interested in commenting must do so at this time.

DATES: Comments on this rulemaking must be received on or before September 4, 2003. All comments should be submitted in writing or electronically according to the directions below in the **SUPPLEMENTARY INFORMATION** section.

Public Hearing. Commenters may request a public hearing no later than August 19, 2003. Commenters requesting a public hearing should specify the basis for their request. If EPA determines that there is sufficient reason to hold a public hearing, it will be held on September 8, 2003, at 10 a.m. Requests to present oral testimony must be made by August 25, 2003. Persons interested in requesting a hearing, attending a hearing, or presenting oral testimony at a hearing should call Mr. David Beck at (919) 541–5421.

ADDRESSES: To make comments by mail, send (two) 2 copies of your comments to the Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. A–2002–0072. Comments also may be submitted electronically, or through hand delivery/courier. Follow the detailed instructions as provided in I.C. of the **SUPPLEMENTARY INFORMATION** section in the related direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register**.

If a public hearing is held, it will take place at the Big Island Elementary School, 1114 Schooldays Road, Big Island, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. David Beck, Office of Environmental Policy Innovation (E–143–02), U.S. EPA, Research Triangle Park, NC 27711. Mr. Beck can be reached at (919) 541–5421 (or by e-mail at: *beck.david@epa.gov*). Further information on today's action may also be obtained on the World Wide Web at *http://www.epa.gov/projectxl/.*

SUPPLEMENTARY INFORMATION: This document concerns an ''Amendment to Project XL Site-Specific Rulemaking for Georgia-Pacific Corporation's Facility in Big Island, Virginia.'' For further information, please see the related direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: July 28, 2003.

Marianne L. Horinko,

Acting Administrator.

[FR Doc. 03–19920 Filed 8–4–03; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI77

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Astragalus magdalenae* var. *peirsonii* (Peirson's milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for the federally threatened *Astragalus magdalenae* var. *peirsonii* (Peirson's milk-vetch). We propose to designate a total of approximately 52,780 acres (ac) (21,359 hectares (ha)) of critical habitat in Imperial 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 the economic and other relevant impacts of specifying any 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 Ass'n* 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 public comment periods.

DATES: We will accept comments until October 6, 2003. Public hearing requests must be received by September 19, 2003.

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, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, CA 92009.

2. You may hand-deliver written comments and information to our Carlsbad Fish and Wildlife Office, at the above address, or fax your comments to 760–731–9618.

3. You may send your comments by electronic mail (e-mail) to *FW1PMV@r1.fws.gov.* For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' section.

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: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Service (telephone (760) 431–9440; facsimile (760) 431–9618).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

It is our intent that any final action resulting from this proposal will be as accurate as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Based on public comment, in developing the final rule we may find that areas proposed are not essential, appropriate for exclusion under section 4(b)(2), or not appropriate for exclusion, in which case, they would be made part of the final designation. We particularly seek comments concerning:

(1) The reasons why any areas should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species resulting from the designation;

(2) Specific information on the amount and distribution of *Astragalus magdalenae* var. *peirsonii* and its habitat, and which habitat or habitat components are essential to the conservation of this species and why;

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

(4) Any foreseeable economic or other potential impacts resulting from the

proposed designation, in particular, any impacts on small entities;

(5) Economic and other values associated with designating critical habitat for *Astragalus magdalenae* var. *peirsonii* such as those derived from non-consumptive uses (*e.g.*, hiking, camping, photography, improved air quality, increased soil retention, and ''existence values''); 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). Please submit electronic comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: RIN1018–AI77'' 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 Carlsbad Fish and Wildlife Office at phone number 760–431–9440. Please note that the e-mail address ''*FW1PMV@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 address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Background

We listed *Astragalus magdalenae* var. *peirsonii* as threatened on October 6, 1998 (63 FR 53596) due to threats of increasing habitat loss from Off-Highway Vehicle (OHV) use and associated recreational development, destruction of plants, and lack of protection afforded the plant under State law. 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.

The current name, *Astragalus magdalenae* var. *peirsonii* (Munz and Mc Burney) Barneby (Barneby 1958), is accepted in both systematic (Barneby 1964) and floristic treatments (Barneby 1959, Munz 1974, and Spellenberg 1993). Surveys conducted in the Borrego Valley, have failed to document a historical reference to an occurrence of *Astragalus magdalenae* var. *peirsonii* (Bureau of Land Management (BLM) 2001); consequently this population is thought to be extirpated. A collection from the Yuma Dunes of Arizona thought to represent *A. m.* var. *peirsonii* was found to be misidentified. In Mexico, *A. m.* var. *peirsonii* is known from the Gran Desierto of northwestern Sonora (Felger 2000) and from northeastern Estado de Baja California (Barneby 1959, 1965; Spellenberg 1993). Currently, the only known population of *A. m.* var. *peirsonii* remaining in the United States is located in the Algodones Dunes of Imperial County, California. This dune field is one of the largest in the United States and one of the most popular for OHV use.

Astragalus magdalenae var. *peirsonii* is a stout, short-lived perennial member of the Fabaceae (Legume Family). Plants develop extremely long tap roots (Barneby 1964) that penetrate deeply to the more moist sand and anchor the plants in the shifting dunes. The root crown is often exposed by wind action moving the sand away from the base of the plants. The flowers are arranged in 10 to 17 flowered racemes. The inflated fruits are large and contain 11 to 16 large flattened black seeds—among the largest seeds of any Astragalus in North America. Seeds are either dispersed locally by falling out of partly opened fruits on the parent plant salt-shaker style or by their release from fruits blown across the sand after falling from the parent plant. Seeds require no pre-germination treatment to induce germination, but show increased germination success when scarified (outer cover is broken) (Romspert and Burk 1979; Porter *in litt.* 2002). Dispersed seeds that do not germinate during the subsequent growing season become part of the seed bank (Given 1994). In laboratory studies, seeds germinated more readily at lower and intermediate temperatures of 59 to 77 degrees Fahrenheit (15 to 25 degrees Celsius) in the cooler fall and winter months as might be expected (Romspert and Burk 1979).

Astragalus magdalenae var. *peirsonii* seedlings reportedly mature rapidly, and although perennial, some plants may bear fruit within several months of germination (Barneby 1964; Romspert and Burk 1979). Romspert and Burk (1979) noted that older plants were the primary seed producers, and plants that become reproductive in the first season do not make significant contributions to the seedbank. It is therefore important that plants survive for more than 1 year in order to replenish the existing seedbank.

Astragalus magdalenae var. *peirsonii* exhibits temporal variability in plant numbers apparently associated with annual precipitation patterns. In dune-wide surveys conducted in 1997, 1998, 1999, and 2000, the species was most abundant in 1998, the highest rainfall year, and least abundant in 2000, the lowest rainfall year (BLM 2001). Based on current understanding of the species' life history, sufficient rain in conjunction with wetter-than-average fall weather appears to trigger significant germination events. Seedlings may be generally present in suitable habitat throughout the dunes, especially during above-normal precipitation years. In intervening drier years, plant numbers decrease as individuals die and are not replaced by new seedlings. The species likely depends on the production of seeds in the wetter years and the persistence of the seed banks until appropriate conditions for production and germination occur. Further research and modeling are necessary to better understand the dynamics of this system and how the species may be responding to natural and man-made disturbances within its range.

Astragalus magdalenae var. *peirsonii* occurs on open sand dunes in a vegetation community referred to as psammophytic scrub (Westec 1977; BLM 2000). Desert psammophytic scrub is described as being distinguished by a rather large number of plants restricted entirely or largely to an active dune area (Thorne 1982). Desert psammophytic scrub transitions into the sandier phases of creosote bush scrub, which is generally only present at the lower, more stabilized margins of the dunes (Thorne 1982). *Astragalus magdalenae* var. *peirsonii, Helianthus niveus* ssp.

tephrodes (Algodones Dunes sunflower), *Croton wigginsii* (Wiggins' croton), *Palafoxia arida* ssp. *gigantea* (giant Spanish needle), *Pholisma* (as Ammobroma) *sonorae* (sand food), *Ephedra trifurca* (three-forked ephedra), and *Eriogonum deserticola* (desert eriogonum), are restricted desert psammophytic scrub taxa in the Algodones Dunes (Thorne 1982) while the same author included *Astragalus lentiginosus* var. *borreganus* (Borrego milk-vetch), *Dicorea canescens* (dune bugseed), *Petalonyx thurberi* (sandpaper plant), and *Tiquilia* species as more widely distributed species found off the dunes. Many of these taxa are also found in association with *A. m.* var. *peirsonii* in the Gran Desierto of Sonora, Mexico (Felger 2000). *Astragalus magdalenae* var. *peirsonii* is found on deep, active dunes generally under 20 degrees slope. Usually, one or more of the other psammophytic scrub taxa (Thorne 1982) are also found with *A. m.* var. *peirsonii.* Creosote bush scrub is rarely found in deep sand dunes, but may encroach in adjacent areas especially where the base soil is exposed.

