

a listed species and that may require special management considerations or protection. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4 of the Act requires that we consider economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We have prepared a draft economic analysis for the proposal to designate certain areas as critical habitat for *Astragalus magdalenae* var. *peirsonii*. This analysis considers the potential economic effects of designating critical habitat for *A. magdalenae* var. *peirsonii*. It also considers the economic effects of protective measures taken as a result of listing the species under the Act, and other Federal, State, and local laws that aid habitat conservation in areas proposed for designation.

Limitations on future OHV access within the ISDRA will depend on the outcome of future management decisions. Future impacts could range from no effects to complete closure of critical habitat areas within the eight distinct BLM management areas. Pre-critical habitat economic benefits enjoyed by OHV users within the proposed critical habitat designation range from \$0 for the North Algodones Wilderness (currently closed to OHV use) and Dune Buggy Flats management area (not proposed for designation) to \$4.9 million per year for that portion of the Glamis management area proposed for designation. If all of the areas proposed for designation within the ISDRA were closed to OHV use, the annual consumer surplus impact would range from \$8.9 million per year to \$9.9 million per year.

While future closures of areas are not anticipated to occur by either the Service or BLM, in the past the ISDRA has experienced closures of areas to OHV use to provide protection to *Astragalus magdalenae* var. *peirsonii*. Given the uncertainty of future management decisions, the economic analysis provides estimates of the potential total economic contribution of each ISDRA management area and that portion of each management area proposed as critical habitat. These total economic contribution estimates represent the upper bound of impacts

that could result from closure of these areas to OHV use.

We solicit data and comments from the public on the draft economic analysis, as well as on all aspects of the proposed rule to designate critical habitat for *Astragalus magdalenae* var. *peirsonii*. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

Author

The primary author of this document is the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

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

Dated: March 30, 2004.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-A178

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Astragalus jaegerianus* (Lane Mountain milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Astragalus jaegerianus* (Lane Mountain milk-vetch). Approximately 29,522 acres (ac) (11,947 (ha)) of land fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in the Mojave Desert in San Bernardino County, California.

Critical habitat identifies specific areas that are essential to the conservation of a listed species, and that may require special management considerations or protection. If this proposal is made final, section 7(a)(2) of

the Act requires that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of critical habitat. The regulatory effect of the critical habitat designation does not extend beyond those activities funded, permitted, or carried out by Federal agencies. State or private actions, with no Federal involvement, are not affected.

Section 4 of the Act requires us to consider economic, national security, and other relevant impacts when specifying any particular area as critical habitat. We will conduct an analysis of the economic impacts of designating these areas, in a manner that is consistent with the ruling of the 10th Circuit Court of Appeals in *N.M. Cattle Growers Assn v. USFWS*. We hereby solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise this proposal prior to final designation to incorporate or address new information received during the comment period.

DATES: We will accept comments until June 7, 2004. Public hearing requests must be received by May 21, 2004.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA, 93003.

2. You may also send comments by electronic mail (e-mail) to FW1Lanemv@r1.fws.gov. In the event that our internet connection is not functional, please submit your comments by the alternate methods mentioned above.

3. You may hand-deliver comments to our Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

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

FOR FURTHER INFORMATION CONTACT: Connie Rutherford, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003 (telephone (805) 644-1766; facsimile (805) 644-3958).

SUPPLEMENTARY INFORMATION:

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Endangered Species Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, "Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7." Currently, only 445 species or 36 percent of the 1,244 listed species in the United States under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,244 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the

Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with NEPA, all are part of the cost of critical habitat designation. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Public Comments Solicited

We intend any final action resulting from this proposal to 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 hereby solicited. Comments particularly are sought concerning:

(1) The reasons why any habitat should or should not be determined to

be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation, specifically, any lands being considered under a conservation plan;

(2) With specific reference to the recent amendments to sections 4(b)(2) of the Act, we request information regarding impacts to national security associated with proposed designation of critical habitat;

(3) Specific information on the amount and distribution of *Astragalus jaegerianus* habitat, and what habitat is essential to the conservation of the species and why;

(4) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any foreseeable economic or other potential impacts resulting from the proposed designation—in particular, any impacts on small entities; and

(6) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see ADDRESSES section). In the event that our internet connection is not functional, please submit your comments by the alternate methods mentioned above. Please submit Internet comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: [RIN 1018-AI78]" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Ventura Fish and Wildlife Office at phone number 805-644-1766. Please note that the Internet address "FW1Lanemv@r1.fws.gov" will be closed out at the termination of the public comment period.

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 addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or

address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Background

We listed *Astragalus jaegerianus* (Lane Mountain milk-vetch) as threatened on October 6, 1998 (63 FR 53596) due to threats of increasing habitat loss and degradation. It is our intent, in this proposed rule, to reiterate and discuss only those topics directly relevant to the development and designation of critical habitat or relevant information obtained since the final listing. Please refer to our final listing rule for a more detailed discussion of the plant's taxonomic history and physical description.

Astragalus jaegerianus (Lane Mountain milk-vetch) is a member of the pea family (Fabaceae) that is restricted in its range to a portion of the west Mojave Desert that is north of Barstow, in San Bernardino County, California. The plant overwinters as a taproot. The stems often grow in a zigzag pattern, usually up through low bushes, referred to in this proposed rule as host shrubs.

This species can be considered a hemicryptophyte (partially hidden), because it is usually often found growing within the canopy of a host shrub. Like other species of *Astragalus*, the roots of *A. jaegerianus* contain nodules that fix nitrogen. Gibson *et al.* (1998) postulate that *A. jaegerianus* may have a mutually beneficial relationship with the host shrub, wherein the host shrub provides trellis-like support for *A. jaegerianus*, and benefits from higher levels of soil nitrogen derived from the litter and roots of *A. jaegerianus*.

Presumably, as with other perennial species in the Mojave Desert, the plant begins regrowth in the late fall or winter, once sufficient soil moisture is available. Individuals go dormant in the late spring or summer when soil moisture has been depleted (Bagley 1999). Blooming typically occurs in April and May. However, if climatic conditions are unfavorable, the plants may desiccate prior to flowering or setting seed. Therefore, substantial contributions to the seedbank may occur

primarily in climatically favorable years.

Production of pods and the number of seeds per pod can be highly variable, both in the field and in greenhouse conditions. Seed pods can contain as many as 18 seeds, but more typically 4 to 14 seeds (Sharifi *et al.* 2003). In the field, seeds that do not germinate during the subsequent year become part of the seed bank. Seed germination rates in the field may resemble the low germination rate of 5 percent that is observed in germination trials of unscarified (outer cover is broken) seed (Sharifi in litt. 2004).

Seeds collected from *Astragalus jaegerianus* range in size from 1.5 to over 5.0 milligrams in weight (Sharifi in litt. 2003). The relatively large size of these seed compared to many desert annual species would make them an attractive food source to ants and other large insects, small mammals, and birds (Brown *et al.* 1979). These animal species would also be the most likely vectors to disperse *A. jaegerianus* seeds within and between populations. Sharifi (pers. comm. 2004) confirmed the presence of *A. jaegerianus* seeds within native ant coppices.

Limited observations on *Astragalus jaegerianus* pollinators were carried out in 2003 (Kearns 2003). Observations were made on two plants in one population for seven days. Although 30 different insect species were observed visiting flowers in the area, only 4 visited *A. jaegerianus* flowers. The most frequent pollinator was *Anthidium dammersi*, a solitary bee in the megachilid family (Megachilidae). *Anthidium dammersi* occurs in the Mojave and Colorado deserts of California, Nevada, and Arizona (Kearns 2003), and will fly up to 0.6 mi (1 km) away from their nest; although if floral resources are abundant, they will decrease their flight distances accordingly (Doug Yanega, University of California Riverside, pers. comm. 2003). Kearns (2003) found that the *Anthidium* individuals he inspected carried pollen primarily from phacelia (*Phacelia distans*) (82 percent of individuals) and *Astragalus jaegerianus* (64 percent). The three occasional visitors to *A. jaegerianus* were a hover fly (*Eupeodes volucris*), a large anthophrid bee (*Anthophora* sp.), and the white-lined sphinx moth (*Hyles lineata*). The extent to which *Astragalus jaegerianus* relies on these and other pollinators to achieve seed set is not yet known. However, in a greenhouse experiment, 25 percent of pollinated *A. jaegerianus* flowers set seed, while only 5 percent of nonpollinated flowers set seed (Sharifi pers. comm. 2004).

Although the aboveground portion of the plant dies back each year, individuals of *Astragalus jaegerianus* persist as a perennial rootstock through the dry season. The perennial rootstock may also allow *Astragalus jaegerianus* to survive occasional dry years, while longer periods of drought might be endured by remaining dormant (Beatley in Bagley 1999). In another federally listed species, Osterhout milk-vetch (*Astragalus osterhoutii*), which occurs in sagebrush steppe habitat in Colorado, individuals have remained dormant for up to 4 years (Dawson in litt. 1999).

