

prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### Drafting Information

The principal author of these regulations is Aimee K. Meacham of the Office of Associate Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Proposed Amendments to the Regulations

Accordingly, proposed regulations published on October 23, 2002 (67 FR 65066), are withdrawn, and 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*, 26 U.S.C. 1502 \* \* \*

**Par. 2.** Section 1.1502-21 is amended by:

1. Revising paragraph (b)(1).
2. Adding paragraph (b)(3)(v) and (h)(7).

The revision and addition read as follows:

#### § 1.1502-21 Net operating losses.

\* \* \* \* \*

(b) \* \* \*

(1) [The text of the proposed amendment to § 1.1502-21(b)(1) is the same as the text of § 1.1502-21T(b)(1) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(3) \* \* \*

(v) [The text of the proposed amendment to § 1.1502-21(b)(3)(v) is the same as the text of § 1.1502-21T(b)(3)(v) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(h) \* \* \*

(7) [The text of the proposed amendment to § 1.1502-21(h)(7) is the same as the text of § 1.1502-21T(h)(7) published elsewhere in this issue of the **Federal Register**].

**Par. 3.** Section 1.1502-32 is amended by:

1. Revising paragraphs (a)(2) and (h).
2. Adding paragraphs (b)(3)(iii)(C), (b)(3)(iii)(D), (b)(3)(vi) and (h)(6).

The revision and additions read as follows:

#### § 1.1502-32 Investment adjustments.

\* \* \* \* \*

(a)(2) [The proposed amendment to § 1.1502-32(a)(2) is the same as § 1.1502-32T(a)(2) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(b) \* \* \* (1) \* \* \*

(3) \* \* \*

(iii) \* \* \*

(C) and (D) [The proposed amendment to § 1.1502-32(b)(3)(iii)(C) and (b)(3)(iii)(D) are the same as § 1.1502-32T(b)(3)(iii)(C) and (b)(3)(iii)(D) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(4)(i) \* \* \*

(vi) [The proposed amendment to § 1.1502-32(b)(4)(vi) is the same as § 1.1502-32T(b)(4)(vi) published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

(h)(6) [The proposed amendment to § 1.1502-32(h)(6) is the same as § 1.1502-32T(h)(6) published elsewhere in this issue of the **Federal Register**].

**Par. 4.** Section 1.1502-35 is added to read as follows:

#### § 1.1502-35 Transfers and issuances of subsidiary member stock.

[The text of proposed § 1.1502-35 is the same as the text of § 1.1502-35T published elsewhere in this issue of the **Federal Register**].

\* \* \* \* \*

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03-6118 Filed 3-11-03; 1:04 pm]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018-AI69

### Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Yermo xanthocephalus* (Desert Yellowhead)

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), propose to designate critical habitat for *Yermo xanthocephalus* (desert yellowhead) pursuant to the Endangered Species Act (Act) of 1973. *Y. xanthocephalus* was

federally listed as threatened throughout its range in central Wyoming in 2002. Approximately 146 hectares (ha) (360 acres (ac)) in Fremont County, Wyoming, are proposed for designation as critical habitat for *Y. xanthocephalus*. The proposed critical habitat occurs entirely on land managed by the Bureau of Land Management (BLM).

If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat.

**DATES:** We will accept comments until the close of business on May 13, 2003. Public hearing requests must be received by April 28, 2003.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

(1) You may submit written comments and information to the Field Supervisor, Wyoming Field Office, U.S. Fish and Wildlife Service, 4000 Airport Parkway, Cheyenne, Wyoming 82001.

(2) You may hand-deliver written comments to our Wyoming Field Office at the address given above.

(3) You may send comments by electronic mail (e-mail) to [fw6\\_desertyellowhead@fws.gov](mailto:fw6_desertyellowhead@fws.gov). See the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jodi Bush, Assistant Field Supervisor, Wyoming Field Office, U.S. Fish and Wildlife Service, at the above address (telephone: 307-772-2374; facsimile: 307-772-2358; e-mail: [Jodi\\_Bush@fws.gov](mailto:Jodi_Bush@fws.gov)).

#### SUPPLEMENTARY INFORMATION:

#### Background

Wyoming botanist Robert Dorn discovered *Yermo xanthocephalus* (desert yellowhead) while conducting field work in the Beaver Rim area of central Wyoming in 1990. Dorn discovered a small population of an unusual species of Composite (Asteraceae). Dorn's closer examination revealed that the species was unknown

to science and represented a new genus. Dorn (1991) named his discovery *Y. xanthocephalus*, or literally "desert yellowhead."

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

*Yermo xanthocephalus* flowers from mid-June to August and may flower a second time in September. The start and end of flowering, as well as the duration of flowering, vary between years and seem dependent upon temperature and other climatic variables. Fruits have been observed from mid-July to early September, but do not persist after the flower has dried and bracts ruptured (Heidel 2002).

*Yermo xanthocephalus* appears to be an obligate outcrosser (cannot self-pollinate) (Heidel 2002) and is likely pollinated by visually-oriented insects attracted to the yellow flowers (Dorn 1991). Several Hymenoptera (order including sawflies, ants, bees, and wasps) have been collected from *Y. xanthocephalus* heads, and small skipper butterflies noted on them, although the identity of these potential pollinators is not currently known (Heidel 2002). No work has been done to document the status of these potential pollinators in this vicinity. However, of the skippers known from Fremont County that most likely use *Y. xanthocephalus* habitat, all have Nature Conservancy Global Ranks of G-4 (apparently secure globally) and G-5 (demonstrably secure globally) with no special conservation or management needs identified by Opler *et al.* (1995).

The fruits of *Yermo xanthocephalus* are single-seeded achenes (dry fruit) with a parachute-like pappus of slender bristles. At maturity, the fruits are exposed to the wind, which may disperse the seed over long distances. However, the clustered distribution pattern of *Y. xanthocephalus*, often along colluvial (rock debris) washes, suggests that dispersal distances are short and perhaps fostered by water erosion (Heidel 2002).

The species is restricted to shallow deflation hollows in outcrops of

Miocene sandstones of the Split Rock Formation (Love 1961, Van Houten 1964). These hollows have been shaped by the microscale dynamics of local winds, as well as erosional processes, in an unstable portion of the landscape on sites lacking desert pavement and with low vegetation exposed to strong-wind (Bynum 1993). Within the hollows, *Yermo xanthocephalus* occurs on low slopes, rim margins, colluvial fans, and bottoms at elevations generally ranging from 2,050 to 2,060 meters (m) (6,720 to 6,760 feet (ft)) (Heidel 2002).

*Yermo xanthocephalus* grows in recent soils derived from sandstones and limestones of the Split Rock Formation at its junction with the White River Formation (Heidel 2002). Bynum (1993) found these are shallow, loamy soils of the Entisol order that can be classified as a coarse-loamy over sandy-skeletal mixed Lithic Torriorthent. In contrast, the surrounding sagebrush community occupies deep sandy loam of the Aridisol order. The surface stratum is mildly alkaline with little organic matter, while subsurface layers have no accumulation of humus, clay, gypsum, salts, or carbonates (Bynum 1993).

The shape and orientation of the wind-excavated hollows may allow for accumulation of moisture from sheet wash coming off adjacent areas, so the hollows may be more mesic (moist) than surrounding areas (R. Scott, Central Wyoming College, pers. comm. 2002). The vegetation of these sites is typically sparse, with vegetative cover often as low as 10 percent, and consists primarily of low-cushion plants and scattered clumps of Indian ricegrass (*Stipa hymenoides*). Species common to these communities include *Arenaria hookeri* (Hooker's sandwort), *Astragalus kentrophyta* (thistle milkvetch), *Hymenoxys acaulis* (stemless hymenoxys), and *Phlox muscoides* (squarestem phlox) (Fertig 1995). A more complete list of frequently associated species can be found in Heidel (2002).

*Yermo xanthocephalus* is currently known from a single population with plants widely scattered over an area of 20 ha (50 ac). This population consists of one large subpopulation at the base of Cedar Rim and two smaller subpopulations within 0.4 kilometer (km) (0.25 mile (mi)). Originally, Dorn observed approximately 500 plants within 1 ha (2.5 ac) in 1990 on Federal land managed by the BLM (Dorn 1991). The estimate of the plant population's size has increased from 500 in 1990 to 11,967 plants in 2001 (R. Scott, Central Wyoming College, pers. comm., 2001). However, Dorn's original estimate of

500 plants was an ocular estimate and did not include two nearby subpopulations, while Scott has been conducting extensive population censuses in all three subpopulations using a monitoring grid (Heidel 2002). Therefore, the difference in estimates may be largely the result of different techniques used over differing acreages and cannot be assumed to show a significantly increasing trend in population size between 1990 and 2001. Based upon Scott's data collected from 1995 through 2001, the actual population count has increased from 9,293 in 1995 to 11,967 in 2001, possibly in response to higher than normal precipitation over the study period (R. Scott, Central Wyoming College, pers. comm., 2001).

Surveys conducted between 1990 and 1994 failed to locate additional populations of *Yermo xanthocephalus* on outcrops of the Split Rock, White River, Wagon Bed, and Wind River formations in the Cedar Rim and Beaver Rim areas of southern Fremont County (Fertig 1995). No additional populations were located during follow-up surveys conducted during 1997 along Beaver Rim in Fremont and Natrona counties, as well as in the Shirley Basin in Carbon County (Heidel 2002). Additional surveys were conducted during 2001 in segments of Cedar Rim and Beaver Rim and surrounding areas not previously surveyed; however, no new populations were located (Heidel 2002).

*Yermo xanthocephalus* is vulnerable to extinction from randomly occurring, catastrophic events, as well as even small-scale habitat degradation, due to its small population size and limited geographic range. As described by Fertig (1995), the species is characterized by a long-lived perennial growth form, adaptation to severe habitats, and low annual reproductive output. This low reproductive output would make the species increasingly vulnerable to extinction due to chance events if the population size declined, because it is unlikely that the species would exhibit a high rate of population growth, even if environmental conditions improved after such an event.

While not known to have impacted *Yermo xanthocephalus* to date, oil and gas development could impact the population of *Y. xanthocephalus*. The known population is encompassed by, and adjacent to, oil and gas leases with no specific lease stipulations included to protect the plant. Construction of well pads, access roads, and pipelines through occupied habitat, as well as seismic exploration of oil and gas producing formations, could result in direct destruction or crushing of plants

and soil compaction and erosion. Additionally, a network of roads and well pads in the area would result in more human intrusion into what is now a relatively remote area.

The presence of locatable minerals in the area and their potential extraction could also impact the known *Yermo xanthocephalus* population. Uranium and zeolites, a locatable mineral with properties useful in water softening, manufacturing of catalysts, pollution control, and removal of radioactive products from radioactive waste, are found in the Beaver Rim area (BLM 1986). Private parties can stake a mining claim, explore for, and extract locatable minerals in accordance with the 1872 General Mining Law. Such activity should it occur in the vicinity of the known population could result in direct destruction of individual plants and habitat.

Recreational off-road vehicle use threatens to crush *Yermo xanthocephalus* plants and compact or erode soil. A two-track, four-wheel-drive vehicle trail leading to an abandoned oil well bisects the population and is open to recreationists driving four-wheel-drive trucks and other smaller all-terrain vehicles.

The *Yermo xanthocephalus* population is in a grazing allotment pasture where trampling may occur as cattle casually move along "cow trails" or other tracks while grazing or moving to water. Focused or prolonged use of the area by cattle could result in damage to the habitat and individual plants. Scott (2000) noted signs of moderate wild horse traffic adjacent to the habitat. However, at this time, grazing has not been documented as impacting the *Y. xanthocephalus* population.

Additionally, the invasion of non-native species, particularly noxious weeds, could accompany many of the activities discussed above. The resulting changes to the vegetative community could have significant adverse impacts on the population of *Yermo xanthocephalus*.

The current BLM Lander Resource Management Plan, which covers the area proposed for designation as critical habitat for *Yermo xanthocephalus*, was approved in 1987, 3 years prior to the species' discovery. Therefore, the Resource Management Plan does not specifically mention the plant. In response to the proposed listing of *Y. xanthocephalus*, the BLM developed a draft conservation agreement, assessment, and strategy for the plant (BLM 1998) in order to promote its conservation and recovery on BLM lands. However, the document was never finalized or signed.

In the 6 years that complete population counts have been done, the *Yermo xanthocephalus* population has appeared stable (Heidel 2002). Current conditions appear favorable to the species and its habitat. Even small changes to the habitat, such as protective fencing around the plant's location, or changes in livestock and wildlife use or numbers, may have negative impacts by altering water flow patterns and trails that currently carry water and soil flows. These kinds of changes also may allow native and non-native plant species to out-compete *Y. xanthocephalus* for water and habitat.

#### Previous Federal Action

In the plant Notice of Review published on September 30, 1993 (58 FR 51144), we designated *Yermo xanthocephalus* a Category 2 species for potential listing under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). At that time, Category 2 species were those for which data in our possession indicated listing was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support a proposed rule. On February 28, 1996, we published a Notice of Review in the **Federal Register** (61 FR 7596) that discontinued the designation of Category 2 species as candidates. At that time, this species was upgraded to candidate status based upon its small population size, the failure to locate additional populations in similar habitats during additional surveys during 1994, and further analysis of threats. A candidate is a species for which we possess substantial information on biological vulnerability and threats to support preparation of a listing proposal.

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

Biodiversity Legal Foundation's petition.

We published the proposed rule to list *Yermo xanthocephalus* as threatened in the **Federal Register** on December 22, 1998 (63 FR 70745). In the proposed rule, we found that the designation of critical habitat was not prudent because the minimal benefits of such designation would be far outweighed by the increase of threats from over collection or other human activities. We believed critical habitat designation would provide no additional benefit to the species beyond that conferred under sections 7 and 9 of the Act by listing.

In a proposed rule published in the **Federal Register** on September 5, 2000 (65 FR 53691), we reopened the comment period. In the same proposed rule, we sought comments regarding a draft conservation agreement, assessment, and strategy submitted by BLM (BLM 1998) for our consideration when making the listing decision. The conservation agreement, assessment, and strategy was never finalized or signed and was not considered as a firm commitment to perform the actions when assessing conservation commitments in making the listing decision.

On August 9, 1999, BLM segregated (proposed withdrawal of) 1,521.26 ha (3,759.12 ac) surrounding the population of *Yermo xanthocephalus* for 2 years from location and entry under the general Mining Act of 1872, and from settlement, sale, location, and entry under the general land laws (64 FR 43209). However, this segregation expired on August 9, 2001, with no finalized withdrawal in place.

On November 12, 2001, Biodiversity Legal Foundation, Biodiversity Associates, Center for Native Ecosystems, and Wyoming Outdoor Council filed a complaint in the U.S. District Court of Colorado alleging that the Service failed to make a timely final listing determination and critical habitat designation for *Yermo xanthocephalus* (*Biodiversity Legal Foundation v. Norton*, 01-B-2204 District of Colorado). The Court approved a settlement agreement on February 28, 2002, which included a March 8, 2003, date for submission of proposed critical habitat for *Y. xanthocephalus* to the **Federal Register** for publication and a March 8, 2004, date for submission of final critical habitat for *Y. xanthocephalus* to the **Federal Register**.

After a review of the best scientific data available and all comments received in response to the proposed rule, we published a final rule on March 14, 2002, designating *Yermo xanthocephalus* as threatened

throughout its range (67 FR 11442). We did not designate critical habitat at that time. However, we reevaluated our prudence determination under the standards mandated by various court decisions and found that designation of critical habitat for *Y. xanthocephalus* was prudent. We elected to list *Y. xanthocephalus* as threatened without designation of critical habitat to allow us to concentrate limited resources on other listing actions that needed to be addressed, while allowing us to invoke the protections needed for the conservation of this species without further delay. We committed to prepare a critical habitat designation in the future when our available resources and priorities would allow.

### Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification with regard to actions carried out, funded, permitted, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the

regulatory definition of adverse modification in relation to the conservation of the species.

Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. However, the designation of critical habitat provides benefits to the species in other ways. Designation of critical habitat allows for a better focus of conservation efforts by identifying those areas that contain the primary constituent elements (physical and biological features) essential to the conservation of the species. The designation alerts public land management agencies to the importance of the area for conservation of the species. Additionally, designation of critical habitat allows for long-term planning that will facilitate the conservation needs of the species.

To be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), that provide essential life cycle needs of the species.

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species," (50 CFR 424.12(e)). Accordingly, unless the best available scientific data do not demonstrate that the conservation needs of the species require it, we will not designate critical habitat in areas

outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act, and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should, at a minimum, be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, unpublished materials, and expert opinion.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

### Methods

In determining areas that are essential to conserve *Yermo xanthocephalus*, we used the best scientific information

available, as required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12). We reviewed available information that pertains to the habitat requirements of this species, including information from the final rule listing the species as threatened (67 FR 11442), data from research and survey observations at the known population site, status reports compiled by the Wyoming Natural Diversity Database, the BLM's Resource Management Plan/Environmental Impact Statement for the Lander Resource Area (1986), Geological Survey Bulletins regarding the geology of central Wyoming and the Beaver Rim area, data regarding soils at the known population site, and discussions with botanical experts and BLM employees.

We mapped critical habitat based on U.S. Geological Survey 7.5" quadrangle maps (Dishpan Butte and Sweetwater Station, Wyoming). We included the areas occupied by the subpopulations of *Yermo xanthocephalus* based upon existing maps of the subpopulations, as well as site visits by Service and BLM employees. We included adjacent areas of suitable soils and vegetative communities to allow for maintenance of the seed bank and dispersal. Additionally, we identified areas with topographic features (outcroppings, cliffs, and hills) influencing the microscale dynamics of local winds, erosional processes, and hydrologic processes needed to maintain the integrity of the shallow deflation hollows providing *Y. xanthocephalus* habitat, as well as the sheet wash that provides increased moisture to the habitat. We believe these areas are necessary because of the unstable nature of the landscape (Bynum 1993) and the more mesic nature of the hollows than the surrounding arid landscape (R. Scott, Central Wyoming College, pers. comm. 2002). We delineated the boundary of this area using section lines and quarter-section lines where feasible, in order to facilitate BLM management and enforcement. This designation will also reduce the likelihood that extant populations would be identified and vandalized.

#### Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we must consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species, and that may require special management considerations or protection. These include, but are not limited to: space for individual and population growth, and for normal

behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. The area proposed as critical habitat for *Yermo xanthocephalus* is within the geographical area presently occupied by the species and contains these physical or biological features (primary constituent elements) essential for the conservation of the species.

Based on our knowledge to date, the primary constituent elements for *Yermo xanthocephalus* consist of, but are not limited to:

(1) Recent soils derived from sandstones and limestones of the Split Rock Formation at its junction with the White River Formation. These are shallow, loamy soils of the Entisol order that can be classified as coarse-loamy over sandy-skeletal, mixed, Lithic Torriorthent. The surface stratum has little organic matter and subsurface layers show no accumulation of humus, clay, gypsum, salts, or carbonates.

(2) Plant communities associated with *Yermo xanthocephalus* that include, but may not be limited to, sparsely-vegetated cushion plant communities with scattered clumps of *Oryzopsis hymenoides* (Indian ricegrass) between 2,043 and 2,073 m (6,700 and 6,800 ft) in Fremont County, Wyoming. Species common to these communities include *Arenaria hookeri* (Hooker's sandwort), *Astragalus kentrophyta* (thistle milkvetch), *Hymenoxys acaulis* (stemless hymenoxys), and *Phlox muscoides* (squarestem phlox). These cushion-plant communities also contain natural openings.

(3) Topographic features/relief (outcroppings, cliffs, and hills) and physical processes, particularly hydrologic processes, that maintain the shape and orientation of the hollows characteristic of *Yermo xanthocephalus* habitat (through microscale dynamics of local winds and erosion) and maintain moisture below the surface of the ground (through sheet wash from the adjacent outcroppings, cliffs, and hills).

#### Criteria Used To Identify Critical Habitat

We identified critical habitat essential for the conservation of *Yermo xanthocephalus* in the only area where it is known to occur. There are no known historic locations for this species. While we acknowledge the high degree of threat that arises from chance catastrophic events given the limited

geographic distribution of this species, we find no compelling evidence that the plant ever existed at other locations. We believe conservation of the species can be achieved through management of threats to the population within this proposed critical habitat.

Given the clustered distribution pattern of *Yermo xanthocephalus* and our assumption that dispersal distances are short and possibly fostered by water erosion, a limited amount of critical habitat is essential for maintenance of the seed bank and dispersal. Additionally, the persistence of the species requires some surrounding habitat to maintain the ecological processes that allow the population and the primary constituent elements to persist.

Even though we did not propose sites other than where the population is currently known to occur, we do not mean to imply that habitat outside the designation is unimportant or may not be required for recovery of the species. Areas that support newly discovered populations in the future, but are outside the critical habitat designation, will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act, as determined on the basis of best available information at the time an action is proposed.

#### Critical Habitat Proposal

The proposed critical habitat area described below constitutes our best assessment at this time of the area essential for the conservation of *Yermo xanthocephalus*. The site includes the only known location where the species currently occurs and, as such, is essential.

The proposed critical habitat is approximately 146 ha (360 ac) of Federal lands managed by BLM in the Beaver Rim area approximately 10 km (6 mi) north of Sweetwater Station in southern Fremont County, Wyoming. Within this area, *Yermo xanthocephalus* occurs in sparsely vegetated cushion-plant communities associated with shallow soils on low slopes, rim margins, colluvial fans, and bottoms within deflation hollows. Additionally, as discussed previously, we included areas supporting topographic features (outcroppings, cliffs, and hills) influencing the microscale dynamics of local winds, erosional processes, and hydrologic processes needed to maintain the integrity of the shallow deflation hollows providing *Y. xanthocephalus* habitat, as well as the

sheet wash that provides increased moisture to the habitat. Within the critical habitat, *Y. xanthocephalus* occurs in 3 subpopulations with a total population size of 11,967 plants in 2001 (R. Scott, Central Wyoming College, pers. comm. 2001). Dispersal from these subpopulations is limited and frequently occurs along colluvial washes.

### Effects of Critical Habitat Designation

#### Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, 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 designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer 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. Conference reports provide conservation recommendations to assist the action agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, 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 action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. "Reasonable and prudent alternatives" are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated, and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect *Yermo xanthocephalus* or its critical habitat will require section 7 consultation. Federal actions not affecting listed species or critical habitat do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or

indirectly destroy or adversely modify critical habitat or may be affected by the designation include, but are not limited to:

(1) Activities that have the potential to appreciably degrade or destroy *Yermo xanthocephalus* habitat (and its PCEs), including mining, oil and gas exploration and development, herbicide use, intensive livestock grazing, clearing, discing, farming, residential or commercial development, off-road vehicle use, and heavy recreational use;

(2) Alteration of existing hydrology by lowering the groundwater table or redirection of sheet flow from areas adjacent to deflation hollows;

(3) Compaction of soil through the establishment of trails or roads;

(4) Activities that foster the introduction of non-native vegetation, particularly noxious weeds, or create conditions that encourage the growth of non-natives. These activities could include, but are not limited to:

irrigation, supplemental feeding of livestock, and ground disturbance associated with pipelines, roads, and other soil-disturbing activities; and

(5) Appreciably decreasing habitat value or quality through indirect effects (e.g., construction of fencing along the perimeter of the critical habitat leading to cattle congregation at the fence and resultant focused disturbance, erosion, and changes to drainage patterns, soil stability, and vegetative community composition).

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Wyoming Field Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, P.O. Box 25486, DFC, Denver, Colorado 80225-0486 (telephone: 303-236-7400; facsimile: 303-236-0027).

### Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will conduct an analysis of

the economic impacts of designating the specific proposed area as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a public comment period on the draft economic analysis and proposed rule at that time.

#### Public Comments Solicited

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

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of *Yermo xanthocephalus* habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use practices and current or planned activities in the subject area and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for *Yermo xanthocephalus*, such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs); and

(6) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

If you wish to comment on this proposed rule, you may submit your comments and materials by any one of several methods (see **ADDRESSES** section). If submitting comments by electronic format, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include your name and return e-mail address in your e-mail message.

Please note that the e-mail address will be closed out at the termination of the public comment period. If you do not receive confirmation from the system that we have received your message, contact us directly by calling our Wyoming Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address (see **ADDRESSES** section).

#### Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the public comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

#### Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made at least 15 days prior to the close of the public comment period.

We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

#### Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the notice? (5) What else could we do to make the proposed rule easier to understand?

Send 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 also may e-mail your comments to this address: [Execsec@ios.doi.gov](mailto:Execsec@ios.doi.gov).

#### Required Determinations

##### *Regulatory Planning and Review*

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this document is not a significant rule and therefore OMB is not required to review it. We are preparing a draft analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific area as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments.

##### *Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small

organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The area we are proposing as critical habitat is already occupied by *Yermo xanthocephalus*. As a result, Federal agencies funding, permitting, or implementing activities in this area are already required to consult with us under section 7 of the Act, to avoid jeopardizing the continued existence of this species. While the designation of critical habitat will require that agencies ensure, through section 7 consultation, that their activities do not destroy or adversely modify critical habitat, we do not believe this will result in any additional regulatory burden on the Federal agencies or their applicants. As a result, this proposed rule, if finalized, would not likely result in a significant economic burden on Federal agencies or their applicants. However, the economic analysis will provide the details needed prior to certifying that this proposed rule is not expected to have a significant adverse impact on a substantial number of small entities, with no need for a regulatory flexibility analysis.

#### *Energy Supply, Distribution or Use* (Executive Order 13211)

On May 18, 2001, the President issued an Executive Order (13211) which applies to regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this proposed rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

#### *Unfunded Mandates Reform Act* (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we will use the economic analysis to further evaluate this situation.

#### *Takings*

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The rule will not increase or decrease

current restrictions on private property concerning *Yermo xanthocephalus* because all of the critical habitat designated is on Federal land. Due to current public knowledge of the species' protection, and the fact that the plant receives protection through section 9 of the Act both within and outside of the designated areas, we do not anticipate that property values will be affected by the critical habitat designation.

#### *Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in Wyoming. The designation of critical habitat within the geographic range occupied by *Yermo xanthocephalus* imposes no additional restrictions to those currently in place and, therefore, has little additional impact on State and local governments and their activities. The designation may have some benefit to these governments in that the area essential to the conservation of the species is more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. While defining the area essential to the conservation of *Y. xanthocephalus* and identifying primary constituent elements does not alter where and what federally sponsored activities may occur, this information may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

#### *Civil Justice Reform*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated area to assist the public in understanding the habitat needs of *Yermo xanthocephalus*.

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

This proposed rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB Control Number.

#### *National Environmental Policy Act*

Our position is that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the National Environmental Policy Act (NEPA) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (Ninth Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)). However, when the range of the species includes States within the Tenth Circuit, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners v. U.S. Fish and Wildlife Service*, 75 F.3d 1429 (Tenth Cir. 1996), we will complete a NEPA analysis. The range of *Yermo xanthocephalus* includes States within the Tenth Circuit; therefore, we are completing an Environmental Assessment and will announce its availability in the **Federal Register**.

#### *Government-to-Government Relationship with Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of *Yermo xanthocephalus* because these lands do not support populations, or provide essential habitat. Therefore, critical habitat for *Y. xanthocephalus* has not been proposed on Tribal lands.

#### **References Cited**

- Bureau of Land Management (BLM). 1986. Final Resource Management Plan/ Environmental Impact Statement for the Lander Resource Area.
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Fertig, W. 1995. Status Report on *Yermo xanthocephalus* in central Wyoming. Wyoming Natural Diversity Database Report to the BLM, Wyoming State Office and Rawlins District. 46pp.

Heidel, B. 2002. Status Report on *Yermo xanthocephalus* in Wyoming. Wyoming Natural Diversity Database Report to the BLM, Wyoming State Office and Rawlins District. 24pp.

Love, J.D. 1961. Geological Survey Bulletin 112: Split Rock Formation (Miocene) and moonstone Formation (Pliocene) in central Wyoming. Contributions to General Geology. 1–I. United States Government Printing Office, Washington, DC.

Opler, P.A., H. Pavulaan, and R.E. Stanford (coordinators). 1995.

Butterflies of North America. Jamestown, ND: Northern Prairie Wildlife Research Center Home Page. <http://www.npwr.usgs.gov/resource/distr/lepid/bflyusa/bflyusa.htm> (Version 26JUN2002).

Scott, R.W. 2000. Field Studies on *Yermo xanthocephalus* Dorn: BLM Cooperative Agreement No. KAA000003, Final Report. Department of Biology, Central Wyoming College. 13pp.

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

recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

**PART 17—[AMENDED]**

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

**Authority:** 16 U.S.C. 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. In § 17.12(h), revise the entry for *Yermo xanthocephalus* under “FLOWERING PLANTS” to read as follows:

**§ 17.12 Endangered and threatened plants.**

\* \* \* \* \*

(h) \* \* \*

**Author**

The primary author of this proposed rule is Mary E. Jennings (see ADDRESSES section).

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

Endangered and threatened species, Exports, Imports, Reporting and

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Flowering plants							
* <i>Yermo xanthocephalus</i> .	* Desert yellowhead ..	* U.S.A. (WY) .....	* Asteraceae—Sun-flower.	* T	* 723	* 17.96(a)	* NA
* 	* 	* 	* 	* 	* 	* 	* 

3. In § 17.96, amend paragraph (a) by adding an entry for *Yermo xanthocephalus* in alphabetical order under Asteraceae to read as follows:

**§ 17.96 Critical habitat—plants.**

- (a) \* \* \*
- Family Asteraceae: *Yermo xanthocephalus* (Desert yellowhead)
- (1) Critical habitat unit is depicted for Fremont County, Wyoming, on the map below.
- (2) The primary constituent elements of critical habitat for *Yermo xanthocephalus* are those habitat components that are essential for the primary needs of the species. Based upon our current knowledge of this species, the primary constituent elements include, but are not limited to:
- (i) Recent soils derived from sandstones and limestones of the Split

Rock Formation at its junction with the White River Formation. These are shallow, loamy soils of the Entisol order that can be classified as coarse-loamy over sandy-skeletal, mixed, Lithic Torriorthent. The surface stratum has little organic matter and subsurface layers show no accumulation of humus, clay, gypsum, salts, or carbonates.

(ii) Plant communities associated with *Yermo xanthocephalus* that include, but may not be limited to, sparsely vegetated cushion-plant communities with scattered clumps of *Oryzopsis hymenoides* (Indian ricegrass) between 2,043 and 2,073 m (6,700 and 6,800 ft) in Fremont County, Wyoming. Species common to these communities include *Arenaria hookeri* (Hooker’s sandwort), *Astragalus kentrophyta* (thistle milkvetch), *Hymenoxys acaulis*

(stemless hymenoxys), and *Phlox muscoides* (squarestem phlox). These cushion-plant communities also contain natural openings.

(iii) Topographic features/relief and physical processes, particularly hydrologic processes, that maintain the shape and orientation of the hollows characteristic of *Yermo xanthocephalus* and maintain moisture below the surface of the ground.

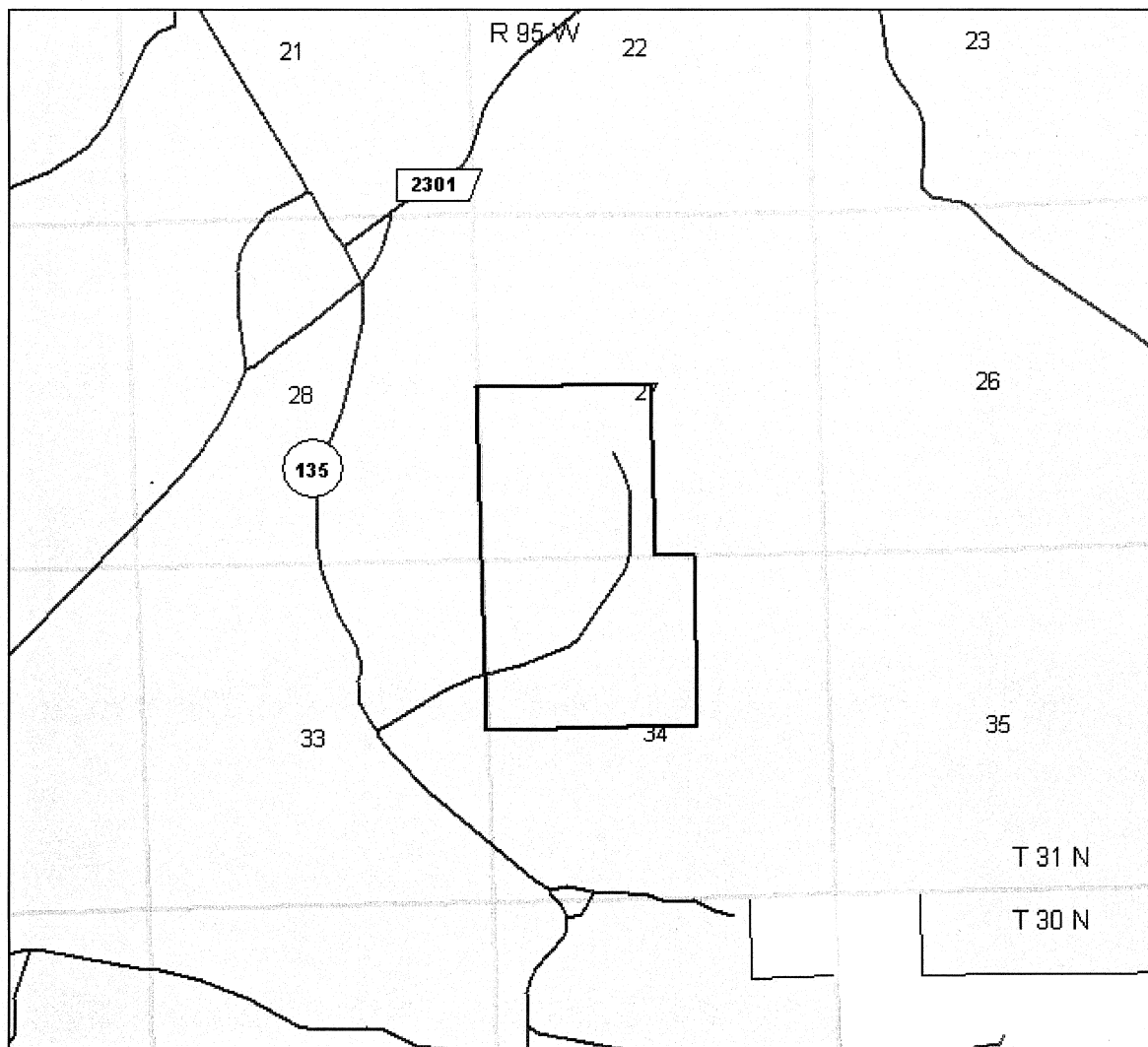
(3) The critical habitat unit occurs entirely in Fremont County, Wyoming.




(i) From U.S. Geological Survey 7.5” quadrangle maps Dishpan Butte and Sweetwater Station, Wyoming. T. 31 N., R. 95 W., SW ¼ sec. 27, NW ¼ sec. 34, and W ½ W ½ NE ¼ sec. 34.

