

demand away from advanced occupant detection systems, such as a DASS.

V. Conclusion

The DASS option is intended to provide manufacturers the flexibility of deploying an air bag when such a deployment would not be harmful and may be potentially beneficial, as opposed to suppressing the air bag or relying on a low risk deployment. However, central to this idea is the availability of a test procedure that accurately describes the “real world” conditions to delineate DASS performance, regardless of the basic technology used within the suppression system. While there may be great potential benefits through use of occupant protection systems such as a DASS, there must also be robust and repeatable test protocols to assess such systems. The agency believes that the Smart Vision proposed test procedure was simply not sufficient for the agency to expedite a rulemaking that would establish the benchmark for assessment of future DASSs.

The agency continues to have interest in obtaining test data that would support development of a test procedure to assess DASSs. We welcome developers of DASS safety systems to approach the agency with proposals for collaborative research for such test procedure development. Specifically, the agency is interested in research that would address the areas of concern expressed above.

In accordance with 49 CFR part 552, this completes the agency’s review of the petition.

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30162; delegation of authority at 49 CFR 1.50.

Dated: August 10, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E7-16139 Filed 8-15-07; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List *Astragalus anserinus* (Goose Creek milk-vetch) as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list *Astragalus anserinus* (Goose Creek milk-vetch) as threatened or endangered under the Endangered Species Act of 1973, as amended (Act). We find that the petition presents substantial scientific or commercial information indicating that listing *A. anserinus* may be warranted. Therefore, with the publication of this notice, we are initiating a status review of the species, and we will issue a 12-month finding to determine if listing the species is warranted. To ensure that the status review is comprehensive, we are soliciting information and data regarding this species.

DATES: The finding announced in this document was made on August 16, 2007. To be considered in the 12-month finding for this petition, data, information, and comments must be submitted to us by October 15, 2007.

ADDRESSES: The complete supporting file for this finding is available for public inspection, by appointment, during normal business hours at the Snake River Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1387 S. Vinnell Way, Room 368, Boise, ID 83709. Please submit any new information, materials, comments, or questions concerning this species or this finding to the above address, or via electronic mail (e-mail) at fw1srbocoment@fws.gov.

FOR FURTHER INFORMATION CONTACT: Jeff Foss, Field Supervisor, Snake River Fish and Wildlife Office (see **ADDRESSES**); by telephone at 208-378-5243; or by facsimile at 208-378-5262. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339. Please include “*Astragalus anserinus* scientific information” in the subject line for faxes and e-mails.

SUPPLEMENTARY INFORMATION:

Public Information Solicited

When we make a finding that substantial information is presented to indicate that listing a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on *Astragalus anserinus*. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry,

agricultural, or any other interested parties concerning the status of *A. anserinus*. We are seeking information regarding the species’ historical and current status and distribution, its biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its habitat.

We will base our 12-month finding on a review of the best scientific and commercial information available, including all information received during the public comment period. If you wish to provide comments, you may submit your comments and materials concerning this finding to the Field Supervisor, Snake River Fish and Wildlife Office (see **ADDRESSES**). Please note that comments merely stating support or opposition to the actions under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species shall be made “solely on the basis of the best scientific and commercial data available.” At the conclusion of the status review, we will issue the 12-month finding on the petition, as provided in section 4(b)(3)(B) of the Act.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.), 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 information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our 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 we find that substantial information was presented, we are required to promptly commence a review of the status of the species.

We base this finding on information provided by the petitioner that we determined to be reliable after reviewing sources referenced in the petition and information available in our files at the time of the petition review. We evaluated that information in accordance with 50 CFR 424.14(b). Our process for making this 90-day finding under section 4(b)(3)(A) of the Act and 50 CFR 424.14(b) of our regulations is limited to a determination of whether the information in the petition meets the “substantial information” threshold.

On February 3, 2004, we received a petition dated January 30, 2004, from Red Willow Research, Inc., and 25 other concerned parties requesting that we emergency list *Astragalus anserinus* as threatened or endangered, and designate critical habitat concurrently with the listing. The other 25 concerned parties include the Prairie Falcon Audubon Society Chapter Board, Western Watersheds Project, Utah Environmental Congress, Sawtooth Group of the Sierra Club, and 21 private citizens; hereafter, we refer to them collectively as the petitioners. The petition clearly identified itself as a petition and included the requisite identification information as required in 50 CFR 424.14(a). The petition contains information on the natural history of *A. anserinus*, its population status, and potential threats to the species. Potential threats discussed in the petition include destruction and modification of habitat, disease and predation, inadequacy of existing regulatory mechanisms, and other natural and manmade factors such as exotic and noxious weed invasions and road construction and maintenance.

In a February 19, 2004, letter to the petitioners, we responded that our initial review of the petition for *Astragalus anserinus* determined that an emergency listing was not warranted, and that due to court orders and judicially approved settlement agreements for other listing actions, we would not be able to further address the petition to list the species at that time. However, funding has since become available to address this petition. As such, this finding addresses the petition.

