

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**Endangered and Threatened Wildlife and Plants; Final Rule Determining *Asclepias welshii* (Welsh's Milkweed) To Be a Threatened Species With Critical Habitat**

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

**ACTION:** Final rule.

**SUMMARY:** The Service determines *Asclepias welshii* (Welsh's milkweed) to be a threatened species and designates its critical habitat. This species is known to occur only in the Coral Pink Sand Dunes and in the Sand Hills 8 miles to the northeast of the Coral Pink Sand Dunes, both in Kane County, Utah. In the Coral Pink Sand Dunes, about 6,000 plants occur on lands administered by the Bureau of Land Management. An estimated 4,000 plants are thought to occur on State of Utah land in the Coral Pink Sand Dunes State Park, while about 500 plants are estimated to grow in the Sand Hills northeast of the Coral Pink Sand Dunes. Altogether, the total population of this species is thought to be no more than 11,000 plants. The population in the Coral Pink Sand Dunes is disturbed by off-road-vehicle activity. Portions of the areas in which both populations occur are leased for oil and gas. This final rule implements for this species the protection provided by the Endangered Species Act of 1973, as amended.

**DATES:** The effective date of this rule is November 27, 1987.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Fish and Wildlife Enhancement Office at 134 Union Boulevard, Fourth Floor, Lakewood, Colorado, and the Fish and Wildlife Enhancement Field Office at Room 2078 Administration Building, 1745 W. 1700 S., Salt Lake City, Utah.

**FOR FURTHER INFORMATION CONTACT:** John L. England, Botanist, at the above Salt Lake City address (801/524-4430 or FTS 588-4430).

**e SUPPLEMENTARY INFORMATION:  
Background**

*Asclepias welshii* (Welsh's milkweed) is a member of the family Asclepiadaceae (milkweed family). It was described by Holmgren and Holmgren (1979) from plants collected on the Coral Pink Sand Dunes (Dunes) in Kane County, Utah. Five earlier collections were made in this area between 1954 and 1978 by W. Cottam, A.H. Barnum, N. Holmgren, and S.L. Welsh (Holmgren and Holmgren 1979). This plant is a rhizomatous, herbaceous perennial, 10 to 40 inches tall, with large oval leaves and cream-colored flowers that are rose-tinged in the center. It grows on open, sparsely vegetated semi-stabilized sand dunes and on the lee slopes of actively drifting sand dunes.

The population consists of approximately 11,000 individuals in several concentrations distributed more or less randomly over the Coral Pink Sand Dunes, with scattered individuals between concentrations and in an area of the Sand Hills to the northeast. In the Coral Pink Sand Dunes area administered by the Bureau of Land Management (Bureau), a careful survey disclosed about 6,000 plants in 12 concentrations (Bureau 1980). On State of Utah land (Coral Pink Sand Dunes State Park), there are an estimated 4,000 plants, while in the small Bureau-administered area of the Sand Hills to the northeast, there are an estimated additional 500 plants. A Bureau survey in September 1984, showed a population of about 4,000 plants (Bureau 1984, Service 1986c); the State Park estimated a population of about the same size occurring within the State Park. The plants grow on both the tops and sides of the dunes.

In the summer of 1980, field work was carried out at the Coral Pink Sand Dunes site by a Bureau botanist (Bureau 1980). This investigation involved mapping groups of plants and counting the plants on the dunes by age class. The investigation showed that off-road vehicles were modifying the habitat and destroying Welsh's milkweed plants and that domestic livestock were utilizing this species as a forage plant.

On December 15, 1980, the Service published a notice of review for plants in the **Federal Register** (45 FR 82480), which included *Asclepias welshii* as a Category 1 species. Category 1 comprises taxa for which the Service presently has substantial information on biological vulnerability and threats to support the appropriateness of proposing to list as endangered or threatened species. For administrative purposes, all plants included in that review are treated as being under

petition. A finding was made on October 13, 1983, that listing *Asclepias welshii* was warranted but precluded by pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Endangered Species Act (Act). Such petitions are recycled under section 4(b)(3)(C)(i). The Service published a proposed rule to list *Asclepias welshii* as an endangered species on June 6, 1984 (49 FR 23399), constituting the next 1-year finding, which was required on or before October 13, 1984.

