

operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: October 19, 2010.

C.L. Stowe,

Captain, U.S. Coast Guard, Captain of the Port San Francisco.

[FR Doc. 2010-27707 Filed 11-2-10; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA-R09-OAR-2010-0814; FRL-9219-6]

Delegation of National Emission Standards for Hazardous Air Pollutants for Source Categories; State of Nevada; Clark County Department of Air Quality and Environmental Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act as amended in 1990, EPA is proposing to grant delegation of specific national emission standards for hazardous air pollutants (NESHAP) to Clark County, Nevada.

DATES: Any comments on this proposal must arrive by December 3, 2010.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2010-0814, by one of the following methods:

1. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.

2. *E-mail:* steckel.andrew@epa.gov.

3. *Mail or Deliver:* Andrew Steckel (AIR-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through <http://www.regulations.gov> or e-mail. <http://www.regulations.gov> is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail

address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947-4124, wang.mae@epa.gov.

SUPPLEMENTARY INFORMATION: This proposal concerns the delegation of unchanged NESHAP to Clark County, Nevada. In the Rules and Regulations section of this **Federal Register**, EPA is amending regulations to reflect the current delegation status of NESHAP in Nevada. EPA is taking direct final action without prior proposal because the Agency believes this action is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in a subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Authority: This action is issued under the authority of Section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: October 5, 2010.

Deborah Jordan,

Director, Air Division, Region IX.

[FR Doc. 2010-27804 Filed 11-2-10; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R8-ES-2009-0078; MO 92210-0-0009-B4]

RIN 1018-AW53

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for *Astragalus jaegerianus* (Lane Mountain Milk-Vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on our April 1, 2010, proposed revised designation of critical habitat for *Astragalus jaegerianus* (Lane Mountain milk-vetch) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed revised designation of critical habitat for *Astragalus jaegerianus* and an amended required determinations section of the proposal. We are reopening the comment period for an additional 30 days to allow all interested parties an opportunity to comment on the items listed above. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule.

DATES: We will consider public comments we receive on or before December 3, 2010. Comments must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R8-ES-2009-0078.

- *U.S. mail or hand-delivery:* Public Comments Processing, *Attn:* FWS-R8-ES-2009-0078; Division of Policy and Directives Management; U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT:

Connie Rutherford, Listing and Recovery Coordinator, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003; telephone (805) 644-1766; facsimile (805) 644-3958. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION:**Public Comments**

We intend that any final action resulting from the proposed rule will be based on the best scientific data available and will be as accurate and effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party during this reopened comment period on the proposed revised designation of critical habitat for *Astragalus jaegerianus* published in the **Federal Register** on April 1, 2010 (75 FR 16404), including the draft economic analysis of the proposed revised designation of critical habitat for *A. jaegerianus* and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not revise the designation of habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

- The amount and distribution of *Astragalus jaegerianus* habitat,
- What areas within the geographical area occupied by the species at the time of listing that contain features essential to the conservation of the species we should include in the designation and why, and
- What areas outside the geographical area occupied at the time of listing are essential to the conservation of the species and why.

(3) Land-use designations and current or planned activities in the subject areas and their possible effects on proposed revised critical habitat for *Astragalus jaegerianus*.

(4) Any foreseeable economic, national security, or other relevant impacts of designating any area that

may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that exhibit these impacts.

(5) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(6) Comments or information that may assist us in identifying or clarifying the primary constituent elements and the resulting physical and biological features essential to the conservation of *Astragalus jaegerianus*.

(7) How the proposed revised critical habitat boundaries could be refined to more closely circumscribe the landscapes identified as essential.

(8) Information on the potential effects of climate change on *Astragalus jaegerianus* and its habitat.

(9) Any foreseeable impacts on energy supplies, distribution, and use resulting from the proposed revised designation and, in particular, any impacts on electricity production, and the benefits of including or excluding any particular areas that exhibit these impacts.

(10) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(11) Information on whether the DEA makes appropriate assumptions regarding current practices and any regulatory changes that likely may occur if we designate proposed revised critical habitat for *Astragalus jaegerianus*.

(12) Information on the accuracy of our methodology in the DEA for distinguishing baseline and incremental costs, and the assumptions underlying the methodology.

(13) Information on whether the DEA correctly assesses the effect on regional costs associated with any land use controls that may result from the proposed revised designation of critical habitat for *Astragalus jaegerianus*.

(14) Information on whether the proposed revised designation of critical habitat will result in disproportionate economic impacts to specific areas or small businesses, including small businesses in the land development sector in San Bernardino County.

(15) Information on whether the DEA identifies all costs that could result from the proposed revised designation of

critical habitat for *Astragalus jaegerianus*.

(16) Economic data on the incremental costs of designating a particular area as revised critical habitat.