The current known geographical range of *Astragalus magdalenae* var. *peirsonii* in the United States is limited to a narrow band in the central portion of the Algodones Dunes of Imperial County, California. This band runs parallel to the active, linear dunes on the western edge of the dune field in a northwest to southeast direction. The band is between these active linear dunes on the west and transverse ridge dunes to the east. The dunes in this band are composed of a series of transitional crescentic ridges (Muhs *et al.* 1995). Historically *A. m.* var. *peirsonii* was found in Borrego Valley, San Diego County (Barneby 1964). In Mexico, *A. m.* var. *peirsonii* occurs in northeastern Estado de Baja California (Barneby 1959, 1964; Westec 1977; Spellenberg 1993), and in the Gran Desierto of Sonora (Felger 2000).

The Algodones Dunes are one of the largest dune fields in North America. The Algodones Dunes are often referred to as the Imperial Sand Dunes, a designation derived from their inclusion in the Imperial Sand Dunes Recreation Area (ISDRA) established by the BLM. Virtually all lands in the Algodones Dunes are managed by BLM. However, the State of California and private parties own some small inholdings in the dune area (see Table 1).

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

Unit	Federal	State	Private	Total
Algodones Dunes	50,441 ac (20,413 ha)	833 ac (337 ha)	1,506 ac (609 ha)	52,780 ac. (21,359 ha).

The dunes extend about 40 miles (mi) (64 kilometers (km)), trending from northwest to southeast (Norris and Norris 1961). Winds from the northwest are prevalent in the winter, while in the summer the winds are from the southeast (Romspert and Burk 1979). This regime is likely responsible for the dune-building (Norris and Norris 1961) and fruit dispersal that result in the persistence of the plants in the dune system. The dunes are generally considered to have formed from sands from Lake Cahuilla that historically occupied the Cahuilla Basin. The western boundary of the dunes is marked by a series of parallel, longitudinal generally southeast trending ridges. The northern third of the dunes is narrow, about 2 mi (3 km) wide, and increases in elevation from 200 to 300 feet (ft) (60–91 meters (m)) in the northern portion to 300 to 400 ft (91 to 121 m) in the southern portion north of Highway 78. Areas in the central portion of the dunes reach an elevation 500 ft (152 m) south of State Highway 78, but reach elevations of only 200 ft (60 m) for most areas just north of Interstate 8. The central portion of the dunes is wider, about 5 mi (8 km), and is characterized by deep bowls (hollows among the dunes) and slip faces (areas so steep that the loose sand naturally cascades downward) that run transverse to the primary ridge line (Norris and Norris 1961). The area south of Interstate 8 is generally characterized by lower elevation, under 300 ft (91 m), dunes.

The Algodones Dunes are one of the driest and hottest regions in the United States. Romspert and Burk (1979) reported average yearly precipitation between 1941–1970 was 2.6 in (67.8 mm). The rainfall is often described as scattered or patchy. Rainfall amounts differ from place to place and from year to year with areas to the northwest being generally dryer than those to the southeast (BLM 2001). A soil survey for the Imperial Valley area of Imperial County (Zimmerman 1981) did not include the areas east of the Coachella Canal but did depict a few adjacent portions of the Algodones Dunes as Rositas fine sand with 9 to 30 percent slopes. Rositas fine sand are described as deep, somewhat excessively drained, sloping soils formed in wind-blown sands of diverse origin. Dean (1978) describes the sand as quartz with a mean grain size of 0.006 in (0.17 mm). Norris and Norris (1961) report that the dunes contain 60 to 70 percent quartz and 30 to 40 percent feldspar sand. Further analysis of the sands of the Algodones Dunes found its source was likely sediment from the Colorado River that flowed into the Cahuilla Basin (Muhs *et al.* 1995)

Destruction of plants and modification of habitat associated with OHV activity is considered the primary threat to *Astragalus magdalenae* var. *peirsonii.* Vehicles may have a direct impact on the plants by crushing and killing them or reducing their reproductive output. Vehicles can alter dune structure by altering hydrological traits of the dune, cover standing plants with encroaching sand, or expose standing plants by causing sand to fall away from the plants. Willoughby (BLM 2001), however, concluded that healthy populations of *A. m.* var. *peirsonii* persist in OHV ''open areas'' in the Algodones Dunes and that populations in both ''open'' and ''closed'' areas respond to precipitation patterns. This likely results from the observation that OHV use does not tend to encroach on habitat of the plants in more distant regions of the open area away from concentrated OHV staging sites (BLM 2001). Significant impacts from OHV use on *A. m.* var. *peirsonii* have been observed at and near OHV staging areas and have been previously documented (WESTEC 1977; ECOS 1990; BLM 2000). Since the species' listing, recreational use has steadily increased in the Algodones Dunes.

Another threat is herbivory by seed weevils, in the family Bruchidae, which contributes to the mortality of seeds and reduces seed crop for *Astragalus magdalenae* var. *peirsonii* (Romspert and Burk 1979). Fruits collected in April and stored in a bottle continued to release these seed weevils into

October (Romspert and Burk 1979). However, the overall impact of seed weevils on the reproductive output of *A. m.* var. *peirsonii* is not known at this time. Weevils were noted on nearly all of the *A. m.* var. *peirsonii* plants encountered in 2003 by Porter (Porter, *in litt.* 2003). Herbivory of leaves, leaflets, and stem tips by rodents was also noted by Porter (*in litt.* 2002a; *in litt.* 2003).

We have not yet developed a recovery plan or a conservation strategy for *Astragalus magdalenae* var. *peirsonii.* Based on our current understanding of the species' biology, the primary conservation needs include: maintenance of the major occurrences of *A. m.* var. *peirsonii* to conserve genetic diversity; management of the species' habitat to prevent catastrophic population declines; and collection of additional information concerning recreational use-patterns in the Algodones Dunes, the direct and indirect effects of OHV use on this species, and biological factors affecting milk-vetch demographics.

Previous Federal Action

The final rule listing *A. m.* var. *peirsonii* as threatened was published in the **Federal Register** on October 6, 1998 (63 FR 53596). At the time we listed the plant we determined that designation of critical habitat was not prudent based on concerns about potential, deliberate acts of vandalism that could result from such a designation.

On October 25, 2001, we received a petition to delist *Astragalus magdalenae* var. *peirsonii,* dated October 24, 2001, from David P. Hubbard, Ted. J. Griswold, and Philip J. Giacinti, Jr. of Procopio, Cory, Hargreaves & Savitch LLP on behalf of the American Sand Association (ASA), San Diego Off-Road Coalition (SDO–RC), and Off-Road Business Association (O–RBA). On November 20, 2001, we sent a letter to David P. Hubbard of Procopio, Cory, Hargreaves & Savitch LLP acknowledging receipt of their petition. The Service is in the process of making the 90-day finding on the petition.

On November 15, 2001, the Center for Biological Diversity and California Native Plant Society filed a lawsuit in the U.S. District Court for the Southern District of California challenging our determination not to designate critical habitat for eight desert plants, including *Astragalus magdalenae* var. *peirsonii (Center for Biological Diversity et al.* v. *Norton,* No. 01 CV 2101). A second lawsuit also asserting the same challenge was filed on November 21, 2001, by the *Building Industry Legal Defense Fund* v. *Norton,* No. 01 CV 2145). Following the filing of these suits, the ASA, California Off-Road Vehicle Association, American Motorcycle Association, Inc.—District 37, the SDO–RC, and the O–RBA filed a motion to intervene. The motion was granted by the Court but limited the interveners' participation to resolution of an appropriate timeline for reconsideration of the critical habitat determination for *A. m.* var. *peirsonii.* On July 1, 2002, the court ordered the Service to complete a review of the prudency determination and, if prudent, to propose critical habitat for the plant on or before July 28, 2003.

