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Written comments by the public on the proposed information collections are due on or before April 17, 2000 and reply comments or due on or before April 28, 2000. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed and/or modified information collections on or before June 12, 2000. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to [jboley@fcc.gov](mailto:jboley@fcc.gov) and to Timothy Fain, OMB Desk Officer, 10236 NEOB, 725-17th Street, NW, Washington, DC 20503 or via the Internet to [fain\\_t@al.eop.gov](mailto:fain_t@al.eop.gov).

#### Ordering Clauses

Pursuant to the authority contained in sections 4(i), 4(j), 201(b), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201(b), 303(r), and 403, this Further Notice of Proposed Rulemaking is adopted.

The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration, 5 U.S.C. 605(b).

Federal Communications Commission.

**Kenneth P. Moran,**

*Chief, Accounting Safeguards Division.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AG02

#### Endangered and Threatened Wildlife and Plants; Proposed Determination of Endangered Status for *Astragalus Holmgreniorum* (Holmgren Milk-Vetch) and *Astragalus Ampullarioides* (Shivwits Milk-Vetch)

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), propose to determine endangered species status under the Endangered Species Act (Act) of 1973, as amended, for two perennial herbs, *Astragalus holmgreniorum* (Holmgren milk-vetch) and *Astragalus ampullarioides* (Shivwits milk-vetch). Three small populations of *A. holmgreniorum* exist in Washington County, Utah and adjacent Mohave County, Arizona. Five small populations of *A. ampullarioides* exist in Washington County, Utah. Significant portions of the habitat of both species are subject to disturbance from urban development, off-road vehicles (ORVs), grazing, displacement by exotic weeds, and mineral development. A determination that *A. holmgreniorum* and *A. ampullarioides* are endangered species would implement the Federal protections provided by the Act for these plants.

**DATES:** Comments from all interested parties must be received by June 12, 2000. Public hearing requests must be received by May 30, 2000.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Lincoln Plaza, Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** John L. England, Botanist, Utah Field Office, at the address listed above (telephone: 801/524-5001).

#### SUPPLEMENTARY INFORMATION:

##### Background

*Astragalus holmgreniorum* (Holmgren milk-vetch) was first collected as a scientific specimen in 1941 by Melvin Ogden. Rupert Barneby and Noel and Patricia Holmgren rediscovered the species in 1979. Barneby (1980) recognized the species as a unique taxon occurring in a localized area on the Arizona-Utah border, and named it for its co-discoverers. *A. ampullarioides* (Shivwits milk-vetch) was first collected near Shem in Washington County, Utah by Duane Atwood in 1976. The species was originally described by Stanley Welsh (1986) as a variety of *A. eremiticus*. Barneby (1989) questioned the taxonomic significance of the species and submerged *A. eremiticus* var. *ampullarioides* within typical *A. eremiticus*. Later research work by Harper and Van Buren (1998), and Stubben (1997) demonstrated significant genetic and ecological differences

between typical *A. eremiticus* and *A. eremiticus* var. *ampullarioides*. Welsh (1998) revised the species' taxonomy elevating the taxon to full species status as *A. ampullarioides*. Both species are narrowly distributed Mojave Desert endemics restricted to the immediate vicinity of St. George, Utah.