**Summary of Comments and Recommendations**

In the June 6, 1984, proposed rule (49 FR 23399) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice that invited general public comment was published in the Southern Utah News on June 27, 1984. Seventeen written comments were received. A public hearing was requested by the State of Utah, and was held in Kanab, Utah, on September 18, 1984 (see September 4, 1984, **Federal Register** (49 FR 34879)). Six formal oral comments were presented, two of which had been previously received as written comments, for a total of 21 comments.

Eleven comments, four from the State of Utah, five from the Bureau, one from the City of Kanab, and one from Kane County, maintained that recreational off-road-vehicle use (i.e., by dune buggies and three-wheel all-terrain vehicles) is not a threat sufficient to cause the extinction of *Asclepias welshii*. Those comments that provide detail cite the following reasons: (1) *Asclepias welshii* is apparently adapted to the naturally unstable drifting sands of the Coral Pink Sand Dunes; (2) the plant is increasing in numbers with the current level of off-road-vehicle use; (3) off-road-vehicle use is concentrated on unvegetated active dunes and trails through the semi-stabilized vegetated dunes which have few if any *Asclepias welshii* plants; (4) the deep-seated rhizome of *Asclepias welshii* is not subject to disturbance; and (5) no long-term studies exist of the population trend of *Asclepias welshii*, and short-term studies and inventories indicate a population increase.

The Service agrees that *Asclepias welshii* is adapted to the naturally unstable drifting sands of the Coral Pink Sand Dunes and is a significant

component of the flora of the Dunes. It is a colonizer of the unvegetated dunes in the sequence of plant succession on the Dunes. Many plant species adapted to sand dunes establish themselves either by seed or vegetatively in interdune areas in the lee of the approaching sand dune. These individual plants are then able to grow at rates great enough to stay ahead of the rate of wind deposited sand accumulation in the lee of the sand dune proper. As the crest of the sand dune reaches the position of the plant, sand accumulation ceases and wind erosion on the windward side of the plant begins. Sand dune-adapted plants often have fibrous roots or rhizomatous rootstocks (*Asclepias welshii* has a rhizomatous rootstock) that are able to hold sand in place and thus initiate the stabilization of dunes. Mechanical disturbance can break the vegetative cover that has stabilized or partially stabilized sand dunes, thus making them more active. Plants damaged by off-road-vehicle use often are unable to respond to drifting sand and sometimes are buried and die. Observations of the habitat of *Asclepias welshii* show that the southern portion of the Coral Pink Sand Dunes are more actively drifting and less vegetated, on the whole, than the northern portion. The southern portion of the Dunes is also the area that receives the greatest concentration of off-road-vehicle use, due to the proximity of developed recreational facilities (i.e., campgrounds with sanitary facilities and water) and to its open, less-vegetated condition. Highly active dunes will sometimes overwhelm the ability of even well-adapted dune plants to keep pace with the drifting sand. Contrary to statements that off-road-vehicle use is not directly affecting *Asclepias welshii* are observations by other commenters and Service personnel that actual direct disturbance of individual *Asclepias welshii* plants by off-road vehicles is occurring (Service 1986 a and b). An additional significant effect would be damage to rhizomes and roots and interference with seedling establishment. Such cryptic effects are likely to cause loss of vigor and reduction of reproductive success in the population. Information for other plant species indicates that population declines will occur even without evidence of widespread damage to individual plants. The Service concludes that off-road-vehicle use is destroying individual *Asclepias welshii* plants and adversely modifying the species habitat.

Studies of the effects of off-road-vehicle use on dune-adapted plants (e.g., Luckenbach and Bury 1983) have shown significant reductions in density and

diversity of vegetative cover in dunes subject to off-road-vehicle traffic. The relatively new three-wheel and four-wheel off-road vehicles, unlike the traditional dune buggies, have tires that are less expensive and not as susceptible to damage from vegetation. Thus there is an increase in use of the new type vehicles on the more vegetated portion of the dunes, which are modifying the habitat and destroying individuals of *Asclepias welshii* (Service 1986a and 1986b).

