

services, including all applicable fixed and traffic-sensitive charges.

(6) *Rural CLEC* shall mean a CLEC that does not serve (i.e., terminate traffic to or originate traffic from) any end users located within either:

(i) Any incorporated place of 50,000 inhabitants or more, based on the most recently available population statistics of the Census Bureau or

(ii) An urbanized area, as defined by the Census Bureau.

(b) Except as provided in paragraphs (c) and (e) of this section, a CLEC shall not file a tariff for its interstate switched exchange access services that prices those services above the higher of:

(1) The rate charged for such services by the competing ILEC or

(2) The lower of:

(i) The benchmark rate described in paragraph (c) of this section or

(ii) The lowest rate that the CLEC has tariffed for its interstate exchange access services, within the six months preceding June 20, 2001.

(c) From June 20, 2001 until June 20, 2002, the benchmark rate for a CLEC's interstate switched exchange access services will be \$0.025 per minute. From June 20, 2002 until June 20, 2003, the benchmark rate for a CLEC's interstate switched exchange access services will be \$0.018 per minute. From June 20, 2003 until June 21, 2004, the benchmark rate for a CLEC's interstate switched exchange access services will be \$0.012 per minute. After June 20, 2005, the benchmark rate for a CLEC's interstate switched exchange access services will be the rate charged for similar services by the competing ILEC, *provided, however*, that the benchmark rate for a CLEC's interstate switched exchange access services will not move to bill-and-keep, if at all, until June 20, 2005.

(d) Notwithstanding paragraphs (b) and (c) of this section, in the event that, after June 20, 2001, a CLEC begins serving end users in a metropolitan statistical area (MSA) where it has not previously served end users, the CLEC shall not file a tariff for its interstate exchange access services in that MSA that prices those services above the rate charged for such services by the competing ILEC.

(e) *Rural exemption*. Notwithstanding paragraphs (b) through (3) of this section, a rural CLEC competing with a non-rural ILEC shall not file a tariff for its interstate exchange access services that prices those services above the rate prescribed in the NECA access tariff, assuming the highest rate band for local switching and the transport interconnection charge. If the competing ILEC is subject to the Commission's

CALLS Order, 65 FR 38684, June 21, 2000, this rate shall be reduced by the NECA tariff's carrier common line charge.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AF61

Endangered and Threatened Wildlife and Plants; Final Rule for Endangered Status for *Astragalus pycnostachyus* var. *lanosissimus* (Ventura marsh milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine endangered status for *Astragalus pycnostachyus* var. *lanosissimus* (Ventura marsh milk-vetch) pursuant to the Endangered Species Act (Act) of 1973, as amended. Historically known from a three-county region in coastal southern California, *A. pycnostachyus* var. *lanosissimus* was believed extinct until its rediscovery in 1997. The only known extant population of this recently rediscovered plant occurs in Ventura County, California, on less than 1 acre of degraded dune habitat that was previously used for disposal of petroleum wastes. The most significant current threats to *A. pycnostachyus* var. *lanosissimus* are direct destruction of this population from proposed soil remediation, residential development, and associated activities. This taxon is also threatened by unanticipated human-caused and natural events that could eliminate the single remaining population. Competition from nonnative invasive plant species is an additional threat. This action will extend the Act's protection to this plant.

EFFECTIVE DATE: This rule is effective June 20, 2001.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Rick Farris or Lois Grunwald, Ventura Fish and Wildlife Office, at the address above (telephone 805/644-1766; facsimile 805/644-3958).

SUPPLEMENTARY INFORMATION:

Background

Astragalus pycnostachyus var. *lanosissimus* (Ventura marsh milk-vetch) was first described by Per Axel Rydberg (1929) as *Phaca lanosissima* from an 1882 collection by S.B. and W.F. Parish made from "La Bolsa," probably in what is now Orange County, California. The combination *A. pycnostachyus* var. *lanosissimus* was assigned to this taxon by Philip Munz and Jean McBurney in 1932 (Munz 1932).

Astragalus pycnostachyus var. *lanosissimus* is a herbaceous perennial in the pea family (Fabaceae). It has a thick taproot and multiple erect, reddish stems, 40 to 90 centimeters (cm) (16 to 36 inches (in)) tall, that emerge from the root crown. The pinnately compound leaves are densely covered with silvery white hairs. The 27-39 leaflets are 5 to 20 millimeters (mm) (0.2 to 0.8 in) long. The numerous greenish-white to cream colored flowers are in dense clusters and are 7 to 10 mm (0.3 to 0.4 in) long. The calyx teeth are 1.2 to 1.5 mm (0.04 in) long. The nearly sessile, single-celled pod is 8 to 11 mm (0.31 to 0.43 in) long (Barneby 1964). The blooming time has been recorded as July to October (Barneby 1964); however, the one extant population was observed in flower in June 1997. This variety is distinguished from *A. pycnostachyus* var. *pycnostachyus* by the length of calyx tube, calyx teeth, and peduncles. It is distinguished from other local *Astragalus* species by its size, perennial habit, size and shape of fruit, and flowering time.