A member of the pea family (Fabaceae), *Astragalus holmgreniorum* grows close to the ground and is a herbaceous (non-woody) perennial that produces small purple flowers in the spring, and dies back to its root crown (base of the stalk where roots begin) after the flowering season. The plant's pinnately compound (arranged on opposite sides of the stem in a row) leaves arise directly from the root crown. The leaves are pressed close to the ground, and are 4 to 13 centimeters (cm) (1.5 to 5.1 inches (in)) long, and have 9 to 15 leaflets. The leaflets are 0.8 to 1.6 cm (0.3 to 0.6 in) long and are broadly obovate (oval with the narrow end towards the base of the leaf) in shape. The flowers of *A. holmgreniorum* are purple, 1.8 to 2.4 cm (0.7 to 0.9 in) long, and 0.6 to 0.9 cm (0.2 to 0.4 in) wide and have the distinctive papilionaceous flower shape of a legume (pea-like flower with 5 petals that include a large petal on top enclosing 2 lateral petals and 2 smaller lower petals). The flowers are borne in a raceme inflorescence (flowers occur along a stalk), commonly with 6 to 16 flowers. The peduncle (flower stalk) is 2 to 8.5 cm (0.8 to 3.6 in) long and arises directly from the root crown. The peduncle is erect during anthesis (period the flower is open) and is prostrate, with the plant's leaves in fruit (Barneby 1980; 1989; Welsh, *et al.* 1987; Stubben 1997). The fruits are pods 3 to 5 cm (1 to 2 in) long and 0.6 to 0.9 cm (0.2 to 0.4 in) across. The pods retain seeds even after the pods fully open up along the margin. With age, each pod eventually dries out and opens up at both the top and bottom ends (Barneby 1989; Stubben 1997).

*Astragalus holmgreniorum* grows on the shallow, sparsely vegetated soils derived primarily from the Virgin limestone member of the Moenkopi Formation. The species is a principal member of a warm-desert shrub vegetative community dominated by the following perennial shrubs: desert goldenhead (*Acamptopappus sphaerocephalus*), white burrobush (*Ambrosia dumosa*), range ratany (*Krameria parvifolia*), and Anderson wolfberry (*Lycium andersonii*). In addition, plant species associated with *A. holmgreniorum* include several perennial and annual forbs and grasses; most significant are the introduced

weedy species foxtail brome (*Bromus rubens*), storksbill (*Erodium cicutarium*), and African mustard (*Malcolmia africana*) (Stubben 1997; Armstrong and Harper 1991; Van Buren 1992; Harper and Van Buren 1998).

Only three populations of *Astragalus holmgreniorum* are known. The species' primary population exists on the Arizona (Mohave County) and Utah (Washington County) border approximately 11 kilometers (km) (7 miles (mi)) south of the center of St. George, Utah (Stubben 1997). This population is fragmented by Interstate Highway 15, areas of urban development, and spotty natural habitat occurrences. The number of individual plants in all the species' populations varies considerably from year to year. This population averages from 4,000 to 5,000 plants in an average year to about 9,000 to 10,000 plants in years with wet winters (Stubben 1997; R. Van Buren, Utah Valley State College, Orem, Utah, pers. comm. 1998). The second population of about 1,000 plants is approximately 8 km (5 mi) west of St. George (Stubben 1997; Van Buren 1992). The third population consist of about 300 plants, and is located approximately 15 km (9 mi) east of St. George (Stubben 1997). The small number of populations and restricted habitat of this species make it vulnerable to human-caused and natural environmental disturbances. Urban expansion of St. George and highway and power line construction have destroyed significant portions of the species' potential habitat and threaten additional occupied habitat. The species is also threatened by ORV use, displacement by exotic weeds, mineral exploration and development (Harper 1997; Stubben 1997).

*Astragalus ampullarioides* (Shivwits milk-vetch) is a perennial, herbaceous plant that is considered a tall member of the pea family, although some plants appear shorter because of grazing impacts. Stems may grow along the ground or to a height of 20 to 50 cm (8 to 20 in). However, ungrazed flowering stems may attain a height of 1 meter (40 in). Its leaves are pinnately compound, 4 to 18 cm (1.6 to 7.1 in) long, and have 11 to 23 elliptical leaflets. Each plant produces about 45 small cream-colored flowers about 2 cm (0.8 in) long on a single stalk in the spring. Seeds are produced in small pods, and the plant dies back to its root crown after the flowering season. The fruit is a short, broad pod between 0.8 and 1.5 cm (0.3 to 0.6 in) in length and 0.6 to 1.2 cm (0.2 to 0.5 in) in width (Barneby 1989; Welsh 1986, 1998; Welsh, *et al.* 1987).

