DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3900

[WO–3201310–PP–OSHL]

RIN 1004–AD90

Commercial Oil Shale Leasing Program

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of reopening of public comment period.

SUMMARY: The Bureau of Land Management (BLM) is reopening and extending by 30 days, the public comment period for the Advance Notice of Proposed Rulemaking (ANPR) published in the **Federal Register** on August 25, 2006 (71 FR 50378). The ANPR requested comments and suggestions to assist in the writing of a proposed rule to establish a commercial leasing program for oil shale. In order to provide the public with additional time to prepare and submit comments, the BLM is extending the comment period 30 days from the original comment period closing date of September 25, 2006. The comment period is extended to October 25, 2006.

DATES: We will accept comments and suggestions on the ANPR until October 25, 2006.

ADDRESSES: Commenters may mail written comments to the Bureau of Land Management, Administrative Record, Room 401LS, 1849 C Street, NW, Washington, DC 20240; or hand-deliver written comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC 20036. Federal eRulemaking Portal: *http://www.regulations.gov*. E-mail: *Comments_washington@blm.gov*. (Include ''Attn: 1004–AD90'')

FOR FURTHER INFORMATION CONTACT: For information on the substance of the Advance Notice, please contact Ted Murphy at (202) 452–0350. For information on procedural matters, please contact Kelly Odom at (202) 452–5028. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to contact the above individuals during business hours. FIRS is available twenty-four hours a day, seven days a week.

SUPPLEMENTARY INFORMATION: The BLM published the ANPR on August 25, 2006 (71 FR 50378), and provided a 30-day comment period that will end on September 25, 2006. We are extending the comment period on the ANPR until October 25, 2006. The comment period is being extended in order to provide additional time for the public to prepare and submit comments on the commercial oil shale leasing program that the BLM is developing.

As stated in the August 25, 2006, ANPR, the BLM is particularly interested in receiving comments on the following questions relating to regulations it is developing for an oil shale commercial leasing program:

1. What should be the royalty rate and point of royalty determination?
2. Should the regulations establish a process for bid adequacy evaluation, *i.e.*, Fair Market Value determination, or should the regulations establish a minimum acceptable lease bonus bid?
3. How should diligent development be determined?
4. What should be the minimum production requirement?
5. Should there be provisions for small tract leasing?

The BLM is also interested in receiving any other comments regarding content and structure of the oil shale leasing program.

Dated: September 19, 2006.

Chad Calvert,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 06–8198 Filed 9–25–06; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU45

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Astragalus ampullarioides* (Shivwits Milk-Vetch) and *Astragalus holmgreniorum* (Holmgren Milk-Vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; reopening of public comment period, notice of availability of draft economic analysis and draft environmental assessment, and revisions to proposed critical habitat boundaries.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the proposal to designate critical habitat for *Astragalus ampullarioides* (Shivwits milk-vetch) and *Astragalus holmgreniorum* (Holmgren milk-vetch) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of the draft economic analysis for the proposed designation of critical habitat for Holmgren and Shivwits milk-vetches. The draft economic analysis finds that, over 20 years, post-designation costs for Holmgren and Shivwits milk-vetch conservation-related activities are estimated to range between $8.8 and $14.1 million in undiscounted 2006 dollars. In discounted terms, potential post-designation economic costs are estimated to be $8.5 to $13.0 million (using a 3 percent discount rate) or $8.2 to $12.1 million (using a 7 percent discount rate). In addition, we announce the availability of a draft environmental assessment that has been prepared in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA). Finally, we propose to revise boundary descriptions for two critical habitat subunits: Holmgren milk-vetch's Unit 2a (Stucki Spring) and Unit 2b (South Hills).

DATES: We will accept comments until October 26, 2006.

ADDRESSES: If you wish to comment on the proposed rule, draft economic analysis, or draft environmental assessment, you may submit your comments and materials to us by any one of the following methods:

(1) *E-mail:* You may send comments by electronic mail (e-mail) to *hsmilkvetch@fws.gov*. Please see Public Comments Solicited section below for file format and other information about electronic filing.

(2) *Fax:* You may fax comments to (801) 975–3331.

(3) *Mail or hand delivery/courier:* You may submit written comments to Larry Crist, Acting Field Supervisor, Utah Ecological Services Field Office, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119.

