

rules is a VOC, and the provisions in these rules are enforceable and result in specified VOC reductions dependent upon the specific type of operation.

#### IV. What Action Is EPA Taking Today?

EPA is proposing to approve Indiana's amendment to its SIP consisting of an amendment to 326 IAC 8-1-6, new facilities; general reduction requirements. This rule exempts boat manufacturers subject to 326 IAC 20-48, NESHAPS for boat manufacturing, or reinforced plastics composites manufacturers subject to 326 IAC 20-56, NESHAPS for reinforced plastics composites production facilities, from the requirement to do a BACT analysis, for the purposes of 326 IAC 8-1-6, provided they comply with the applicable NESHAPS.

However, any approval of this exemption to 326 IAC 8-1-6 would not address (or take action on) whether the boat manufacturing or reinforced plastics composites production NESHAPS represent reasonably available control technology, which is the level of control required by EPA for existing sources in ozone nonattainment areas. In addition, any approval would not address (or take action on) whether these NESHAPS regulations satisfy BACT as required by 326 IAC 2-2 (prevention of significant deterioration) or lowest achievable emission rate as required by 326 IAC 2-3 (nonattainment new source review).

#### VI. Statutory and Executive Order Reviews

##### *Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735, September 30, 1993), this action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget.

##### *Paperwork Reduction Act*

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

##### *Regulatory Flexibility Act*

This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

##### *Unfunded Mandates Reform Act*

Because this rule proposes to approve pre-existing requirements under State law, and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

##### *Executive Order 13132: Federalism*

This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

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

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

##### *Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

##### *Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

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

##### *National Technology Transfer Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impractical. In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the State to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 18, 2007.

**Bharat Mathur,**

*Acting Regional Administrator, Region 5.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### **Endangered and Threatened Wildlife and Plants; Anticipated Delisting of *Astragalus desereticus* (Deseret milk-vetch) From the List of Endangered and Threatened Plants; Prudency Determination for Designation of Critical Habitat**

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

**ACTION:** Advanced notice of proposed rulemaking; notice of critical habitat prudency determination.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce our intention to conduct rulemaking under the Endangered Species Act (Act) of 1973 as amended (Act) (16 U.S.C. 1531 *et seq.*) for the purpose of removing

*Astragalus desereticus* (Deseret milk-vetch) from the List of Endangered and Threatened Plants in the near future. Specifically, we intend to propose delisting *A. desereticus* because threats to the species as identified in the final listing rule (64 FR 56590, October 20, 1999) are not as significant as earlier believed and are managed such that the species is not likely to become in danger of extinction throughout all or a significant portion of its range in the foreseeable future. Upon delisting, *A. desereticus* would be managed pursuant to a Conservation Agreement among the Service and Utah State agencies.

In response to a stipulated settlement agreement we have reconsidered whether designating critical habitat for *Astragalus desereticus* would be prudent based on this species' current status. We have determined that such a designation is not prudent because, as described in this advanced notice, we believe that designating critical habitat would not be beneficial to the species (50 CFR 424.12). This is because no area meets the definition of "critical habitat" (i.e., there are no areas essential to the conservation of the species which require special management considerations, and protections afforded by the species' current listing status appear to be no longer necessary).

**DATES:** Comments and information must be submitted before March 26, 2007.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials by any one of the following methods:

(1) You may mail or hand-deliver written comments and information to Field Supervisor, Utah Ecological Services Office, U.S. Fish and Wildlife Service, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119.

(2) You may electronic mail (e-mail) your comments to [deseretmilkvetch@fws.gov](mailto:deseretmilkvetch@fws.gov). For directions on how to submit comments by e-mail, see the "Public Comments Solicited" section of this notice. In the event that our Internet connection is not functional, please submit your comments by mail, hand delivery, or fax to 801-975-3331.

**FOR FURTHER INFORMATION CONTACT:** Larry England, U.S. Fish and Wildlife Service, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119 (telephone 801-975-3330; fax 801-975-3331; e-mail [larry\\_england@fws.gov](mailto:larry_england@fws.gov)).

