

Dated: September 29, 1998.

**Jamie Rappaport Clark,**

Director, Fish and Wildlife Service.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AB75

#### Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule to List the Plants *Astragalus lentiginosus* var. *micans* (shining milk-vetch) and *Astragalus lentiginosus* var. *sesquimetalis* (Sodaville milk-vetch) as Threatened

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

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) withdraws the proposed rule to list *Astragalus lentiginosus* var. *micans* (shining milk-vetch) and *Astragalus lentiginosus* var. *sesquimetalis* (Sodaville milk-vetch) as threatened, pursuant to the Endangered Species Act of 1973, as amended (Act). These plants are two of seven desert *Astragalus* taxa from California and Nevada that were included in a proposed rule published on May 8, 1992 (57 FR 19844). Since the proposed rule was published, management of the lands which support one population of *A. lentiginosus* var. *sesquimetalis* and both locations where *A. lentiginosus* var. *micans* occurs, have been transferred to wilderness under management of the National Park Service at Death Valley National Park. Based on evaluation of this information and public comments, and reevaluation of existing data, the Service has determined that evidence of sufficient threat warranting the listing of *Astragalus lentiginosus* var. *micans* and *Astragalus lentiginosus* var. *sesquimetalis* is not present at this time. The Service will continue to monitor the status of these species and may reevaluate the need for their listing at any time in the future on the basis of new information and/or actual or potential habitat alteration detrimental to the plants' continued existence.

**ADDRESSES:** The complete files for these actions are available for inspection, by appointment, during normal business hours. For *Astragalus lentiginosus* var. *sesquimetalis* contact the Nevada State Office, U.S. Fish and Wildlife Service, 1340 Financial Blvd., Suite 234, Reno,

NV 89502. For *A. lentiginosus* var. *micans* contact the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

**FOR FURTHER INFORMATION CONTACT:** Nevada State Office Supervisor, at the above address; telephone 702-861-6300 (for *Astragalus lentiginosus* var. *sesquimetalis*) or Ventura Field Supervisor, above address; telephone 805-644-1766 (for *Astragalus lentiginosus* var. *micans*).

#### SUPPLEMENTARY INFORMATION:

##### Background

On May 8, 1992, the Service published a proposal in the **Federal Register** (57 FR 19844) to list as endangered or threatened seven desert plant taxa in the genus *Astragalus* which occur in California and Nevada. The proposed listing was followed by a 60-day comment period that closed on July 7, 1992. A final determination on the proposal was delayed by other listing priorities, a limited budget, and the Federal moratorium on final listing actions. After the proposed rule was published, changes in the management of desert lands occurred and new conservation activities were initiated in some of the areas where these taxa occur. Due to these changes and the amount of time that had elapsed since the original publication, the Service reopened a 45-day comment period for the proposed listing on September 3, 1996 (61 FR 46430).

The Service has considered all available information and withdraws its proposal to list these two taxa. The proposal for *Astragalus lentiginosus* var. *micans* is withdrawn because the Service lacks sufficient evidence to indicate that vehicle trespass, visitor use, and the presence of Russian thistle (*Salsola* sp.), an invasive, nonnative plant, currently subject this taxon to significant threat. The proposal for *A. lentiginosus* var. *sesquimetalis* is withdrawn because the Service lacks sufficient evidence to indicate that livestock and vehicle trespass, or development of its habitat are currently threatening this taxon.

*Astragalus lentiginosus* var. *micans* (shining milk-vetch) was described by Rupert Barneby (1956) based on two specimens (co-types) collected on the lower slopes of sand dunes at the southeast end of Eureka Valley, Inyo County, California in 1955. A flowering collection was made by Philip Munz and John Roos in April 1955 and a fruiting specimen was collected by Roos in May 1955. The plant is an erect white-silky perennial with a hardened

base. The leaves range from 4.5 to 9.5 centimeters (cm) (1.8 to 3.7 inches (in.)) in length and consist of 11 to 17 leaflets. The flowers are cream to pale yellow with lavender or indigo distally, and are arranged in loose, 20-to 35-flowered racemes. The pods are stiffly papery, inflated, and often angled upward to a distinct beak (Barneby 1964).

