

activities and natural events that may be affecting the habitat and reestablishment of the species. Other threats, like undocumented immigrant traffic, are larger than one agency's jurisdiction. However, we believe that existing regulatory mechanisms are sufficient to protect the species. The overall existing management of the U.S. Forest Service is protecting much of the habitat in Sycamore Canyon. We also acknowledge that, due to small population size, demographic or genetic factors may apply to each of the locations in Arizona and Sonora, Mexico, but we have no genetic information to determine whether this is indeed the case.

We conclude that the Gentry indigo bush does not warrant listing at this time. In order to make a warranted finding, the species must, at a minimum, meet the definition of a threatened species. In accordance with section 3(19) of the Act, a threatened species is one which is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Based on all the information we have gathered and reviewed, we do not conclude this to be the case for the following reasons.

Populations have persisted in all but one of the known locations over time. A new population was located in Mexico and offers hope that there may be more populations located with additional surveys. Areas that were previously overlooked as suitable habitat outside of the floodplain appear to support Gentry indigo bush. Thus, populations may not be as vulnerable to extirpation from flood events as previously thought since the species does have the ability to recolonize after flood events, and plants located out of the floodplain and on the sides of the canyon could provide a source for the recolonization of plants in stream habitat. The largest known population occurs in Sycamore Canyon within the Goodding RNA, where mining, roads, and grazing are prohibited and where the U.S. Forest Service has completed a number of conservation actions that have improved the habitat for Gentry indigo bush. Additionally, as noted above, the actions of the U.S. Forest Service and the protection that the canyon receives by virtue of its wilderness and RNA designations will continue to provide for the long-term conservation of Gentry indigo bush in Sycamore Canyon. The metapopulation in Sycamore Canyon has persisted through some dramatic environmental events, and its numbers have increased; thus, we believe it will continue to persist into the future. Other factors (e.g., watershed degradation,

invasive species, undocumented immigrant and U.S. Border Patrol activities, recreation, fire, climate change, and genetic factors associated with small population size) discussed above have not been documented as more than low magnitude or potential threats, and therefore it is not reasonably foreseeable that these factors pose threats over a significant portion of the species' range. We anticipate that we will have the opportunity to work cooperatively with the Tohono O'odham Nation, as we have in the past, to census their populations and address potential concerns, if necessary. We also plan to emphasize the need for and participation in future monitoring efforts, surveys, and genetic studies.

The Service does not believe the Gentry indigo bush is likely to become a threatened species throughout either all or a significant portion of its range in the foreseeable future. The only population for which we have a thorough threats assessment is the one on U.S. Forest Service land in Sycamore Canyon. While the Sycamore Canyon population is not entirely devoid of potential threats, we believe that U.S. Forest Service management (e.g., RNA and Wilderness designations, exclusion of both domestic and Mexican cattle from the habitat) sufficiently ameliorates human-influenced threats, while its persistence over time through droughts and floods, and its discovery outside the floodplain, render it unlikely to be extirpated from the canyon as a result of natural factors.

Threats facing the other populations are less well known. Three populations are known from Mexico. One population in Mexico has been present since its original discovery in 1995, another one was relocated in 2005 after it was initially detected in 2004, and the remaining population was only detected in 2005. Based on this information, two of the populations are known to have persisted. In addition, according to information received during the public comment period, the Mexico populations are in areas not accessible to cattle. We can verify that plants still exist on the Tohono O'odham Nation. The fact that the Mexican and Tohono O'odham Nation populations have persisted under current management and through various climatic conditions provides evidence that whatever threats may exist, if any, are not significant. In summary, we have no evidence to indicate that any portion, let alone a significant portion, of the species' range is threatened to the extent that listing under the Act is warranted.

We will continue to monitor the status of this species and will accept

additional information and comments at any time from all concerned governmental agencies, the scientific community, industry, and any other interested party concerning this finding. This information will help us monitor and encourage beneficial measures for this species.

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor at the Arizona Ecological Services Office (see **ADDRESSES** section).

Author

The primary author of this document is the Arizona Ecological Services 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: September 14, 2005.

Marshall Jones,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 05-18881 Filed 9-26-05; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AT74

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Astragalus lentiginosus* var. *coachellae* (Coachella Valley milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

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

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the proposed designation of critical habitat for *Astragalus lentiginosus* var. *coachellae* (Coachella Valley milk-vetch), and the availability of a draft economic analysis of the proposed designation of critical habitat. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted on this proposed rule need not be resubmitted as they have already been incorporated into the

public record and will be fully considered in our final determination.

