

(1) Removal, cutting, digging up, damaging, or destroying threatened plants on non-Federal land if conducted in knowing violation of State law or regulation or in violation of State criminal trespass law.

(2) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit.

(3) The unauthorized removal, reducing to possession or collection of this species from areas under Federal jurisdiction.

In appropriate cases, permits could be issued to allow collection for scientific or recovery purposes, for horticultural or botanical exhibition, for educational purposes, or for special purposes consistent with the purposes of the Act. You should direct questions regarding whether specific activities may constitute a violation of section 9 to the Field Supervisor of the New Mexico Ecological Services Field Office (see ADDRESSES section).

#### National Environmental Policy Act

We have determined that Environmental Assessments and

Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### Required Determinations

This rule does not contain collections of information that require Office of Management and Budget approval under 44 U.S.C. 3501 *et seq.*

#### References Cited

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

Author: The primary author of this final rule is Charlie McDonald, New Mexico Ecological Services Field Office (see ADDRESSES section).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

#### Regulation Promulgation

#### PART 17—[AMENDED]

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h) add the following to the List of Endangered and Threatened Plants in alphabetical order under FLOWERING PLANTS:

#### § 17.12 Endangered and threatened plants.

\* \* \* \* \*

(h) \* \* \*

Species			Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name							
FLOWERING PLANTS								
*	*	*	*	*		*		*
Helianthus paradoxus .....	Pecos sunflower (=puzzle sunflower, paradox sunflower).		U.S.A. (NM, TX) ...	Asteraceae .....	T	667	NA	NA
*	*	*	*	*		*		*

Dated: September 14, 1999.

**John G. Rogers,**

Acting Director, Fish and Wildlife Service.

[FR Doc. 99–27186 Filed 10–19–99; 8:45 am]

BILLING CODE 4310–55–P

#### DEPARTMENT OF THE INTERIOR

#### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018–AE57

#### Endangered and Threatened Wildlife and Plants; Final Rule to List *Astragalus desereticus* (Deseret milk-vetch) as Threatened

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

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), determine the plant species, *Astragalus desereticus* (Deseret milk-vetch), to be a threatened species under the authority of the

Endangered Species Act of 1973, as amended (Act). *Astragalus desereticus*, considered extinct until its rediscovery in 1981, exists in one small population in Utah County, Utah. Threats to the plant include residential development, highway widening, livestock grazing and trampling, and other impacts to its limited habitat. This plant receives no protection under State or local laws or regulations. This rule implements Federal protection provided by the Act for this plant.

**EFFECTIVE DATE:** November 19, 1999.

**ADDRESSES:** The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Utah Ecological Services Field Office, U.S. Fish and Wildlife Service, Lincoln Plaza Suite 404, 145

East 1300 South, Salt Lake City, Utah 84115.

**FOR FURTHER INFORMATION CONTACT:** John L. England at the above address (telephone: 801/524–5001).

#### SUPPLEMENTARY INFORMATION:

#### Background

Marcus E. Jones collected a distinctive *Astragalus* from “below Indianola,” a town in Sanpete County, Utah, on June 2, 1893. This same plant was again collected by Ivar Tidestrom from “near Indianola” on June 17, 1909. Specimens from these two collections laid in obscurity in various herbaria until Rupert Barneby recognized their uniqueness and described them as *Astragalus desereticus* (Barneby 1964). Efforts to relocate the species’

population were initially fruitless (Barneby 1964, Welsh 1978a, 1978c) leading to a presumption of extinction (Ripley 1975, Welsh 1975, 1978b). However, on May 27, 1981, Elizabeth Neese discovered a population of *A. desereticus* on a sandstone outcrop above the town of Birdseye, Utah County, Utah, less than 6.2 kilometers (km) (10 miles (mi)) from Indianola (Welsh and Chatterley 1985). This population remains the only known occurrence of the species (Franklin 1990, 1991, Service 1991). It is possible that this population is the one from which Jones and/or Tidestrom made their collections more than 70 years earlier (Franklin 1990, 1991, Welsh and Chatterley 1985).

