Oregon, survived. These two remnant populations are geographically separated by about 320 kilometers (km) (200 miles (mi)) of unsuitable or discontinuous habitat.

Population declines led to classification of this subspecies as endangered in 1967 under the Endangered Species Protection Act of 1966 (32 FR 4001). The subspecies was automatically included in the lists of threatened and endangered species when the Endangered Species Act was authorized in 1973 (16 U.S. C. 1531 *et seq.*). Prior to 1977, only the Columbia River population was listed as endangered since the Douglas County population was considered a black-tailed deer (*Odocoileus hemionus columbiana*) or a hybrid between the black-tailed deer and the Columbian white-tailed deer by the State of Oregon. In 1978, the State of Oregon recognized the white-tailed deer population in Douglas County as the Columbian white-tailed deer and prohibited hunting of white-tailed deer in that county (ODFW 1995). The Columbian White-tailed Deer Recovery Plan (Recovery Plan) was approved by us in 1976, and a revised version was approved in 1983 (Service 1983). Because of the distance between the Douglas County and Columbia River populations, and differences in habitats and threats, the Recovery Plan addresses the recovery of these two populations separately.

Crews (1939) estimated the population in the 1930s in Douglas County at 200 to 300 individuals within a range of about 78 square kilometers (sq km) (30 square miles (sq mi)). In 1970, ODFW estimated that 450 to 500 deer were present. By 1983, the number had increased to about 2,500 (Smith 1985). The population has continued to grow, and are presently estimated to be between 5,900 to 7,900 deer (ODFW 1999).

Along with this increase in numbers, the range also has expanded. The deer have expanded to the north and west in the last 10 years, and now occupy an area of approximately 800 sq km (308 sq mi) (ODFW 1995).

Most habitat for the Douglas County population is on private lands. Approximately 3,880 hectares (ha) (9,586 acres (ac)) of suitable habitat are presently considered secure on Federal, County and private lands. For the purpose of delisting, habitat is considered secure if it is protected by legally binding measures or law from adverse human activities for the foreseeable future.

The current total population size is estimated as approximately six times the population size required for downlisting, which greatly reduces the risk to the population. It is also anticipated that as habitat management and restoration activities are implemented by the Bureau of Land Management, which contains the majority of secure lands, the carrying capacity and numbers of deer on these lands will increase accordingly. The Douglas County population has met the objectives in the Recovery Plan, and greatly exceeded the habitat objectives.

We published a proposed rule to delist the Columbian white-tailed deer on May 11, 1999 (64 FR 25263). The original comment period closed on June 25, 1999. We reopened the comment period on November 3, 1999 (64 FR 59729) to conduct a peer review of the proposal, and solicited the opinions of three appropriate and independent specialists regarding the data, assumptions, and supportive information presented for the Douglas County population of Columbian white-tailed deer, per our Interagency Cooperative policy for Peer Review in Endangered Species Act Activities (59 FR 34270). We are reopening the comment period again in order to provide the three independent peer reviewers an opportunity to review previous public comments, and any additional public comments, on the proposed rule.

References Cited

Bailey, V. 1936. The mammals and life zones of Oregon. North American Fauna. U.S. Department of Agriculture, Washington, DC 55: 89–91.

Crews, A.K. 1939. A study of the Oregon white-tailed deer, *Odocoileus virginianus leucurus* (Douglas). M.S. thesis. Oregon State College. Corvallis. 46 pp.

Gavin, T.A. 1984. Pacific Northwest. *in:* White-tailed deer, ecology and management. L. K. Halls, editor. A Wildlife Management Institute publication. Pages 491–492.

Gavin, T.A. 1978. Status of the Columbian white-tailed deer: some quantitative uses of biogeographic data. Pages 185–202 *in:* Threatened Deer. IUCN. Morges, Switzerland. 434 pp.

Oregon Department of Fish and Wildlife. 1999. Deer census and population trend data. Unpublished ODFW report, Southwest Regional Office. 4 pages.

Oregon Department of Fish and Wildlife. 1995. Columbian white-tailed deer biological status assessment. Report to Oregon Fish and Wildlife Commission. 83 pp.

Smith, W.P. 1985. Current geographic distribution and abundance on the Columbian white-tailed deer, *Odocoileus virginianus leucurus* (Douglas). Northwest Science 59:243–251.

U. S. Fish and Wildlife Service. 1983. Revised Columbian white-tailed deer recovery plan. Portland, Oregon. 75 pp.

Author

The primary author of this notice is Barbara Behan of the Regional Office, U.S. Fish and Wildlife Service, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6131).

Authority

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

Thomas J. Dwyer,

Regional Director, Fish and Wildlife Service.

[FR Doc. 99–33735 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF86

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for *Ambrosia pumila* (San Diego Ambrosia) from Southern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, propose to list *Ambrosia pumila* (San Diego ambrosia) as endangered under the Endangered Species Act of 1973, as amended (Act). This plant is restricted to San Diego and Riverside Counties, California and Baja California, Mexico, from Colonet to Lake Chapala. *Ambrosia pumila* is primarily restricted to flat or sloping grasslands, often along valley bottoms or areas adjacent to vernal pools. This species is threatened by the following; destruction, fragmentation, and degradation of habitat by recreational and commercial development; highway construction and maintenance; construction and maintenance activities associated with a utility easement; competition from non-native plants; trampling by horses and humans; off-road vehicle (ORV) use; and inadequate regulatory mechanisms. This proposed rule, if made final, would extend protection under the Act to *Ambrosia pumila*.

DATES: Comments from all interested parties must be received by February 28, 2000. Requests for public hearings must be received by February 14, 2000.

ADDRESSES: If you wish to comment, you may submit your comments and

materials concerning this proposal by any one of several methods.

You may submit written comments to the Deputy Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

You may send comments by e-mail to ambrosia__pr@fws.gov. Please submit these comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: [RIN number]'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 760–431–9440.

You may hand-deliver comments to our Carlsbad office at 2730 Loker Avenue West, Carlsbad, California.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Gary D. Wallace, Botanist, at the above address (telephone 760/431–9440; facsimile 760/918–0638).