The type locality is "La Bolsa," where the plant was collected in 1882 by S.B. and W.F. Parish (Barneby 1964). Based on the labeling of other specimens collected by the Parishes in 1881 and 1882, Barneby (1964) suggested that this collection may have come from the Ballona marshes in Los Angeles County. However, Critchfield (1978) believed that "La Bolsa" could easily have referred to Bolsa Chica, a coastal marsh system located to the south in what is now Orange County. He noted that Orange County was not made a separate county from Los Angeles until 1889, 7 years after the Parish's collection was made. In the five decades following its discovery, *Astragalus pycnostachyus* var. *lanosissimus* was collected from about four locations in Los Angeles and Ventura counties, three of which are near one another. In Los Angeles County it was collected from near Santa Monica in 1882, the Ballona marshes just to the south in 1902, and "Cienega" in 1904, also likely near the Ballona wetlands. In

Ventura County it was collected in 1901 and 1925 from Oxnard and in 1911 from Ventura, a city adjacent to Oxnard. By 1964, Barneby (1964) believed that it had certainly been extirpated from Santa Monica southward, noting that there was still the possibility it survived in Ventura County (although he knew of no locations at that time). The species was briefly rediscovered in 1967 by R. Chase, who collected a single specimen growing by a roadside between the cities of Ventura and Oxnard. Subsequent searches uncovered no other living plants at that location, although some mowed remains discovered on McGrath State Beach lands, across the road from the collection site, were believed to belong to this taxon (information on herbarium label from specimen collected by R.M. Chase, 1967). Floristic surveys and focused searches conducted in the 1970s and 1980s at historic locations failed to locate any *A. pycnostachyus* var. *lanosissimus*, and the plant was presumed extinct (Isley 1986; Spellenberg 1993; Skinner and Pavlik 1994) until June 12, 1997, when a population of the plant was rediscovered by U.S. Fish and Wildlife Service (Service) biologist Kate Symonds, in a degraded coastal dune system near Oxnard, California.

Almost nothing is known of the habitat requirements of *Astragalus pycnostachyus* var. *lanosissimus*. All but two of the known collections of this taxon were made prior to 1930. Specimen labels from these collections and original published descriptions contain virtually no habitat information. The related variety, *Astragalus pycnostachyus* var. *pycnostachyus*, is found in or at the high edge of coastal saltmarshes and seeps. The newly discovered population of *A. pycnostachyus* var. *lanosissimus* occurs in a sparsely vegetated low area, at an elevation of about 10 meters (30 feet), in a site previously used for disposal of petroleum waste products (Impact Sciences, Inc. 1997). Dominant shrub species at the site are *Baccharis pilularis* (coyote brush), *Baccharis salicifolia* (mule fat), *Salix lasiolepis* (arroyo willow), and the nonnative *Myoporum laetum* (myoporum) (Impact Sciences, Inc. 1997). The population itself occurs with sparse vegetative cover provided primarily by *Baccharis pilularis*, *Baccharis salicifolia*, a nonnative *Carpobrotus* sp. (seafig), and a nonnative annual grass, *Bromus madritensis* ssp. *rubens* (red brome). Soils are reported to be loam-silt loams (Impact Sciences, Inc. 1997). Soils were likely transported from other locations as a cap for the disposal site once it was

closed. The Service is not aware of records on the origin of the soil used to cap the waste disposal site; however, because of the costs of transport, the soil source is likely of local origin.

The population of *Astragalus pycnostachyus* var. *lanosissimus* consisted of about 374 plants total in 1997, of which 260 were small plants, thought to have germinated in the last year. Fewer than 65 plants in the population produced fruit in 1997 (Impact Sciences, Inc. 1997). The plants are growing in an area of less than 1 acre, with one outlying plant located 10 to 20 meters (30–60 feet) from the main group in 1997 (D. Steeck, Service, pers. obs. 1997). In 1998, surveys revealed 192 plants. In 1999, Service efforts went into placing hardware cloth cages around a sample of plants. This experimental caging was initiated due to severe herbivory, apparently by small mammals. An estimate of between 30 and 40 plants produced flowers in 1999, believed to be fewer than half of those blooming in 1998 (D. Steeck *in litt.* 1999).

