

private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### *E. Applicability of Executive Order 13045*

The Executive Order, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

#### *F. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed rule does not create a mandate on State, local, or tribal governments and does not impose any enforceable duties on these entities. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically

solicits comment on this proposed rule from State and local officials.

#### *G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. The rule does not significantly or uniquely affect the communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

#### *H. Executive Order 13211: Energy Effects*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standard. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### **List of Subjects in 40 CFR Part 262**

Environmental protection, Hazardous materials transportation, Hazardous waste, Packaging and containers, Reporting and recordkeeping requirements.

Dated: January 6, 2005.

**Stephen L. Johnson,**

*Deputy Administrator.*

For the reasons set forth in the preamble, part 262 of title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

#### **PART 262—[AMENDED]**

1. The authority citation for part 262 continues to read as follows:

**Authority:** 42 U.S.C. 6906, 9612, 6922-6925, 6937, and 6938.

#### **Subpart I—[Amended]**

2. Section 262.90 is amended by revising paragraph (j) to read as follows:

#### **§ 262.90 Project XL for Public Utilities in New York State.**

\* \* \* \* \*

(j) This section will expire on \_\_\_\_ [72 months from effective date].

[FR Doc. 05-822 Filed 1-24-05; 8:45 am]

**BILLING CODE 6560-50-P**

## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

#### **Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petitions To List *Bromus arizonicus* (Arizona brome) and *Nassella cernua* (nodding needlegrass) as Endangered**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day petition finding for petitions to list *Bromus arizonicus* (Arizona brome) and *Nassella cernua* (nodding needlegrass) under the Endangered Species Act of 1973, as amended. We find that neither petition presented substantial scientific or commercial information indicating that listing one or both of these species may be warranted. We will not be initiating a further status review in response to the petitions to list.

**DATES:** The finding announced in this document was made January 7, 2005.

**ADDRESSES:** Data, information, written comments and materials, or questions concerning these petitions and findings should be submitted to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA

93003. The petition findings and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Constance Rutherford, botanist, at the above address (telephone 805/644-1766).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on all information available to us at the time we make the finding. To the maximum extent practicable, this finding is to be made within 90 days of our receipt of the petition, and we must publish the notice of the finding promptly in the **Federal Register**. Our standard for substantial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted" (50 CFR 424.14(b)). If the finding is that substantial information was presented, we are required to promptly commence a review of the status of the species, if one has not already been initiated, under our internal candidate assessment process.

On June 20, 2002, we received two separate petitions, both dated June 18, 2002, to list *Bromus arizonicus* (Arizona brome) and *Nassella cernua* (nodding needlegrass). The petitions requested that we add *Bromus arizonicus* and *Nassella cernua* to the List of Endangered and Threatened Wildlife and Plants. We are responding to both petitions in this one **Federal Register** notice because the petitions were received at the same time from the same petitioner.

*Bromus arizonicus*

This taxon was first described by Cornelius Lott Shear in 1900 as *Bromus carinatus* var. *arizonicus* based on a collection from near Tucson, AZ. Stebbins *et al.* (1944) raised the taxon to full species status based on cytogenetic (cellular) differences between it and *Bromus carinatus*. They found that, while both the taxa are polyploid in their number of chromosomes, *Bromus carinatus* has a chromosome count of

$2n = 56$ , while *Bromus arizonicus* has a chromosome count of  $2n = 84$ . However, some taxonomists still consider *Bromus arizonicus* to be synonymous with *Bromus carinatus* (Felger 2000; R. Felger, University of Arizona, in litt. 2003; P. Jenkins, University of Arizona, in litt. 2003).