Species Information

Astragalus anserinus was first collected in 1982 by Duane Atwood from a location in Box Elder County, Utah. The species was subsequently described in 1984 by Atwood and Welsh (Baird and Tuhy 1991, p. 1). *A. anserinus* is a low-growing, matted, perennial forb in the pea or legume family (Fabaceae), with grey hairy leaves, pink-purple flowers, and brownish-red curved seed pods (Mancuso and Moseley 1991, p. 4). The petitioners state that at least eight other *Astragalus* species may be found sympatric (i.e., coincident or in overlapping ranges of geographic distribution) with *A. anserinus*, although five of the eight species are not mat-forming. This species is distinguished from the three other mat-forming *Astragalus* species primarily by its smaller leaflets and flowers, as well as the color and shape of the seed pods. Flowering typically occurs from late May to early June, and the species is assumed to be insect-pollinated, but the specific pollinator(s) is unknown (Baird and Tuhy 1991, p. 3). Mechanisms of seed dispersal are unknown (Baird and Tuhy 1991, p. 3).

Astragalus anserinus is endemic to the Goose Creek drainage in Cassia County, Idaho; Elko County, Nevada; and Box Elder County, Utah. Most sites are in an area encompassing approximately 10 square miles (mi) (26 square kilometers (km)). An additional disjunct site is known outside the Goose Creek drainage, approximately 22 mi (35 km) to the southwest in Nevada (USFWS 2006, p. 1). Rainfall in the Goose Creek area averages less than 12 inches (30 centimeters) annually. The plant is generally confined to dry, ashy (sometimes sandy), tuffaceous (volcanic ash and particulates) soils from the Salt Lake Formation (Mancuso and Moseley 1991, p. 12). Element Occurrences (EOs) (areas where a species is, or was, present (NatureServe 2002)) of *A. anserinus* have been documented at elevations ranging between 4,900 to 5,480 feet (1,494 and 1,670 meters) (Mancuso and Moseley 1991, p. 10). *A. anserinus* is frequently associated with other species that show a preference for ashy sites (Baird and Tuhy 1991, pp. 2–3).

Population Status

The petition states that there were 19 known EOs of *Astragalus anserinus* as of 2003, including 7 in Idaho, 8 in Utah, and 4 in Nevada. The petition states that surveys conducted between the species' discovery in 1982 and 2003 did not document new range extensions, nor

any widely separated EOs or individuals. The petition also states that the EOs in Idaho experienced a 94.8 percent decline in numbers between 1985 and 2001. This rate of decline was based on survey results from seven EOs in Idaho that were sporadically monitored between 1985 and 2001 by Mancuso (2001a). The petition extrapolates this rate of decline across the range of the species to estimate only 542 *A. anserinus* individuals remaining as of 2001. Further extrapolation by the petitioners suggests that there would likely be approximately 28 plants remaining in 2011, for the 19 EOs identified in the petition.

The petition states that The Nature Conservancy ranked *Astragalus anserinus* as a G2 species, indicating it is “imperiled throughout its range because of rarity or because of other factors making it vulnerable to extinction,” and is considered critically imperiled in Idaho, Nevada, and Utah (Utah Division of Wildlife Resources (UDWR) 1998, p. 32; Nevada Natural Heritage Program (NNHP) 2001, p. 1; Idaho Conservation Data Center (ID CDC) 2006, p. 2).

Based on information in our files, *Astragalus anserinus* was known prior to 2004 from 20 EO records (7 in Idaho, 4 in Nevada, and 9 in Utah). Most known sites were on Federal land managed by the U.S. Bureau of Land Management (BLM) (USFWS 2006, Table 1). In 2004 and 2005, we led a multiagency census and survey effort for *A. anserinus* in cooperation with BLM, the U.S. Forest Service (USFS), and the State natural resource agencies of Idaho, Nevada, and Utah. Surveys typically entailed scouting an area and estimating numbers of individuals. Census efforts, which involved counting every individual, documented 3 additional *A. anserinus* sites in Idaho and 1 in Utah, for a total of 20 known EOs and 4 new sites pending confirmation as EOs (USFWS 2006, Table 1). The census efforts in 2004 and 2005 resulted in detections of 5,052 plants in Idaho, 33,476 plants in Utah, and 4,930 plants in Nevada, totaling 43,458 plants rangewide. State-specific information on the population status of *A. anserinus* is described below.

Idaho

According to the petition, seven *Astragalus anserinus* EOs were identified in Idaho in 2003, occurring primarily on BLM lands, with partial EOs occurring on private land. The petition states that one of the EOs in Idaho declined between 1985 and 2001, from an estimated 2,635 plants to an estimated 136 plants. The petition

indicates that some discrepancy exists regarding the actual EO numbers in Idaho due to the survey techniques that were employed. Estimates were not obtained by actual counts, but by surveying representative areas and projecting numbers of plants observed across what appeared to be potential habitat. As such, the estimates may not be reliable.

Information in our records indicate that, prior to the 2004 and 2005 census efforts, there were seven EOs tracked by the Idaho Conservation Data Center, and numbers of *Astragalus anserinus* at most sites were estimates. The first EO was documented in 1985, but systematic or comprehensive surveys were not performed in Idaho until 1991 (Mancuso and Moseley 1991, p. iii). In 1991, *A. anserinus* counts were estimated at over 914 individuals in Idaho (Mancuso and Moseley 1991, pp. 2, 13–14).

During the 2004 census and survey effort, the seven known Idaho EOs were revisited, and three new sites were located. In total, 5,052 *Astragalus anserinus* individual plants were counted during the census effort, 2,460 of which occurred on the original 7 Idaho EOs (USFWS 2006, Table 1). Census data indicate stable counts at four EOs, an increase in count numbers at one EO (from 2003 surveys), and an unknown change at two EOs (complete censuses were not possible at these sites because part of the EOs are on private land and access is restricted). Due to different census and survey methodologies between those used prior to 2004, and those used for the 2004 and 2005 efforts, we are unable to estimate trends for the species in Idaho (USFWS 2006, Table 1).