DATES: We will accept public comments and information until October 27, 2005.

ADDRESSES: Written comments and materials may be submitted to us by any one of the following methods:

1. You may submit written comments and information to Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011;

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 760/431-9624; or

3. You may send your comments by electronic mail (e-mail) to fw1cfwocvmv@fws.gov. For directions on how to submit electronic comments, see the "Public Comments Solicited" section. In the event that our Internet connection is not functional, please submit your comments by the alternate methods mentioned above.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone 760/431-9440; facsimile 760/431-9624).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We will accept written comments and information during this reopened comment period. We intend that any final action resulting from our critical habitat proposal be as accurate and effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested party concerning the proposed rule and the associated draft economic analysis. 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 Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), including whether the benefits of designation would outweigh any threats to the species resulting from designation;

(2) Specific information on the distribution of *Astragalus lentiginosus* var. *coachellae*, the amount and distribution of the species' habitat, and which habitat is essential to the conservation of the species, and why;

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

(4) 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 concerns and comments;

(5) Any foreseeable economic, environmental, or other impacts resulting from the proposed designation of critical habitat or coextensively from the listing, and in particular, any impacts on small entities or families;

(6) Whether the economic analysis identifies all State and local costs. If not, what other costs should be included;

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

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

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

(10) Whether the economic analysis appropriately identifies all costs that could result from the designation or coextensively from the listing; and

(11) Whether there is information about areas that could be used as substitutes for the economic activities planned in critical habitat areas that would offset the costs and allow for the conservation of critical habitat areas.

All previous 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). Our final determination concerning designation of critical habitat for *Astragalus lentiginosus* var. *coachellae* will take into consideration all comments and any additional information received during both comment periods. On the basis of public comment on the critical habitat proposal, the draft economic analysis, and the final economic analysis, we may during the development of our final determination find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

Please submit electronic comments in an ASCII file and avoid the use of any special characters or any form of encryption. Also, please include "Attn:

Coachella Valley milk-vetch" and your name and return address in your e-mail message regarding the *Astragalus lentiginosus* var. *coachellae* proposed rule or the draft economic analysis. If you do not receive a confirmation from the system that we have received your e-mail message, please submit your comments in writing using one of the alternate methods described above in the **ADDRESSES** 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 address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold 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 comments. 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 public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office at the address listed under **ADDRESSES**. Copies of the proposed critical habitat rule for *Astragalus lentiginosus* var. *coachellae* and the draft economic analysis are also available on the Internet at <http://www.fws.gov/pacific/carlsbad/CVMV.htm>. In the event that our Internet connection is not functional, please obtain copies of documents directly from the Carlsbad Fish and Wildlife Office.

Background

On December 14, 2004, we published a proposed rule in the **Federal Register** (69 FR 74468) to designate critical habitat for *Astragalus lentiginosus* var. *coachellae* pursuant to the Act. We identified approximately 20,559 acres (ac) (8,320 hectares (ha)) of essential habitat for this species. Of the essential habitat, we proposed to designate approximately 3,583 ac (1,450 ha) of critical habitat in three units in Riverside and San Bernardino Counties, California. Approximately 16,976 ac (6,870 ha) of essential habitat covered under the pending Coachella Valley Multiple Species Habitat Conservation

Plan in Riverside County was excluded from proposed critical habitat under section 4(b)(2) of the Act. The first comment period for the *A. l. var. coachellae* proposed critical habitat rule closed on February 14, 2005. For more information on this species, refer to the final rule listing this species as endangered, published in the **Federal Register** on October 6, 1998 (63 FR 53596).

The proposed critical habitat for *Astragalus lentiginosus* var. *coachellae*, published on December 14, 2004 (69 FR 74475), was intended to include only Federal and State lands. Although the descriptions of the proposed critical habitat units describe those units as Federal or State lands, due to using a 100 meter Universal Transverse Mercator grid in our mapping process, some acres associated with private lands were inadvertently included in the total acreage figures. Because the draft economic analysis looks at the costs associated with all of the acreage included in the proposed rule, the development costs on private lands were included. If this proposed critical habitat designation is made final, the Service intends to explicitly remove the private lands in the final determination.

