

**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****49 CFR Part 192**

[Docket No. PS-107; Notice 2]

RIN 2137-AB50

**Determining the Extent of Corrosion on Gas Pipelines****AGENCY:** Research and Special Programs Administration (RSPA), DOT.**ACTION:** Notice of availability of draft environmental assessment.

**SUMMARY:** Gas pipeline operators must examine buried metallic pipelines for corrosion when the pipeline is exposed. RSPA proposed to require that operators investigate further to determine the extent of any harmful corrosion that is found. A draft environmental assessment of this proposed rule is available in the docket.

**DATES:** Interested persons may submit written comments on the Draft Environmental Assessment until June 24, 1999.

**ADDRESSES:** Send comments in duplicate to Marvin Fell, Room 7428, Research and Special Programs Administration, U. S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Identify the docket and notice number stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in Room 7428 between 8:30 a.m. and 5:00 p.m. each business day.

**FOR FURTHER INFORMATION CONTACT:** Marvin Fell at (202) 366-6205 or fellm@rspa.dot.gov.

**SUPPLEMENTARY INFORMATION:** Whenever a gas pipeline operator learns that a buried metallic pipeline has been exposed, the operator is required to examine the exposed portion of the pipeline for evidence of external corrosion, if the pipeline is bare or has a deteriorated coating (49 CFR 192.459). In a notice of proposed rulemaking (54 FR 27041; June 27, 1989), RSPA proposed to amend this standard to require that when corrosion requiring remedial action is found, the operator investigate further to determine the extent of the corrosion.

We have analyzed the proposed rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Only in limited circumstances will operators marginally enlarge an area of exposed pipe to investigate the extent of corrosion, and less harmful investigative techniques

will be used where necessary to safeguard people and the environment. Thus, we have determined that the proposed rule would not significantly affect the quality of the human environment. A draft environmental assessment document is available for review in the docket.

Issued in Washington, D.C. on May 19, 1999.

**Richard B. Felder,**Associate Administrator for Pipeline Safety.  
[FR Doc. 99-13161 Filed 5-24-99; 8:45 am]

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**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17**

RIN 1018-AF61

**Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for *Astragalus pycnostachyus* var. *lanosissimus* (Ventura Marsh Milk-vetch)****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose endangered species status pursuant to the Endangered Species Act of 1973, as amended (Act), for *Astragalus pycnostachyus* var. *lanosissimus* (Ventura marsh milk-vetch). Historically known from a three-county region in coastal southern California, *Astragalus pycnostachyus* var. *lanosissimus* was believed extinct until its rediscovery in 1997. The newly discovered and only known extant population of this taxon occurs in Ventura County, California. This population occupies less than one acre and is located in degraded dune habitat previously used for disposal of petroleum wastes. The most significant current threats to *Astragalus pycnostachyus* var. *lanosissimus* are direct destruction of this population and alteration of its habitat from proposed soil remediation, residential development, and associated activities. Because of the small area occupied by this taxon, it is also threatened by catastrophic natural and human-caused events. Competition from nonnative invasive plant species and predation by nonnative snails are additional threats. This proposal, if made final, would extend the Act's protection to this plant. We seek additional data and invite comments from the public on this proposed rule.

**DATES:** Comments from all interested parties must be received by July 26, 1999. Public hearing requests must be received by July 9, 1999.

**ADDRESSES:** Send comments and materials concerning this proposal and public hearing requests to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California, 93003. Comments and materials received, as well as the supporting documentation used in preparing this rule, will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Diane Steeck, Botanist, at the address above (telephone 805/644-1766; facsimile 805/644-3958).

**SUPPLEMENTARY INFORMATION:****Background**

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

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

The type locality is "La Bolsa," where the plant was collected in 1882 by S.B. and W.F. Parish (Barneby 1964). Based on the labeling of other specimens collected by the Parishes in 1881 and 1882, Barneby (1964) suggested that this collection may have come from the