*Astragalus desereticus* is a perennial, herbaceous, sub-acaulous (almost stemless) plant in the bean family (*Fabaceae*). Individual plants are approximately 4–15 centimeters (cm) (2–6 inches (in)) in height, and arise from a caudex (the persistent base of an otherwise annual herbaceous stem). Stems are about 6 cm (2 in) tall. The pinnately compound leaves (feather-like arrangement with leaflets displayed on a central stalk) are 4–11 cm (2–4 in) long with 11–17 leaflets. The leaflets are elliptic to ovate in shape, with a dense silvery gray pubescence (short hairs) on both sides. The species' flowers are of the characteristic papilionaceous form common to the bean family, 1.8–2.2 cm (0.7–0.9 in) long, white in color with a purple tip on the keel, and borne on a stalk of 5–10 flowers. The seed pods are 1 to 2 cm (0.4–0.8 in) long, densely covered with lustrous hairs, and bear 14–16 ovules (a minute rudimentary structure from which a plant seed develops after fertilization). Detailed descriptions of *A. desereticus* can be found in Barneby (1964, Barneby in Cronquist *et al.* 1989), and in Welsh (1978c, Welsh *et al.* 1987, 1993).

The only known population of *Astragalus desereticus* occurs primarily on steep south- and west-facing slopes. The plant grows on soils derived from a specific and unusual portion of the geologic Moroni Formation. This geologic feature is characterized by coarse, crudely bedded conglomerate (Franklin 1990). The plant community in which *A. desereticus* occurs is dominated by pinon pine (*Pinus edulis*) and Utah juniper (*Juniperus osteosperma*). Other associated plant species include: sagebrush (*Artemisia tridentata*), scrub oak (*Quercus gambelii*), wild buckwheat (*Eriogonum brevicaule*), Indian ricegrass (*Stipa hymenoides*), needle and thread grass (*Stipa comata*), bitter brush (*Purshia*

*tridentata*), and plateau beardtongue (*Pentstemon scariosus*) (Franklin 1990).

The sole population of *Astragalus desereticus* consists of between 5,000 and 10,000 individuals that grow on an area of less than 120 hectares (ha) (300 acres (ac)) (Franklin 1990, Stone 1992). The species' total range is approximately 2.6 km (1.6 mi) long, and 0.5 (km) (0.3 mi) across. Extensive searches of similar habitat in Utah and Sanpete Counties, Utah, have failed to identify any other populations (Franklin 1991, Larry England, Service, pers. comm. 1997). The land upon which *A. desereticus* grows is owned by the State of Utah and three private land owners (Franklin 1990, 1991; Chris Montague, The Nature Conservancy, 1992, 1997 pers. comm.). *Astragalus desereticus* is threatened by grazing and trampling by ungulates, alteration of its habitat due to residential development and road widening, and natural events, such as fire, due to its limited distribution.

#### Previous Federal Action

Section 12 of the Act (16 U.S.C. 1531 *et seq.*) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. The Secretary presented this report, designated as House Document No. 94–51, to Congress on January 9, 1975. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition to list those taxa named therein under section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act), and its intention to review the status of those plants. *Astragalus desereticus* was included in the July 1, 1975, notice on list "C," indicating that the species was probably extinct.

On June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to designate approximately 1,700 vascular plant species, including *Astragalus desereticus*, as endangered pursuant to section 4 of the Act. The Smithsonian Institution and the Service assembled this list of 1,700 plant species on the basis of comments and data received in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. In the proposed rule, we also designated *A. desereticus* as a species about which we were particularly interested in obtaining any new information on living specimens and extant populations. General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The 1978 amendments to the Act required that all

proposals over 2 years old be withdrawn, although proposals published before the 1978 amendments' enactment could not be withdrawn before the end of a 1-year grace period beginning on the enactment date. On December 10, 1979, we published a notice of withdrawal (44 FR 70796) of that portion of the June 16, 1976, proposal that had not been made final, which included *A. desereticus*.