*Astragalus lentiginosus* var. *micans* is restricted to sands of the lower slopes and base of dunes at two sites located about 6 kilometers (km) (4 miles (mi)) apart in the Eureka Valley. These two sites, the Eureka Dunes and the Saline Spur Dunes, represent the entire known historic and the current range of this taxon (Barneby 1956; Spellenberg 1993; Bruce Pavlik, Mills College, *in litt.* 1983 and 1996). Potential populations from Big Dune, Nevada, erroneously noted in the proposed rule as possibly being *A. lentiginosus* var. *micans* (57 FR 19845), had, in fact, already been identified from past collections as *A. lentiginosus* var. *variabilis* (Pavlik, *in litt.* 1980, 1996; R. Barneby, New York Botanical Garden, *in litt.* 1981).

Of the two sites in the Eureka Valley where this plant occurs, the Eureka Dunes, approximately 5 km (3 mi) long and up to 2.4 km (1.5 mi) in width, appears to support the most substantial population of *Astragalus lentiginosus* var. *micans*. As mapped (Bagley 1986), the distribution of this taxon on the Saline Spur Dunes, to the east, is more restricted. In the 1960s and 1970s, increasing off-highway vehicle (OHV) use on the Eureka Dunes destroyed vegetation over the northern end of the lower dunes and flats, an area that supports *A. lentiginosus* var. *micans* (Bureau of Land Management (BLM) 1976, Service 1982). Two other taxa endemic to dunes of the Eureka Valley, *Oenothera californica* ssp. *eurekensis* (Eureka Valley evening primrose, formerly *O. avita* ssp. *eurekensis*) and *Swallenia alexandre* (Eureka Valley dune grass), co-occur with *A. lentiginosus* var. *micans* and were federally listed as endangered in 1978 (43 FR 17910) as a result of this activity. The BLM closed the dunes to OHV use in 1976, although active enforcement of the closure wasn't effective until 1980. Since that time, botanists have noted that *A. lentiginosus* var. *micans* appears to be recolonizing the formerly disturbed areas (Pavlik 1979; Service 1982; Mark Skinner, California Native Plant Society (CNPS), *in litt.* 1995), although censuses before and after the closure are not available. The dunes were managed by the BLM until 1994, when passage of the California Desert Protection Act (CDPA) of 1994 transferred the area to the National Park

Service (NPS) at Death Valley National Park. Both sites are now included in wilderness areas within the park.

The primary threats to *Astragalus lentiginosus* var. *micans* identified in the proposed rule were illegal off-road vehicle activity at the Eureka Dunes and competition with Russian thistle. These issues are discussed within this document under factors A, D, and E of the "Summary of Factors Affecting the Species" section of this rule.

*Astragalus lentiginosus* var. *sesquimetalis* (Sodaville milk-vetch) was first collected by W.H. Shockley in 1882 near Sodaville, Mineral County, Nevada, and described by Per Axel Rydberg as *Cystium sesquimetro* (Rydberg 1929). The segregate genus *Cystium*, however, is not recognized by other botanists, and in 1945, Barneby reclassified the plant as *Astragalus lentiginosus* var. *sesquimetalis*. The plant is a prostrate perennial with straw-colored stems up to 80 cm (31 in.) long and covered with silky hairs. The leaflets are 6 to 18 millimeters (mm) (0.2 to 0.7 in.) long. The light purple flowers have white silky calyces 7 to 8 mm (0.3 in.) long, arranged on 6-to 12-flowered racemes. The pod is moderately inflated, 1.6 to 2.6 cm (0.6 to 1.0 in.) long, with an upwardly curved beak.

