

EPA/600/P-99/002bF, October 2004); staff assessments presented in the Review of the National Ambient Air Quality Standards for Particulate Matter: Assessment of Scientific and Technical Information (henceforth, the "Staff Paper") (EPA-452/R-05-005a, December 2005); Clean Air Scientific Advisory Committee (CASAC) advice and recommendations, as reflected in the CASAC's letters to the Administrator, discussions of the drafts of the Criteria Document and Staff Paper at public meetings, and separate written comments prepared by individual members of the CASAC PM Review Panel; and public comments received during the development of these documents, either in connection with CASAC meetings or separately.

In the preamble to the proposed rule, EPA acknowledged that a number of new scientific studies on the health effects on PM had been published recently that were not included in the Criteria Document. See 71 FR at 2625. In order to ensure that the Administrator is fully aware of the new science that has developed since the cutoff date before making a final decision on whether to revise the current PM NAAQS, EPA conducted a provisional assessment of relevant new studies. EPA screened and surveyed the recent literature, including studies submitted during the public comment period on the proposed rule, and conducted a provisional assessment that places the results of those studies of potentially greatest policy relevance in the context of the findings of the 2004 Criteria Document. The focus of the provisional assessment was on: (a) epidemiological studies conducted in the U.S. or Canada that assessed exposures to PM<sub>2.5</sub> and/or PM<sub>10-2.5</sub> and (b) toxicology or epidemiology studies that compared the effects of PM from different sources, PM components, or size fractions.

The provisional assessment of the new PM science is presented in a document prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development, entitled "Provisional Assessment of Recent Studies on Health Effects of Particulate Matter Exposure" (EPA/600/R-06/063, June 2006). The following section of this notice describes how to obtain copies of this document.

#### B. How Can I Get a Copy of This Document?

1. *Docket.* EPA has established a docket for the current review of the PM NAAQS under Docket ID No. EPA-HQ-OAR-2001-0017. The document

entitled "Provisional Assessment of Recent Studies on Health Effects of Particulate Matter Exposure" (EPA/600/R-06/063) will be placed in this docket. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, Room B102 EPA West, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202-566-1744 and the telephone number for the Air and Radiation docket and Information Center is 202-566-1742.

2. *Electronic Access.* You may access this document at <http://www.epa.gov/air/particlepollution/actions.html> or on the NCEA home page under the "Recent Additions" and "Data and Publications" menus at <http://www.epa.gov/ncea>.

#### List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: July 7, 2006.

**Peter W. Preuss,**

*Director, National Center for Environmental Assessment.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018-AU51

#### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Astragalus brauntonii* and *Pentachaeta lyonii*

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

**ACTION:** Proposed rule; reopening of comment period and notice of availability of draft economic analyses.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the reopening of the comment period on the proposed designation of critical habitat for *Astragalus brauntonii* (Braunton's milk-vetch) and *Pentachaeta lyonii* (Lyon's pentachaeta) and the availability of the draft economic analyses of the proposed designation of critical habitat. The draft economic analysis for *Astragalus brauntonii* identifies a total

surplus (sum of producer and consumer surplus) of approximately \$91.87 million over a 20-year period (approximately \$8.11 million annually at a 7 percent discount rate, or approximately \$5.99 million annually at a 3 percent discount rate) from housing development forecasted to be built within the area of *Astragalus brauntonii* proposed critical habitat. The draft economic analysis for *Pentachaeta lyonii* identifies a total surplus (sum of producer and consumer surplus) of approximately \$121.21 million over a 20-year period (approximately \$10.69 million annually at a 7 percent discount rate, or \$7.91 million annually at a 3 percent discount rate) from housing development forecasted to be built within the area of *Pentachaeta lyonii* proposed critical habitat. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule and the associated draft economic analyses. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this comment period, and will be fully considered in preparation of the final rule.

**DATES:** We will accept public comments until August 21, 2006.

**ADDRESSES:** Written comments and materials may be submitted to us by any one of the following methods:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

2. You may hand-deliver written comments and information to our Ventura Fish and Wildlife Office, at the above address.

3. You may fax your comments to 805/644-3958.

4. You may send comments by electronic mail (e-mail) to: [fw82plantsch@fws.gov](mailto:fw82plantsch@fws.gov), or to the Federal eRulemaking Portal at <http://www.regulations.gov>. For directions on how to file comments electronically, see the "Public Comments Solicited" section. In the event that our Internet connection is not functional, please submit your comments by one of the alternate methods mentioned above.

Copies of the draft economic analyses and the proposed rule for critical habitat designation are available on the Internet at <http://www.fws.gov/ventura> or from the Ventura Fish and Wildlife Office at the address and contact numbers above.

**FOR FURTHER INFORMATION CONTACT:** Diane Noda, Ventura Fish and Wildlife Office, at the address listed in

**ADDRESSES** (telephone 805/644-1766; facsimile 805/644-3958).

**SUPPLEMENTARY INFORMATION:**

**Public Comments Solicited**

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation (70 FR 68982; November 10, 2005) and on our draft economic analyses of the proposed designation. We will consider information and recommendations from all interested parties. We are particularly interested in 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 Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether it is prudent to designate critical habitat;

(2) Specific information on the amount and distribution of *Astragalus brauntonii* and *Pentachaeta lyonii* habitat, and what areas that were occupied at the time of listing and that contain the features that are essential to the conservation of the species, should be included in the designations and why and what areas that were not occupied at the time of listing are essential to the conservation of the species and why;

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

(4) Additional information on areas which could be excluded from the final designation, specifically in Orange County;

(5) Information on whether the following should be included as a primary constituent element (PCE) for *Astragalus brauntonii*: Plant communities in areas that are  $\geq 600$  meters (m) in diameter, which is the minimum size needed to support associated insect pollinators (*e.g.*, bees and wasps), and seed dispersers (*e.g.*, insects and small mammals);

(6) Information on whether the following should be included as a PCE for *Pentachaeta lyonii*: Plant communities in areas that are  $\geq 600$  m in diameter, which is the minimum size needed to support associated insect pollinators, specifically bees, wasps, and flies;

(7) Information on whether, and, if so, how many of, the State and local environmental protection measures referenced in the draft economic analysis were adopted largely as a result of the listing of *Astragalus brauntonii* and *Pentachaeta lyonii*, and how many

were either already in place or enacted for other reasons;

(8) Information on whether the draft economic analyses identify all State and local costs attributable to the proposed critical habitat designation, and information on any costs that have been inadvertently overlooked;

(9) Information on whether the draft economic analyses make appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(10) Information on whether the draft economic analyses correctly assess the effect on regional costs associated with any land use controls that may derive from the designation of critical habitat;

(11) Information on areas that could potentially be disproportionately impacted by the *Astragalus brauntonii* and *Pentachaeta lyonii* critical habitat designation. The draft economic analyses indicate the potential economic value of areas within Ventura, Los Angeles, and Orange counties. Based on this information, we may consider excluding portions of these areas from the final designation per our discretion under section 4(b)(2) of the Act;

(12) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, and in particular, any impacts on small entities or families; the reasons why our conclusion that the proposed designation of critical habitat will not result in a disproportionate effect on small businesses should or should not warrant further consideration; and other information that would indicate that the designation of critical habitat would or would not have any impacts on small entities or families;

(13) Information on whether the draft economic analyses appropriately identify all costs that could result from the designation;

(14) Information on 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; and

(15) Whether the benefit of excluding any particular area from the critical habitat designation under section 4(b)(2) of the Act outweighs the benefit of including those particular areas in the designation.

The Secretary shall designate critical habitat on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any

particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of including a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

All previous comments and information submitted during the initial comment period on the November 10, 2005, proposed rule (70 FR 68982) need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning the draft economic analyses and the proposed rule by any one of several methods (see **ADDRESSES** section). Our final designation of critical habitat will take into consideration all comments and any additional information we receive during both comment periods. On the basis of public comment on the draft economic analyses, the critical habitat proposal, and the final economic analyses, we may during the development of our final determination find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or not appropriate for exclusion.

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. Please also include "Attn: RIN 1018-AU51" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. We will not consider anonymous comments, and we will make all comments available for public inspection in their entirety. Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for public inspection, by appointment during normal business hours at the Ventura Fish and Wildlife Office at the address listed under **ADDRESSES**.

Copies of the proposed rule and draft economic analyses are available on the Internet at: <http://www.fws.gov/ventura/>. You may also obtain copies of the proposed rule and draft economic analyses from the Ventura Fish and Wildlife Office (see **ADDRESSES**), or by calling 805/644-1766.

## Background

We published a proposed rule to designate critical habitat for *Astragalus brauntonii* and *Pentachaeta lyonii* on November 10, 2005 (70 FR 68982). The proposed critical habitat totaled approximately 3,638 acres (ac) (1,471 hectares (ha)) for *Astragalus brauntonii* in Ventura, Los Angeles, and Orange counties, California; and 4,212 ac (1,703 ha) for *Pentachaeta lyonii* in Ventura and Los Angeles counties, California. Pursuant to the terms of a July 28, 2003, settlement agreement, we will submit for publication in the **Federal Register** a final critical habitat designation for *Astragalus brauntonii* and *Pentachaeta lyonii* on or before November 1, 2006.

Critical habitat is defined in section 3 of the Act as 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 essential to the conservation of the species and that may require special management considerations or protection, and 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. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. Based on the November 10, 2005, proposed rule to designate critical habitat for *Astragalus brauntonii* and *Pentachaeta lyonii* (70 FR 68982), we have prepared an individual draft economic analysis of the proposed critical habitat designation for *Astragalus brauntonii* and another for *Pentachaeta lyonii*.

The current draft economic analyses estimate the foreseeable economic impacts of the proposed critical habitat designation on government agencies and private businesses and individuals. The draft economic analysis provides a measure of the total surplus (sum of producer and consumer surplus) that will accrue from housing development

forecasted to be built within the area of proposed critical habitat. The amount of surplus generated per housing unit is calculated as the market price of the new housing minus the variable costs of development and construction: Total expected surplus within the critical habitat unit is calculated by multiplying this expression by the expected number of housing units. For a further description of the methodology of these analyses, see section 3 (methodology) of draft economic analyses.

The draft economic analysis for *Astragalus brauntonii* identifies a total surplus (sum of producer and consumer surplus) of approximately \$91.87 million over a 20-year period (approximately \$8.11 million annually at a 7 percent discount rate, or approximately \$5.99 million annually at a 3 percent discount rate) from housing development forecasted to be built within the area of *Astragalus brauntonii* proposed critical habitat. The draft economic analysis for *Pentachaeta lyonii* identifies a total surplus (sum of producer and consumer surplus) of approximately \$121.21 million over a 20-year period (approximately \$10.69 million annually at a 7 percent discount rate, or \$7.91 million annually at a 3 percent discount rate) from housing development forecasted to be built within the area of *Pentachaeta lyonii* proposed critical habitat. The draft economic analyses measure lost economic efficiency associated with residential and commercial development, and public projects and activities, such as economic impacts on transportation projects, the energy industry, and Federal lands. The residential development industry is anticipated to experience the highest estimated costs as described in the draft economic analyses.

The draft economic analyses consider the potential economic effects of actions relating to the conservation of *Astragalus brauntonii* and *Pentachaeta lyonii*, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. They further consider the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for *Astragalus brauntonii* and *Pentachaeta lyonii* in essential habitat areas. The draft analyses consider both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (e.g.,

lost economic opportunities associated with restrictions on land use).

These draft analyses also address how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, these draft analyses look retrospectively at costs that have been incurred since the date these two species were listed as endangered (January 29, 1997; 62 FR 4172) and considers those costs that may occur in the 20 years following a designation of critical habitat.

As stated earlier, we solicit data and comments from the public on these draft economic analyses, as well as on all aspects of the proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

## Required Determinations—Amended

### Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. However, it is not anticipated to have an annual effect on the economy of \$100 million or more or affect the economy in a material way. The draft economic analysis for *Astragalus brauntonii* identifies a total surplus (sum of producer and consumer surplus) of approximately \$8.11 million annually at a 7 percent discount rate, or approximately \$5.99 million annually at a 3 percent discount rate from housing development forecasted to be built within the area of *Astragalus brauntonii* proposed critical habitat. The draft economic analysis for *Pentachaeta lyonii* identifies a total surplus (sum of producer and consumer surplus) of approximately \$10.69 million annually at a 7 percent discount rate, or \$7.91 million annually at a 3 percent discount rate from housing development forecasted to be built within the area of *Pentachaeta lyonii* proposed critical habitat. The residential development industry is anticipated to experience the highest estimated costs as described in the draft economic analyses. Due to the

timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) did not formally review the proposed rule.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A-4, September 17, 2003). Pursuant to Circular A-4, once it has been determined that the Federal regulatory action is appropriate, the agency will then need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

