Public Comment Solicited

We intend that any final action resulting from our September 2002 proposal will 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 portion of the proposed rule subject to the court's remand order. On the basis of public comment, during the development of our new, partial final determination we may find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2), or not appropriate for exclusion; in all of these cases, this information would be incorporated into our new final determination with respect to those areas. We particularly seek comments concerning:

(1) Specific information on the amount and distribution of habitat for the 15 vernal pool species, and what habitat is essential to the conservation of the species and why;

(2) The reasons why any areas should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Information related to the benefits of designating any of these areas as critical habitat for the 15 vernal pool species;

(4) Information related to the benefits of excluding any of these areas as critical habitat for the 15 vernal pool species;

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

(6) Land use designations and current or planned activities in or adjacent to the areas proposed, and the possible impacts on those uses and activities from a critical habitat designation;

(7) Any foreseeable economic or other potential impacts resulting from the proposed designation, including any impacts on small entities; and

(8) 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: RIN 1018–AUO6'' 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 Sacramento Fish and Wildlife Office at telephone number 916/414–6600, during normal business hours.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Authority

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

Dated: December 17, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–28164 Filed 12–27–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ09

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 lentiginosus* var. *piscinensis* (Fish Slough 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 the federally threatened *Astragalus lentiginosus* var. *piscinensis* (Fish Slough milk-vetch), and the reopening of the public comment period on the proposed rule to designate critical habitat for this taxon. The comment period will provide the public, Federal, State, and local agencies, and Tribes with an opportunity to submit written comments on this proposal and its respective draft economic analysis. Comments previously submitted on the proposed rule need not be resubmitted as they have been incorporated into the public record as a 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 until 5 p.m. on or before January 27, 2005. Any comments that we receive after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: Written comments and materials may be submitted to us by one of the following 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, CA 93003.

(2) You may hand-deliver written comments and information to our Ventura Fish and Wildlife Office, at the above address, or fax your comments to 805/644–3958.

(3) You may send comments by electronic mail (e-mail) to: *fw1fsmv_pch@r1.fws.gov*. Please see the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received, as well as supporting documentation used in preparation of the proposed critical habitat rule for *Astragalus lentiginosus* var. *piscinensis* (69 FR 31552), 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 this taxon by contacting the Ventura Fish and Wildlife Office at the above address. The draft economic analysis and the proposed rule for critical habitat designation also are available on the Internet at *http://*

ventura.fws.gov/. In the event that our Internet connection is not functional, please obtain copies for documents directly from the Ventura Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Threloff, 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 and information from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the draft economic analysis or the proposed rule to designate critical habitat for *Astragalus lentiginosus* var. *piscinensis* (69 FR 31552). 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 lentiginosus* var. *piscinensis* 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, and whether the proposed area may need special management or protection;

(4) Current or planned water withdrawals or diversions in or adjacent to the area proposed, or in more distant areas, that could impact the hydrology of Fish Slough, the nature of any impacts from these withdrawals, and whether there is a Federal nexus to such withdrawals that could result in consultations under section 7 of the Act, or a similar requirement under State law;

(5) 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;

(6) Additional information that can be used to characterize or more completely understand the regional aquifer that supports aquatic or riparian habitat in Fish Slough, or how local ground water pumping activities affect the hydrology of Fish Slough;

(7) Information on how many of the State and local environmental protection measures referenced in the draft economic analysis were adopted largely as a result of the listing of *Astragalus lentiginosus* var. *piscinensis*, and how many were either already in place or enacted for other reasons;

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

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

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

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

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

(13) 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 the proposed rule by any one of several methods (*see* **ADDRESSES** section).

Please submit Internet comments to *fw1fsmv_pch@r1.fws.gov* in an ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: Fish Slough 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 lentiginosus var. *piscinensis* is a prostrate perennial, with few-branching stems that are up to 39 inches (1 meter) in length and covered with stiff, appressed hairs. We listed *A. l.* var. *piscinensis* as threatened under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) on October 6, 1998 (63 FR 53596). Please refer to the final listing rule for a more detailed discussion of the species' taxonomic history and description.