Although a substantial *Astragalus jaegerianus* seedbank most likely exists, establishment of new individuals may not occur with great frequency, and may pose a large bottleneck for the continued persistence of the species. In addition to the low seed germination rates discussed earlier, several other observations contribute to this theory. First, we have some indication that individuals may have a long life span; in one long-term plot, individuals have been tracked for a period of 13 years. Out of a total of 9 individuals, 1 has persisted over a period of 13 years, 1 has persisted 12 years, 1 has persisted 10 years, 1 has persisted 6 years, 1 has persisted 5 years, and 2 have persisted 3 years (Rutherford in litt. 2004). Secondly, very few seedlings have been observed. During the extensive surveys of 2001, approximately 2 percent of the 4,964 individuals observed were thought to be seedlings (Charis 2002). However, the actual number of seedlings may have been even lower, because resprouts from established individuals were most likely mistaken for seedlings (Sharifi pers. comm. 2004). Because the population of *Astragalus jaegerianus* in any given year is comprised primarily of established individuals, maintaining the seed bank ensures that the populations are replenished with new individuals.

After the early collections in 1939 and 1941, the plant was not collected again until it was rediscovered in 1985 at the sites referred to as Brinkman Wash, Montana Mine, and Paradise Wash. Throughout the 1990s, hundreds more plants were located in these areas (Lee and Ro Consulting Engineers 1986, Brandt *et al.* 1993, Prigge 2000a) in surveys sponsored by the Department of the Army's (Army) National Training Center at Fort Irwin (NTC). Surveys in 1999 established that the Brinkman Wash—Montana Mine site supports one large continuous population (Prigge *et al.* 2000a). In 1992, the third and southernmost population was found 9 mi (14 km) to the south, on Coolgardie Mesa, a few miles west of Lane

Mountain; this site closely approximates the type locality.

Extensive surveys funded by the Army were conducted in 2001 (Charis 2002). The 2001 surveys contributed greatly to our knowledge of the overall distribution and abundance of *Astragalus jaegerianus* in the three populations. In addition, a fourth population was located during these surveys on NTC lands in an area referred to as Goldstone. Approximately 20 percent of this population is on lands leased by the Army to the National Aeronautics and Space Administration (NASA) for tracking facilities. Much of the most recent information included in this proposed rule is taken from the Army survey report (Charis 2002).

Individuals of *Astragalus jaegerianus* are concentrated in four geographically distinct areas. In this rule, a population refers to a concentration of *Astragalus* individuals, a population site refers to the land that supports the population, and a unit refers to specific sites that are being considered for critical habitat designation. The four populations of *A. jaegerianus* are arrayed more or less linearly along a 20-mile-long axis that trends in a northeasterly-to-southwesterly direction. The names of the four populations, from northeast to southwest, and land ownership are as follows—the Goldstone population occurs on NTC, lands including a portion leased to NASA; the Brinkman Wash-Montana Mine population occurs entirely on NTC lands; the Paradise Wash population occurs primarily on Army lands, with a small portion of the remaining population occurring on Bureau lands intermixed with private lands along the southwestern fringe of the population; the Coolgardie population occurs primarily on Bureau-managed lands, with a number of small privately owned parcels scattered within.

Based on the information available, including historic records and current location information, there is nothing to suggest that *Astragalus jaegerianus* was ever more widespread than currently known. The Army surveys in 2001 (Charis 2002) included reconnaissance surveys on habitat that appeared suitable but outside the known range of *A. jaegerianus*, including the Mount General area near Barstow and in the Alvord Mountains 20 mi (32 km) to the east. In addition, since 1996, rare plant surveys have been conducted on the Naval Air Weapons Station at China Lake 6 miles (4.8 km) to the northwest of the known distribution (Charis 2002; Silverman in litt. 2003). None of these other surveys have resulted in the location of any other populations.

Astragalus jaegerianus is most frequently found on shallow soils derived from Jurassic or Cretaceous granitic bedrock. A small portion of the individuals located to date occur on soils derived from diorite or gabbroid bedrock (Charis 2002). In one location on the west side of the Coolgardie site, plants were found on granitic soils overlain by scattered rhyolitic cobble, gravel, and sand. Soils tend to be shallower immediately adjacent to milk-vetch plants than in the surrounding landscape; at the Montana Mine site, rotten, highly weathered granitic bedrock was reached within 2 in (6 cm) of the soil surface near *A. jaegerianus* plants (Fahnestock 1999). The topography where *A. jaegerianus* most frequently occurs is on low ridges and rocky low hills where bedrock is exposed at or near the surface and the soils are coarse or sandy (Prigge 2000b; Charis 2002). Most of the individuals found to date occur between 3,100 and 4,200 feet (ft) (945 to 1,280 meters (m)) in elevation (Charis 2002). At lower-lying elevations, the alluvial soils appear to be too fine to support *A. jaegerianus*, and at higher elevations the soils may not be developed enough to support *A. jaegerianus* (Prigge 2000b; Charis 2002).

Prigge (pers. comm. 2003) examined and found no relationship between the abundance and distribution of *Astragalus jaegerianus* and levels of micronutrients or heavy metals, such as selenium, in the soil. Another focus of pending research will be on measuring transpiration rates and gas exchange rates for *A. jaegerianus*; these rates would be an indicator as to whether the taproots of *A. jaegerianus* are tapping into a water source stored within fractured granite bedrock, thus allowing it to utilize water not available to other plants within the community (Prigge *et al.* 2002).

At the landscape level, the plant community within which *Astragalus jaegerianus* occurs can be described as Mojave mixed woody scrub (Holland 1998), Mojave creosote bush scrub (Holland 1988; Cheatham and Haller 1975; Thorne 1976), or creosote bush series (Sawyer and Keeler-Wolf 1995). These broad descriptions, however, are lacking in detail that is useful in describing the communities where *A. jaegerianus* is found. While creosote bush (*Larrea tridentata*) is present in the landscape, its presence and abundance is not as extensive in the specific areas where *A. jaegerianus* occurs, presumably because these soils are shallower than optimal depth for creosote bush.

Data gathered from the four sites that support *Astragalus jaegerianus*

populations have been more useful in describing the plant community that *A. jaegerianus* grows in. Common to all four sites is the remarkably high diversity of desert shrub species, while the relative frequency of these species varies slightly from site to site. The shrub species that occur in the highest densities at *A. jaegerianus* sites include turpentine bush (*Thamnosma montana*), white bursage (*Ambrosia dumosa*), Mormon tea (*Ephedra nevadensis*), Cooper goldenbush (*Ericameria cooperi* var. *cooperi*), California buckwheat (*Eriogonum fasciculatum* var. *polifolium*), brittlebush (*Encelia farinosa* or *E. actoni*), desert aster (*Xylorrhiza tortifolia*), goldenheads (*Acamptopappus spheroccephalus*), spiny hop-sage (*Grayia spinosa*), cheesebush (*Hymenoclea salsola*), winter fat (*Kraschenninikovia lanata*), and paper bag bush (*Salazaria mexicana*).

Astragalus jaegerianus utilizes a variety of species as host shrubs. Individuals of *A. jaegerianus* are rarely observed on bare ground, and more frequently within dead shrubs, leading to speculation that the milk-vetch may have outlived its host shrub. Host shrubs may also be important in providing appropriate microhabitat conditions for *A. jaegerianus* seed germination and seedling establishment (Charis 2003).

At the Brinkman-Montana Mine site, Prigge *et al.* (2000b) showed that the difference between host shrub preference by *Astragalus jaegerianus* and the frequency with which these shrubs occurred in the plant community was statistically significant, indicating that some shrubs are more suitable as hosts than others. During Army surveys in 2001, host shrubs were noted for 4,899 individuals of *A. jaegerianus*. Six shrub species (*Thamnosma montana*, *Ambrosia dumosa*, *Eriogonum fasciculatum* var. *polifolium*, *Ericameria cooperi* var. *cooperi*, *Ephedra nevadensis*) and dead shrubs accounted for 75 percent of the host shrub records.

The cumulative total number of *Astragalus jaegerianus* individuals found from all surveys to date is approximately 5,800 (Charis 2002). Charis (2002) attempted to extrapolate the total number of individuals by factoring in the amount of intervening suitable habitat between transects in confirmed occupied habitat, along with an "observability" factor ranging from 30 percent to 70 percent; this results in estimations of the total number of individuals ranging from 20,524 to 47,890. The actual number of individuals observed during the surveys

at the four population sites during the climatically favorable year of 2001 are as follows—Goldstone, 555; Brinkman Wash-Montana Mine, 1,487; Paradise Wash, 1,667; Coolgardie, 2,014 (Charis 2002). Low numbers of individuals observed in prior and subsequent years (2000, 2002, and 2003) suggest that this species may well follow the pattern of other perennial desert species that rely on favorable climatic conditions that do not occur with any predictable frequency (Beatley 1974, Kearns 2003; B. Prigge, pers. comm. 2003).