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. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analyses of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for *Astragalus brauntonii* and *Pentachaeta lyonii* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, residential and commercial development). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our draft economic analyses of the proposed critical habitat designation, we evaluate the potential economic effects on small business entities resulting from conservation actions related to the listing of *Astragalus*

*brauntonii* and *Pentachaeta lyonii* and proposed designation of critical habitat. We determined from our draft analyses that the small business entities that may be affected are firms in the new home construction sector. Small business effects have been calculated on the total surplus generated from new housing construction within critical habitat. This assumption is conservative because it is the worst-case scenario of how critical habitat will affect small businesses. In the event that conservation is achieved without requiring developers to completely avoid critical habitat, impacts on small businesses will be lower.

To estimate the number of firms potentially affected, these analyses use the following steps. First, they calculate the number of homes built by small businesses annually. Average revenues for a small construction firm are \$694,000 annually. The mean new home price for the study area of these analyses is approximately \$970,000 for *Astragalus brauntonii* and \$920,000 for *Pentachaeta lyonii*. Small construction firms are assumed to build one new home per year. Second, they calculate the proportion of new home construction that would be undertaken by small businesses. Prior analyses of permitting data in Sacramento County found that 22 percent of building permits for single family dwellings were issued to builders classified as small businesses. A total of 156 new homes are projected to be built within *Astragalus brauntonii* proposed critical habitat over the next 20 years. Accordingly, 34 are projected to be built by small businesses. Since each firm builds one home per year, 34 small firms are potentially affected within *Astragalus brauntonii* proposed critical habitat over the 20-year time frame of this analysis. A total of 222 new homes are projected to be built within *Pentachaeta lyonii* proposed critical habitat over the next 20 years. Accordingly, 49 are projected to be built by small businesses. Since each firm builds one home per year, 49 small firms are potentially affected within *Pentachaeta lyonii* proposed critical habitat over the 20-year time frame of this analysis. These firms may be affected by activities associated with the conservation of *Astragalus brauntonii* and *Pentachaeta lyonii*, inclusive of activities associated with listing, recovery, and critical habitat. Critical habitat is not expected to result in significant small business impacts. In the development of our final designation, we will explore potential alternatives to minimize impacts to any

affected small business entities. These alternatives may include the exclusion of all or portions of the critical habitat units in Ventura, Los Angeles, and Orange counties, California.

We do not believe that the designation of critical habitat for *Astragalus brauntonii* and *Pentachaeta lyonii* will result in a disproportionate effect to small business entities. However, we are seeking comment on potentially excluding areas from the final critical habitat designation if it is determined that there will be a substantial and significant impact to small real estate development businesses in the affected areas.

The economic impacts of the proposed critical habitat designation vary widely even within a county. That is, the impacts of designation are frequently localized, which is sensible from an economic point of view and is consistent with the principles of urban economics. Housing prices vary over urban areas, typically declining as the location of the house becomes more remote. Large impacts may result from critical habitat if a particular area has a large fraction of developable land in critical habitat. Some areas have few alternate sites for development, or have highly rationed housing resulting in high prices. Any of these factors may cause the cost of critical habitat designation to increase. Please refer to our draft economic analyses of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

#### *Executive Order 13211*

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant 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), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or

tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments," with two exceptions. It excludes "a condition of federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) As discussed in the draft economic analyses of the proposed designation of critical habitat for the *Astragalus brauntonii* and *Pentachaeta lyonii*, the impacts on nonprofits and small governments are expected to be small. There is no record of consultations between the Service and any of these governments since the *Astragalus brauntonii* and *Pentachaeta lyonii* were listed as endangered on January 29, 1997 (62 FR 4172). It is likely that small governments involved with developments and infrastructure projects will be interested parties or involved with projects involving section 7 consultations for the *Astragalus brauntonii* and *Pentachaeta lyonii* within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a local government's budget. Consequently, we do not believe that the designation of critical habitat for the *Astragalus brauntonii* and *Pentachaeta lyonii* will significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

#### *Takings*

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for the *Astragalus brauntonii* and *Pentachaeta lyonii*. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the proposed designation of critical habitat for the *Astragalus brauntonii* and *Pentachaeta lyonii* does not pose significant takings implications.

#### **Author**

The primary author of this notice is the staff of the Ventura Fish and Wildlife Office.

#### **Authority**

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

Dated: July 7, 2006.

#### **Matt Hogan,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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