

Issued November 30, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-A178

Endangered and Threatened Wildlife and Plants; Notice of Availability of Draft Economic Analysis and Reopening of the Public Comment Period for the Proposed Designation of Critical Habitat for *Astragalus jaegerianus* (Lane Mountain Milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of draft economic analysis and reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft economic analysis for the proposed designation of critical habitat for *Astragalus jaegerianus* (Lane Mountain milk-vetch) under the Endangered Species Act of 1973, as amended (Act). We are also reopening the public comment period for the proposal to designate critical habitat for this species to allow all interested parties to comment on the proposed rule and the associated draft economic analysis. Comments previously submitted on the proposed rule need not be resubmitted as they have been incorporated into the public record as part of this reopening of the comment period, and will be fully considered in preparation of the final rule.

DATES: We will accept all comments and information received on or before January 7, 2005. Any comments that we receive after the closing date may not be considered in the final decision on this proposal.

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

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003, or by facsimile 805/644-3958.

(2) You may hand-deliver written comments to our office, at the address given above.

(3) You may send comments by electronic mail (e-mail) to: fw1Lanemv@r1.fws.gov. Please see the Public Comments Solicited section below for file format and other information about electronic filing. In the event that our Internet connection is not functional, please submit your comments by the alternate methods mentioned above.

Comments and materials received, as well as supporting documentation used in preparation of the proposed critical habitat rule, will be available for public inspection, by appointment, during normal business hours at the above address. You may obtain copies of the draft economic analysis for *Astragalus jaegerianus* by contacting the Ventura Fish and Wildlife Office at the above address. The draft economic analysis and the proposed rule for critical habitat designation are also available on the Internet at <http://ventura.fws.gov/>. In the event that our Internet connection is not functional, please obtain copies of documents directly from the Ventura Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Connie Rutherford, Ventura Fish and Wildlife Office, at the address listed above (telephone 805/644-1766; facsimile 805/644-3958).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend any final action resulting from this proposal to be as accurate and as effective 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 the economic analysis or the proposed rule to designate critical habitat for *Astragalus jaegerianus* (69 FR 18018, April 6, 2004). We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of exclusion outweigh the benefits of specifying such area as part of the critical habitat;

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

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

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed

designation of critical habitat; in particular, any impacts on small entities or families;

(5) Whether the economic analysis identifies all State and local costs attributable to the proposed critical habitat designation. If not, what costs are overlooked;

(6) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(7) Whether the economic analysis correctly assesses the effect on regional costs associated with land use controls that derive from the designation;

(8) Whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation;

(9) Whether the economic analysis appropriately identifies all costs that could result from the designation; and

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

All comments and information submitted during the initial comment period on the proposed rule need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning the draft economic analysis and proposed rule by any one of several methods (see **ADDRESSES** section).

Please submit Internet comments to fw1Lanemv@r1.fws.gov in an ASCII file format and avoid the use of special characters and encryption. Please also include "Attn: Lane Mountain Milk-vetch Critical Habitat" in your e-mail subject header, and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for 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, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours, in our Ventura Fish and Wildlife Office at the above address.

Background

Astragalus jaegerianus (Lane Mountain milk-vetch) is a member of the pea family (Fabaceae) that is restricted in its range to a portion of the west Mojave Desert north of Barstow, in San Bernardino County, CA. It is a wispy perennial herb with cream-to-purple flowers, whose zig zag stems grow up through low desert shrubs, referred to as host shrubs, that provide it with support. The stems wither at the end of each growing season, and the plant overwinters as a taproot. The visibility of populations can fluctuate dramatically from year to year, depending on climatic conditions. In favorable years, seed production may be substantial. In unfavorable years, the plants may desiccate prior to flowering or setting seed, or the taproots may remain dormant and not resprout.

Populations of *Astragalus jaegerianus* are concentrated in four geographically distinct areas that are arrayed more or less linearly along a 20 mile (32 kilometer) long axis that trends in a northeasterly-to-southwesterly direction. The Goldstone and Brinkman Wash-Montana Mine populations occur entirely on Department of Defense (Army) lands at Fort Irwin. The Paradise Wash population occurs primarily on Army lands, with a portion on Federal lands administered by the Bureau of Land Management (BLM). The Coolgardie population occurs primarily on BLM-managed lands, with a portion on small privately owned parcels scattered between the Federal lands.

We listed *Astragalus jaegerianus* as threatened on October 6, 1998 (63 FR 53596) due to threats of increasing habitat loss and degradation. The primary threat is loss of individuals and habitat due to proposed military training activities. Other potential threats include recreational mining, off-highway vehicle use, and alteration in

habitat from the encroachment of nonnative species.

On April 6, 2004, we published a proposed rule in the **Federal Register** (69 FR 18018) to designate critical habitat for *Astragalus jaegerianus*. We proposed to designate approximately 29,522 acres (ac) (11,947 hectares (ha)) of critical habitat in San Bernardino County, CA. The first comment period on the proposed critical habitat rule for *Astragalus jaegerianus* closed on May 21, 2004.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act. We note, however, that a recent 9th Circuit judicial opinion, *Gifford Pinchot Task Force v. United State Fish and Wildlife Service*, has invalidated the Service's regulation defining destruction or adverse modification of critical habitat. We are currently reviewing the decision to determine what effect it (and to a limited extent *Center for Biological Diversity v. Bureau of Land Management* (Case No. C-03-2509-SI, N.D. Cal.)) may have on the outcome of consultations pursuant to Section 7 of the Act.

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

Approximately 52 percent of the lands within the proposed designation of critical habitat for *Astragalus jaegerianus* occur on Army lands at Fort Irwin, and 32 percent of the lands occur on BLM lands. Less than 1 percent of the lands proposed are State lands, and approximately 15 percent of the lands proposed are on privately owned parcels interspersed with BLM lands.

We know of no Tribal lands within these boundaries of proposed critical habitat.

The economic analysis addresses the impacts of *Astragalus jaegerianus* conservation efforts on activities occurring on lands proposed for designation. The analysis measures lost economic efficiency associated with mining and off-highway vehicle recreation, as well as potential uncertainty to landowners and project delay.

The economic analysis includes both pre-designation and post-designation economic costs to various entities as a result of *Astragalus jaegerianus* conservation activities. Pre-designation costs are those costs estimated to have occurred from the time the species was listed until the proposal of critical habitat. The estimated pre-designation costs range from \$1.58 million to \$2.1 million. These costs are associated primarily with two major conservation efforts: those taken by the Army to plan for and implement conservation actions at Fort Irwin, and those taken by the BLM to plan for, and implement, conservation actions within the framework of the West Mojave Plan, a multiple species habitat conservation plan and amendment to the California Desert Conservation Area Plan.

The total post-designation costs are expected to range from \$5.84 million to \$13.01 million. These costs are associated primarily with land acquisition, land management activities, and project-related surveys and monitoring associated with conservation of *Astragalus jaegerianus* over a 20-year time period.

With respect to the Army lands at Fort Irwin, the analysis only focuses on the direct costs associated with *Astragalus jaegerianus* conservation, and does not attempt to quantify the potential impacts to military readiness, if any, that may result from critical habitat designation.

Author

The primary author of this notice is Connie Rutherford, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

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

Dated: December 1, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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