Ballona marshes in Los Angeles County. However, Critchfield (1978) believed that "La Bolsa" could easily have referred to Bolsa Chica, a coastal marsh system located to the south in what is now Orange County. He noted that Orange County was not made a separate County from Los Angeles until 1889, seven years after the Parish's collection was made. In the five decades following its discovery, *Astragalus pycnostachyus* var. *lanosissimus* was collected only a few times, always from locations in coastal Los Angeles and Ventura counties. In Los Angeles County it was collected from near Santa Monica in 1882, the Ballona marshes just to the south in 1902, and "Cienega" in 1904, also likely near the Ballona wetlands. In Ventura County it was collected in 1901 and 1925 from Oxnard and in 1911 from "Ventura, California," a city adjacent to Oxnard. By 1964, Barneby (1964) believed that it had certainly been extirpated from Santa Monica southward, noting that there was still the possibility it survived in Ventura County (although he knew of no locations at that time). The species was rediscovered in 1967 through the chance collection by R. Chase of a single specimen growing by a roadside between the cities of Ventura and Oxnard. Searches uncovered no other living plants at that location, although some mowed remains that were discovered on McGrath State Beach lands across the road from the collection site were believed to belong to this taxon (information on herbarium label from specimen collected by R.M. Chase, 1967). Floristic (plant) surveys and focused searches conducted in the 1970s and 1980s at historic collection locations did not locate any populations of *Astragalus pycnostachyus* var. *lanosissimus* and the plant was presumed extinct (Isley 1986, Spellenberg 1993, Skinner and Pavlik 1994). On June 12, 1997, a population of the plant was rediscovered by Service biologist Kate Symonds, in a degraded coastal dune system near Oxnard, California. This population is located about one mile from the site of Chase's 1967 discovery at McGrath State Beach.

Almost nothing is known of the habitat requirements of *Astragalus pycnostachyus* var. *lanosissimus*. Specimen labels from collections and original published descriptions contain virtually no habitat information. It is possible that some insight into its habitat may be inferred from the habitat of the related variety, *A. pycnostachyus* var. *pycnostachyus*, which is found in or at the high edge of coastal saltmarshes and seeps. However, any

strict concordance in habitat requirements of these related taxa is conjectural. The newly discovered population of *Astragalus pycnostachyus* var. *lanosissimus* occurs in a sparsely vegetated low area, at an elevation of about 10 meters (30 feet), in a site previously used for disposal of petroleum waste products (Impact Sciences, Inc. 1997). Dominant shrub species at the site are *Baccharis pilularis* (coyote brush), *Baccharis salicifolia* (mule fat), *Salix lasiolepis* (arroyo willow), and the nonnative *Myoporum laetum* (myoporum) (Impact Sciences, Inc. 1997). The population itself occurs with patchy vegetative cover provided primarily by *Baccharis pilularis*, *Baccharis salicifolia*, a nonnative *Carpobrotus* sp. (seafig), a nonnative beardgrass, *Polypogon monspeliensis* (annual beard grass), and a nonnative annual grass, *Bromus madritensis* ssp. *rubens* (red brome). Soils are reported to be loam-silt loams (Impact Sciences, Inc. 1997). Soils may have been brought in from other locations as a cap for the disposal site once it was closed. We do not know the specific origin of the soil used to cap the waste disposal site, however because of the costs of transport, the soil source is likely from the immediate site or from a local source.

The population of *Astragalus pycnostachyus* var. *lanosissimus* consisted of about 374 plants total in 1997, of which 260 were small plants, thought to have germinated in the last year. Fewer than 65 plants in the population produced fruit in 1997 (Impact Sciences, Inc. 1997). In 1998, fewer than 200 plants were found on the site, although a greater number were reproducing than in the previous year (Impact Sciences, Inc. 1998). The plants are growing in an area of less than one acre, with one outlying plant located about 50 meters from the main group (Impact Sciences, Inc. 1998).

The land on which the only known population of *Astragalus pycnostachyus* var. *lanosissimus* grows is privately owned. A project to decontaminate the soils and construct a housing development on the site is proposed (Impact Sciences, Inc. 1998). The most significant current threats to *Astragalus pycnostachyus* var. *lanosissimus* are direct destruction of this population and alteration of habitat from proposed soil remediation (clean-up) and residential development activities. Due to its small population size and the very restricted area it occupies, this taxon is also threatened by catastrophic natural and human-caused disturbances. Competition from nonnative, invasive, plant species and predation from

nonnative snail species are additional threats.