Differences between *Astragalus ampullarioides* and typical *A.*

*eremiticus*, which is also found in Washington County, Utah, are apparent from the following morphological and ecological characteristics: (1) *A. ampullarioides* has more flowers in each inflorescence, (2) *A. ampullarioides* has more elongated flower stalks, (3) *A. ampullarioides* has wider pods, (4) *A. ampullarioides* has taller plants, (5) *A. ampullarioides* has hollow stems, *A. eremiticus* stems are solid, and (6) *A. ampullarioides* plants are highly palatable to grazing animals, whereas typical *A. eremiticus* is seldom if ever eaten (Barneby 1989; Welsh 1986, 1998; Welsh, *et al.* 1987; Van Buren 1992; Harper and Van Buren 1998). The variation between the two species is also apparent at the genetic level. DNA analysis of *Astragalus* species, have shown significant differences in genetic markers between *A. ampullarioides* and *A. eremiticus* (Stubben 1997).

*Astragalus ampullarioides* grows on the Chinle geological formation at five separate sites in Washington County, Utah. These sites are distributed on a narrow band of the exposed Chinle formation over a distance of about 40 km (25 mi) near the City of St. George, Utah. These 5 populations contain about 1,000 individual plants (R. Van Buren, pers. comm. 1998). Two of the five populations occur near Shivwits on the western edge of the species' range. One population occurs on the Shivwits Indian Reservation and contains about 50 individual plants (L. England, pers. comm. 1999); the other population occurs on Bureau of Land Management (BLM) land and contains about 135 individual plants (Utah Natural Heritage Program 1999). Three other populations occur near Harrisburg Junction on the eastern edge of the species' range. One of these populations occurs on a mixture of State and BLM lands and contains about 300 individual plants (L. England, pers. comm. 1999). Another population occurs on BLM lands and contains four plants (Utah Natural Heritage Program 1999). The third population is located within commercial and residential development and contains about 200 individual plants (Utah Natural Heritage Program 1999). Native plant species normally associated with *A. ampullarioides* include: beautiful bluedicks (*Dichostemma pulchellum*), birdsfoot trefoil (*Lotus humistratus*), snakeweed (*Gutierrezia microcephala*), mariposa lily (*Calochortus flexuosus*), and several other Mojave Desert plants. Currently the most significant plant species associated with *A. ampullarioides* are the introduced

weedy species foxtail brome (*Bromus rubens*), cheat grass (*B. tectorum*), storksbill (*Erodium cicutarium*), and African mustard (*Malcolmia africana*) (Armstrong and Harper 1991; Van Buren 1992, 1998; Harper and Van Buren 1998).

*Astragalus ampullarioides* is threatened by the same activities as *A. holmgreniorum*. In addition, *A. ampullarioides* also is heavily grazed by most wild and domestic herbivores, and one of its five populations is threatened by activities associated with clay quarry mining and unauthorized waste disposal (Harper 1997). *A. ampullarioides* is restricted to clay soils derived from outcrops of the Chinle formation which naturally limits its potential habitat and population (R. Van Buren pers. comm. 1998).

#### Previous Federal Action

Section 12 of the Act (16 U.S.C. 1533 *et seq.*) 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, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. We published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) announcing our decision to treat the Smithsonian report as a petition within the context of section 4(c)(2) now section 4(b)(3) of the Act, and our intention to review the status of those plants.

The July 1975 notice was updated by a notice in the **Federal Register** on December 15, 1980 (45 FR 82480). On November 28, 1983, we amended the 1980 notice (48 FR 53640) and added *Astragalus holmgreniorum* as a category 2 candidate species. Category 2 candidates were defined as taxa for which information indicated that proposing to list the taxa as endangered or threatened was possibly appropriate but substantial data on biological vulnerability and threats were not currently known or on file to support a listing proposal. A later Notice of Review published on February 21, 1990 (55 FR 6185), maintained *A. holmgreniorum* as a category 2 species and included *A. eremiticus* var. *ampullarioides* (a synonym of *A. ampullarioides*) as a category 2 species.