SUPPLEMENTARY INFORMATION:

Background

Ambrosia is a genus of 35 to 50 wind-pollinated species of annuals and perennials in the Asteraceae (sunflower) family. The perennial taxa range from woody shrubs to herbaceous rhizomatous (possessing underground stems) taxa. Payne (1976) notes that self-pollination and self-fertility contribute strong inbreeding, as does seed longevity. Members of the genus occur predominantly in the Western Hemisphere, especially North America. Species are generally found in arid or semiarid areas.

Ambrosia pumila (San Diego ambrosia), was originally described as *Franseria pumila* by Thomas Nuttall (Nuttall 1840) based on a specimen he collected near San Diego in 1836. Delpino (1871) transferred the species to another genus he erected based on a character of the fruit and published the combination *Hemiambrosia pumila* (Nutt.) Delpino. Asa Gray (1882), after seeing specimens of the plant with fruits, decided it was closely related to members of the genus *Ambrosia* and published the currently accepted combination, *Ambrosia pumila* (Nutt.) A. Gray. This has been recognized by current systematic and floristic treatments (Payne 1963; Munz 1935, 1974; Munz and Keck 1959; Ferris 1960; Beauchamp 1986; Payne 1993).

Ambrosia pumila is an herbaceous perennial arising from a branched system of rhizome-like roots. This rhizomatous perennial habit results in groupings of aerial stems, often termed clones, that are, or at least were at one time, all attached to one another. References to clones derive from the presence of currently separated specimens whose interconnections have degenerated leaving genetically identical but organically separate individuals. The aerial stems sprout in early spring after the winter rains and deteriorate in late summer. Therefore, the plant may not be evident from late summer to early spring. The aerial stems are 0.5 to 3 decimeter (dm) (2 to 12 inches (in)) rarely to 5 dm (20 in) tall and densely covered with short hairs. The leaves are 3 to 4 times pinnately divided into many small segments and are covered with short soft, gray-white, appressed hairs. This species is monoecious, with separate male and female flowers on the same plant, and is wind-pollinated. The male flower clusters (heads) are borne on terminal racemes, and the female flower clusters (heads) are in the axils of the leaves below the male inflorescences. The fruiting heads are enclosed by cup-like structures that have no spines, although some reports note a few vestigial spines. *Ambrosia pumila* may be distinguished from other species of *Ambrosia* in the area by its leaves which are twice divided, involucres (cup-like structures) lacking hooked spines, and lack of longer stiff hairs on the stems and leaves. This species flowers from May through October.

Several factors make it difficult to determine the extent of an individual plant. The species is rhizomatous, plants produce a few to many aerial stems each year, the rhizomatous connections among the aerial stems may deteriorate over time resulting in physically separate but genetically identical individuals, and plants may have intermingling rhizomes resulting in intermixed aerial stems that appear identical. Because this species is a clonal plant, the numbers of genetically different individuals in an occurrence, especially small occurrences, could be very low. It is possible that an occurrence that supports even 1,000 aerial stems may consist of very few plants. This suggests that the low genetic diversity within the smaller occurrences may relegate these occurrences to extinction (Barrett & Kohn 1991). Seven of the 13 extant occurrences fall into this category of reportedly supporting 1,000 or fewer aerial stems. It is also possible that even the largest reported number of aerial stems (10,000) may represent fewer than 100 plants. Some surveys have reported numbers of plants, when in fact, only numbers of aerial stems have been counted, and the actual number of separate plants is not determinable (CNDDB 1999).

Ambrosia pumila is found on upper terraces of rivers and drainages as well as in open grasslands, openings in coastal sage scrub habitat, and dry lake beds. The species may also be found in disturbed sites such as fuel breaks and roadways. Associated native plant taxa include *Distichlis spicata* (saltgrass), *Orcuttia californica* (California Orcutt grass), *Baccharis salicifolia* (Mule-fat), and *Eremocarpus setigerus* (Turkey-mullein). Populations of *Ambrosia pumila* occur on Federal, State, local government, and private lands in western San Diego County, western Riverside County, and in the northern state of Baja California, Estado de Baja California, Mexico.

This species has been reported from 49 occurrences in the United States (CNDDB 1999). Four were combined with other occurrences, six were based on misidentified specimens, and two that were based on old collections have not been documented since 1936 (CNDDB 1999). Three occurrences consist of transplanted plants from other occurrences that were subsequently partially or totally eliminated (CNDDB 1999). There are, therefore, 34 verifiable native reported occurrences of this species. Twenty of these have been extirpated since the 1930's, nearly all by commercial development and activities associated with highway construction. One occurrence, with a single stem in 1996, is considered non-viable due to the small size of the occurrence and the high level of disturbance of the site (CNDDB 1999). Subtracting this non-viable occurrence, there are currently 13 extant native occurrences of this species. Two recent occurrences (CNDDB 1999; T. Stewart, CDFG *in litt.*1999) are incorporated here into previously known occurrences. Eleven occurrences are in San Diego County, and two are in western Riverside County.

San Diego County

In San Diego County, two occurrences are protected on the Sweetwater River watershed in the recently established San Diego National Wildlife Refuge (SDNWR). One of these was reported to be 0.6 hectares (ha) (0.25 acres(ac)) in size in 1996, and 0.15 ha (0.06 ac) in 1998 (Julie Vanderwier, USFWS *in litt.*1998). Numbers of aerial stems have

not been reported in the various surveys of this site. The 1998 survey indicated an unknown number of stems at this site and additionally a few plants nearby to the northeast. These few plants are included here in the earlier known occurrence. The second occurrence on the San Diego National Wildlife Refuge was reported to support 50 plants in 1996. It must be pointed out that throughout this discussion reports that include numbers of ''plants'' are, in fact, indicating only the numbers of aerial stems. It is not possible to determine the extent of a single genetically distinct plant from the numbers of aerial stems because a plant may consist of numerous aerial stems produced by interconnected underground rhizomes. These rhizomes may deteriorate over time, resulting in physically separate but genetically identical plants. A survey in 1998 (Vanderwier *in litt.*1998) reported that this site covered 0.07 ha (0.03 ac). This same survey discovered a large number of individuals just to the northeast in a 0.7-ha (1.75-ac) site, considered here as an extension of the second occurrence. Another occurrence on the Sweetwater River watershed is in El Cajon on a 0.02-ha (0.06-ac) vacant lot owned by California Department of Transportation (Caltrans) which supported 10,000 stems in 1997 (Vanderwier *in litt.*1997). In 1998 an additional occurrence was found in El Cajon on a group of vacant lots of 1.9 ha (4.8 ac) supporting 6,500 plants (aerial stems) (CNDDB 1999).