#### Previous Federal Action

Federal government actions involving *Astragalus pycnostachyus* var. *lanosissimus* began as a result of section 12, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. The Smithsonian Institute presented a report (House Document No. 94-51), to Congress on January 9, 1975, and included *Astragalus pycnostachyus* var. *lanosissimus* on List C, among those taxa believed possibly extinct in the wild. We published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of our acceptance of the report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4 (b)(3) of the Act) and expressed our intent to review the status of the plant taxa named therein.

On June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to list approximately 1,700 vascular plant species pursuant to section 4 of the Act. We assembled a list, that included *Astragalus pycnostachyus* var. *lanosissimus*, from the comments and data received by the Smithsonian Institution and information collected in our own files in response to House Document No. 94-51 and the July 1, 1975, **Federal Register** publication. We summarized the general comments received in relation to the 1976 proposal in the April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In a December 10, 1979, notice (44 FR 70796) we withdrew the portion of the June 16, 1976, proposal that had not been made final, which included *Astragalus pycnostachyus* var. *lanosissimus*.

On December 15, 1980, we published an updated candidate notice of review for plants in the **Federal Register** (45 FR 82480). This notice included *Astragalus pycnostachyus* var. *lanosissimus* in a list of category 1 candidate species that were possibly extinct in the wild. These category 1 candidates would have been given high priority for listing were extant populations to be confirmed. Category 1 comprised taxa for which sufficient information was on file to support proposals for endangered and threatened status.

We maintained *Astragalus pycnostachyus* var. *lanosissimus* as a category 1 candidate in subsequent

notices: November 28, 1983 (48 FR 53640), September 27, 1985 (50 FR 39526), and February 21, 1990 (55 FR 6184). On September 30, 1993, we published a **Federal Register** notice (58 FR 51144) informing the public that we were moving taxa whose existence in the wild was in doubt, including *Astragalus pycnostachyus* var. *lanosissimus*, to category 2. Category 2 comprised taxa for which there was available biological information in our possession indicating that listing was possibly appropriate, but the information was insufficient to support listing the species as endangered or threatened. In the February 28, 1996, notice of review (61 FR 7596), we informed the public that we were discontinuing the designation of multiple categories of candidates and that we would consider only taxa meeting the definition of former category 1 as candidates for listing. Thus *Astragalus pycnostachyus* var. *lanosissimus* was excluded from this and subsequent notices of review. In 1997, *A. pycnostachyus* var. *lanosissimus* was rediscovered and a review of the taxon's status indicated that a proposed rule was warranted.

The processing of this proposed rule conforms with our final listing priority guidance for fiscal years 1998 and 1999, published in the **Federal Register** on May 8, 1998 (63 FR 25502). This guidance establishes a three-tiered approach that assigns relative priorities on a descending basis, to listing actions to be carried out under section 4 of the Act (16 U.S.C. 1531 *et seq.*). The guidance calls for giving highest priority to completion of emergency listings for species facing a significant risk to their well-being (Tier 1). The next highest priority is for processing final decisions on pending proposed listings, resolution of the conservation status of species identified as candidates, processing 90-day or 12-month administrative findings on petitions, and for a limited number of delisting/reclassification activities (Tier 2). Third priority is the processing of petitions for critical habitat designations and the preparation of proposed and final critical habitat designations (Tier 3). This proposed rule for *Astragalus pycnostachyus* var. *lanosissimus* falls under Tier 2.

#### 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. We may determine a species to be an endangered or threatened species due to one or more

of the five factors described in section 4(a)(1). These factors and their application to *Astragalus pycnostachyus* var. *lanosissimus* (Ventura marsh milk-vetch) are as follows:

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

With the exception of the extant Ventura County population, *Astragalus pycnostachyus* var. *lanosissimus* is believed extirpated from all other areas from which it has been collected. In Los Angeles County, this taxon was collected in the late 1800s and early 1900s from Santa Monica, Ballona marsh, and "Cienega" (probably near Ballona marsh). These coastal areas are now urbanized within the expansive Los Angeles metropolitan area. About 90 percent of the Ballona wetlands, once encompassing almost 2000 acres, have been drained, dredged, and developed into the urban areas of Marina del Rey and Venice (Critchfield 1978; Friends of Ballona Wetlands 1998). Ballona Creek, the primary freshwater source for the wetland, had been straightened, dredged and channelized by 1940 (Friesen, *et al.* 1981). Despite periodic surveys of what remains at the Ballona wetlands, *Astragalus pycnostachyus* var. *lanosissimus* has not been collected there since the early 1900s (Gustafson 1981; herbarium labels from collections by H. P. Chandler and by E. Braunton, 1902, housed at University of California at Berkeley Herbaria). Barneby (1964) believed that *Astragalus pycnostachyus* var. *lanosissimus* was extirpated from all areas south of Santa Monica by the mid-1960s. In 1987, botanists searched specifically for *Astragalus pycnostachyus* var. *lanosissimus* at previous collection locations throughout its range, including Bolsa Chica in Orange County and on public lands around Oxnard in Ventura County, without success (F. Roberts, U.S. Fish and Wildlife Service, *in litt.* 1987; R. Burgess, California Native Plant Society, *in litt.* 1987; T. Thomas, USFWS, pers. comm. 1997). Point Muga Naval Air Weapons Station in Southern Ventura County may have habitat. Detailed surveys have not been conducted there, however *Astragalus pycnostachyus* var. *lanosissimus* was not found during cursory surveys of the base, nor has this taxon ever been collected there in the past.

The single known population of *Astragalus pycnostachyus* var. *lanosissimus* occurs in a degraded backdune community near the city of Oxnard. From 1955 to 1981 the land on which it occurs was used as a disposal site for oil field wastes (Impact

Sciences, Inc. 1998). In August 1998, the City of Oxnard released a Draft Environmental Impact Report (DEIR) for development of this site (Impact Sciences, Inc. 1998). The project proposed for the site includes remediation of soils contaminated with hydrocarbons, followed by construction of 364 homes and a 6-acre lake on 91 acres of land, including that on which *Astragalus pycnostachyus* var. *lanosissimus* grows. The proposed soil remediation would involve excavation and stockpiling of the soils, followed by soil treatment and redistribution of the soils over the site (Impact Sciences, Inc. 1998). The proposed project, as described in the DEIR, would entirely eliminate the only known population of *Astragalus pycnostachyus* var. *lanosissimus* from this site, resulting in the extinction of this taxon in the wild. In March 1999, a Final Environmental Impact Report (FEIR) was released by the City of Oxnard. This FEIR includes an alternative to the proposed project in which the population of *Astragalus pycnostachyus* var. *lanosissimus* would not be directly eliminated, but excavation for soil remediation would occur to within 50 feet of the population. A 5-acre area would be left undeveloped around the population, to serve as a buffer from the residential development that would surround it.

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

Overutilization is not known to be a problem for *Astragalus pycnostachyus* var. *lanosissimus* at present. Soon after this taxon was discovered, the project proponent installed a fence around the population, which appears to have been effective in minimizing unauthorized visitation. However, some plants have been transplanted to an off-site greenhouse. Because of the population's small size, the removal of even modest numbers of plants from the population could increase the risk of extinction.

#### C. Disease or Predation.

A sooty fungus was found on the leaves of *Astragalus pycnostachyus* var. *lanosissimus* in late summer 1997, as leaves began to senesce (age) and the plants entered a period of dormancy (Impact Sciences, Inc. 1998; T. Yamashita, Sunburst Plant Disease Clinic, pers. comm. 1998). The effects of the fungus on the population are not known, but it is possible that the fungus attacks senescing leaves in great number only at the end of the growing season. The plants appeared robust when in flower in June 1997, matured seed by October 1997, and were regrowing in

spring 1998, after a period of dormancy, without obvious signs of the fungus (D. Steeck, USFWS, pers. obs. 1997, 1998).

In spring 1998, during abundant seasonal rains, a nonnative snail from the Mediterranean, *Otala lactea* (milk snail), was present in great numbers in the population, feeding on adult and seedling plants of *Astragalus pycnostachyus* var. *lanosissimus*. Manual removal of snails, the use of snail baits, and the eventual cessation of rains reduced snail numbers. However, in years of high rainfall they may again affect the population.