The longterm viability of *Astragalus jaegerianus* depends on numerous variables, including life history characteristics (e.g., longevity), population characteristics (e.g., rates of recruitment and mortality), and carrying capacity of the habitat. The need to maintain high-quality habitat for *A. jaegerianus* is important to its long-term persistence. Aside from the sandy granidiorite soils and the mixed desert scrub community which have been described in the previous sections, we believe that the other characteristics important to ensure the maintenance of the ecologic processes within *A. jaegerianus* habitat include habitat of sufficient size and quality to maintain pollinators; and habitat of sufficient size and quality to maintain seed dispersal mechanisms.

At the time *Astragalus jaegerianus* was listed as endangered in 1998, threats to the species included dry wash mining, recreational off-highway vehicle use, military maneuvers on Army lands at NTC and NTC expansion lands, and the lack of regulatory mechanisms that would offer formal protection for the species or its habitat. Stochastic extinction (extinction from random natural events) is also a concern, and could result from such events as flooding (that could wash substantial amounts of the seedbank into unsuitable habitat), prolonged drought (that could reduce the abundance of viable seed in the seed bank), or unforeseen events including wildfire, wildfire suppression activities, or pipeline breaks or repairs.

Since the final rule was published, new information concerning the status of *Astragalus jaegerianus* and the nature of its threats is available. The 2001 surveys have provided better information on the distribution of the species. The extent of the three populations that were previously known has been greatly expanded, and the fourth population (Goldstone) was discovered during these surveys. Also, the size of the populations as represented by the number of individuals that can be observed in a favorable climatic year is now known to

be larger than was thought at the time of listing. In addition, a substantial change occurred in land management—on January 11, 2002, President George W. Bush signed the Fort Irwin Military Lands Withdrawal Act of 2001 (Pub. L. 107–107) into law. This legislation withdrew approximately 110,000 ac (44,516 ha) of land, formerly managed by the Bureau, for military use. Subsequent surveys and geographic information system (GIS) analysis indicated that the proposed expansion area covers 118,674 ac (48,026 ha). Military use of the withdrawn lands will not begin until compliance with the National Environmental Policy Act (NEPA) and a consultation pursuant to section 7(a)(2) of the Act with the Service have been completed.

Two of the four populations of *Astragalus jaegerianus* (Brinkman Wash—Montana Mine, Paradise Wash populations) occur almost entirely on withdrawn lands within the NTC expansion. The Army is proposing to establish two conservation areas for *A. jaegerianus*. The first conservation area will comprise 2,470 ac (1,000 ha) at the Goldstone site. The second conservation area, referred to as Paradise Valley Conservation Area, will comprise 4,302 ac (1,741 ha) along the southwestern boundary of NTC. Therefore, all of one and a portion of a second population of the three populations on NTC lands are in areas that will be placed in conservation areas.

Finally, since the early 1990s, the Bureau has acted as the lead agency in developing the West Mojave Plan (WMP); the planning area for this multiagency effort covers 9,360,000 ac (3,787,900 ha) of the western Mojave Desert. These lands include approximately 3,300,000 ac (1,335,477 ha) of lands administered by the Bureau, 3,000,000 ac (1,214,070 ha) of private lands, and 102,000 ac (41,278 ha) of State lands. The remaining lands lie within areas administered by the Department of Defense and National Park Service; these agencies are not formally part of the WMP. The draft environmental impact report/statement (EIR/S) for the WMP was published in May 2003. As part of the Bureau's preferred alternative, they propose to establish two conservation areas for *Astragalus jaegerianus*. The first conservation area, referred to as the West Paradise Conservation Area, will comprise 1,243 ac (503 ha), and will be contiguous with the Army's Paradise Valley Conservation Area along the southwestern boundary of NTC. This area is currently designated as land-use class L by the Bureau, which denotes limited use. The second is the

Coolgardie Mesa Conservation Area (CMCA); it will comprise approximately 13,354 ac (5,404 ha) at the Coolgardie site. This area is currently designated as land-use class M by the Bureau, which denotes moderate use. Both conservation areas would be managed to maintain habitat for *A. jaegerianus* with the following proposed management prescriptions: Implement a minerals withdrawal, require a 5 to 1 mitigation ratio for land-disturbing projects, and limit total ground disturbance to 1 percent. Once the WMP is finalized, the County of San Bernardino will be the lead entity in preparing a draft Habitat Conservation Plan (HCP) that will address conservation measures that will be proposed for private lands within the area covered by the WMP.

The Bureau has also recently completed a consultation with the Service for a route designation project in the western Mojave Desert area. The project includes a proposal to reduce the number of roads within the proposed CMCA that are designated as open to travel; other roads will be proposed for closure and restoration (Service 2003a).

The impacts from military activities within the boundaries of NTC on *Astragalus jaegerianus* and its habitat will vary, depending on the type of terrain and the level and frequency of use. The Army (Charis 2003) anticipates the following types of impacts—individuals of *A. jaegerianus* could be killed or damaged through direct contact with wheeled and tracked vehicles, construction, digging and earth-moving activities, temporary bivouacs, helicopter landings, the movement of soldiers on foot, and other activities in the project area. Habitat for *A. jaegerianus* could be affected by substantially reducing or eliminating host plants within the project area, soil erosion and compaction, and the loss of cryptobiotic soil crusts that help stabilize the soil surface and assist with water transport to plant roots. Army (Charis 2003) anticipates that in “high-intensity” use areas, up to 100 percent of individuals and habitat could be lost; in “moderate-intensity” use areas, up to 60 percent of individuals could be lost; in “low-intensity” use areas, up to 20 percent of individuals and habitat could be lost; and in proposed conservation areas, the only loss of individuals or habitat expected to occur is from straying military vehicles or personnel. Windblown dust that has been loosened from the soil surface due to military activities may also affect *A. jaegerianus* by inhibiting photosynthesis and transpiration in individuals, altering suitable germination sites, and altering

the effectiveness of pollinator visits and of seed dispersal by wildlife species.

Other nonmilitary activities may also occur within NTC. Recently, a fiber-optic cable was installed through the Goldstone population. Although the installation consisted of trenching through *Astragalus jaegerianus* habitat, no individuals were affected (Service 2003b). Other activities not related to military training, such as road construction or maintenance activities, may be also be proposed in the future by the Army.

Previous Federal Action

The final rule listing *A. jaegerianus* as an endangered species was published on October 6, 1998 (63 FR 53596).

On November 15, 2001, our decision not to designate critical habitat for *Astragalus jaegerianus* and seven other plant and wildlife species was challenged in *Southwest Center for Biological Diversity and California Native Plant Society v. Norton* (Case No. 01–CV–2101–IEG (S.D.Cal.)). On July 1, 2002, the court ordered the Service to reconsider its not prudent determination, and propose critical habitat, if prudent, for the species by September 15, 2003, and a final critical habitat designation, if prudent, no later than September 15, 2004. However, the Service exhausted the funding appropriated by Congress to work on critical habitat designations in 2003 prior to completing the proposed rule. On September 8, 2003, the court issued an order extending the publication date of the proposed critical habitat designation for *A. jaegerianus* to April 1, 2004, and the final designation to April 1, 2005. In light of *Natural Resources Defense Council v. U.S. Department of the Interior*, 113 F.3d 1121 (9th Cir. 1997), and the diminished threat of overcollection, the Service has reconsidered its decision and has determined that it is prudent to designate critical habitat for the species.

Critical Habitat

Section 3(5)(A) of the Act defines critical habitat as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. “Conservation” 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.

The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands. Under section 7 of the Act, Federal agencies must consult with us on activities they undertake, fund, or permit that may affect critical habitat and lead to its destruction or adverse modification. However, the Act prohibits unauthorized take of listed species and requires consultation for activities that may affect them, including habitat alterations, regardless of whether critical habitat has been designated. We have found that the designation of critical habitat provides little additional protection to most listed species.

To be included in a critical habitat designation, habitat must be either a specific area within the geographic area occupied by the species on which are found those physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)) and which may require special management considerations or protections, or be specific areas outside of the geographic area occupied by the species which are determined to be essential to the conservation of the species. Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, “The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.”

Regulations at 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species. When we designate critical habitat, we may not have the information necessary to identify all areas that are essential for the conservation of the species. Nevertheless, we are required to designate those areas we consider to be essential, using the best information available to us. Accordingly, we do not designate critical habitat in areas outside the geographic area occupied by

the species unless the best available scientific and commercial data demonstrate that those areas are essential for the conservation needs of the species.

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties or other entities that develop HCPs, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Section 4 of the Act requires that we designate critical habitat on the basis of what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted

projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Relationships to Sections 3(5)(A) and 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection. As such, for an area to be designated as critical habitat for a species it must meet both provisions of the definition. In those cases where an area does not provide those physical and biological features essential to the conservation of the species, it has been our policy not to include them in designated critical habitat. Likewise, if we believe that an area determined to be biologically essential has an adequate conservation management plan that covers the species and provides for adaptive management sufficient to conserve the species, then special management and protection are not needed. Therefore, these areas do not meet the second provision of the definition and are also not proposed as critical habitat. Examples of conservation management plans that we consider when designating critical habitat include Habitat Conservation Plans (HCPs) for nonmilitary areas.

