

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

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

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

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

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

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

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

Previous Federal Action

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

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

Biodiversity Legal Foundation's petition.

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

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

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

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

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