On December 15, 1980, we published a revised notice of review for native plants in the **Federal Register** (45 FR 82480) designating *Astragalus desereticus* a category 1 species. At that time, we defined category 1 candidates as those taxa for which we had on file sufficient information on biological vulnerability and threats to support preparation of listing proposals. In addition, *A. desereticus* was identified as a species that may have recently become extinct. In 1981, a population of *A. desereticus* was discovered. On November 28, 1983, we published a revised notice of review in the **Federal Register** (48 FR 53640) in which *A. desereticus* was included as a category 2 candidate species. Category 2 candidates were formally defined as taxa for which data on biological vulnerability and threats indicated that listing was possibly appropriate, but for which data were not sufficient to support issuance of listing proposals. In preparing the 1983 notice, we deemed it appropriate to acquire additional information on the distribution and abundance of *A. desereticus* before proposing the species for listing. We maintained *A. desereticus* as a category 2 species in updated notices of review published in the **Federal Register** on September 27, 1985 (50 FR 39526), and February 21, 1990 (55 FR 6184). As a result of additional information obtained in 1990 and 1991 status surveys (Franklin 1990 and Service 1991), we reclassified *A. desereticus* as a category 1 candidate in the September 30, 1993, notice of review (58 FR 51144). Upon publication of the February 28, 1996, Notice of Review, (61 FR 7596), we ceased using category designations and included *A. desereticus* as a candidate species. Candidate species are those for which the Service has on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered. We maintained *Astragalus desereticus* as a candidate in the September 19, 1997, Notice of Review (62 FR 49398).

Section 4(b)(3)(B) of the Act's 1982 amendments required the Secretary of the Interior to make findings on certain petitions within 1 year of their receipt.

Section 2(b)(1) of the Act's 1982 amendments further required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. Because we accepted the 1975 Smithsonian report and the Service's notices as petitions, we treated all the taxa contained in those notices, including *Astragalus desereticus*, as having been newly petitioned on October 13, 1982. The deadline for a finding on such petitions, including that for *A. desereticus*, was October 13, 1983. Since that date, we made successive 1-year findings that listing *A. desereticus* was warranted, but precluded by other listing actions of higher priority. Our proposal to list *A. desereticus* as threatened on January 28, 1998 (63 FR 4207), constituted the warranted 12-month finding for this species.

The processing of this final rule conforms to our Listing Priority Guidance for Fiscal Years 1998 and 1999 published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to be facing a significant and imminent risk to its well being (Tier 1). Second priority (Tier 2) is processing final determinations on proposed additions species to the lists of endangered and threatened wildlife and plants; the processing of new proposals to add species to the lists; the processing of administrative petition findings to add species to the lists, delist species, or reclassify listed species (petitions filed under section 4 of the Act); and a limited number of proposed or final rules to delist or reclassify species. Third priority (Tier 3) is processing proposed or final rules designating critical habitat. The processing of this final rule is a Tier 2 action. We have updated this rule to reflect any changes in information concerning distribution, status, and threats since the publication of the proposed rule.

#### **Summary of Comments and Recommendations**

In the January 28, 1998, proposed rule and associated notifications, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We contacted and requested comments from all appropriate Federal and State agencies, County governments, scientific organizations, and other interested parties. We published newspaper notices requesting public comment on the proposed rule in *The*

*Salt Lake Tribune* and *the Deseret News* on February 10, 1998, and *the Daily Herald* on February 11, 1998.

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we solicited the expert opinion of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the supportive biological and ecological information for *Astragalus desereticus*. The purpose of this review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. One specialist responded in writing agreeing with our analysis and supporting the proposed action, while two others responded verbally agreeing with our analysis.

During the comment period we reviewed a total of three written comments. We did not receive any comments on the issues raised in our discussion of the biology or threats to the species. Two commenters, including the respondent peer reviewer, concurred with our proposal to list *Astragalus desereticus* as threatened. The third commenter stated that the Service should not list *A. desereticus* because it has no authority under the Act to list or regulate species that are not involved in interstate commerce.

We believe that the application of the Act to *Astragalus desereticus* does not exceed Congress's Commerce Clause authority under the U.S. Constitution for the reasons given in Judge Wald's opinion and Judge Henderson's concurring opinion in *National Association of Home Builders v. Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997), *cert. denied*, 1185 S. Ct. 2340 (1998). That case involved a challenge to application of the Act's prohibitions to protect the listed Delhi Sands flower-loving fly. As with *A. desereticus*, the Delhi Sands flower-loving fly is endemic to only one state. Judge Wald held that application of the Act's prohibitions against taking of endangered species to this fly was a proper exercise of Commerce Clause power to regulate: (1) Use of channels of interstate commerce; and (2) activities substantially affecting interstate commerce because it prevented loss of biodiversity and destructive interstate competition. Judge Henderson upheld protection of the fly because doing so prevents harm to the development that is part of interstate commerce. See *Gibbs v. Babbitt*, 31 F.Supp.2d 531 (E.D.N.C. 1998).