**SUPPLEMENTARY INFORMATION:**

**Public Comments Solicited**

This notice announces the opening of a 60-day comment period on our advanced notice of proposed

rulemaking. We encourage interested parties to provide comments on *A. desereticus* to the Project Leader, Utah Ecological Services Office (see **ADDRESSES**). We will base rulemaking on a review of the best scientific and commercial information available, including all such information received during the public comment period. Information regarding the following topics would be particularly useful: (1) Species biology, including but not limited to population trends, distribution, abundance, demographics, genetics, and taxonomy; (2) habitat conditions, including but not limited to amount, distribution, and suitability; (3) conservation measures that have been implemented that benefit the species; (4) threat status and trends; and (5) other new information or data. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

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, but you should be aware that the Service may be required to disclose your name and address pursuant to the Freedom of Information Act. 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 address indicated in the **ADDRESSES** section.

Please submit electronic comments in an ASCII or Microsoft Word file and avoid the use of any special characters or any form of encryption. Also, please include "Attn: *Astragalus desereticus*" and your name and return address in your e-mail message. 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.

**Background**

*Astragalus desereticus* is a perennial, herbaceous, subcaulescent (almost stemless) plant (Barneby 1989) in the legume family. It is approximately 2–6 inches (in) (5.1–15.2 centimeters (cm)) in height, and has pinnately compound leaves (feather-like arrangement with leaflets displayed on a central stalk) that are 2–4 inches (in) (5.1–10.2 cm) long with 11–17 leaflets. The flower petals are whitish except for pinkish wings and a lilac keel-tip, and seed pods are 0.4–0.8 in (1.0–2.0 cm) long and densely covered with lustrous hairs.

*Astragalus desereticus* habitat is narrowly restricted to steep, sandy bluffs (Barneby 1989) associated with south and west facing slopes (Franklin 1990) within the Moroni Formation at elevations between 5,400 and 5,600 feet (1,646 and 1,707 meters (m)) (Franklin 1990). The current known range of *A. desereticus* is limited to the Birdseye population (Stone 1992) which occupies an area approximately 1 mile (mi) (1.6 kilometers (km)) long by 0.3 mi (0.5 km) wide, or about 345 acres (ac) (139.6 hectares (ha)), in the Thistle Creek watershed immediately east of Birdseye, Utah. Approximately 230 ac (93 ha) are owned by the Utah Division of Wildlife Resources (UDWR) in the Birdseye Unit of the Northwest Manti Wildlife Management Area (WMA), 25 ac (10.1 ha) are owned by the Utah Department of Transportation (UDOT), and 90 ac (36.4 ha) are on private lands owned by several landowners. The WMA extends across the northern and central portions of the population. The mineral rights under the WMA and the majority of the mineral rights under the private lands are owned by the Utah School and Institutional Trust Lands Administration (SITLA).

Franklin (1990) estimated the population in May 1990 at fewer than 5,000 plants. Stone (1992) resurveyed the population in late May 1992 and reported more than 10,000 plants, indicating that a substantial seed bank existed in the soil. He reported that the northern portion of the population appeared the same as in 1990, but high densities of seedlings and young milk-vetch plants occurred locally in the southern portion. Observations of *Astragalus desereticus* on the WMA show that the species population increased by 31 percent from 2000–2005 (*Astragalus desereticus* monitoring plot data conducted by the Service, 2000 and 2005, USFWS, Salt Lake City, Utah; hereinafter cited as Service 2005).

### Previous Federal Actions

*Astragalus desereticus* was listed as a threatened species due to small population size, restricted distribution, development, cattle grazing (including erosion and trampling), and impacts to pollinator habitat (64 FR 56590, October 20, 1999). At the time of listing, we determined that designating critical habitat for *A. desereticus* was not prudent due to the lack of benefit to the species. Specifically, we discussed application of sections 4 and 7 of the Act and management of the species' habitat by UDWR.

On July 5, 2005, the Center for Native Ecosystems, Forest Guardians, and the Utah Native Plant Society filed a complaint in the U.S. District Court for the District of Columbia challenging our determination that designating critical habitat was "not prudent" (*Center for Native Ecosystems, Forest Guardians, and Utah Native Plant Society v. Gale Norton* (05-CV-01336-RCL)). In a stipulated settlement agreement, we agreed to submit for publication in the **Federal Register** a new critical habitat determination for *Astragalus desereticus* by January 19, 2007.