Three occurrences occur on the San Diego River watershed. The largest one is in Mission Trails Regional Park (MTRP) managed by the City of San Diego, and on adjacent private land. That portion of the occurrence on MTRP land managed by the City of San Diego occupies 13.6 ha (34 ac) and supported 1,500 stems in 1994. The adjacent private lands portion of this occurrence is afforded protections under the City of San Diego's Subarea Plan of the Multiple Species Conservation Program (MSCP) (City of San Diego 1997). The second occurrence on the San Diego River watershed and also in MTRP supports an unknown number of individuals (CNDDB 1999). Both occurrences in MTRP are afforded protected under provisions of City of San Diego's Subarea Plan (City of San Diego 1997). The third occurrence on the San Diego River watershed occurs at Gillespie Field, where there are small remnants of native populations scattered near the south side of the airfield. The current status of these remnants is unknown.

The four remaining occurrences in San Diego County may eventually be protected under provisions of the Multiple Habitats Conservation Program (MHCP) or the City of San Diego's north segment MSCP Subarea Plan. Three are small occurrences on the San Luis Rey River watershed near Bonsall—1) Some plants are presumed extant in a fenced area on Caltrans lands, and some are on private land. However, the current number of aerial stems or the area of this occurrence is not known; (2) Another occurrence in the area is 2.6 ha (6.6 ac) in size and supported about 700 plants (aerial stems) in 1996; and (3) the third occurrence on the San Luis Rey River watershed is on jointly private and Caltrans-owned lands near Bonsall and reportedly supported 2,000 to 3,000 plants (aerial stems) in 1997 (CNDDB 1999). The remaining extant occurrence in San Diego County is on the San Dieguito River watershed. The privately owned site is 31.7 ha (79.2 ac) in size and reportedly supported 2,000 stems in 1997 (CNDDB 1999). Recent site visits found fewer than 100 stems in an area less than 0.4 ha (1 ac) (Wallace *in litt.* 1999). The area is degraded and immediately adjacent to a bulldozed area of a development (Wallace *in litt.* 1999).

Riverside County

Two occurrences are known from Riverside County on privately owned lands. One occurrence along Nichols Road, Lake Elsinore supported an estimated 3,400 stems in 1997, and another occurrence at a fenced mitigation bank area at Skunk Hollow supported about 100–300 stems in 1998 (Brenda McMillan USFWS in litt.1999).

Baja California, Mexico

The current documented range of *Ambrosia pumila* in Baja California, Mexico extends from Colonet south to Lake Chapala. Two of the three documented sites were confirmed by Hogan and Burrascano (1996). Although additional occurrences may exist in Baja California, the species is not considered to be widespread because of lack of appropriate habitat and impacts from agriculture and urban development, especially near the coast.

Previous Federal Action

Federal Government action on this species began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be threatened, endangered, or extinct in the United States. This report, designated House Document No. 94–51 was presented to Congress on January 9, 1975. (*Ambrosia pumila* was not included in this document). A revision of the Smithsonian report (Ayensu and DeFilipps 1978) provided new lists based on additional data on taxonomy, geographic range, and endangered status of taxa, as well as suggestions of taxa to be included or deleted from the earlier listing. *Ambrosia pumila,* not included in the first Smithsonian report, was recommended for threatened status in the Ayensu and DeFilipps (1978) report. We published an updated Notice of Review of plants on December 15, 1980 (45 FR 82479). This notice included *Ambrosia pumila* as a category 1 candidate. Category 1 candidates were taxa for which we had sufficient information on biological vulnerability and threats to support preparation of listing proposals.

Section 4(b)(3)(B) of the Act requires the Secretary to make findings on petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Ambrosia pumila* because the 1978 Smithsonian report (Ayensu and DeFilipps 1978) had been accepted as a petition. On October 13, 1983, we found that the petitioned listing of this species was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Notification of this finding was published in the **Federal Register** on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled annually, pursuant to section 4(b)(3)(C)(i) of the Act. On November 28, 1983, we published a supplement (48 FR 53639) to the December 15, 1980, Notice of Review of plant taxa for listing. The status of *Ambrosia pumila* was changed to category 2. Category 2 candidates were taxa for which information then in our possession indicated that proposing to list the taxa as endangered or threatened was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support proposed rules. The status of *Ambrosia pumila* remained unchanged through, and including, the Notice of Review we published in the **Federal Register** on September 30, 1993 (58 FR 51143). On February 28, 1996, we published in the **Federal Register** (61 FR 7595) a Notice of Review of plant and animal taxa that are candidates for listing as endangered or threatened. In that notice we announced changes to the way that we identify species that are candidates for listing under the Act, and we

discontinued maintenance of a list of species that were previously identified as ''category 2 candidates.'' Thus, as a category 2 candidate, *Ambrosia pumila* was not included in the February 28, 1996, Notice of Review.

On January 9, 1997, we received a petition dated November 12, 1996, from Mr. David Hogan of the Southwest Center for Biodiversity and Ms. Cindy Burrascano of the California Native Plant Society, San Diego Chapter, requesting that *Ambrosia pumila* (San Diego ambrosia) be listed as endangered pursuant to section 4 of the Act. Additionally, the petition appealed for emergency listing pursuant to section 4(b)(7) of the Act. The petitioners further requested that critical habitat be designated for *Ambrosia pumila* concurrent with the listing pursuant to 50 CFR 424.12 and the Administrative Procedures Act 50 U.S.C. 5.53. On January 23, 1997, we notified the petitioners that we received their petition and that their petition would be processed based on the listing priority guidance then in effect.

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition presents substantial information indicating that the action may be warranted. To the maximum extent practicable, this finding should be made within 90 days of the receipt of the petition and it should be published promptly in the **Federal Register**. If we determine that listing the species may be warranted, section 4(b)(3)(B) of the Act requires us to make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority. However, because of budgetary restraints, we processed petitions in accordance with the 1997 listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). This guidance identified four tiers of listing activities to be conducted by us with appropriate funds. Tier 1, the highest priority, covered emergency listings of species facing an imminent risk of extinction as defined under the emergency listing provisions of section (4)(b)(7) of the Act. Tier 2, the second priority, included processing of final determinations for species currently proposed for listing. Tier 3, the third priority, addressed efforts under the Act to resolve the conservation status of candidate species and process administrative findings on petitions to add species to the lists or reclassify threatened species to endangered status. Tier 4, the lowest priority, covered the processing of critical habitat determinations, delisting actions, and reclassification of endangered species to threatened status. Under the priority system and because of the backlog of species proposed for listing and awaiting final listing determinations at that time, we deferred action on listing petitions except where an emergency existed and where the immediacy of the threat was so great to a significant portion of the population that the routine listing process would not be sufficient to prevent large losses that might result in extinction.