If you submitted comments or information on the proposed revised rule (75 FR 16404) during the initial comment period from April 1, 2010, to June 1, 2010, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning revised critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning our proposed rule, the associated DEA, and our amended required determinations by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hard copy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hard copy comments on <http://www.regulations.gov>.

Comments and materials we receive (and have received), as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on <http://www.regulations.gov> (Docket Number FWS-R8-ES-2009-0078), or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the proposed rule and DEA by mail from the Ventura Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT**), by visiting the Federal eRulemaking Portal at <http://www.regulations.gov> (Docket Number FWS-R8-ES-2009-0078), or on our Web site at <http://www.fws.gov/ventura>.

Background

It is our intent to discuss only those topics directly relevant to the proposed revised designation of critical habitat for *Astragalus jaegerianus* in this document. For more information on previous Federal actions concerning *A. jaegerianus*, refer to the proposed revised designation of critical habitat published in the **Federal Register** on April 1, 2010 (75 FR 16404). Additional information on *A. jaegerianus* may also be found in the final listing rule published in the **Federal Register** on October 6, 1998 (63 FR 53596), and the proposed designation of critical habitat for *A. jaegerianus* in the **Federal Register** on April 6, 2004 (69 FR 18018). These documents are available on the Ventura Fish and Wildlife Office Web site at <http://www.fws.gov/ventura>.

On April 8, 2005 (70 FR 18220), we published our final designation of critical habitat for *Astragalus jaegerianus*. Because we excluded all proposed acreage from the designation, the final designation included zero (0) acres (0 hectares). On December 19, 2007, the 2005 critical habitat determination was challenged by the Center for Biological Diversity (*Center for Biological Diversity v. United States Fish and Wildlife Service et al.*, Case No. CV-07-08221-JFW-JCRx). In a settlement agreement accepted by the court on June 27, 2008, we agreed to reconsider the critical habitat designation for *A. jaegerianus*. The settlement stipulated that we submit a proposed revised critical habitat rule for *A. jaegerianus* to the **Federal Register** for publication on or before April 1, 2010, and submit a final revised determination on the proposed critical habitat rule to the **Federal Register** for publication on or before April 1, 2011.

Section 3 of the Act defines critical habitat 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 that may require special management considerations or protection, and 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. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the

effects of their proposed actions, under section 7(a)(2) of the Act.

Under section 4(b)(2) of the Act, we may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact, including but not limited to the value and contribution of continued, expanded, or newly forged conservation partnerships.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies); the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species; and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of *Astragalus jaegerianus*, the benefits of critical habitat include public awareness of the presence of *A. jaegerianus* and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for *A. jaegerianus* due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We prepared a DEA of our April 1, 2010 (75 FR 16404), proposed revised designation of critical habitat for *Astragalus jaegerianus*.

The intent of the DEA is to identify and analyze the potential economic impacts associated with the proposed revised designation of critical habitat for

Astragalus jaegerianus. The DEA quantifies the economic impacts of all potential conservation efforts for *A. jaegerianus*; some of these costs will likely be incurred regardless of whether we designate revised critical habitat. The economic impact of the proposed revised designation of critical habitat for *A. jaegerianus* is analyzed by comparing scenarios both “with critical habitat” and “without critical habitat.” The “without critical habitat” scenario represents the baseline for the analysis, considering protections already in place for the species (for example, under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated and may include costs incurred in the future. The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since we listed the species, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed revised designation of critical habitat for the *A. jaegerianus*. For a further description of the methodology of the analysis, see Chapter 2, “Framework for the Analysis,” of the DEA.

The current DEA estimates the foreseeable economic impacts of the proposed revised designation of critical habitat for *Astragalus jaegerianus* by identifying the potential resulting incremental costs. The DEA analyzed economic impacts of *A. jaegerianus* conservation efforts on the following activities: Recreational OHV use, recreational surface mining, and wind energy development. It also assessed possible indirect impacts to economic activities as the result of possible applications of the California Environmental Quality Act (CEQA), and regulatory uncertainty or delay. The DEA considers future baseline and incremental impacts over the next 20 years (2011 to 2030), which was determined to be the appropriate period for analysis because limited planning information is available for most

activities to forecast activity levels for projects beyond a 20-year timeframe.