Utah

According to the petition, eight *Astragalus anserinus* EO locations were identified in Utah prior to 2003. These EOs were located partially on BLM lands and partially on State or private lands, and most were estimated to be less than 1 acre (ac) (0.4 hectare (ha)) in size. The petition provides an estimate of 7,000 plants from a 1990 survey (Baird and Tuhy 1991), and indicates that a discrepancy exists regarding the actual numbers of individuals in Utah due to the survey techniques that were employed. Estimates were not obtained by actual counts, but by surveying representative areas and projecting numbers of plants observed across what appeared to be potential habitat. Thus, they may not be reliable. The petition also states that the 1991 population counts may have been significantly overestimated because more recent information has confirmed that *A.*

anserinus is not present in all areas determined to be potential habitat during the 1991 surveys.

Information in our records indicates that prior to the 2004 and 2005 census and survey efforts, there were nine known *Astragalus anserinus* EOs in Utah. Eight of these EOs were documented by the Utah Natural Heritage Program (UNHP), and the other was documented by the NNHP database, but was not included in the UNHP database (Mancuso and Moseley 1991, p. 2). In addition, at least one site that had not been submitted to the UNHP was known by the staff of BLM's Salt Lake City, Utah, Field Office. All 9 EOs in Utah were surveyed either in 1990 or 1991, documenting an estimated 7,617 individuals in Utah (Baird and Tuhy 1991, p. 2; NNHP 2001, p. 1).

During the 2004 and 2005 census efforts, six previously known *Astragalus anserinus* EOs (although only partial counts were conducted at three of the six sites) and one new site were visited. We counted 33,476 individuals at these 7 sites (EOs). Two other EOs, previously documented in Utah with the greatest numbers of individuals, were not visited during the 2004 and 2005 census efforts, due to difficulty of access and time limitations of surveyors (USFWS 2006, Table 1). Census data indicate higher count numbers of *A. anserinus* than previous estimates at five previously known EOs. Due to different census and survey methodologies used prior to 2004, and in the 2004 and 2005 efforts, we are unable to estimate trends for the species in Utah (USFWS 2006, Table 1).

Nevada

According to the petition, one area with four loosely connected *Astragalus anserinus* EOs had been identified in Nevada by 2003. The petition states that approximately 800 plants were observed during surveys conducted in 1993, and that no further surveys were conducted between 1993 and the time that the petition was submitted in 2004.

Reference information from NNHP (2001, p. 1) includes documentation of surveys in Nevada in 1991 and 1992, during which 4 EOs were located and numbers were estimated at 827 individuals. The 2004 and 2005 census efforts did not locate any new sites in Nevada. There are currently four EOs in Nevada, documented by the NNHP. During the 2004 and 2005 census efforts, all 4 EOs were visited, and 4,930 *Astragalus anserinus* individuals were counted. Although census data indicate increasing numbers at all EOs in Nevada, different census and survey methodologies used prior to 2004, and for the 2004 and 2005 efforts, prevent us

from estimating trends for the species in Nevada (USFWS 2006, Table 1).

Threats Analysis

Section 4 of the Act (16 U.S.C. 1533), and implementing regulations at 50 CFR part 424, set forth procedures for adding species to the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (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. In making this finding, we evaluated whether threats to *Astragalus anserinus* presented in the petition and other information available in our files at the time of the petition review reasonably indicate that listing the species may be warranted. Our evaluation of these threats is presented below.

A. Present or Threatened Destruction, Modification, or Curtailment of the Species' Habitat or Range

The petition states that *Astragalus anserinus* is endemic to the Goose Creek watershed in Idaho, Utah, and Nevada, and that based on survey information available in 2003, the plant occurred at a total of 19 sites in Cassia County, Idaho; Box Elder County, Utah; and Elko County, Nevada. The petition also states that, based on the decline in estimated plant numbers at one site in Idaho (a 94.8 percent decrease between 1985 and 2001), the species was in danger of extinction throughout its range.

There is little information available regarding the EO size, viability, or distribution of *Astragalus anserinus* prior to 1989. Records prior to 2004 may not accurately reflect the species' historical distribution because they were limited in scope, although they were collected in a systematic, comprehensive manner with the goal of determining species distribution and abundance (Mancuso and Moseley 1991, p. 2).

Our survey records from 2004 and 2005 indicate that *Astragalus anserinus* exists in 24 known EOs. Ten of the EOs are in Idaho, nine in Utah, and five in Nevada (USFWS 2006, Table 1). Most of these sites occur on BLM lands. The Service, BLM, USFS, Idaho Conservation Data Center, NNHP, and Utah Conservation Data Center (UCDC)

conducted survey and census activities for the species in 2004 and 2005, and four new sites were identified (three in Idaho and one in Utah). Censuses included counts of individual plants, unlike the previous population surveys cited in the petition. As a result, counts of individuals at known EOs were higher than previously documented for one EO in Idaho, five EOs in Utah, and three EOs in Nevada. No counts of individuals at any known EOs demonstrated a decline, and the number of EOs has not decreased since 2003. Overall, it appears that the petitioners' claim of a decline in the number of individuals in Idaho has not occurred, and population declines have also not occurred at most of the EOs in Utah or Nevada.