*Astragalus lentiginosus* var. *sesquimetalis* occurs on powdery clay saline soils adjacent to springs. The taxon is known globally from three sites that are arrayed along a north-south line through a low topographic corridor of the western Great Basin, known as the Lahontan Trough. Those sites are Big Sand Spring, Death Valley National Park, Inyo County, California; Cold Springs, Nye County, Nevada; and Sodaville, Mineral County, Nevada (Morefield 1993).

The Big Sand Spring site of *Astragalus lentiginosus* var. *sesquimetalis*, like the Eureka Dunes and Saline Sand Spur localities of *A. lentiginosus* var. *micans*, was under BLM management until 1994. Passage of the CDPA transferred the site to NPS management by inclusion within a wilderness area of Death Valley National Park. The site was maintained within a cattle grazing allotment and a wild burro Herd Management Area by BLM, and it currently retains those designations under NPS management. Although a fenced enclosure was constructed around the Big Sand Spring site and adjacent spring habitat in 1986 as an effort to protect *A. lentiginosus* var. *sesquimetalis*, cattle and burros continued to access the site on occasion by breaking through the fence or by climbing over the fence from the dredge spoils just outside of the enclosure

(California Department of Fish and Game (CDFG) *in litt.* 1988). In the fall of 1996, NPS tore down and replaced sections of the old fence (NPS, *in litt.* 1996). Population surveys at this location has not been completed annually or systematically and population size probably varies according to precipitation, as well as other environmental factors. Several hundred to a thousand individuals have been recorded at this site in the last decade (Constance Rutherford, BLM, *in litt.* 1989, James Morefield, Nevada Natural Heritage Program (NNHP), *in litt.* 1991).

The privately owned and maintained sites of *Astragalus lentiginosus* var. *sesquimetalis* at Cold Springs (10 hectares (ha) (25 acres (ac)) in Nye County) and Sodaville (10 ha (25 ac) in Mineral County), Nevada are adjacent to BLM grazing allotments. Although the sites are subject to cattle and burro trespass, the Service has no evidence of grazing or trampling damage on either site from cattle and burros (Morefield 1993). Because both sites are adjacent to highways, potential damage to the plants and their habitat by vehicular trespass, commercial development, and/or associated roadside activities has been suggested (Morefield 1993, 57 FR 19844). To date, however, no permit requests for development of either property site or the waters thereon have been filed with state or county permitting authorities, and no evidence of vehicular trespass has been recorded since 1978 (Morefield 1993). The Sodaville property is also the site of a refugia population of Railroad Valley Springfish (*Chrenichthys nevadae*), a federally threatened species that occupies adjacent springs (Mike Sevon, Nevada Division of Wildlife (NDOW), *in litt.* 1996). At the time of the last census of these sites in 1992, about 600 to 750 plants were known to exist at the Sodaville site (Morefield 1993) and about 500 plants at the Cold Springs site (Morefield 1993). No population trend data are available for these populations and their current population status is unknown. Threats to *A. lentiginosus* var. *sesquimetalis* identified in the proposed rule are discussed further under factors A and E of the "Summary of Factors Affecting the Species" section of this notice.

#### Public Comments on the Proposed Rule

During the two comment periods in 1992 and 1996, all interested parties were requested to submit factual reports or information to be considered in making a final listing determination. Appropriate Federal and State agencies, the Mexican government, local

governments, scientific organizations, and other interested parties were notified and their comments solicited regarding the 1992 proposed rule and on any changes in management or threats that may have occurred since that time. Legal notices inviting general public comment were published in the appropriate California and Nevada local newspapers.

Comments specifically relevant to *Astragalus lentiginosus* var. *micans* or *A. lentiginosus* var. *sesquimetalis* are incorporated into this withdrawal notice where appropriate. The Service has not prepared a discussion or response to several additional comments that were received in support of withdrawal of *A. lentiginosus* var. *sesquimetalis* because these comments did not provide any additional relevant information concerning the species' biology, population size, numbers or distribution; threats or lack thereof; or conservation agreements or other protection instruments and their possible impacts to the species.

