

malfunction which could cause a hazardous condition if permitted to continue.

§ 193.2437 [Amended]

57. Section 193.2437 would be amended by removing paragraphs (a)(3) and (a)(4), and by removing and reserving paragraph (b). In paragraph (a)(2) the semicolon would be removed and period added in its place.

58. Section 193.2439 would be amended by revising paragraph (a)(1) to read as follows:

§ 193.2439 Emergency shutdown control systems.

(a) * * *

(1) Temperatures of the component exceed the maximum and minimum design limits.

* * * * *

Subpart F—Operation

59. Section 193.2521 in Subpart F would be revised to read as follows:

§ 193.2521 Operating records.

(a) Each operator shall maintain a record of the results of each inspection, test, and investigation required by this subpart and ANSI/NFPA 59A (1996 edition). Such records must be kept for a period of not less than 5 years.

(b) Data collected from section 193.2209 must be maintained for not less than one year.

Subpart G—Maintenance

60. Section 193.2609 in Subpart G would be revised to read as follows:

§ 193.2609 Support systems.

Each support system or foundation of each component must be inspected annually, not to exceed 15 months, for any detrimental change that could impair support.

61. Section 193.2611 in Subpart G would be amended by redesignating existing paragraphs (a) and (b) as new paragraphs (b) and (c) respectively, and by adding a new paragraph (a) to read as follows:

§ 193.2611 Fire protection.

(a) Facility operators shall prepare and implement a maintenance program for all plant fire protection equipment.

* * * * *

62. Section 193.2619 in Subpart G would be amended by revising paragraph (c) introductory text to read as follows:

§ 193.2619 Control systems.

* * * * *

(c) Control systems in service, but not normally in operation (such as relief

valves and automatic shutdown devices), and internal shutoff valves must be inspected and tested once each calendar year, not exceeding 15 months, with the following exceptions:

* * * * *

63. Section 193.2639 in Subpart G would be amended by revising paragraph (a) to read as follows:

§ 193.2639 Maintenance records.

(a) Each operator shall keep a record at each LNG plant of the date and type of each maintenance activity performed on each component to meet the requirements of this part and ANSI/NFPA 59A, including periodic tests and inspections, for a period of not less than five years.

* * * * *

Subpart I—Fire Protection

64. Section 193.2801 would be revised to read as follows:

§ 193.2801 Scope.

This subpart and ANSI/NFPA 59A (1996 edition) prescribe requirements for fire prevention and fire control at LNG plants. However, the requirements do not apply to existing LNG plants that do not contain LNG.

§§ 193.2803 and 193.2805 [Removed and Reserved]

65. Sections 193.2803 and 2805 would be removed and reserved.

66. Section 193.2807 would be revised to read as follows:

§ 193.2807 Smoking.

In addition to the requirements related to smoking in ANSI/NFPA 59A (1996 edition), each operator shall display signs marked with the words "NO SMOKING" in prominent places in areas where smoking is prohibited.

§§ 193.2809, 193.2811 and 193.2815 [Removed and Reserved]

67. Sections 193.2809, 193.2811 and 193.2815 would be removed and reserved.

68. Section 193.2817 would be revised to read as follows:

§ 193.2817 Fire equipment.

Each operator shall provide and maintain fire control equipment and supplies in accordance with the applicable requirements of ANSI/NFPA 59A to protect or cool components that could fail due to heat exposure from fires. Protection or cooling must be provided for critical components as long as the heat exposure exists.

§ 193.2819 [Amended]

69. Section 193.2819 would be amended by removing paragraphs (a),

(c) and (f), and by redesignating existing paragraphs (b), (d) and (e) as paragraphs (a), (b), and (c), respectively.

70. Section 193.2821 would be revised to read as follows:

§ 193.2821 Fire detection.

In addition to the requirements in ANSI/NFPA 59A (1996 edition) each operator shall provide an audible alarm in the area of fire detection.

Issued in Washington, DC on December 16, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98-33757 Filed 12-21-98; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AF31

Endangered and Threatened Wildlife and Plants: Proposed Threatened Status for the Plant *Yermo xanthocephalus*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes to list the plant *Yermo xanthocephalus* (desert yellowhead) as a threatened species pursuant to the Endangered Species Act of 1973, as amended. *Yermo xanthocephalus* is a recently described Wyoming endemic known only from the south end of Cedar Rim on the summit of Beaver Rim in southern Fremont County, Wyoming. It is known from a single population occupying an area of less than two hectares (ha) (five acres (ac)) of suitable habitat. In 1998 this population contained an estimated 15,000 plants and existed entirely on Federal lands. Surface disturbances associated with oil and gas development, compaction by vehicles, trampling by livestock, and randomly occurring, catastrophic events threaten the existing population.