The petition to list *Bromus arizonicus* comprises one page of information about the species, including its habitat, distribution, potential threats, observations made by the petitioner at historic locations for the species, and two literature citations. The information from the petition is summarized as follows: *Bromus arizonicus* is an annual grass restricted in distribution to the San Joaquin Valley, the southern Coast Ranges, and Channel Islands of southern California, Arizona, and Baja California, Mexico. The species is associated with valley grassland, foothill woodland, chaparral, coastal sage scrub, and creosote bush scrub. The species occurs principally in an average annual rainfall band between 5 and 14 inches (in) (13 to 36 centimeters (cm)), and in an elevational band between 20 and 2,000 feet (ft) (6 and 610 meters (m)). Twisselmann (1967) indicated that the species is widespread in the valley grasslands, especially in the lower Sonoran grassland, and is scarce in creosote bush scrub in the desert. However, the petitioner stated that *Bromus arizonicus* became rarer in the 1970s and 1980s as a result of overgrazing during drought periods.

The petitioner estimates that *Bromus arizonicus* historically ranged across 5 million acres (ac) (2 million hectares (ha)), and estimates that the range has been reduced to 25 ac (10 ha) in Arizona and 25 ac (10 ha) in California. Causes cited for the disappearance of the species in the San Joaquin Valley include a combination of overgrazing by cattle and two extended droughts in the 1970s and 1980s. During his own surveys in the 1990s, the petitioner was able to find only one small stand of *Bromus arizonicus* in Kern County, in an area protected from grazing. In 2002, the petitioner found that a second stand of *Bromus arizonicus* that he had observed over a period of years has been converted to a truck stop parking lot. The petitioner states that threats to *Bromus arizonicus* include: Commercial and residential development, agricultural development, off-highway vehicle activity, energy developments, grazing, fires, military activities, introduction of nonnative plants, roadside herbicide use, roadside mowing, and border patrol activities along the United States-Mexico border. However, other than the two references

mentioned above, the petitioner did not provide any other information related to the status of *Bromus arizonicus*, such as field survey forms or reports documenting either positive or negative survey findings, a list of historic locations that were field-checked, maps, or an explanation of how estimates of historic and current ranges were derived.

The information available to us for the species in California states that the species is: "Occasional in coastal sage scrub and weedy ground; coast west of Point Dume, Sepulveda Canyon, west Los Angeles" (Raven *et al.* 1986); "reported only from Salinas Valley" in Monterey County (Matthews 1997); and "evidently widespread about waste places of towns, railroads, ranches, and highways from coast to Cuyama Valley" in the Santa Barbara region (Smith 1998). The University of California at Berkeley and Jepson Herbaria (UC/JEPS) (2003) indicates that the species is principally found in grasslands and shrublands in California at elevations of less than 3,300 ft (1,000 m). The species has been collected in 13 California counties (UC/JEPS 2003). The information available to us for the species in Arizona indicates that it occurs "almost throughout the state, at moderate elevations" (Kearney and Peebles 1951), and in "sandy washes and protected sites in desert areas, roadsides, and other disturbed soils, mostly below 5,000 feet but occasionally higher in the northern part of its range where it occurs as an introduced weed" (Gould 1988). The Natural Resources Conservation Service lists this species as occurring in the States of Nevada and Texas, in addition to California, Arizona, and Baja California (<http://plants.usda.gov>).

*Nassella cernua*

This taxon was first described as *Stipa cernua* by G. L. Stebbins and R. M. Love (1941) based on a collection made from Alameda County, CA. In 1990, M.E. Barkworth segregated the genus *Nassella* and included the species *cernua*, from *Stipa* (Barkworth 1993).

The petition to list *Nassella cernua* comprises one page of information about the species, including its habitat, distribution, potential threats, and observations made by the petitioner at historic locations for the species. No literature citations were included. The information from the petition is summarized as follows: *Nassella cernua* is a perennial grass restricted in distribution to the North Coast Range, eastern San Francisco Bay area, San Joaquin Valley, the Coast Ranges of southern California, and in Baja

California, Mexico. The petitioner states that the species occurs principally in an average annual rainfall band between 5 and 14 in (13 to 36 cm), and in an elevational band between 20 and 4,500 ft (6 and 1,370 m).