We reviewed the petition and supporting documentation to determine whether *Ambrosia pumila* faced a significant risk to its well-being under the emergency listing provisions of section 4(b)(7) of the Act (61 FR 64479). On July 15, 1997, we concluded that emergency listing and the designation of critical habitat were not warranted, and that the petition should be processed as a Tier 3 priority task pursuant to the listing priority guidance for fiscal year 1997. A notice published in the **Federal Register** (62 FR 55268) on October 23, 1997, announced the extension of the fiscal year 1997 listing priority guidance until such time as the fiscal year 1998 appropriation bill for the Department of the Interior became law and new final guidance was published in the **Federal Register**. In this notice there were no changes made in the tier system.

On October 1, 1997, Southwest Center for Biodiversity and the California Native Plant Society filed a lawsuit in the United States District Court for the Southern District of California challenging our failure to produce timely administrative 90-day and 12-month findings for *Ambrosia pumila.*

On May 8, 1998, new listing priority guidance for Fiscal Years 1998 and 1999 was published in the **Federal Register** (63 FR 10931). This new guidance changed the four tier priority system to a three tier priority system. Highest priority, Tier 1, was processing emergency listing rules for any species determined to face a significant and imminent risk to its well being. Second priority, Tier 2, was processing final determinations on pending proposed listings; the processing of new proposals to add species to the lists; the processing of administrative petition findings to add species to the lists, and petitions to delist species, or reclassify listed species (petitions filed under section 4 of the Act); and a limited number of delisting and reclassifying actions. Lowest priority, Tier 3, was the processing of proposed or final critical habitat designations. Under that guidance, the administrative review process for this petition fell under Tier 2. We published a 90-day finding on the petition to list *Ambrosia pumila* as endangered in the **Federal Register** (64 FR 19108) on April 19, 1999. We found that substantial information existed indicating listing may be warranted and solicited comments and information regarding the finding. However, we did not receive any comments by May 19, 1999, the close of the comment period. On October 28, 1999, the District Court ordered us to complete a 12-month finding for *Ambrosia pumila* on or before December 10, 1999. This proposed rule constitutes the 12-month finding on the petition.

The processing of this final rule conforms with our current Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. This final rule is a Priority 2 action and is being completed in accordance with the current Listing Priority Guidance.

Peer Review

In accordance with interagency policy published on July 1, 1994 (59 FR 34270), upon publication of this proposed rule in the **Federal Register** we will solicit expert reviews by at least three specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomic, biological, and ecological information for *Ambrosia pumila.* The purpose of such a review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including the input of appropriate experts.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR Part 424) issued to implement the listing provisions of the Act, set forth the procedures for adding species to the Federal list. We may determine that a species is endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Ambrosia pumila* (Nutt.) A. Gray are as follows.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Twenty of the 34 reported native occurrences of this species have been eliminated by urbanization, recreational development and highway construction and alteration (CNDDB 1999). Of the remaining 14, one occurrence in a sidewalk crack in National City, is considered non-viable (CNDDB 1999). Six of the 13 other extant occurrences, including three of the larger (reportedly supporting more that 1,000 aerial stems) occurrences, are threatened with habitat destruction associated with highway expansion or maintenance activities or by maintenance of utility rights of way, including mowing (CNDDB 1999). One of these is west of the Bonsall Bridge and reportedly supported 2,000 to 3,000 stems in 1997 (CNDDB). The two other smaller occurrences near Bonsall are also threatened by Caltrans highway maintenance and expansion (CNDDB 1999). These are the only three extant occurrences known within the San Luis Rey watershed. Two occurrences near El Cajon within the San Diego River watershed, both reportedly supporting more that 1,000 stems, are likewise threatened by highway maintenance and highway widening (CNDDB 1999). The last occurrence threatened by highway expansion or maintenance activities or utility rights of way maintenance activities is a large (500 to 1,000 stems reported in 1998) occurrence along Nicols Road in Riverside County (CNDDB 1999). Two occurrences, both reportedly supporting more that 1,000 aerial stems have been affected by recreational development (CNDDB 1999). One of these is within a golf course under construction near Del Dios. During a recent visit, this site appeared to be significantly degraded by grading in the immediate vicinity and less than 100 aerial stems were found on the site which was less than 0.4 ha (1 ac) in size (Wallace *in litt.* 1999). The second occurrence is located within and adjacent to Mission Trails Regional Park, managed by the City of San Diego, which is required by the Multiple Species Conservation Program (MSCP) to conserve and manage 90 percent of the large population on their lands. A 10 percent loss (0.2 ha or 0.05 ac) of this major population of *Ambrosia pumila* occurred in 1997 for development of a campground facility (CNDDB 1999) and was allowed under the provisions of the City of San Diego's Subarea Plan (City of San Diego 1997). If more than a 10 percent loss occurs, the species will no longer be covered under the provisions of the MSCP (City of San Diego 1997). It will be possible to verify future losses and assess indirect effects of these losses when the biological monitoring and management aspect of the MSCP Subarea Plans are in full effect. An additional habitat loss for this species was an occurrence on the San Luis Rey watershed that supported over 1,600 ''plants'' (aerial stems). This loss occurred in spite of an existing agreement prohibiting impacts to this species (see discussion below regarding San Diego Gas and Electric under factor D). The site was graded and the plants extirpated in late 1996. Two other occurrences are threatened by residential or commercial development. The larger of the two reportedly supported 6,500 stems in 1998 (CNDDB 1999). This occurrence is on vacant lots and back yards in a residential area of El Cajon (CNDDB 1999). In Riverside County, one occurrence, near Lake Elsinore, is threatened by highway expansion activities, the other occurrence at Skunk Hollow is threatened by indirect impacts associated with urbanization surrounding the occurrence (CNDDB 1999).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be a factor affecting *Ambrosia pumila* at this time. However, rare taxa are favored by some professional and amateur botanists for their collections or for trade with other individuals. The potential threat to this species from overcollection may increase upon publication of this proposed rule.