Many factors affect the rate of sand dune drifting and plant growth. Periods of high wind and low precipitation, especially in the arid area of the Coral Pink Sand Dunes, would increase the rate of sand drifting and decrease the ability of plants to vegetatively and reproductively keep pace with the drifting dunes. Destabilization of vegetated dunes by off-road-vehicle use during such periods would accelerate sand movement to a point that exceeds the tolerance of *Asclepias welshii* plants. Thus, the Service maintains that off-road-vehicle use is a threat, which in certain circumstances would be severe, to *Asclepias welshii*.

There are no long-term studies of the population trend of *Asclepias welshii*. The 1980 Bureau census of the *Asclepias welshii* populations on Federal lands showed a population of 5,340 individuals. Four years later in 1984, a followup survey by the Bureau, in response to the Service proposal to list *Asclepias welshii* as an endangered species, showed a population of fewer than 4,000, demonstrating a significant decline in the mid-term (Bureau 1980 and 1984, Service 1986c). Short-term studies have been inconclusive. A Bureau study of a single 25-square-foot plot established in 1983 found a 15-percent increase in aboveground stems in 1984. This finding may represent the increase in vigor of a single individual, and cannot be taken as a statistically significant indicator of the population as a whole. In addition, the area of the Coral Pink Sand Dunes has gone through a period of about 6 or 7 years of above-normal precipitation that, as described above, may have tended to slow sand dune activity and enhance the growth and reproduction of *Asclepias welshii*. The short drought during the winter of 1983-84, given the ability of sand to store water and readily yield it to plants, probably was not long enough to have had a significant impact on sand dune vegetation, including *Asclepias welshii*. The Service maintains that, because it is totally endemic to the Coral Pink Sand Dunes and nearby Sand Hills, and because off-road-vehicles are

modifying its habitat in some areas and threaten to disturb its habitat throughout the majority of its range, *Asclepias welshii* is threatened by off-road-vehicle activity.

Eight comments, two from the State of Utah, two from the Bureau, two from private citizens, and one each from the City of Kanab and Kane County, maintained that grazing is not a threat to *Asclepias welshii*. Those comments that provide detail cite the following reasons: (1) The genus *Asclepias* as a group is toxic and *Asclepias welshii* is probably at least moderately toxic to livestock; (2) livestock do not effectively use dune areas for grazing; (3) current grazing use and allowed maximum use under current grazing plans is much less than historical grazing use prior to Federal management of grazing by the Bureau.

The Service agrees that members of the genus *Asclepias* contain poisonous compounds; however, the degree of toxicity varies greatly among individual species. There is no documented evidence that *Asclepias welshii* has been responsible for livestock or wildlife poisoning. On the contrary, it has been documented that *Asclepias welshii* is at least palatable to range livestock and is not a threat to them (Bureau 1980). The Service recognizes that it is difficult for hoofed animals to traverse sand dunes, so that most of the population of *Asclepias welshii* is out of the range of probable impact from grazing livestock. Current grazing use is less than the species endured historically and is at levels that appear to pose no significant threat to *Asclepias welshii*. The Service, therefore, agrees that *Asclepias welshii* appears not to be threatened by livestock grazing, despite the occasional grazing of *Asclepias welshii* plants at the perimeter of its habitat.

Three comments, one each from the Mayor of Kanab, the State of Utah, and the Bureau, maintain that the Bureau has adequate management authority to provide for the conservation of *Asclepias welshii*. While the Bureau does provide for the management of lands and species under its control, Welsh's milkweed populations have declined. The listing of *Asclepias welshii* as threatened will reinforce existing Bureau authority to take measures necessary to prevent the decline of this species. The fact that the Bureau considers the species in need of special protective management tends to support the Service's assessment and recognition of its status under the Act.