The seeds of *Astragalus pycnostachyus* var. *lanosissimus* in 1997 were heavily infested with seed beetles (Bruchidae: Coleoptera). Seed predation by seed beetles and weevils has been reported among other members of the genus *Astragalus* (Platt *et al.* 1974; Lesica 1995). In a seed collection made for conservation purposes, we found that most fruits in 1997 partially developed at least four seeds. However seed predation reduced the average number of undamaged seeds to only 1.8 per fruit (D. Steeck, USFWS, and M. Meyer, California Department of Fish and Game, unpublished data). The level of year to year variation in seed predation and its consequences for the population of *Astragalus pycnostachyus* var. *lanosissimus* are not known at this time.

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

*Astragalus pycnostachyus* var. *lanosissimus* currently receives no protection under Federal law, and it is not currently listed by the State of California. However, on February 4, 1999, the California Fish and Game Commission accepted a petition to list the species under the California Endangered Species Act, making it a candidate for State listing. California Senate Bill 879, passed in 1997 and effective January 1, 1998, requires individuals to obtain a section 2081(b) permit from the California Department of Fish and Game (CDFG) to take a candidate species incidental to otherwise lawful activities, and requires that all impacts be fully mitigated and all measures be capable of successful implementation. However, these requirements have not been tested and it will be several years before their effectiveness can be evaluated.

Remediation of the soils on the site and any proposed development must comply with the California Environmental Quality Act (CEQA) and the California Coastal Act. The CEQA requires a full public disclosure of the potential environmental impacts of

proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with the other agencies concerned with the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Species that can be shown to meet the criteria for State listing, such as *Astragalus pycnostachyus* var. *lanosissimus* are considered under CEQA (CEQA Section 15380). Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding social or economic considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species. Protection of listed species through CEQA is, therefore, dependent upon the discretion of the lead agencies.

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

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

*Astragalus pycnostachyus* var. *lanosissimus* is, by virtue of its small population size and the small area occupied, susceptible to extinction from natural and human-caused catastrophic

events. An example of an uncertain but potentially catastrophic environmental effect is wildfire during the summer prior to seed maturation. There is also some potential for random events such as a plane crash (the taxon is under the extended center flight line of the Oxnard airport, and a crash occurred on the site in 1995 (Murphy *in litt.* 1997)) to cause extinction.

Small population size also increases the susceptibility of this taxon to extinction from competition with nonnative plant species. *Cortaderia selloana* (pampas grass), *Carpobrotus* sp., *Polypogon monspeliensis*, and *Bromus madritensis* ssp. *rubens* are invasive nonnative plant species that occur at the site of the single extant population (Impact Sciences, Inc. 1997). *Carpobrotus* sp. in particular, are competitive, succulent species with the potential to cover vast areas in dense clonal mats. *Polypogon monspeliensis* grew in high densities around some mature individuals of *Astragalus pycnostachyus* var. *lanosissimus* in 1998 and seedlings were germinating among patches of *Carpobrotus* and *Bromus* in 1998 (D. Steeck, pers. obs. 1998). Seedling survival rates in these areas have not yet been determined. These invasive, nonnative species are associated with wholesale conversion of native plant communities, leading to declines and local extirpation of native species. While population trend information is not available, the presence of these nonnative species on the site is cause for concern that this plant community is vulnerable to conversion and the *Astragalus pycnostachyus* var. *lanosissimus* population is at risk.

The small population risks described above in this section are increased by activities in the occupied habitat associated with planning for land use at the site. For example, at least two excavations were conducted in the population to examine the soils in which the plants occur (D. Steeck, pers. obs. 1997) and to examine the root structure of an adult plant (R. Smith, Impact Sciences 1998). In April 1998, four plants from the population were removed and transported to a greenhouse in a preliminary attempt at transplantation. In addition to the direct removal of reproducing individuals from the population, exploratory excavations within the population can potentially alter the hydrology of the micro-site where the plants are found, reduce seedling establishment by burying or removing seeds and seedlings from the soil, and injure plant roots.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Astragalus pycnostachyus* var. *lanosissimus* in determining to propose this rule. Residential and commercial development have resulted in the loss and alteration of this taxon's coastal habitat and are the most likely cause of population extirpation historically. Loss and alteration of habitat from soil remediation activities and proposed residential development threaten the only known extant population. Other threats include competition from nonnative plant species and catastrophic natural and human-caused events which could diminish or destroy the very small extant population. Existing regulatory mechanisms are inadequate to protect this taxon. Based on our evaluation, the preferred action is to list *Astragalus pycnostachyus* var. *lanosissimus* as endangered.