(4) *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Larry Crist, Acting Field Supervisor, Utah Ecological Services Field Office, at the address listed in **ADDRESSES** (telephone, 801–975–3330; facsimile, 801–975–3331).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We will accept written comments and information during this reopened comment period. We solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the

original proposed rule published in the **Federal Register** on March 29, 2006 (71 FR 15966), revisions to the proposed rule described in this document, the draft economic analysis, and the draft environmental assessment. In addition to the points listed in the March 29, 2006, proposed rule, we particularly seek comments concerning:

(1) The reasons 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 distribution of the Holmgren and Shivwits milk-vetches, the amount and distribution of the species' habitat, and which habitat contains the necessary features (primary constituent elements) essential to the conservation of these species and why;

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

(4) 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 concerns and comments;

(5) Any foreseeable environmental impacts directly or indirectly resulting from the proposed designation of critical habitat;

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

(7) Whether the economic analysis identifies all State and local costs attributable to the proposed critical habitat, and information on any costs that have been inadvertently overlooked;

(8) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(9) Whether the economic analysis correctly assesses the effect on regional costs associated with land-use controls that derive from the designation;

(10) Whether the critical habitat designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation;

(11) Whether the economic analysis appropriately identifies all costs that could result from the critical habitat designation; and

(12) Whether the benefit of exclusion in any particular area outweighs the benefits of inclusion under section 4(b)(2) of the Act.

Comments previously submitted on the March 29, 2006, proposed rule (71 FR 15966) need not be resubmitted as they have been incorporated into the record and will be fully considered in preparation of the final rule. If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). Our final designation of critical habitat for the Holmgren and Shivwits milk-vetches will take into consideration all comments and any additional information received during both comment periods. Based on public comment on the proposed rule, the draft economic analysis, and the draft environmental assessment, as well as on the conclusions of the final economic analysis and environmental assessment, we may find during the development of our final determination that some areas proposed do not contain the features that are essential to the conservation of the species, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

Please submit electronic comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: RIN 1018–AU45'' in the subject line, and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet 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 will be available for public inspection, by appointment, during normal business hours at the Utah Ecological Services Field Office at the address listed under **ADDRESSES**.

You may obtain copies of the proposed rule, draft economic analysis, and draft environmental assessment by mail from the Utah Ecological Services Field Office at the address listed under **ADDRESSES** or by visiting our Web site at *http://mountain-prairie.fws.gov/species/plants/milkvetche/index.htm.*

Background

Holmgren and Shivwits milk-vetches are members of the pea family (*Fabaceae* or *Leguminosae*). Holmgren milk-vetch is a stemless, herbaceous (non-woody) perennial that produces leaves and small purple flowers in the spring. Shivwits milk-vetch is a perennial, herbaceous plant with yellow to cream-colored flowers that is considered a tall member of the pea family. Holmgren milk-vetch is known from Mohave County, Arizona, and Washington County, Utah. Shivwits milk-vetch is known only from Washington County in Utah. Threats to both species that resulted in their listing on September 28, 2001 (66 FR 49560), include development of land for residential and urban use, habitat modification from human disturbances such as off-road vehicle use, competition with nonnative plant species, and impacts from mining and grazing.

On March 29, 2006, we proposed to designate approximately 2,421 acres (ac) (980 hectares (ha)) of critical habitat for Shivwits milk-vetch, and 6,475 ac (2,620 ha) of critical habitat for Holmgren milk-vetch, which include known occupied sites and associated habitats containing the identified primary constituent elements (71 FR 15966). The proposed designation includes Federal, State, Tribal, and private lands in Arizona and Utah. On August 1, 2006, the Service announced the availability of a draft recovery plan for the two species (71 FR 43514). The recovery plan identifies the areas important for recovery; these areas correspond to those we have proposed as critical habitat.

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, under section 7(a)(2) of the Act.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific 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. In compliance with section 4(b)(2) of the Act, we have prepared a draft economic analysis of the March 29, 2006 (71 FR 15966), proposed designation of critical habitat for Holmgren and Shivwits milk-vetches.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of the two milk-vetches, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the two milk-vetches in essential habitat areas. The draft economic analysis considers 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).

The draft economic analysis also addresses 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, the draft economic analysis looks retrospectively at costs that have been incurred since the date the two milk-vetches were listed in 2001, and considers those costs that may occur in the 20 years following a designation of critical habitat.