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the ESA, we have found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. Our 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. We believe 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 306 species or 25 percent of the 1,211 listed species in the United States under our jurisdiction have designated critical habitat. We address the habitat needs of all 1,211 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. We believe 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 us 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 us with little ability to prioritize our 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, our 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 us 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.

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 which 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 unoccupied 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, 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, 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 these specific areas in designated critical habitat. Likewise, if we believe, based on an analysis, 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 already being provided, so those areas do not meet the second provision of the definition and are also not proposed as critical habitat.

Further, section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data available after taking into consideration the economic impact, 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, if we determine the benefits of excluding an area from critical habitat outweigh the benefits of including the area in critical habitat, provided the action of excluding the area will not result in the extinction of the species.

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 which are proposed for designation as critical habitat and those areas which are subsequently finalized (*i.e.*, designated).

Prudency Determination

Section 4(a)(3) of the Act and its implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is listed as endangered or threatened. Our regulations at 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. In our October 6, 1998, final rule (63 FR 53596), we determined that designation of critical habitat would provide little conservation benefit over that provided by listing. We determined that designation of critical habitat was not prudent based on the increased threat of vandalism and stated that designation of critical habitat could lead to acts of vandalism, may provoke deliberate incidents of vandalism by OHV users and may serve to encourage acts of vandalism.

However, in the past few years, several of our determinations that the designation of critical habitat would not be prudent have been overturned by court decisions. For example, in *Conservation Council for Hawaii* v. *Babbitt,* the United States District Court for the District of Hawaii ruled that the Service could not rely on the ''increased threat'' rationale for a ''not prudent'' determination without specific evidence of the threat to the species at issue (2 F. Supp. 2d 1280 [D. Hawaii 1998]). Additionally, in *Natural Resources Defense Council* v. *U.S. Department of the Interior,* the United States Court of Appeals for the Ninth Circuit ruled that the Service must balance, in order to invoke the ''increased threat rationale,'' the threat against the benefit to the species of designating critical habitat (113 F. 3d 1121, 1125 [9th Cir. 1997]).

We continue to be concerned that Peirson's milk-vetch is vulnerable to impacts from OHV use in the area, vandalism, or disturbance of their habitat and that these threats might be increased by the designation of critical habitat, publication of critical habitat maps, and further dissemination of location and habitat information. The periodically low numbers and restricted range of this plant taxon make it vulnerable. At this time, we do have some limited specific evidence for vandalism, and other unauthorized human disturbance specific to this plant and its habitat.

The courts also have ruled that, in the absence of a finding that the designation of critical habitat would increase threats to a species, the existence of another type of protection, even if it offers potentially greater protection to the species, does not justify a ''not prudent'' finding (*Conservation Council for Hawaii* v. *Babbitt* 2 F. Supp. 2d 1280). We are already working with Federal and State agencies and organizations in carrying out conservation activities for this plant and conducting surveys for additional occurrences of the species and to assess habitat conditions. These entities are fully aware of the distribution, status, and habitat requirements for this plant.

We have reconsidered our evaluation of the threats posed by vandalism in the prudency determination. We have determined that the threats to Peirson's milk-vetch from specific instances of vandalism we previously identified are limited, if not speculative. Accordingly, we withdraw our previous determination that the designation of critical habitat is not prudent for Peirson's milk-vetch. Therefore, we determine that the designation of critical habitat is prudent for Peirson's milk-vetch. At this time, we have sufficient information necessary to identify specific areas as essential to the conservation of this plant taxon and are therefore proposing critical habitat (*see* ''Methods and Analysis used to Identify Proposed Critical Habitat'' section below for a discussion of information used in our reevaluation).

Methods

As required by section 4(b)(2) of the Act and regulations at 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 conservation of *Astragalus magdalenae* var. *peirsonii.* This included information from our own documents on this plant and related taxa, available information that pertains to the biology and habitat requirements of this taxon, including data from research and survey observations, such as Westec (1977), BLM surveys conducted from 1998 to 2002 primarily summarized by Willoughby (BLM 2000, 2001), Thomas Olsen Associates (TOA) (2001), and Phillips and Kennedy (2002); the California Natural Diversity Database (2003); peer-reviewed journal articles and book excerpts regarding *A. m.* var. *peirsonii,* similar species, or more generalized issues of conservation biology; unpublished biological documents and discussions with botanical experts regarding *A. m.* var. *peirsonii* and related species; site visits; and discussions.

The area proposed for critical habitat is occupied by *Astragalus magdalenae* var. *peirsonii* as demonstrated by repeated surveys summarized by BLM (BLM 2000, 2001), and independently confirmed by TOA (TOA 2001). This plant may be present as standing plants, as seed bank in the sand or as plants persisting as perennial root crowns in the sand. During any given year, the suitable habitat for *A. m.* var. *peirsonii* may be occupied by various combinations of these three life history phases. The dynamics of dune morphology, local rainfall patterns and amounts, as well as the spatial distribution of the seed bank, and seed scarification each contribute to the patchy or mosaic nature of the distribution of standing plants of *A. m.* var. *peirsonii.* Local rainfall patterns and amounts are likely to cause shifts in the proportions of these three life history phases. All areas proposed as critical habitat contain at least one of the primary constituent elements and have been determined to be essential to the conservation of the species, as described below.

Areas proposed as critical habitat are occupied, in any given year, by standing plants, root crowns, or the soil seed bank. Likewise, areas of unsurveyed, suitable habitat that are contiguous with areas where standing plants have been documented by BLM surveys (BLM 2000, 2001), are reasonably likely to support standing plants, root crowns, or

a portion of the soil seed bank. BLM did not survey every west-to-east transect across the dunes, however, interpolation of earlier survey data (WESTEC 1977) and census data (TOA 2001) confirms the presence of *Astragalus magdalenae* var. *peirsonii* and the continuity of the northwest-to-southeast habitat. These data sustain our inclusion of these areas in the proposed critical habitat. These areas are not likely any bigger than naturally occurring gaps in the spatial distribution. As a result, these intervening areas, where standing plants may not have been documented are determined to be essential to the conservation of *A. m.* var. *peirsonii* because they contain the primary constituent elements and will accommodate the natural fluctuations and movement of populations as well as connectivity across the plants' range. Surveys need not have identified standing plants for an area to be considered occupied because a species may still be present at a site as part of the seed bank (Given 1994) or unsprouted root crowns.

The most extensive survey of the Algodones Dunes was conducted in 1977 (Westec 1977). This survey used 66 transects that ran across the dunes from west to east. Along the transects they recorded presence and relative abundance of standing plants of *Astragalus magdalenae* var. *peirsonii* and four other rare psammophytic scrub species. In 1998 the BLM began surveying for rare plants in the dunes repeating the methodology used by Westec in their 1977 survey; however, the BLM surveyed only 34 of the original 66 transects and employed a different abundance measure. The BLM conducted these surveys for 5 consecutive years (1998, 1999, 2000, 2001, and 2002) recording the presence and abundance of the rare plant taxa along the transects.

To determine the general range of *Astragalus magdalenae* var. *peirsonii* in the Algodones Dunes, we used survey information from published and unpublished documents and maps including Westec (1977), BLM (2000, 2001), and TOA (2001). Westec (1977) devised a grid system overlay for the Algodones Dunes. Each quadrant of the grid was approximately 0.45 mi (0.72 km) on a side. BLM reproduced this grid system to present data from their subsequent annual surveys from 1998 to 2002 (BLM 2000, 2001). Both Westec and BLM considered a grid square occupied if *A. m.* var. *peirsonii* was encountered anywhere within that grid square. For comparison, we also superimposed census data included by TOA (2001) on this same grid system. We produced maps based on Westec (1977), BLM (2000, 2001), and TOA (2001) data. Because of the differences in survey methodologies and abundance classes used by these surveys, we considered each of these records to represent presence or absence only. Due to fluctuations in both the presence and abundance of *A. m.* var. *peirsonii* from year to year, we combined the data from multiple years of survey data. Also the various surveys recorded standing plants as the only measure of occupancy, not taking into account a dormant soil seed bank or root crowns.

