**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**[Docket No. FWS–R1–ES–2010–0071; FF09E21000 FXES11110900000 201]**

**RIN 1018–BE61**

## Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Slickspot Peppergrass (Lepidium papilliferum)

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

**ACTION:** Revised proposed rule; reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), again revise our previous proposal to designate critical habitat for slickspot peppergrass (*Lepidium papilliferum*) under the Endangered Species Act (Act). In total, approximately 17,049 hectares (ha) (42,129 acres (ac)) in Ada, Elmore, Gem, Payette, and Owyhee Counties in Idaho fall within the boundaries of the revised proposed critical habitat designation. If we finalize this revised rule as proposed, it would extend the Act's protections to this species' critical habitat. We are proposing changes to our previous critical habitat proposal for slickspot peppergrass based on new information available on the current condition of slickspot peppergrass occurrences, as well as use of an alternative method for mapping critical habitat for the species that more precisely includes areas that provide the physical and biological features essential to the conservation of the species. The effect of the revised proposed critical habitat would be to conserve slickspot peppergrass and its habitat under the Act.

**DATES:** We will accept comments received or postmarked on or before September 21, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by September 8, 2020.

**ADDRESSES:** You may submit comments by the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R1–ES–2010–0071, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R1–ES–2010–0071; U.S. Fish and Wildlife Service, MS: JAO/1N, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information that you provide us (see the Information Requested section below for more information).

*Availability of supporting materials:* The coordinates or plot points or both from which the critical habitat maps are generated are included in the administrative record for this proposed revised critical habitat designation and are available at *http://www.fws.gov/idaho* and *http://www.regulations.gov* under Docket No. FWS–R1–ES–2010–0071. Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the U.S. Fish and Wildlife Service website and may also be included in the preamble and/or at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Christopher Swanson, Acting State Supervisor, U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709; telephone 208–378–5243. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

*Why we need to publish a rule.* This is a second revision of the proposed rule to designate critical habitat for the threatened plant species, slickspot peppergrass (76 FR 27184, May 10, 2011, and 79 FR 8402, Feb. 12, 2014). All areas we are proposing as critical habitat are occupied by the species, and the majority of the area proposed is located on lands administered by the Bureau of Land Management (BLM). Under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), any species that is determined to be threatened or endangered requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule. We reinstated slickspot peppergrass as a threatened species under the Act effective September 16, 2016 (81 FR 55058, Aug. 17, 2016). We are revising our previously proposed critical habitat rule to incorporate new information we received from the Idaho Department of Fish and Game (IDFG) regarding habitat quality rankings of slickspot peppergrass occurrences (Kinter and Miller 2016, Table 5).

*The basis for our action.* Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species.

*Economic analysis.* In order to consider economic impacts, we previously prepared an analysis of the economic impacts of the proposed critical habitat designation and related factors. The final economic analysis, which was completed March 12, 2012, concluded that critical habitat designation would not likely affect levels of economic activity or conservation measures being implemented within the proposed critical habitat area. The analysis stated that the primary reason critical habitat is unlikely to generate economic impacts beyond administrative costs of consultation is that approximately 85.8 percent of the proposed critical habitat is Federal land managed by the BLM, which is a party to a binding conservation agreement established for the purpose of slickspot peppergrass conservation; all projects and activities occurring on these public lands within the proposed critical habitat, are already subject to section 7 consultation for slickspot peppergrass (IEC 2012, p. ES–5). The BLM administers Federal lands that encompass approximately 84.7 percent of the current critical habitat

proposal; we consider this 1.1 percent decrease in the percentage of proposed critical habitat administered by BLM to be inconsequential relative to the conclusions of the 2012 economic analysis. Unless unforeseen changes occur to existing conservation measures or the management of land use activities, the incremental impacts of critical habitat designation described in the 2012 final economic analysis would continue to be limited to additional administrative costs of section 7 consultations for Federal agencies (primarily BLM), associated with considering the potential for adverse modification of critical habitat. The final economic analysis is available at *http://www.regulations.gov* under the docket number for this rulemaking, which is FWS–R1–ES–2010–0071.

*Peer review.* In accordance with our peer review policy published July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we solicited expert opinion in 2011 from five appropriate and independent specialists regarding the 2011 proposed rule. We received input from three of the five individuals. Since that time, we have implemented a standard practice of developing a species status assessment (SSA) as the scientific foundation to inform our listing determinations and recovery plans (U.S. Fish and Wildlife Service 2016, *in litt.,* pp. 1–2). In 2018, we initiated the development of an SSA for slickspot peppergrass, and in August 2018, we solicited expert opinion from four independent specialists with scientific expertise on slickspot peppergrass and its habitat regarding our draft SSA report. These four individuals generally concurred with the information and conclusions in the draft SSA report, including our use of data from the IDFG (Kinter and Miller 2016, entire); these data were used extensively in the SSA. The purpose of peer review is to ensure that our critical habitat designations are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the biology, habitat, and threats to the species. The final SSA report (USFWS 2020) is available at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2010–0071.

Because we will consider all comments and information we receive during the comment period, our final designation may differ from this proposal. Based on the new information we receive (and any comments on that new information), our final designation may not include all areas proposed, may include some additional areas, and may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion. Such final decisions would be a logical outgrowth of this proposal, as long as we: (1) Base the decisions on the best scientific and commercial data available and take into consideration the relevant impacts; (2) articulate a rational connection between the facts found and the conclusions made, including why we changed our conclusion; and (3) base removal of any areas on a determination either that the area does not meet the definition of ''critical habitat'' or that the benefits of excluding the area will outweigh the benefits of including it in the designation.

**Information Requested**

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, Native American tribes, the scientific community, industry, or any other interested party concerning this revised proposed rule. Comments previously submitted during earlier public comment periods on proposed critical habitat for slickspot peppergrass will be considered in our final decision and need not be resubmitted. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information to inform the following factors that the regulations identify as reasons why designation of critical habitat may be not prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(b) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States; or

(d) No areas meet the definition of critical habitat.

(2) Specific information on:

(a) The amount and distribution of [species] habitat;

(b) What areas, that were occupied at the time of listing and that contain the physical or biological features essential to the conservation of the species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species. We particularly seek comments:

(i) Regarding whether occupied areas are inadequate for the conservation of the species; and

(ii) Providing specific information that supports the determination that unoccupied areas will, with reasonable certainty, contribute to the conservation of the species and contain at least one physical or biological feature essential to the conservation of the species.

(3) Any additional areas occurring within the historical range of the species that should be included in the designation because they (a) are occupied at the time of listing and contain the physical and biological features that are essential to the conservation of the species and that may require special management considerations, or (b) are unoccupied at the time of listing and are essential for the conservation of the species.

(4) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(6) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts.

(7) New scientific information regarding critical habitat for this species that has become available since the May 10, 2011, publication of our proposed rule to designate critical habitat for slickspot peppergrass (76 FR 27184, May 10, 2011) and the Feb. 12, 2014, publication of our revised proposed rule to designate critical habitat for slickspot peppergrass (79 FR 8402, Feb. 12, 2014).

(8) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better

accommodate public concerns and comments. We particularly seek comments regarding the appropriateness of our use of an updated critical habitat mapping methodology that replaces use of Quarter-Quarter sections based on the Public Land Survey System.

(9) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. In particular, we are interested in areas proposed for designation on non-Federal lands covered by a conservation agreement or plan that specifically addresses threats to slickspot peppergrass. We are asking for information related to whether the specific nonFederal lands covered under the 2006 Candidate Conservation Agreement (CCA) signed by the State of Idaho Governor's Office of Species Conservation, the BLM, IDFG, Idaho Department of Lands, Idaho National Guard, and several nongovernmental cooperators should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding these areas outweigh the benefits of including these areas under section 4(b)(2) of the Act.

(10) Although we are not aware of any current habitat conservation plans (HCP), safe harbor agreements (SHA), or conservation agreements or plans covering municipal or private lands with proposed critical habitat, we request information from the public concerning interest in developing these agreements to memorialize ongoing conservation programs or partnerships that benefit slickspot peppergrass, including renewing expired memoranda of agreement (MOAs) associated with the 2006 CCA that were previously signed by private landowners, which overlap with proposed critical habitat. Municipal or private lands covered by ongoing or new agreements that include ongoing activities that have been demonstrated to effectively benefit slickspot peppergrass may be appropriate for exclusion under section 4(b)(2) of the Act.

(11) We also request information from local governments concerning interest in renewing or revising the following expired municipal conservation agreements and information regarding ongoing implementation of conservation measures associated with these plans that benefit slickspot peppergrass, and the appropriateness of considering lands covered by these agreements, if renewed or revised, for exclusion under section 4(b)(2) of the Act:

(a) The Conservation Agreement for Slickspot Peppergrass at the Boise Airport, Ada County, Idaho, between the Service and the City of Boise Airport that expired in December 2015 (City of Boise and U.S. Fish and Wildlife Service 2003, *in litt.*).

(b) The Conservation Agreement by, and between, Boise City and the Service for *Allium aasea* (Aase's onion), *Astragalus mulfordiae* (Mulford's milkvetch), and slickspot peppergrass (Hull's Gulch Agreement) that expired in 2006 (U.S. Fish and Wildlife Service 1996, *in litt.*).

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

You may submit your comments and materials concerning this revised proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. We will consider all comments and information received during the comment period on this revised proposed rule, as well those received during the previous comment periods associated with the 2011 proposed critical habitat rule (76 FR 27184, May 10, 2011) and the 2014 revised proposed critical habitat rule (79 FR 8402, Feb. 12, 2014), in the preparation of a final designation. Therefore, it is not necessary to resubmit comments previously provided during the comment periods on those proposed rules.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Comments and materials we receive, as well as supporting documentation we used in preparing this revised proposed rule, will be available for public inspection on *http://www.regulations.gov*.

*Public Hearing*

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulation at 50 CFR 424.16(c)(3).

**Previous Federal Actions**

In this revised proposed rule, we primarily discuss those topics directly relevant to updating the 2011 proposed critical habitat rule (76 FR 27184, May 10, 2011) and the 2014 revised proposed critical habitat rule (79 FR 8402, Feb. 12, 2014). For more information on previous Federal actions concerning slickspot peppergrass, refer to those documents and the 2016 final rule reinstating threatened status for the species under the Act (81 FR 55058, Aug. 17, 2016).

**Changes from the Previous Proposed Rules**

*Summary of Changes*

There are three primary changes from our previous proposed critical habitat rules (76 FR 27184, May 11, 2011; and 79 FR 8402, February 12, 2014) that we quickly summarize here and discuss in further detail in later sections of this document. First, since the publication of our May 10, 2011, proposed rule (76 FR 27184) and our February 12, 2014, revised proposed rule (79 FR 8402), we received information from IDFG regarding some additional areas that meet our definition of critical habitat for slickspot peppergrass, and some areas previously proposed as critical habitat that no longer meet our definition. We incorporated this new information and revised our designation accordingly. In addition, we changed our critical habitat mapping methodology to use geographic information system (GIS)-generated polygons, replacing our use of Quarter-Quarter sections based on the Public Land Survey System.

Finally, the regulations concerning critical habitat have been revised and updated (81 FR 7414, Feb. 11, 2016; 84 FR 45020, August 27, 2019). The original 2011 proposed rule (76 FR 27184, May 10, 2011) identified primary constituent elements (PCEs) for the critical habitat designation, and our 2014 revision did not change those (79 FR 8402, Feb. 12, 2014). In accordance

with the revisions to our critical habitat regulations, this revised proposed rule includes specific descriptions of the physical and biological features (PBFs) that are essential to the conservation of the species and which may require special management considerations or protection. We also revised the language describing PBF 1(b) to clarify the intent of the original language used in the 2011 proposed critical habitat rule (76 FR 27190, May 10, 2011) as follows: Sparse vegetation, with introduced, invasive, nonnative plant species cover absent or limited to low to moderate levels. The 2011 proposed critical habitat rule (76 FR 27184, May 10, 2011) described PBF 1(b) as: ''Sparse vegetation with low to moderate introduced, invasive, nonnative plant species cover'' (76 FR 27190). The intent of this updated language is to clarify that introduced, invasive, nonnative plant species are absent from slick spot microsites or are limited to low or moderate levels.

*Summary of New Information*

As described in our 2014 revised critical habitat proposal (79 FR 8402, Feb. 12, 2014), we based our criteria for the identification of critical habitat for slickspot peppergrass on the Element Occurrence (EO) rankings of the Idaho Natural Heritage Program (INHP). An EO is the distinct geographic location where a species occurs. In the case of slickspot peppergrass, EOs are groups of slickspot peppergrass plants that all occur within 1 kilometer (km) (0.6 mile (mi)) of each other; that is, all slickspot peppergrass plants within a 1-km (0.6-mi) distance of one another are aggregated into a single EO (Colket and Robertson 2006, *in litt.,* pp. 1–2; Kinter and Miller 2016, p. 1). In 2016, new information became available on slickspot peppergrass EO rankings when IDFG completed a systematic assessment based on field data collected from summer 2012 through spring 2016. IDFG used NatureServe guidance to rank EOs based on three factors: Size, condition, and landscape context (Kinter and Miller 2016, p. 3). We believe that the IDFG's 2016 report now constitutes the best available information regarding the size and quality of slickspot peppergrass occurrences. Incorporating this new information led to the removal of critical habitat areas associated with ten EOs that, based on a ranking in the 2016 assessment study by IDFG, no longer meet critical habitat criteria, as well as the addition of critical habitat areas associated with 24 EOs and two sub-EOs that, based on their 2016 IDFG ranking, meet critical habitat criteria.

We also used a more biologically-based GIS method for mapping critical habitat in our revised proposal. This GIS-based method involved mapping slickspot peppergrass EOs surrounded by 820-foot (ft) pollinator buffers, creating polygons that include only those areas that meet the definition of critical habitat for the species (see Physical and Biological Features Essential to the Conservation of the Species below). The new mapping methodology led to a reduction of acreage proposed for critical habitat from 61,301 ac in the 2014 proposal to 42,129 ac, a 31 percent decrease.

This reopened comment period provides all interested parties with an additional opportunity to submit written comments on this revised proposed rule, specifically regarding the new proposed EOs that have been included or EOs that have been removed from critical habitat based on the best scientific data that has become available since the 2011 proposed critical habitat rule (76 FR 27184, May 10, 2011) and the 2014 revised proposed critical habitat rule (79 FR 8402, Feb. 12, 2014).

## Critical Habitat

### Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Designation also does not allow the government or public to access private lands, nor does designation require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific occupied areas, we focus on the specific features that are essential to

support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

**Prudency Determination**

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

As discussed in our 2009 listing determination (74 FR 52014, Oct. 8, 2009), there is currently no imminent threat of take attributed to collection or vandalism identified under Factor B for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. We determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to slickspot peppergrass and that those threats in some way can be addressed by section 7(a)(2) consultation measures. The species occurs wholly in the jurisdiction of the United States, and we are able to identify areas that meet the definition of critical habitat. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) has been met and because there are no other circumstances the Secretary has identified for which this designation of critical habitat would be not prudent, we have determined that the designation of critical habitat is prudent for slickspot peppergrass.