The land on which the only known population of *Astragalus pycnostachyus* var. *lanosissimus* grows is privately owned and a project to decontaminate the soils and construct a housing development on the site has been proposed (Impact Sciences, Inc. 1998). Limited efforts to assist with the conservation of the species have been initiated by the project proponent, the Service, the State, and other cooperators. The project proponent has successfully grown plants in a remote greenhouse facility. Several plants were excavated from the natural population and potted, and several plants were started from seed gathered from the natural population. In addition, we cooperated with the California Department of Fish and Game in making conservation seed collections from the site. This seed was divided into a seed storage collection and a seed bulking project at the Rancho Santa Ana Botanic Gardens.

Previous Federal Action

Federal actions on this taxon began as a result of section 12 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94–51) was presented to Congress on January 9, 1975, and *Astragalus pycnostachyus* var. *lanosissimus* was included on List C, among those taxa believed possibly

extinct in the wild. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3)) of the Act and its intention to review the status of the plant taxa named therein.

On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. This list, which included *Astragalus pycnostachyus* var. *lanosissimus*, was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Endangered Species Act required that all proposals more than 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In a December 10, 1979, notice (44 FR 70796), the Service withdrew the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. *A. pycnostachyus* var. *lanosissimus* was included in that withdrawal notice.

We published an updated candidate notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Astragalus pycnostachyus* var. *lanosissimus* in a list of category 1 candidate species that were possibly extinct in the wild. These category 1 candidates would have been given high priority for listing if extant populations were confirmed.

The Service maintained *Astragalus pycnostachyus* var. *lanosissimus* as a category 1 candidate in subsequent notices published on November 28, 1983 (48 FR 53640), September 27, 1985 (50 FR 39526), and February 21, 1990 (55 FR 6184). The Service published a notice (58 FR 51144) on September 30, 1993, in which taxa whose existence in the wild was in doubt, including *A. pycnostachyus* var. *lanosissimus*, were moved to Category 2. On February 28, 1996, we published a Notice of Review in the **Federal Register** (61 FR 7596) that discontinued the designation of category 2 species as candidates, including those taxa thought to be extinct. Thus, *A. pycnostachyus* var. *lanosissimus* was excluded from this and subsequent notices of review. In

1997, *A. pycnostachyus* var. *lanosissimus* was rediscovered and a review of the taxon's status indicated that a proposed rule was warranted.

We published a proposed rule to list *Astragalus pycnostachyus* var. *lanosissimus* as endangered in the **Federal Register** on May 25, 1999 (64 FR 28136). 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 May 25, 1999, proposed rule (64 FR 28136), we requested interested parties to submit factual reports or information that might contribute to development of a final rule. We contacted appropriate Federal agencies, State agencies, county and city governments, scientific organizations, and other interested parties and requested information and comments. We published a newspaper notice inviting public comment in the Los Angeles Times on June 3, 1999.

During the comment period we received comments from 4 individuals, agencies, or group representatives concerning the proposed rule. Two commenters supported the proposal, one was neutral, and one was opposed to the proposal. Comments provided additional information that, along with other clarifications, has been incorporated into the "Background" or "Summary of Factors" sections of this final rule. Opposing comments and our responses are summarized as follows:

Comment 1: The proposed rule failed to meet any listing criteria as defined by the Act.

Response 1: We disagree. The arguments presented in the Summary of Factors Affecting the Species section of the rule have been supported by the peer review process as well as our internal legal and biological reviews for compliance with the Act.

Comment 2: The proposed rule utilized outdated and incomplete data, and failed to include information about the horticultural experiments conducted in central California.

Response 2: The data used in determining the status of *Astragalus pycnostachyus* var. *lanosissimus* was current and complete at the time the proposed rule was written. Experimental horticultural activities involving the removal of some plants and seeds from the natural population and their propagation in a greenhouse facility have been initiated, and we believe that such activities may prove to be useful in conserving the plant

species. However, these initial experiments have shown limited success, and the ability to maintain populations necessary for the recovery of *A. pycnostachyus* var. *lanosissimus* has not been demonstrated.

Comment 3: There are no additional benefits for the species by listing it.

Response 3: Federal listing will provide additional protection for the species through Federal regulations and recovery efforts. Additional protection will potentially be provided through the consultation process for projects which may affect the species that are funded, permitted, or carried out by a Federal agency as required by section 7 of the Act. In addition, Federal listing of a species generally provides for recognition and additional funding, by our agency as well as others, for the conservation and recovery of the species. Although our recovery planning process typically occurs after the species has been federally listed, the State listing of this species has served to advance the process of identifying appropriate recovery actions. We currently do not know what population size and habitat areas are needed to support the continued existence of this species. However, specific recovery objectives and criteria to delist the species in the future, including targets for population/habitat sizes, will be developed during the formal recovery planning process. This process will involve species experts, scientists, and interested members of the public, in accordance with the interagency policy on recovery plans under the Act, published on July 1, 1994 (59 FR 34272).