Pre-designation (2001–2006) costs associated with species conservation activities are estimated to range from $9.3 to $13.7 million in 2006 dollars. Potential post-designation (2007–2026) costs are estimated to range between $8.8 and $14.1 million in undiscounted 2006 dollars. In discounted terms, potential post-designation economic costs are estimated to be $8.5 to $13.0 million (using a 3 percent discount rate) and $8.2 to $12.1 million (using a 7 percent discount rate). In annualized terms, potential post-designation costs are expected to range from $0.6 to $0.9 million annually (annualized at 3 percent) and $0.9 to $1.1 million annually (annualized at 7 percent).

We solicit data and comments from the public on the draft economic analysis, as well as on all aspects of the proposal to designate critical habitat. 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.

Draft Environmental Assessment; National Environmental Policy Act

The draft environmental assessment (EA) presents the purpose of and need for critical habitat designation, the Proposed Action and alternatives, and an evaluation of the direct, indirect, and cumulative effects of the alternatives pursuant to the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) as implemented by the Council on Environmental Quality regulations (40 CFR 1500 *et seq.*) and according to the Department of the Interior's NEPA procedures.

The EA will be used by the Service to decide whether or not critical habitat will be designated as proposed, if the Proposed Action requires refinement, or if further analyses are needed through preparation of an environmental impact statement (EIS). If the Proposed Action is selected as described, or with minimal changes, and no further environmental analyses are needed, then a Finding of No Significant Impact (FONSI) would be the appropriate conclusion of this process.

Proposed Change to Boundaries of Holmgren Milk-Vetch Units 2a and 2b

Following publication of the proposed critical habitat rule on March 29, 2006, we received updated information from the Bureau of Land Management (BLM), St. George Field Office, St. George, Utah on plant habitat and occupancy. Based on this information, we propose to amend the boundaries of two subunits for the Holmgren milk-vetch within Unit 2 (Santa Clara): Unit 2a (Stucki Spring) and Unit 2b (South Hills). Corrected maps and boundary descriptions are provided in the Proposed Regulation Promulgation section below.

We propose changes to Unit 2a (Stucki Springs) and Unit 2b (South Hills) based on 2006 field survey results and comments contributed by BLM. Field reconnaissance in 2006 by BLM resulted in adjustment of boundaries to better include Holmgren milk-vetch habitat. Specific changes to Unit 2a (Stucki Springs) include: (1) Extension of the boundary to the north and west that results in the inclusion of an additional 139 ac (56.3 ha); and (2) retraction of the boundary on the south and southeast that results in the deletion of 114 ac (46.2 ha). The adjustment to the north and west further captures watershed and some of the formation contributing to the occupancy of Holmgren milk-vetch, and better reflects recent surveyed habitat and occupancy. The retraction to the south and southeast excludes habitat that is not occupied by Holmgren milk-vetch. Boundary adjustments for Unit 2a (Stucki Springs) result in an increase of proposed critical habitat in this subunits from approximately 412 ac (168 ha) to 437 ac (177 ha).

Specific changes to Unit 2b (South Hills) include: (1) The addition of 7 ac (2.8 ha) to the northeast portion of the subunit to include drainage patterns from the ridgeline and slope of the adjacent formation; (2) the deletion of 17 ac (6.9 ha) to the southeast to correct a mapping error that proposed critical habitat outside the area known to be occupied by the taxon; and (3) the realignment of the western boundary 100 feet (30 meters) to the east for management purposes. Boundary adjustments for Unit 2b (South Hills) result in a decrease of proposed critical habitat in this subunit from approximately 147 ac (59 ha) to 129 ac (52 ha).

Overall, therefore, the total proposed critical habitat for the two milk-vetches would be increased by only 8 ac (3.3 ha) as a result of these proposed changes to the boundaries of Holmgren milk-vetch Units 2a and 2b.

Future Boundary Changes

Manmade features within the boundaries of proposed designated, mapped units, such as buildings, roads, parking lots, and other paved areas, do not contain any of the primary constituent elements for Holmgren and Shivwits milk-vetches and are not considered critical habitat. Additional efforts will be made to remove these areas in the final critical habitat designation for Holmgren and Shivwits milk-vetches. However, any such structures and the land under them

inadvertently left inside critical habitat boundaries have been excluded by text and are not designated as critical habitat.

Required Determinations—Amended

In our March 29, 2006, proposed rule (71 FR 15966), we indicated that we would be deferring our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders was available in the draft economic analysis. Those data are now available for our use in making these determinations. In this notice we are affirming the information contained in the proposed rule concerning Executive Orders 13132 and Executive Order 12988; the Paperwork Reduction Act; and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). Based on the information made available to us in the draft economic analysis, we are amending our Required Determinations, as provided below, concerning Executive Order 12866 and the Regulatory Flexibility Act; Executive Order 13211, Executive Order 12630; and the Unfunded Mandates Reform Act. We are also complying with NEPA by preparation of a draft environmental assessment of the critical habitat proposal.

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise legal and policy issues. Based on our draft economic analysis, potential post-designation (2007–2026) costs are estimated to range between $8.8 and $14.1 million in undiscounted 2006 dollars. In discounted terms, potential economic costs are estimated to be $8.5 to $13.0 million (using a 3 percent discount rate) and $8.2 to $12.1 million (using a 7 percent discount rate). In annualized terms, potential costs are expected to range from $0.6 to $0.9 million annually (annualized at 3 percent) and $0.9 to $1.1 million annually (annualized at 7 percent). Therefore, we do not believe that the proposed designation of critical habitat for the Holmgren and Shivwits milk-vetches would result in an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule or accompanying economic analysis.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (OMB, Circular A–4, September 17, 2003). Under Circular A–4, once it has been determined that the Federal regulatory action is appropriate, the agency will need to consider alternative regulatory approaches. Because the determination of critical habitat is a statutory requirement under the Act, 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 under 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, provided 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 (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)) (SBREFA), 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. Based upon our draft economic analysis of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. This determination is subject to revision based on comments received as part of the final rulemaking.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as 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 the Holmgren and Shivwits milk-vetches would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, housing development, livestock grazing, residential and related development, recreation activities, mining, and transportation). 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 the proposed critical habitat designation is made final, Federal agencies must consult with us 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.

Our draft economic analysis of the proposed critical habitat designation evaluated the potential economic effects on small business entities and small governments resulting from conservation actions related to the listing of these species and proposed designation of their critical habitat. The activities affected by Holmgren and Shivwits milk-vetches' conservation

efforts may include land development, transportation and utility operations, and conservation on public and tribal lands. More than 98 percent of the prospective economic costs (based on upper-bound future undiscounted cost figures) associated with conservation activities for Holmgren and Shivwits milk-vetches are expected to be borne by Federal agencies (primarily BLM) and state departments of transportation. Thus, impacts to land development (*i.e.*, BLM land disposal) and transportation and utilities operations (*i.e.*, Western and Southern Corridor projects) are not expected to affect small entities. The following is a summary of the information contained in the draft economic analysis:

(a) Development

According to the draft economic analysis, Holmgren and Shivwits milk-vetches' development-related losses account for approximately 71 percent of forecast costs, and range from $7.2 to $10.0 million (in 2006 dollars) over 20 years. The costs consist of losses in Federal land value resulting from the removal of BLM-administered public lands from disposal status, meaning the lands cannot be sold or exchanged for private use. The only clearly directly affected entity is the BLM, a large government agency. Federal governments are not defined as small entities by the Small Business Administration. As a result of this information, we have determined that the proposed designation is not anticipated to have a substantial effect on a substantial number of small development businesses.

(b) Transportation and Utility Operations

Potential costs to transportation and utility operations in habitat proposed for designation account for another 25 percent of forecast costs. Undiscounted costs are estimated to range between $1.0 and $3.5 million (in 2006 dollars) over 20 years, or $0.8 to $2.5 million assuming a 3 percent discount rate and $0.6 to $1.7 million assuming a 7 percent discount rate. The amounts are driven by project modification costs associated with the Southern and Western Corridor transportation projects. These projects comprise more than 95 percent of the transportation and utility-related costs. These costs are expected to be borne by state departments of transportation. State governments are not defined as small entities by the Small Business Administration. As a result of this information, we have determined that the proposed designation is not anticipated to have a substantial effect on a substantial number of transportation and utility businesses.

Costs associated with utilities (power lines) as a result of species conservation activities is expected to be minimal, with total pre-designation (2001–2006) costs estimated around $3,000 (in 2006 dollars). No post-designation costs (2007–2026) are anticipated, since no foreseeable project is located within the proposed critical habitat area.

(c) Conservation on Public and Tribal Lands

Future costs associated with managing critical habitat on public and tribal lands account for an additional three percent of forecast costs. Undiscounted costs are estimated at approximately $0.5 million (in 2006 dollars) over 20 years, or $0.4 million assuming a 3 percent discount rate and $0.3 million assuming a 7 percent discount rate. The costs primarily consist of ecological studies and habitat monitoring by BLM and the United States Geological Survey. These activities constitute over 95 percent of the conservation activities on public and tribal lands.

In summary, three subunits (State Line, South Hills, and Stucki Springs) for Holmgren milk-vetch account for more than 95 percent of total undiscounted costs. We have considered whether this proposed rule would result in a significant economic impact on a substantial number of small entities, and we have concluded that it would not. Federal agencies (primarily BLM) and State Departments of Transportation account for approximately 74 and 25 percent of total undiscounted costs, respectively.

Executive Order 13211—Energy Supply, Distribution, and Use

On May 18, 2001, the President issued 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 due to potential novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Appendix A of the draft economic analysis provides a discussion and analysis of this determination. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to the situation without any regulatory action being taken. The draft economic analysis finds that none of these criteria are relevant to this analysis (no foreseeable utility project is located within the proposed critical habitat area). Thus, no energy-related impacts associated with Holmgren and Shivwits milk-vetches' conservation activities within proposed critical habitat are expected. As such, the proposed designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use and a Statement of Energy Effects is not 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 the following two exceptions: It excludes ''a condition of federal assistance'' and ''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; AFDC 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, or permits, or that 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) The draft economic analysis discusses potential impacts of critical habitat designation for the Holmgren and Shivwits milk-vetches on land development, transportation and utility operations, and conservation on public and tribal lands. The analysis estimates that costs of the rule could range from $8.8 million to $14.1 million in undiscounted dollars over 20 years. Ninety-nine percent of the impacts are anticipated to affect Federal agencies (primarily BLM) and State Departments of Transportation. Impacts on small governments are not anticipated, or they are anticipated to be passed through to consumers. Consequently, we do not believe that the designation of critical habitat for the Holmgren and Shivwits milk-vetches will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Executive Order 12630—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 Holmgren and Shivwits milk-vetches in a takings implications assessment. The takings implications assessment concludes that this proposed designation of critical habitat for the Holmgren and Shivwits milk-vetches does not pose significant takings implications.

Author

The primary authors of this notice are the staff of the Utah Ecological Services Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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. Critical habitat for the Holmgren milk-vetch (*Astragalus holmgreniorum*) and Shivwits milk-vetch (*Astragalus ampullarioides*) in § 17.96(a), which was proposed to be added on March 29, 2006, at 71 FR 15966, is proposed to be amended by revising the index map and two of the critical habitat unit descriptions for Holmgren milk-vetch as follows:

§ 17.96 Critical habitat—plants.

(a) Flowering plants.