Based on new biological and threat information (Armstrong and Harper 1991; Van Buren 1992) we identified *Astragalus holmgreniorum* as a category 1 candidate in the 1993 plant Notice of Review (58 FR 51133). At that time, category 1 candidates comprised taxa for which we had significant biological

information to propose the species as endangered or threatened.

In the February 28, 1996, Notice of Review (61 FR 7596), we ceased using the category designations for candidates and included both *Astragalus holmgreniorum* and *A. ampullarioides* (*A. eremiticus* var. *ampullarioides*) as candidate species. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered.

On June 2, 1999, we received a petition from Peter Galvin of the Southwest Center for Biological Diversity, Tucson, Arizona to list both *Astragalus holmgreniorum* and *A. ampullarioides* as endangered species under the Act. The petition specified endangered status because of the rarity of the plant and the significant population and individual losses of both plants. The petition also requested designation of critical habitat concurrent with the listing. Inasmuch as *Astragalus holmgreniorum* and *A. ampullarioides* are currently designated candidate species with assigned listing priorities of two and three, respectively, we consider them already under petition and covered by a warranted but precluded finding. We responded to this petition on June 14, 1999, notifying the petitioner that our Endangered Species Petition Management Guidance issued in July 1996 considers a petition for a candidate species as redundant, and as such will be treated as a second petition. We also notified the petitioner that preparation of a proposed rule for listing of *A. holmgreniorum* and *A. ampullarioides* was ongoing and would be published in the **Federal Register** in the near future.

The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudence and determinability decisions) and proposed or final designations of critical habitat

will no longer be subject to prioritization under the Listing Priority Guidance. This proposed rule for *Astragalus holmgreniorum* and *A. ampullarioides* is a Priority 3 action and is being completed in accordance with the current Listing Priority Guidance. If it is determined that an emergency situation exists for either or both species, the species will be elevated to Priority 1.

#### Peer Review

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

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the 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 ampullarioides* (Welsh) Welsh (Shivwits milk-vetch) and *A. holmgreniorum* Barneby (Holmgren milk-vetch) are as follows:

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

The entire population of *Astragalus holmgreniorum* and most of the population of *A. ampullarioides* are vulnerable to habitat loss and extirpation due to urban growth and development in the St. George area of Washington County, Utah. St. George is a rapidly growing "sun-belt" city. The human population of the St. George area has grown from about 48,000 in 1990 to over 75,000 in 1999, and is projected to double within the next 20 years. Construction of residential housing destroyed occupied and potential habitat of both species during the last 5 years (Harper 1997; Stubben 1997; R. Van Buren, pers. comm. 1998). The continued demand for land for urban expansion of Washington County

communities threatens all populations of *A. holmgreniorum* and the eastern populations of *A. ampullarioides* (Harper 1997; Stubben 1997). Residential and commercial development, along with associated construction of new roads, highways, electric power transmission lines, pipelines, airports, residential and commercial buildings, recreational facilities such as golf courses, and maintenance of existing roads will encroach and threaten the habitat of both species.

Habitat degradation from ORV use is increasing within both species' habitats. Both *Astragalus holmgreniorum* and *A. ampullarioides* are in the same general area as the listed plant species *Arctomecon humilis* (dwarf bear-poppy), which has been severely impacted by ORV use and urban development (Harper 1997; R. Van Buren, pers. comm. 1998). Conservation measures to protect the recently listed Mohave Desert tortoise (*Gopherus agassizii*) population from development may have caused a change in urbanization patterns that may lead to an increase in urban development and encroachment into the habitat of *A. holmgreniorum* and *A. ampullarioides* (Stubben 1997; Harper 1997; D. Pietrzak, BLM, St. George, Utah, pers. comm. 1993). Patterns of urban, commercial, and residential expansion north of St. George City were affected by conservation efforts for the Desert tortoise including the Washington County Habitat Conservation Plan. Significant areas of potential community growth in the St. George area, especially between the city and the Arizona border, are within the occupied habitat of *A. holmgreniorum* and *A. ampullarioides*.