DATES: Comments from all interested parties must be received by February 22, 1999. Public hearing requests must be received by February 5, 1999.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Wyoming Field Office, U.S. Fish and Wildlife Service, 4000 Airport Parkway, Cheyenne, Wyoming 82001. Comments and materials received will be available for public inspection, by appointment,

during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mike Long, Field Supervisor, Wyoming Field Office (see **ADDRESSES** section), telephone (307) 772-2374, extension 34; facsimile (307) 772-2358.

SUPPLEMENTARY INFORMATION:

Background

Yermo xanthocephalus was discovered by Wyoming botanist Robert Dorn while conducting field work in the Beaver Rim area of central Wyoming in 1990. Dorn discovered a small population of an unusual species of Composite (Asteraceae). Dorn's closer examination revealed that the species was unknown to science and represented a new genus. Dorn (1991) named his discovery *Y. xanthocephalus*, or literally "desert yellowhead."

Y. xanthocephalus is a tap-rooted, glabrous (hairless) perennial herb with leafy stems to 30 centimeters (cm) (12 inches (in)) high. The leathery leaves are alternate, lance-shaped to oval, 4-25 cm (1.5-10 in) long and often folded along the midvein. Leaf edges are smooth or toothed. Flower heads are many (25-180) and crowded at the top of the stem. Each head contains four to six yellow disk flowers (ray flowers are absent) surrounded by five yellow, keeled involucre (whorled) bracts (small leaves beneath the flower). The pappus (the outer whorl of flowering parts) consists of many white bristles.

The species is restricted to shallow deflation hollows in outcrops of Miocene sandstones of the Split Rock Formation (Van Houten 1964). These wind-excavated hollows accumulate drifting snow and may be more mesic (moist) than surrounding areas. The vegetation of these sites is typically sparse, consisting primarily of low-cushion plants and scattered clumps of Indian ricegrass (*Stipa hymenoides*).

Dorn observed approximately 500 plants within 1 ha (2.5 ac) in 1990 on Federal surface managed by the Bureau of Land Management (BLM). Surveys conducted since 1990 by Richard Scott, Professor of Biology at Central Wyoming College in Riverton, have failed to locate additional populations on outcrops of the White River, Wagon Bed, and Wind River formations in the Beaver Rim area. The plant population has increased from 500 in 1990 to an estimated 15,000 plants in 1998, possibly in response to higher than normal precipitation (R. Scott, Central Wyoming College, pers. comm., 1998).

Previous Federal Action

In the plant notice of review published on September 30, 1993 (58 FR 51144), we designated *Y. xanthocephalus* a Category 2 species for potential listing under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). At that time, Category 2 species were those for which data in our possession indicated listing was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support a proposed rule. 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, and this species was upgraded to candidate status at that time. A candidate is a species for which we possess substantial information on biological vulnerability and threats to support preparation of a listing proposal.

Processing of this proposal is a Tier 2 activity under the current listing priority guidance (63 FR 25502, May 8, 1998). Tier 1 actions are emergency listings. Tier 2 actions include processing final decisions on proposed listings; resolving the conservation status of candidate species; processing administrative findings on petitions; and delisting or reclassifying actions.

On November 24, 1997, we received a petition from the Biodiversity Legal Foundation and Biodiversity Associates alleging that *Y. xanthocephalus* warranted emergency listing. On December 22, 1997, we notified the petitioners that emergency listing was not appropriate because BLM regulations provided some conservation measures for the species, and current exploratory oil and gas activities near the known occupied habitat of *Y. xanthocephalus* were being coordinated with our staff in the Wyoming Field Office. In addition, we notified the petitioners that petitions for candidate species are considered second petitions, because candidate species are species for which we have already decided that listing is warranted. Therefore, no 90-day finding was required for Biodiversity Legal Foundation's petition.