Livestock Grazing and Water Developments

The petition cites ground-disturbing water developments, such as pipelines and placement of water sources within EOs for the purposes of livestock management, as threats to *Astragalus anserinus*. The petition states that road and water pipeline construction occurred within extant *A. anserinus* EOs in Idaho in 2001 and 2002. The petition also states that additional livestock-related water construction projects were planned in known EOs in both Utah and Idaho in 2004, and that these activities would likely result in loss of individual plants, reduction or loss of seed bank, permanent alteration of habitat, and increased potential for additional noxious and exotic weed introductions.

The petition does not provide specific information on the effects of the water pipeline that was constructed in Idaho during 2001 and 2002. A water tank on BLM lands fed by this pipeline is located at least 3,000 feet (1,000 meters) from *Astragalus anserinus* EOs and has been in place for 12 years (USFWS 2005b, p. 3). The pipeline to this tank (and an opening valve) is located above ground within an *A. anserinus* EO. Plans are being made to remove the water pipeline from the EO and bury it under the existing unimproved road at the site. An environmental assessment will be completed prior to implementation of this activity (USFWS 2005b, p.3), to identify and develop appropriate measures to avoid or minimize adverse effects of this activity, including potential effects to *A. anserinus*.

Based on information contained in our files, the first water pipeline in Goose Creek (Goose Creek Pipeline Number 1) was constructed in 1987 (Hardy 2005, p. 3), and supplies two water tanks within *Astragalus anserinus*

habitat in Utah. The 2004 census report indicates that vegetation was trampled and consumed more heavily closer to the water tanks, and that areas within approximately 150 feet (50 meters) of the tanks were completely denuded of vegetation due to livestock use. The denuded area around one water tank extended for 300 feet (100 meters). Thirteen plants were located at that location, but no data is available on whether the species was present in the area prior to construction (USFWS 2006, p. 2). This was a newly discovered *A. anserinus* site at an existing EO. We are unable to determine if plant numbers changed as a result of the water tank installation, because we do not have pre-construction data. Approximately 450 feet (140 meters) away from this same tank, another *A. anserinus* site (within the same EO) occurs and is occupied by more than 850 plants. This site is partially protected from livestock use due to its location on a steep bluff. A second water tank was constructed in 2005 on a large flat area. Based on limited survey efforts, we estimate the nearest *A. anserinus* plants to be approximately 1,600 feet (500 meters) from this tank (USFWS 2006, p. 3). The pipeline servicing this tank and another tank impacted the upper portion of this *A. anserinus* site. Areas disturbed by construction were seeded with nonnative forage species, and monitoring to detect the effects from this new water tank and pipeline is underway. Currently, there are four enclosure cages, and plant monitoring will occur inside and outside the cages (Hardy 2005, p. 6; USFWS 2005a, p. 3). In addition, BLM plans to construct a livestock enclosure around 1 acre (0.4 ha) of occupied habitat at this site, and undertake a census of *A. anserinus* within and adjacent to the enclosure (Hardy 2005, p. 6).

Information in our records indicates that a pipeline was constructed in Utah through two *Astragalus anserinus* EOs in 2004. BLM staff conducted site clearances in 2000, 2002, and in conjunction with the Service in 2004, prior to pipeline construction. No *A. anserinus* plants were found during the initial 2000 survey, but plants were documented during the 2002 survey. However, no plants were lost during construction of the pipeline (USFWS 2005a, p. 3).

The petition indicates that livestock cause impacts to *Astragalus anserinus* through trampling, increased levels of disturbance, and consumption of ash soils in attempts to alleviate mineral deficiencies resulting from their diet of low quality rangeland forage. The petition cites a report by Mancuso

(2001b) on Idaho EOs to support portions of this claim. The report stated that concerns for *A. anserinus* are focused on the sharp decline in the number of plants over the past decade and possible habitat degradation problems related to recent wildfires and ongoing livestock use impacts.

One report on Utah and Idaho occurrences of *Astragalus anserinus* (Mancuso and Moseley 1991, p. 22) identified indirect impacts from cattle grazing, such as trampling and trailing (moving cattle to, or between, allotments repeatedly on the same path), as primary existing threats to the species. However, neither this report nor the petition provides specific information on the magnitude or severity of livestock trampling and disturbance threats in Idaho, Nevada, or Utah.

Multi-agency surveys conducted in 2004 and 2005 failed to detect any evidence of livestock impacts to *Astragalus anserinus* due to soil consumption (USFWS 2006, p. 1). Neither the petition nor the information available in our files indicate that livestock soil consumption presents a threat to the species.

Public Land Management

The petition indicates that changes in land management in Cassia County, Idaho, would pose a threat to *Astragalus anserinus* EOs in that county. The petition provides general information about management proposals submitted to the Idaho Federal Lands Task Force Working Group (Task Force) by the Twin Falls/Cassia Resource Enhancement Trust (Enhancement Trust). The Task Force proposed that public lands management be turned over to State and private groups. The petition states that the Enhancement Trust proposes significant alteration of habitat in Cassia County, Idaho, including habitats that currently support the species. It also states that the Enhancement Trust may recommend increasing the length of the grazing season on Federal lands, which would be detrimental to *A. anserinus* EOs. However, the petition does not provide a citation or reference material for the Task Force information.

The alterations in land management identified in the petition have not occurred to date, and any change of management is speculative at this point. In addition, prior to occurring, Federal agencies must follow a specific process to relinquish ownership and management of public land, including compliance with the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and other laws. The

coordination with the Service that would take place during that process would provide an opportunity for us to recommend conservation measures for *Astragalus anserinus* and other species of concern at that time. The petition does not provide evidence, nor is there any information in our files, that such a land transfer is imminent, or that the potential management change may be a significant threat to *A. anserinus*.