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of three peer reviewers regarding pertinent scientific or commercial data and assumptions relating to population status and biological and ecological information for *Astragalus pycnostachyus* var. *lanosissimus*. Only one reviewer responded. This reviewer provided supporting information for the listing of the species and described the information included in the rule as factually correct to the best of his knowledge.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be

determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Astragalus pycnostachyus* var. *lanosissimus* are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Astragalus pycnostachyus var. *lanosissimus* is believed to have been extirpated from all but one of the general areas from which it has been collected. In Los Angeles County, this taxon was collected in the late 1800s and early 1900s from Santa Monica, Ballona Marsh, and "Cienega" (probably near Ballona Marsh). These coastal areas are now urbanized within the expansive Los Angeles metropolitan area. About 90 percent of the Ballona wetlands, once encompassing almost 2000 acres, have been drained, dredged, and developed into the urban areas of Marina del Rey and Venice (Critchfield 1978; Friends of Ballona Wetlands 1998). Ballona Creek, the primary freshwater source for the wetland, had been straightened, dredged, and channelized by 1940 (Friesen, *et al.* 1981). Despite periodic surveys of what remains at the Ballona wetlands, *A. pycnostachyus* var. *lanosissimus* has not been collected there since the early 1900s (Gustafson 1981; herbarium labels from collections by H. P. Chandler and by E. Braunton, 1902, housed at U.C. Berkeley Herbaria). Barneby (1964) believed that *A. pycnostachyus* var. *lanosissimus* was extirpated from all areas south of Santa Monica by the mid-1960s. In 1987, botanists searched for *A. pycnostachyus* var. *lanosissimus* at previous collection locations throughout its range in coastal habitats, including Bolsa Chica in Orange County and on public lands around Oxnard in Ventura County, without success (F. Roberts, Service, in litt. 1987; R. Burgess, CNPS, in litt. 1987; T. Thomas, Service, pers. comm. 1997). Point Mugu Naval Air Weapons Station, in southern Ventura County, may have potential habitat. Detailed surveys have not been conducted there; however, *A. pycnostachyus* var. *lanosissimus* was not found during cursory surveys of the base, and this taxon has never been collected there.

The single known population of *Astragalus pycnostachyus* var. *lanosissimus* occurs near the city of Oxnard, in a degraded backdune community. From 1955 to 1981 the land on which it occurs was used as a disposal site for oil field wastes (Impact Sciences, Inc. 1998). In 1998, the City of Oxnard published a Final Environmental Impact Report (FEIR) for

development of this site (Impact Sciences, Inc. 1998). The proposal for the site includes remediation of soils contaminated with hydrocarbons, followed by construction of 364 homes and a 6-acre lake on a total of 91 acres, including the land on which *A. pycnostachyus* var. *lanosissimus* grows. The proposed soil remediation would involve excavation and stockpiling of the soils, followed by soil treatment and redistribution of the soils over the site (Impact Sciences, Inc. 1998), destroying the *A. pycnostachyus* var. *lanosissimus* population that was identified on the site late in the planning process. In order to mitigate for this loss, the project included provisions for seed collection and horticultural propagation, and transplantation of greenhouse seedlings and plants collected from the wild to off-site locations.

The proposed project, as described in the FEIR, would adversely affect the only known population of *A. pycnostachyus* var. *lanosissimus*, resulting in the likely extinction of this taxon in the wild. On July 27, 1999, the California Department of Fish and Game (CDFG) signed a Memorandum of Understanding (MOU) with the project proponent to establish a permanent rare plant preserve on site and provide for experimental off-site mitigation (see Appendix E, CDFG 2000). The intent of the MOU was to increase protections to the milk-vetch beyond that in the original project description. However, implementing the MOU would still result in intensive habitat disturbance during soil remediation, up to the edge of the extant stand of *A. pycnostachyus* var. *lanosissimus*. Under the MOU, when the project is complete there will be a 5-acre preserve surrounded by urban land use.