Critical habitat is defined in section 3 of the Act as 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 essential to the conservation of the species and that may require special management considerations or protection, and 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. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4(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 of the December 14, 2004 (69 FR 74468), proposed designation of critical habitat

for *Astragalus lentiginosus* var. *coachellae*.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of *Astragalus lentiginosus* var. *coachellae*, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for *A. l. var. coachellae* in essential habitat areas. The analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (e.g., lost economic opportunities associated with restrictions on land use). This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this analysis looks retrospectively at costs that have been incurred since the date the species was listed as an endangered species and considers those costs that may occur in the 20 years following the designation of critical habitat.

Pre-designation costs include those *Astragalus lentiginosus* var. *coachellae*-related conservation activities associated with sections 4, 7, and 10 of the Act that have accrued since the time that *A. l. var. coachellae* was listed as endangered (October 6, 1998), but prior to the final designation of critical habitat. The pre-designation costs in the proposed critical habitat are estimated at \$2.5 million.

Post-designation effects include likely future costs associated with *Astragalus lentiginosus* var. *coachellae* conservation efforts following the final designation of critical habitat in December 2005 (effectively 2006 through 2025). The total costs associated with the designation of critical habitat are expected to be \$7.8 million in constant dollars, or \$5.8 million and \$4.2 million when using a three percent or seven percent discount rate, respectively, over the next 20 years (an annualized cost of \$0.4 million at either rate). As mentioned above, private lands were not meant to be included in the proposed designation. The costs

associated with development on private lands are \$1.5 million in constant dollars, or \$1.1 million and \$0.8 million when using a three percent or seven percent discount rate, respectively, over the next 20 years (an annualized cost of \$0.07 million at either rate). Therefore, the net costs associated with the designation of critical habitat are expected to be \$6.2 million in constant dollars, or \$4.7 million or \$3.4 million when using a three percent or seven percent discount rate, respectively over the next 20 years (an annualized cost of \$0.03 million at either rate).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues. However, because the draft economic analysis indicates the potential economic impact associated with a designation of all habitat with features essential to the conservation of this species would total no more than \$0.4 million per year, we do not anticipate that this final rule will have an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the time line for publication in the **Federal Register**, the Office of Management and Budget (OMB) did not formally review the proposed 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. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), 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 designation as well as 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.

To determine if this proposed designation of critical habitat for *Astragalus lentiginosus* var. *coachellae* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., residential, industrial, and commercial development). We considered each industry or category individually 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 the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process. Our analysis determined that costs involving conservation measures for *Astragalus lentiginosus* var. *coachellae* would be incurred for activities involving residential, commercial, and industrial development (land subdivision companies); transportation (California Department of Transportation (Cal Trans), Coachella Valley Association of Governments

(CVAG), or Riverside County Transportation Commission (RCTC)); Federal land (Bureau of Land Management (BLM), U.S. Forest Service (USFS), and U.S. Fish and Wildlife Service (Service)); other public (California Department of Fish and Game (CDFG) and California Department of Parks and Recreation (CDPR)) or conservation (The Nature Conservancy (TNC) and Center for Natural Lands Management (CNLM)) land management, water supply (Mission Springs Water District (MSWD) and Coachella Valley Water District (CVWD)), and flood control (CVWD and Riverside County Flood Control and Water Conservation District (RCFC) agencies); implementation of the draft Coachella Valley Multiple Species Habitat Conservation Plan (MSHCP); and wind energy projects (private businesses and individuals).

In our economic analysis of this proposed designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of this species and proposed designation of its critical habitat. Critical habitat designation is expected to result in additional costs to real estate development projects through a Local Development Mitigation Fee. This fee will be imposed by local jurisdictions on residential, commercial, and industrial development occurring on private land containing habitat for covered species (species included in the MSHCP permit) within the Coachella Valley MSHCP Plan Area. The affected land is located within Riverside County and under private ownership by individuals who will either undertake a development project on their own or sell the land to developers for development. However, as previously mentioned, due to using a 100 meter Universal Transverse Mercator grid in our mapping process, private lands were inadvertently included in the proposed critical habitat designation. If the proposed rule is made final, the Service intends to explicitly remove private lands, and therefore the additional costs to real estate development projects mentioned above will likely not materialize. For businesses involved with land development, the relevant threshold for "small" is annual revenues of \$6 million or less. The North American Industry Classification System (NAICS) code 237210 is comprised of establishments primarily engaged in servicing land (e.g., excavation, installing roads and utilities) and subdividing real property into lots for subsequent sale to builders.

Land subdivision precedes actual construction, and typically includes residential but may also include industrial and commercial properties.