Summary of Factor A

The petition identifies potential factors, including livestock grazing and water development, and public land management, as threats to *Astragalus anserinus* habitat that are causing a decline in estimated plant numbers. We find that the petition does not present substantial scientific or commercial information to indicate that livestock trampling or water development exist at levels that may threaten *A. anserinus*, that livestock soil consumption or public land management revisions may threaten the species, or that population declines exist in any of the EOs.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The petition indicates that any collection of *Astragalus anserinus* could pose additional and substantial risk to the species due to estimated low numbers of individuals (542 plants in all 3 States as of 2001). However, no collection efforts were documented, and we are unaware of any efforts in the planning stages. The petition states that past attempts to germinate seeds in the lab were not successful, and that this makes the species additionally vulnerable to any collection efforts. The petition cites a personal communication from Cheney (2000) on failed germination attempts, but does not provide a full citation or supporting information. We are, therefore, unable to determine whether collection may be a risk factor for *A. anserinus*, based on information contained in the petition. Further, we are not aware of any information indicating that the overutilization of *A. anserinus* for commercial, recreational, scientific, or educational purposes may represent a significant threat to the species.

Summary of Factor B

The petition identifies collection as a threat to *Astragalus anserinus*. However, we find that the petition does not present substantial scientific or commercial information to indicate that overutilization (collection) may threaten this species.

C. Disease or Predation

The petition states that disease and herbivory are potential threats to *Astragalus anserinus*. Information cited in the petition to support the claim that disease is a potential threat to the species is limited to an excerpt from Baird and Tuhy (1991): "It is possible that natural predation and disease have greater impacts on *A. anserinus* than those caused by livestock."

The petition provides general information about leguminous plants and possible herbivory of foliage and seeds, and indicates that natural herbivory of *Astragalus anserinus* exists. The petition states that regional fires have reduced the amount of habitat adjacent to *A. anserinus* EOs, increasing the likelihood of herbivory by invertebrates and wildlife. Herbivory by livestock is discussed as a potential threat to the species, with the magnitude of threat depending in part on whether water developments occur within EOs. Water developments are present within some EOs; however, no information presented in the petition, or available in our files, documents a relationship to herbivory by livestock. Livestock enclosure fencing is in place or planned for installation around *A. anserinus* occupied habitat in these EOs, reducing potential livestock impacts.

The petition also states that herbivory by introduced gallinaceous species (e.g., quail, partridge, and turkey) is a potential threat, and discusses general distribution and diet information for these species. However, the petition provides no information on the magnitude or extent of potential impacts of herbivory on *Astragalus anserinus*.

Information in our files indicates that fungal infection and insect or rabbit herbivory occur in some of the known *Astragalus anserinus* EOs (Glenné 2006). However, the documented fungus and herbivory conditions were not prevalent throughout an entire EO, nor throughout the range of *A. anserinus*. Accordingly, the magnitude of the threat from these factors appears to be low. We are not aware of any data indicating herbivory by livestock or introduced wildlife may be a factor threatening this species.

Summary of Factor C

The petition identifies disease and herbivory as threats to *Astragalus anserinus*. However, we find that the petition does not present substantial scientific or commercial information to indicate that either of these factors may threaten this species.

D. Inadequacy of Existing Regulatory Mechanisms

The petition states that State and Federal agencies have failed to conduct regular monitoring for *Astragalus anserinus* throughout its range, and have failed to protect it from numerous direct and indirect impacts associated with livestock (i.e., water developments, trampling, and grazing) and invasive, non-native plants (see Factors A and E). The petition also states that mechanisms to regulate and control these various activities have failed to prevent harm to *A. anserinus* habitat.

The petition also asserts that BLM has failed to enforce the Idaho Standards and Guidelines (State-specific policies under which lands are to be managed to maintain rangeland health and resources), and that the Nevada Standards and Guidelines are inadequate for the conservation of *Astragalus anserinus*. It further states that BLM in Utah has not adequately implemented the Utah Standards and Guidelines. The petition explains that BLM has indicated its intent to approve and construct water developments in Utah without conducting site-specific clearances, and refers to a project that would take place in a known occurrence of *A. anserinus*. Finally, the petition states that while the petitioners were under contract to the USFS, none of their recommended management or conservation actions for this species were ever implemented by the USFS or the Idaho Conservation Data Center.

Information in our records confirms that regular monitoring of *Astragalus anserinus* or its known EOs has not historically been conducted. The Goose Creek drainage is in a remote area not easily accessed for monitoring; however, coordinated, multi-agency efforts were conducted in 2004, 2005, and 2006, and additional surveys and censuses are planned in the future (USFWS 2005a, pp. 1 and 2; 2005b, pp. 1 and 2; 2006, pp. 7–9). The petition's assertion that BLM is likely to approve and construct water developments without conducting site-specific clearances is not supported by the information in our files.

Our records indicate that BLM conducted site-specific clearances in 2000 and 2002, prior to constructing the Goose Creek Pipeline number 2 in Utah (Hardy 2005, p. 5; USFWS 2005a, p. 3). Our records also indicate that, as a result of the clearance procedure and implementation of recommendations from the Service, there was no loss of *Astragalus anserinus* plants (Hardy 2005, p. 5; USFWS 2005a, p. 3). Finally, our records indicate that coordination among agencies on future development

projects, weed control efforts, and other conservation efforts is underway (USFWS 2005b, p. 3; USFWS 2006, p. 6).