The small size of the preserve and its proximity to future urban and suburban uses makes it subject to the effects of nonnative, invasive plant and animal species, increased water supply due to suburban irrigation runoff, and chemicals such as herbicides, pesticides, and fertilizers (see Conservation Biology Institute 2000, CDFG 2000 and references therein). Independently or in combinations, these factors present difficult management challenges which, if not adequately addressed, could lead to the elimination of *A. pycnostachyus* var. *lanosissimus* from the site. Nonnative plant and animal species are competitors and predators, respectively, that can directly reduce survival of native plants, and they can also upset the invertebrate (pollinator) and vascular plant associations upon which native plants depend (Conservation Biology Institute

2000). The limited information available about possible specific effects of competition and predation on the Ventura marsh milk-vetch is described in CDFG (2000). While the life-history requirements of the Ventura marsh milk-vetch are not well understood, any factor that substantially alters the hydrology of the site, such as increases or decreases in urban/suburban runoff, is likely to make the site unsuitable for this wetland species (see the discussion of hydrology and small preserves in Conservation Biology Institute (2000)). Likewise, increased levels of chemicals arriving via runoff or drift can be expected in small preserves and can harm native species. Specific predictions about the effects of chemicals such as herbicides and pesticides on the proposed milk-vetch preserve would be speculative at this point, but given the proximity of the preserve to future suburban and urban uses, increases in pesticides or herbicides can be expected. These increases could harm the milk-vetch directly, or alter the pollinator or plant associations upon which it depends.

Fuel management is also a concern for small preserves in urban or suburban areas; the fire hazard at the wildland-urban interface is receiving national and local attention (Federal Fire Policy 2001, Ventura County 2001). In this part of California much of the native and some of the nonnative vegetation is flammable. Currently the local fire department requires 100 feet of vegetation modification for fire safety (Ventura County 2001). If the proposed development design required that 100 feet of fuel modification was necessary in the preserve, it would reduce the size of the core preserve to 1.9 acres. Finally, attempts to grow this species elsewhere in the wild have failed, or require constant intervention (Mary Meyer, March 2000 *In litt.*; Wayne Ferren, August 2000 *In litt.*). Thus, the preserve, as designed, does not adequately address the biological needs of the species, relies on unproven management measures, and will not insure protection of the site.

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

Overutilization is not known to be a problem for *Astragalus pycnostachyus* var. *lanosissimus* at present. Soon after this taxon was discovered, the project proponent installed a fence around the population, which appears to have been effective in minimizing unauthorized visitation.

C. Disease or Predation

A sooty fungus was found on the leaves of *Astragalus pycnostachyus* var. *lanosissimus* in late summer, 1997, as leaves began to senesce and the plants entered a period of dormancy (Impact Sciences, Inc. 1997; T. Yamashita, Sunburst Plant Disease Clinic, pers. comm. 1998). The effects of the fungus on the population are not known, but it is possible that the fungus attacks senescing leaves in great number only at the end of the growing season. The plants appeared robust when in flower in June 1997, matured seed by October 1997, and were regrowing in March 1998, after a period of dormancy, without obvious signs of the fungus (D. Steeck, Service, pers. obs. 1997, 1998, 1999).

The seeds of *Astragalus pycnostachyus* var. *lanosissimus* in 1997 were heavily infested with seed beetles (Bruchidae: Coleoptera). In a seed collection made for conservation purposes, the Service found that while most fruits in 1997 partially developed at least 4 seeds, seed predation reduced the average number of undamaged seeds to only 1.8 per fruit (D. Steeck, Service, and M. Meyer, CDFG, unpublished data). Apparently heavy seed predation by seed beetles and weevils has been reported among other members of the genus *Astragalus* (Platt *et al.* 1974; Lesica 1995). The effects of seed predation on the population and its variability from year to year are not known at this time.

The introduced nonnative milk snail (*Otala lactea*) was observed causing damage to the foliage of *Astragalus pycnostachyus* var. *lanosissimus* in 1998 and 1999 concurrent with a dramatic decline in seedling plants (D. Steeck, Service pers. comm. 1999).

Severely pruned plants were observed in 1999, which was attributed to small mammal herbivory (D. Steeck field notes 1999).

D. The Inadequacy of Existing Regulatory Mechanisms

The California Fish and Game Commission listed *Astragalus pycnostachyus* var. *lanosissimus* as endangered under the Native Plant Protection Act (NPPA) (chapter 1.5 sec. 1900 *et seq.* of the California Fish and Game Code) and the California Endangered Species Act (CESA) (chapter 1.5 sec. 2050 *et seq.*) on April 6, 2000. California Senate Bill 879, passed in 1997 and effective January 1, 1998, requires individuals to obtain a section 2081(b) permit from CDFG to take a listed species incidental to otherwise lawful activities, and requires

that all impacts be fully mitigated and all measures be capable of successful implementation. However, past attempts to mitigate impacts to rare plant populations have often failed (Howald 1993), and it is unclear how well these requirements will provide for the long-term conservation of State-listed plants.

The California Environmental Quality Act (CEQA) requires a full public disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with the 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." Species that can be shown to meet the criteria for State listing, such as *Astragalus pycnostachyus* var. *lanosissimus*, are considered under CEQA (CEQA Section 15380). Once significant effects are identified, the lead agency must require mitigation for effects through changes in the project unless the agency decides that overriding social or economic considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA, therefore, is ultimately left to the discretion of the agency involved.