C. *Disease or predation.* Disease and predation are not known to be factors affecting this plant species.

D. *The inadequacy of existing regulatory mechanisms.* Existing regulatory mechanisms that could provide some protection for this species include—(1) Federal laws and regulations including the National Environmental Policy Act (NEPA), the Endangered Species Act in those cases where this species occurs in habitat occupied by other listed species, and section 404 of the Federal Clean Water Act; (2) State laws, including the Native Plant Protection Act (NPPA), the California Endangered Species Act (CESA), the California Environmental Quality Act (CEQA), and section 1603 of the California Fish and Game Code; (3) regional planning efforts pursuant to the California Natural Community Conservation Planning Program (NCCP); (4) land acquisition and management by Federal, State, or local agencies, or by private groups and organizations; (5) local land use processes and ordinances; and (6) enforcement of Mexican laws.

Federal Laws and Regulations

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 to 4347) requires disclosure of the environmental effects of projects within Federal jurisdiction. NEPA requires that each of the project alternatives recommend ways to protect, restore and enhance the environment and avoid and minimize any possible adverse effects when implementation poses significant adverse impacts. NEPA does not, however, require that the lead agency select an alternative with the least significant impact to the environment, nor does it prohibit implementing a proposed action in an environmentally sensitive area (40 CFR 1500 *et seq.*). Only two of the extant occurrences of *Ambrosia pumila* are on Federal lands.

The Federal Endangered Species Act (Act), as amended, may afford protection to sensitive species if they coexist with species already listed as threatened or endangered under the Act. A number of federally listed species occur within the range of *Ambrosia pumila* and are known or likely to co-occur with the species. Protection afforded by these species, however, is minimal due to the lack of significantly overlapping habitat requirements. These species include Riverside fairy shrimp (*Streptocephalus woottonii*), *Orcuttia californica* (California Orcutt grass), and Least Bell's vireo (*Vireo bellii pusillus*), listed as endangered, and the coastal California gnatcatcher (*Polioptila californica californica*), and *Navarretia fossalis* (spreading navarretia), listed as threatened. These species are not known to consistently co-occur in the same vegetation communities although they may occur in nearby associated communities.

Conservation provisions under the Clean Water Act could afford some protection to *Ambrosia pumila. Ambrosia pumila* could potentially be affected by projects requiring a permit from the Army Corps of Engineers (Corps) under section 404 of the Clean Water Act. Under section 404, the Corps regulates the discharge of fill material into waters of the United States, which

includes navigable and isolated waters, headwaters, and adjacent wetlands. Section 404 regulations require that applicants obtain an individual permit for projects to place fill material affecting greater than 1.2 ha (3 ac) of waters of the United States. Nationwide Permit 26 (33 CFR part 330, revised on December 20, 1996 (61 FR 65916) was established by the Department of the Army to facilitate authorization of discharges of fill into isolated waters (including wetlands and vernal pools) that cause the loss of less than 1.2 ha (3 ac) of waters of the United States, and that cause minimal individual and cumulative environmental impacts. Projects affecting less than 0.1 ha (0.33 ac) of isolated waters require no prior approval by the Corps. In addition, other nationwide permits authorize activities that may affect *Ambrosia pumila* without prior notification to the corps. Because the distribution of this species occurs in non-wetland habitat and in habitats associated with drainages and dry lakebeds, the instances and extent of protection for this species under section 404 is unclear. However, there are no specific provisions that adequately conserve rare or candidate plant species.

Minimal impacts to the occurrences of *Ambrosia pumila* were incurred on the San Diego National Wildlife Refuge as a consequence of efforts to relocate burrowing owls onto the refuge. Throughout the relocation process, the *Ambrosia pumila* were considered, and minimal impacts were limited to an area of approximately eight square meters (9.6 square yards). Similar relocation efforts will be coordinated to avoid direct or indirect impacts to *Ambrosia pumila.* The San Diego National Wildlife Refuge currently has no specific protections in place to prevent trampling of the plant by horses and people who traverse one of the occurrences, nor is there a weed abatement plan for the *Ambrosia pumila* sites. However, future management includes abandonment of some trails and installation of trail signs to direct horses and people away from the *Ambrosia pumila* sites (Tom Roster, San Diego National Wildlife Refuge pers. comm 1999.).

State Laws and Regulation

Although State laws, including CEQA, CESA, and NPPA at times may provide a measure of protection to the species, these laws are not adequate to protect the species in all cases. For example, under CEQA where overriding social and economic considerations can be demonstrated, a project may go forward even if adverse impacts to a species are significant.

Ambrosia pumila is included on List 1B of the California Native Plant Society Inventory (Skinner and Pavlik 1994), which, in accordance with section 1901, chapter 10 of the California Department of Fish and Game Code, makes it eligible for State listing. This species is not, as yet, listed under the California Endangered Species Act.

The California Environmental Quality Act (Public Resources Code, section 21000 *et seq.*) pertains to projects on non-Federal lands and requires that a project proponent publicly disclose the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency. The lead agency is responsible for conducting a review of the project and consulting with other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to ''reduce the number or restrict the range of a rare or endangered plant or animal'' including those that are eligible for listing under the NPPA or CESA. However, as noted above, under CEQA where overriding social and economic considerations can be demonstrated, a project may go forward even where adverse impacts to a species are significant.

Regional Planning Efforts

In 1991, the State of California established the NCCP program to address conservation needs of natural ecosystems throughout the State. The focus of the current planning program is the coastal sage scrub community in Southern California, although other vegetative communities are being addressed in an ecosystem approach. *Ambrosia pumila* is a covered species under the Multiple Species Conservation Program (MSCP) in southwestern San Diego County. Based on the MSCP, we issued a Federal incidental take permit to the City of Poway in July 1996, City of San Diego in July 1997, and to the County of San Diego in March 1998. The MSCP establishes a 68,800-ha (172,000-ac) preserve and provides for monitoring and management for the 85 covered species addressed in the permit, including *Ambrosia pumila.* Additionally, *Ambrosia pumila* is defined by the MSCP as a narrow endemic. This requires that unavoidable impacts associated with reasonable use or essential public facilities must be minimized and mitigated within the MSCP planning area both inside and outside the Multiple Habitat Plan Area (MHPA).