Summary of Factor D

The petition states that State and Federal agencies have failed to monitor and protect *Astragalus anserinus*. However, we find that the petition does not present substantial scientific or commercial information indicating that a lack of agency monitoring and protection efforts may threaten the species.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

The petition presents a number of other factors as having negative effects on the continued existence of *Astragalus anserinus*, including natural soil characteristics, failure of seeds to germinate, loss or lack of native pollinators, loss of genetic variability, fires and firefighting tactics, exotic and noxious weeds, road construction and maintenance, range improvements, off-road vehicle use, mining, and illegal trash dumping.

Germination Failure and Natural Soil Characteristics

The petition states that an attempt to germinate seeds collected from *Astragalus anserinus* was unsuccessful. The petition cites a personal communication from Cheney (2000) for the information on germination and translocation of the species, but does not provide us with a full citation or supporting documentation. It further states that future seed collection, laboratory germination, and transplanting individuals back into suitable habitat in the Goose Creek watershed do not represent a viable option for the species' recovery and enhancement. Based on the failure to germinate seeds in a laboratory setting, petitioners conducted soil tests at occupied and potentially suitable but unoccupied sites. Soil test results indicated that all occupied sites contained low nutrient levels. The petition states that poor nutrient levels at occupied sites make it unlikely that *A. anserinus* EOs will expand within known habitats, or colonize or recolonize unoccupied habitat.

The petition does not provide information on the techniques used during the attempted germination of *Astragalus anserinus*, and we are unable to assess whether appropriate dormancy breaking techniques were employed. Although the petition states that poor nutrient levels at occupied sites make it

unlikely that occurrences of *A. anserinus* will expand, we are unaware of any studies relating *A. anserinus* colonization potential to soil nutrients. The species may be more tolerant of low nutrient soils, which could be a factor in its current distribution. Mancuso and Moseley (1991, p. 12) state that *A. anserinus* occurs in very low densities in many locations, and is commonly missing from similar-looking habitats near sites where it occurs. On balance, the data do not appear to indicate that low germination success or low nutrient levels in soils may be threats to this species.

Native Pollinators

The petition states that the potential loss or lack of native plant pollinators has been noted as a threat to the persistence of *Astragalus anserinus*. It indicates that pollinators are adversely impacted by livestock through habitat degradation, loss of food sources, and trampling of ground nests, and that *A. anserinus* reproduction is then reduced by lack of pollination. Mancuso and Mosely (1991, p. 24) cited a study by Sugden (1985, p. 309) on the trampling effects of sheep grazing on a rare milk-vetch in California with a life history similar to that of *A. anserinus*. This study was compared to discussion by Mancuso and Mosely on livestock effects to *A. anserinus*. However, the petition does not present documentation of loss or decline of native pollinators within *A. anserinus* habitat.

Loss of Genetic Variability

The petition states that loss of genetic variability was likely occurring because *Astragalus anserinus* plants are few in number and the remaining individuals are widely scattered. No supporting data or information on whether genetic variability of *A. anserinus* is being lost is provided in the petition or its supporting materials. In addition, interagency census efforts conducted in 2004 and 2005 resulted in detections of 43,458 *A. anserinus* plants rangewide (USFWS 2006, Table 1).

Fires and Firefighting

The petition cites Mancuso (2001b) as stating that fires have had an apparent impact on Idaho EOs of *Astragalus anserinus*. It states that fires can result in additional herbivory of native plants and accelerated weed invasions, and that wildfires in 2000 resulted in blading of fire lines and roads (for firefighting) through occupied *A. anserinus* habitat (Petition, p. 56). The petitioners also provide one example of blading at a potential *A. anserinus* site (Petition, p. 21). However, interagency

surveys conducted in 2004 and 2005 did not document the blading of fire lines or roads through *A. anserinus* EOs (USFWS 2006, pp. 4–5 and Table 1). The petition does not provide information regarding the threat posed by fires and firefighting tactics to *A. anserinus* EOs in Utah and Nevada, and our files indicate that surveyors were unable to demonstrate a link between fires and increased herbivory in 2004 and 2005 (USFWS 2006, pp. 4–5, and Table 1).

Nonnative and Noxious Plants

The petition states that nonnative and noxious plants are currently impacting or threatening *Astragalus anserinus* EOs. It cites Mancuso and Moseley (1991) as having observed *Euphorbia esula* (leafy spurge) in the region in 1991, but not in any *A. anserinus* EOs, and that *E. esula* was documented in four EOs and near two EOs in 2001 (Mancuso 2001a).

Information in our files corroborates the petition's claim that nonnative and noxious plants may be impacting *Astragalus anserinus* EOs. Our records indicate that during the 2004 and 2005 surveys and census efforts, *Euphorbia esula* was detected at or near 7 of the 10 sites in Idaho and 2 of the 10 sites in Utah (USFWS 2006, p. 4), in spite of the fact that efforts to control *E. esula* within the Goose Creek drainage have been underway for several years. Control efforts for *E. esula* are increasing, but past efforts to control this species in the Goose Creek drainage have not halted its spread, and it has been found directly competing with *Astragalus anserinus* at three sites (USFWS 2006, p. 4). Based on the information provided in the petition and other information available in our files, we have determined that *Euphorbia esula* competition may present a threat to *A. anserinus*, because it often creates monocultures where little or no other native vegetation persists. *Euphorbia esula* displaces other vegetation by shading, reducing water and nutrients available to other plants, and producing plant toxins that prevent the growth of other plants beneath it. In addition, because of its persistent nature and ability to regenerate from small pieces of root, *E. esula* is extremely difficult to eradicate.