One comment from the State of Utah argued that the listing of *Asclepias welshii* as endangered and the

designation of its critical habitat in the Coral Pink Sand Dunes is contrary to the purpose of the State Park and the intent of the Utah State Legislature in establishing and funding the Coral Pink Sand Dunes State Park. The Service recognizes legitimate uses for the Coral Pink Sand Dunes other than as habitat for the conservation of *Asclepias welshii*. The listing of *Asclepias welshii* as threatened reflects the Service's assessment of the threats posed to the species; potential effects of economic or other activities may not be considered in making such a listing determination. The designation of the Coral Pink Sand Dunes as critical habitat will not have a direct effect on the State of Utah and the Coral Pink Sand Dunes State Park. However, half of the Coral Pink Sand Dunes are on Federal land managed by the Bureau and used by recreational vehicles based at the State Park. The Service encourages the State of Utah to participate in the conservation of *Asclepias welshii* and to participate with the Service, the Bureau, and other interested and affected groups in developing a management plan that will provide for the conservation of *Asclepias welshii* as well as recreational use of the Dunes.

One comment from the State of Utah stated that the listing of *Asclepias welshii* and designating critical habitat would draw adverse attention to the plant from possible vandals. The Service is also concerned that this may happen; however, it is the Service's position that the benefits to the species as a consequence of its listing as threatened will offset the possible negative effects of undue notoriety. The conservation and recovery of the species may include a program of public education to develop sensitivity toward the species and its part in the biological heritage of the region and the nation. The same comment from the State of Utah stated that since there are two populations of the species, one at the Coral Pink Sand Dunes and the other in the nearby Sand Hills, there is no need to designate critical habitat. The Service maintains that both populations are essential for the survival and recovery of *Asclepias welshii* and that designation of critical habitat for both populations is desirable and appropriate.

One comment from the Bureau pointed out that the proposed rule described *Asclepias welshii* as "10 cm" tall. This was a typographical error in the proposed rule; *Asclepias welshii* is about 100 centimeters (40 inches) tall at maturity.

Four comments from professional botanists stated that *Asclepias welshii*

is a narrow endemic restricted entirely to the Coral Pink Sand Dunes and the nearby Sand Hills and is vulnerable to habitat destruction.

Four comments, three from professional botanists and one from a private citizen, stated that a designation of critical habitat is appropriate for this species. The three botanists based their statements on the fact that they expected no commercialization through collecting and trade of *Asclepias welshii* and thus the publication in the **Federal Register** of its occupied habitat through a critical habitat designation would not adversely affect the species' populations. The private citizen based his support of the critical habitat designation on the existence of the Coral Pink Sand Dunes tiger beetle (*Cicindela limbata albissima*), which is endemic to the Coral Pink Sand Dunes and may face the same threats as *Asclepias welshii*. The listing of *Asclepias welshii* and designation of its critical habitat may incidentally provide some degree of habitat protection for this tiger beetle. The Service is also evaluating the status of the tiger beetle as time and funds permit to determine the appropriateness of designating it as endangered or threatened under the Act (see notice of review, 49 FR 21663, May 22, 1984).

Six comments, five from professional botanists and one from a private individual, state that off-road-vehicle use damages dune vegetation. Two of these botanists have observed direct destruction of *Asclepias welshii* plants by off-road-vehicle use.

Four comments, three from professional botanists and one from a conservation group, agreed with the Service's proposed rule to list *Asclepias welshii* as an endangered species and designate its critical habitat. One comment from a professional botanist suggested that the available biological evidence and the nature and degree of threats to *Asclepias welshii* suggest that threatened status is most appropriate for this species. After reappraising the population data, reconsidering the degree and nature of threats, determining that the current level of grazing is not a threat to the species, and learning that the State has drafted a general management plan that would control the effects of off-road-vehicle traffic on dune vegetation, the Service finds that *Asclepias welshii* is not endangered as defined by the Act. However, given its vulnerability, the modification of its habitat, and the existence of threats to its population, it does fully meet the definition of threatened, as defined by the Act.