In Utah, occupied *Astragalus holmgreniorum* and *A. ampullarioides* habitat occurs on Federal (BLM), State of Utah, Tribal (Shivwits Band of the Paiute Tribe) and private land. In Arizona, *A. holmgreniorum* is restricted to State of Arizona lands immediately adjacent to the Utah border. Private and State lands may be subject to land use changes such as an increase in urban development. Federal lands with populations of *A. holmgreniorum* may be subject to exchange or sale to the States or private parties. The State of Utah had proposed to the BLM to acquire lands that harbor the largest portion of the *A. holmgreniorum* population in exchange for occupied desert tortoise habitat north of St. George in Washington County (Stubben 1997; D. Pietrzak, pers. comm. 1993). A private land developer has proposed to develop much of the Utah portion of the

*A. holmgreniorum* habitat for a planned residential community. A major highway is proposed for construction through the *A. holmgreniorum* habitat between St. George and the Arizona border. A proposed planned community development near Harrisburg Junction has the potential to destroy one of the three eastern *A. ampullarioides* populations (Rosenberg Associates 1999). An electric power transmission line is proposed to pass through the two western *A. ampullarioides* populations. Gypsum mining operations occur adjacent to occupied *A. holmgreniorum* habitat south of St. George. An existing clay pit now being used as an unauthorized waste disposal area occurs adjacent to occupied *A. ampullarioides* habitat east of St. George. Both of these mining-related activities have the potential to destroy both *A. holmgreniorum* and *A. ampullarioides* habitat.

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

*Astragalus holmgreniorum* and *A. ampullarioides* have no known commercial, recreational, or scientific use at this time. There is no evidence of overcollection by botanists and/or horticulturists at this time.

**C. Disease or Predation**

We have no information to indicate that diseases threaten the continued survival of either *Astragalus holmgreniorum* or *A. ampullarioides*.

*Astragalus ampullarioides* is extremely palatable to both wildlife and domestic livestock, but *A. holmgreniorum* is not. The two western *A. ampullarioides* populations currently are overgrazed, often to the point that reproduction is forgone due to the loss of the entire flower and fruit of virtually every plant in the population (Harper 1997; Harper and Van Buren 1998).

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

There are no Federal or State laws or regulations directly protecting *Astragalus holmgreniorum* and *A. ampullarioides* or their habitat. However, the BLM Manual 6840 states that "The BLM shall carry out management, consistent with multiple use, for the conservation of candidate species and their habitats and shall ensure that actions authorized, funded, or carried out do not contribute to the need to list any of these species as Threatened or Endangered." The BLM has incorporated its intent to conserve these species into the *Dixie Resource Area Proposed Management Plan and*

*Final Environmental Impact Statement* (BLM 1998). However, the location of these species in areas valued for future urban expansion makes the long term security of their habitat, even on Federal lands, questionable. Listing the species under the Act will reinforce the BLM'S ability to conserve habitat on Federal lands. There is no legal protection for either species on State of Arizona or State of Utah lands or on private property.

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

Past habitat disturbance has caused the proliferation of introduced annual weeds into both species' occupied habitat (Harper 1997). Foxtail brome, cheatgrass, storksbill, and African mustard are now the dominant species within the plant communities of both *Astragalus holmgreniorum* and *A. ampullarioides* (Stubben 1997; Harper and Van Buren 1998; Van Buren 1999). Both species are vulnerable to displacement by introduced weeds (Harper 1997; Harper and Van Buren 1998; Stubben 1997; Van Buren 1999).

Because of the low numbers of individuals, low number of populations, and restricted habitats of both *Astragalus holmgreniorum* and *A. ampullarioides*, these plants are vulnerable to human disturbances, which may increase the negative impacts of natural disturbances to populations of these species. The numbers of individuals and populations are sufficiently low that future losses may result in the loss of population viability. The extremely small and disjunct populations of *A. ampullarioides* may be vulnerable to a loss of genetic viability (Harper 1997; Harper and Van Buren 1998).