Eight of the 11 extant occurrences in San Diego County are in the MSCP planning area. Five of the eight known occurrences in the MSCP planning area are currently afforded some level of protection within approved permitted Subarea Plans. Two of the occurrences, both at Mission Trails Regional Park (MTRP), are addressed under the approved City of San Diego's Subarea Plan (City of San Diego 1997). Under this plan, coverage for this species is dependent upon conservation of 90 percent of the only large population in the MSCP, located in and adjacent to MTRP (CNDDB 1999). Provisions of the City of San Diego's Subarea Plan require conservation of 100 percent of the portion of the occurrence on private lands adjacent to MTRP near a radio tower. The other occurrence at MTRP is also protected under provisions of the approved City of San Diego's Subarea Plan (City of San Diego 1997). The occurrence near Del Dios in the San Dieguito River watershed, is within the approved County of San Diego's Subarea Plan (County of San Diego 1997). An additional three occurrences are located within the City of El Cajon, which is in the process of preparing a subarea plan consistent with the MSCP.

Within approved Subarea Plans, four of the six occurrences are impacted due to trampling, (CNDDB 1999), and competition from non-native species affects all the occurrences. There are likely other indirect impacts from altered fire and hydrological regimes. The threat from trampling, increased competition from non-native plants and altered fire and hydrological regimes will likely be significantly reduced or eliminated when the monitoring and management program required by the MSCP and Subarea Plans is in place.

The San Diego Association of Governments Multiple Habitat Conservation Plan (MHCP) in northwestern San Diego County is still in the planning phase. It has been proposed that the only known occurrence of this species within the planning area be conserved and that the species be treated as a narrow endemic requiring surveys of suitable habitat and in situ conservation of 80–100 percent of each occurrence discovered in the area. One of the two occurrences in Riverside County is at Skunk Hollow in a fenced mitigation bank. However, this site suffered from sheep intrusion and grazing in March 1999 (Christine Moen, USFWS *in litt.*1999).

San Diego Gas and Electric owns powerline easements for some of the land at one of the occurrences on the

San Diego National Wildlife Refuge and for all of an occurrence in Oceanside. The Service, CDFG, and San Diego Gas and Electric (SDG&E) signed an implementation agreement and memorandum of understanding in December 1995 under the Natural Community Conservation Program called the San Diego Gas and Electric Subregion Plan (SDG&E Plan). Under the provisions of this plan, Ambrosia pumila is a covered species and a narrow endemic. The plan prohibits impacts to occupied habitat except in emergency situations. Contrary to the SDG&E Plan, a 1996 SDG&E project resulted in the extirpation of a relatively large occurrence at Oceanside that reportedly supported 1,600 plants (aerial stems).

The County of Riverside is preparing the Western Riverside Multiple Species Habitat Conservation Plan. *Ambrosia pumila* has been proposed for coverage under this plan but analysis of the data have not yet been completed.

Mexican Laws

We are not aware of any existing regulatory mechanisms in Mexico that would protect *Ambrosia pumila* or its habitat. Although Mexico has laws that could provide protection for rare plants, there are no specific protections for this species or vernal pools with which it is often associated. If specific protections were available and enforceable in Mexico, the portion of the range in Mexico alone, in isolation, would not be adequate to ensure long-term conservation of this species.

E. *Other natural or manmade factors affecting their continued existence.* Non-native plants threaten virtually all of the extant occurrences of *Ambrosia pumila* (CNDDB 1999, Vanderwier *in litt.* 1998). Non-native species of grasses and forbs have invaded many of Southern California's plant communities. Their presence and abundance are often an indirect result of persistent and repeated habitat disturbance from development, discing, mowing, alteration of local hydrology and the presence and maintenance of highways and trails. This species is subject to displacement by non-native species, which also likely affect the reproductive potential of this low growing wind-pollinated species (CNDDB 1999). Non-native species found with *Ambrosia pumila* include *Brassica* spp. (mustard), *Vulpia* spp. (annual fescue), *Erodium* spp. (Crane's-bill), *Bromus* spp. (brome grass), and *Foeniculum vulgare* (sweet fennel). The presence of these and other non-native plants is likely to affect (1) pollen and fruit dispersal by increasing the aerial density of plant material, (2) fire patterns by increasing the fuel volume due to the influx of larger plants, and (3) hydrological conditions by decreasing the amount of water available for *Ambrosia pumila.* The cumulative and collective effects of non-native plants pose a threat to this species which apparently has a low output of seeds. Few preserved museum specimens have fertile fruits and field collections have not provided evidence of production of significant numbers of viable seeds. This species is also threatened by altered hydrological regimes at several occurrences associated with roads, rights of way, or locations mowed for fire breaks (CNDDB 1999). A 1998 survey (Vanderwier *in litt.* 1998) reported that non-native species are common on the two occurrences in the San Diego National Wildlife Refuge and a portion of one of these occurrences is in a fuel modification zone where the plants are mowed. Several occurrences are threatened by periodic mowing which, if done in late summer or early fall, is likely to remove the flowering portions of the aerial stems and greatly reduce or eliminate the reproductive output for the year. The effects on the rhizomes by soil compaction from vehicle traffic is undocumented.

In at least one documented instance in 1999, an occurrence of *Ambrosia pumila* at Skunk Hollow, Riverside County, was grazed by sheep (Christine Moen, USFWS *in litt.* 1999). Grazing would likely eliminate or severely reduce the annual reproductive output of *Ambrosia pumila* and could also reduce the vegetative portions of the plants to a degree that would threaten their capacity to persist.

Six of the 13 extant occurrences of *Ambrosia pumila,* including four of the larger occurrences, are threatened due to the impacts of trampling by horses and people as well as ORV traffic. Two of these occurrences are on the San Diego National Wildlife Refuge (Vanderwier *in litt.* 1998, Tom Roster SDNWR pers. comm.1999). Trampling likely is a threat to any of the other accessible occurrences such as those with utility easements for maintenance purposes or access roads. The two occurrences near trails in Mission Trails Regional Park are threatened by trampling by people (City of San Diego 1999). Additional discussion of trampling may be found under Regional Planning Efforts, under factor D of this rule. The two occurrences in El Cajon are threatened by trampling by people and vehicles (CNDDB 1999).