The survey efforts, discussed above, provided us with the data necessary to construct a model showing which regions of the Algodones Dunes represent essential habitat for the *Astragalus magdalenae* var. *peirsonii.* The model that we created used the data collected by the BLM from 1998 to 2002 as the input data and the data collected by Westec 1977 and TOA 2001 as a means of verifying the information generated by the model. The BLM data was used as the input data source for the model because it was more current, covered multiple years, and used the same methodology each year. Time and resources precluded us from conducting independent surveys. Outlier occurrences evidenced only by Westec 1977 were not included because of the age of the report and the lack of substantiation by more recent BLM surveys.

In order to create this model we used the BLM data to extrapolate the values for four variables: (1) The presence or absence of standing plants of *A. m.* var. *peirsonii;* (2) the abundance of *A. m.* var. *peirsonii;* (3) the frequency of occurrence of *A. m.* var. *peirsonii;* and (4) the number of associated rare psammophytic plant taxa present. These variables were scored, then standardized, and finally compiled. We grouped the data into five categories and created a map depicting the distribution of the model's output. This map showed a strong band of high values that ran from the Northeast to the Southwest of the dune field. The portion of the dunes that corresponded to the top three categories represented the portion of the Algodones Dunes that is essential to the conservation of this species.

Analysis of four variables depicted on GIS-based maps provided us with information necessary for determining which areas of the Algodones Dunes are essential for the conservation of the species and contain the primary constituent elements. The first variable was that of the presence or absence of standing plants. This indicated localities where *Astragalus magdalenae* var. *peirsonii* had been found in each of the five survey years either as seedlings or as older plants. The second variable gave us information about the relative abundance of *A. m.* var. *peirsonii* in each of the five survey years. The highest abundance class value recorded for each grid cell during the five survey years was used as the cell's value for this variable. This provided us with information to depict areas that seem to have higher plant densities, and thus presence of primary constituent elements. The third variable provided us with information about the frequency with which *A. m.* var. *peirsonii* occurred from year to year. This variable was calculated based on the number of times *A. m.* var. *peirsonii* was reported in a grid cell throughout the 5-year survey period. This was important in determining areas that continued to function as good habitat for *A. m.* var. *peirsonii* and were most likely to contain the primary constituent elements. Finally, we used the presence and absence data for the other rare psammophytic scrub taxa that occur in the Algodones dunes and are often found with *A. m.* var. *peirsonii* as the fourth variable. These plants included *Croton wigginsii, Helianthus niveus* ssp. *tephrodes, Palafoxia arida* var. *gigantea,* and *Pholisma sonorae.* For each grid cell, scores were assigned based on the number of these associated plants that were found over the course of the 5 years of surveys. Higher scores may indicate a greater abundance and persistence of *A. m.* var. *peirsonii* and/or the diversity of associated psammophytic scrub species. Therefore, by this measure higher scores indicate the presence of higher quality psammophytic scrub habitat, and thus the presence of primary constituent elements.

Intrinsic to the creation of the essential habitat model for *Astragalus magdalenae* var. *peirsonii* was the application of several assumptions related to the (1) BLM study design (Willoughby 2000 and Willoughby 2001), (2) habitat and weather variability across the entire dune system, (3) paved roads as barriers to dispersal, (4) occurrences of plants and seeds in grid cells over different survey periods, and (5) model protocol. These assumptions are described to allow the reviewer to understand the potential strengths and limitations of the results of the habitat modeling. Based on the BLM study design, a consistent survey methodology was used for the plant surveys conducted in 1998, 1999, and 2000 (Willoughby 2000 and Willoughby 2001). Vegetation maps (BLM 2003),

wind patterns (Romspert and Burk 1979 and Norris and Norris 1961), and precipitation patterns (Willoughby 2000 and Willoughby 2001) supported our assumption that the habitat, in terms of dune action, precipitation, and vegetation, was uniform in variation and continuous throughout the dune system. Based on rainfall data collected from November 16, 2000 to March 16, 2001 (1.40 inches of precipitation was recorded at Cahuilla Ranger Station in the northwest part of the dunes and 2.67 inches of precipitation was reported at Buttercup Campground in the southern end of the dunes (Willoughby 2001)), BLM indicated that more precipitation may fall in the southern portion of the Algodones Dunes compared to the northern end of the dunes. However, given the limited precipitation data available for the Algodones Dunes (5 months) and the relatively short linear extent of the dunes (40 mi long) (64 km long), we could not project a rainfall gradient and, instead, assumed that the precipitation was uniformly variable and continuous throughout the dune system. Based on observations of unimpeded sand and wind movement across existing paved roads, we did not expect that the paved roads would represent a barrier to the dispersal of the fruits and seeds of *Astragalus magdalenae* var. *peirsonii*. Surveys conducted by BLM indicate variability in occurrences of standing plants from year to year (Willoughby 2000 and Willoughby 2001) and that at any given time, these occurrences may represent standing plants, root crown regrowth, or seedlings of *Astragalus magdalenae* var. *peirsonii*. We assumed that if standing plants were not found in a particular grid cell during a survey, but were recorded as present in other survey years, then that grid cell may be occupied by either root crowns or seeds of this species. BLM randomly selected survey transects and, as expected, this random selection results in gaps between transects. We projected the distribution of *Astragalus magdalenae* var. *peirsonii* across the gaps by assuming that the values of unknown grid cells are more closely related to nearby cells rather than distant cells.

From the data provided by BLM we were able to calculate scores for each of these variables and then extrapolate the values for each variable for the entire dune area. We made this extrapolation based on a statistical method called Kriging, which calculates new values for unsurveyed areas based on the known values for the cells that were surveyed. The data for these four variables was then standardized to a scale of 0 to 5 points so that the range of scores, from low to high, would be comparable to one another. The standardized scores were then totaled for each cell, for a possible high score of 20 points. This set of values was then further refined using the Kriging method to generate a map similar in appearance to a topographic map, showing the resulting scores of the model in the same way a topographic map shows variations in elevation. A line was then drawn around those areas of higher-quality psammophytic scrub habitat described above and considered essential to the conservation of *Astragalus magdalenae* var. *peirsonii.*

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 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 magdalenae* var. *peirsonii* 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 *A. m.* var. *peirsonii* 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) intervening areas that allow gene flow and provide connectivity or linkage within segments of the larger population; and (3) areas that provide basic requirements for growth, such as water, light, and minerals.

The conservation of *Astragalus magdalenae* var. *peirsonii* is dependent upon a number of factors including the protection and management of existing population sites and habitat, 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 fruit as well as seed dispersal. Some of the factors associated with the observed and potential distribution of this species include: seeds will likely germinate if germination requirements of scarification and moisture are met within a germination time frame for the species (Porter, *in litt.* 2003); germination patterns likely reflect the distribution of the seed bank in the shifting sands, (seeds will not effectively germinate below a certain depth); and distribution patterns of standing plants may, in large part, reflect the distribution pattern of adequate rainfall for a particular year.

The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of *Astragalus magdalenae* var. *peirsonii.* These habitat components and primary constituent elements are generally associated with psammophytic scrub (*e.g., Croton wigginsii, Eriogonum deserticola, Helianthus niveus* ssp. *tephrodes, Palafoxia arida* var. *gigantea, Pholisma sonorae,* and *Tiquilia plicata*). Based on the best available information at this time, the primary constituent elements of critical habitat for *A. m.* var. *peirsonii* consist of:

(1) Intact, active sand dune systems (defined as sand areas that are subject to sand-moving winds that result in natural expanses of slopes and swales) within the historical range of *A. m.* var. *peirsonii* that are characterized by:

(A) substrates of the Rositas soil series, specifically Rositas fine sands of sufficient depth to promote *A. m.* var. *peirsonii* and discourage creosote bush scrub; and

(B) wind-formed slopes of less than 30 degrees, but generally less than 20 degrees.

Criteria Used To Identify Critical Habitat

We identified critical habitat essential to the conservation of *Astragalus magdalenae* var. *peirsonii* in the primary locations where it currently occurs or has been known to occur in the Algodones Dunes. We are proposing to designate critical habitat to maintain self-sustaining populations of *A. m.* var. *peirsonii* within the range of the taxon in the United States.