We have carefully assessed the best scientific and commercial information available concerning the past, present, and future threats faced by these species in making this proposed rule. Threats to *Astragalus holmgreniorum* and *A. ampullarioides*, including development of land for residential and urban use, habitat modification from human disturbances, competition with non-native plant species, and impacts from mining and grazing activities, imperil the continued existence of these species. Much of the habitat where these species occur is suitable for development and for modification by mining and grazing, and is unprotected from these threats. Because of the high potential of these threats to result in the extinction of both species, the preferred action is to list *A. holmgreniorum* and *A. ampullarioides* as endangered. The Act defines an endangered species as one in danger of

extinction throughout all or a significant portion of its range. Endangered status reflects the vulnerability of these species to factors that may adversely affect these species and their extremely limited habitat.

**Critical Habitat**

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by the 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 considerations 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 the designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states that the processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 and FY 2001 as allowed by our funding allocation for that year. As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing

actions required by the Act. Deferral of the critical habitat designation for *Astragalus holmgreniorum* and *A. ampullarioides* will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of these species without further delay.

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

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

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of these species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7

consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we propose that critical habitat is prudent for *Astragalus holmgreniorum* and *A. ampullarioides*.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to these species, and the magnitude and immediacy of those threats. We will make the final critical habitat determination with the final listing determination for *Astragalus holmgreniorum* and *A. ampullarioides*. If this final critical habitat determination is prudent, we will develop a proposal to designate critical habitat for *A. holmgreniorum* and *A. ampullarioides* as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 6's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as final listing determinations with statutory deadlines.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing can encourage and result in public awareness and conservation actions by Federal, State, Tribal (Shivwits Band of the Paiute Tribe), and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Funding may be available through section 6 of the Act for the States to conduct recovery activities. The protection required by Federal agencies and 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 us 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) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Considerable portions of the habitat of both *Astragalus holmgreniorum* and *A. ampullarioides* are on lands under Federal jurisdiction managed by the BLM. The BLM is responsible for insuring that all activities and actions on lands that they manage are not likely to jeopardize the continued existence of *A. holmgreniorum* and *A. ampullarioides*. Proposed highway and power line projects within the habitat of both species would require Federal permits from the Federal Highway Administration and Federal Energy Regulatory Commission. These agencies, also, must insure that actions which they permit are not likely to jeopardize the continued existence of both species. In addition, sections 2(c)(1) and 7(a)(1) of the Act require Federal agencies to utilize their authorities in furtherance of the purposes of the Act to carry out conservation programs for endangered and threatened species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, would 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 these species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, damaging, or destruction of such plants in knowing violation of any State law or regulation, or in the course of a violation of State criminal trespass law. Certain exceptions to the prohibitions apply to

our agents and agents of 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 and threatened plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. We anticipate that few trade permits would be sought or issued for *Astragalus holmgreniorum* and *A. ampullarioides* because these species are not common in the wild and are unknown in cultivation.

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

Questions regarding whether specific activities, such as changes in land use, will constitute a violation of section 9 should be directed to the Utah Field Office (see **ADDRESSES** section). Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to: Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225-0486.

#### Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. In particular, comments are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;
- (2) The location of any additional population of these species and the

reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population of these species; and

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

Final promulgation of the regulation on these species will take into consideration the comments and any additional information we receive, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor, Utah Field Office (see **ADDRESSES** section).

#### National Environmental Policy Act

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

#### Paperwork Reduction Act

This rule does not contain any collections of information that require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018-0094. This rule does not alter that information collection requirement. For additional information concerning permits and associated requirements for endangered plant species, see 50 CFR 17.62 and 17.63.

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#### Author

The primary author of this proposed rule is John L. England, U.S. Fish and Wildlife Service, Utah Ecological Services Field Office, Salt Lake City, Utah (see **ADDRESSES** section).