The DEA estimates that no economic impacts are likely to result from the designation of critical habitat. The main reason for this conclusion is that approximately 79 percent of the designated area is Federal land that is either being managed for *Astragalus jaegerianus* conservation by the Bureau of Land Management (BLM) under the guidance of the California Desert Conservation Area Plan, as modified by the West Mojave Plan, or is being held by the Department of Defense (DOD). Because the DOD acquired these lands as mitigation for the expansion of Fort Irwin, it will not permit any ground-disturbing activities on them. Ultimately, the DOD will transfer the lands to the BLM, and BLM will manage them as part of the Coolgardie Mesa and West Paradise Areas of Critical Environmental Concern. The Service, DOD, and BLM do anticipate consultation on the land transfer, but expect that the consultation would be informal and not require a formal biological opinion under section 7 of the Act. An additional reason that no economic impacts are likely to result from the designation of critical habitat is that the private lands (remaining 21 percent of designation interspersed in a checkerboard fashion among the BLM ACECs lands) occur in a remote region where access, development, and construction are limited. Also land use activities specifically within ACECs are limited. These private lands are being targeted through the WMP for acquisition by Federal agencies from willing sellers to eventually become part of one of the two ACECs. No section 7 consultations have occurred regarding activities on private lands within the area since the listing of the desert tortoise (*Gopherus agassizii*) in 1990. The federally threatened desert tortoise occurs throughout the area that we have proposed as critical habitat; critical habitat for the desert tortoise also completely overlaps the areas proposed as critical habitat for *A. jaegerianus*. Consequently, based on discussions with land managers and the lack of consultations on private lands in this area since the listing of the desert tortoise, we do not anticipate any land use changes that will result in future consultations.

The DEA also discusses the potential benefits associated with the designation of critical habitat. The primary intended benefit of critical habitat is to support the conservation of endangered and threatened species, such as *Astragalus jaegerianus*. However, economic benefits are not quantified or monetized

in the DEA. As described in the DEA, modifications to future projects are unlikely given the extensive baseline protections already provided to *A. jaegerianus* habitat, the anticipated lack of economic activity, and lack of a Federal nexus on privately owned, unprotected parcels.

The DEA considered both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the “opportunity costs” associated with the commitment of resources to comply with habitat protection measures (e.g., lost economic opportunities associated with restrictions on land use). The DEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, small entities, and the energy industry. We can use this information to assess whether the effects of the revised designation might unduly burden a particular group or economic sector.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as on all aspects of the proposed revised designation of critical habitat, and our amended required determinations. We may revise the proposed rule or the economic analysis to incorporate or address information we receive during this public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided the exclusion will not result in the extinction of the species.

Required Determinations—Amended

In our proposed rule dated April 1, 2010 (75 FR 16404), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal

Governments” (59 FR 22951). Based on the DEA data, we are also affirming our required determinations made in the proposed rule concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), and E.O. 13211 (Energy, Supply, Distribution, and Use).

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed revised designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of a final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

To determine if the proposed revised designation of critical habitat for *Astragalus jaegerianus* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as residential and commercial development. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect *A. jaegerianus*. If the proposed critical habitat designation is finalized, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA of the proposed revised designation of critical habitat, we evaluated the potential economic effects resulting from implementation of conservation actions related to the proposed revised designation of critical habitat. The DEA estimates that no economic impacts are likely to result from the designation of critical habitat for *Astragalus jaegerianus*. This determination is based on the fact that approximately 79 percent of the proposed critical habitat is already subject to conservation measures that benefit the plant. Economic impacts are unlikely in the remaining 21 percent, given the limited potential for future economic activity and the low probability of a Federal nexus that would require consultation with the Service. Based on that analysis, no impacts to small entities are expected as a result of the proposed critical habitat designation. Please refer to chapter 3 of the DEA for a more detailed discussion of our analysis.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis

was gathered from the Small Business Administration, stakeholders, and the Service. For the reasons discussed above, and based on currently available information, we certify that if promulgated, the proposed designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Executive Order 13211—Energy Supply, Distribution, and Use

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires an agency to prepare a Statement of Energy Effects when undertaking certain actions. We implement this executive order using the Office of Management and Budget's guidance which outlines nine outcomes that may constitute "a significant adverse effect" when compared to no regulatory action. As discussed in chapter 3, the DEA finds that this proposed revised critical habitat designation is expected not to have any impacts on the energy industry. As a result, a Statement of Energy Effects is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local or Tribal governments," with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local and Tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Tribal governments "lack authority" to adjust

accordingly. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) as a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

Critical habitat designation does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Designation of critical habitat may indirectly impact non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action that may affect designated critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the DEA of the proposed designation of critical habitat for *Astragalus jaegerianus*, we do not believe that this rule would significantly or uniquely affect small governments because it would not produce a Federal mandate of \$100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The DEA concludes that critical habitat designation for *A. jaegerianus* is not likely to result in incremental direct or indirect impacts to economic activities. Because no incremental costs are anticipated, no small entities are expected to be affected by the designation. Consequently, we do not believe that the revised critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

References Cited

A complete list of all references we cited in the proposed rule and in this document is available on the internet at <http://www.regulations.gov> or from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this notice are staff members of the Ventura Fish and Wildlife Office (*see FOR FURTHER INFORMATION CONTACT*).

Authority

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

Dated: October 25, 2010.

Will Shafroth,

Acting Assistant Secretary for Fish & Wildlife and Parks.

[FR Doc. 2010-27773 Filed 11-2-10; 8:45 am]

BILLING CODE 4310-55-P