

California Native Plant Society

And

Center for Biological Diversity

January 27, 2005

Field Supervisor
Ventura Fish and Wildlife Office
U.S. Fish and Wildlife Service
2493 Portola Road, Suite B
Ventura, CA 93003

RE: Comments on the Draft Economic Analysis and Proposed Designation of Critical Habitat for *Astragalus lentiginosus* var. *piscinensis* (Fish Slough Milk-vetch)

Dear Field Supervisor:

The California Native Plant Society (CNPS) is a non-profit organization of more than 10,000 laypersons and professional botanists organized into 32 chapters throughout California. The mission of the California Native Plant Society is to increase understanding and appreciation of California's native plants and to conserve them and their natural habitats, through education, science, advocacy, horticulture and land stewardship. Our members and chapters work closely with the U.S. Fish and Wildlife Service (USFWS) and other State and Federal agencies to manage and conserve rare and common botanical resources in California. The Center for Biological Diversity (Center) is a non-profit organization with over 12,000 members in CA and across the nation, dedicated to protecting endangered species and wild places through science, policy, education, and environmental law.

The CNPS and the Center support the establishment of Critical Habitat for the conservation of *Astragalus lentiginosus* var. *piscinensis* throughout the range of the species (CNPS-Center letter dated 8/2/04). We have reviewed Draft Economic Analysis of Critical Habitat Designation for the Fish Slough Milk-vetch, *Astragalus lentiginosus* var. *piscinensis* and offer the following comments on the document. We have divided these comments into two sections: general comments and document specific comments.

General Comments:

The Economic Analysis fails to acknowledge any benefit of conserving a species that is threatened by extinction from proposed activities. Estimating the dollar value of the Fish Slough Milk-vetch (FSMV) based only on the measures of the existing market for the plant is an inaccurate valuation. There are many other potential values, destined to grow with our knowledge of the species, and its role



Dedicated to the preservation of California native flora

in desert ecosystems, in science, wildlife habitat, medicine, aesthetic and in ways still unforeseen. Certainly this species, a member of the Fabaceae (bean family), fixes nitrogen - an essential nutrient for both plants and wildlife. Nitrogen is often a limiting nutrient in desert ecosystems. It is not possible to calculate a precise value for this nitrogen fixation, but this ecosystem service should at least be mentioned as a benefit of conservation of this species.

Further, what price can be put on species conservation that allows future generations to enjoy and appreciate the natural heritage of California and Inyo and Mono counties? What value can be put on the ability of evolutionary processes to continue to work on the unique genotype that we recognize as the FSMV? What is the value of conserving the full suite of species and ecosystem functions in the unique habitat where FSMV still survives? While these costs may be hard to quantify by a dollar value, they still exist. Methods are available to estimate such values (see ecological economics references at end of these comments). We request that they be acknowledged in the Final Economic Analysis.

The Economic Analysis never clearly identifies the economic benefits of the designation of Critical Habitat, only the costs. The absence of these types of data suggests an inherent bias in the Economic Analysis.

The estimation of economic cost is not substantiated, and is based on “totals” that have no supporting data. In the absence of documentation of methods by which “costs” were calculated, neither decisionmakers nor the public can judge the validity of the estimates.

The Economic Analysis also confuses the economic costs by including costs of conservation efforts for the species (not its Critical Habitat) with conservation of the proposed Critical Habitat for the next 20 years. While we can see using the costs of species conservation as a partial basis for evaluating the economic costs of Critical Habitat, we contend that it is not appropriate to include “pre-designation” estimates as part of the Critical Habitat economic costs estimate because these costs are associated with measure taken for the listed species not its Critical Habitat.

The Economic Analysis generally underestimates the benefits and therefore overestimates the costs of actions associated with FSMV conservation and Critical Habitat conservation. Many of the conservation efforts benefit a number of rare species, including the Owen’s pupfish, Owens tui chub, other rare plant taxa, and undescribed mollusk species, unique alkaline meadows, significant cultural values and its unique scenic values. It is therefore neither accurate nor appropriate to allocate all costs to FSMV conservation. Throughout this analysis, costs should be prorated among all species/issues that benefit from this critical habitat designation and other conservation actions.