Of the parties specifically addressing *A. lentiginosus* var. *micans*, two expressed concern that NPS does not have adequate funds or staff to protect the Eureka Dunes from vehicle trespass, three expressed concern about the occurrence of Russian thistle at the base of the Dunes, one suggested that Indian rice grass (*Oryzopsis hymenoides*) might threaten *A. lentiginosus* var. *micans* in the future, and one requested that the final determination on this listing action be delayed until completion of the Northern and Eastern Mojave Ecosystem Management Plan (NEMO). The issues of vehicle trespass and the occurrence of Russian thistle are discussed under factors A, D, and E of the "Summary of Factors Affecting the Species" section of this notice. In regard to Indian rice grass, the Service is not aware of any information to suggest that this native species is currently a threat to this taxon. In response to the suggestion to delay the final determination of this listing action, the Service cannot delay action on a proposed rule, except in circumstances where there is substantial disagreement among knowledgeable scientists regarding the sufficiency or accuracy of data relevant to the determination (50 CFR 424.17).

Several comments received during the 1992 comment period questioned the varietal distinctiveness of *Astragalus lentiginosus* var. *micans*. In preparing this withdrawal notice, the Service has determined that the most recent taxonomic treatment of the genus (Spellenburg 1993) and information received from an expert on the species during the 1996 comment period

(Pavlik, *in litt.* 1996) treat the taxon as distinct at the varietal level.

**Issue 1:** Five commenters raised issues specifically relating to *Astragalus lentiginosus* var. *sesquimetalis*. The comment concerning a delayed determination of the proposed listing of this taxon was addressed in the above paragraph regarding *A. lentiginosus* var. *micans*. This commenter also expressed concern that competition from wild licorice (*Glycyrrhiza lepidota*) was an additional potential threat to the Death Valley population.

**Service Response:** The Service is not aware of any information suggesting that wild licorice poses a threat to *A. lentiginosus* var. *sesquimetalis*.

**Issue 2:** One comment expressed concern about livestock and burro trespass and the feasibility of burro-proof fencing at the Death Valley site.

**Service Response:** Livestock and burro trespass is addressed in factors A, B, and C of the "Summary of Factors Affecting the Species" section of this notice.

**Issue 3:** One comment challenged the appropriateness of listing plant varieties under the Act.

**Service Response:** Section 3(16) of the Act states that "(t)he term 'species' includes any subspecies of fish or wildlife or plants \* \* \* which interbreeds when mature." The Service discussed in a **Federal Register** notice published on April 16, 1978 (43 FR 17912) the common use of the terms "species" and "varieties" by botanists and concluded that plants named as "varieties" are essentially subspecies and, therefore, "species" as defined in the Act.

**Issue 4:** One commenter stated that *Astragalus lentiginosus* var. *sesquimetalis* is a poisonous, narcotic plant that, as such, should not be protected by the Federal government. This commenter also expressed concern over Federal protection of a species that the State of Nevada referred to as "locoweeds" and had gone so far as to ban its commerce under a Nevada Revised Statute (NRS).

**Service Response:** In response to the latter concern, no *Astragalus* fit the characteristics of noxious species as classified by the State of Nevada, and therefore, none are listed as noxious weeds under the NRS (NRS 555) (John O'Brien, Nevada Division of Agriculture, *in litt.* 1996). Because many plants are commonly called "locoweeds," plant identities are often confused when common names are used in literature, and the commenter may have confused *Astragalus* with other locoweeds. *Astragalus lentiginosus* var. *sesquimetalis* does contain compounds

that may cause toxic and/or narcotic reactions when eaten by animals, as do most *Astragalus* species and many other species of plants, including some that are common in human diets (e.g., the potato *Solanum tuberosum*) (Kingsbury 1964). That characteristic alone does not affect a listing decision under the Act.