Because *Ambrosia pumila* is a rhizomatous clonal species, a single plant may be represented by many aerial stems. An occurrence, especially some of the smaller ones, could be composed of one or only a few plants. For example, an occurrence where 500 stems had been counted could represent only 50 plants. This would likely reflect low genetic variability, which is detrimental to the long-term persistence of the species (Barrett and Kohn 1991). This condition exacerbates the other threats to all other occurrences of this species.

Transplantation of *Ambrosia pumila,* previously employed in an effort to salvage plants from native occurrences identified for extirpation, has proven to be of limited success. Transplantation protocols were generally lacking and likely did not include—meaningful guidelines for site selection, sampling methods to ensure that as many individual plants as possible are represented in the transplantation, measures of success for survival and recruitment of new seedling generations, and recourse for failure or limited success of any of these aspects of transplantation. There does not appear to be a well documented transplantation that meet the above measures. Maintenance of a few of the aerial stems for a period of time does not demonstrate that transplantation of this rhizomatous clonal perennial is an effective means for perpetuating the genetic lineages that constitute one or more of the occurrences of this species.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this taxon in determining to propose this rule. Based on this evaluation, the preferred action is to list *Ambrosia pumila* (San Diego ambrosia) as endangered. The species is threatened with extinction due to habitat alteration and destruction resulting primarily from highway and right-of-way widening and maintenance, urban development, trampling, competition from non-native plants, and vulnerability to naturally occurring events due to low numbers of individuals. Any of the threats noted above is compounded by the fact that this species is a rhizomatous, clonal, perennial that has wind-pollinated flowers and apparently rarely sets seed. The number of genetically different plants at a given site is unknown, but there may be more than 100 aerial stems per plant. This means that some of the smaller occurrences could represent a single plant. Seven of the 13 occurrences are on private lands, some of these with rights-of-way access. Although conservation measures are in place for 5 of the 13 occurrences, full protection afforded by a monitoring and

management program is not yet in place. Even with full protection, this would be less than half of the known occurrences and will likely not protect sufficient numbers of genetically different plants. Also, as yet there are no known examples of transplanted or reintroduced occurrences of this species in which sexual reproduction has occurred to sustain either a viable population or exhibit the genetic diversity found in a naturally occurring population.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. 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 a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the 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.

The Final Listing Priority Guidance for FY 1999/2000 (64 FR 57114) states, ''The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will be funded separately from other section 4 listing actions and will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 1999 and FY 2000 as allowed by our funding allocation for that year.'' As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act.

We propose that critical habitat is prudent for *Ambrosia pumila.* In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt,* 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we believe that designation of critical habitat for would be prudent for *Ambrosia pumila.*

Due to the small number of populations, *Ambrosia pumila* is vulnerable to unrestricted collection, vandalism, or other disturbance. We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, at this time we do not have specific evidence for *Ambrosia pumila* of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we propose that critical habitat is prudent for *Ambrosia pumila.* However, the deferral of the critical habitat designation for *Ambrosia pumila* will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of *Ambrosia pumila* without further delay. We anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for this species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will make the final critical habitat determination with the final listing determination for *Ambrosia pumila.* If this final critical habitat determination is that critical habitat is prudent, we will develop a proposal to designate critical habitat for *Ambrosia pumila* as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations.

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 activities. 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 States and requires that recovery actions be carried out for all listed species. We discuss the protection required of Federal agencies and the prohibitions against taking and harm, in part, below.

Section 7(a) of the Act, as amended, 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)(4) of the Act requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, 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 to destroy or adversely modify its critical habitat. If a Federal agency action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. The association of *Ambrosia pumila* with dry waterways and lakebeds may result in the Corps becoming involved through its permitting authority under section 404 of the Clean Water Act, and the issuance of permits necessary to build flood control structures associated with highway projects.

The two occurrences of *Ambrosia pumila* on the San Diego National Wildlife Refuge receive the general protection afforded biotic resources on the refuge. However, there is currently no specific management plan for this plant. The City of San Diego (1999) has prepared a draft management plan for the occurrences of *Ambrosia pumila* in Mission Trail Regional Park. This management plan has not yet been finalized.

As noted above under factor D of the ''Summary of Factors Affecting the Species'' section, eight of the occurrences in San Diego County are in the MSCP planning area, five of which are within approved Subarea Plans. According to the City of San Diego's Subarea Plan (City of San Diego 1998), 90 percent of the only major population will be conserved and 100 percent of the adjacent portion of the occurrence will be preserved. The monitoring method is to include a site-specific monitoring plan with management plans and directives to protect against detrimental edge effects (City of San Diego 1998). This Subarea Plan also treats this species as a narrow endemic requiring jurisdictions and other participants to specify measures in their subarea plans to ensure that impacts to these resources are avoided to the maximum extent possible. Under the County of San Diego's Subarea Plan, *Ambrosia pumila* is a narrow endemic requiring avoidance to the maximum extent possible. Where avoidance is infeasible, a maximum encroachment may be authorized of up to 20 percent of the population on site. Where impacts are allowed, in-kind preservation shall be required at a 1:1 to 3:1 ratio depending upon the sensitivity of the species and population size, as determined in a biological analysis approved by the Director of the Fish and Wildlife Service.

Listing *Ambrosia pumila* provides for the development and implementation of a recovery plan for the species. This plan will bring together Federal, State, and regional agency efforts for conservation of the species. A recovery plan will establish a framework for agencies to coordinate their recovery efforts. The plan will set recovery priorities and estimate the costs of the tasks necessary to accomplish the priorities. It will also describe the site specific management actions necessary to achieve conservation and survival of the species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered 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 interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits malicious damage or destruction on areas under Federal jurisdiction, and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued because this species is not common in cultivation or common in the wild. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.62. Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

It is our policy, published in the **Federal Register** (59 FR 34272) on July 1, 1994, to identify to the maximum extent practicable those activities that would or would not be likely to constitute a violation of section 9 of the Act if a species is listed. The intent of this policy is to increase public awareness of the effect of the species' listing on proposed and ongoing activities within its range. Collection of listed plants or activities that would damage or destroy listed plants on Federal lands are prohibited without a Federal endangered species permit. Such activities on non-Federal lands would constitute a violation of section 9 of the Act if they were conducted in knowing violation of California State law or regulation, or in the course of violation of California State criminal trespass law. Otherwise such activities would not constitute a violation of the Act on non-Federal lands.