The petitioner estimates that *Nassella cernua* historically ranged across 10 million ac (4 million ha). He estimates that the range has been reduced to 800 ac (324 ha) in California and 200 ac (81 m) in Baja California. Causes cited for the decline of the species in the San Joaquin Valley include a combination of overgrazing by cattle and two extended droughts in the 1970s and 1980s. The petitioner states that threats to *Nassella cernua* include commercial and residential development, agricultural development, off-highway vehicle activity, energy developments, grazing, fires, military activities, introduction of nonnative plants, roadside herbicide use, roadside mowing, and border patrol activities along the United States-Mexico border. However, the petitioner did not provide any other information related to the status of *Nassella cernua*, such as a list of historic locations that were field-checked, maps, or an explanation of how estimates of historic and current ranges were derived.

The information in our files indicates that in California, the species is scattered in coastal sage scrub and chaparral in the western half of the Santa Monica Mountains below 2000 ft. (Raven *et al.* 1986); found in "dry hills, open woods, and rocky slopes, chaparral, coastal prairie, coastal sage scrub, etc." in Monterey County (Matthews 1997); and "common throughout the interior except in the most arid parts" in San Luis Obispo County (Hoover 1970). UC/JEPS (2003) indicates that the species is principally found in grasslands, chaparral, and juniper woodland in California at elevations of less than 4,600 ft (1,400 m), and distributed within the inner North Coast Ranges, eastern San Francisco Bay area, South Coast Ranges, Transverse Ranges, Peninsular Ranges, and Baja California. The species has

been collected in 30 of California's 58 counties (UC/JEPS 2003).

NatureServe (2000; 2003) indicates that the global heritage status rank for both *Bromus arizonicus* and *Nassella cernua* is G5, which means that the species is common, widespread, and abundant (although it may be rare in parts of its range, particularly on the periphery). NatureServe (2000) defines this ranking as a species that is not considered to be vulnerable in most of its range. The U.S. Forest Service (2003) and Bureau of Land Management (2003) do not have *Bromus arizonicus* or *Nassella cernua* on their sensitive species lists, and neither the California Natural Diversity Data Base (2003) nor the California Native Plant Society (2003) tracks these species or gives them any special consideration. Additionally, neither the Arizona Natural Heritage Program (2003) nor the Nevada Natural Heritage Program (2003) tracks *Bromus arizonicus* or gives it any special consideration.

Although the petitioner mentioned a number of threats to both *Bromus arizonicus* and *Nassella cernua*, he did not provide information concerning specific threats and specific locations, other than the reference to one site for *Bromus arizonicus* being converted to a parking lot. Felger (in litt. 2003) indicated that *Bromus arizonicus* was a very common grass in the Sonoran Desert and "beyond any question it is not in any way endangered." We contacted the petitioner and inquired whether he could provide us with any additional information on either species; he indicated he was not able to do so at this time (C. Rutherford, Service, in litt. 2003). Based on the information provided by the petitioner, and the information available to us, we find that threats the petitioner mentioned cannot be adequately determined for *Bromus arizonicus* or *Nassella cernua*.

#### Findings

We have reviewed the petitions, literature cited in the petitions, other

pertinent literature, and information available in our files. The available information we were able to access concerning these species indicates that they are widespread. Without additional information on the life history, range, or population size of *Bromus arizonicus* and *Nassella cernua*, such as an explanation of how estimates of historic and current ranges were derived, information concerning specific threats and specific locations, or any other references, we cannot evaluate the seriousness of the potential threats to them.

After reviewing the best scientific and commercial information available, and because of the lack of adequate data indicating a biological vulnerability and presence of threats to these species, we find the petitions do not present substantial information that listing *Bromus arizonicus* or *Nassella cernua* may be warranted. However, we welcome any additional information concerning the status of *Bromus arizonicus* and *Nassella cernua*. Please submit any information to the Field Supervisor, Ventura Fish and Wildlife Office (see ADDRESSES section).

#### References Cited

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

#### Author

The primary author of this document is Constance Rutherford, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see ADDRESSES section).

#### Authority

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

Dated: January 7, 2005.

**Steve Williams,**

*Director, Fish and Wildlife Service.*

[FR Doc. 05-1261 Filed 1-24-05; 8:45 am]

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