#### **Summary of Factors Affecting the Species**

After a thorough review and consideration of all information available, we have determined that *Astragalus desereticus* should be classified as a threatened species. In making this determination we have followed the procedures set forth in section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424). We may determine a species to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Astragalus desereticus* Barneby (Deseret milk-vetch) are as follows:

##### *A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range*

*Astragalus desereticus* is known from one small population of about 5,000 reproducing individuals and several thousand immature plants on less than 120 ha (300 ac) (Franklin 1990, Stone 1992). This species is endemic to one unusual narrow geologic strata characterized by coarse, poorly sorted conglomerate. Any conversion or destruction of *A. desereticus* habitat has the potential to jeopardize the species' limited population. Urban development of the Wasatch Front metropolitan area is rapidly spreading into the surrounding agricultural lands, especially small communities in the drainages of the Provo, Spanish Fork, and Weber Rivers (Quality Growth Efficiency Tools Technical Committee 1997 (QGETTC)). The population growth of this metropolitan area is expected to double by the year 2020. In addition, conversion of agricultural land to urban use is expected to double in the same time period (QGETTC 1997). Highly accessible rural areas, such as Birdseye, may grow in population at an even more rapid rate. Since the species' rediscovery, one landowner has built a private residence within the species' occupied habitat. Prior to 1998, the town of Birdseye contained about 20 homes. Since the publication of the proposed rule, a 70-unit residential subdivision began construction adjacent to the south side of the species' population. The entire *A. desereticus* population is within 300 meters (m) (1,000 feet (ft)) of U.S. Highway 89. The nearest plants are within a few meters of the road. U.S. Highway 89 is currently a two-lane rural highway. With increasing human population in the general area of southern Utah County and northern Sanpete County, it

is likely that this road will be expanded to four lanes. Such a highway widening could destroy a significant portion of the species population (QGETTC 1997).

*Astragalus desereticus* is located on highly accessible public and private land that is currently used for cattle grazing and wildlife management (Franklin 1991, Stone 1992). The land managed by the Utah Division of Wildlife Resources is a wildlife management area that also is used for cattle grazing (Franklin 1991). Cattle are used by the Utah Division of Wildlife Resources (DWR) in spring to encourage plant growth for big game forage in the winter. This grazing occurs within the habitat of *A. desereticus* (Stone 1992). The cattle tend to concentrate primarily on the upslope areas where forage production is greater (Stone 1992). Erosion in these areas is exacerbated by cattle grazing and game trails. In addition to the effects of erosion, trampling threatens *A. desereticus* particularly at the southern end of the population (Franklin 1991). As cattle and wildlife graze the habitat of *A. desereticus*, the animals are likely to trample plants. Although mule deer numbers have stabilized in recent years, Rocky Mountain elk populations are increasing. Although currently DWR has no specific plans for the conservation of *A. desereticus*, they are interested in developing guidelines for the conservation of Deseret milkvetch to work in concert with their primary goal of enhancing big game winter range. The DWR is interested in acquiring property interests in additional winter range lands also occupied by *A. desereticus*.

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

Overutilization is not known to be a threat to *Astragalus desereticus*.

#### *C. Disease or Predation*

In contrast to many species of *Astragalus*, *A. desereticus* appears to be palatable to cattle. The genus *Astragalus* has the largest number of species in the Intermountain west, many of which are poisonous to grazing animals. Three types of poisonous compounds are found within the genus. Some species within the genus concentrate the toxic element selenium in their tissues; these species are called selenophytes (Stone 1992). The fact that *A. desereticus* does not produce a "snake-like" odor typical of other "snakeweeds," as selenophytes are sometimes called, and the fact that no other selenophytes occur in the area, indicate that *A. desereticus* is not a selenophyte (Stone 1992). Other *Astragalus* species produce poisonous

alkaloids as metabolic byproducts. The known alkaloid producers as well as the selenium accumulators are not closely related to *A. desereticus*. The third type of poison found within *Astragalus* are various nitrotoxins. Ruminants in particular are highly susceptible to nitrotoxin poisoning. Some species closely related to *A. desereticus* contain nitrotoxins (Barneby 1989). While *A. desereticus* may not be preferred forage for cattle or native ungulates, it is palatable and may be inadvertently taken along with preferred forage in the area.