Further, section 4(b)(2) of the Act states that critical habitat shall be designated, and revised on the basis of the best scientific data available after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined, following an analysis, that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. Consequently, we may exclude an area from designated critical habitat based on economic impacts, or other relevant impacts such as preservation of

conservation partnerships and national security.

In our critical habitat designations we have used both the provisions outlined in sections 3(5)(A) and 4(b)(2) of the Act to evaluate those specific areas proposed for designation as critical habitat and those areas which are subsequently finalized (*i.e.*, designated). We have applied the provisions of these sections of the Act to lands essential to the conservation of the subject species to evaluate and either exclude from final critical habitat or not include in proposed critical habitat. Lands in which we have either excluded from or not included in critical habitat based on those provisions include those covered by: (1) Legally operative HCPs that cover the species, and provide assurances that the conservation measures for the species will be implemented and effective; (2) draft HCPs that cover the species, have undergone public review and comment, and provide assurances that the conservation measures for the species will be implemented and effective (*i.e.*, pending HCPs); (3) Tribal conservation plans that cover the species and provide assurances that the conservation measures for the species will be implemented and effective; (4) State conservation plans that provide assurances that the conservation measures for the species will be implemented and effective; and (5) Fish and Wildlife Service Comprehensive Conservation Plans that provide assurances that the conservation measures for the species will be implemented and effective.

As discussed above, the Bureau is leading the development of the WMP; the WMP includes the federal action of amending the Bureau's California Desert Conservation Area Plan and the development of a habitat conservation plan for non-federal lands within the planning area. Conservation of *A. jaegerianus* is a key factor that is being considered in the development of the WMP. We have been providing technical assistance to the Bureau to ensure that the WMP provides for protection and management of habitat essential for the conservation of this species. In addition, the Bureau's proposed amendments to the California Desert Conservation Area Plan will be subject to consultation under section 7 of the Act. As part of the WMP, the Bureau is proposing to establish the Coolgardie Mesa and West Paradise Conservation Areas, to implement management actions that will contribute toward the conservation of the species, and to modify current activities within these areas so that such activities will not impair the conservation of the

species. The County of San Bernardino is the lead agency for preparing the specific portion of the habitat conservation plan that would be in effect for this portion of the planning area. The habitat conservation plan may not contain specific measures to conserve *A. jaegerianus* on private lands; however, both components of the WMP target these lands for acquisition and subsequent management for the conservation of the species. We will conduct an economic analysis that includes potential economic effects of the actions proposed in the WMP, and we will consider the results of the economic analysis and the adequacy of the WMP in the conservation of *A. jaegerianus* in our final critical habitat determination.

The Sikes Act Improvement Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species.

Section 318 of the fiscal year 2004 National Defense Authorization Act (Pub. L. 108-136) amended the Act to address the relationship of INRMPs to critical habitat. We are proposing to designate Army lands on NTC as critical habitat for *Astragalus jaegerianus*. Although NTC has an INRMP in place, it does not address *A. jaegerianus* and it does not include the withdrawn lands where much of the critical habitat for *A. jaegerianus* is located. The Army is amending its existing INRMP to address the conservation of *A. jaegerianus* throughout its lands, including the expansion area. However, we cannot exclude Army lands from this proposed critical habitat designation under this amendment to the Act because the amended INRMP has not been completed and we have not had the opportunity to determine if the INRMP provides a benefit to *A. jaegerianus*. We will consider the INRMP if it is completed prior to our final designation

of critical habitat, or at a later date, if the Service has sufficient funding to undertake a proposed withdrawal of critical habitat.

Military lands may also be excluded from critical habitat designation based on section 4(b)(2) of the Act. As discussed above, an area may be excluded from critical habitat if it is determined, following an analysis of relevant impacts including the impact to national security, that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. Currently, the Army had proposed a combination of conservation measures and military training over *A. jaegerianus* sites. When we conduct the 4(b)(2) analysis prior to finalizing this designation, we will fully consider the final plans for the expansion areas, the economic analysis, and any comments received from the Army on this proposal.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the survival and recovery of *Astragalus jaegerianus*. This information included data from our files that we used for listing the species; geologic maps (California Geologic Survey 1953), recent biological surveys and reports, particularly from the Army surveys of 2001 (Charis 2002); additional information provided by the Army, the Bureau of Land Management, and other interested parties; and discussions with botanical experts. We also conducted multiple site visits to all three units that are being proposed for designation.

The longterm probability of the survival and recovery of *Astragalus jaegerianus* is dependent upon the protection of existing population sites, and the maintenance of ecologic functions within these sites, including connectivity within and between populations within close geographic proximity to facilitate pollinator activity and seed dispersal mechanisms, and the ability to maintain these areas free of major ground-disturbing activities. The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of *A. jaegerianus*.

In our delineation of the critical habitat units, we selected areas to provide for the conservation of *Astragalus jaegerianus* at the four sites

where it is known to occur. All four sites are essential because, as cited earlier, *Astragalus jaegerianus* exhibits life history attributes, including variable seed production, low germination rates, and habitat specificity in the form of a dependence on a co-occurring organism (host shrubs), that make it particularly vulnerable to extinction (Keith 1998, Gilpin and Soule 1986). We believe the proposed designation is of sufficient size to maintain landscape scale processes and to minimize the secondary impacts resulting from human occupancy and human activities occurring in adjacent areas. We mapped the units with a degree of precision commensurate with the available information, the size of the unit, and the time allotted to complete this proposal. We anticipate that the boundaries of the three mapping units may be refined based on additional information received during the public comment period.

Of principle importance in the process of delineating the proposed critical habitat units are data in a geographic information system (GIS) format provided by the Army depicting the results of field surveys for *Astragalus jaegerianus* conducted in 2001 by the Army (Charis 2002). These data consisted of three files depicting the locations of transects that were surveyed for *A. jaegerianus*, the locations of *A. jaegerianus* individuals found during the surveys, and minimum convex polygons (MCP) calculated to represent the outer bounds of *A. jaegerianus* populations (Charis 2002).

For mapping proposed critical habitat units, we proceeded through a multi-step process. First, we started with the MCPs that had been calculated by the Army (Charis 2002). We then expanded these boundaries outward from the edge of each of the 4 populations by a distance of 0.25 mi (0.4 km). We did this to include *Astragalus jaegerianus* individuals that are part of these essential populations, but were not noted during surveys. The basis for determining that these additional land areas are occupied are as follows: (1) This habitat has the appropriate elevational range, and includes the Primary Constituent Elements (PCEs) (See Primary Constituent Elements section below), i.e. granitic soils, and plant communities that support host plants that *A. jaegerianus* requires; (2) Botanists involved in the Army surveys stated that "the estimate of [*A. jaegerianus*] distribution is a minimum" (SAIC 2003); and that additional individuals of *A. jaegerianus* most likely occurred on the fringes of the MCPs. (Wertenberger in litt. 2003); (3) mapping

errors during the 2001 surveys indicated that the location of individuals did not match up precisely with the location of the transect boundaries (Charis 2002); (4) limited surveys were conducted in 2003, and despite the unfavorable climatic conditions for *A. jaegerianus*, 13 additional individuals were located outside the MCPs (SAIC 2003). Three of the four areas where new plants were found were within the 0.25 mi (0.4 km) boundary; and (5) this 0.25 mi (0.4 km) distance is commensurate in scale with the distance between transects where individuals were found and the distance between individuals along one transect, and it is well within the distance that can be traversed by pollinators and seed dispersers.

We next removed areas on the margins of the critical habitat units where we determined, by referring to digital raster graphic maps, the topography is either too steep or the elevation too high to support additional *Astragalus jaegerianus* individuals. This boundary modification involved editing the eastern and southeastern edge of the Coolgardie Unit and a cirque-shaped sliver from the central portion of the southern boundary of the Goldstone-Brinkman Unit.

For the Goldstone and Brinkman-Montana populations, expansion of the MCP boundaries by 0.25 mi (0.4 km) left a narrow corridor (about 0.125 mi (0.2 km)) between the revised population boundaries. We chose to bridge the gap between the two populations by incorporating the intervening habitat that is within the geographic area occupied by the species between the Goldstone and Brinkman-Montana populations and occupied as seed banks into a single critical habitat unit. We did this for several reasons: the intervening habitat between the two MCPs contains the PCEs with the appropriate elevational range, granitic soils, and plant communities (based on topographic maps, geologic maps, and aerial photos) that *Astragalus jaegerianus* requires, there were no obvious geographic barriers between the two MCPs; the distance between the two closest *A. jaegerianus* individuals across the gap of the two MCPs was smaller than the distance between individuals within the MCPs; and the distance between the two MCPs was small enough that it could be easily traversed by a pollinator with a potential flight distance of 0.6 mi (1 km), or a seed disperser such as certain small mammals and birds. These granitic soils and plant community also provide habitat for the pollinators that visit *A. jaegerianus* flowers that results in the production of seed, habitat for seed

dispersers (birds, small mammals, and large insects) that carry seed between the coppices of suitable host shrubs, and as long-term storage for the soil seedbank of *A. jaegerianus*.