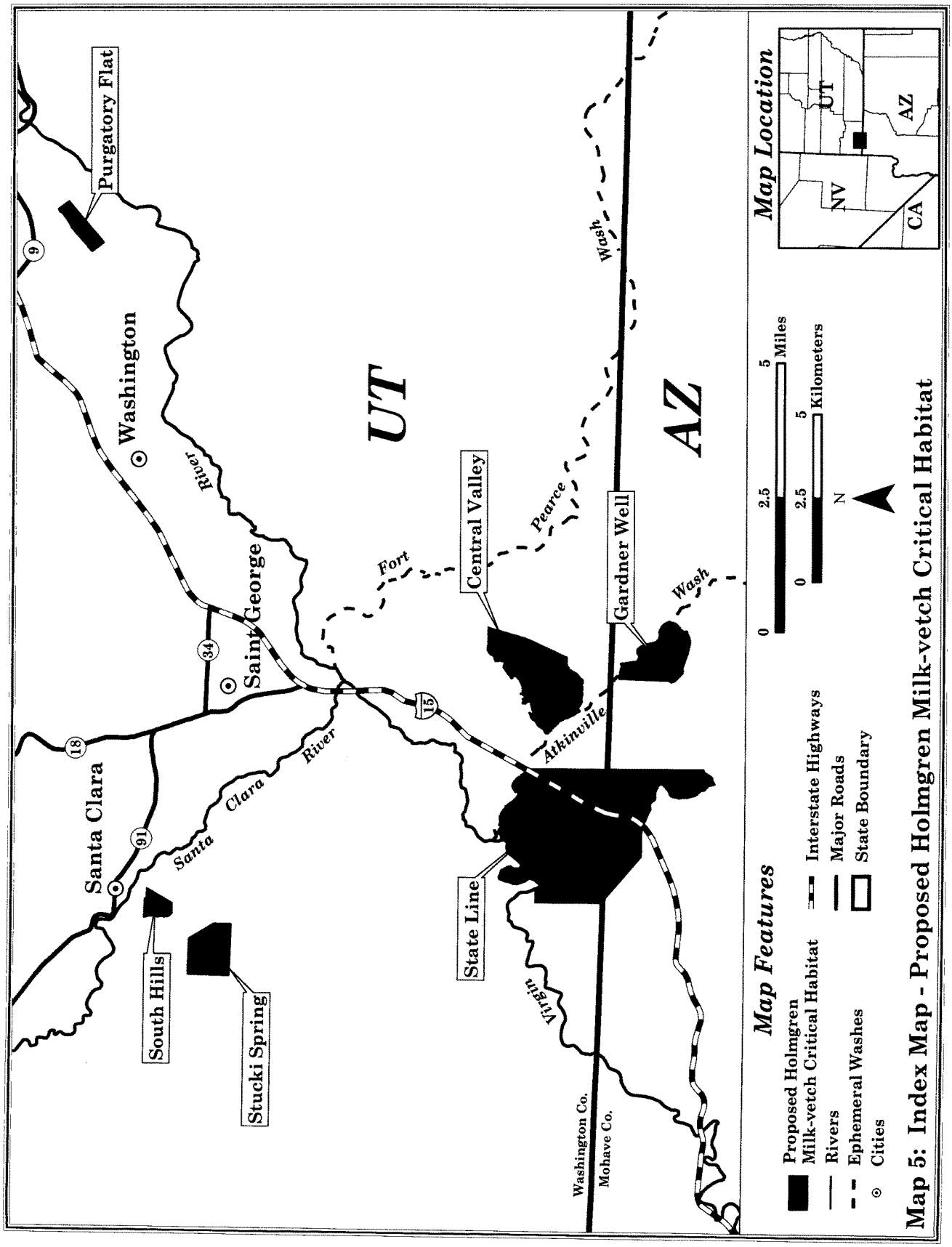
* * * * *

Family Fabaceae: *Astragalus holmgreniorum* (Holmgren Milk-vetch).

* * * * *

(5) **Note:** Index map (Map 5) follows:

BILLING CODE 4310–55–P



Map 5: Index Map - Proposed Holmgren Milk-vetch Critical Habitat

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* * * * *

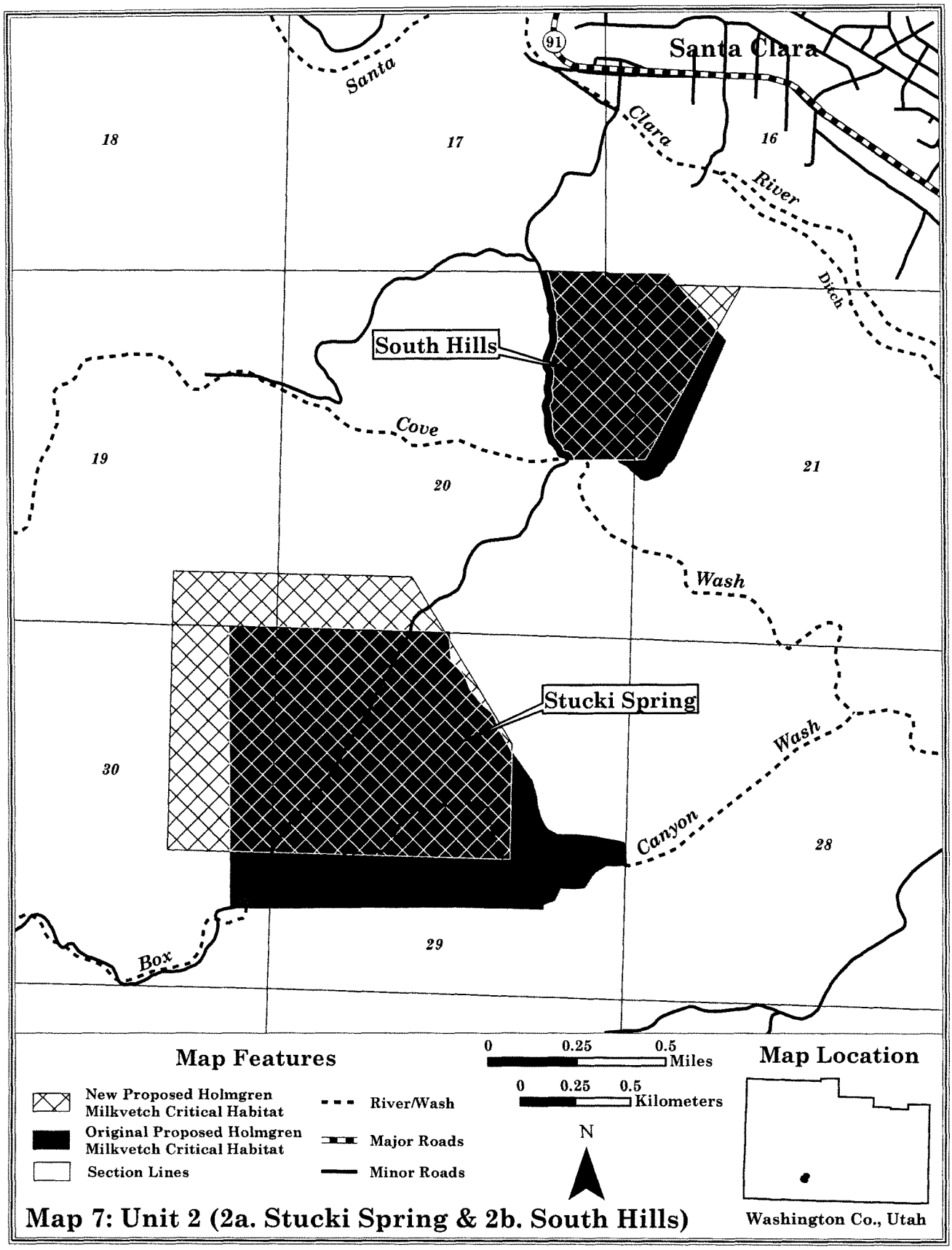
(7) Unit 2—Santa Clara Unit: Washington County, Utah. This Unit consists of two subunits: Stucki Spring and South Hills.

(i) Unit 2a: Stucki Spring, Washington County, Utah. Land bounded by the UTM Zone 12 NAD 83 coordinates (meters E, meters N): 263203, 4109419; 261650, 4109466; 261683, 4110718; 262761, 4110687; 263214, 4109938; 263203, 4109419.

(ii) Unit 2b: South Hills, Washington County, Utah. Land bounded by the UTM Zone 12 NAD 83 coordinates (meters E, meters N): 263385, 4112054; 263932, 4112044; 263975, 4111990; 264261, 4111983; 263824, 4111209; 263504, 4111208; 263503, 4111213; 263502, 4111218; 263501, 4111220; 263498, 4111226; 263494, 4111234; 263489, 4111239; 263485, 4111243; 263481, 4111246; 263476, 4111248; 263475, 4111249; 263463, 4111252; 263462, 4111253; 263456, 4111254; 263454, 4111259; 263453, 4111262; 263447, 4111274; 263443, 4111280; 263427, 4111298; 263427, 4111298; 263418, 4111308; 263413, 4111323; 263409, 4111337; 263406, 4111354; 263406, 4111366; 263406, 4111383; 263406, 4111386; 263405, 4111403; 263405, 4111407; 263402, 4111422; 263400, 4111427; 263396, 4111440; 263394, 4111449; 263395, 4111455; 263397, 4111460; 263400, 4111464; 263405, 4111473; 263406, 4111478; 263407, 4111479; 263408, 4111493; 263408, 4111503; 263406, 4111515; 263405, 4111516; 263403, 4111529; 263402, 4111534; 263407, 4111547; 263409, 4111553; 263411, 4111568; 263412, 4111572; 263413, 4111592; 263412, 4111597; 263411, 4111609; 263409, 4111615; 263407, 4111620; 263405, 4111624; 263399, 4111631; 263398, 4111634; 263397, 4111644; 263401, 4111660; 263408, 4111679; 263421, 4111711; 263422, 4111714; 263429, 4111738; 263430, 4111746; 263431, 4111767; 263431, 4111772; 263428, 4111792; 263428, 4111822; 263430, 4111853; 263429, 4111860; 263428, 4111865; 263428, 4111866; 263420, 4111884; 263419, 4111888; 263421, 4111904; 263421, 4111913; 263417, 4111935; 263416, 4111937; 263405, 4111976; 263399, 4112013; 263398, 4112017; 263390, 4112041; 263390, 4112042; 263385, 4112054.