Document Specific Comments:

Page ES-1, 3. The CNPS and the Center that the proposed Critical Habitat unit includes all of the hydrologic features that the Service believes are necessary. It is unclear here or elsewhere in the document what those additional hydrologic features are that are not included in the designation. We contend that if additional hydrological features are critical to the species survival, then they must be included in the designation.

Page ES-4, 9. 1st bullet. As mentioned above, costs for species and habitat conservation benefit a number of species, including the FSMV. Therefore, the cost needs to be prorated by the number of species it benefits.

2nd bullet. The groundwater monitoring also benefits a number of species, and requires equitable prorating. Additionally, a reduction in groundwater levels will affect the production of the mining activities and the downstream water extraction, so the cost needs to be further prorated to include these human-benefiting activities.

3rd bullet. The maintenance of the enclosure fencing is a land-owner decision, not the result of a mandate under the Endangered Species Act. Therefore, we contend that they have no bearing on the post-designation costs and need to be deleted.

4th bullet. The indirect costs associated with grazing reduction opportunities are not part of the Critical Habitat designation economic impacts for several reasons. First, the reduction of grazing has already been instituted, and therefore is not affected by the designation of Critical Habitat. Secondly, the reduction of cattle and installation of an enclosure – both of which have already been implemented, and are therefore not affected by the designation of Critical Habitat – are not a federal mandate under the Endangered Species Act, but a decision on the part of the landholder to exclude the leaseholder's cattle. Therefore they have no bearing on the post-designation costs and need to be deleted.

5th bullet. The direct costs of signs needs to be deleted from the document because the BLM would have to provide them regardless of whether or not sensitive resources are adjacent to routes. All designated routes require signs. Signage is a benefit to users of routes, such as off-road vehicle riders, as well as natural resources, including wildlife and vegetation.

Page ES-5, 11. The 15 percent of future costs being borne by private parties is misleading. Groundwater monitoring benefits a suite of species, including humans, and preclusion of grazing is a landowner decision, not required by the Endangered Species Act. We request a more candid and realistic evaluation of the impact to private parties, who, in the absence of a federal nexus, will sustain no impact from the designation of Critical Habitat.

Page ES-5, 12, 2nd bullet. We agree that a reduction in the size of the Critical Habitat unit would not reduce the costs related to FSMV conservation and recovery.

Page 1-8, 1.2.4 Benefits, 39. As part of the complete evaluation of Economic Analysis, the inclusion of the “discussion” of “the benefits of proposed CHD that are best expressed in biological terms that can be weighed against the expected cost impacts of the rulemaking” which is supposedly to be included in the “preamble to the final rulemaking” is requisite in this Economic Analysis. The failure to include this most important issue as part of the Economic Analysis provides no opportunity for the CNPS or the Center to evaluate the merits of the opinions. Therefore, we request that this draft be re-issued and include this most important analysis.

Page 2-9, Overlap with Other Listed Species 58, last two sentences. Costs of habitat restoration need to be pro-rated over the number of species that it benefits. Additionally, while we support “parse”ing the costs for the Section 7 consultation with multiple species, we did not see evidence of that in the document. We request that prorating costs of consultations be clearly identified and pro-rated costs for restoration be included as they appropriately benefit each species.

Page 4-5, Exhibit 4-2. Summary of FSMV Pre-designation Conservation Efforts and Associated Costs. All of the proposed costs have multiple species benefits including human. We request that all of these costs be pro-rated to accurately evaluate the part of the cost attributable to FSMV. Additionally, the cost of signs is a function of route designation, not FSMV conservation.

Page 4-9, 120. We contend that the exclusion of cattle from 80 acres of LADWP land is not part of the consideration of Critical Habitat, because the landowner was not required to implement the exclusion or reduce AUM’s (animal unit month) under Endangered Species Act consultation, as referenced in 121.

Page 4-10, 123. The use of “volunteer routes” is completely inappropriate. Routes that are illegally created are just that – illegal routes. We request that accurate identification of illegal routes be clearly identified in this document. This rampant problem is only increasing on the public lands landscape, and your referral to them as “volunteer” disturbingly suggests that their creation is a condoned behavior. We strongly request that all “volunteer routes” be replaced with “illegal routes”.

Page 4-12, 124. Signing of a route network is clearly a function of recreation planning. Regardless of where a designated route network is in place, signs must be installed and maintained. Representing this inherent cost as a FSMV Critical Habitat Economic Analysis cost is disingenuous at best. From our perspective, elimination of routes in this sensitive area would be biologically preferable, and would eliminate the need for any route signs or maintenance.