Questions on whether specific activities would likely constitute a violation of section 9, should be directed to the Field Supervisor of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Public Comments Solicited

It is our intent that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Our practice is to make comments, including names and home addresses of respondents, available for

public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. All comments, including written and e-mail, must be received in our Carlsbad Fish and Wildlife Office by February 28, 2000. We particularly seek comments concerning:

(1) Biological, commercial, trade, or other relevant data concerning threat (or lack thereof) to *Ambrosia pumila*.

(2) The location of any additional populations of *Ambrosia pumila* and the reasons why any habitat should or should not be determined to be critical habitat for this species pursuant to section 4 of the Act.

(3) Additional information concerning the essential habitat features (biotic and abiotic), range, distribution, population size of this taxon, and information relating to the distributions of genetically distinct individuals within the population.

(4) Current or planned activities in the subject area and their possible impacts on this taxon.

Final promulgation of the regulations on *Ambrosia pumila* will take into consideration any comments and any additional information we receive during the comment period, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor of the Service's Carlsbad Fish and Wildlife 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 our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain any information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is required. Any 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 endangered plants, see 50 CFR 17.62 and 17.63.

References Cited

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

Author: The primary author of this proposed rule is Gary D. Wallace, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend part 17 as set forth below:

PART 17— [AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4205; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended 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	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Ambrosia pumila	San Diego ambrosia	U.S.A. (CA) Mexico	Asteraceae	E		NA	NA
*	*	*	*	*	*	*	

Dated: December 9, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–33781 Filed 12–28–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991221345–9345–01; I.D. 113099B]

RIN 0648–AL30

Fisheries of the Exclusive Economic Zone off Alaska; Prohibition of Nonpelagic Trawl Gear in the Bering Sea and Aleutian Islands Pollock Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 57 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This action would consist of three regulatory changes. First, it would prohibit the use of nonpelagic trawl gear in the directed pollock fisheries of the Bering Sea and Aleutian Islands (BSAI). Second, the action would revise the existing performance standard for pelagic trawl gear. Third, crab and halibut bycatch limits established for the BSAI groundfish trawl fisheries would be reduced. This action is necessary to address bycatch reduction objectives in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and is intended to further the goals and objectives of the FMP.

DATES: Comments on the proposed rule must be received at the following address by February 14, 2000.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel or faxed to (907) 586–7465. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th St., Room 453, Juneau, AK 99801. Copies of Amendment 57 to the FMP and of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from NMFS at the above address or by calling the Alaska Region, NMFS, at (907)586–7228. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Nina Mollett, (907)586–7228.

SUPPLEMENTARY INFORMATION:

NMFS manages the domestic groundfish fisheries of the BSAI under the FMP. The North Pacific Fishery Mangement Council (Council) prepared the FMP under the Magnuson-Stevens Act. Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679.

The Council has submitted Amendment 57 for Secretarial review. A Notice of Availability (NOA) of the FMP amendment was published on December 10, 1999 with comments on the FMP amendment invited through February 7, 2000. Written comments may address the FMP amendment, the proposed rule, or both, but must be received by February 7, 2000 to be considered in the decision to approve or disapprove the FMP amendment.

Background and Need for Action

This action is designed to comply with the Magnuson-Stevens Act, which emphasizes the importance of reducing bycatch to maintain sustainable fisheries. National Standard 9 of the Magnuson-Stevens Act mandates that conservation and management measures minimize bycatch, to the extent practicable, and minimize mortality where bycatch cannot be avoided.

More specific authority for the proposed rule is provided by paragraph 303(b)(2) of the Magnuson-Stevens Act. It states: ''Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may * * * designate zones where, and periods when, fishing * * * shall be permitted only * * * with specified types and quantities of fishing gear.''

The objective of Amendment 57, as adopted by the Council at its June 1998 meeting, is to reduce bycatch in the BSAI pollock fishery. The proposed action to implement the amendment has three parts.

1. Prohibition on Nonpelagic Trawl Gear in the BSAI Directed Pollock Fishery

Under existing regulations (§ 679.20(a)(5)(i)(B)), the Administrator of the Alaska Region, NMFS, in consultation with the Council, has authority to limit the amount of the total allowable catch (TAC) that may be taken in the directed fishery for pollock using nonpelagic trawl gear. The Administrator accomplishes this by allocating TAC for pollock between pelagic and nonpelagic trawl gear types during the annual specification process. In practice, the Council has recommended allocating TAC between gear types only twice. In 1990, the Bering Sea pollock TAC was split 88 percent for pelagic gear and 12 percent for nonpelagic trawl gear during the annual specification process. No limit was placed on nonpelagic trawl gear during subsequent years until the 1999 season, when the entire pollock TAC was allocated to pelagic gear and none to nonpelagic gear. This step was taken in anticipation of Amendment 57 being approved.

Currently, NMFS has authority to prohibit nonpelagic trawling for pollock in the BSAI under § 679.21(e)(7)(i). When a prohibited species catch (PSC) allowance, or a seasonal apportionment of the allowance, is reached in the pollock/Atka mackerel/''other species'' category, NMFS prohibits nonpelagic trawling for pollock either throughout the BSAI, or, depending on the PSC species, in the affected zone of the BSAI, for the remainder of the year.

The Council's rationale for permanently prohibiting nonpelagic trawling for pollock in the BSAI, instead of relying on existing measures, is that the prohibition is expected to result in needed bycatch savings while imposing a relatively low cost on the fishery. Pollock is the only fishery where both types of trawl gear are used, and already most fishing for pollock is conducted with pelagic trawl gear, which has a substantially lower bycatch rate of halibut and crab. Although operators who use both types of gear would lose some flexibility under this rule, participants in the pollock fishery would nevertheless be able to catch the TAC.

2. Performance Standard

Existing regulations, establish a performance standard to discourage operators from fishing on the seabed with pelagic gear at times when nonpelagic trawl gear is prohibited in the BSAI. The regulations prohibit a vessel engaged in directed fishing for pollock from having 20 or more crabs of any species, with a carapace width of more than 1.5 inches (38 mm) at the widest dimension, on board at any one time. Crabs were chosen for the standard because they inhabit the seabed and, if caught with trawl gear, provide proof that a trawl has been in contact with the bottom. The proposed rule would clarify that the standard