Astragalus magdalenae var. *peirsonii* has a very limited range even within the Algodones Dunes. Less than one-third of the area delineated by the ISDRA has documented occurrences of *A. m.* var. *peirsonii.* Extreme fluctuations in populations have been demonstrated.

As a result, it is likely in some years that few, if any, seeds are added to the soil seed bank. The patchy distribution of the plants in any given year is likely a combination of several factors including the dynamics of dune morphology, local rainfall patterns and amounts, as well as the spatial distribution of the seed bank, and seed scarification.

We delineated the proposed critical habitat by creating data layers in a GIS format. Because of the dynamic nature of the distribution of this plant, the cyclic nature of suitable climatic regimes, and the presence of a seed bank for *Astragalus magdalenae* var. *peirsonii,* grid squares where this plant has not been encountered are included as critical habitat if they are contiguous with grid squares where the plant has been found and possess the primary constituent elements and are considered occupied. Another reason for their inclusion is that there are gaps in those transects surveyed by Westec and BLM. The TOA (2001) survey bridged some of these gaps and leave little doubt that additional surveys in previously unsurveyed transects would likely fill in the east-to-west pattern as well. The BLM surveys serve as the basis for the mapping of critical habitat. An exception to this is instances where Westec (1977) data is the only source of a record. Because BLM has included only 34 west-east transects along the length of the dunes, and additional data from TOA (2001) and Westec (1977) tend to bridge the gaps between BLM's transects, we considered the northwest to southeast distribution to be generally continuous.

In order to provide legal descriptions of the critical habitat boundaries, we then used an overlayed 100-meter grid to establish Universal Transverse Mercator (UTM) North American Datum 27 (NAD 27) coordinates which, when connected, provided the critical habitat unit boundaries.

In designating critical habitat, we made an effort to avoid developed areas, OHV staging areas, and disturbed areas along roadways that are unlikely to contain the primary constituent elements and therefore contribute to the conservation of *Astragalus magdalenae* var. *peirsonii.* However, we did not map critical habitat in sufficient detail to exclude all developed areas, or other lands unlikely to contain the primary constituent elements essential for the conservation of *A. m.* var. *peirsonii.* Areas within the boundaries of the mapped units, such as buildings, roads, parking lots, railroad tracks, canals, and other paved areas, will not contain one or more of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger a consultation under section 7 of the Act, unless they affect the species or primary constituent elements in adjacent critical habitat.

Special Management Considerations

Special management considerations or protections may be needed to maintain the physical and biological features as well as the primary constituent elements that are essential for the conservation of *Astragalus magdalenae* var. *peirsonii* within the unit being proposed as critical habitat. As noted in the Critical Habitat section, ''special management considerations or protection'' is a term that originates in section 3(5)(A) of the Act under the definition of critical habitat. We believe that the proposed critical habitat unit may require the special management considerations or protections outlined below.

1. The dune composition and structure should be maintained in a manner compatible with the natural distribution pattern of *Astragalus magdalenae* var. *peirsonii* and be conducive to the persistence of associated psammophytic scrub species and discourage creosote bush scrub.

2. The direct and indirect impacts of OHVs on individual plants, as well as on the plants reproductive capacity, must be scientifically determined. These impacts must be assessed at a relevant time scale to determine seasonal impact, frequency of impact, duration of impacts, and pattern of impacts. This may allow an objective application of acceptable levels and timing of OHV activity in each of the BLM recreation management areas.

Recently, the BLM issued a Recreation Area Management Plan (RAMP) for the Imperial San Dunes (BLM 2003). A specified major focus of the RAMP is to ensure that the ''world class opportunities'' of Imperial Sand Dunes Recreation Area (ISDRA) are continuously available while responding to increased need for protection of plant and animal species in the dunes (BLM 2003). Species specific management needs and measures for *Astragalus magdalenae* var. *peirsonii* are not addressed in the RAMP. In the RAMP, BLM does include a monitoring/study plan that they propose to implement. The results of this monitoring would be incorporated into a management plan developed for *Astragalus magdalenae* var. *peirsonii.*

Within the ISDRA only the North Algodones Dune Wilderness Area (Wilderness Area) will remain closed to public motorized vehicle use. Although the Wilderness Area does not allow motorized recreational use, it is open to non-motorized public uses including hiking and horseback riding. Additionally, vehicular use by the California Department of Fish and Game, the Border Patrol and other permitted entities will be allowed. The Wilderness Area is not actively managed for the conservation of plant and animal species, rather management will take the form of ''minimal and subtle on-site controls and restrictions.''

Proposed Critical Habitat Designation

Lands proposed for critical habitat designation include Federal and private lands. The approximate areas of proposed critical habitat by land ownership are shown previously in this document in table 1.

The proposed critical habitat areas constitute our best assessment of the areas essential for the conservation of *Astragalus magdalenae* var. *peirsonii* and *provide* the primary constituent elements **described above.** The critical habitat includes locations where standing plants of *A. m.* var. *peirsonii* have been observed during BLM and Westec surveys. Because of the natural fluctuations in population numbers and timing of rainfall and pattern of seed germination, standing plants may not appear in all areas of critical habitat every year. Within the boundary of critical habitat we also include areas contiguous to those where standing plants have been recorded, and where, because of plant proximity and habitat continuity, we have no reason to doubt the presence of plants as a seed bank. This has been supported by recent findings from a single survey by TOA (2001) that found plants in areas of the dunes interspersed with those included in the BLM transects.

The Algodones Dunes Critical Habitat Unit is in eastern Imperial County, California. This is the only region in the United States where there are deep dunes maintained by dune-building winds that result in natural expanses of swales and slopes under 20 degrees slope, and appropriate Rositas soils. This is also the only region of the United States that supports an extant population of *Astragalus magdalenae* var. *peirsonii,* and we have no evidence that another such area exists. It extends, as an elongate triangle shape, from the International Boundary northward in a northwesterly direction. The western boundary parallels the Coachella Canal. The eastern boundary is generally half way between this and Ted Kipf Road to the east. The northern end attenuates to a point near the convergence of the Coachella Canal and Ted Kipf Road.

The Algodones Dunes Critical Habitat Unit has three separate portions separated by highways. The discontinuities associated with the highways are likely traversed occasionally by mature fruits dispersed by the wind as well as by pollinators. The northern portion of the Unit is north of State Highway 78. The majority of the northern portion of the critical habitat lies within the North Algodones Dunes Wilderness. The central portion of the Unit is south of State Highway 78 and north of Interstate 8. This portion of the Unit extends from the leeward side of the dunes east of the Coachella Canal eastward to approximately one half the distance to Ted Kipf Road on the eastern side of the Algodones Dunes. West of the central portion of the critical habitat, there are at least 11 campgrounds mostly associated with the Gecko Road area. The southern portion of the Unit is south of Interstate 8 and includes campgrounds and a major OHV staging area. *Astragalus magdalenae* var. *peirsonii* has consistently been found in the Buttercup Management Area. A primary feature of the area are the barchan dunes that between 1953 and 1968 were determined to migrate toward the southeast (Smith 1978). This pattern is likely still operative. This area is important to the conservation of *A. m.* var. *peirsonii* because it provides the only potential connectivity between the range of the plant in the United States and that in Mexico.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, permit, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent that it appreciably diminishes the value of critical habitat for the conservation 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.

In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

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) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist Federal agencies in eliminating conflicts that may be caused by their proposed actions. The conservation measures 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 (50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act 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 (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If 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 likelihood of jeopardizing the continued existence of listed species or resulting in the destruction or adverse modification of critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including 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 reinitiating 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 affect critical habitat and require that a section 7 consultation be conducted include, but are not limited to:

(1) Activities that disturb or degrade the structure of the dunes (ridges, slip faces, bowls, and swales);

(2) Activities that irreversibly compact or disturb the sand such that seeds of *Astragalus magdalenae* var. *peirsonii* are not capable of germinating or plants are not able to survive; and,

(3) Activities that alter the existing hydrology or reduce soil moisture by lowering the groundwater table or redirecting surface flows.

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 Peirson's milk-vetch 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 these reasons, 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.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may 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 the *Astragalus magdalenae* var. *peirsonii* is appreciably reduced. The actions listed previously are activities that may affect critical habitat and are not necessarily actions that would result in adverse modification. We also note that such activities may also jeopardize the continued existence of the species.