(iii) **Note:** Map of Unit 2 (Map 7) follows:

BILLING CODE 4310–55–P



Map 7: Unit 2 (2a. Stucki Spring & 2b. South Hills)

* * * * *

Dated: September 19, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–8191 Filed 9–25–06; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU77

Endangered and Threatened Wildlife and Plants; Prudency Determination for the Designation of Critical Habitat for Trichostema austromontanum ssp. compactum

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of proposed finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have reconsidered whether designating critical habitat for *Trichostema austromontanum* ssp. *compactum,* a plant, is prudent. This taxon was listed as threatened under the Endangered Species Act of 1973, as amended (Act), on September 14, 1998; at that time we determined that designation of critical habitat was not prudent because designation would increase the degree of threat to the taxon and would not benefit the taxon. As a consequence of a settlement agreement we are withdrawing our previous not prudent finding. Further, on the basis of our review and evaluation of the best scientific and commercial information available, we believe that designation of critical habitat continues to be not prudent for *T. a.* ssp. *compactum.* As a result, we are proposing a new ''not prudent'' determination for *T. a.* ssp. *compactum.*

DATES: We will accept comments from all interested parties until November 27, 2006.

ADDRESSES: If you wish to comment on the proposed finding, you may submit your comments and materials identified by RIN 1018–AU77, by any of the following methods:

(1) E-mail: *fw8cfwocomments@fws.gov.* Include ''RIN 1018–AU77'' in the subject line.

(2) Fax: 760/431–9624.

(3) Mail: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011.

(4) Hand Delivery/Courier: You may hand-deliver written documents to our office (see **ADDRESSES**).

(5) Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, telephone, 760/431–9440; facsimile, 760/431–9624.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this finding will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed finding are hereby solicited. Comments particularly are sought concerning:

(1) Reasons that designation of critical habitat may or may not be prudent for *T. a.* ssp. *compactum*;

(2) Specific information on management activities for this taxon and how those activities do or do not address threats identified in the listing rule;

(3) The possible risks and benefits of designating critical habitat for *T. a.* ssp. *compactum;* and

(4) Ways in which we could improve or modify this finding to increase public participation and understanding.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to *fw8cfwocomments@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: RIN 1018–AU77'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number (760) 431–9440.

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 names and/or home addresses, etc. but if you wish us to consider withholding this information you must state this prominently at the beginning of your comments. In addition, you must present rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of 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 Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

Background

It is our intent to discuss only those topics directly relevant to the not prudent critical habitat determination. For more information on biology and ecology of *Trichostema austromontanum* ssp. *compactum*, refer to the final rule listing this taxon as threatened published in the **Federal Register** on September 14, 1998 (63 FR 49006).

Taxonomy and Description

Trichostema austromontanum ssp. *compactum*, a member of the Lamiaceae (mint family), was described by F. Harlan Lewis (1945) based on specimens collected in 1941 by M. L. Hilend in Riverside County, California. The taxon occurs only on the northwestern margin of a single vernal pool (Bauder 1999, p. 13). *T. a.* ssp. *compactum* is a compact, soft-villous (with long, shaggy hairs) annual plant, approximately 4 inches (10 centimeters) tall, with short internodes (stem segments between leaves) (Lewis 1945, p. 284–386, Lewis 1993, p. 732), elliptic leaves, and blue flowers in a five-lobed corolla. The two stamens are blue. The fruit consists of four smooth, basally joined nutlets. This taxon flowers in July and August.

Threats

In the 1998 final listing rule, we stated that trampling and low numbers (small population size) threatened *Trichostema austromontanum* ssp. *compactum* (63 FR 49006). At the time of listing there were reports of on-going impacts caused by trampling associated with hikers and horses. It was observed that trampling by horses crushed plants and also created depressions that retained water where seeds and adult plants of *T. a.* ssp. *compactum* drown (Hamilton 1991, p 2, 22; Hamilton 1996). Since listing, the California