For the Paradise population, we removed a small portion of habitat (47 ac (19 ha)) from the eastern edge of the MCP (5,497 ac (2,225 ha)), thereby eliminating a small cluster of three individuals and the surrounding suitable habitat from the proposed critical habitat unit. We did this for two reasons: the distance between this small cluster of three individuals and the other 1,487 individuals mapped within the MCP was greater than the distance between other clusters of individuals within the MCP, and this cluster of individuals was not adjacent to, or providing connectivity to, any other known population of *A. jaegerianus*.

Finally, the boundaries of the critical habitat units were modified slightly in the process of creating the legal descriptions of the critical habitat units. This process consisted of overlaying the critical habitat units with grid lines spaced at 100-m intervals; the grid lines following the Universal Transverse Mercator (UTM) coordinate system ties to the North American Datum of 1927. Vertices defining the critical habitat boundary polygon were then moved to the closest vertex on the 100-m UTM grid lying inside of the critical habitat boundary. Vertices not necessary to define the shape of the boundary polygon were deleted. Changing the boundaries in this fashion serves two purposes: (1) It creates a list of coordinates that is easier for the public to use when looking at USGS 7.5 minute topographic maps and, (2) it minimizes the number of coordinates necessary to define the shapes of the critical habitat units.

In selecting areas of proposed critical habitat, we typically make an effort to avoid developed areas, such as roads and buildings at NASA's Goldstone facilities, and that are unlikely to contribute to the conservation of *Astragalus jaegerianus*. However, we did not map critical habitat in sufficient detail to exclude patches of habitat within the larger areas being mapped that are unlikely to contain the primary constituent elements essential for the conservation of *A. jaegerianus*. Land within the boundaries of the mapped units upon which are located facilities, such as buildings, roads, parking lots, communication tower pads, and other paved areas, does not and will not contain any of the primary constituent elements. In addition, old mining sites where the soil profile and topography have been so altered that no native

vegetation can grow also do not and will not contain any of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Much of what is known about the specific physical and biological requirements of *Astragalus jaegerianus* is described in the Background section of this proposal and in the final listing rule. The proposed critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *Astragalus jaegerianus* throughout its range and to provide those habitat components essential for the conservation of the species. These habitat components provide for: (1) Individual and population growth, including sites for germination, pollination, reproduction, pollen and seed dispersal, and seed bank; (2) sites for the host plants that provide structural support for *A. jaegerianus*; (3) intervening areas that allow gene flow and provide connectivity or linkage within segments of the larger population; and (4) areas that provide basic requirements for growth, such as water, light, and minerals.

The conservation of *Astragalus jaegerianus* is dependent upon a number of factors, including the protection and management of existing population sites and habitat and the maintenance of normal ecological functions within these sites, including connectivity between groups of plants within close geographic proximity to facilitate gene flow among the sites by pollinator activity and dispersal of seeds. Some of the factors associated

with the observed and potential distribution of this species include the following: A portion of seeds will likely germinate if germination requirements of scarification and moisture are met within a germination time frame for the species; germination patterns likely reflect the distribution of the seed bank in the soils; and distribution patterns of standing plants may, in large part, reflect the distribution pattern of requisite climatic conditions for a particular year, while in other areas, standing plants may not be visible but persist as dormant taproots for a number of years. Including habitat surrounding the known populations outward for a distance of 0.25 mi (0.4 km) would ensure inclusion of most of the population.

Based on our knowledge to date, the primary constituent elements of critical habitat for *Astragalus jaegerianus* consist of:

(1) Shallow soils (between 3,100 and 4,200 ft (945 to 1,280 m) in elevation) derived primarily from Jurassic or Cretaceous granitic bedrock, and less frequently on soils derived from diorite or gabbroid bedrock and at one location on granitic soils overlain by scattered rhyolitic cobble, gravel, and sand.

(2) The host shrubs (between 3,100 and 4,200 ft (945 to 1,280 m) in elevation) within which *Astragalus jaegerianus* grows, most notably *Thamnosma montana*, *Ambrosia dumosa*, *Eriogonum fasciculatum* ssp. *polifolium*, *Ericameria cooperi* var. *cooperi*, *Ephedra nevadensis*, and *Salazaria mexicana* that are usually found in mixed desert shrub communities.

We selected critical habitat areas to provide for the conservation of *Astragalus jaegerianus* at the only four sites where they are known to occur. We are not proposing any critical habitat units that do not contain plants.

Special Management Considerations

Within the geographic area occupied by the species, for an area to be designated as critical habitat it must contain those physical or biological features essential to the conservation of the species that may require special management considerations or protection. The Goldstone-Brinkman unit may require special management considerations or protection due to the threats to the species and its habitat posed by invasions of non-native plants such as Sahara mustard (*Brassica tournefortii*) that may take over habitat for the species; habitat fragmentation that detrimentally affects plant-host plant (composition and structure of the desert scrub community) and plant-

pollinator interactions, leading to a decline in species reproduction and increasing susceptibility to non-native plant invasion; and vehicles that cause direct and indirect impacts, such as excessive dust, to the plant. Habitat for *Astragalus jaegerianus* in the Goldstone-Brinkman unit has been fragmented to a minor extent. We anticipate that in the future, habitat fragmentation will increase, that changes in composition and structure of the plant community may be altered by the spread of non-native plants, and that the direct and indirect effects of dust may increase. All of these threats would render the habitat less suitable for *A. jaegerianus*, and special management may be needed to address them. At this time, special management considerations under 3(5)(a) of the Act do warrant proposing this unit as critical habitat, but if circumstances change these areas may be designated in the final rule.

The Paradise unit may require special management considerations or protection due to the threats to the species and its habitat posed by invasions of non-native plants such as Sahara mustard (*Brassica tournefortii*) that may take over habitat for the species; habitat fragmentation that detrimentally affects plant-host plant (composition and structure of the desert scrub community) and plant-pollinator interactions, leading to a decline in species reproduction and increasing susceptibility to non-native plant invasion; vehicles that cause direct and indirect impacts, such as excessive dust, to the plant. Habitat for *Astragalus jaegerianus* in the Paradise unit has been fragmented to a minor extent. We anticipate that in the future, habitat fragmentation may increase, that changes in composition and structure of the plant community may be altered by the spread of non-native plants, and that the direct and indirect effects of dust may increase. All of these threats would render the habitat less suitable for *A. jaegerianus*, and special management may be needed to address them. At this time, special management considerations under 3(5)(a) of the Act do warrant proposing this unit as critical habitat, but if circumstances change these areas may be designated in the final rule.

The Coolgardie unit may require special management considerations or protection due to the threats to the species and its habitat posed by invasions of non-native plants such as Sahara mustard (*Brassica tournefortii*) that may take over habitat for the species; habitat fragmentation that detrimentally affects plant-host plant (composition and structure of the desert

scrub community) and plant-pollinator interactions, leading to a decline in species reproduction and increasing susceptibility to non-native plant invasion; vehicles that cause direct and indirect impacts, such as excessive dust, to the plant; and limited mining activities that can lead to changes in essential habitat conditions (e.g., decreases in plant cover, and increases in non-native species). Habitat for *Astragalus jaegerianus* in the Coolgardie unit has been fragmented to a moderate extent from current and historical mining and from off-road vehicle use, and non-native species have been introduced into the area. We anticipate that in the future, habitat fragmentation may increase, and that changes in composition and structure of the plant community may be altered by the continued spread of non-native plants. All of these threats would render the habitat less suitable for *A. jaegerianus*, and special management may be needed to address them. At this time, special management considerations under 3(5)(a) of the Act do warrant proposing this unit as critical habitat, but if circumstances change these areas may be designated in the final rule.

Proposed Critical Habitat Designation

The proposed critical habitat areas described below constitute our best assessment at this time of the areas needed for the species' conservation. The three areas being proposed as critical habitat are all within an area that is north of the town of Barstow in the Mojave Desert in San Bernardino County, California, are currently occupied, and contain the primary constituent elements that sustain the *Astragalus jaegerianus*.

The following general areas are proposed as critical habitat (see legal descriptions for exact critical habitat boundaries).

Unit 1: Goldstone-Brinkman

Unit 1 consists of approximately 9,906 ac (4,008 ha), with 9,502 ac (3,845 ha) of the lands managed by the Army on NTC. Of the Army land, 996 ac (403 ha) are leased to NASA (Goldstone Tracking Station). The Army is proposing to designate approximately 1,300 ac (526 ha) as the Goldstone Conservation Area. The rest of the unit consists of 211 ac (85 ha) of state land, and 193 ac (78 ha) of private land. This unit is essential because it supports two of the four populations of *Astragalus jaegerianus*—the Goldstone and Brinkman Wash—Montana Mine populations. In 2001 surveys, 555 and 1,487 individuals were observed, respectively, in these two populations.

The land within this unit supports the PCEs for the species—granitic soils and plant community that are necessary for the growth, reproduction, and establishment of *A. jaegerianus* individuals. This unit also includes an essential narrow 0.125 mi (0.2 km) corridor between the two populations that contains the appropriate granitic soils and plant community to support *A. jaegerianus*, and supports pollinators and seed dispersers between the two populations. This unit is the northeasternmost of the three units.

Unit 2: Paradise

Unit 2 consists of approximately 6,828 ac (2,763 ha). Of this, 5,755 ac (2,329 ha) is on Army lands on NTC, and approximately 466 ac (189 ha) on adjacent Federal lands managed by the Bureau of Land Management (Bureau). The Army is proposing to designate approximately 4,800 ac (1,943 ha) of this site as the East Paradise Valley Conservation Area. The Bureau is also proposing to designate an area of approximately 1,000 ac (405 ha), which includes some private inholdings, at this site as part of the East Paradise Valley Conservation Area. This unit is essential because it supports the Paradise population, only one of four populations of *Astragalus jaegerianus*; in 2001 surveys, 1,667 individuals were observed in this population. The land within this unit supports the granitic soils and plant community that are necessary for the growth, reproduction, and establishment of *A. jaegerianus* individuals. These granitic soils and plant community also provide habitat for the pollinators that visit *A. jaegerianus* flowers that results in the production of seed, habitat for seed dispersers (birds, small mammals, and large insects) that carry seed between the coppices of suitable host shrubs, and as long-term storage for the soil seedbank of *A. jaegerianus*.

Unit 3: Coolgardie

Unit 3 consists of approximately 12,788 ac (5,175 ha), primarily on Federal lands managed by the Bureau. Approximately the same amount of land (9,161 ac (3,707 ha)) is within the Bureau's proposed Coolgardie Mesa Conservation Area (CMCA) and overlaps to a great extent with the proposed Coolgardie critical habitat unit. Parcels of private land are scattered throughout this unit and total approximately 3,627 ac (1,467 ha). Some portion of these parcels most likely will be acquired by the Bureau and added to the CMCA. This unit is essential because it supports one of only four populations of *Astragalus jaegerianus*. In 2001 surveys,

2,014 plants were observed in this population. The land within this unit supports the granitic soils and plant community that are necessary for the growth, reproduction, and establishment of *A. jaegerianus* individuals; proposed critical habitat does not include the “donut hole” in the

center of the unit, which does not contain the appropriate granitic soils. These granitic soils and plant community also provide habitat for the pollinators that visit *A. jaegerianus* flowers that results in the production of seed, habitat for seed dispersers (birds, small mammals, and large insects) that

carry seed between the coppices of suitable host shrubs, and as long-term storage for the soil seedbank of *A. jaegerianus*.

The approximate areas of proposed critical habitat by land ownership are shown in Table 1.

TABLE 1.—APPROXIMATE AREAS, GIVEN IN ACRES (AC)¹ AND HECTARES (HA) OF PROPOSED CRITICAL HABITAT FOR *Astragalus jaegerianus* BY LAND OWNERSHIP

Unit name	Department of Defense lands (Federal)	Bureau of Land Management (Federal)	State lands commission	Private lands	Totals
1. Goldstone-Brinkman ...	9,502 ac (3,845 ha)	0 ac (0 ha)	211 ac (85 ha)	193 ac (78 ha)	9,906 ac (4,008 ha)
2. Paradise	5,755 ac (2,329 ha)	466 ac (189 ha)	0 ac (0 ha)	607 ac (246 ha)	6,828 ac (2,763 ha)
3. Coolgardie	0 ac (0 ha)	9,074 ac (3,672 ha)	0 ac (0 ha)	3,714 ac (1,503 ha)	12,788 ac (5,175 ha)
Totals	15,257 ac (6,174 ha).	9,627 ac (3,896 ha)	211 ac (85 ha)	4,427 ac (1,792 ha)	29,522 ac (11,947 ha)

¹ Approximate acres have been converted to hectares (1 ac = 0.4047 ha). Fractions of acres and hectares have been rounded to the nearest whole number. Totals are sums of units.

Effects of Critical Habitat Designation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, 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 designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the action agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared

according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. “Reasonable and prudent alternatives” are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency’s legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or

relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated, and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly affect critical habitat include, but are not limited to:

(1) Activities that would disturb the upper layers of soil, including disturbance of the soil crust, soil compaction, soil displacement, and soil destabilization. These activities include, but are not limited to, livestock grazing, fire management, and recreational use that would include mechanical disturbance such as would occur with tracked vehicles, heavy-wheeled vehicles, off-highway vehicles (including motorcycles), and mining activities, such as “club mining” with drywashers and sluices.

(2) Activities that appreciably degrade or destroy the native desert scrub communities, including but not limited to livestock grazing, clearing, discing,

fire management, and recreational use that would include mechanical disturbance such as would occur with tracked vehicles, heavy-wheeled vehicles, off-highway vehicles (including motorcycles), and mining activities such as "club mining" with drywashers and sluices.

(3) The application or runoff of chemical or biological agents into the air, onto the soil, or onto native vegetation, including substances such as pesticides, herbicides, fertilizers, tackifiers, obscurants, and chemical fire retardants.

Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of *Astragalus jaegerianus* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

We recognize that the proposed designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For this reason, we want to ensure that the public is aware that critical habitat designations do not signal that habitat outside the proposed designation is unimportant or may not be required for recovery. Areas outside the proposed critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act. Critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Activities on Federal lands that may affect *Astragalus jaegerianus* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act or any other activity requiring Federal action (*i.e.*, funding, authorization), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal and private lands that are not federally funded, authorized, or permitted, do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of *Astragalus jaegerianus* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

Designation of critical habitat could affect the following agencies and/or actions:

(1) Military-related and construction activities of the Army on its lands or lands under its jurisdiction, including those lands leased to NASA;

(2) Activities of the Bureau of Land Management on its lands or lands under its jurisdiction;

(3) The release or authorization of release of biological control agents by Federal agencies, including the Bureau of Land Management, the Army, and the U.S. Department of Agriculture; and

(4) Habitat restoration projects on private lands receiving funding from Federal agencies, such as from the Natural Resources Conservation Service.

As discussed previously in this rule, we are consulting with both the Army and the Bureau on activities that are being proposed on their lands. We are consulting with the Army on its proposed addition of training lands on NTC (Charis 2003). We are also consulting with the Bureau as the lead Federal agency for the proposed West Mojave Plan (Bureau 2003).

Where federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans submitted by the applicant to secure an incidental take permit, pursuant to section 10(a)(1)(B) of the Act, would be subject to the section 7 consultation process. The Superior-Cronese Critical Habitat Unit for the desert tortoise (*Gopherus agassizii*), a species that is listed as threatened under the Act, overlaps in range with *Astragalus jaegerianus* in a portion of the Brinkman-Montana, Paradise, and Coolgardie populations of the species. Although we anticipate that most of the activities occurring on private lands within the range of *A. jaegerianus* will eventually be included under the umbrella of the HCP to be prepared by the County of San Bernardino, there may be activities proposed for private lands that either need to be completed prior to the approval of the WMP's HCP,

or there may be a proposed activity that is not covered by the HCP, and therefore may require a separate habitat conservation plan.

If you have questions regarding whether specific activities will likely constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (*see ADDRESSES* section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232 (telephone 503/231-6131; facsimile 503/231-6243).

Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act

We have not excluded any lands from this proposed designation pursuant to sections 3(5)(A), 4(a)(3), and 4(b)(2) of the Act. Although the Bureau has published the draft EIR/S for the West Mojave Plan and we anticipate the final plan may be published in fall 2004, the attendant draft HCP has yet to be prepared. The proposed designation includes a portion of Fort Irwin, an Army installation. The Army has proposed to establish two conservation areas and an additional area that would be subject to light use (*i.e.*, foot traffic only); however, the integrated natural resource management plan for this portion of the installation has not been finalized. We expect to work with the Army on the development of the integrated natural resource management plan for Fort Irwin in the coming months. We may consider excluding these lands from critical habitat in the final designation pursuant to these sections of the Act.

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for the *Astragalus jaegerianus* is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at <http://ventura.fws.gov>, or by contacting the Ventura Fish and Wildlife Office directly (*see ADDRESSES* section).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of at least

three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received within the 60-day comment period on this proposed rule as we prepare our final rulemaking. Accordingly, the final determination may differ from this proposal.

Public Hearings

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (*see ADDRESSES* section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following—(1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the notice? (5) What else could we do to make this proposed rule easier to understand?

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

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order (EO) 12866, this action was submitted to the Office of Management and Budget (OMB); however they declined to review the proposed rule. We will submit the final rule to OMB for their review. OMB makes the final determination under Executive Order 12866.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. SBREFA also amended the Regulatory Flexibility Act to require a certification statement. Based on the information that is available to us at this time, we are certifying that this proposed designation of critical habitat will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration (SBA), small entities include small organizations, including any independent nonprofit organization that is not dominant in its field, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. The SBA defines small businesses categorically and has provided standards for determining what constitutes a small business at 13 CFR parts 121–201 (also found at <http://www.sba.gov/size/>), which the Regulatory Flexibility Act requires all Federal agencies to follow. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under

this rule as well as the types of project modifications that may result.

The Regulatory Flexibility Act does not explicitly define either “substantial number” or “significant economic impact.” Consequently, to assess whether a “substantial number” of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a “significant economic impact.” Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the Regulatory Flexibility Act. (*Mid-Tex Electric Co-Op, Inc. v. F.E.R.C.* and *American Trucking Associations, Inc. v. EPA*).

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation if they lack a Federal nexus. In areas where the species is present, Federal agencies funding, permitting, or implementing activities are already required to avoid jeopardizing the continued existence of the *Astragalus jaegerianus* through consultation with us under section 7 of the Act. If this critical habitat designation is finalized, Federal agencies must also consult with us to ensure that their activities do not destroy or adversely modify designated critical habitat.

Should a federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat. In our experience, the vast majority of such projects can be successfully implemented with at most minor changes that avoid significant economic impacts to project proponents.

In the case of *Astragalus jaegerianus*, our review of the consultation history for this plant and other information currently available to us indicates that the proposed designation of critical habitat is not likely to have a significant impact on any small entities or classes of small entities. We could identify no small entities that would be affected by this designation. Therefore, we are certifying that the proposed designation of critical habitat for *Astragalus*

jaegerianus will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. This determination will be revisited after the close of the comment period and revised, if necessary, in the final rule.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation and will make that analysis available for public review and comment before finalizing this designation. However, court deadlines require us to publish this proposed rule before the economic analysis can be completed.

This discussion is based upon the information regarding potential economic impact that is available to us at this time. This assessment of economic effects may be modified prior to final rulemaking based upon development and review of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and Executive Order 12866. This analysis is for the purpose of compliance with the Regulatory Flexibility Act and does not reflect our position on the type of economic analysis required by *New Mexico Cattle Growers Assn. v. U.S. Fish & Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the draft economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of \$100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for the *Astragalus jaegerianus*, as described above, is not expected to significantly affect energy supplies, distribution, or use. There are no transmission power lines identified on the proposed designated habitat, or energy extraction activities (Bureau of

Land Management 1980). Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings.

(a) Under the Unfunded Mandates Reform Act, if a rule will produce a Federal mandate of \$100 million or greater in any one year, a statement must be prepared and a summary of that statement included in the rulemaking. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). If the economic analysis being prepared to analyze the economic impacts of this designation indicates that the rule will produce a Federal mandate of \$100 million or more in any year, a statement will be prepared and this proposed rule will be supplemented with a summary of that statement published in the notice announcing availability of the proposed economic analysis.

(b) This proposed rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. State lands constitute a very small amount, only 0.7%, of the total proposed designation. Given the distribution of this species, small governments will not be uniquely affected by this proposed rule. Small governments will not be affected at all unless they propose an action requiring Federal funds, permits, or other authorization. Any such activity will require that the involved Federal agency ensure that the action is not likely to adversely modify or destroy designated critical habitat. However, as discussed above, Federal agencies are currently required to ensure that any such activity is not likely to jeopardize the species, and no further regulatory impacts from this proposed designation of critical habitat are anticipated. We will examine any potential impacts to small governments in our economic analysis, and revise our determination if necessary.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference With Constitutionally

Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for *Astragalus jaegerianus*. This preliminary assessment concludes that this proposed rule does not pose significant takings implications. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by *Astragalus jaegerianus* would have little incremental impact on State and local governments and their activities. This is because the proposed critical habitat occurs to a great extent on Federal lands managed by the Department of Defense and the Bureau of Land Management, and less than 2 percent occurs on private lands that would involve State and local agencies.

The proposed designation of critical habitat may have some benefit to State and local governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning rather than waiting for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Astragalus jaegerianus*.

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

This proposed rule does not contain new or revised information collection for which OMB approval is required under the Paperwork Reduction Act.

Information collections associated with certain Act permits are covered by an existing OMB approval and are assigned clearance No. 1018-0094, Forms 3-200-55 and 3-200-56, with an expiration date of July 31, 2004. Detailed information for Act documentation appears at 50 CFR part 17. This rule will not impose recordkeeping 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.

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. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action

significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951) and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a Government-to-Government basis. We have determined that there are no Tribal lands essential for the conservation of *Astragalus jaegerianus*. Therefore, designation of critical habitat for *A. jaegerianus* has not been proposed on Tribal lands.

References Cited

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

Author

The primary author of this proposed rule is Constance Rutherford, Ventura Fish and Wildlife Office, U.S. Fish and

Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (805/644-1766).

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. In § 17.12(h), revise the entry for "*Astragalus jaegerianus*" under "FLOWERING PLANTS," to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	*
<i>Astragalus jaegerianus</i> .	Lane Mountain milk-vetch.	U.S.A. (CA)	Fabaceae—Pea	E	647	17.96(a)	NA
*	*	*	*	*	*	*	*

3. In § 17.96(a), add critical habitat for *Astragalus jaegerianus*, in alphabetical order under Family Fabaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) Flowering plants.

* * * * *

Family Fabaceae: *Astragalus jaegerianus* (Lane Mountain milk-vetch)

(1) Critical habitat units are depicted for San Bernardino County, California, on the maps below.

(2) Critical habitat consists of the mixed desert scrub community within the range of *Astragalus jaegerianus* that is characterized by the following primary constituent elements:

(i) Shallow soils derived primarily from Jurassic or Cretaceous granitic bedrock, and less frequently soils

derived from diorite or gabbroid bedrock and at one location granitic soils overlain by scattered rhyolitic cobble, gravel, and sand.

(ii) The highly diverse mixed desert scrub community that includes the host shrubs within which *Astragalus jaegerianus* grows, most notably: *Thamnosma montana*, *Ambrosia dumosa*, *Eriogonum fasciculatum* ssp. *polifolium*, *Ericameria cooperi* var. *cooperi*, *Ephedra nevadensis*, and *Salazaria mexicana*.

(3) Critical Habitat Map Units.

(i) Map Unit 1: Goldstone-Brinkman. San Bernardino County, California. From USGS 1:24,000 quadrangle maps Paradise Range and Williams Well. Lands bounded by UTM zone 11 NAD27 coordinates (E,N): 511200; 3897700; 511400; 3898100; 511600; 3898400; 511800; 3898600; 515900; 3898600; 516400; 3898500; 516800; 3898400;

516900; 3898300; 517300; 3898500; 517500; 3898600; 517600; 3898700; 517500; 3899100; 517500; 3900100; 517600; 3900200; 518400; 3900600; 519000; 3900600; 519600; 3900500; 520000; 3900300; 520200; 3900100; 521400; 3898700; 521500; 3898500; 521500; 3898300; 521400; 3897900; 521300; 3897800; 521100; 3897700; 519400; 3897700; 518600; 3897800; 518400; 3897600; 518100; 3897400; 517900; 3897300; 517800; 3897100; 517300; 3896600; 517400; 3896500; 517700; 3895900; 517700; 3895300; 517600; 3894700; 517500; 3894500; 517400; 3894400; 517000; 3894100; 516900; 3894000; 517300; 3893800; 517800; 3893500; 518100; 3893300; 518200; 3893200; 518200; 3892900; 518000; 3892600; 517500; 3892100; 517300; 3892100; 517100; 3892200; 516800; 3892400; 515800; 3893100; 515600; 3893300; 515500; 3893200;

514000; 3892200: 513600; 3892200:
 512900; 3892600: 512500; 3893000:
 512400; 3893200: 512500; 3893800:
 512600; 3894400: 512700; 3894900:
 512800; 3895000: 514400; 3896100:
 514600; 3896200: 514700; 3896200:
 515000; 3896100: 515100; 3896600:
 512800; 3896500: 511900; 3896600:
 511700; 3896700: 511400; 3897100:
 511200; 3897400: returning to 511200;
 3897700.

(ii) Map Unit 2: Paradise.

San Bernardino County, California.
 From USGS 1:24,000 quadrangle map
 Williams Well. Lands bounded by UTM
 zone 11 NAD27 coordinates (E,N):
 504000; 3895000: 504400; 3895200:
 505100; 3895500: 505800; 3895500:
 506200; 3895400: 506600; 3895300:
 506800; 3895100: 507500; 3893900:
 507600; 3894000: 508400; 3894700:
 508800; 3895000: 509300; 3895400:
 509500; 3895500: 509900; 3895500:
 510000; 3895400: 510200; 3895100:
 510600; 3894400: 510700; 3894200:
 510800; 3893900: 510900; 3893500:
 510900; 3893000: 510800; 3892500:
 510500; 3891200: 510400; 3891000:

510200; 3890800: 509700; 3890500:
 507800; 3889400: 507600; 3889300:
 507500; 3889300: 507100; 3889400:
 506700; 3889800: 506400; 3890300:
 506200; 3891000: 506000; 3891800:
 505900; 3892200: 505600; 3892400:
 504900; 3892900: 504500; 3893300:
 504300; 3893600: 503900; 3894300:
 503900; 3894800: returning to 504000;
 3895000.

(iii) Map Unit 3: Coolgardie.

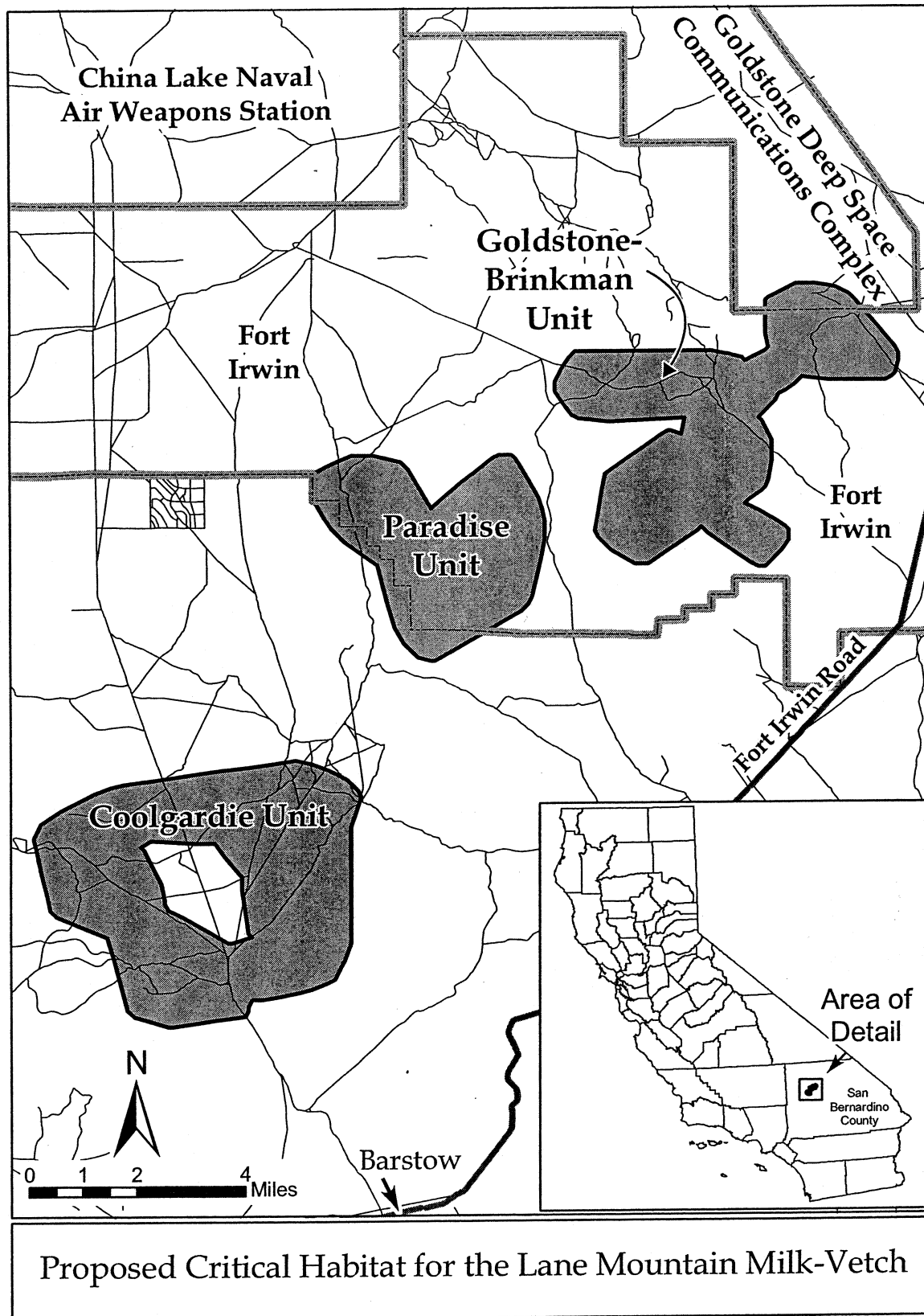
San Bernardino County, California.
 From USGS 1:24,000 quadrangle maps
 Lane Mountain and Mud Hills. Lands
 bounded by UTM zone 11 NAD27
 coordinates (E,N): 495800; 3884400:
 496400; 3884800: 497200; 3885200:
 497400; 3885300: 497900; 3885500:
 498300; 3885600: 499100; 3885700:
 500500; 3885900: 501200; 3886000:
 502000; 3886100: 502700; 3886200:
 503400; 3886300: 503900; 3886200:
 504400; 3886000: 504800; 3885800:
 505000; 3885700: 505100; 3885600:
 505300; 3885400: 505400; 3885200:
 505100; 3884300: 505100; 3880800:
 504900; 3880300: 504800; 3880100:
 504600; 3879700: 504400; 3879600:

503900; 3879400: 503500; 3879300:
 503000; 3879200: 502400; 3879100:
 502100; 3879100: 502000; 3878900:
 502000; 3878800: 501900; 3878600:
 501100; 3878500: 500400; 3878400:
 499700; 3878300: 499600; 3878300:
 499300; 3878400: 498600; 3878600:
 498400; 3878800: 498100; 3879900:
 498000; 3880300: 497800; 3881000:
 496300; 3881600: 496100; 3881800:
 496000; 3882200: 495800; 3883000:
 495700; 3883500: 495600; 3883900:
 495600; 3884000: returning to 495800;
 3884400.

Excluding: 498800; 3883700: 498900;
 3883600: 499000; 3883400: 499400;
 3882600: 499500; 3882100: 499500;
 3882000: 499600; 3881800: 500000;
 3881600: 500900; 3881100: 501400;
 3880800: 501500; 3880800: 502100;
 3881000: 502000; 3881100: 501800;
 3882400: 501800; 3882800: 501700;
 3882900: 501300; 3883400: 501000;
 3883800: 500500; 3883800: 499100;
 3883900: returning to 498800; 3883700.

(iv) **Note:** Maps for Units 1, 2, and 3
 follow:

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Dated: March 30, 2004.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04-7695 Filed 4-5-04; 8:45 am]

BILLING CODE 4310-55-C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AT61

Endangered and Threatened Wildlife and Plants; Special Regulations for the Western Distinct Population Segment of the Gray Wolf

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing.

We, the U.S. Fish and Wildlife Service (Service), are conducting public hearings on a proposed special rule for nonessential experimental populations of the western distinct population segment of the gray wolf (*Canis lupis*) in Idaho and Montana. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this comment period, and will be fully considered in the final rule.

DATES: Comments must be received by May 10, 2004, to receive consideration. (See "Public Hearings" section for time and location of the public hearing).

ADDRESSES: Comments on the proposed rule may be sent to Western Gray Wolf Recovery Coordinator, U.S. Fish and Wildlife Service, 100 N. Park, #320, Helena, Montana 59601, or by email to WesternGrayWolf@fws.gov. You also may hand-deliver written comments to

our Montana Ecological Services Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Ed Bangs, Gray Wolf Recovery Coordinator, at the above address or telephone (406) 449-5225.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2003, we published in the **Federal Register** (68 FR 15879) an advance notice of proposed rulemaking that announced our intention to propose rulemaking on nonessential experimental populations for the western distinct population segment of the gray wolf. On March 9, 2004, we published a proposed rule in the **Federal Register** (69 FR 10956) for these nonessential experimental populations and solicited public comments. Please refer to the proposed rule for background information, a summary of previous Federal actions, and provisions of the special regulations. We are now announcing public hearings to be held on this proposed rule.

Public Comments Solicited

We intend that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. In some circumstances, we will withhold a respondent's identity from the rulemaking record, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comments. However, we will not

consider anonymous comments. We will make all submissions from organizations or businesses available for public inspection in their entirety (see **ADDRESSES** section).

Public Hearings

In our March 9, 2004, proposed rule, we stated our intention to hold public hearings. Therefore, we will hold the following hearings:

Public Hearings

1. Helena, Montana—April 19, 2004, at the Colonial Hotel, 2301 Colonial Drive from 6 p.m. to 9 p.m.

2. Boise, Idaho—April 20, 2004, at The Grove Hotel, Evergreen Room, 245 South Capitol Blvd., from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m.

Anyone wishing to make an oral comment or statement for the record at the public hearing listed above is encouraged (but not required) to also provide a written copy of the statement and present it to us at the hearing. Oral and written statements receive equal consideration. In the event there is a large attendance, the time allotted for oral statements may be limited.

Author

The primary author of this notice is Sharon Rose, External Affairs Officer, Denver Regional Office, telephone 303-236-4580.

Authority

Authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 30, 2004.

Mary G. Henry,

Regional Director, Denver, Colorado.

[FR Doc. 04-7707 Filed 4-2-04; 11:22 am]

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