In surveys of habitat similar to that occupied by *Astragalus desereticus* in Utah County, our personnel observed that overgrazing by domestic ungulates has almost completely denuded the landscape (Service 1991). Similar grazing pressure is known from the current habitat of *A. desereticus*; therefore, the effects of grazing, particularly overgrazing, constitute a likely threat. This species is much less abundant in the more heavily grazed southern portion of its habitat (Franklin 1990, 1991), indicating that grazing may be a significant threat. Cattle grazing may be particularly harmful because it occurs during a critical period for *A. desereticus* reproduction (i.e., flowering) (Stone 1992).

There are no known insect parasites or disease organisms that significantly affect this species.

#### *D. The Inadequacy of Existing Regulatory Mechanisms*

*Astragalus desereticus* receives no protection or consideration under any Federal, State, or local law or regulation other than that provided by the Act.

#### *E. Other Natural or Manmade Factors Affecting Its Continued Existence*

By virtue of the limited number of individuals and range of the remaining population of *Astragalus desereticus*, this species is threatened with extinction from naturally occurring events. The probability that a natural event such as fire, drought, or disease will cause extinction is greater for species having a small population and highly restricted range (Stone 1992). Rare species in the genus *Astragalus* have exhibited low levels of genetic diversity when compared to other more widespread, closely related species (Stone 1992). Low genetic variability makes it difficult for a species to respond to changes in the environment thus making them more vulnerable to extinction.

The original locality description for *Astragalus desereticus* at Indianola is thought to be over-generalized and

perhaps this contributed to the species' presumed extinction (Welsh 1985, Franklin 1990). Indianola, Utah, and the species' current known population near Birdseye, Utah, are about 4.4 km (7 mi) apart. The specific geological characteristics of *A. desereticus* habitat are uncommon within the Moroni Formation, though the formation is exposed for a much larger area in southern Utah County and northern Sanpete County, Utah. Although it is thought that some additional populations of *A. desereticus* were present at or near Indianola as reported by Jones in 1893 and Tidestrom in 1909, there are no known populations existing in that location today. Other unknown factors may affect the current distribution and vitality of *A. desereticus* populations.

A potential threat to *Astragalus desereticus* is related to the populations of ungulates in the area and their effect on pollinators. Other species in the genus *Astragalus* suffer from low numbers of pollinators due to the indirect effect that ungulates can have on the pollinator's nest sites (Stone 1992). Bumblebees (*Bombus* spp.), which nest in abandoned rodent burrows, are likely the primary pollinators of *A. desereticus*. Land use practices that increase grazing pressure may cause burrows to collapse, destroying bumblebee nests (Stone 1992). Since bees have a low fecundity (low capability of producing offspring), their populations may not recover for many years, particularly if grazing by large ungulates is maintained. An absence of effective pollinators would probably reduce the fecundity of *A. desereticus*.

In preparing this final rule we have carefully reviewed the best scientific and commercial information available regarding the past, present, and future threats faced by *Astragalus desereticus*. Based on this evaluation, the preferred action is to list *A. desereticus* as threatened. Threatened status reflects the vulnerability of this species to factors that may negatively affect the species and its extremely limited habitat. While not in immediate danger of extinction, *A. desereticus* is likely to become an endangered species in the foreseeable future if present threats continue or increase. We have contacted the current land owners and although many are receptive in the near-term to providing for passive protection, having no immediate plans for development, in the long-term they continue to have expectations for the future use and development of their properties.

### Critical Habitat

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. We have determined that the designation of critical habitat for *A. desereticus* is not prudent due to the lack of benefit to the species.

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency (see "Available Conservation Measures" section). As such, designations of critical habitat may affect activities on Federal lands and may affect activities on non-Federal lands where such a Federal nexus exists. Under section 7 of the Act, Federal agencies are required to ensure that their actions do not jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat. However, both jeopardizing the continued existence of a species and adverse modification of critical habitat have similar standards and thus similar thresholds for violation of section 7 of the Act. In fact, biological opinions that conclude that a Federal agency action is likely to adversely modify critical habitat but not jeopardize the species for which the critical habitat has been designated are extremely rare. Also, the designation of critical habitat for the purpose of informing Federal agencies of the location of *A. desereticus* habitat is not necessary because we can inform Federal agencies through other means. For these reasons, the designation of critical habitat for *A. desereticus* would provide no additional benefit to the species beyond that conferred by listing, and, therefore, such designation is not prudent.

