available forage) in shrub-steppe habitats has been well documented (Yensen 1980; Whisenant 1990; Noss *et al.* 1995; Holechek *et al.* 1998; Belnap *et al.* 1999; Holechek et al. 1999). Although grazing of *Lepidium papilliferum* by cattle appears low, and infrequent by other herbivores (Popovich 2001), spring-grazing sheep have been observed to uproot *L. papilliferum* plants. Since *L. papilliferum* is apparently unpalatable, sheep rarely consume the plants but simply pull them from the ground while foraging, killing the plants (D. Quinney and J. Weaver, pers. comm., 1998). Recent studies from 1994 to 1999 reported that as much as 50 percent or more of the *L. papilliferum* plants at various monitoring sites on the Snake River Plain were damaged or destroyed by cattle and sheep grazing and trampling (Moseley 1994; J. Weaver, *in litt.*, 1998; Mancuso 2000). For additional discussion on livestock grazing threats to this species, see Factors A and E.

Herbivory by beetles has been observed on *Lepidium papilliferum* plants (M. Mancuso, *in litt.*, 1998). Although some plants were nearly defoliated and may have been killed by beetle herbivory, it is not considered to be a major threat at this time. However, the effects of threats such as insect herbivory on *L. papilliferum* may become more detrimental as population sizes are reduced.

D. The Inadequacy of Existing Regulatory Mechanisms

Lepidium papilliferum is considered a sensitive species by the BLM (J. Klott, pers. comm., 2002; ICDC 2002). The BLM has regulations that address the need to protect sensitive, candidate, and Federally listed species, and monitoring *L. papilliferum* on Federal lands has been initiated. Monitoring helps to identify threats and management actions that may be necessary to control habitat degradation, but the effects of activities such as livestock use of the habitat have not been evaluated for most *L. papilliferum* occurrences managed by the BLM. Numerous occurrences on Federal lands are threatened by nonnative weeds, herbicide spraying, mining, off-road vehicle use, and habitat degradation through increased fire frequency (see Factors A and E for additional information).

Land exchanges involving the transfer of BLM land supporting *Lepidium papilliferum* into private ownership are a potential threat to this species. For example, a land exchange is currently proposed whereby the BLM would sell 12 ha (30 ac) of a 16 ha (40 ac) parcel to a private developer in the foothills of Boise, ID, as part of a larger land exchange. BLM would retain the 4 ha (10 ac) that contains a population of *L. papilliferum.* The 12 ha (30 ac) would be sold with a conservation easement and the developer would be required to fence the perimeter of the 4 ha (10 ac) retained in BLM ownership. With the 4 ha (10 ac) site surrounded by residential development, *L. papilliferum* habitat becomes fragmented and the population isolated from other *L. papilliferum* populations (A. DeBoldt, pers. comm., 2002). Future land exchanges are a continuing threat since BLM lands occupied by *L. papilliferum* could potentially support activities such as farming and mining, and may be sold for development purposes.

A conservation agreement with the City of Boise was completed in 1996 for the Hulls Gulch Reserve in the foothills north of Boise, which includes minimal habitat for *Lepidium papilliferum* (Service, *in litt.*, 1996). The *L. papilliferum* habitat within the Hulls Gulch Reserve, restricted to less than 2 m^2 (21.5 ft^2), is very low quality (D-rank), vulnerable to disturbances from an adjacent trail, and a housing development (Mancuso 2000), and represents only one occurrence of *L. papilliferum.*