The petition also states that *Halogeton glomeratus* (halogeton) was present within one EO, and *Bromus tectorum* (cheatgrass) was present in four Idaho EOs in 2001, although these species were not documented at these locations in 2000. Information from our 2004 and 2005 surveys confirmed *H. glomeratus* near one *Astragalus anserinus* EO

(USFWS 2006, p. 4). It is presently undetermined whether the presence of *B. tectorum* or *H. glomeratus* may present a threat to *A. anserinus*.

Road Construction and Maintenance

The petition identifies loss of habitat and loss of individual *Astragalus anserinus* plants resulting from road construction and maintenance as a concern, and cites the widening of the Coal Banks road through an extant Idaho occurrence in 2001 as an example. However, it does not provide specific information on the threat of road construction and maintenance in other portions of *A. anserinus*'s range.

Information from our files, specifically Mancuso and Moseley (1991, p. 22), indicates that some habitat was likely destroyed during construction of a network of secondary roads that cross much of the Goose Creek Basin. During the 2004 and 2005 surveys, *Astragalus anserinus* was observed as generally occurring in loose soils, although a few plants were found in areas with compacted soils (USFWS 2006, p. 1). However, field observations suggest that *A. anserinus* is capable of withstanding, and is possibly adapted to, some level of natural disturbance, because plants were found in washes and on steep slopes where downward soil movement occurs (USFWS 2006, p. 1). *Astragalus anserinus* was found on unimproved roads and livestock trail margins, but not in tire tracks or livestock trails, presumably because compaction is too great (USFWS 2006, p. 1). Roads were observed in three *A. anserinus* EOs in Idaho, two EOs in Nevada, and one EO in Utah (USFWS 2006, Table 1). It is likely that road construction and maintenance have an adverse effect on *A. anserinus* through temporary loss of habitat or individuals, and that some habitat is lost through road development; however it is unclear whether such adverse effects may threaten the species.

Range Management

The petition identifies habitat loss from range management as a negative impact to *Astragalus anserinus*. Petitioners state that *Agropyron cristatum* (crested wheatgrass), which is seeded to establish forage for livestock and for erosion control, was growing within occupied *A. anserinus* habitat, resulting in habitat modifications that may preclude *A. anserinus*'s occupation. The petition also indicates that fencing and vegetation treatments, such as chaining or controlled burns, may contribute to adverse habitat modification. The petition does not provide specific information on the

magnitude, extent, or severity of these threats.

Our records indicate that range management in the Goose Creek area consists primarily of water development projects (see Pipeline and Water Development and Livestock under Factor A above) and *Agropyron cristatum* seedings. *A. cristatum* was documented at two *Astragalus anserinus* EOs in Idaho, one EO in Nevada, and three EOs and a new site in Utah, during the 2004 and 2005 census efforts (USFWS 2006, p. 5). *A. cristatum* seedings are extensive within *A. anserinus* habitat, especially in Utah. The two species are typically spatially separated, with *A. cristatum* growing on flatter areas and *A. anserinus* occurring on sloping areas (USFWS 2006, p. 5). Maps obtained from BLM's Salt Lake City Office indicate that *A. cristatum* was seeded directly on top of numerous *A. anserinus* EOs; however, this could not be confirmed during field observations. Since *A. cristatum* was seldom observed on steeper slopes where *A. anserinus* is established, the steep slopes may have been too difficult to plant and were avoided for this reason (USFWS 2006, p. 5).

Off-road Vehicle (ORV) Use, Mining, and Illegal Trash Dumping

The petition discusses ORV use as a potential threat to *Astragalus anserinus*, and cites DeBolt (1989) and Mancuso (2001b) as first describing ORV use as a threat to the species, because of rapidly increasing ORV use in Idaho, Nevada, and Utah. Neither a complete citation for the DeBolt reference nor supporting documentation is provided in the petition. The petition refers to illegal trash dumping as a potential threat to *A. anserinus*, and states that although dumping is limited in scope, the potential impact is important to consider. It also discusses mining that historically occurred in and near occupied habitat, and states that if mining efforts were to increase, they could present substantial threats to the species. The petition does not provide information on the number of *A. anserinus* occurrences impacted or the magnitude, extent, or severity of impacts from ORV use, trash dumping, or mining.

Our records indicate that one ORV track was observed in the 2004 surveys near an *Astragalus anserinus* EO, but not within the EO itself (USFWS 2006, Table 1). One trash dump was observed on private land near an *A. anserinus* EO in Utah during the 2004 surveys (USFWS 2006, p. 5). While ORV use and illegal trash dumping occur in the range of the species and may impact some

individuals, the magnitude and extent of these threats appear to be low at this time. We lack information on potential or actual threats that mining activities may present to *A. anserinus*.

Summary of Factor E

The petition identifies numerous potential factors, including seed germination failure and native soil characteristics, loss of native pollinators, loss of genetic variability, fires and firefighting tactics, nonnative and noxious plants, road construction and maintenance, range management, ORV use, mining, and illegal trash dumping, as threats to *Astragalus anserinus*. We find that the petition along with information available in our files presents substantial scientific or commercial information indicating that competition with *Euphorbia esula* may present a threat to *A. anserinus* from shading, reducing available water and nutrients, and producing plant toxins that prevent the growth of other plants beneath it. Because of its persistent nature and ability to regenerate from small pieces of root, *E. esula* is extremely difficult to eradicate. However, based on the available information, it is unclear whether the potential factors of seed germination failure and native soil characteristics, loss of native pollinators, loss of genetic variability, fires and firefighting tactics, road construction and maintenance, range management, ORV use, mining, and illegal trash dumping identified by the petition may threaten this species. We will consider information related to these factors during the status review.