This advance notice of proposed rulemaking (ANPR) announces our intent to remove *Astragalus desereticus* from the Federal list of Endangered and Threatened Plants, based on a combination of recovery and original data error, including: (1) The species' habitat remains intact and little changed from the early 1990s when monitoring activities were first initiated (UDWR *et al.* 2006); (2) the population has grown considerably since listing; and (3) threats are not as significant as we had anticipated at the time of listing, and they are adequately managed such that the species is not likely to become in danger of extinction throughout all or a significant portion of its range in the foreseeable future. This notice also constitutes our new prudence determination in fulfillment of the stipulated settlement agreement.

### Review of Available Information

Section 4 of the Act and its implementing regulations (50 CFR part 424.11) set forth procedures for removing species from the Federal List of Endangered and Threatened Wildlife and Plants. Regulations at 50 CFR 424.11(d) state that the factors considered in delisting a species are the following, as they relate to the definitions of endangered or threatened species: (A) Present or threatened destruction, modification, or curtailment of habitat or range; (B) overutilization for commercial,

recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. A delisting must be supported by the best scientific and commercial data available to the Secretary after conducting a review of the status of the species. A species may be delisted only if such data substantiate that it is neither endangered nor threatened for one or more of the following reasons: (1) Extinction; (2) recovery; and (3) original data for classification in error.

When we listed *Astragalus desereticus*, we identified several threats to the species, all but one habitat related. These threats included primary and secondary effects of urban expansion, road construction, and cattle grazing (all identified pursuant to factors A and E). Factor D, inadequacy of existing regulatory mechanisms, was also identified as a threat. Information available at this time indicates that some of these threats did not materialize, and others are not as significant as we had anticipated. In addition, a recently completed Conservation Agreement (cited herein as UDWR *et al.* 2006) among the Service, UDWR, UDOT, and SITLA should adequately address our concerns pursuant to factor D. We are not aware of any new threats at this time that were not identified when the species was listed.

Although the species' distribution is still small and restricted, there has been little to no habitat disturbance in recent years and there are no foreseeable potential threats to the State-owned portion of the species' range (UDWR *et al.* 2006). Occupied habitat continues to be intact and little has changed since the early 1990s when Stone (1992) concluded that the population was not subject to any deterministic threats (*i.e.*, habitat destruction or attempts at eradication) (UDWR *et al.* 2006). One house has been built on private property within the species' range, affecting about 2 ac (0.8 ha), or less than 1 percent of occupied habitat. Residential development could directly affect up to about 10 percent of the species' habitat in the future (England 2006); however, this is not considered to be a significant threat, given that the majority of the species habitat would remain protected on the State WMA for the foreseeable future. We are not aware of any specific development plans at this time.

There are currently no plans for highway widening (West 2006). Should highway widening occur in the future, there is adequate right-of-way space to

minimize impacts to *Astragalus desereticus* individuals. In addition, mineral development does not appear to be a significant threat because SITLA owns the mineral rights on most of the occupied habitat. These mineral rights have not been leased (Durrant 2006), and SITLA has agreed to work with lessees to ensure disturbances to occupied habitat are avoided or that unavoidable impacts are appropriately mitigated (UDWR *et al.* 2006).

Prior to state acquisition of the WMA, livestock grazing (primarily sheep) had occurred for over 100 years on occupied *Astragalus desereticus* habitat (England 2006). The WMA is now being managed as big game winter range and UDWR controls all grazing rights on the property. Cattle grazing has been used as a management tool by UDWR, but only on a limited basis. *A. desereticus* occupied habitat is largely unsuitable for cattle grazing (Green 2006). There is no evidence that current wildlife or livestock browsing levels are negatively impacting *A. desereticus* populations (UDWR *et al.* 2006).

A significant portion of the species' range (approximately 67 percent) is managed by UDWR as part of the Northwest Manti WMA. Plants occurring on the WMA constitute the core of the species' population, providing the seed source for reproduction and maintenance of the seed bank (UDWR *et al.* 2006). Historic data and recent observations indicate that the population has grown substantially since listing (Franklin 1990; Stone 1992; Service 2005). Plant density on the WMA, as measured by Service personnel, increased by 31 percent between 2000 and 2005 (Service 2005); therefore, the species and its habitat are considered stable (UDWR *et al.* 2006).

Natural events such as drought and fire may occur in the areas of *A. desereticus* habitat. However, we have no information to indicate that natural events have or may cause long-term population reductions. Vegetation within the species' range is an open to sparse woodland overstory, not prone to fire outbreaks (Franklin 1990, England 2006).

The Service, UDWR, UDOT, and SITLA signed a Conservation Agreement (CA) dated October 10, 2006, that was specifically developed to ensure long-term survival and conservation of *Astragalus desereticus* (UDWR *et al.* 2006). The CA is designed to formalize a program of conservation measures that address potential threats and maintain the species' specialized habitat. These measures are consistent with actions taken by UDWR and they have a proven

track record of protecting and enhancing the species. Measures include: (1) Habitat maintenance (including maintenance of the current pinyon-juniper woodland vegetation type with its current diverse understory of native shrubs, grasses and forbs; restricting habitat disturbing actions such as livestock grazing and road and mineral development; ensuring that the destruction of individual plants does not occur and that appropriate mitigation is provided for any unavoidable effects to individual plants or their habitat); (2) retention of *A. desereticus* habitat on the Birdseye Unit of the Northwest Manti WMA in State of Utah ownership under the management of the UDWR; and (3) avoidance of herbicide use in *A. desereticus* habitat, including along highway right-of-ways. The CA also includes an annual monitoring program and provides a mechanism to evaluate the feasibility of acquiring private lands to benefit *A. desereticus*.

Based on our evaluation, we conclude that the CA is sufficient to address potential future threats to the species on State of Utah lands, providing long-term protection and enhancement measures. In accordance with the CA, efforts will be made to work with adjacent private landowners to provide species conservation measures and easements. However, long-term species conservation can be achieved solely on the State of Utah WMA which provides the core of the species population, providing the seed source for reproduction, and maintenance of the seed bank (UDWR *et al.* 2006).

#### Prudency Determination

As mentioned above, we believe that designating critical habitat would not be beneficial to the species (50 CFR 424.12). Specifically, we believe that there are no habitat areas containing physical or biological features that are essential to the conservation of the species and that may require special management consideration or protection, and available information at the time of this determination indicates that the threats to the species identified at the time of listing are no longer significant or have never materialized.

*Astragalus desereticus* habitat does not require additional special management considerations or

protection given proven and effective management strategies already implemented by the State of Utah. The recently signed CA (UDWR *et al.* 2006) provides assurances for continued management and protection of the species under these proven strategies, which should maintain habitat of sufficient quantity and quality to ensure viable populations for the foreseeable future. Available information indicates that the *A. desereticus* population has grown substantially since listing, and the species and its habitat are considered stable (UDWR *et al.* 2006). Because of the population growth, the Conservation Agreement and the fact that threats identified at the time of listing are no longer significant or have never materialized, available information indicates that habitat destruction is no longer a threat to the species.

Therefore, based on our regulations and the information available to us at this time, we find there are no areas that constitute critical habitat for *A. desereticus* because no areas meet the definition of critical habitat pursuant to section 3(5)(A) of the Act. Thus, critical habitat designation would not be beneficial to the species. Designation of critical habitat is, therefore, not prudent.

#### Effects of This Advance Notice of Proposed Rulemaking

This Advance Notice of Proposed Rulemaking announces our intent to propose rulemaking which may remove protections afforded *Astragalus desereticus* under the Act. This rule, if made final, would revise 50 CFR 17.12(h) to remove *A. desereticus* from the List of Endangered and Threatened Plants. Because no critical habitat was ever designated for this species, this rule would not affect 50 CFR 17.96.

If we make a final decision to delist *Astragalus desereticus*, the prohibitions and conservation measures provided by the Act would no longer apply to this species. Federal agencies would no longer be required to consult with us under section 7 of the Act to ensure that any action they authorize, fund, or carry out would not likely jeopardize the continued existence of *A. desereticus* or destroy or adversely modify designated critical habitat. Until *A. desereticus* is delisted, any Federal actions, or federally funded or permitted actions,

must comply with the Act. If delisting occurs, we anticipate that the CA discussed above would guide *A. desereticus* management.

#### Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

#### National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment, as defined by the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### References Cited

A complete list of all references cited herein is available, upon request, from the Utah Ecological Services Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

#### Author

The primary author of this document is Larry England, Botanist, Utah Ecological Services Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

#### Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 18, 2007.

#### Todd Willens,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7-1062 Filed 1-24-07; 8:45 am]

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