On June 4, 2004, we published a proposed rule in the **Federal Register** (69 FR 31552) to designate critical habitat for *Astragalus lentiginosus* var. *piscinensis*. We proposed to designate a total of approximately 8,490 acres (3,435 hectares) of critical habitat in Inyo and Mono Counties, CA. The first comment period on the proposed critical habitat rule for *A. l.* var. *piscinensis* closed on August 3, 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 States 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 may have on the outcome of consultations pursuant to Section 7 of the Act.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat on the basis of the best scientific and commercial data available, after taking into consideration the economic impact, impact to national security, and any other relevant impacts of specifying any particular area as critical habitat. We have prepared a draft economic analysis for the proposal to designate certain areas as critical habitat for *Astragalus lentiginosus* var. *piscinensis*. This analysis considers the potential economic effects of our proposed designation, and 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 64 percent of the proposed critical habitat designation is under Federal ownership, 34 percent is owned by the city of Los Angeles, and 2 percent is State owned. The economic analysis addresses the effects of conservation efforts for *Astragalus lentiginosus* var. *piscinensis* on activities occurring on lands proposed for designation. This economic analysis focuses on the following activities as being potentially affected by conservation considerations for *A. l.* var. *piscinensis*: agricultural production, livestock grazing, recreation, commercial mining, groundwater exportation, and resource management activities in the Bureau of Land Management-designated Area of Critical Environmental Concern where *A. l.* var. *piscinensis* occurs.

Because of some uncertainty in estimating the effects of conservation activities related to Astragalus lentiginosus var. piscinensis, the economic analysis includes an upper and lower-bound cost estimate. The analysis includes both ''pre-designation'' (occurring from the time of the listing of *A. l.* var. *piscinensis* to final designation of critical habitat) and ''post-designation'' (forecast to occur from 2005 to 2025) economic impacts. Estimated pre-designation costs range from $749,000 to $808,000. Total post-designation costs are approximately $946,000 to $978,000 (or $501,000 to $518,000 in present value terms and $47,300 to $48,900 on an annualized basis over the 20-year post-designation analysis period).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this proposed designation of critical habitat is a significant rule only in that the Office of Management and Budget (OMB) has determined that it may raise novel legal and policy issues. However, the economic analysis indicates that the proposed designation will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, OMB has not formally reviewed this rule.

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. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. However, the SBREFA does not explicitly define ''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 an area. The SBREFA also amended the RFA to require a certification statement. We are hereby certifying that this proposed rule will not have a significant economic impact on a substantial number of small entities, as explained below.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

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 *Astragalus lentiginosus* var. *piscinensis* through consultation with us under section 7 of the Act. If this critical habitat designation is finalized, Federal agencies must also consult with us to ensure that their activities do not destroy or adversely modify designated critical habitat.

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

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 lentiginosus* var. *piscinensis*, we anticipate that the proposed designation of critical habitat is not likely to have a significant economic impact on any small entities or classes of small entities. The only section 7 consultations since the taxon was listed have been associated with U.S. Army Corps of Engineers Section 404 permitting of the removal and re-construction of fish barriers at three springs. No post-designation section 7 consultations are currently anticipated for this taxon. The costs presented in the economic analysis reflect, where data permit, ranges representing the reasonably foreseeable future. All post-designation costs are anticipated to be direct costs of projects intended to benefit *A. l.* var. *piscinensis*.

We considered the potential relative cost of compliance to small entities and evaluated only small entities that are expected to be directly affected by the proposed designation of critical habitat. Based on the economic analysis for *A. l.* var. *piscinensis*, 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 lentiginosus* var. *piscinensis* 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 *A. l.* var. *piscinensis*.

In summary, we have considered whether this proposed designation would result in a significant economic impact on a substantial number of small entities, and we have concluded that it would not. No future consultations are currently anticipated, and we have no indication that the types of activities that we review under section 7 of the Act will change significantly in the future. Thus, we conclude that the proposed designation of critical habitat for *Astragalus lentiginosus* var. *piscinensis* is not likely to result in a significant impact to this group of small entities. Therefore, we are certifying that the proposed designation of critical habitat for *A. l.* var. *piscinensis* will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.)

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. The economic analysis indicates that the proposed designation will not have an annual effect on the economy of $100 million or more. In addition, lands proposed for designation include only Federal, State, and City-owned lands; the majority of forecast economic impacts are anticipated to be associated with direct costs to Federal, State, and municipal agencies. Therefore, we believe that this critical habitat designation will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

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 lentiginosus* var. *piscinensis*. Our assessment concludes that this proposed rule does not pose significant takings implications.

Author

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

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

Dated: December 17, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–28163 Filed 12–27–04; 8:45 am]

BILLING CODE 4310–55–P