Finding

We have reviewed the petition and literature cited in the petition, and evaluated the information determined to be reliable to make this finding. We also reviewed reliable information that was readily available in our files to evaluate the reliability of information in the petition. The petition presents information that degradation of habitat from invasive exotic species and noxious plant species may have contributed to habitat loss and population declines. The information in our files supports the petition's statements regarding this threat to *Astragalus anserinus*. Survey information available in our files corroborates that *Euphorbia esula* has been documented at several EOs, and may represent a threat to *A. anserinus*, based on *A. anserinus*' difficulty in competing with this nonnative, invasive species (USFWS 2006 p. 4). Therefore, based on our review, we find that the petition presents substantial

information indicating that listing *A. anserinus* may be warranted. As such, we are initiating a status review to determine whether listing *A. anserinus* under the Act is warranted.

We have also reviewed the available information to determine if the existing and foreseeable threats pose an emergency to *Astragalus anserinus*. We have determined that an emergency listing is not warranted at this time, based on the information provided in the petition and otherwise available in our files. This determination is based on the fact that none of the threats, aside from a catastrophic fire, are capable of eliminating a substantial portion of the species over the course of the next 2 or 3 years. Catastrophic and other natural wildfires are normally beyond management control and difficult to predict, but the open ash, sparsely vegetated habitat sites where *A. anserinus* occurs rarely burn. All known sites of the population are assumed extant, and a paucity of information makes it difficult to establish population trends. Based on the information contained in the petition and information provided through discussions with knowledgeable individuals, we do not believe that an emergency listing of this species is warranted because while the plant's current status range-wide is unclear or unknown, there are no known range-wide imminent threat(s). However, if at any time we determine that emergency listing of this species is warranted, we will seek to initiate an emergency listing.

References Cited

A complete list of all references cited is available, upon request, from the Snake River Fish and Wildlife Office (see **ADDRESSES**).

Author

The primary authors of this notice are staff members of the Snake River Fish and Wildlife Office (see **ADDRESSES**).

Authority

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

Dated: August 9, 2007.

H. Dale Hall,

Director, U.S. Fish and Wildlife Service.

[FR Doc. E7-16145 Filed 8-15-07; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Status of the Rio Grande Cutthroat Trout

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Status review; reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our review of the Rio Grande cutthroat trout (*Oncorhynchus clarki virginalis*) to determine if candidate status is warranted. The Endangered Species Act of 1973, as amended (Act), requires that we identify species of wildlife and plants that are endangered or threatened, based on the best available scientific and commercial information. Through the Federal rulemaking process, we add these species to the List of Endangered and Threatened Wildlife at 50 CFR 17.11 or the List of Endangered or Threatened Plants at 50 CFR 17.12. As part of this program, we maintain a list of species that we regard as candidates for listing. A candidate is one for which we have on file sufficient information on biological vulnerability and threats to support a proposal to list as endangered or threatened but for which preparation and publication of a proposal is precluded by higher-priority listing actions. During or prior to April of 2008, we will make a determination concerning the results of the status review for the Rio Grande cutthroat trout and, shortly thereafter, we will publish this determination in the **Federal Register**.

Comments previously submitted on the status of the Rio Grande cutthroat trout need not be resubmitted as they have been incorporated into the public record and will be fully considered in preparation of the final revised status review.

DATES: We will accept comments and information from all interested parties for our use in the status review and in preparing a revised finding until September 17, 2007.

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

1. You may mail or hand-deliver your written comments and information to Wally "J" Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New

Mexico Ecological Services Field Office, 2105 Osuna NE., Albuquerque, NM 87113.

2. You may fax your comments to Wally "J" Murphy, Field Supervisor, New Mexico Ecological Services Field Office, at (505) 346-2542.

3. You may send comments by electronic mail (e-mail) to R2FWE_AL@fws.gov.

4. You may go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Comments and materials received, as well as supporting documentation used in the preparation of the candidate status review, will be available for public inspection, by appointment, during normal business hours at the New Mexico Ecological Services Field Office, at the street address above (telephone: (505) 346-2525).

FOR FURTHER INFORMATION CONTACT: Wally "J" Murphy, Field Supervisor, New Mexico Ecological Services Field Office (see **ADDRESSES**) (telephone: (505) 346-2525; facsimile: (505) 346-2542). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

Background

For background information on the events leading to our notice of intent to initiate a status review for the Rio Grande cutthroat trout, refer to our notice published in the **Federal Register** on May 22, 2007 (72 FR 28664).

Request for Information

On May 22, 2007, we published a notice of intent to initiate a candidate status review for the Rio Grande cutthroat trout (72 FR 28644). We accepted public comments for inclusion in the status review for 45 days, ending July 6, 2007. In response to requests from interested parties, we are reopening the comment period for an additional 30 days (see **DATES**) to offer all interested parties an opportunity to submit data and information for inclusion in our status review for this species.

Our determination of candidate status for the Rio Grande cutthroat trout must be based upon the best available scientific and commercial data, as required under section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We request that you submit any information on the Rio Grande cutthroat trout previously submitted for our review. We are particularly interested in any relevant information gathered since June 2002 concerning the following: