

- § 63.1344(a)(3), related to the temperature operating limit for an in-line kiln/raw mill equipped with an alkali bypass;
- § 63.1349(e)(3), related to requirements associated with preparation for, and conduct of, a new performance test if a source anticipates making an operational change that may adversely affect compliance with an applicable dioxin/furan (D/F) emission standard;
- § 63.1350(a)(4)(v) through (vii), related to visible emission monitoring of a totally enclosed conveying system transfer point; and
- § 63.1350(c)(2)(i), (d)(2)(i), and (e), related to operating conditions during daily visual opacity observations by Method 9 (40 CFR part 60, appendix A) and daily visual emissions observations by Method 22 (40 CFR part 60, appendix A).

Accordingly, these seven amendments are withdrawn as of July 2, 2002. We will take final action on the proposed rule after considering the comments received. We will not institute a second comment period on this action. The seventeen provisions for which we did not receive adverse comment will become effective on July 5, 2002, as provided in the preamble to the direct final rule.

#### List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: June 26, 2002.

**Robert Brenner,**

Acting Assistant Administrator for Air and Radiation.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AF86

#### Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for *Ambrosia pumila* (San Diego Ambrosia) From Southern California

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

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), determine endangered status for *Ambrosia pumila*

(San Diego ambrosia) pursuant to the Endangered Species Act of 1973, as amended (Act). This plant species is restricted to 15 known occurrences in San Diego and Riverside Counties, CA, and also occurs in Estado de Baja California, Mexico. *Ambrosia pumila* primarily occurs on upper terraces of rivers and drainages as well as in open grasslands, openings in coastal sage scrub habitat, and occasionally in areas adjacent to vernal pools. This species is threatened by the following: present or threatened destruction, fragmentation, and degradation of habitat primarily by construction and maintenance of highways, maintenance of utility easements, development of recreational facilities, and residential and commercial development; inadequate regulatory mechanisms; potential competition, encroachment, and other negative impacts from non-native plants; mowing and discing for fuel modification; and trampling, as well as soil compaction by horses, humans, and vehicles. This rule implements the Federal protection and recovery provisions of the Act for *Ambrosia pumila*.

**DATES:** This rule is effective August 1, 2002.

**ADDRESSES:** The supporting record for this rule is available for inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, CA 92008.

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, at the above address; telephone 760/431-9440; facsimile 760/918-0638.

**SUPPLEMENTARY INFORMATION:**

**Background**

*Ambrosia* is a genus comprising 35 to 50 wind-pollinated annual and perennial plant species in the Asteraceae (sunflower) family. The perennial taxa range from woody shrubs to herbaceous plants with rhizome-like roots. Rhizomes are underground stems that produce leafy shoots. Self-pollination and self-fertility contribute to strong inbreeding among species of *Ambrosia* (Payne 1976). Members of the genus occur predominantly in the Western Hemisphere, especially North America. Species are generally found in arid or semiarid areas and some are weeds of cultivated fields or strand species of Pacific and Caribbean beaches.

*Ambrosia pumila* (San Diego ambrosia) was originally described as *Franseria pumila* by Thomas Nuttall (Nuttall 1840) based on a specimen he

collected near San Diego, California, in 1836. Asa Gray (Gray 1882), after seeing specimens of the plant with fruits, decided it was closely related to members of the genus *Ambrosia* and published the currently accepted combination, *Ambrosia pumila* (Nutt.) A. Gray. This classification has been recognized by current systematic and floristic treatments (Payne 1964, Munz 1935, Keck 1959, Ferris 1960, Munz 1974, Beauchamp 1986, and Payne 1993).

*Ambrosia pumila* is an herbaceous perennial plant species that spreads vegetatively by means of slender, branched, underground rhizome-like roots from which the aerial (above-ground) stems arise. Plants that spread in this way are referred to as clonal species. This clonal growth pattern results in groupings of aerial stems interconnected by their underground rhizome-like roots that represent genetically identical individuals. When these underground interconnections disintegrate, aerial stems that are genetically identical are physically separate. The aerial stems sprout in early spring after the winter rains. Dead aerial stems may persist or deteriorate after their growing season. Therefore, the plant may not be in evidence at some times of the year. The aerial stems sprout in early spring after the winter rains and deteriorate in late summer. Therefore, the plant may not be in evidence from late summer to early spring. The aerial stems are 5 to 30 centimeters (cm) (2 to 12 inches (in)) tall, but may grow to 50 cm (20 in), and are densely covered with short hairs. The leaves are two to four times pinnately divided into many small segments and are covered with short, soft, gray-white, appressed (lying flat on surface) hairs. This wind-pollinated species flowers from May through October with separate male and female flower clusters (heads) on the same plant. The male flowers are yellow to translucent and are borne in clusters on terminal racemes (flower stalks). The female flowers have no petals and are yellowish-white. Female flowers are in clusters in the axils of the leaves below the male flower clusters.

Although some species of *Ambrosia* have breeding systems that contribute to strong inbreeding (Payne 1976), the breeding system of *A. pumila* has not been studied. The fruiting heads are enclosed by involucre (composed of modified leaf-like structures fused together) to form cup-like structures that have no spines, although some reports note a few vestigial (remnant) spines. Few preserved museum specimens have fertile fruits, and field collections have

not provided evidence of production of significant numbers of viable seeds. None of the 22 seeds collected from three sites at Mission Trails Regional Park germinated in a test performed by Ransom Seed Laboratory (City of San Diego 2000). Although plants may flower, the annual reproductive output of fruits may be low. The lifespan of an individual plant, as well as the number and distribution of seedlings, are unknown. *A. pumila* may be distinguished from other species of *Ambrosia* in the area by its herbaceous perennial growth form, leaves which are two to four times pinnately divided, cup-like involucre lacking hooked spines, and lack of longer, stiff hairs on the stems and leaves.

Because *Ambrosia pumila* is a clonal species, it is difficult to determine the extent of an individual plant. Individual plants persist as a herbaceous rhizome-like root systems. These underground systems are likely intermingled at any given site. Each year a plant produces a variable number of aerial stems along its rhizome-like root system. The underground interconnections may deteriorate over time leaving genetically identical separate plants that represent clones. Thus, survey reports that record the number of "plants" at a site are in fact reporting the numbers of aerial stems that represent an unknown number of genetically distinct plants. Because this species is a clonal plant, the number of genetically different individuals in any given occurrence, especially small occurrences, may be very low. Small occurrences of *A. pumila* may be more susceptible to harmful effects from inbreeding, especially if only a portion of the population flowers in any given year (Barrett and Kohn 1991). Seven of the 15 extant occurrences that support 1,000 or fewer aerial stems may potentially be susceptible to extirpation (localized extinction) because of low number of aerial stems or low genetic diversity within the occurrences. There are, as yet, no data to determine a correlation between the genetic diversity and extirpations of occurrences of this species in the past that were not attributed to habitat loss. Preliminary results comparing greenhouse-grown specimens from two native populations of *A. pumila* indicated that there were fixed differences between specimens from the two populations represented in this study (H. Truesdale, San Diego State University Biology Department (SDSU), *in litt.* 2000). While the clonal structure of the populations is not known, these preliminary results indicate the importance of maintaining

each of the separate occurrences to preserve the genetic variability represented in each of the occurrences.