It is likely that development companies in Riverside County, the entities directly impacted by the regulation, would not bear the additional costs of *Astragalus lentiginosus* var. *coachellae* conservation within the essential habitat, but pass these costs to the landowners through a lower land purchase price. Of the 8,598 acres of developable land in Units 1 and 2, 8,559 acres are under private ownership and "vacant"; the remaining 39 acres are under private ownership and in agriculture.

To comply with the SBA recommendation that Federal agencies consider impacts to entities that may be indirectly affected by the proposed regulation, this screening level analysis presents information on land subdivision and farming businesses for Riverside County as these are the businesses that would likely be impacted directly or indirectly by the regulation (see Table A-1 in the draft economic analysis). As highlighted in Table A-1, the majority of the land subdivision and farming businesses within Riverside County are considered small businesses.

It is important to note that the identity and number of land subdivision and farming businesses impacted by the critical habitat designation is not known. In addition, the identity and number of affected businesses classified as "small" is also not known. Nevertheless, the county-level information provided in Table A-1 reflects the smallest region for which data relevant to this analysis exist. This county-level information clearly over-represents the potential number of small businesses impacted by development-related *Astragalus lentiginosus* var. *coachellae* conservation efforts as the privately owned developable land within the essential habitat (approximately 8,598 acres) comprises less than two-tenths of one percent of the total land area in the County (4,612,480 acres), and only 265.2 acres of this private land is forecasted to be developed between 2006 and 2025. Furthermore, the 39 acres of agriculture land represent less than one-half of one percent of the developable land (approximately 8,598 acres) within the essential habitat.

While the identity and number of land subdivision and farming businesses impacted by the critical habitat designation is not known, considering that low density residential

development is expected to comprise 79 percent of the forecasted acres of land development between 2006 and 2025, this analysis relates the economic impacts to the median home price in the County. The mitigation cost per acre of development is \$1,975 for this species, and the build-out density for residential low development is fewer than eight dwelling units per acre. Thus, *Astragalus lentiginosus* var. *coachellae*-related conservation efforts are expected to cost between \$247 and \$1,975 per residential dwelling unit (one to eight dwelling units per acre) developed. Considering the median sales price for single family residences in the County was \$315,000 in 2004, the economic impacts are equal to 0.08 percent to 0.63 percent of the median home price in Riverside County. These costs may be borne by the developer or passed on to the landowner through a lower land purchase price.

Based on this data, we have determined that this proposed designation would not result in a significant economic impact on a substantial number of small entities, in particular to land developers or farmers in Riverside County since no private lands are actually being proposed for critical habitat as stated earlier in the Background section. We may also exclude areas from the final designation if it is determined that these localized areas have an impact to a substantial number of businesses and a significant proportion of their annual revenues. As such, we are certifying that this proposed designation of critical habitat would not result in a significant economic impact on a substantial number of small entities. Please refer to Appendix A of our draft economic analysis of this proposed designation for a more detailed discussion of potential economic impacts to small business entities.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues. On the basis of our draft economic analysis, the proposed critical habitat designation is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action, and no Statement of Energy Effects is required. Please refer to Appendix A of our draft

economic analysis of the proposed designation for a more detailed discussion of potential effects on energy supply.

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

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

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly

impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments. As discussed in the draft economic analysis, nine small local governments are located adjacent to or bisect the areas subject to this analysis: Palm Springs (population 42,807); Cathedral City (population 42,647); Banning (population 23,562); Yucca Valley (population 16,865); Desert Hot Springs (population 16,582); Cherry Valley (population 5,891); Thousand Palms (population 5,120); Cabazon (population 2,229); and Morongo Valley (population 1,929). All nine of the local governments have populations that fall within the criteria (fewer than 50,000 residents) for "small entity." However, there is no record of consultations between the Service and these cities since *Astragalus lentiginosus* var. *coachellae* was listed in 1998. Indeed, it is not likely that these cities would be involved in a land development project involving a section 7 consultation, although a city may be involved in land use planning or permitting, and may play a role as an interested party in infrastructure projects. Any cost associated with this activity/involvement is anticipated to be a very small portion of the city's budget. Consequently, we do not believe that critical habitat designation would significantly or uniquely affect small government entities. As such, Small Government Agency Plan is not required.

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 proposing critical habitat for *Astragalus lentiginosus* var. *coachellae*. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go

forward. In conclusion, the designation of critical habitat for *Astragalus lentiginosus* var. *coachellae* does not pose significant takings implications.

Author

The primary authors of this notice are the staff of the Carlsbad 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: September 16, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05-19098 Filed 9-26-05; 8:45 am]

BILLING CODE 4310-55-P