Page 4-15 through 16, Economic Impacts 138-142. This section does not prorate the costs based on the number of species including human that will benefit from the measures put in place. It needs to consider all the benefactors.

Page 4-18 through 29 ACEC Conservation Activities. While we generally support the activities within the ACEC, we again contend that the Economic Analysis does not equitably evaluate the costs associated with the FSMV Critical Habitat, but instead include the benefits to a suite of species, including humans. We contend that this inequality gives the perception that proposed costs of the designation of Critical Habitat for the FSMV is really much greater than if you prorated the costs over all affected species. In other words, every Direct Cost except the propagation of FSMV (and the costs of signs as discussed above) benefits a number of other species, including humans.

Page 4-30 through 4-31. As pointed out above, this cost exclusion and AUM reduction is not a consequence of Critical Habitat designation and needs to be eliminated.

Page 4-32 through 4-33 Commercial mining groundwater Monitoring. They would have to monitor groundwater regardless of the FSMV's nearby occurrence. This cost cannot be attributed to Critical Habitat designation and needs to be eliminated.

With regards to the questions that were posed to the public in the Federal Register Announcement,

- 1) Reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Acts, including the benefits of exclusion outweigh the benefits of specifying such area as part of CH.

The CNPS and the Center contend that the Economic Analysis does not present any verifiable data sets which provide reasons that any habitat should not be included as part of Critical Habitat.

- 2) Specific information on the amount and distribution of *Astragalus lentiginosus var. piscinensis* habitat and what habitat is essential to the conservation of this species and why.

The CNPS and the Center refer you to our original 8/2/04 letter on this subject.

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

The CNPS and the Center refer you to our original 8/2/04 letter on this subject.

- 4) Any foreseeable economic, national security or other potential impacts resulting from the proposed designation of critical habitat: in particular any impacts on small entities or families.

The CNPS and the Center contend that neither the Proposed Critical Habitat Designation nor the Economic Analysis present any verifiable data, which support the contention, that designation is likely to create adverse economic, national security or other impacts.

- 5) Whether the economic analysis identifies all State and local costs attributable to the proposed critical habitat designation. If not what costs are overlooked.

The CNPS and the Center contend that there are several beneficial costs that were overlooked (see above comments)

- 6) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of Critical Habitat.

The CNPS and the Center contend that many assumptions were incorrectly made in the Economic Analysis (see above comments)

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

The CNPS and the Center contend that the Economic Analysis incorrectly assesses the regional costs of the designation

- 8) Whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final Critical Habitat designation.

The CNPS and the Center contend that the Economic Analysis does not make a case for any economic impacts that would be a cause of exclusion of any areas from the final Critical Habitat designation

- 9) Whether the EA appropriately identifies all costs that could result from the designation.

The CNPS and the Center contend that the Economic Analysis inflated the costs that could result from the designation and attributed incorrect costs to the designation. See comments above.

- 10) 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 comment.

The CNPS and the Center request that the data used for the calculation of costs be included in as part of a supplemental Draft Economic Analysis, so that we can truly evaluate how these costs were calculated.

Finally, we emphasize that the flaws in the analysis render it unreliable and that it should under no circumstances be used to designate CH or to exclude areas from CH. For one, the decision to omit or eliminate key benefits information is

contrary to the Endangered Species Act's mandate to assess the benefits of specifying areas as critical habitat. 16 U.S.C. § 1533(b)(2). We also note that any management actions and associated economic impacts that result from the listing of the FSMV alone may not be considered in the ultimate determination of critical habitat boundaries (in other words to justify excluding areas from CH).

We again remind you that Critical Habitat is essential for protecting rare species, because it works. Research by Cornell University, using FWS' own data, shows that species with designated critical habitat are less likely to be declining, and twice as likely to be recovering, than species without critical habitat." see: <http://www.biologicaldiversity.org/swcbd/programs/policy/ch/CHSEER9-2003.pdf>. Species cannot be conserved unless their habitat and the ecological processes they depend upon are also conserved. This is a basic tenet of ecology and conservation biology.

Thank you for the opportunity to submit these comments. We look forward to seeing the release of a supplemental Economic Analysis for public review in the very near future.

Sincerely,



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