*Ambrosia pumila* primarily occurs on upper terraces of rivers and drainages as well as in open grasslands, openings in coastal sage scrub, and occasionally in areas adjacent to vernal pools. The species may also be found in disturbed sites such as fire fuel breaks and edges of dirt roadways. Associated native plants include *Distichlis spicata* (saltgrass), *Baccharis salicifolia* (mulefat), *Baccharis sarathroides* (broom baccharis), *Eriogonum fasciculatum* (California buckwheat), and *Eremocarpus setigerus* (turkey-mullein). In the United States, populations of *A. pumila* occur on Federal, State, local jurisdictional, and private lands in western San Diego and Riverside Counties.

This species has been previously reported from 49 occurrences in the United States (California Natural Diversity Database (CNDDB) 1999). The California Department of Fish and Game (CDFG) defines the term occurrence for plants as single plants, a population, or group of nearby populations found within 0.25 miles (mi) (0.4 kilometer (km)) of each other (R. Bittman, CDFG, *in litt.* 2002). Since publication of the proposed rule, additional information concerning an additional historical occurrence in the Arlington area of the City of Riverside in Riverside County, has become available (Provance *et al.* 2001). Also, an extant occurrence that supports six concentrations of aerial stems was found in the Alberhill area of Riverside County (Hewitt and McGuire 2000). Two occurrences, one northwest of Sweetwater Dam and another near Gillespie Field, were combined with other adjacent occurrences because of their close proximity. Six occurrences were based on misidentified specimens. Three occurrences consist of plants transplanted from other locations that were subsequently partially or totally eliminated (CNDDB 1999).

Based on the analysis of this current information, we believe that there are 40 verifiable native reported occurrences of this species. However, 21 of these 40 occurrences have been extirpated, most since the 1930s and nearly all by urban development and highway construction. One of these 21 occurrences, an occurrence near Graves Avenue in the City of El Cajon, San Diego County, that was included as extant in the listing proposal, has been extirpated by commercial and housing development (C. Burrascano, *in litt.* 2001). Of the remaining 19 extant occurrences, 2 were based on old collections where the species has not been documented since

1936 (CNDDB 1999), including the recently reported historical occurrence in the City of Riverside (Provance *et al.* 2001) which no longer exists. One occurrence, near a city sidewalk, reduced to a single stem in 1996 (CNDDB 1999), is considered non-viable and therefore is not considered as an extant occurrence. Subtracting these 4 occurrences, we now believe that there are 15 extant native occurrences of this species, 12 are in San Diego County and 3 are in western Riverside County. Knowledge of the full extent of the historical range of any organism is limited by the surviving records. In the case of *Ambrosia pumila* in San Diego County, the pattern of extirpated occurrences reflects a significant loss of occurrences from each of the watersheds in which the species occurs rather than a complete loss from those watersheds. The pattern in Riverside County is different in that the recently discovered record of a historical occurrence reflects a significant loss to the geographical extent of the range in that county.

#### *San Diego County*

Five of the 12 remaining occurrences of *Ambrosia pumila* in San Diego County are within the Sweetwater River watershed; a sixth near El Cajon was apparently extirpated in 1999 or 2000. Two of the five occurrences are in the San Diego National Wildlife Refuge (SDNWR). The largest occurrence, in the northern portion of the SDNWR, was reported to cover 5.6 hectares (ha) (13.8 acres (ac)) and supported tens of thousands of aerial stems in 1998 (CNDDB 1999). Recent surveys by Service biologists reported this occurrence to be 1.4 ha (3.5 ac) in 1999 and 1.3 ha (3.2 ac) in 2000 (GIS database Carlsbad Fish and Wildlife Office). Differences in the acreage may be due to different survey methods or the scope of the surveys. Numbers of aerial stems present were not recorded. The second occurrence on the SDNWR was reported to support aerial stems in 1996. A survey of the second occurrence in 1998 (J. Vanderwier, USFWS, *in litt.* 1998) reported that this site covered less than 0.1 ha (less than 0.1 ac) and supported hundreds of aerial stems (CNDDB 1999). Another occurrence on private land near the junction of Jamul Road and Steele Canyon Road was reported to be 0.1 ha (0.3 ac) in size in 1996, and less than 0.1 ha (less than 0.1 ac) in 1998 (CNDDB 1999; J. Vanderwier, *in litt.* 1998). Numbers of aerial stems have not been reported in the various surveys of this site. The 1998 survey indicated an unknown number of stems at this site and the extension of this occurrence to accommodate a few plants nearby to the

northeast. This extension was recognized as a separate occurrence that supported about 100 stems in 1998 (CNDDDB 1999). The remaining occurrence in the Sweetwater River watershed in El Cajon is on adjacent vacant lots totaling less than 0.1 ha (0.1 ac) owned by California Department of Transportation (Caltrans) and supported an estimated 10,000 stems in 1997 (J. Vanderwier, *in litt.* 1997). *A. pumila* is still present on these Caltrans owned lots (B. April, Caltrans, pers. comm., 2002). Caltrans purchased these lots in the 1960s as right-of-way for the proposed connector between I-5 and I-8. This proposal, although still part of the Regional Transportation Plan, is not funded and at some point in the future Caltrans may auction off the parcels (B. April, pers. comm., 2002). In the proposed listing rule we included an additional occurrence in El Cajon on a group of vacant lots 1.9 ha (4.8 ac) in size that supported 6,500 plants (aerial stems) in 1998 (CNDDDB 1999). This occurrence was apparently extirpated by development (C. Burrascano, *in litt.* 2001).

Three of the 12 occurrences in San Diego County are within the San Diego River watershed. The largest of these occurrences is in Mission Trails Regional Park (MTRP), managed by the City of San Diego, and extends to adjacent private land. The portion of the occurrence on MTRP occupied 13.6 ha (34 ac) and supported 1,500 stems in 1994 (CNDDDB 1999). One of the areas in MTRP identified as Patch C encompasses 1.0 ha (2.5 ac) (City of San Diego 2000). A portion of that patch, identified as C6 and calculated to be 0.7 ha (1.7 ac), supported approximately 178,624 aerial stems in 2001 (City of San Diego 2001). The adjacent privately owned portion of this occurrence is afforded protections under the City of San Diego's Subarea Plan of the Multiple Species Conservation Program (MSCP) (City of San Diego 1997). The second occurrence within the San Diego River watershed and also in MTRP supports an unknown number of individuals (CNDDDB 1999). Both occurrences in MTRP are afforded protection under provisions of City of San Diego's Subarea Plan (City of San Diego 1997). The third occurrence within the San Diego River watershed occurs at Gillespie Field, a small general aviation airport, where there are small remnants of the native occurrence scattered near the south side of the airfield. The current status of these remnants is unknown.

One of the 12 occurrences in San Diego County is within the San Dieguito River watershed in the County of San

Diego's Subarea Plan area of the MSCP on a privately owned site. In 1997, 2,000 stems were reportedly found in a less than 0.1 ha (0.1 ac) area (CNDDDB 1999). During a site visit in 1999 fewer than 100 stems were found in an area estimated to be less than 0.1 ha (less than 0.1 ac) (G. Wallace, USFWS, *in litt.* 1999). The uphill slope immediately adjacent to the site was graded in conjunction with a residential development (G. Wallace, *in litt.* 1999).

The three remaining occurrences in San Diego County are within the San Luis Rey River watershed near Bonsall. Two occur within the planning boundary of the North County MSCP Subarea Plan. These may receive protection if this plan is approved. At one occurrence, some plants are presumed extant in a fenced area on Caltrans lands adjacent to State Route 76, and some are on private land. However, the current number of aerial stems or the areal extent of this occurrence is not known. The second occurrence in the area is estimated to be 2.6 ha (6.6 ac) in size and reportedly supported about 700 aerial stems in 1996. The third occurrence is within the planning area for the Multiple Habitat Conservation Plan (MHCP) on private and Caltrans lands near Bonsall and reportedly supported 2,000 to 3,000 aerial stems in 1997 (CNDDDB 1999). The areal coverage of the eight patches at this occurrence was calculated to be less than 0.1 ha (0.2 ac) in 2000 (American Realty Trust, Inc. 2002).

#### Riverside County

The three extant occurrences known from Riverside County are on privately owned lands. One occurrence, along Nichols Road in the City of Lake Elsinore, supported an estimated 3,400 stems in 1997; a westward extension of the Nichols Road occurrence was documented by a specimen collected in 2001 and deposited in the Herbarium at Rancho Santa Ana Botanic Garden (RSA), Claremont, CA. Another occurrence at a biological preserve at Skunk Hollow supported about 100 to 300 stems in 1998 (B. McMillan, USFWS, *in litt.* 1999). Since publication of the proposed rule to list *Ambrosia pumila*, an additional occurrence has been located near Alberhill (Hewitt and McGuire 2000). This occurrence is about 3.5 km (2.1 mi) to the northwest of the Nichols Road site and reportedly consists of about 12,800 aerial stems in six concentrations, with most of the stems in a single concentration (Hewitt and McGuire 2000). Also, since the listing proposal, a specimen documenting a historical occurrence in the Arlington area of the City of

Riverside, Riverside County has been reported (Provance *et al.* 2001).

#### Estado de Baja California, Mexico

The current documented range of *Ambrosia pumila* in Mexico extends from Colinet south to Lake Chapala in north-central Baja California. Two of the three documented sites were confirmed by D. Hogan, Southwest Center for Biological Diversity (now Center for Biological Diversity) and C. Burrascano, San Diego Chapter, California Native Plant Society (CNPS) (1996). Although additional occurrences may exist in Baja California Mexico, the species is not considered to be widespread because of the lack of appropriate habitat and impacts from agriculture and urban development, especially near the coast.

#### Previous Federal Action

Federal Government action on this species began pursuant to section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be threatened, endangered, or extinct in the United States. This report, designated House Document No. 94-51, was presented to Congress on January 9, 1975. *Ambrosia pumila* was not included in this document. A revision of the Smithsonian report (Ayensu and DeFilipps 1978) provided new lists based on additional data on taxonomy, geographic range, and endangered status of taxa, as well as suggestions of taxa to be included or deleted from the earlier listing. *A. pumila*, not included in the first Smithsonian report, was recommended for threatened status in the Ayensu and DeFilipps (1978) report. We published an updated Notice of Review (NOR), on December 15, 1980 (45 FR 82479). This notice included *A. pumila* as a category 1 candidate species. Category 1 candidate species were taxa for which we had sufficient information on biological vulnerability and threats to support preparation of listing proposals.

The 1978 Smithsonian report (Ayensu and DeFilipps 1978), which included *Ambrosia pumila*, was accepted as a petition. Section 2(b)(1) of the 1982 amendments to the Act required that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Section 4(b)(3)(B) of the Act further requires the Secretary to make findings on petitions within 12 months of their receipt. Consequently, on October 13, 1983, we found that the petitioned listing of this species was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Notification of this finding was

published in the **Federal Register** on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled annually, pursuant to section 4(b)(3)(C)(i) of the Act. On November 28, 1983, we published a supplement (48 FR 53639) to the December 15, 1980, NOR of plant taxa for listing. In this NOR, the status of *A. pumila* was changed to a category 2 candidate species. Category 2 candidate species were taxa for which information then in our possession indicated that proposing to list the taxa as endangered or threatened was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support proposed rules. The status of *A. pumila* remained unchanged through, and including, the September 30, 1993 NOR (58 FR 51143). On February 28, 1996, we published an NOR (61 FR 7595). In that notice we announced changes to the way we identify species that are candidates for listing under the Act that included our discontinuance of the maintenance of a list of species that were previously identified as category 2 candidates. Thus, as a category 2 candidate, *A. pumila* was not included in the February 28, 1996, NOR.

On January 9, 1997, we received a petition dated November 12, 1996, from the Southwest Center for Biological Diversity and the San Diego Chapter of the California Native Plant Society, requesting that *Ambrosia pumila* be listed as endangered pursuant to section 4 of the Act. Additionally, the petition appealed for emergency listing pursuant to section 4(b)(7) of the Act. The petitioners further requested that critical habitat be designated for *A. pumila* concurrent with the listing pursuant to 50 CFR 424.12 and the Administrative Procedure Act (5 U.S.C. 553). On January 23, 1997, we notified the petitioners that we received their petition and that it would be processed based on the listing priority guidance then in effect.

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition presents substantial information indicating that the action may be warranted. To the maximum extent practicable, this finding should be made within 90 days of the receipt of the petition and it should be published promptly in the **Federal Register**. If we determine that listing the species may be warranted, section 4(b)(3)(B) of the Act requires us to make a finding within 12 months of the date of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from

immediate proposal by other pending proposals of higher priority. However, because of budgetary restraints, we processed petitions in accordance with the 1997 listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). This guidance identified four tiers of listing activities to be conducted by us with appropriate funds. Tier 1, the highest priority, covered emergency listings of species facing an imminent risk of extinction as defined under the emergency listing provisions of section 4(b)(7) of the Act. Tier 2, the second priority, included processing of final determinations for species currently proposed for listing. Tier 3, the third priority, addressed efforts under the Act to resolve the conservation status of candidate species and process administrative findings on petitions to add species to the lists or reclassify threatened species to endangered status. Tier 4, the lowest priority, covered the processing of critical habitat determinations, delisting actions, and reclassification of endangered species to threatened status. Under the priority system and because of the backlog of species proposed for listing and awaiting final listing determinations at that time, we deferred action on listing petitions except where an emergency existed and where the immediacy of the threat was so great to a significant portion of the population that the routine listing process would not be sufficient to prevent large losses that might result in extinction.

We reviewed the petition and supporting documentation to determine whether *Ambrosia pumila* warranted emergency listing pursuant to section 4(b)(7) of the Act. On July 15, 1997, we concluded that emergency listing and the designation of critical habitat were not warranted, and that the petition should be processed as a Tier 3 priority task pursuant to the listing priority guidance for fiscal year 1997 (61 FR 64475). On October 23, 1997, a notice published in the **Federal Register** (62 FR 55268), announced the extension of the fiscal year 1997 listing priority guidance until such time as the fiscal year 1998 appropriation bill for the Department of the Interior became law and new final guidance was published in the **Federal Register**. In this notice there were no changes made in the tier system.