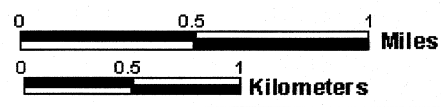
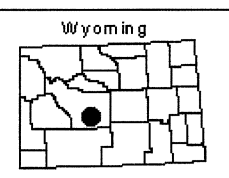
(ii) Map follows:

**BILLING CODE 4310–55–P**

## Proposed Critical Habitat for Desert Yellowhead (*Yermo xanthocephalus*)



 Roads
 Bureau of Land Management
 Private



**DISCLAIMER**

This map is a graphical representation of (*Yermo xanthocephalus*) critical habitat and is provided for illustrative purposes only. The map and GIS vector files used to create this map are not the definitive source for determining critical habitat boundaries. While the Service makes every effort to represent the critical habitat shown on this map as completely and accurately as possible (given existing time, resource, data and display constraints), the USFWS gives no warranty, expressed or implied, as to the accuracy, reliability, or completeness of these data.

\* \* \* \* \*

Dated: March 6, 2003.

**Craig Manson,**

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03-6131 Filed 3-13-03; 8:45 am]

BILLING CODE 4310-55-C

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

RIN 1018-AI26

**Endangered and Threatened Wildlife and Plants; Critical Habitat Designation for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants in California and Southern Oregon****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule; reopening of the comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period for the proposed rule and economic analysis to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for four vernal pool crustaceans and eleven vernal pool plants in 36 counties in California and one county in Oregon. We are reopening the comment period for the proposed rule and the draft economic analysis to allow interested parties additional time to submit comments and information to us for our consideration in making the final determination of critical habitat for the 15 vernal pool species. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this reopening of the comment period, and will be fully considered in the final rule.

**DATES:** We will accept comments on the proposed critical habitat designation and the economic analysis until March 28, 2003.

**ADDRESSES:** Written comments and information should be submitted to Wayne White, Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage, Room W-2605, Sacramento, CA 95825. Written comments may also be sent by fax to 916/414-6710 or hand-delivered to our Sacramento Fish and Wildlife Office at the above address. You may also send comments by electronic mail (e-mail) to [fw1\\_vernalpool@fws.gov](mailto:fw1_vernalpool@fws.gov).

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours in the U.S. Fish and Wildlife Service's Sacramento Fish and Wildlife Office at the above address. You may obtain copies of the proposed rule and the draft economic analysis from the above address, by calling (916) 414-6600, or from our Web site at <http://sacramento.fws.gov/>.

**FOR FURTHER INFORMATION CONTACT:** Arnold Roessler or Susan Moore, at the Sacramento Fish and Wildlife Office address above (telephone (916) 414-6600; facsimile (916) 414-6710).

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

On September 24, 2002, we published a proposed rule to designate critical habitat, pursuant to the Endangered Species Act of 1973, as amended (Act), for four vernal pool crustaceans and eleven vernal pool plants (67 FR 59884). The four vernal pool crustaceans involved in this critical habitat designation are the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*) and vernal pool tadpole shrimp (*Lepidurus packardii*). The eleven vernal pool plant species are Butte County meadowfoam (*Limnanthes floccosa* ssp. *californica*), Contra Costa goldfields (*Lasthenia conjugens*), Hoover's spurge (*Chamaesyce hooveri*), succulent (or fleshy) owl's-clover (*Castilleja campestris* ssp. *succulenta*), Colusa grass (*Neostapfia colusana*), Greene's tuctoria (*Tuctoria greenei*), hairy Orcutt grass (*Orcuttia pilosa*), Sacramento Orcutt grass (*Orcuttia viscida*), San Joaquin Valley Orcutt grass (*Orcuttia inaequalis*), slender Orcutt grass (*Orcuttia tenuis*), and Solano grass (*Tuctoria mucronata*). We proposed a total of 128 units of critical habitat for these 15 species, totaling approximately 672,920 hectares (ha) (1,662,762 acres (ac)) in 36 counties in California and one county in Oregon. All the species listed above live in vernal pools (shallow depressions that hold water seasonally), swales (shallow drainages that carry water seasonally), and ephemeral freshwater habitats. None are known to occur in riverine waters, marine waters, or other permanent bodies of water. The vernal pool habitats of these species have a discontinuous distribution west of the Sierra Nevada that extends from southern Oregon through California into northern Baja California, Mexico. The

species have all adapted to the generally mild climate and seasonal periods of inundation and drying which help make the vernal pool ecosystems of California and southern Oregon unique. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regards to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary of the Interior shall designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact of specifying any particular area as critical habitat.

The public comment period for the September 24, 2002, proposal originally closed on November 25, 2002, and was extended by the November 21, 2002, notice of availability of the draft economic analysis to close on December 23, 2002. The draft economic analysis estimates the foreseeable economic impacts of the critical habitat designation on government agencies and private businesses and individuals. The Service will not make any final decisions about exclusions based on economic impact, until it has obtained public comment on the economic analysis and produced an addendum to the economic analysis containing its final conclusions. The Service is interested in comments from the public on the economic analysis, on whether any of the areas identified in the economic analysis as having economic effects should be excluded for economic reasons, and whether those or any other areas should be excluded for other reasons.

For further information regarding background biological information on the 15 vernal pool species, please refer to our proposed rule published in the **Federal Register** on September 24, 2002, (67 FR 59884).

**Public Comments Solicited**

We solicit additional information and comments that may assist us in making a final decision on the proposed rule to designate critical habitat for the four vernal pool crustaceans and eleven vernal pool plants. We intend that any final action resulting from our proposal will be as accurate and effective as possible. Therefore, we are reopening the comment period to solicit additional information from the general public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning: