

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

Effects of Critical Habitat Designation

Section 7 Consultation

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

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the action agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

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

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not

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

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

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

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

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

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

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

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

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

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

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

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

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

Economic Analysis

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