One comment from an off-road-vehicle user group urged the Service not to Close the Dunes to recreational off-road-vehicle use, and suggested that responsible off-road-vehicle recreationists would cooperate with the land-managing agencies, including the State of Utah and the Bureau, in educating and policing their ranks to ensure that stands of endangered plant species would be conserved. They hoped that their use of the Dunes could continue under necessary regulations to protect dune vegetation and *Asclepias welshii*. The Service is encouraged by the attitude shown by this group and will work with the land-managing agencies at the Coral Pink Sand Dunes to develop the vegetation and recreation management plans necessary to conserve *Asclepias welshii*.

While a final rule was being developed, a draft of the rule and accompanying economic analysis of the designation of critical habitat was provided to the Governor of Utah. In a letter to the Secretary of the Interior dated November 1, 1985, the Governor expressed disagreement with several aspects of the rule and analysis. These comments and the Service's responses are provided below:

The Governor questioned the adequacy of scientific knowledge of the species to support its listing and suggested that the Service, the Bureau, and the State initiate further studies to evaluate its status before a final status determination is made. The Service agrees that the species, which was only formally described in 1979, is not especially well understood biologically, but as noted above, the Service believes that available information is sufficient to support a determination that it is threatened.

The Governor also maintained that designation of critical habitat for this species could cause a direct negative impact on Coral Pink Sand Dunes State Park and its operations. As noted above, the Service expects no direct effect on Park operations as a result of the designation, which would only affect activities authorized, funded, or carried out by Federal agencies by requiring that such activities avoid destroying or adversely modifying critical habitat. Inasmuch as there is no known Federal involvement in the management of the Park, the Service continues to maintain that designation would not directly affect Park operations. The Service is pleased to note that the State has developed a draft management plan for the Park that would control the effects of off-road-vehicle traffic on dune vegetation. The draft plan provides

conservation zones that will provide some protection to Welsh's milkweed and its critical habitat through the regulation of off-road-vehicle use in the Park.

Addressing the draft economic analysis, the Governor objected that a statement to the effect that up to 2,000 vehicles might be on the dunes at a given time was misleading. The Service believes the Governor's objection was based on a misunderstanding of the draft analysis. The figure of 2,000 vehicles was given as an upper limit for visitor use of the dunes in estimating the number of persons that might be affected if the designation led to restrictions on activities at the Park. In fact no such impact is expected, and the figure of 2,000 visitors does not appear in the final, approved analysis.

Finally, the Governor contended that existing State regulatory mechanisms are adequate to protect *Asclepias welshii*. The Service maintains that adverse habitat modification has occurred under existing regulations. The Service believes the listing will not replace, but rather reinforce and complement protection afforded under State authority. There should be no inconsistency or conflict between Federal and State protection of the species.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all scientific and commercial information available, the Service has determined that *Asclepias welshii* (Welsh's milkweed) should be classified as a threatened species. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Asclepias welshii* Holmgren and Holmgren (Welsh's milkweed) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* *Asclepias welshii*, with the exception of a very small population in the Sand Hills, is totally endemic to the Coral Pink Sand Dunes. The Dunes are utilized primarily for recreational off-road-vehicle use. Off-road-vehicle use is adversely modifying the habitat and destroying individual plants of *Asclepias welshii*. Variations in the use of various areas in the Dunes and the variations in

abundance of *Asclepias welshii* in those same areas indicate that off-road-vehicle use has had a negative impact on *Asclepias welshii*. In the absence of protection for this plant under the Act, unrestricted off-road-vehicle use will degrade the Coral Pink Sand Dune population further. Continued habitat destruction from off-road-vehicle use will conceivably cause its extirpation from a considerable portion of its current range within the Dunes. In addition, a significant portion of the critical habitat is under lease for oil and gas development. The development of these leases, without consideration for *Asclepias welshii*, might affect the species. However, oil and gas development is not considered a threat to the species at this time due to "no surface occupancy" stipulations on oil and gas leases within the Coral Pink Sand Dunes, and the low potential for oil and gas development within and in the vicinity of the species' critical habitat. Additional details concerning oil and gas leasing and the lease stipulations are provided under the "Critical Habitat" section of this rule.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* Although livestock grazing on *Asclepias welshii* does occur on a limited basis, it is not believed that current grazing levels on this plant constitute any threat to its continued existence.

D. *The inadequacy of existing regulatory mechanisms.* There are no Federal, State, or local laws or regulations that specifically apply to this species or provide for its protection. Section 13 of the Utah Recreation Vehicle Act (Utah Code Annotated 41-22-13 [1981], enacted by Chapter 107, Laws of Utah 1971) states: "No person shall operate a recreation vehicle in connection with acts of vandalism, harassment of wildlife or domestic animals, burglaries or other crimes, or damage to the environment which includes pollution of air, water or land, abuse of the watershed, impairment of plant or animal life or excessive mechanical noise." The State of Utah's Department of Parks and Recreation is of the opinion that it would be able to provide effective conservation of *Asclepias welshii* and its critical habitat, given the above State statute, financial assistance, and a workable interagency agreement with the Bureau to manage recreational use of the entire Coral Pink Sand Dunes. However, existing regulatory measures have not prevented this species from becoming threatened. Without positive steps prompted by the Federal designation of

*Asclepias welshii* as a threatened species, the current status of *Asclepias welshii* will likely decline to endangered in the foreseeable future.

E. *Other natural or manmade factors affecting its continued existence.* The arid climate and unstable habitat of *Asclepias welshii* make its ecosystem a fragile one, vulnerable to degradation by surface disturbances.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Asclepias welshii* as threatened. This is based on the fact that the species exists in low numbers and occurs in a limited fragile ecosystem that is presently disturbed by off-road-vehicle use. A designation of critical habitat was considered prudent in this case because most of the plants are known to occur on Federal lands and would benefit from such a designation. A decision to take no action on *Asclepias welshii* would exclude this species from needed protection available under the Act. *Asclepias welshii* occupies much of the habitat available to the species and is probably capable of maintaining its populations providing the threat of extreme habitat disturbance is controlled. If control of off-road-vehicle use is not adequate, however, the species would be likely to undergo decline to the point at which extinction is probable. *Asclepias welshii* is not at present in danger of extinction, however, and therefore listing as an endangered species would not be warranted.

Although the Service proposed to list the milkweed as an endangered species, a careful reappraisal of status information upon which the proposed rule was based, together with an analysis of scientific information received during the public comment period, persuaded the Service that this species is not now endangered. The current level of grazing does not appear to pose a threat to the milkweed, and current habitat management efforts are such that the milkweed is not in immediate danger of extinction.

#### Critical Habitat

Critical habitat, as defined by Section 3 of the Act, means: (i) 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 (I) essential to the conservation of the species and (II) that

may require special management considerations or protection, and (ii) 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.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is designated for *Asclepias welshii* to include about 4,000 acres of sand dune habitat in the Coral Pink Sand Dunes and the Sand Hills area in Kane County, Utah. The Coral Pink Sand Dunes are a clearly definable and recognizable geographic entity, readily located on published U.S. Geological Survey maps. The critical habitat of *Asclepias welshii* within the Sand Hills is defined by a legal land description. The known primary constituent element is considered to be the sand dunes themselves.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or may be affected by such designation. Livestock grazing is no longer considered a threat to the critical habitat. Additional information has indicated that cattle graze only at the perimeter of the sand dunes included as critical habitat. Cattle also have difficulty traversing sand dunes and are seldom, if ever, put to graze within the critical habitat. Continued surface disturbance by recreational off-road vehicles, however, is adversely affecting the critical habitat. This activity will need to be regulated or modified to take into account the effects on critical habitat. In addition, the entire critical habitat area is leased or is available for oil and gas leasing. The potential exists for habitat damage if the recovery of mineral resources is not done in a manner that avoids destruction of the critical habitat of *Asclepias welshii*. However, the Bureau has informed the Service that the potential for oil and gas development within and in the vicinity of critical habitat is low. The Bureau has also imposed "no surface occupancy" stipulations on oil and gas leases to exclude onsite drilling within the Coral Pink Sand Dunes. These stipulations were imposed to preserve the recreational value of the Coral Pink Sand Dunes, and are compatible with the critical habitat designation. Therefore, oil and gas leasing is not

expected to affect or be affected by the designation of critical habitat.