Summary of Factors Affecting the Species

Section 4 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 endangered or threatened due to one or more of the

five factors described in section 4(a)(1). These factors and their application to *Y. xanthocephalus* (desert yellowhead) are as follows:

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

The entire known range of *Y. xanthocephalus* consists of an area of less than two ha (five ac) in southern Fremont County, Wyoming. Surveys conducted since 1990 have failed to find additional populations, although there are a number of sites with similar soils, drainage and plant associations in the area. The plant is easily recognized during its summer flowering season, so it seems likely that surveys would have found additional populations if they exist. Therefore, the species is vulnerable to extinction from even small-scale habitat degradation due to its small population size and limited geographic range.

The known population is threatened by surface disturbances associated with recreation, oil and gas development, mineral extraction, trampling by livestock, and soil compaction by vehicles (Fertig 1995). Recreational off-road vehicle use presents a threat to *Y. xanthocephalus* through the crushing of plants and compaction or erosion of soil. This threat is greatest in the spring and summer when plants are in flower or heavy with fruit. No physical barriers prevent vehicle use in the immediate area of the *Y. xanthocephalus* population. The known population is several miles from Wyoming State Highway 135 and other maintained roads. In 1996, Highway 135 had an estimated daily traffic of 360 vehicles (Wyoming Department of Transportation 1996). A two-track, four-wheel drive trail leading to an abandoned oil well bisects the population, and is open to hunters or other recreationists using four-wheel drive trucks and other smaller all-terrain vehicles (ATVs). The most common activities that attract users to the area are hunting, rock collecting and searching for human artifacts (such as arrowheads). The population is a few miles north of the Sweetwater Crossing on the Oregon-California Trail, which is a popular tourist attraction. There has been no significant surface disturbance caused by vehicles during the past four years that the site has been under study (R. Scott, pers. comm., 1998). The BLM Resource Management Plan limits vehicle use to existing roads (including established two-tracks), but the potential for habitat and plant destruction by ATV's remains a threat.

Oil and gas development also threaten the known population. In 1997, BLM leased for oil and gas development a 1,160 ac tract (designated WYW140702) that encompasses the *Y. xanthocephalus* population. An adjacent lease (WYW138846) consisting of 2,080 ac was purchased by the same operator in May 1996. Both leases are for a 10-year period, and no specific lease stipulations were included to protect the plant. Construction of well pads, access roads, and pipelines through occupied habitat would result in direct destruction or crushing of plants and soil compaction and erosion. The 1920 Mineral Leasing Act promotes maximum recovery of Federal mineral resources. However, the 1987 Amendments to the Mineral Leasing Act (30 U.S.C. 226(g)) require lessees to have an approved operating plan that protects surface resources prior to submitting Applications for Permission to Drill. The BLM regulations provide that species that are candidates for listing under the Endangered Species Act be afforded protection.

The current lessee is aware that the plant exists in the area, and has been very cooperative with BLM staff. The current drilling plan proposes exploration in locations that should not pose a threat to *Y. xanthocephalus*, but the current operator is free to sell its leases to other companies that could revise the drilling plan. An existing two-track road leading to an abandoned oil well currently bisects the only population of *Y. xanthocephalus*. Redrilling of abandoned wells in search of producing formations that may have been previously overlooked is a common technique used during oil and gas exploration. Permits to drill can be conditioned by BLM to provide some protection to the plant. However, a greater level of protection would be afforded by stipulations contained directly in the leases, and such stipulations to protect the plant cannot be added to the leases until renewal in 2007.

Although the current oil and gas exploratory wells pose no threat to *Y. xanthocephalus*, the discovery of an oil and/or gas pool on the lease areas would precipitate field developments that would introduce new threats to the plant and its habitat. In-field development could involve up to eight wells per section, depending on the characteristics of the producing formations. This intensified drilling activity would result in a new network of additional roads and well pads, and more human intrusion into what is now a remote area.

Seismic explorations for oil and gas producing formations also present a threat to *Y. xanthocephalus* and its habitat through use of explosives, direct trampling, and soil compaction. However, these activities were carried out in the lease area during the early 1990s, so a permit application for further exploration is not likely. In addition, seismic explorations on BLM surface now require environmental analysis prior to permitting, and BLM will protect occupied *Y. xanthocephalus* habitat from damage if a request for further exploration is received (J. Kelly, BLM, pers. comm., 1998).

The known *Y. xanthocephalus* population is located in BLM's Lander Resource Area, which is rich in locatable mineral resources, such as gold, copper, and uranium. Private parties can stake a mining claim and extract locatable minerals in accordance with the 1872 General Mining Law, and such activity could jeopardize the known population of *Y. xanthocephalus*. Zeolites, a locatable mineral with properties useful in water softening, manufacturing of catalysts, and pollution control, are found in the Beaver Rim area. The mineral also may have marketability for use in processes to remove radioactive products from radioactive wastes (Bureau of Land Management 1986). The BLM's authority to regulate mineral claims under the 1872 General Mining Law is limited, although mining activities in areas with five or more acres of surface disturbance of unpatented BLM land are required to have an approved operating plan under 43 CFR 3809. Although the staking of locatable mineral claims on or near the plant's habitat is not likely, official withdrawal of the area from locatable mineral claims would remove this threat.

Livestock grazing may also present a threat to *Y. xanthocephalus* habitat, which is within an existing grazing allotment. Livestock trampling of plants does occur, primarily because the *Y. xanthocephalus* area is a travel corridor between pastures (Fertig 1995). There are no existing barriers to prevent livestock access to the habitat. Fencing of the area would protect the plants from this threat, but also would probably result in a change in the associated plant community in the habitat. This change could result in unanticipated adverse impacts to the survival of *Y. xanthocephalus*.

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

Y. xanthocephalus is vulnerable to over-collecting conducted for scientific or educational purposes because of its small extant population size and habitat. The leaves of *Y. xanthocephalus* contain a chemical that produces a mild numbing sensation in the human mouth when even tiny portions are tasted (R. Scott, pers. comm., 1998). This could indicate potential medicinal qualities that could prove attractive to pharmaceutical companies, but the potential for this to be a threat to the existing population is currently unknown.

C. Disease or Predation

Cattle graze in the immediate vicinity of occupied *Y. xanthocephalus* habitat, but observation on the site indicate that the plant is not palatable to grazers. Tracks reveal that domestic and wild animals grazing the area spit out *Y. xanthocephalus* leaves and flowers after tasting (R. Scott, pers. comm., 1998). Predation of *Y. xanthocephalus* fruit by insects does occur, but it is unknown whether or not the extent of current predation differs from historical levels. Thus, the degree of threat that this factor poses to the species is unknown.

D. The Inadequacy of Existing Regulatory Mechanisms

The State of Wyoming has no endangered species act or other laws to provide protection to plant species. The current BLM Lander Resource Management Plan (RMP), which covers the known population of *Y. xanthocephalus*, was approved in 1987, three years prior to the species' discovery. Therefore, the plan does not specifically mention the species. The RMP protects special status plant species in general across the entire Resource Area, and provides no-surface-occupancy restrictions for threatened and endangered species impacted by oil and gas development. As *Y. xanthocephalus* is not currently listed, and no specific stipulations were included with the current oil and gas leases, attempts by BLM to restrict activities by imposing conditions during the application to drill stage are appealable by the operator.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Species with small population size and restricted distribution are vulnerable to extinction by natural processes and human disturbance (Levin et al. 1996). Random events causing population fluctuations or

population extirpations become a serious concern when the number of individuals or the geographic distribution of the species is very limited. A single human-caused or natural environmental disturbance could destroy the entire population of *Y. xanthocephalus*.

This species occupies an area of less than five acres, and while the total number of plants known to exist has increased from 500 when it was discovered in 1990 to an estimated 15,000 in 1998, this increase may be due to higher than normal precipitation during recent years. The establishment of this species is episodic and dependent on suitable spring and summer moisture conditions (Fertig 1995). Seed set in 1990 was characterized as "almost nil" due to destruction of achenes (fruits) by insects and drought (Dorn 1991). A series of drought years could result in a severe reduction in population size and eventual extinction.

The species was described by Fertig (1995) as a "classic 'K' selected species characterized by a long-lived perennial growth form, adaptation to severe habitats, and low annual reproductive output." This low reproductive output makes the species increasingly vulnerable to extinction due to chance events as population size declines, because it is unlikely that the species will exhibit a high rate of population growth, even if environmental conditions improved after such an event.