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

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

#### Proposed Regulation Promulgation

For the reason given in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

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

**Authority:** 16 U.S.C. 1561–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.12(h) by adding the following, in alphabetical order

under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**  
\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
<i>Astragalus ampullarioides</i>	Shivwits milk-vetch	U.S.A. (UT) .....	Fabaceae .....	E	.....	NA	NA
<i>Astragalus holmgreniorum</i>	Holmgren milk-vetch	U.S.A. (AZ, UT) .....	Fabaceae .....	E	.....	NA	NA

Dated: March 29, 2000.  
**Jamie Rappaport Clark,**  
*Director, Fish and Wildlife Service.*  
[FR Doc. 00–9070 Filed 4–11–00; 8:45 am]  
BILLING CODE 4310–55–P

**DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**50 CFR Part 660**

[I.D. 112399D]  
**Fisheries Off West Coast States and in the Western Pacific; Petition for Rulemaking on the Prohibition of Shark Finning and Related Measures**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.  
**ACTION:** Notice of receipt of petition for rulemaking; request for comments.

**SUMMARY:** NMFS announces receipt of, and requests public comment on, a petition for rulemaking. The Western Pacific Fisheries Coalition (Petitioner), consisting of the Hawaii Fishermen’s Foundation and Hawaii Audubon Society, has petitioned the Secretary of Commerce (Secretary) to prohibit shark finning (i.e., removal of only the fins and returning the remainder of the shark to the sea), and implement measures to require full utilization of sharks harvested in fisheries conducted under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP).

**DATES:** Comments on the petition must be received by NMFS no later than May 12, 2000.

**ADDRESSES:** Written comments should be sent to, and copies of the petition are available from, Dr. Charles Karnella, Administrator, Pacific Islands Area Office, NMFS, 1601 Kapiolani Blvd., Rm 110, Honolulu, HI 96814. Please mark the outside of the envelope “Shark Petition.” Comments also may be sent via facsimile (fax) to 808-973-2941. Comments submitted via e-mail or Internet will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** Alvin Katekaru, 808-973-2935 ext. 207, fax 808-973-2941, e-mail *alvin.katekaru@noaa.gov*

**SUPPLEMENTARY INFORMATION:** The fishery affected by this petition for rulemaking is primarily the Hawaii-based longline fishery, which is managed according to the FMP developed by the Western Pacific Regional Fishery Management Council (Council). The Secretary has management authority, under the Magnuson-Stevens Fishery Conservation and Management Act, over the shark resources in the U.S. Exclusive Economic Zone of the western Pacific region.

The purpose of the petition is to facilitate maximum utilization of sharks harvested in the western Pacific, particularly in the Hawaii longline fishery. The Petitioner maintains that the continued unrestricted practice of shark finning in the fishery is wasteful and could lead to overexploitation of certain vulnerable shark species that are managed under the FMP. A prohibition on shark finning would be consistent with the United Nations Food and

Agriculture Organization’s International Plan of Action for the Conservation and Management of Sharks.

The Petitioner requests the Secretary to amend the FMP and to promulgate regulations for the western Pacific region that would govern the possession at-sea and landing of sharks, as well as implement restrictions on the sale/purchase of sharks, similar to those contained in the regulations implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (50 CFR 635.30(c); 64 FR 29090, May 28, 1999). Such regulations would be precautionary and would likely reduce the harvest of Pacific shark stocks, including the relatively abundant blue shark.

NMFS requests comments on the petition for rulemaking. NMFS recognizes that shark fin transshipments and importation of processed shark fins into the United States are closely related to the conservation and management issues raised in this petition. In addition to comments on the petition for rulemaking, NMFS requests public comment addressing the practice of shark finning as it relates to transshipments and importation of processed fins. NMFS will consider this information in determining whether to proceed with the development of regulations requested by the Petitioner.

**Authority:** 16 U.S.C. 1801 *et seq.*  
Dated: April 7, 2000.  
**Andrew A. Rosenberg,**  
*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*  
[FR Doc. 00–9071 Filed 4–7–00; 3:54 pm]  
BILLING CODE 3510–22–F