Lepidium papilliferum is considered to be rare and imperiled at the global and State scale (G2/S2 rating) by the Idaho Natural Heritage Program (Idaho Native Plant Society 1999; Air Force 2000). However, Idaho has no endangered species legislation that protects threatened or endangered species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Because the majority of populations of Lepidium papilliferum are extremely small (fewer than 5 plants per slickspot), and existing habitat is fragmented by agricultural conversion, fire, grazing, roads, and urbanization, local extirpation is a threat to this species. Habitat fragmentation has also likely resulted in reduced gene flow between populations (M. Mancuso, *in litt.* 1998), thus inhibiting dispersal and recolonization of potentially suitable habitat areas. The small size of many populations presents a threat to their survival due to environmental and genetic factors (Moseley 1994). In addition, less than 2,246 ha (5,550 ac) of high-quality (with A-ranked occurrences) potential habitat, with slickspots scattered throughout, exists for this species (M. Mancuso, *in litt.,* 1998; ICDC 2002), which may not be adequate to ensure the long-term persistence of *L. papilliferum.* In 1999, new threats, including off-road vehicle use, cinder and gravel mining claims, and residential development, were observed at 7 (14 percent) of the 40 occurrences monitored, indicating a continuation of the threats associated with this species (Mancuso 2000).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species in determining the status of *Lepidium papilliferum.* The small amount of occupied habitat, combined with ongoing threats make this species vulnerable to extinction. Most of the remaining sites that support *L. papilliferum* are small and fragmented, and existing occurrences are vulnerable to impacts from factors including grazing, trampling, herbicide use, military training, competition from nonnative vegetation, urban and agricultural development, and habitat degradation from frequent fires. Seventy-four percent of *L. papilliferum* occurrences are either completely or partially on Federal land managed primarily by the BLM and Air Force, and may be afforded some level of protection. Approximately 32 percent of *L. papilliferum* occurrences occur either partially or wholly on private lands. Of the 70 extant occurrences, only 6 (9 percent) are considered to be viable (A-ranked).

Existing regulatory mechanisms are inadequate or ineffective in protecting this taxon. One conservation agreement has been developed and implemented for *Lepidium papilliferum;* however, it covers only one occurrence of the species representing less than 1.5 percent of the extant occurrences. Based on our evaluation, *L. papilliferum* meets the definition of endangered under the Act, which is a species in danger of becoming extinct throughout all or a significant portion of its range.

Critical Habitat

Critical habitat is defined in section 3 of the Act as the—(i) 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 geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary 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 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 implementing regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform the required analysis of impacts of the designation is lacking, or if the biological needs of the species are not sufficiently well known to allow identification of an area as critical habitat. Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the designating a particular area as critical. The Secretary may exclude any area from critical habitat if she determines that the benefits of such exclusion outweigh the conservation benefits, unless to do so would result in the extinction of the species. In the absence of a finding that critical habitat would increase threats to a species, if any benefits would derive from critical habitat designation, then a prudent finding is warranted. In the case of this species, designation of critical habitat may provide some benefits.

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. Designating critical habitat may also produce some educational or informational benefits. Therefore, designation of critical habitat for *Lepidium papilliferum* is prudent.

However, our budget for listing activities is currently insufficient to allow us to immediately complete all the listing actions required by the Act. Listing *Lepidium papilliferum* without designation of critical habitat will allow us to concentrate our limited resources on higher priority listing actions, while allowing us to put in place protections needed for the conservation of this species without further delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without critical habitat designations when it is essential that such determinations be promptly published. The legislative history of the 1982 Act amendments also emphasized this point: ''The Committee feels strongly, however, that, where biology relating to the status of the species is clear, it should not be denied the protection of the Act because of the inability of the Secretary to complete the work necessary to designate critical habitat. * * * The committee expects the agencies to make the strongest attempt possible to determine critical habitat within the time period designated for listing, but stresses that the listing of species is not to be delayed in any instance past the time period allocated for such listing if the biological data is clear but the habitat designation process is not complete'' (H.R. Rep. No. 97–567 at 20 (1982)). We will prepare a critical habitat designation in the future when our available resources and priorities allow.

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 public awareness and results in

conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to 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 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 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 responsible federal agency must enter into consultation with us.