#### 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) which 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. Critical habitat is not determinable when one or both of the following situations exist—(1) Information sufficient to perform required analyses of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat (50 CFR 424.12(a)(2)). Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other

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. For the reasons discussed below we find that designation of critical habitat for *Astragalus pycnostachyus* var. *lanosissimus* is not prudent.

Critical habitat designation provides protection for listed species on Federal lands and on non-Federal lands or private lands where there is Federal involvement through authorization or funding of, or participation in, a project or activity (Federal nexus). If such a Federal nexus is found, then the Act provides protection through section 7 consultation procedures. *Astragalus pycnostachyus* var. *lanosissimus* occurs exclusively on privately owned land and the activities constituting threats to its existence (see "Summary of Factors Affecting the Species" section above) do not require Federal involvement and therefore are not subject to consultation under section 7 of the Act. Our analysis has not identified a Federal nexus which would trigger section 7 consultation on land where the species occurs. With no current or future Federal nexus there will be no benefit to the species as a result of the consultation requirements under section 7 of the Act.

This species occurs at a single locality, occupying less than an acre of property in a highly altered and rapidly urbanizing landscape. Due to its exclusive occurrence on private land, and with no Federal involvement in projects on those lands, the benefits of listing are limited, being restricted to the protective prohibitions provided under section 9 of the Act. As applied to plants, section 9 of the Act prohibits the importation and exportation of listed plant species into or from the United States. Further, under section 9 it is unlawful to remove and reduce to possession, or to maliciously damage or destroy, any listed plant species from areas under Federal jurisdiction. In addition, it is unlawful to remove, cut, dig up, or damage or destroy a listed plant species on any area in knowing violation of any State law or regulation or in violation of a State criminal trespass law. Finally, it is unlawful to deliver, receive, carry or transport, or sell or offer to sell the species in interstate or foreign commerce. As previously discussed, the residential development and soil remediation activities threatening this species occur wholly on private land. Any removal or destruction of this species on private land, if in compliance with State law,

would not violate section 9. Designation of critical habitat would not make section 9 any more or less applicable to this plant species. As such, designation of critical habitat would provide no benefit to the species.

Section 10 allows the Secretary to permit otherwise prohibited activity. Under certain circumstances, the Secretary may issue permits to take wildlife and fish (but not plants) in conjunction with otherwise legal activities (section 10(a)(1)(B)), and for scientific purposes (section 10(a)(1)(A)). These permits extend authorization to the applicant to impact the species, as opposed to impacting critical habitat. Impacts to habitat may be permitted under section 10(a)(1)(B) when the number of individual animals to be taken can not be quantified. In the case of this plant species which occurs solely on private land, neither section 10(a)(1)(A) nor section 10(a)(1)(B) are applicable. Designation of critical habitat would result in no benefit to the species under section 10 of the Act.

Because this plant species occurs only on private land with no Federal nexus, section 7 of the act is not applicable. In addition, critical habitat designation will not invoke the protection afforded under section 9, and since, in this case, permitting is not applicable, there is no section 10 requirement to meet. Neither listing nor designation of critical habitat will require the private landowner to undertake active management or modify any of its activities on behalf of this species. Because all appropriate non-Federal regulating agencies are aware of this species and its location on private land, any additional notice to the general public and state and/or local government due to designation of critical habitat would not increase the protection afforded this species under the Act. Because the private landowner and the developer have been notified of the Federal status of this species, and because the survival and recovery of this species depends upon their participation and cooperation, we will continue to work with the property owner to further the conservation of the species. We conclude therefore that no benefit to the species would be realized through designation of critical habitat. For all of the above reasons we find it not prudent to designate critical habitat.

#### 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 activities. Recognition through listing encourages

public awareness and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition from willing sellers and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The single known extant population of *Astragalus pycnostachyus* var. *lanosissimus* occurs on privately owned land and our analysis has not identified a Federal nexus that will trigger consultation requirements under section 7 of the Act.

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

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. With respect to *Astragalus pycnostachyus* var. *lanosissimus*, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for

endangered plants, apply (16 U.S.C. 1538(a)(2)). These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to persons acting in an agency capacity for the Service and to State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant taxa under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. Requests for copies of the regulations on listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE 11th Avenue, Portland, Oregon 97232-4181 (503/231-2063, facsimile 503/231-6243).