The Coastal Zone Management Act of 1972 is a Federal statute that allowed for the establishment of the California Coastal Act (CCA) of 1976. CCA established a coastal zone. In Ventura County, the site of the only known extant population of *Astragalus pycnostachyus* var. *lanosissimus* occurs in the California Coastal Zone (Impact Sciences, Inc. 1998). As required by CCA, Ventura County has developed a Coastal Land Use Plan. It currently designates the area occupied by *A. pycnostachyus* var. *lanosissimus* as Open Space, and amendments of the Coastal Land Use Plan will be required for approval of a residential development on this property. Land use decisions made by local agencies in the Coastal Zone are appealable to the California Coastal Commission. Although the Coastal Zone designation and CEQA require that unique biological resources, such as *A. pycnostachyus* var. *lanosissimus*, be considered in the planning process, any protection offered by these regulatory

mechanisms is ultimately at the discretion of the local and State agencies involved and, therefore, does not assure protection for, or preclude the need to list, this taxon.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Astragalus pycnostachyus var. *lanosissimus* is threatened with extinction from unanticipated human activities and natural events by virtue of the very limited number of individuals in, and the small area occupied by, the only known extant population. A wildfire in the summer before seeds have matured, a plane crash (the taxon is under the extended center flight line of the Oxnard airport and a crash occurred on the site in 1995 (Murphy *in litt.* 1997), and other natural or unanticipated human-caused events could eliminate the existing population and result in the extinction of this taxon from the wild.

The single known population of this taxon is also threatened by competition with nonnative plant species. *Cortaderia selloana* (pampas grass), *Carpobrotus* sp., and *Bromus madritensis* ssp. *rubens* are invasive nonnative plant species that occur at the site (Impact Sciences, Inc. 1997). *Carpobrotus* sp. in particular, are competitive, succulent species with the potential to cover vast areas in dense clonal mats. *Bromus madritensis* ssp. *rubens* grew in high densities around some mature individuals of *Astragalus pycnostachyus* var. *lanosissimus* in 1998, and seedlings were germinating among patches of *Carpobrotus* and *Bromus* in 1998 (D. Steeck, pers. obs. 1998). Seedling survival rates in these areas have not yet been determined. As explained under factor A, managing nonnative plants and animals and other threats to native species is difficult in small preserves (Conservation Biology Institute 2000, CDFG 2000). *Carpobrotus* and *Bromus* can compete directly with the milk-vetch and may also alter the microenvironment so seriously that they alter the invertebrate (pollinator) and vascular plant associations upon which the milk-vetch depends (see discussion of nonnative predators and competitors on the site in CDFG (2000)). In addition, the life history and biology of *Astragalus pycnostachyus* var. *lanosissimus* is not well known, owing to its only recent rediscovery. It will be many years before we understand what factors influence seedling germination and the production of viable seeds in the wild.

Astragalus pycnostachyus var. *lanosissimus* is also threatened by activities in occupied habitat associated

with planning for land use at the site. For example, the project proponents have conducted at least two excavations in the population to examine the soils in which the plants occur (D. Steeck, pers. obs. 1997) and to examine the root structure of an adult plant (R. Smith, R.A. Smith and Associates, pers. comm. 1998). In April 1998 the project proponents dug up and transported three plants out of Ventura County to a greenhouse in central California in a preliminary attempt at transplanting them. In addition to the direct removal of reproducing individuals from the population, exploratory excavations within the population can potentially alter the hydrology of the micro-site where the plants are found, reduce seedling establishment by burying or removing seeds and seedlings from the soil, and injure plant roots.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this taxon in determining this final rule. Residential and commercial development have resulted in the loss and alteration of this taxon's coastal habitat and are the most likely cause of population extirpation historically. Loss and alteration of habitat from soil remediation activities and proposed residential development threaten the only known extant population. Other threats include competition from nonnative plant species and unanticipated human activities and natural events which could diminish or destroy the very small extant population. Existing regulatory mechanisms are inadequate to protect this taxon. Because *Astragalus pycnostachyus* var. *lanosissimus* is in danger of extinction throughout all or a significant portion of its range, it fits the Act's definition of endangered.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) 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 (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "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.

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 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 activity and the 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.

In the proposed rule, we indicated that designation of critical habitat for *Astragalus pycnostachyus* var. *lanosissimus* was not prudent because we believed that designation of critical habitat would not provide any additional benefit beyond that provided through listing as endangered. We came to that conclusion because the plant occurs only on private land with no known Federal nexus, because the designation of critical habitat would not invoke the protection afforded under section 9, and because, in this case, with no permit requirement, section 10 is not applicable. In addition, the private landowner and all appropriate non-Federal agencies were aware of the Federal status of this species and its location on private land.