Moreover, we completed a section 7 consultation with BLM on the Imperial Sand Dunes Recreational Area Management Plan (RAMP) (FWS–IMP–3419.2) dated April 3, 2003. In that biological opinion, we concluded that the implementation of the RAMP is not likely to jeopardize the continued existence of *Astragalus magdalenae* var. *peirsonii.* BLM will modify the monitoring plan to include (1) dune-wide monitoring of *A. m.* var. *peirsonii*, (2) dune-wide monitoring and calibration of OHV use patterns, (3) two experimental studies on the effects of OHVs on *A. m.* var. *peirsonii*, (4) examination for correlation between OHV use patterns and *A. m.* var. *peirsonii* population levels, (5) modeling of *A. m.* var. *peirsonii* populations under various management scenarios, and (6) an implementation schedule. In addition, BLM proposes to establish triggers to activate alternative management actions when visitation exceeds target levels and to reinitiate consultation (1) if *A. m.* var. *peirsonii* population levels in individual Management Areas fall to 50 percent of baseline in a comparable rainfall year (at or above the long-term mean), and (2) after accumulation of 4 years of monitoring information. This information will be valuable in determining the effects of the RAMP on critical habitat. While BLM's proposed action has not been analyzed in the context of a final designation of critical habitat, we expect that a similar approach would be used to evaluate whether the implementation of the RAMP would result in destruction or adverse modification of critical habitat.

If you have questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and plants and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

All lands proposed as critical habitat are within the geographical area occupied by the species and are necessary for the conservation of *Astragalus magdalenae* var. *peirsonii.* Federal agencies already consult with us on actions that may affect *A. m.* var. *peirsonii* to ensure that their actions do not jeopardize the continued existence of the species. Thus, we do not anticipate substantial additional regulatory protection will result from critical habitat designation.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

An analysis of the economic impacts of proposing critical habitat for the *Astragalus magdalenae* var. *peirsonii* 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://carlsbad.fws.gov*, or by contacting the Carlsbad Fish and Wildlife Office directly (*see* **ADDRESSES** section).

Peer Review

In accordance with our policy published 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 during the 60-day comment period on this proposed rule as we prepare our final rulemaking. Accordingly, the final designation may differ from this proposal.

Public Hearings

The 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 proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on 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 this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is not a significant rule and, therefore, was not reviewed by the Office of Management and Budget (OMB). We will be preparing a draft economic analysis of this proposed action; we will use this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat and excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such areas as part of the critical habitat, unless failure to designate such area as critical habitat will lead to the extinction of the *Astragalus magdalenae* var. *peirsonii.* This draft economic analysis will be made available for public review and comment before we finalize this designation. At that time, copies of the analysis will be available for downloading from the Carlsbad Fish and Wildlife Office's Internet website at *http://carlsbad.fws.gov* or by contacting the Carlsbad Fish and Wildlife Office directly (*see* **ADDRESSES** section)

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 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*).

To determine if the rule would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting). We applied the ''substantial number'' test individually to each affected industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

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 magdalenae* var. *peirsonii* 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 through consultation with us.

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.

Based on our experience with section 7 consultations for all listed species, virtually all projects-including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. The kinds of actions that may be included in future reasonable and prudent alternatives include avoidance, conservation set-asides, management of competing non-native species, restoration of degraded habitat, construction of protective fencing, and regular monitoring. These measures are not likely to result in a significant economic impact to project proponents.

In the case of *Astragalus magdalenae* var. *peirsonii,* our review of the consultation history for this plant suggests that the proposed designation of critical habitat is not likely to have a significant impact on any small entities or classes of small entities. The only class of small entities that could be affected by this designation is the off-

highway vehicle industry. To identify potential small entities related to off-highway vehicle use that may be affected by the proposed designation, we considered the membership list of the Off-Road Business Association (updated June 11, 2003) to be an indication of the potential number of small entities that may be affected by the proposed designation of critical habitat. Based on the June 11, 2003, list, 247 companies were members of the Off-Road Business Association. Most of the Off-Road Business Association members represented business primarily located in California.

We considered the potential relative cost of compliance to these small entities and evaluated only small entities that are expected to be directly affected by the proposed designation of critical habitat. Based on the consultation history for *Astragalus magdalenae* var. *peirsonii,* we do not anticipate that the proposed designation of critical habitat will result in increased compliance costs for small entities. The business activities of these small entities and their effects on *Astragalus magdalenae* var. *peirsonii* or its proposed critical habitat have not directly triggered a section 7 consultation with the Service under the jeopardy standard and likely would not trigger a section 7 consultation under the adverse modification standard after designation of critical habitat. The proposed designation of critical habitat does not, therefore, create a new cost for the small entities to comply with the proposed designation. Instead, proposed designation only impacts Federal agencies that conduct, fund, or permit activities that may affect critical habitat for *Astragalus magdalenae* var. *peirsonii.* Moreover, none of the small entities have been applicants with a Federal agency for a section 7 consultation with the Service. On April 3, 2003, we also completed a section 7 consultation with BLM on the Imperial Sand Dunes RAMP. In that biological opinion, we concluded that the implementation of the RAMP is not likely to jeopardize the continued existence of *Astragalus magdalenae* var. *peirsonii.* Thus, we conclude that the proposed designation of critical habitat is not likely to result in a significant impact to this group of small entities.

In addition, we completed an informal section 7 consultation with BLM on the potential effects to *Astragalus magdalenae* var. *peirsonii* of a private company filming a movie on Federal lands within the Algodones Dunes. Given the relatively small number of consultations related to film-making activities on Federal lands within the Algodones Dunes, we anticipate that the proposed designation of critical habitat is not likely to have a significant impact on this group of small entities.

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.

In summary, we have considered whether this proposed designation would result in a significant economic impact on a substantial number of small entities and find that it would not. This rule would result in project modifications only when proposed activities with a Federal nexus would destroy or adversely modify critical habitat. While this may occur, it is not expected to occur frequently enough to affect a substantial number of small entities. Even if a small entity is affected, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. The kinds of measures we anticipate we would recommend can usually be implemented at low cost. Therefore, we are certifying that the proposed designation of critical habitat for the *Astragalus magdalenae* var. *peirsonii* 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.

This discussion is based upon the information regarding potential economic impact that is available to us at this time. This assessment of economic effect 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. 802(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; 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 magdalenae* var. *peirsonii* is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use. 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 *et seq*.), the Service will use the economic analysis to further this rule's effect on nonfederal governments.

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 magdalenae* var. *peirsonii.* 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, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policies, we requested information from and coordinated development of this proposed critical habitat designation with appropriate State resource agencies in California. The proposed designation of critical

habitat in areas currently occupied by the *Astragalus magdalenae* var. *peirsonii* imposes no additional significant restrictions beyond those currently in place and, therefore, has little incremental impact on State and local governments and their activities.

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

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 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), Executive Order 13175, 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 the *Astragalus magdalenae* var. *peirsonii.* Therefore, designation of critical habitat for the *A. m.* var. *peirsonii* has not been proposed on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

The primary authors of this notice are the Carlsbad Fish and Wildlife Office staff (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. In § 17.12(h) revise the entry for ''*Astragalus magdalenae* var. *peirsonii*,'' 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							
*	*	*	*	*	*	*	
Astragalaus magdalenae var. *peirsonii.*	Peirson's milkvetch	U.S.A. (CA)	Fabaceae—Pea	T	647	17.96(a)	NA
*	*	*	*	*	*	*	

3. In § 17.96, amend paragraph (a) by adding an entry for *Astragalus magdalenae* var. *peirsonii* in alphabetical order under Family Fabaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Fabaceae: *Astragalus magdalenae* var. *peirsonii* (Peirson's Milk-Vetch)

(1) Critical habitat units are depicted for Algodones Dunes in Imperial County, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Astragalus magdalenae* var. *peirsonii* consist of intact, active sand dune systems (defined as sand areas that are subject to sand-moving winds that result in natural expanses of slopes and swales) within the historical range of *A. m.* var. *peirsonii* that are characterized by:

(i) Substrates of the Rositas soil series, specifically Rositas fine sands of sufficient depth to promote *A. m.* var. *peirsonii* and discourage creosote bush scrub; and

(ii) Wind-formed slopes of less than 30 degrees, but generally less than 20 degrees.

(3) Critical habitat does not include existing features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical Habitat Map Units.