**Issue 5:** A "joking reference" to vandalizing *A. lentiginosus* var. *sesquimetalis* on the private property where it exists was made at a local public meeting in Nye County, NV (*Pahrump Valley Times*, October 4, 1996).

**Service Response:** Because this comment was not made by the private property owner, nor was there any evidence that this threat was supported by the property owner, vandalism is not currently considered by the Service to be a threat to *A. lentiginosus* var. *sesquimetalis*, particularly since this species is being withdrawn from consideration for listing.

#### Summary of Factors Affecting the Species

The Act and implementing regulations found a 50 CFR 424.17(3) provide the basis for determining a species to be endangered or threatened and for withdrawing a proposed rule when it has not been found to be supported by available information. The five factors described in section 4(a)(1) of the Act, as they apply to the withdrawal of the proposed listing of *Astragalus lentiginosus* Dougl. var. *micans* Barneby (shining milk-vetch) and *Astragalus lentiginosus* Dougl. var. *sesquimetalis* (Rydb.) Barneby (Sodaville milk-vetch), are as follows:

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

Off highway vehicle use has been the primary threat to *Astragalus lentiginosus* var. *micans*. Beginning in the 1960s, the Eureka Dunes became a popular location to ride OHVs, including dune buggies (Service 1982). On Easter weekend in 1976, for example, almost 50 vehicles were reported at the Eureka Dunes (BLM 1976). The height of vehicle damage to the endemic plants of the Eureka Dunes probably occurred by the mid to late 1970s (Service 1982). Two other plant taxa endemic to the Eureka Valley were listed as endangered in 1978 (43 FR 17910) as a result of OHV activity.

Due, in part, to public concern over the declining condition of the dune's endemic flora, BLM officially closed the Eureka Dunes to OHV use in 1976. However, it was not until 1980 that BLM rangers and other personnel

effectively enforced the closure (Service 1982). In the 1980s and early 1990s, BLM continued to maintain the closure and installed pipe barriers, wooden barriers, and signs around the northwest and central parking areas to block vehicle access to the dunes and to direct visitor use. During the past decade, the patrols and barriers have effectively prevented most vehicle trespass outside the confines of the parking area, although occasional trespass has still occurred (BLM, *in litt.* 1992; Glenn Harris, BLM, pers. comm. 1996). During transfer of the management of the Eureka Valley to NPS, the wooden barriers in the northwest parking area were stolen (G. Harris, pers. comm. 1996) and a few individual plants of *Astragalus lentiginosus* var. *micans* recolonizing the parking area were run over by vehicles (Renee Beymer, NPS, *in litt.* 1996; Diane Steeck, Service, pers. obs. 1996). In the fall of 1996, NPS installed temporary t-post barriers in the parking area, which they replaced with NPS wilderness markers a few months later. The Park is in the process of placing more permanent barriers and reducing the size of the parking area to allow the milk-vetch to recolonize an area at the dune base previously denuded by vehicles. The NPS reports that ranger patrols of the area occur at about the same level as before the Eureka Valley was transferred to its management (NPS, *in litt.* 1996).

The Service concludes that the BLM's earlier efforts to reduce vehicle trespass at the north end of the Eureka Dunes, combined with the current reduction in the size of the northwest parking area to allow *Astragalus lentiginosus* var. *micans* to continue recolonizing the sandy flats, and the continuation of enforcement patrols by NPS have reduced vehicle trespass into the population to the extent that vehicle trespass does not currently constitute a significant threat to the survival of this taxon. The Service is working with NPS to identify and implement additional conservation activities to manage visitor numbers and use patterns into the future.

The second location where *Astragalus lentiginosus* var. *micans* occurs, the Saline Spur Dunes, is also located within wilderness under NPS management. This location is fairly isolated, lacks road access, and receives little human visitation, consequently the Service believes threats to this location are minimal.

The alkaline spring-associated habitat of *Astragalus lentiginosus* var. *sesquimetalis* is vulnerable to surface developments, water diversions, vehicular traffic, and trampling by

domestic and wild herbivores. The Cold Spring and Sodaville populations of this taxon occur entirely on private land. Any development activities that result in surface disturbances or decreased spring flows could threaten these populations. While the owner of the Sodaville property has expressed future intent to develop a portion of the 64 ha (160 ac) surrounding the springs, his intention is not to disturb or threaten *A. lentiginosus* var. *sesquimetalis* or its habitat (Durk Pearson, HRH Resources, pers. comm. 1996). To date, neither property owner has filed for any of the State or county permits necessary for development of property or the waters thereon. The Service has no evidence of activity that would represent a substantial threat to *A. lentiginosus* var. *sesquimetalis* on private property at this time.

The Big Sand Spring site recently has passed from BLM authority to that of NPS by inclusion in Death Valley National Park through the CDPA of 1994. While under BLM authority, this site was managed as both an Area of Critical Environmental Concern and a Wild Horse and Burro Herd Management Area. As such, it was vulnerable to trampling by feral burros and livestock due to breaks in enclosure fencing and other means of access. As part of NPS's current management activities to mitigate or eliminate potential threats to this taxon (NPS, *in litt.* 1996), new fencing has been constructed around Big Sand Spring. The NPS has identified and implemented further conservation activities, such as monitoring and increased patrol efforts.

The Service concludes that development does not pose a threat to this taxon, and impacts from livestock have currently been reduced to the extent that they no longer pose a threat to this taxon.

#### *B. Over Utilization for Commercial, Recreational, Scientific, or Educational Purposes*

There are no known commercial values or purposes for these species.

#### *C. Disease or Predation*

Disease is not known to be a factor for these taxa. As discussed under Factor A of the "Summary of Factors Affecting the Species" section of this notice, *Astragalus lentiginosus* var. *sesquimetalis* may be subject to grazing by livestock and burros in the Big Sand Spring location, but trampling is more likely, due to toxicity of the plants (BLM, *in litt.* 1992). New fencing at the site has been constructed to prevent

access by livestock and burros (C. Mullen, pers. obs. 1997).

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

The Endangered Species Act should provide protection to *Astragalus lentiginosus* var. *micans* at the Eureka Dunes and Saline Spur Dunes by virtue of the co-existence of this taxon with two other listed plant taxa, *Oenothera californica* ssp. *eurekensis* and *Swallenia alexandre*. Although they prefer somewhat different sand depths and stability, the majority of the mapped distribution of *A. lentiginosus* var. *micans* coincides with that of the *Oenothera* at the Eureka Dunes and with both taxa over much of the Saline Spur Dunes (BLM 1976, Bagley 1986). In 1982 the Service funded preparation of a Recovery Plan for the Eureka Valley Dunes. The two major tasks identified in the plan involved, (1) removing human threats to the Eureka Dunes and auxiliary dunes where these species occur, and (2) determining population and habitat conditions needed to ensure their survival, and then managing for those conditions. These tasks have been partially completed and have benefitted *A. lentiginosus* var. *micans* as well as the two listed taxa (Harris 1994 as cited in Noell 1994). The co-occurrence of *A. lentiginosus* var. *micans* with these listed plants should offer it substantial protection from visitor use and vehicle trespass, providing NPS enforces compliance and manages visitor use to adequately protect, and promote the recovery of, the listed taxa.

Long-term management actions to mitigate or eliminate potential threats to areas in the eastern Mojave Desert, including Park sites that support *Astragalus lentiginosus* var. *micans* and *A. lentiginosus* var. *sesquimetalis* are currently being formulated by NPS for inclusion in the NEMO Plan (NPS, *in litt.* 1996), a joint effort of NPS, BLM, and the Service. This plan is still being formulated, however, and does not currently provide any additional protection to these species. NPS is developing a monitoring program for both *A. lentiginosus* var. *micans* and *A. lentiginosus* var. *sesquimetalis* at the sites within Death Valley National Park where they occur.