After further consideration, and in light of recent court rulings regarding critical habitat designations, we believe that *Astragalus pycnostachyus* var. *lanosissimus* may benefit from critical habitat designation. For example, critical habitat designation may educate and inform the public and help focus conservation efforts through future Federal, State, and local planning efforts and the public, by identifying the habitat needs and crucial areas for *Astragalus pycnostachyus* var. *lanosissimus*. Therefore, we now believe that critical habitat designation may be prudent for *Astragalus pycnostachyus* var. *lanosissimus*.

Critical habitat is not determinable (50 CFR 424.12(a)(2)) when one or both of the following situations exist—(1) Information sufficient to perform required analyses of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Almost nothing is known of the habitat requirements of *Astragalus pycnostachyus* var. *lanosissimus*. All but two of the known collections of this taxon were made prior to 1930.

Specimen labels from these collections and original published descriptions contain virtually no habitat information. The newly discovered population of *A. pycnostachyus* var. *lanosissimus* occurs at a site previously used for disposal of petroleum waste products (Impact Sciences, Inc. 1997), on soils that were likely transported from other locations as a cap for the disposal site once it was closed. The original source of these soils is not known. As a result of this lack of information about the habitat needs of the species, we believe that the biological needs of the species are not sufficiently well known to permit designation of an area as critical habitat, and find that critical habitat for *A. pycnostachyus* var. *lanosissimus* is not determinable at this time.

Our regulations (50 CFR 424.17(b)(2)) require that, when we make a “not determinable” finding, we designate critical habitat within two years of the publication date of the original proposed listing rule, unless the designation is found to be not prudent. However, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Listing the Ventura marsh milk-vetch without designation of critical habitat will allow us to concentrate our limited resources on higher-priority critical habitat and other listing actions, while allowing us to invoke protections needed for the conservation of this species without further delay. We will make a determination regarding critical habitat in the future at such time when our available resources and priorities allow.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages public awareness and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition from willing sellers and cooperation with the States and requires that recovery actions be carried out for all listed species. 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, 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 with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the 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 the Service. The single known extant population of *Astragalus pycnostachyus* var. *lanosissimus* occurs on privately owned land. While currently there are no direct Federal authorizations needed for remediation of the contaminated soils of the site, Federal involvement could potentially arise from this situation in the future.

The listing of *Astragalus pycnostachyus* var. *lanosissimus* as endangered will provide for the development of a recovery plan for this taxon. Such a plan will bring together Federal, State, and local efforts for the conservation of this taxon. The plan will establish a framework for agencies to coordinate activities and to cooperate with each other in conservation efforts. The plan will set recovery priorities and describe site-specific management actions necessary to achieve the conservation of this taxon.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to *Astragalus pycnostachyus* var. *lanosissimus*, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.1 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 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, or damaging or destroying of such endangered plants in knowing violation

of any State law or regulation, including 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 taxa under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. Requests for copies of the regulations on listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE 11th Avenue, Portland, Oregon 97232-4181 (503/231-2063, facsimile 503/231-6243).

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not be likely to constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within the taxon's range. *Astragalus pycnostachyus* var. *lanosissimus* is not located on areas currently under Federal jurisdiction. Collection, damage, or destruction of this species on Federal lands is prohibited (although in appropriate cases a Federal endangered species permit may be issued to allow collection for scientific or recovery purposes). Such activities on areas not under

Federal jurisdiction constitutes a violation of section 9 if conducted in knowing violation of State law or regulations, or in violation of State criminal trespass law. Questions regarding whether specific activities would constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Ventura Fish and Wildlife Office (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments, 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. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new information collection requirements for which the 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 threatened species, see 50 CFR 17.32.

References Cited

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

Author

The primary authors of this notice are Diane Steeck and Tim Thomas, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Regulation Promulgation

Accordingly, the Service hereby amends 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. Section 17.12(h) is amended by adding the following, in alphabetical order under the families indicated, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

| Species | | Historic range | Family | Status | When listed | Critical habitat | Special rules |
|------------------------------------------------------------|---------------------------|-------------------|--------------------|--------|-------------|------------------|---------------|
| Scientific name | Common name | | | | | | |
| FLOWERING PLANTS | | | | | | | |
| * | * | * | * | * | * | | * |
| <i>Astragalus pycnostachyus</i> var. <i>lanosissimus</i> . | Ventura marsh milk-vetch. | U.S.A. (CA) | Fabaceae—Pea | E | 708 | NA | NA |
| * | * | * | * | * | * | | * |

Dated: May 14, 2001.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 01-12663 Filed 5-18-01; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 001108316-1083-02; I.D. 060600B]

RIN 0648-AK50

Fisheries of the Exclusive Economic Zone Off Alaska; Improved Individual Fishing Quota Program

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to amend regulations implementing the Individual Fishing Quota (IFQ) Program for the Pacific halibut and sablefish fixed gear fisheries in and off Alaska. NMFS has identified parts of the program that need further refinement or correction for effective management of the affected fixed gear fisheries. This action is intended to effect those refinements and is necessary to further the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) with respect to the IFQ fisheries.