(i) Map Unit 1: Algodones Dunes, Imperial County, California. From USGS 1:24,000 quadrangle maps Acolita, Amos, Cactus, Glamis, Glamis NW, Glamis SE, Grays Well, Grays Well NE, and Tortuga, California.

(A) Unit 1a: lands bounded by the following UTM NAD27 coordinates (E,N): 657200, 3668800; 658100, 3668800; 658100, 3668500; 658000, 3668500; 658000, 3668000; 658100, 3668000; 658100, 3667800; 658200, 3667800; 658200, 3667600; 658300, 3667600; 658300, 3667300; 658400, 3667300; 658400, 3667100; 658500, 3667100; 658500, 3666800; 658600, 3666800; 658600, 3666600; 658700, 3666600; 658700, 3666500; 658800, 3666500; 658800, 3666400; 658900, 3666400; 658900, 3666300; 659000, 3666300; 659000, 3666200; 659100, 3666200; 659100, 3666100; 659300, 3666100; 659300, 3666000; 659400, 3666000; 659400, 3665900; 659500, 3665900; 659500, 3665800; 659600, 3665800; 659600, 3665700; 659700, 3665700; 659700, 3665600; 659800, 3665600; 659800, 3665500; 660000, 3665500; 660000, 3665400; 660100, 3665400; 660100, 3665300; 660200, 3665300; 660200, 3665200; 660300, 3665200; 660300, 3665100; 660500, 3665100; 660500, 3665000; 660700, 3665000; 660700, 3664900; 660800, 3664900; 660800, 3664700; 660900, 3664700; 660900, 3664500; 661000, 3664500; 661000, 3664400; 661200, 3664400; 661200, 3664300; 661400, 3664300; 661400, 3664100; 661500, 3664100; 661500, 3663900; 661600, 3663900; 661600, 3663700; 661700, 3663700; 661700, 3663600; 661800, 3663600; 661800, 3663500; 662000, 3663500; 662000, 3663400; 662100, 3663400; 662100, 3663200; 662200, 3663200; 662200, 3662900; 662300, 3662900; 662300, 3662700; 662400, 3662700; 662400, 3662500; 662500, 3662500; 662500, 3662400; 662600, 3662400; 662600, 3662300; 662700, 3662300; 662700, 3662200; 662800, 3662200; 662800, 3662100; 664000, 3662100; 664000, 3662000; 664400, 3662000; 664400, 3661900; 664600, 3661900; 664600, 3661800; 664800, 3661800; 664800, 3661500; 664900, 3661500; 664900, 3661300; 665000, 3661300; 665000, 3661100; 665100, 3661100; 665100, 3660200; 665200, 3660200; 665200, 3660000; 665500, 3660000; 665500, 3659900; 665900, 3659900; 665900, 3659800; 666100, 3659800; 666100, 3659700; 666200, 3659700; 666200, 3659600; 666300, 3659600; 666300, 3659500; 666400, 3659500; 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671200, 3650100; 670900, 3650100; 670900, 3650000; 670600, 3650000; 670600, 3649900; 670300, 3649900; 670300, 3649800; 670100, 3649800; 670100, 3649700; 669900, 3649700; 669900, 3649600; thence west to the Imperial Sand Dunes Recreational Area (ISDRA), North Algodones Dunes Wilderness Management Area (NADWMA) boundary at UTM NAD27 y-coordinate 3649600; thence northwest following the ISDRA, NADWMA boundary to UTM NAD27 x-coordinate 669100; thence north following UTM NAD27 coordinates 669100, 3650500; 669000, 3650500; 669000, 3650900; 669100, 3650900; 669100, 3651200; 669200, 3651200; 669200, 3651300; 669300, 3651300; 669300, 3651400; 669400, 3651400; 669400, 3651700; 669300, 3651700; 669300, 3651800; 669200, 3651800; 669200, 3652400; 669300, 3652400; 669300, 3652500; 669400, 3652500; 669400, 3652700; 669500, 3652700; 669500, 3652900; 669600, 3652900; 669600, 3653600; 669500, 3653600; 669500, 3653700; 669400, 3653700; 669400, 3653800; 669100, 3653800; 669100, 3653900; 669000, 3653900; 669000, 3654100; 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(B) Unit 1b: lands bounded by the following UTM NAD27 coordinates (E,N): 676200, 3650500; 676400, 3650500; 676400, 3650400; 676500, 3650400; 676500, 3650300; 676600, 3650300; 676600, 3650100; 676700, 3650100; 676700, 3649600; 676800, 3649600; 676800, 3648600; 677000, 3648600; 677000, 3648500; 677200, 3648500; 677200, 3648400; 678100, 3648400; 678100, 3648500; 679800, 3648500; 679800, 3648600; 679900, 3648600; 679900, 3649400; 680000, 3649400; 680000, 3649600; 680300, 3649600; 680300, 3649700; 681100, 3649700; 681100, 3649600; 681300, 3649600; 681300, 3649400; 681400, 3649400; 681400, 3647700; 681300, 3647700; 681300, 3647600; 681200, 3647600; 681200, 3647500; 681100, 3647500; 681100, 3647400; 681000, 3647400; 681000, 3647300; 680900, 3647300; 680900, 3647200; 681000, 3647200; 681000, 3647100; 681100, 3647100; 681100, 3647000; 681200, 3647000; 681200, 3646900; 681400, 3646900; 681400, 3646800; 681500, 3646800; 681500, 3646500; 681600, 3646500; 681600, 3646300; 681700, 3646300; 681700, 3646200; 681900, 3646200; 681900, 3646100; 682100, 3646100; 682100, 3645900; 682200, 3645900; 682200, 3645600; 682300, 3645600; 682300, 3645500; 682400, 3645500; 682400, 3645400; 682700, 3645400; 682700, 3645500; 682800, 3645500; 682800, 3645600; 682900, 3645600; 682900, 3645700; 683000, 3645700; 683000, 3645800; 683100, 3645800; 683100, 3645900; 683400, 3645900; 683400, 3645600; 683500, 3645600; 683500, 3645100; 683600, 3645100; 683600, 3644500; 683700, 3644500; 683700, 3644000; 684300, 3644000; 684300, 3643900; 684400, 3643900; 684400, 3643700; 684500, 3643700; 684500, 3643500; 684600, 3643500; 684600, 3643400; 684800, 3643400; 684800, 3643300; 685000, 3643300; 685000, 3643200; 685100, 3643200; 685100, 3643100; 685200, 3643100; 685200, 3643000; 685300, 3643000; 685300, 3642800; 685400, 3642800; 685400, 3642700; 685500, 3642700; 685500, 3642600; 685600, 3642600; 685600, 3642500; 685700, 3642500; 685700, 3642300; 685800, 3642300; 685800, 3640800; 685700, 3640800; 685700, 3640400; 685600, 3640400; 685600, 3640300; 685500, 3640300; 685500, 3640200; 685200, 3640200; 685200, 3640100; 684700, 3640100; 684700, 3640000; 684600, 3640000; 684600, 3639600; 684700, 3639600; 684700, 3639300; 684900, 3639300; 684900, 3639200; 685100, 3639200; 685100, 3639100; 685500, 3639100; 685500, 3639000; 685600, 3639000; 685600, 3638900; 685700, 3638900; 685700, 3638800; 685800, 3638800; 685800, 3638700; 685900, 3638700; 685900, 3638500; 686000, 3638500; 686000, 3638400; 686100, 3638400; 686100, 3638300; 686300, 3638300; 686300, 3638200; 686500, 3638200; 686500, 3638100; 686600, 3638100; 686600, 3637900; 686700, 3637900; 686700, 3637500; 686600, 3637500; 686600, 3637000; 686500, 3637000; 686500, 3636700; 686400, 3636700; 686400, 3636600; 686300, 3636600; 686300, 3636500; 686200, 3636500; 686200, 3636400; 686300, 3636400; 686300, 3636300; 686500, 3636300; 686500, 3636200; 687000, 3636200; 687000, 3636500; 687100, 3636500; 687100, 3636700; 687200, 3636700; 687200, 3636800; 687300, 3636800; 687300, 3636900; 687500, 3636900; 687500, 3637000; 687600, 3637000; 687600, 3637100; 687700, 3637100; 687700, 3637200; 687800, 3637200; 687800, 3637300; 687900, 3637300; 687900, 3637500; 688200, 3637500; 688200, 3637600; 688300, 3637600; 688300, 3637500; 688500, 3637500; 688500, 3637400; 688600, 3637400; 688600, 3637300; 688700, 3637300; 688700, 3637100; 688800, 3637100; 688800, 3637000; 688900, 3637000; 688900, 3636900; 689000, 3636900; 689000, 3636800; 689200, 3636800; 689200, 3636700; 689300, 3636700; 689300, 3636600; 689400, 3636600; 689400, 3634100; 689500, 3634100; 689500, 3632800; 689600, 3632800; 689600, 3632200; 689700, 3632200; 689700, 3632000; 690700, 3632000; 690700, 3631900; 691200, 3631900; 691200, 3631800; 691400, 3631800; 691400, 3631700; 691500, 3631700; 691500, 3631600; 691600, 3631600; 691600, 3631400; 691700, 3631400; 691700, 3631200; 691900, 3631200; 691900, 3631100; 692100, 3631100; 692100, 3631000; 692200, 3631000; 692200, 3630900; 692300, 3630900; 692300, 3630800; 692400, 3630800; 692400, 3630600; 692500, 3630600; 692500, 3630500; 692700, 3630500; 692700, 3630400; 692900, 3630400; 692900, 3630300; 693000, 3630300; 693000, 3630100; 693100, 3630100; 693100, 3629900; 693200, 3629900; 693200, 3629800; 693400,