*Astragalus lentiginosus* var. *sesquimetalis* is on the State of Nevada's list of critically endangered species in accordance with Nevada Revised Statute 527.270. Under the terms of State law, this statute provides that "no member of its kind may be removed or destroyed at any time by any means except under special permit issued by the State Forester

Firewarden" (NRS 527.270). Private property development affecting the plant directly, or indirectly through habitat modification, would require a permit from the Nevada Division of Forestry prior to removal or destruction. The Sodaville site is also the location of a population of Railroad Valley Springfish, a federally listed threatened fish that is protected under the Act. Existing regulatory mechanisms, given the current status of the species, are adequate.

#### *E. Other Natural or Manmade Factors Affecting Their Continued Existence*

A potential threat to *Astragalus lentiginosus* var. *micans* at the Eureka Dunes is the occurrence and spread of Russian thistle. Although Russian thistle was documented on the dunes in the 1970s and 1980s, it appears to have increased from the mid to late 1980s around the base of the main Eureka Dune, particularly along the dune's east side (Bagley, pers. comm. 1996). While there is substantial concern about the occurrence of Russian thistle around the dunes (Mary DeDecker, CNPS, *in litt.* 1996; Mark Bagley, CNPS, pers. comm. 1996, Mary Ann Henry, CNPS, *in litt.* 1996), its effect on *A. lentiginosus* var. *micans* is unknown. Pavlik (*in litt.* 1996) did not find that cover by Russian thistle affected reproduction or survivorship of *A. lentiginosus* var. *micans* when he conducted research on the dunes, although cover of thistle may have increased since that time (Bagley, pers. comm. 1996). However, the active growing season of *A. lentiginosus* var. *micans* and Russian thistle do not coincide. *Astragalus lentiginosus* var. *micans* exhibits most of its growth in the early spring, with flowering from March to June (Pavlik 1979), while the period of greatest growth for Russian thistle is late spring and summer, with flowering from August to October (The Nature Conservancy 1986; BLM, *in litt.* 1992; B. Pavlik, *in litt.* 1996). This reduces the likelihood of direct competition for water between these taxa (BLM, *in litt.* 1992; B. Pavlik, *in litt.* 1996). Although Russian thistle may not exhibit a direct, measurable, effect on *A. lentiginosus* var. *micans*, it may affect it indirectly, through its influence on other biota or on abiotic factors of the dune community (B. Pavlik, *in litt.* 1996). Nonetheless, based on the evidence available at this time, the Service concludes that Russian thistle does not substantially affect the long-term existence of this taxon in the Eureka Valley.

The possibility of destruction of plants, especially seedlings, of *Astragalus lentiginosus* var. *micans*

from trampling by dune visitors is also a concern (R. Beymer, pers. comm. 1996; B. Pavlik, *in litt.* 1996). The road leading out of the north end of Death Valley National Park, past the Eureka Dunes access road, has been improved in the last 2 years, and additional portions of it have been paved (R. Beymer, pers. comm. 1996). Although NPS has neither publicized nor planned any improvements in facilities at the Eureka Dunes, the area is likely to attract more visitors due to its recent inclusion within a National Park. The Service acknowledges the potential for trampling by visitors to affect *A. lentiginosus* var. *micans*, but concludes that evidence is insufficient to conclude that the Park cannot adequately manage visitor use to effectively protect this taxon and promote the recovery of the co-occurring listed taxa on the dunes.