Regulation or modification of adverse activities might include restricting off-road-vehicle use to existing roads and trails or excluding use from certain areas or during particular times when the critical habitat may be most vulnerable to disturbance.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has considered the critical habitat designation in light of relevant additional information obtained. No significant economic or other impacts are expected to result from the critical habitat designation. This conclusion is based on no known involvement of Federal funds or permits for off-road-vehicle activities within the Coral Pink Sand Dunes State Park, voluntary efforts between the State of Utah and the Bureau to develop a joint management plan for the Coral Pink Sand Dunes, the absence of any active mineral claims or oil and gas development within or in the vicinity of critical habitat, "no surface occupancy" stipulations on oil and gas leases to preserve the recreational value of the Coral Pink Sand Dunes, additional information that livestock grazing is not expected to affect the critical habitat, and the unquantifiable benefits that may result from the critical habitat designation.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies, prohibitions against collecting, and possible recovery actions are discussed, in part, below.

Section 7 (a) of the Act, as amended, requires Federal agencies 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. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. 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 a listed species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Possible effects of critical habitat designation on the Bureau have already been discussed. Known Federal activities that may affect Welsh's milkweed are sanctioned use of off-road vehicles within the species habitat and permitting actions in response to oil and gas development. The Bureau is already consulting with the Service, and additional impacts due to this listing are expected to be minimal.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Asclepias welshii*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. No such trade in *Asclepias welshii* is known. It is anticipated that few trade permits will ever be sought or issued for *Asclepias welshii* since it is neither a desirable species for collectors nor common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal and reduction to possession of endangered plant species from areas under Federal jurisdiction. Section 4(d) allows for the provision of such protection to threatened species through regulations. This protection will apply to *Asclepias welshii* under regulations codified at 50 CFR Part 17. These regulations also provide permits for exceptions to this prohibition. *Asclepias welshii* is found on both Federal and State of Utah lands. It is likely that few collecting permits for *Asclepias welshii* will ever be requested. Requests for copies of the regulations on plants and

inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-1903).

Recovery actions that should enhance the status of *Asclepias welshii* would include the development and implementation of a comprehensive recreation and habitat management plan for the Coral Pink Sand Dunes and the species. Such a plan could provide conservation areas within the Dunes dedicated to maintaining the *Asclepias welshii* population and the natural biotic and abiotic components of the dune ecosystem.

**National Environmental Policy Act**

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

**Regulatory Flexibility Act and Executive Order 12291**

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major rule under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

The critical habitat of *Asclepias welshii* is located on State and Federal lands. About 1,900 acres of critical habitat are on Federal lands administered by the Bureau, and about 2,100 acres of critical habitat are on State of Utah lands administered by the

Utah Division of Parks and Recreation. Based on the economic and other impact information already discussed, no significant economic or other impacts are expected to result from the critical habitat designation. In addition, no direct costs, enforcement costs, or information collection or recordkeeping requirements are imposed on small entities by this designation. These determinations are based on a Determination of Effects of Rules that is available at the Service's Salt Lake City Field Office, Room 2078 Administration Building, 1745 W. 1700 S., and Denver Regional Office, 134 Union Boulevard, fourth floor, Lakewood, Colorado.

**References Cited**

Bureau of Land Management. 1980. Study on *Asclepias welshii* on the Coral Pink Sand Dunes and the Sand Hills. Unpubl. report prepared by the Cedar City District: Utah, on file at the U.S. Fish and Wildlife Service's Regional Office, Denver, Colorado. 5pp.

Bureau of Land Management. 1984. Letter to Dr. James L. Miller, U.S. Fish and Wildlife Service, Denver, Colorado.

Fish and Wildlife Service. 1986a. Off-road-vehicle impacts on *Asclepias welshii* at the Sand Spring vicinity of the Coral Pink Sand Dunes during the Memorial Day Weekend of 1986. Unpubl. report on file at the U.S. Fish and Wildlife Service's Salt Lake City Field Office, Salt Lake City, Utah. 2pp.

Fish and Wildlife Service. 1986b. Field Report, *Asclepias welshii* Unpubl. report on file at the U.S. Fish and Wildlife Service's Salt Lake City Field Office, Salt Lake City, Utah. 1p.

Fish and Wildlife Service. 1986c. Relationship between the 1980 Bureau of Land Management study on *Asclepias welshii*. (Anderson Report) and the 1984 Bureau survey of *Asclepias welshii* (Kanab Resource Area Report). Memorandum to the files on file at the U.S. Fish and Wildlife Service's Regional Office, Denver, Colorado.

Holmgren, N.H. and P.K. Holmgren. 1979. A new species of *Asclepias* (Asclepiadaceae) from Utah. *Brittonia* 31(1):110-114.

Luckenback, R.A. and R.B. Bury. 1983. Effects of off-road vehicles on the biota of the Algodones Dunes, Imperial County, California. *Journal of Applied Ecology* 20:265-286.

**Author**

The primary author of this rule is John L. England, Botanist, U.S. Fish and Wildlife Service, Salt Lake City Field Office, Salt Lake City, Utah. Dr. James L. Miller, Botanist, U.S. Fish and Wildlife Service, Denver, Colorado, served as editor. Jane O. Yager, Economist, Office of Endangered Species, Washington, DC, edited the portions of the rule dealing with the effects of designating critical habitat.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

**Regulations Promulgation**

**PART 17—[AMENDED]**

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

**Authority:** Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 [16 U.S.C. 1531 *et seq.*]; Pub. L. 99-625, 100 Stat. 3500 [1986], unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order, under Asclepiadaceae to the list of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Asclepiadaceae—Milkweed family.						
<i>Asclepias welshii</i>	Welsh's milkweed	U.S.A. (UT)	T	295	17.96(a)	NA

3. Amend § 17.96(a) by adding critical habitat of *Asclepias welshii* preceding that of *Strophanomeria malheurensis* as follows:

**§ 17.96 Critical habitat—plants.**

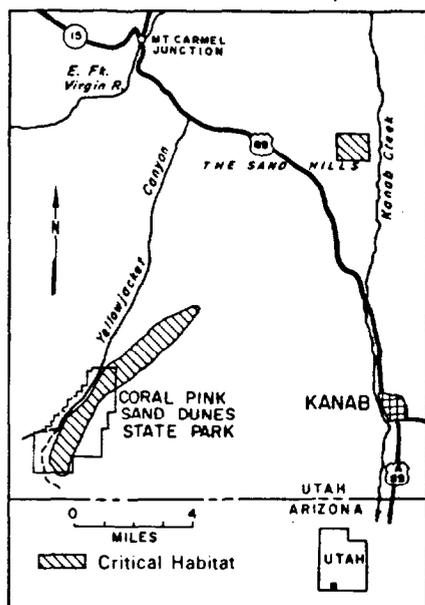
(a) \* \* \*

**Family Asclepiadaceae—*Asclepias welshii* (Welsh's milkweed)**

Utah, Kane County: entire Coral Pink Sand Dunes, within T43S, R7W and R8W, and T44S, R8W about 10 miles west of Kanab;

also, the area of the Sand Hills, about 10 miles north of Kanab, within T42S, R6W, Section 8 (S½ of the N½ and N½ of the S½). The constituent elements of this critical habitat are the sand dunes themselves.

**Note.**—Map follows.



\* \* \* \* \*

Dated: September 21, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and  
Wildlife and Parks.

[FR Doc. 87-24844 Filed 10-27-87; 8:45 am]

BILLING CODE 4310-55-M