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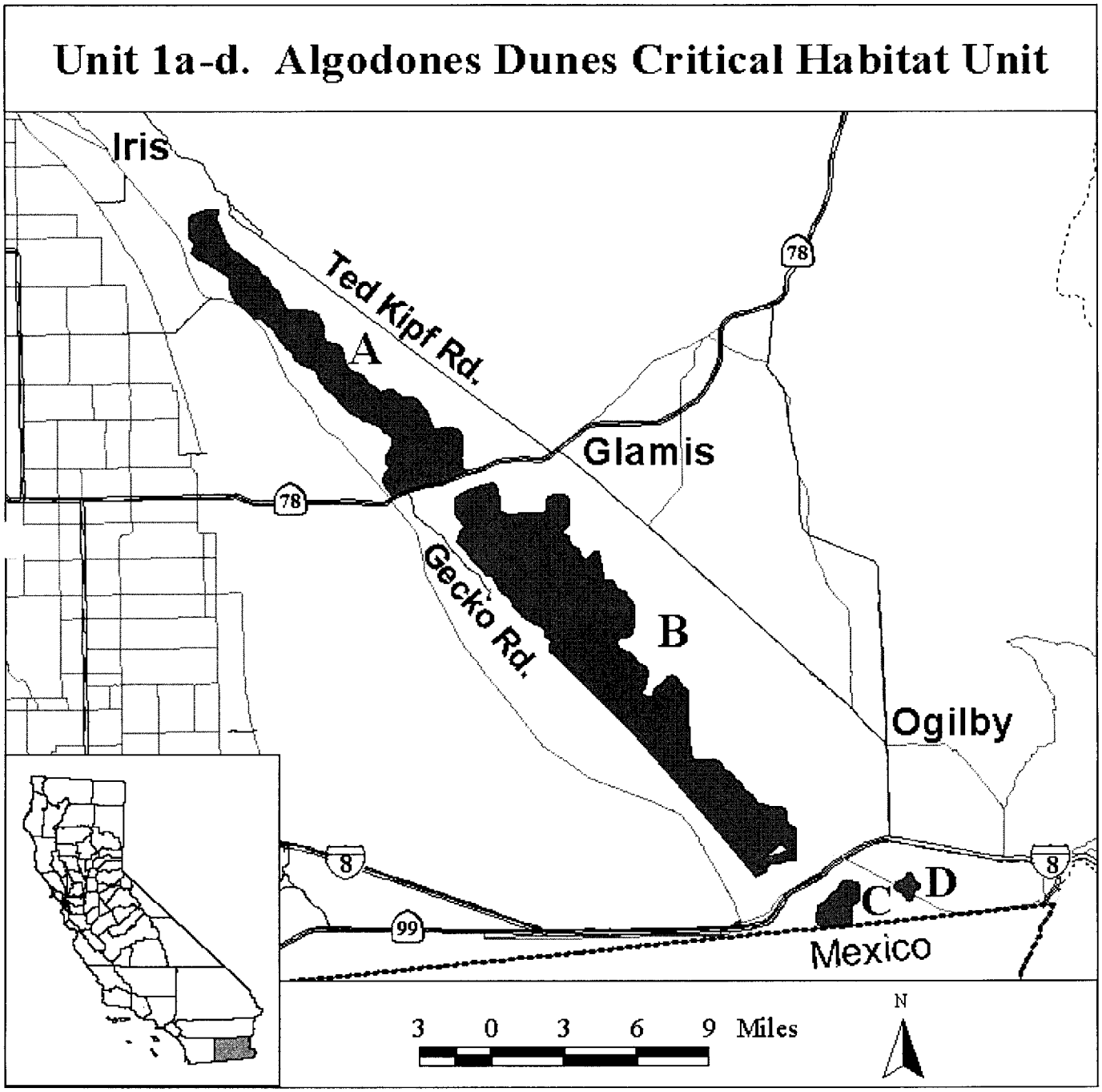
(C) Unit 1c: beginning at the U.S./Mexico border at UTM NAD27 x-coordinate 698400, lands bounded by the following UTM NAD27 coordinates (E,N): 698400, 3620800, 698200, 3620800; 698200, 3620900; 698000, 3620900; 698000, 3621100; 697900, 3621100; 697900, 3621700; 698000, 3621700; 698000, 3622200; 698200, 3622200; 698200, 3622300; 698400, 3622300; 698400, 3622400; 698500, 3622400; 698500, 3622500; 698600, 3622500; 698600, 3622600; 698700, 3622600; 698700, 3622800; 698800, 3622800; 698800, 3622900; 698900, 3622900; 698900, 3623000; 699000, 3623000; 699000, 3623100; 699200, 3623100; 699200, 3623200; 699300, 3623200; 699300, 3623400; 699400, 3623400; 699400, 3623600; 699500, 3623600; 699500, 3623700; 699600, 3623700; 699600, 3623800; 700300, 3623800; 700300, 3623700; 700700, 3623700; 700700, 3623500; 700800, 3623500; 700800, 3622500; 700700, 3622500; 700700, 3622400; 700600, 3622400; 700600, 3622300; 700400, 3622300; 700400, 3622200; 700300, 3622200; 700300, 3622000; 700200, 3622000; 700200, 3620900; thence south to the U.S./Mexico border at UTM x-coordinate 700200; returning to the point of beginning on the U.S./Mexico border at UTM x-coordinate 698400.

(D) Unit 1d: lands bounded by the following UTM NAD27 coordinates (E,N): 703900, 3624300; 704200, 3624300; 704200, 3624200; 704300, 3624200; 704300, 3624000; 704400, 3624000; 704400, 3623800; 704500, 3623800; 704500, 3623700; 704600, 3623700; 704600, 3623600; 704800, 3623600; 704800, 3623300; 704700, 3623300; 704700, 3623200; 704500, 3623200; 704500, 3623100; 704400, 3623100; 704400, 3622700; 704300, 3622700; 704300, 3622500; 704100, 3622500; 704100, 3622400; 704000, 3622400; 704000, 3622500; 703800, 3622500; 703800, 3622700; 703700, 3622700; 703700, 3622800; 703600, 3622800; 703600, 3623000; 703400, 3623000; 703400, 3623100; 703200, 3623100; 703200, 3623200; 703100, 3623200; 703100, 3623300; 703000, 3623300; 703000, 3623500; 703100, 3623500; 703100, 3623700; 703300, 3623700; 703300, 3623800; 703600, 3623800; 703600, 3623900; 703700, 3623900; 703700, 3624000; 703800, 3624000; 703800, 3624200; 703900, 3624200; returning to UTM NAD27 coordinates 703900, 3624300.

(ii) Map of Algodones Dunes Critical Habitat Unit follows:

BILLING CODE 4310–55–P



* * * * *

Dated: July 28, 2003.

Signed:

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–19670 Filed 8–4–03; 8:45 am]

BILLING CODE 4310–55–C