*Astragalus desereticus* has an extremely narrow distribution in a sandstone outcrop, totaling about 120 ha (300 ac) in one population. At the present time, no other site is known to be occupied or suitable for this plant. The private land owners at Birdseye are aware of the plant's presence and extremely limited habitat, as are the

DWR managers and others involved in the management of the area. Therefore, designation of critical habitat would provide no benefit with respect to notification. In addition, given the species' narrow distribution and precarious status, virtually any conceivable adverse affect to the species' habitat would very likely jeopardize its continued existence. Designation of critical habitat for *A. desereticus* would, therefore, provide no benefit to the species apart from the protection afforded by listing the plant as threatened.

Protection of the habitat of *A. desereticus* will be addressed through the section 4 recovery process and the section 7 consultation process. Although this plant occurs only on private and State land, it may be affected by projects with Federal connections, including potential Federal Highway Administration funding of road widening. We believe that activities involving a Federal action which may affect *A. desereticus* can be identified without designation of critical habitat, by providing Federal agencies with information on the location of occupied habitat and information on the kinds of activities which could affect the species. For the reasons discussed above, we find that the designation of critical habitat for *A. desereticus* is not prudent.

### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups and individuals. The Act provides for possible land acquisition and cooperation with the State, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not

likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

The single known population of *Astragalus desereticus* is on State and privately owned land. However, highway widening, which may adversely affect *A. desereticus*, due to the proximity of the plants to a major highway project, may in part be funded by the Federal Highway Administration and involve consultation under section 7 of the Act.

The Act and its implementing regulations set forth a series of general trade prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 for threatened plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, damaging, or destruction of such plants in knowing violation of any State law or regulation, or in the course of a violation of State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if such regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical and horticultural exhibition, educational purposes, or special reasons consistent with the Act's purposes. With respect to *Astragalus desereticus*, it is anticipated that few, if any, trade permits would be sought or issued since the species is not common in the wild

and is unknown in cultivation. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to: Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act if the species is listed. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. This species is not known to be located on areas under Federal jurisdiction. We believe the actions listed below would not result in a violation of section 9:

(1) Activities authorized, funded, or carried out by Federal agencies (e.g., grazing management, agricultural conversions, range management, rodent control, mineral development, road construction, human recreation, pesticide application, controlled burns) and construction/maintenance of projects (e.g., fences, power lines, pipelines, utility lines) when such activities are conducted according to all reasonable and prudent measures provided by the Service under section 7 of the Act;

(2) Casual, dispersed human activities on foot (e.g., bird watching, sightseeing, photography, and hiking).

The actions listed below may potentially result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the species on Federal Lands;

(2) Application of herbicides in violation of label restrictions;

(3) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for scientific purposes, the enhancement of the propagation or survival, economic hardship, botanical or horticultural exhibition, educational purposes, or other activities consistent with the purposes and policy of the Act.

Questions regarding whether specific activities, such as changes in land use, would constitute a violation of section 9 should be directed to the Utah Ecological Services Field Office (see **ADDRESSES** section).

## National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the basis for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

## Required Determinations

This rule does not contain collections of information that require Office of Management and Budget approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018-0094. This rule does not alter that information collection requirement. For additional information concerning permits and associated requirements for threatened plants, see 50 CFR 17.72.

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U.S. Fish and Wildlife Service. 1991. *Astragalus desereticus*: Supplemental Status Report. Salt Lake City, Utah. 4 pp.

Author: The primary author of this proposed rule is John L. England (see **ADDRESSES** section).

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## Regulation Promulgation

Accordingly, amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.12(h) by adding the following, in alphabetical order under "FLOWERING PLANTS," to the List of Endangered and Threatened Plants:

## § 17.12 Endangered and threatened plants.

\* \* \* \* \*

(h) \* \* \*

Species			Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
<i>Astragalus desereticus</i> .....	Deseret milk-vetch .....	U.S.A. (UT) .....	T	668	NA	NA	
*	*	*	*	*		*	

Dated: September 30, 1999.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 99-27187 Filed 10-19-99; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AE 86