DATES: Effective June 20, 2001, except for the gear type data element of §§ 679.5(l)(2)(vi) and 679.42 (j)(6), which are not effective until the Office of Management and Budget (OMB) approves the information collection requirements contained in those sections. NMFS will announce the effective date for those sections by publication in the **Federal Register**.

Comments on the information collections must be received by June 20, 2001.

ADDRESSES: Copies of the Regulatory Impact Review/Supplementary Final Regulatory Flexibility Analysis may be obtained from Sue Salvesson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, Room 453, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, (Attn: Lori J. Gravel). Send comments on the information collections to NMFS and to OMB at the Office of Information and Regulatory Affairs, Office of Management and

Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: James Hale, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

Regulations codified at 50 CFR part 679 implement the IFQ Program, a limited access system for management of the Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fixed gear fisheries in and off Alaska, under the authority of the Halibut Act with respect to halibut and the Magnuson-Stevens Act with respect to sablefish. Further information on the rationale for and implementation of the IFQ Program is codified in the final rule published in the **Federal Register**, November 9, 1993 (58 FR 59375).

NMFS' continuing assessment of the IFQ Program's responsiveness to conservation and management goals for Pacific halibut and sablefish fisheries has produced two "omnibus" packages of IFQ regulatory reforms since the inception of the program (60 FR 22307, May 5, 1995; 61 FR 41523, August 9, 1996). This final rule, the third such "omnibus" package of regulatory changes to the IFQ Program, amends various portions of the program's implementing regulations. These changes are necessary to promote the ability of fishermen to conduct IFQ fishing operations more efficiently, to enhance NMFS' ability to administer the program, and to improve the clarity and consistency of IFQ Program regulations.

This final rule makes the following changes to the IFQ regulations: (1) In § 679.1 *Purpose and scope*, adds an explicit reference to the Halibut Act, under which regulations in this part regarding the Pacific halibut fishery were developed, and in § 679.1(d) revise "IFQ management plan" to read "IFQ management measures" to prevent any inference that the IFQ Program is itself a "fishery management plan" as that term is used in the Magnuson-Stevens Act; (2) amends the requirements for IFQ fishermen participating in open-access sablefish fisheries in Alaska State waters; (3) adds nomenclature to reflect organizational changes in NMFS' Restricted Access Management (RAM) program; (4) amends the definition of an IFQ landing to include vessels that are removed from the water and put on trailers; (5) removes the reference to an "accompanying statement" establishing IFQ balances; (6) adds an exemption for lingcod fishermen using dinglebar gear from the IFQ 6-hour prior notice of landing and 12-hour landing window requirements; (7) adds gear type to the

information required on a completed IFQ landing report; (8) amends the information required for a shipment report to clarify which registered buyer, in landings involving multiple registered buyers, is responsible for compliance with shipment report requirements; (9) makes minor corrections to errors arising from the consolidation of regulations; (10) amends the survivorship transfer provisions to allow the temporary transfer of a deceased QS holder's QS and IFQ to a designated beneficiary and revise a paragraph on an IFQ leasing provision that expired in 1998; (11) amends the limitations on the use of QS and IFQ to require annual updates on the status of corporations, partnerships, and other collective entities holding QS; (12) amends the submission of appeals to allow appeals to initial administrative decisions to be submitted by facsimile machine; and (13) amends reporting requirements for consistency with the Paperwork Reduction Act (PRA).

A detailed discussion of each of these changes may be found in the preamble to the proposed rule published December 14, 2000, at 65 FR 78126.

NMFS invited public comment on the changes contained in this action through January 16, 2001. No comments were received, and NMFS publishes this rule unchanged from the proposed rule.

This rule revises regulations pertaining to certain IFQ forms and reports to clarify further the data required of the public in these collections of information. Two of the collections of information contained in this final rule have not yet been authorized by OMB pursuant to the PRA. The pertinent collections of information are the addition of "gear type" to information required in a completed IFQ Landing Report at § 679.5 (l)(2) and the addition of a requirement that a corporation, partnership, and other collective entity holding QS submit annual updates on the status of the collective entity as such at § 679.42 (j)(5).

Classification

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection displays a currently valid OMB control number.

This final rule contains collection-of-information requirements subject to the PRA and which have been approved by OMB under OMB control number 0648-0272. These requirements and their