Federal agencies that may have involvement with *Lepidium papilliferum* include the Federal Housing Administration and Farm Services Agency, which may be affected through potential funding of housing and farm loans where this species or its habitat occurs. Highway construction and maintenance projects that receive funding from the U.S. Department of Transportation for Federal highways will also be subject to review under section 7 of the Act. In addition, activities or actions that may affect populations of *L. papilliferum* that occur on Federal lands (*e.g.*, managed by the BLM or Department of Defense) will be subject to section 7 review. Activities on private, State, county or city lands requiring a permit or funding from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, or some other Federal action, including funding (*e.g.,* from the Federal Highway Administration or Federal Emergency Management Agency), will also 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, authorized, or permitted do not require section 7 consultation.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. With respect to *Lepidium papilliferum,* all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, apply (16 U.S.C. 1538(a)(2)). These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport or ship in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce to possession from areas under Federal jurisdiction, any plant listed as an endangered or threatened species. 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, or damaging or destroying of such endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

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 plant taxa under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species.

Our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify, to the maximum extent practicable, those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. The intent of this policy is to increase public awareness of the effects of this listing on proposed and ongoing activities within the species' range. Collection, damage or destruction of this species on Federal land is prohibited, although in appropriate cases a Federal permit could be issued to allow collection for scientific or recovery purposes.

Activities that we believe could potentially result in a violation of section 9 include, but are not limited to:

(1) Grazing levels within *L. papilliferum* habitat that promote the invasion of nonnative species;

(2) Placement of water, salt, and fences for livestock and its associated use within *L. papilliferum* habitat;

(3) Grazing during wet periods that results in the disturbance of slickspot hydrology;

(4) Fire rehabilitation that does not reseed to native shrub-steppe habitat and maintain slickspot integrity;

(5) Failure to control wildfires in shrub-steppe habitats;

(6) Residential or commercial development within shrub-steppe habitat with slickspots;

(7) Uncontrolled off-road vehicle use and other recreational activities in *L. papilliferum* habitats;

(8) Federal land exchanges that may result in the loss or degradation of *L. papilliferum* habitat; and

(9) Application of pesticides/herbicides in violation of label restrictions.

We believe that activities that are unlikely to violate section 9 include any agricultural or residential uses on non-Federal land. We are not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of the Snake River Basin Office (*see* **FOR FURTHER INFORMATION CONTACT**). Requests for copies of the regulations on listed plants and animals, and general inquiries regarding prohibitions and permits, may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Ave., Portland, OR 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 are soliciting comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

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

(2) Additional information concerning the range, locations, and population size of this species;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on this species; and

(4) The reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act, including whether the benefit of designation will outweigh any benefits of exclusion;

If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: RIN 1018–AI50'' 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 Snake River Fish and Wildlife Office at telephone number 208/378–5243.

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 Snake River Basin Office (*see* **ADDRESSES**).

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

Public Hearings

In anticipation of public interest in this issue, a public hearing has been scheduled for Thursday, August 29, 2002, from 1 p.m. until 3 p.m. and from 6 p.m. until 8 p.m. at the AmeriTel Inn/Boise Spectrum, 7499 W. Overland Rd, Boise, ID. Anyone wishing to make oral comments for the record at the public hearing is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Patti Carroll at 503/231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than 1 week before the hearing date.

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses. We will send the peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite them to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed listing of *Lepidium papilliferum.*

National Environmental Policy Act

We have determined that an environmental assessment and/or an environmental impact statement, as defined by 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, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Executive Order 12866

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

Send a copy of any written comments about how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You also may e-mail comments to: *Exsec@ios.doi.gov.*

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The existing OMB control number is 1018–0094 for permit applications regarding endangered and threatened species; this control number expires 7/31/2004.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires Federal agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action, and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this document, is available upon request from the Snake River Basin Office (*see* **ADDRESSES** section).

Author(s)

The primary authors of this proposed rule are Jeri Wood, U.S. Fish and Wildlife Service, Snake River Basin Office (*see* **ADDRESSES**), and Barbara Behan, U.S. Fish and Wildlife Service, Regional Office, Portland, OR.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

For the reasons given in the preamble, we hereby 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:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	*
Lepidium papilliferum	Slickspot peppergrass.	U.S.A. (ID)	Brassicaceae ..... (Mustard)	E		NA	NA
*	*	*	*	*	*	*	*

Dated: July 5, 2002.

Steve Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 02–17715 Filed 7–12–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH10

Endangered and Threatened Wildlife and Plants; Designations of Critical Habitat for Plant Species From the Island of Lanai, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, and public hearing announcement.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice of a public hearing on the proposed critical habitat designations for 32 plants from the island of Lanai, Hawaii. In addition, the comment period which originally closed on May 3, 2002, will be reopened. The new comment period and hearing will allow all interested parties to submit oral or written comments on the proposal. We are seeking comments or suggestions from the public, other concerned agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

DATES: The comment period for this proposal now closes on August 30, 2002. Any comments received by the closing date will be considered in the final decision on this proposal. The public hearing will be held from 6 p.m. to 8 p.m. on Thursday, August 1, 2002, on the island of Lanai, Hawaii. Prior to the public hearing, the Service will be available from 3:30 to 4:30 p.m. to provide information and to answer questions. We will also be available for questions after the hearing.

ADDRESSES: The public hearing will be held at the Lanai Public Library Meeting Room, Fraser Avenue, Lanai City, Hawaii. Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 3–122, P.O. Box 50088, Honolulu, HI 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Henson, at the above address (telephone 808/541–3441; facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

On March 4, 2002, we published a revised proposed critical habitat rule for 32 of the 37 plant species listed under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), known historically from the island of Lanai (67 FR 9806). The original comment period closed on May 3, 2002. The comment period now closes on August 30, 2002. Written comments should be submitted to us (see **ADDRESSES** section).

A total of 37 species historically found on Lanai were listed as endangered or threatened species under the Act between 1991 and 1999. Some of these species may also occur on other Hawaiian islands. Previously, we proposed that designation of critical habitat was prudent for 32 (*Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta, Diplazium molokaiense, Gahnia lanaiensis, Hedyotis mannii, Hesperomannia arborescens, Hibiscus brackenridgei, Isodendrion pyrifolium, Mariscus fauriei, Neraudia sericea, Portulaca sclerocarpa, Sesbania tomentosa, Silene lanceolata, Solanum incompletum, Spermolepis hawaiiensis, Tetramolopium remyi, Vigna o-wahuensis, Viola lanaiensis,* and *Zanthoxylum hawaiiense*) of the 37 species reported from the island of Lanai. No change is made to the 32 proposed prudency determinations in the March 4, 2002, revised proposed critical habitat rule for plants from Lanai. We previously proposed that designation of critical habitat was not prudent for *Phyllostegia glabra* var. *lanaiensis* because it had not been seen recently in the wild, and no viable genetic material of this species is known to exist (65 FR 82086). No change is made to this proposed prudency determination in the March 4, 2002, revised proposed critical habitat rule (67 FR 9806). In the March 4, 2002, revised proposed critical habitat rule, we proposed that designation of critical habitat is prudent for *Tetramolopium lepidotum* ssp. *lepidotum,* a species for which a prudency determination has not been made previously. We determined that designation of critical habitat was prudent for *Hedyotis schlechtendahliana* var. *remyi, Labordia tinifolia* var. *lanaiensis,* and *Melicope munroi* at the time of their listing in 1999.

We also propose designation of critical habitat for 32 (*Abutilon eremitopetalum, Adenophorus periens, Bidens micrantha* ssp. *kalealaha, Bonamia menziesii, Brighamia rockii, Cenchrus agrimonioides, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *mauiensis, Ctenitis squamigera, Cyanea grimesiana* ssp. *grimesiana, Cyanea lobata, Cyanea macrostegia* ssp. *gibsonii, Cyperus trachysanthos, Cyrtandra munroi, Diellia erecta,*