On October 1, 1998, Southwest Center for Biological Diversity and the California Native Plant Society filed a lawsuit in the United States District Court for the Southern District of California, challenging our failure to produce timely administrative 90-day

and 12-month findings for *Ambrosia pumila*.

On May 8, 1998, new listing priority guidance for Fiscal Years 1998 and 1999 was published in the **Federal Register** (63 FR 25502). This new guidance changed the four-tier priority system to a three-tier priority system. Highest priority, Tier 1, was assigned to processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being. Second priority, Tier 2, was processing final decisions on proposed listings; resolving the conservation status of candidate species; the processing of administrative findings on petitions to add species to the lists, and petitions to delist species, or reclassify species; and delisting and reclassifying actions. Lowest priority, Tier 3, was the processing of proposed or final critical habitat designations. Under that guidance, the administrative review process for this petition fell under Tier 2. We published a 90-day finding on the petition to list *Ambrosia pumila* as endangered in the **Federal Register** (64 FR 19108) on April 19, 1999. We found that substantial information existed indicating listing may be warranted and solicited comments and information regarding the finding. However, we did not receive any comments by May 19, 1999, the close of the comment period. On October 28, 1999, the District Court (Case No. 98-CV-1785 J(RBB)) ordered us to complete a 12-month finding for *A. pumila* on or before December 10, 1999.

On December 9, 1999, we sent the proposed rule to list *Ambrosia pumila* as endangered to the **Federal Register**. On December 29, 1999, it was published (64 FR 72993). This proposed rule constituted the 12-month finding on the petition. In the proposed rule we indicated that designation of critical habitat was prudent for *A. pumila*, but we did not propose critical habitat at that time because of budgetary constraints and our current listing priority guidance. Due to limited resources and the need to undertake other, higher-priority listing actions, the Service was unable to make a final determination for this species within the 12-month statutory timeframe provided pursuant to the Act. In August 2001, the Department of the Interior reached an agreement in principle with the Center for Biological Diversity, Southern Appalachian Biodiversity Project, and the California Native Plant Society on a timeframe to make final listing determinations for 14 species, including *A. pumila*. The agreement was formalized in October 2001 (*Center for Biological Diversity, et al. v. Norton*,

Civ. No. 01–2063 (JR) (D.D.C.). The publication of the final rule to list *A. pumila* complies with the terms of that court-approved settlement agreement.

### Summary of Comments and Recommendations

In our December 29, 1999, proposal to list *Ambrosia pumila* as endangered (64 FR 72993), we requested that all interested parties provide information concerning the status and distribution of the species and threats to the species and its habitat. During the 60-day comment period that closed on February 28, 2000, we contacted appropriate Federal and State agencies, county and city governments, scientific organizations, and other interested parties and requested comments on the proposal. In addition, legal notices announcing the publication of the proposed rule and opening of the public comment period were published in the North County Times and The San Diego Union-Tribune on January 6, 2000, and in the Riverside Press Enterprise, on January 7, 2000. We received no requests for a public hearing during the public comment period. We received two letters during the comment period, one from the petitioner and one from a peer reviewer. The comments provided information regarding the condition of several of the occurrences of the species and are incorporated in this final rule. On March 30, 2000, in response to a request, we reopened the comment period (65 FR 16869) for this proposed action for an additional 60 days, until May 30, 2000. No further comments were received during the reopened comment period.

### Peer Review

In accordance with interagency policy published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of three independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomic, biological, and ecological information for *Ambrosia pumila* presented in the proposed rule. The purpose of such a review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including the input of appropriate experts. We received peer review comments from one of the persons contacted. The peer reviewer stated that the proposed action to list *A. pumila* as endangered was clear and complete. The peer reviewer also included some statements about translocations carried out for the species. Those comments are incorporated in this final rule where appropriate. There were no other

responses to our requests for peer review of this listing action.

Where applicable, we have incorporated factual information provided by the commenters in this final rule. Other statements or comments are addressed below.

*Comment 1:* The commenter stated that two additional populations have been reported for Riverside County, bringing the total to four known occurrences in Riverside County.

*Our Response:* Two new occurrences have been reported since the publication of the proposed rule in December 1999. A new historical occurrence of the species is based on a voucher specimen from the Herbarium of Riverside Community College. The specimen, which was verified by Andrew Sanders, Curator of the Herbarium at UCR, was collected in 1940 in the Arlington area of the City of Riverside (Provance *et al.* 2001). The other occurrence is near Alberhill where a series of six subpopulations supporting over 12,000 aerial stems was reported in 2000 (Hewitt and McGuire 2000). Currently, we are aware of three extant occurrences in Riverside County.

*Comment 2:* The commenter did not think transplantation of *Ambrosia pumila* plants from a Caltrans site in the Sweetwater River drainage to a site in Penasquitos Canyon, a different watershed, or to multiple sites, was an appropriate use of those plants.

*Our Response:* Transplantation has been used to salvage plants where the occurrence was to be totally or partially extirpated. The above-mentioned activities were carried out by Caltrans in the summer of 1996, as a mitigation measure for the unavoidable extirpation of *Ambrosia pumila* associated with construction of State Route 125/54. This was done prior to publication of the proposed rule to list the species. As part of the recovery planning process, protocols for the collection and use of salvaged materials will be developed, taking into account the reproductive biology and clonal structure of *A. pumila*. In collecting material for propagation, consideration must be given to maximize genetic variation and equal numbers of progeny should be obtained from each line (Given 1994). Caution will be used in employing translocation, relocation, and reintroduction as mitigation for project impacts (CDFG 1991).

### Summary of Factors Affecting the Species

Section 4 of the Act and implementing regulations (50 CFR Part 424) set forth the procedures for adding species to the Federal list of endangered

and threatened species. We may determine that a species is endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Ambrosia pumila* are as follows.

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Twenty-one of the 40 documented native occurrences of this species are believed to have been extirpated by human activities, including, but not limited to, urban development as well as highway and utility corridor construction and maintenance (CNDDDB 1999). Of the remaining 19 occurrences, the occurrence adjacent to a sidewalk in National City (CNDDDB 1999) was not considered viable because of the small size of the population, and three additional occurrences have not been verified in many years. Five of the remaining 15 extant native occurrences, including 3 of the larger occurrences, are threatened with habitat destruction associated with highway expansion or highway rights-of-way maintenance activities including mowing (CNDDDB 1999). Three known extant occurrences are within the San Luis Rey River watershed and are potentially threatened by highway maintenance and expansion of State Route 76 (CNDDDB, 1999). Since issuance of a Notice of Preparation (NOP) in 1999 regarding widening of State Route 76, the scope of the project has been reduced and Caltrans has recently had internal scoping meetings to discuss alternatives (J. D'Elia, USFWS, *in litt.* 2002). One of these occurrences is west of the Bonsall Bridge and reportedly supported 2,000 to 3,000 stems in 1997 (CNDDDB). While this occurrence is within the boundary of a proposed project on Jeffries Ranch, (along the south side of State Route 76), current project design avoids all of this occurrence (American Realty Trust, Inc. 2002). However, the occurrence is still threatened by highway expansion along the northern boundary of the property. A portion of this same occurrence was inadvertently impacted in 1996 by a San Diego Gas and Electric (SDG&E) utility project. The species was found on the site during the latter stages of planning for the project. Some of the aerial stems were salvaged by Pacific Southwest Biological Services, Inc. and have been maintained for future translocation. *Ambrosia pumila* still occurs at this locality. We have recently received a request from SDG&E for assistance in replanting the *A. pumila* at this site (Sempra Energy *in litt.* 2001). One of the five remaining occurrences within the

Sweetwater River watershed, near El Cajon, reportedly supports more than 1,000 stems, and is potentially threatened by highway construction (CNDDDB 1999) although no project is currently funded for the site (B. April, pers. comm., 2002). In Riverside County, highway expansion or highway and utility rights-of-way maintenance threaten a large occurrence (500 to 1,000 stems reported in 1998) along Nichols Road near Lake Elsinore (CNDDDB 1999).

Development of recreational facilities has also affected *Ambrosia pumila* (CNDDDB 1999). One occurrence that reportedly supported 2,000 aerial stems in 1997 was apparently significantly degraded by the construction of a golf course near Del Dios Highway in the San Dieguito River watershed, San Diego County (G. Wallace, *in litt.* 1999). Fewer than 100 aerial stems were found on the site which was less than 0.1 ha (less than 0.1 ac) in size (G. Wallace, *in litt.* 1999). Construction of a campground facility in MTRP by the City of San Diego resulted in the loss of less than 0.1 ha (0.1 ac) or 10 percent of this major population. This impact was the anticipated loss allowable under provisions of the City of San Diego's MSCP Subarea Plan (City of San Diego 1997). Biological monitoring, a requirement of MSCP, is in place and biologists periodically evaluate the status of this species and make management recommendations.

Urban development continues to threaten this species. A large occurrence in the City of El Cajon that reportedly supported 6,500 stems of *Ambrosia pumila* in 1998 (CNDDDB 1999) was apparently extirpated by commercial and residential development (C. Burrascano, *in litt.* 2001). In Riverside County, the recently reported occurrence near Alberhill (reportedly supporting about 13,000 aerial stems in 2000) is threatened by development associated with the Alberhill Sports and Entertainment project (Hewitt & McGuire 2000).

**B. Overutilization for commercial, recreational, scientific, or educational purposes.** Overutilization is not known to be a factor affecting *Ambrosia pumila* at this time. The potential threat to this species from over-collection may increase upon publication of this rule, although we are not aware of any incidents of collection of this species resulting from the proposal to list *A. pumila* as an endangered species. This species has been offered for sale locally, however, the source of the material is unknown (J. Bartel and B. McMillan, USFWS, pers. comm., 1999; CNPS, *in litt.* 2000).

**C. Disease or predation.** Disease and predation are not known to be factors affecting this plant species.

**D. The inadequacy of existing regulatory mechanisms.** Existing regulatory mechanisms that could currently provide some protection for this species include (1) Federal laws and regulations including the National Environmental Policy Act (NEPA), the Endangered Species Act in those cases where this species occurs in habitat occupied by other listed species, the Fish and Wildlife Coordination Act, and section 404 of the Federal Clean Water Act; (2) State laws, including the Native Plant Protection Act (NPPA), California Endangered Species Act (CESA), California Environmental Quality Act (CEQA), and section 1603 of the California Fish and Game Code; (3) local land use processes and ordinances; and (4) protection under Mexican laws.

#### *Federal Laws and Regulations*

NEPA (42 U.S.C. 4321 to 4347) requires disclosure of the environmental effects of projects within Federal jurisdiction. NEPA requires that the project alternatives include recommendations for protecting, restoring, and enhancing the environment. NEPA does not, however, require that the lead agency select an alternative with the least significant impact to the environment, nor does it prohibit implementing a proposed action in an environmentally sensitive area (40 CFR 1500 *et seq.*).

The Endangered Species Act (Act) may afford protection to *Ambrosia pumila* if it co-occurs with species already listed as threatened or endangered. A number of federally listed species are known to or are likely to co-occur within the range of *A. pumila*. Protection afforded by these species through sections 7 and 10 of the Act, however, is minimal due to the lack of significantly overlapping habitat requirements. These species include the endangered least Bell's vireo (*Vireo bellii pusillus*) and the threatened coastal California gnatcatcher (*Polioptila californica californica*). These species are not known to consistently co-occur in the same vegetation communities with *A. pumila* although they may occur in nearby associated communities.

The Fish and Wildlife Coordination Act and section 404 of the Clean Water Act may afford some protection to *Ambrosia pumila* where it occurs in waters of the United States that require a permit from the U.S. Army Corps of Engineers (Corps). Under section 404 of the Clean Water Act, the Corps regulates the discharge of fill material into waters of the United States, which may include

terraces of streams where *A. pumila* is found. Through the Fish and Wildlife Coordination Act, we may recommend discretionary conservation measures to avoid, minimize, and offset impacts to fish and wildlife resources resulting from a water development project authorized by the Corps. Section 404 regulations require that applicants obtain a nationwide, regional, or individual permit for projects that discharge fill material into waters of the United States. However, because the distribution of this species occurs mainly in non-wetland habitats and may not co-occur with other listed species, the Fish and Wildlife Coordination Act and section 404 of the Clean Water Act provide only limited opportunities to protect *A. pumila*.

#### **State Laws and Regulation**

Although State laws, including CEQA, CESA, and NPPA at times may provide a measure of protection to species, these laws are not adequate to protect species in all cases or may not be applicable to a particular species.

*Ambrosia pumila* is not listed under the CESA although it may be eligible for State listing under section 1901, chapter 10 of the California Department of Fish and Game Code. Its inclusion in List 1B of the California Native Plant Society Inventory (CNPS 2001) may satisfy the threat requirement of that section. The State was petitioned to list this species as endangered, under CESA, in June 1997. This petition was rejected by the State because it was not accurate. The same petitioner submitted another petition in February 1998 to list the species as threatened but subsequently withdrew the petition in March 1998. The State did not comment on our proposal to list this species.

CEQA (Public Resources Code, section 21000 *et seq.*) pertains to projects on non-Federal lands or activities and requires that a project proponent publicly disclose the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency. The lead agency is responsible for conducting a review of the project and consulting with 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" including those that are eligible for listing under the NPPA or CESA. However, under CEQA, where overriding social and economic considerations can be demonstrated, a

project may go forward even where adverse impacts to a species are significant.

#### Mexican Law

We are not aware of any existing regulatory mechanisms in Mexico that would protect *Ambrosia pumila* or its habitat. If *A. pumila* was specifically protected in Mexico, the portion of the range in Mexico alone would not be adequate to ensure long-term conservation of this species.

E. *Other natural or manmade factors affecting their continued existence.* Non-native plants are considered a threat to virtually all of the extant occurrences of *Ambrosia pumila* (CNDDDB 1999; J. Vanderwier, *in litt.* 1998). Non-native species of grasses and forbs have invaded many of southern California's plant communities. Their presence and abundance are often an indirect result of persistent and repeated habitat disturbance from development, discing, mowing, alteration of local hydrology, and the presence and maintenance of highways and trails. Overgrowth and competition by non-native plants likely affect the reproductive potential of this low growing, wind-pollinated species (CNDDDB 1999). Non-native plants found with *A. pumila* include *Brassica* spp. (mustard), *Vulpia* spp. (annual fescue), *Erodium* spp. (crane's-bill), *Bromus* spp. (brome grass), and *Foeniculum vulgare* (sweet fennel). While scientific studies on the effects of non-native plants on *A. pumila* have not been undertaken, the presence of these and other non-native plants is likely to affect (1) pollen and fruit dispersal by impeding flow of wind-blown pollen and local dispersal of seeds; (2) fire patterns by increasing the fuel loads due to the influx of non-native plants; (3) hydrological conditions by decreasing the amount of water available for *A. pumila*; and (4) the cumulative effects by reducing the vegetative productivity and the apparently low seed production for this species.

Several occurrences of *Ambrosia pumila* are threatened by periodic mowing or discing which can reduce the vegetative vigor of the plants and may greatly reduce or eliminate the chances of reproductive output for the year. If the plants were mowed in mid summer to early fall, it is likely that the flowering portions of the aerial stems would be removed. Vegetation in a fuel modification zone in a portion of one of the occurrences in the SDNWR is periodically mowed or disced (J. Vanderwier, *in litt.* 1998; A. Davenport, *in litt.* 2002). In the future, populations on the SDNWR will be flagged prior to

discing for fire breaks to avoid this species (A. Davenport, *in litt.* 2002). The extant occurrence in El Cajon, owned by Caltrans, is also impacted by periodic mowing by an adjacent landowner (CNDDDB 1999; B. April, pers. comm., 2002).

In one documented instance in 1999, the occurrence of *Ambrosia pumila* at a fenced biological preserve at Skunk Hollow in Riverside County, was grazed by sheep (C. Moen, USFWS, *in litt.* 1999). Grazing would likely eliminate or severely reduce the annual reproductive output of *A. pumila* and could also reduce the vegetative portions of the plants to a degree that would threaten their capacity to persist. Grazing was not a covered activity in the Rancho Bella Vista Habitat Conservation Plan that encompasses this area (USFWS 2000).

Trampling by hikers, horses, and vehicles is likely a threat to any of the occurrences that are found along trails, access roads, rights-of-way, and utility easements. At least four of the larger occurrences of *Ambrosia pumila* are known to be threatened by trampling, including the occurrences at the SDNWR (J. Vanderwier, *in litt.* 1998; T. Roster, SDNWR, pers. comm., 1999; A. Davenport, *in litt.* 2002). While the effects on the rhizome-like roots by soil compaction from vehicle traffic has not been quantified, no aerial stems occur in a wide trail used by hikers and horseback riders that traverses an occurrence in the SDNWR (A. Davenport, *in litt.* 2002). As an avoidance measure, some of the trails that cross and fragment occurrences of the species at the SDNWR will be abandoned, while those that remain will have increased signage to direct hikers and equestrian users away from the *A. pumila* populations (T. Roster, pers. comm., 1999). In addition, SDNWR will consult under section 7 of the Act for any proposed actions that may affect *A. pumila*.

The occurrence at Skunk Hollow in Riverside County is reportedly threatened by indirect impacts from urbanization, including a park, surrounding the occurrence (CNDDDB 1999). These activities could include increased impacts from trail use by mountain bikes, horses, or hikers.

Two occurrences are in MTRP. Coincident with their subarea plan (City of San Diego 1997), the San Diego Ambrosia Management Plan (City of San Diego 2000) includes several conservation measures already in place at MTRP. These include fencing at area C which supports the highest concentration of stems of San Diego ambrosia (City of San Diego 2000).

Social trails that disperse foot traffic from main trails have been closed by fencing or signage noting sensitive habitat and an interpretive sign is posted in the area (P. Kilburg, Senior Ranger, MTRP, pers. comm., 2002). The management plan (City of San Diego 2000) states that 26 percent of all mapped patches and 24 percent of the total area supporting this species are impacted by trails. The document also notes that *Ambrosia pumila* cannot withstand trampling from routine foot traffic and that trampling compacts the soil. Compacted soil may reduce the percolation of water into the soil and small patches may be in greater jeopardy than larger patches from this type of altered hydrological condition (City of San Diego 2000). Therefore, the plan recommends enhancement of the population of *A. pumila*. The plan cautions that strategies should be carefully tested prior to large-scale implementation or acceptance as a reliable enhancement method (City of San Diego 2000). Two strategies were proposed, one to increase the areal extent and absolute numbers of rhizome-like roots in a given patch. The other strategy involves increasing the range of the species in MTRP. Removal of exotic non-native species and planting of native grassland species should be included as funding permits (City of San Diego 2000). Enhancement protocols would likely require inclusion of sampling methodologies to identify specific genetic composition of occurrences and obtain material of the desired genotypes. Success criteria will be determined based in part on genetic composition and dynamics of natural populations.

Two extant occurrences (CNDDDB 1999) are within the Metro/Lakeside/Jamul segment of the San Diego County Subarea Plan of the MSCP (County of San Diego 1997). At least one of these occurrences is threatened by the parking of cars on the site and discing of the site (CNDDDB 1999). This same occurrence is affected by trampling during maintenance activities on SDG&E utility towers (J. Vanderwier, *in litt.* 1998) and trampling associated with children using the area as a playground for walking and riding bicycles (A. Davenport, *in litt.* 2002). The area where the plants occur appears to be mowed periodically (A. Davenport, *in litt.* 2002).

As described above in the background section, small occurrences composed of a low number of aerial stems or those consisting of few genetically distinct genotypes are likely at a greater risk of negative impacts from random events. This could include fire, which could

eliminate the reproductive output at an occurrence, kill all of the plants, or severely reduce the vegetative capacity of the plants to sustain reproductive structures for some period of time.

We have carefully assessed the best scientific and commercial information available regarding the threats faced by this species in developing this rule. Based on this evaluation, listing *Ambrosia pumila* as endangered is warranted. The species is threatened with extinction due to present or threatened destruction, fragmentation, and degradation of habitat primarily by construction and maintenance of highways, maintenance of utility easements, development of recreational facilities, and residential and commercial development; inadequate regulatory mechanisms; potential competition, encroachment, and other negative impacts from non-native plants; mowing and discing for fuel modification; and trampling as well as soil compaction by horses, humans, and vehicles. These threats are compounded by the fact that this species is a clonal perennial plant that has wind-pollinated flowers and may rarely produce viable seeds. The number of genetically different plants at any given site is unknown, but there are likely multiple aerial stems per plant. This means that some of the smaller occurrences could represent a single plant. Seven of the 15 occurrences are on private lands, some of these with rights-of-way access where regular maintenance activities may impact the plants. Conservation measures, provided by MSCP, are in place for 5 of the 15 occurrences. Even with full protection, this represents only one-third of the known occurrences and will likely not protect sufficient numbers of genetically different plants. Other occurrences may be conserved in future habitat conservation plans. Also, there are no known examples of transplanted or reintroduced occurrences of this species in which sexual reproduction has occurred to sustain either a viable population or exhibit the genetic diversity found in a naturally occurring population.

#### Critical Habitat

Critical habitat is defined in section 3(5)(A) 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) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time

it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary 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.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

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 designates critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

*Ambrosia pumila* is potentially vulnerable to unrestricted over-collection or vandalism. We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, at this time we do not have specific evidence of over-collection or vandalism of *A. pumila*. This species has been offered for sale locally, but the origin of the material is unknown. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species from over-collection or vandalism.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 of the Act requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical

habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we determine that designation of critical habitat for *Ambrosia pumila* is prudent.

However, the deferral of the critical habitat designation for *Ambrosia pumila* will allow us to concentrate our limited resources on higher priority listing actions, while allowing us to put in place protections needed for the conservation of *A. pumila* without delay. This is consistent with section 4(b)(6)(C)(i) of the Act, which states that final listing decisions may be issued without concurrent designation of critical habitat if it is essential to the conservation of the species that such determinations be promptly published. We will prepare a critical habitat designation for this species in the future at such time when our available resources allow it.

#### 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 and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States, local agencies, private groups, and organizations and requires that recovery actions be carried out for all listed species. We discuss the protection required by Federal agencies and the prohibitions against taking and harm, 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 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 subsequently listed, 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 a species or to destroy or adversely modify its critical habitat. If a Federal agency action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

Several Federal agencies are expected to potentially have involvement with section 7 of the Act regarding this species. The association of *Ambrosia pumila* with terraces of streams may result in the Corps becoming involved through its permitting authority under section 404 of the Clean Water Act and the issuance of permits related to the discharge of fill material into waters of the United States. The Federal Highway Administration may be affected through potential funding of future highway construction affecting this species. The Federal Energy Regulatory Commission may be involved through its permitting authority for utility projects that may potentially affect this species. The two occurrences of *A. pumila* on the SDNWR receive the protection afforded biological resources on the refuge. In addition, SDNWR is managed in accordance with San Diego MSCP. In the long-term, the SDNWR will develop a comprehensive conservation plan that addresses this species and other biological resources.

In 1991, the State of California established the Natural Community Conservation Planning (NCCP) program to address conservation needs of natural ecosystems throughout the State. The initial focus of the NCCP program is the coastal sage scrub community in southern California. Regional habitat conservation plans have been approved, are in development, or are being planned in San Diego, Orange, Riverside, San Bernardino, and Los Angeles Counties pursuant to the State of California Natural Community Conservation Planning Act of 1991 and section 10(a)(1)(B) of the Act.

The San Diego MSCP establishes a 68,800-ha (172,000-ac) preserve and provides for monitoring and management for the 85 covered species addressed in the permit, including *Ambrosia pumila*. Additionally, *A. pumila* is defined in the MSCP as a narrow endemic species. The Service approved subarea plans under the MSCP for the City of Poway in July

1996, the City of San Diego in July 1997, the County of San Diego in March 1998 and the City of La Mesa in January 2000.

All of the 12 extant occurrences in San Diego County are in approved or proposed regional habitat conservation planning areas. Eleven of the 12 extant occurrences in San Diego County are in the MSCP planning area. Two of these occurrences are in the SDNWR. Five of the nine known occurrences in the MSCP planning area are provided protection within approved permitted Subarea Plans. Two of the occurrences, both at MTRP, are addressed under the approved City of San Diego's Subarea Plan (City of San Diego 1997) and in the San Diego Ambrosia Management Plan (City of San Diego 2000). Several conservation measures are in place at MTRP. These include fencing of the largest concentration of *Ambrosia pumila*, closure of several trails that impact the species, and interpretive signage in the area (City of San Diego 2000, P. Kilburg pers. comm., 2002). According to the City of San Diego's Subarea Plan (City of San Diego 1997), 90 percent of the only major population will be conserved and 100 percent of the adjacent portion of the occurrence on private lands near the radio tower will be preserved. The site-specific monitoring plan, with management plan and directives, include measures to protect against detrimental edge effects (City of San Diego 1997). This Subarea Plan also treats this plant as a narrow endemic species requiring impacts within the preserve to be avoided. Outside the preserve, narrow endemic species will be protected through one of the following measures: (1) Avoidance; (2) management; (3) enhancement; and (4) transplantation to areas identified for preservation. Unavoidable impacts associated with reasonable use or essential public facilities would need to be minimized and mitigated (City of San Diego 1997).

Under the County of San Diego's Subarea Plan, *Ambrosia pumila* is a narrow endemic species requiring avoidance to the maximum extent possible. Where avoidance is infeasible, a maximum encroachment may be authorized of up to 20 percent of the population on site. Where impacts are allowed, in-kind preservation shall be required at a 1:1 to 3:1 ratio depending upon the sensitivity of the species and population size, as determined in a biological analysis approved by the Service and the CDFG. The occurrences near Del Dios Highway in the San Dieguito River watershed, as well as two occurrences near Steele Canyon Road are within the approved County of San

Diego's Subarea Plan (County of San Diego 1997).

Two existing occurrences remain within the City of El Cajon. The City of El Cajon submitted a draft MSCP Subarea Plan dated January 2, 1997 (City of El Cajon 1997). Neither of the two occurrences is included within the 100 percent habitat preserve areas. The draft plan notes that the plant is considered a narrow endemic species by MSCP and the intention of the City of El Cajon to address species and habitat protection through the CEQA process. The City of El Cajon has not yet completed their MSCP subarea plan. The last time this plan was an agenda item at a meeting with the City of El Cajon was on May 20, 1999.

The draft Environmental Impact Statement/Environmental Impact Report for the MHCP in northwestern San Diego County was released for review by the San Diego Association of Governments (SANDAG) and the Service in December 2001. The only known occurrence of this species within the planning area is proposed to be conserved. Under the draft MHCP, the plant would be treated as a narrow endemic species requiring surveys of suitable habitat and onsite conservation of 80–100 percent of each occurrence discovered in the area. Two occurrences of *Ambrosia pumila* in San Diego County are within the North County MSCP Subarea Plan, which is also in the planning phase. This plan is projected to be completed in 2004.

The County of Riverside anticipates completion of the Western Riverside Multiple Species Habitat Conservation Plan (MSHCP) by December 2002. *Ambrosia pumila* has been proposed for coverage under this plan and will be treated as a narrow endemic species. The three known extant occurrences of this species in Riverside County are within the planning boundaries of the MSHCP. One of these is within an area already managed for conservation. The other two occurrences are within the criteria area where conservation is proposed. The narrow endemic species policy will require pre-project surveys and onsite conservation of a portion of any new populations identified (County of Riverside 2002).

SDG&E prepared a subregional Natural Communities Conservation Plan. The Service, CDFG, and SDG&E signed an implementation agreement and memorandum of understanding in December 1995. Under the provisions of this plan, *Ambrosia pumila* is a covered species and a narrow endemic species. The plan prohibits impacts to occupied habitat except in emergency situations.

While four of the 12 extant occurrences of *Ambrosia pumila* in San Diego County are in areas where regional habitat conservation planning is ongoing, the plans have not yet been approved. These regional planning efforts include MHCP, the North County MSCP Subarea Plan, and the City of El Cajon Subarea Plan. The details of protections for each of the occurrences of *Ambrosia pumila* under each of these plans are being developed and thus are not currently in place. Protections for the eight remaining occurrences in San Diego County are discussed above. All three of the only known extant occurrences in Riverside County are in the planning area for the Western Riverside Multiple Species Habitat Conservation Plan. Because this plan is not yet approved, two of these occurrences, including one of the largest, are not currently afforded any protections under the MSHCP.

Listing *Ambrosia pumila* provides for the development and implementation of a recovery plan for the species. This plan will bring together Federal, State, and local agency efforts for conservation of the species. A recovery plan will establish a framework for agencies to coordinate their recovery efforts. The plan will set recovery priorities and estimate the costs of the tasks necessary to accomplish the priorities. It will also describe the site-specific management actions necessary to achieve conservation and recovery of the species. Based on the biology of this species and preliminary data regarding the clonal structure of the species, attention should be given to preservation of as many genotypes as possible. This is most easily accomplished by preserving as many different occurrences as possible, determining their clonal structure, and protecting the occurrences from direct effects of habitat destruction or degradation and the indirect effects of encroachment by invasive non-native species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, 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 to possession from areas under

Federal jurisdiction any endangered plant species. In addition, for plants listed as endangered, the Act prohibits 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 or in the course of any violation of a State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and 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 species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few trade permits would ever be sought or issued because this species is not common in cultivation or common in the wild. Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE. 11th Avenue, Portland, OR 97232-4181 (telephone 503/231-2063; facsimile 503/231-6243).

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

Questions on whether specific activities would likely constitute a violation of section 9 should be directed to the Field Supervisor of the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

#### National Environmental Policy Act

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 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Any information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned control number 1018-0094, which expires on July 31, 2004. For additional information concerning these permits and associated requirements, see 50 CFR § 17.62.

#### References Cited

A complete list of all references cited herein is available, upon request, from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

#### Author

The primary author of this final rule is Gary D. Wallace, Ph.D., U.S. Fish and Wildlife Service, Carlsbad 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.

#### Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as follows:

#### 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. Section 17.12(h) is amended by adding the following entry 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>Ambrosia pumila</i> .....	* San Diego ambrosia	* U.S.A. (CA) Mexico	* Asteraceae .....	* E	* 727	* NA	* NA
*	*	*	*	*	*	*	*

Dated: June 14, 2002.  
**Marshall P. Jones, Jr.,**  
 Acting Director, U.S. Fish and Wildlife Service.  
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**BILLING CODE 4310-55-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AF83**

**Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Southern California Distinct Vertebrate Population Segment of the Mountain Yellow-Legged Frog (*Rana muscosa*)**

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

**ACTION:** Final rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), determine endangered status for the southern California distinct vertebrate population segment (DPS) of the mountain yellow-legged frog (*Rana muscosa*) pursuant to the Endangered Species Act of 1973, as amended (Act). This rule implements the Federal protection and recovery provisions afforded by the Act for this DPS.

**DATES:** This rule is effective August 1, 2002.

**ADDRESSES:** Supporting documentation for this rulemaking is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, CA 92008.

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, at the above address (telephone 760/431-9440 and facsimile 760/431-9618).

**SUPPLEMENTARY INFORMATION:**

**Background**

The mountain yellow-legged frog is in the family of true frogs, Ranidae, which consists of frogs that are more closely tied to water bodies for breeding and

foraging than other frog or toad species. Mountain yellow-legged frogs were originally described by Camp (1917) as a subspecies of *Rana boylei*. Zweifel (1955) demonstrated that frogs from the high Sierra Nevada and the mountains of southern California were somewhat similar to each other, yet were distinct from the rest of the *R. boylei* (= *boylei*) group. Since that time, most authors have treated the mountain yellow-legged frog as a full species, *Rana muscosa*, following Zweifel's treatment.

Mountain yellow-legged frogs are moderately sized, about 40 to 80 millimeters (mm) (1.5 to 3 inches (in)) from snout to urostyle (the pointed bone at the base of the backbone) (Zweifel 1955, Jennings and Hayes 1994). The skin pattern of the mountain yellow-legged frog is variable, ranging from discrete dark spots that can be few and large, to smaller and more numerous with a mixture of sizes and shapes, to irregular patches or a poorly defined network (Zweifel 1955). The body color is also variable, usually a mix of brown and yellow, but often with gray, red, or green-brown. Some individuals may be dark brown with little pattern (Jennings and Hayes 1994). Folds are present on each side of the back (dorsolateral folds), but usually are not prominent (Stebbins 1985). The throat is white or yellow, sometimes mottled with dark pigment (Zweifel 1955). The belly and undersurface of the hind limbs are yellow, which ranges in hue from pale lemon yellow to an intense sun yellow. Eye coloration consists of a gold-colored iris with a horizontal, black counter shading stripe (Jennings and Hayes 1994).

The mountain yellow-legged frog is a near-endemic species to California (primarily restricted to California and a small area of Nevada), historically ranging in distribution from southern Plumas County in northern California to northern San Diego County in southern California. Within the range of the species, there are two major clades (a group of organisms that includes all descendants of one common ancestor) separated by a biogeographic break between the central and southern portions of the Sierra Nevada. These

two clades can be further divided into four subgroups, the northern Sierra Nevada, central Sierra Nevada, southern Sierra Nevada, and southern California (Macey *et al.* 2001). In the Sierra Nevada of California, the mountain yellow-legged frog ranges from northern Plumas County (G. Fellers *in litt.* 2000) to southern Tulare County (Jennings and Hayes 1994), at elevations mostly above 1,820 meters (m) (6,000 feet (ft)). The frogs of the southern Sierra Nevada are isolated from the frogs in the mountains of southern California by the Tehachapi Mountains and a distance of about 225 kilometers (km) (140 miles (mi)).

Mountain yellow-legged frogs were historically documented from approximately 166 localities in creeks and drainages in the mountains of southern California (Jennings and Hayes 1994). Of these, an estimated 164 localities were from creeks and drainages in the San Gabriel, Big Bear, and San Jacinto Mountains of Los Angeles, San Bernardino, and Riverside Counties. The two remaining occurrences were documented on Palomar Mountain in San Diego County and were considered to represent an isolated population (Zweifel 1955). Currently the mountain yellow-legged frog is known from only seven locations in southern California in portions of the San Gabriel, San Bernardino, and San Jacinto Mountains (Backlin *et al.* 2002).

Localities of extant populations of mountain yellow-legged frogs in southern California are reported to range in elevation from approximately 370 m (1,200 ft) to 2,290 m (7,500 ft) (Stebbins 1985). Historical localities demonstrating the wide elevation range that mountain yellow-legged frogs inhabited in southern California include Eaton Canyon, Los Angeles County (370 m (1,220 ft)), and Bluff Lake, San Bernardino County (2,290 m (7,560 ft)).

Southern California mountain yellow-legged frogs are diurnal (active during the daylight hours), highly aquatic frogs, occupying rocky and shaded streams with cool waters originating from springs and snowmelt. Water depth, persistence, and configuration (*i.e.*, gently sloping shorelines and margins) appear to be important for mountain