The naturally limited global distribution and abundance of *Astragalus lentiginosus* var. *micans* and *A. lentiginosus* var. *sesquimetalis* increase their vulnerability to extirpation or extinction by unforeseen catastrophic events, either natural (e.g., prolonged drought combined with disease outbreak) or human-caused. Proactive recovery efforts to lessen the threat of such random events typically involves the establishment of additional populations. However, the Service has no evidence to suggest that these taxa have ever been found beyond the areas they currently occupy. Therefore, their conservation would not include increasing the number or distribution of populations beyond the dunes which they currently inhabit. Because of the low probability of an unforeseen catastrophic event(s), either natural (e.g., prolonged drought combined with disease outbreak) or human-caused, taking place and affecting entire populations or colonies of these taxa, the significance of threat from such an event is insufficient to warrant listing at this time.

The Service has carefully assessed the best scientific and commercial information available in the development of this withdrawal notice. After review and consideration of all information available regarding the past, present, and future threats, and past and current conservation efforts by BLM and NPS, the Service has determined that insufficient evidence of threat exists at this time to warrant listing of *Astragalus lentiginosus* var. *micans* and *Astragalus lentiginosus* var. *sesquimetalis* as threatened under the Act. The Service will continue to monitor data involving population status, visitor use, vehicle trespass, the presence of nonnative species (including livestock and feral

burros) or other activities or habitat changes affecting these two taxa.

#### References Cited

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

Authors: The primary authors of this withdrawal notice are Diane Steeck, Ventura Field Office and Christine Mullen, Nevada State Office (see ADDRESSES section).

#### Authority

The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

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

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

Dated: September 29, 1998.

**Jamie Rappaport Clark,**

*Director, U.S. Fish and Wildlife Service.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 20

RIN 1018-AD74

#### Extension of Comment Period: Migratory Bird Hunting Regulations Regarding Baiting and Baited Areas

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

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The Service is extending the comment period on the **Federal Register** proposed rule published March 25, 1998 (63 FR 14415) and extended on May 22, 1998 (63 FR 28343) that invites public comments on proposed changes to the migratory bird hunting regulations regarding baiting and baited areas.

**DATES:** The deadline for postmark on comments will be extended from October 1, 1998, to October 22, 1998.

**ADDRESSES:** Comments regarding this proposed rulemaking should be addressed to: U.S. Fish and Wildlife Service, Post Office Box 3247, Arlington, Virginia 22203-3247, or sent via electronic mail to: R9LE\_WWW@FWS.GOV. Comments may be hand-delivered to 4401 North Fairfax Drive, Suite 500, Arlington, Virginia 22203. The public may inspect comments upon appointment during

normal business hours at 4401 North Fairfax Drive, Suite 500, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Kevin Adams, Chief, Office of Law Enforcement, telephone 703/358-1949.

#### SUPPLEMENTARY INFORMATION:

#### Background

The U.S. Fish and Wildlife Service (Service) has authority (16 U.S.C. 712 and 16 U.S.C. 742a-j) to regulate activities involving the hunting and other taking of migratory game birds. The Service has promulgated regulations (50 CFR part 20) for the hunting of migratory game birds that includes sections for *Methods of Take* and *Definitions of Terms*.

In a **Federal Register** notice dated March 25, 1998, the Service proposed new regulatory language for: accidental scattering of agricultural crops or natural vegetation incidental to hunting, normal agricultural and soil stabilization practices, baited areas, baiting, manipulation, natural vegetation, and top-sowing of seeds. Proposed changes also included new guidance with respect to hunting over natural vegetation that has been manipulated. However, no change was proposed regarding application of strict liability to the migratory game bird baiting regulations.

At the request of a number of organizations, in a **Federal Register** notice dated May 22, 1998, the Service extended the comment period to October 1, 1998. In response to requests to again extend the comment period, and to invite careful consideration by all parties and facilitate substantive public review, the Service is extending the comment period through October 31, 1998.

Dated: October 1, 1998.

**Jamie R. Clark,**

*Director, U.S. Fish and Wildlife Service.*

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 222 and 227

[I.D. 081098D]

#### Endangered and Threatened Species; Petition to Delist Pacific Salmon

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