In addition to the above factors, threats to *Y. xanthocephalus* are increased when people use the occupied area for recreational purposes. For example, erosion or trampling of plants is possible due to hikers or off-road vehicle use. The species occurs on relatively barren sites with less than 25 percent total vegetative cover, and may be intolerant of competition (Fertig 1995). Competition from plants not native to the area would pose a greater threat than competition from species with which *Y. xanthocephalus* has evolved. Non-native plants that might outcompete *Y. xanthocephalus* could be introduced to the area if their seeds are carried in on the footwear or clothing of recreationists.

An additional threat that affects *Y. xanthocephalus* is that posed by its small population size. Populations of plants that remain very small for several generations or that have gone through a past episode of rapid population decline may lose much of their previous genetic variability (Godt et al. 1996). When a population's genetic variability falls to low levels, its long term persistence may

be jeopardized because its ability to respond to changing environmental conditions is reduced. In addition, the potential for inbreeding depression increases, which means that fertility rates and survival rates of offspring may decrease. Although environmental and demographic factors usually supersede genetic factors in threatening species viability, inbreeding depression and the low genetic diversity may enhance the probability of extinction of rare plant species (Levin et al. 1996).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to *Y. xanthocephalus* in determining to issue this proposed rule. Federal listing under authority of the Act is the best mechanism currently available to ensure protection to *Y. xanthocephalus* on public lands throughout its limited range. Although the population has increased in recent years, the future existence of the species is still threatened by potential oil and gas in-field development and by its extremely limited habitat and population size. Therefore, based on this evaluation, the preferred action is to list *Y. xanthocephalus* as a threatened species, which would provide BLM with a strong legal obligation to ensure adequate protective measures in the operating plans for the existing oil and gas leases. While not in immediate danger of extinction, *Y. xanthocephalus* is likely to become an endangered species in the foreseeable future if the threats to the habitat are realized and if present threats posed by small population size and limited geographic range continue to exist. We have determined that threatened status would provide adequate protection from the described threats. As the species occurs only on Federal surface, a classification as endangered, if warranted, would provide no additional level of protection.

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 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, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. We find that designation of critical habitat is not prudent because it would provide no additional benefit to the species beyond that conferred by listing it as threatened and because it may increase the danger of collection to the species. The reasons for this conclusion, including the factors considered in weighing the benefits against the risks of designation, are provided below.

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by the a Federal agency (see Available Conservation Measures section). As such, designation of critical habitat may affect activities on Federal lands and may affect activities on non-Federal lands where such a Federal nexus exists. Under section 7 of the Act, Federal agencies are required to ensure that their actions do not jeopardize the continued existence of a species or result in destruction or adverse modification of critical habitat. However, both jeopardizing the continued existence of a species and adverse modification of critical habitat have similar standards and thus similar thresholds for violation of section 7 of the Act. In fact, biological opinions that conclude that a Federal agency action is likely to adversely modify critical habitat but not jeopardize the species for which the critical habitat has been designated are extremely rare. Given the extremely limited range of *Y. xanthocephalus*, it is likely that any case of adverse modification of its habitat would also constitute jeopardy for the taxon.

The designation of critical habitat for the purpose of informing Federal agencies of the location of occupied *Y. xanthocephalus* habitat is not necessary because the BLM currently permits the surveys and monitoring of the only extant population. However, vandalism and unauthorized collection of *Y.*

xanthocephalus could be a significant threat to the species' survival and recovery, because of the plant's rarity and the fact that it is a monotypic genus. Critical habitat designation would require publication of the legal description of the five ac habitat site in the **Federal Register**, providing information to encourage collectors. The species has generated little interest in the botanical community, so collecting of specimens is currently not a threat. However, the plant may have some medicinal qualities that could elicit the interest of collectors in the future. Therefore, publication of its exact location could result in adverse effects to the species in the future.

The Service acknowledges that critical habitat designation, in some situations, may provide some value to the species by identifying areas important for species conservation and calling attention to those areas in special need of protection. Critical habitat designation of unoccupied habitat may also benefit these species by alerting permitting agencies to potential sites for reintroduction and allowing them the opportunity to evaluate proposals that may affect those areas. However, in this case, the one site where this species exists is well known by the BLM, and it is not known to have previously existed on any other sites. If future management actions include unoccupied habitat, any benefit provided by designation of such habitat as critical would be conferred more effectively and efficiently through the current coordination process.

Taking of listed plants is regulated under section 9 of the Act only in cases of (1) removal and reduction to possession of federally listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging-up, or damaging or destroying in knowing violation of any State law or regulation, including State criminal trespass law. Designation of critical habitat provides no additional benefits or protection from potential take beyond those that this species would receive by virtue of its listing as threatened and likely would increase the degree of threat from collection, vandalism, or other human activities. Protection of *Y. xanthocephalus* will be most effectively addressed through the recovery process under section 4 and the consultation process under section 7 of the Act, and the current interagency coordination processes.

Given all of the above considerations, we find that the designation of critical habitat for *Y. xanthocephalus* is not prudent because the minimal benefits of

such designation would be far outweighed by the increase of threats from over collection or other human activities. Critical habitat designation would provide no additional benefit to the species beyond that conferred under sections 7 and 9 of the Act by listing.

Available Conservation Measures

Conservation measures provided to a species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, local and private agencies, groups and individuals. The Act provides for possible land acquisition, 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 impacting 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 proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is 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 such species or to 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.

Thus, the Act will require BLM to evaluate potential impacts to *Y. xanthocephalus* that may result from activities it authorizes or permits, such as oil and gas development, grazing, and recreational use. The BLM's regulations require protection of candidate species on lands managed by the agency. However, no special land management designations or conservation agreements currently exist to provide special protections for *Y. xanthocephalus*. Section 43 U.S.C. 1712(c)(3) allows BLM to protect tracts as Areas of Critical Environmental Concern (ACEC) to

protect surface resources, including candidate, proposed, or listed species. The habitat for this plant could be considered for ACEC designation. The BLM has expressed interest in entering into a Candidate Conservation Agreement with us. The BLM has provided us with a draft of such a potential Agreement which outlines management, inventory, and monitoring actions to be taken to ensure the conservation of this species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, 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 plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plants under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. It is anticipated that few trade permits would ever be sought or issued because the species is not in cultivation or common in the wild. Requests for copies of the regulations regarding listed species and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver,

Colorado 80225 (telephone (303) 236-7400, Facsimile (303) 236-0027).

We adopted a policy on July 1, 1994, (59 FR 34272) to identify to the maximum extent practicable at the time a species is proposed for listing those activities that would or would not 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 a species' range. We believe that based upon the best available information, the actions listed below would not result in a violation of section 9 provided these activities are carried out in accordance with existing regulation and permit requirements:

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

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

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

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

(2) The unauthorized incidental destruction of *Y. xanthocephalus* habitat on Federal surface land (e.g., conversion of habitat to cropland, road construction, water development, range management, mineral development, and off-highway vehicle use);

(3) Unauthorized application of herbicides in violation of label restrictions;

(4) Unauthorized land use activities that would significantly modify the species' habitat;

(5) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhance of propagation or survival of the species.

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

Public Comments Solicited

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

Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Y. xanthocephalus*;

(2) The location of any additional sites that contain *Y. xanthocephalus*;

(3) Additional information concerning *Y. xanthocephalus* distribution, population size and/or population trend;

(4) Information regarding current or planned land uses, and their possible beneficial or negative impact to *Y. xanthocephalus* or its habitat (e.g., agricultural conversion, oil and gas development, land exchanges, range management, habitat conservation plans, conservation easements);

(5) Biological or physical elements that best describe *Y. xanthocephalus* habitat that could be important for the conservation of the species;

(6) Alternative land use practices that will reduce or eliminate the take of *Y. xanthocephalus*;

(7) Other management strategies that will conserve the species throughout its range.

Final promulgation of the regulations on this species will take into consideration the comments and any additional information received by the Service, 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 addressed to the Wyoming Field Office (see ADDRESSES section).

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paraphrasing, etc.) aid or reduce its

clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

Required Determinations

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

This rule does not contain any new collections of information, other than those associated with permits, already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018-0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

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Van Houten, F.B. 1964. Tertiary Geology of the Beaver Rim Area Fremont and Natrona counties, Wyoming: Geological Survey Bulletin 1164. United States Government Printing Office, Washington, D.C.

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List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

Accordingly, the Service proposes to amend 50 CFR Part 17, as set forth below:

PART 17—[AMENDED]

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

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

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

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*		*
ASTERACEAE—COMPOSITE FAMILY						
*	*	*	*	*		*
<i>Yermo xanthocephalus</i>	Desert yellowhead	U.S.A. (WY)	T	NA	NA	
*	*	*	*	*		*

Dated: December 7, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

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