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

the Services's Ventura Fish and Wildlife Office (see **ADDRESSES** section).

#### Public Comments Solicited

It is our intent that any final action resulting from this proposal will be as accurate and as 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. We particularly seek comments concerning:

- (1) Biological, commercial, trade, or other relevant data concerning any threat (or lack thereof) to *Astragalus pycnostachyus* var. *lanosissimus*;
- (2) The location of any additional populations of *Astragalus pycnostachyus* var. *lanosissimus* 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 essential habitat features (biotic and abiotic), range, distribution, and population size of this taxon; and
- (4) Current or planned activities in the subject area and their possible impacts on this taxon.

Final promulgation of the regulations on *Astragalus pycnostachyus* var. *lanosissimus* 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 a public hearing 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 (see **ADDRESSES** section).

#### National Environmental Policy Act

We have determined that Environmental Assessments, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining the basis for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this notice easier to understand including answers to questions such as the following: (1) Are the requirements in the notice clearly stated? (2) Does the notice contain technical language or jargon that

interferes with the clarity? (3) Does the format of the notice (grouping and order of the sections, use of headings, paragraphing, etc.) Aid or reduce its clarity? (4) Is the description of the notice in the SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the notice? What else could we do to make the notice easier to understand?

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

**Required Determinations**

We have examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

**References Cited**

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

Author: The primary author of this notice is Diane Steeck, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see ADDRESSES section).

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

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

**Proposed Regulation Promulgation**

For the reasons given in the preamble, we propose to amend 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. 4201–4205; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

**§ 17.12 Endangered and threatened plants.**

\* \* \* \* \*  
(h) \* \* \*

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

Dated: April 28, 1999.  
**Jamie Rappaport Clark,**  
*Director, Fish and Wildlife Service.*  
[FR Doc. 99–12991 Filed 5–24–99; 8:45 am]  
BILLING CODE 4310–55–P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018**

**Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Extension of Comment Period on the Proposed Rule to List the Alabama Sturgeon as Endangered**

**AGENCY:** Fish and Wildlife Service, Interior.  
**ACTION:** Proposed rule; notice of public hearing and extension of comment period.

**SUMMARY:** We, the Fish and Wildlife Service, give notice that we are extending the comment period and holding a public hearing on the proposed rule to list the Alabama sturgeon (*Scaphirhynchus suttkusi*) as endangered. We invite all interested

parties to submit comments on this proposal.  
**DATES:** We will hold the public hearing from 7 p.m. to 10 p.m. on Thursday, June 24, 1999, in Montgomery, Alabama. The comment period now closes on July 5, 1999. We will consider any comments received by the closing date in the final decision on this proposal.  
**ADDRESSES:** We will hold the public hearing at the Montgomery Civic Center, 300 Bibb Street, Montgomery, Alabama 36104. You may submit written comments and materials concerning the proposal at the hearing or send them directly to the Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Paul Hartfield (see ADDRESSES section), 601/965–4900, extension 25; facsimile 601/965–4340.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Alabama sturgeon is a small freshwater sturgeon that was historically

found only in the Mobile River Basin of Alabama and Mississippi. The Alabama sturgeon's historic range once included about 1,600 kilometers (km) (1,000 miles (mi)) of the Mobile River system in Alabama (Black Warrior, Tombigbee, Alabama, Coosa, Tallapoosa, Mobile, Tensaw, and Cahaba rivers) and Mississippi (Tombigbee River). Since 1985, all confirmed captures of this fish have been from a short, free-flowing reach of the Alabama River below Miller's Ferry and Claiborne locks and dams in Clarke, Monroe, and Wilcox counties, Alabama. The historic decline of the Alabama sturgeon is attributed to over-fishing, loss and fragmentation of habitat as a result of navigation-related development, and water quality degradation. Current threats primarily result from its small population numbers and its inability to offset mortality rates with reproduction and recruitment.

On March 26, 1999, we published a rule proposing endangered status for the Alabama sturgeon in the **Federal Register** (64 FR 14676). Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that we hold a public hearing if it is requested within 45 days of the publication of the proposed rule. Sheldon Morgan, Chairman, Alabama-