#### Endangered and Threatened Wildlife and Plants; Final Rule To List the Devils River Minnow as Threatened

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

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, determine the Devils River minnow (*Dionda diaboli*) to be a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). The Devils River minnow is a small fish with a known distribution limited to three locations in Val Verde and Kinney counties, Texas, and one drainage in Coahuila, Mexico. The species' range is significantly reduced and fragmented due to habitat loss from dam construction, spring dewatering, and other stream modifications. The numbers of Devils River minnows collected during fish surveys over the past 25 years have declined; once one of the most abundant fish in the Devils River, the minnow has now become one of the least abundant. The species' decline in abundance in the Devils River may be attributed to the effects of both habitat modification and possibly predation by smallmouth bass (*Micropterus dolomieu*), an introduced game fish.

We originally proposed to list the Devils River minnow as endangered. However, since publication of the proposed rule, a Conservation Agreement (Agreement) for the species has been signed and specific milestones for conservation actions have been agreed to by us, the Texas Parks and Wildlife Department (TPWD), and the City of Del Rio. We determine that the

actions already accomplished under this Agreement, have reduced the imminence of the threats to the species sufficiently to justify a threatened designation. This action will implement Federal protection provided by the Act for the Devils River minnow. We determine that designation of critical habitat for the Devils River minnow is not prudent.

**EFFECTIVE DATES:** The effective date of this rule is November 19, 1999.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas, 78758.

**FOR FURTHER INFORMATION CONTACT:** Nathan Allan, Fish and Wildlife Biologist, at the above address, telephone 512/490-0057, or facsimile 512/490-0974.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Devils River minnow (*Dionda diaboli* Hubbs and Brown) is classified in the Cyprinidae (minnow) family. It was first collected from Las Moras Creek, near Brackettville, Texas, on April 14, 1951. The species was described by Hubbs and Brown (1956) from specimens collected in the Devils River at Baker's Crossing (southern-most bridge crossing of State Highway 163) in 1951. The species occurs with similar minnows, such as the closely related manantial roundnose minnow (*Dionda argentosa*) and is also related to the more common roundnose minnow (*Dionda episcopa*). Devils River minnow is recognized as a distinct species by the American Fisheries Society (Robins *et al.* 1991) based on morphological characteristics (Hubbs and Brown 1956), genetic markers (Mayden *et al.* 1992), and chromosome differences (Gold *et al.* 1992).

The Devils River minnow is a small fish, with adults reaching sizes of 25–53 millimeters (mm) (1.0–2.1 inches (in.)) standard length. The fish has a wedge-shaped caudal (near the tail) spot and pronounced lateral stripe with double dashes extending through the eye to the snout but not reaching the lower lip.

The species has a narrow head with prominent dark markings on scale pockets above the lateral line that produce a cross-hatched appearance when viewed from the top (Hubbs and Brown 1956).

Little information is available on life history characteristics, feeding patterns, or reproductive behaviors of this species. However, based on their extended intestinal tract, species of the genus *Dionda* are considered to feed primarily on algae. Since *Dionda episcopa*, a closely related species, are broadcast spawners with nonadhesive eggs that sink to the substrate (Johnston and Page 1992), we believe Devils River minnows are as well.

General habitat associations for Devils River minnow have been described as channels of fast-flowing, spring-fed waters over gravel substrates (Harrell 1978). Although the species is closely associated with spring systems, it most often occurs where spring flow enters a stream, rather than in the spring outflow itself (Hubbs and Garrett 1990). The species is adapted to the hydrologic variations inherent in desert river systems (Harrell 1978), which are characterized by extended droughts and extreme flash floods (USGS 1989).

The Devils River minnow is part of a unique fish fauna in west Texas streams where a mixture of fishes occur, including Mexican peripherals, local endemics, and widespread North American fishes (Hubbs 1957). About half of the native fishes of the Chihuahuan Desert of Mexico and Texas are considered by Hubbs as threatened (1990) and at least four species have been documented to be extinct (Miller *et al.* 1989), primarily due to habitat destruction and introduced species.

The Devils River minnow is native to tributary streams of the Rio Grande in Val Verde and Kinney counties, Texas, and Coahuila, Mexico. The known historical range of the species is based on collections from the 1950's and 1970's and includes the Devils River from Beaver Lake downstream to near its confluence with the Rio Grande; San Felipe Creek from the springs in the headwaters to springs in Del Rio; Sycamore Creek; Las Moras Creek near