**Critical Habitat Determinability**

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for slickspot peppergrass is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to

identify any area that meets the definition of ''critical habitat.''

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for slickspot peppergrass.

**Physical and Biological Features Essential to the Conservation of the Species**

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

We derive the specific physical or biological features essential for slickspot peppergrass from studies of this species' habitat, ecology, and life history as described in the ''Critical Habitat'' section of the proposed rule published in the **Federal Register** on May 10, 2011 (76 FR 27184), on February 12, 2014 (79 FR 8402), and in the information presented below. Additional information can be found in the final listing rule published in the **Federal Register** on October 8, 2009 (74 FR 52014), the listing reinstatement rule published August 17, 2016 (81 FR 55058), and our February 2020 slickspot peppergrass SSA report (USFWS 2020).

With rare exception, slickspot peppergrass is known only to occur in slick spot microsites scattered within the greater semiarid sagebrush-steppe ecosystem of southwestern Idaho. Slick spots provide habitats that are representative of the historical, geographical, and ecological distribution of slickspot peppergrass, and provide nutrients and water for reproduction, germination, and seed dispersal. The restricted distribution of slickspot peppergrass is likely due to its adaptation to the specific conditions within these slick spot habitats. Slick spots are distinguished from the surrounding sagebrush habitat as having the following characteristics: Microsites where water pools when rain falls (Fisher *et al.* 1996, pp. 2, 4); sparse native vegetation; distinct soil layers with a columnar or prismatic structure, higher alkalinity and clay content, and natric (sodic, high sodium) properties (Fisher *et al.* 1996, pp. 15–16; Meyer and Allen 2005, pp. 3–5, 8; Palazzo *et al.* 2008, p. 378); and reduced levels of organic matter and nutrients due to lower biomass production (Meyer and Quinney 1993, pp. 3, 6; Fisher *et al.* 1996, p. 4). Although the low permeability of slick spots appears to help hold moisture (Moseley 1994, p. 8), once the thin crust dries out, the survival of slickspot peppergrass seedlings depends on the ability of the plant to extend the taproot into the argillic horizon (soil layer with high clay content) to extract moisture from the deeper natric zone (Fisher *et al.* 1996, p. 13).

Ecologically functional slick spots have the following three primary layers: the surface silt layer, the middle restrictive layer, and an underlying moist clay layer. Although slick spots can appear homogeneous on the surface, the actual depth of the silt and restrictive layer can vary throughout the slick spot (Meyer and Allen 2005, Tables 9, 10, and 11). The top two layers (surface silt and restrictive) of slick spots are normally very thin; the surface silt layer varies in thickness from a 0.25 to 3 centimeters (cm) (0.1 to 1.2 inches (in)) in slick spots known to support slickspot peppergrass, and the restrictive layer varies in thickness from 1 to 3 cm (0.4 to 1.2 in) (Meyer and Allen 2005, p. 3). Fisher *et al.* (1996, p. 4) describe the smooth surface layer of slick spots as crustlike, with prominent vesicular pores. Below the surface layer, the soil clay content increases abruptly and creates a strongly structured, finely textured boundary (horizon) formed by the concentration of silicate clay materials, known as an argillic horizon.

Slick spot soil profiles are distinctive and distinguished from the surrounding soil matrix by very thin surface layers that form prominently vesicular crusts, natric-like argillic horizons that occur just below the soil surface, and by increasingly saline and sodic conditions with depth (Fisher *et al.* 1996, pp. 11, 16). Disturbances that alter the physical properties of slick spot soil layers, such as deep disturbance and the addition of organic matter, may lead to destruction and permanent loss of slick spots. Slick spot soils are especially susceptible to mechanical disturbances when wet (Rengasamy *et al.* 1984, p. 63; Seronko 2004, *in litt.,* entire). Such disturbances disrupt the soil layers important to slickspot peppergrass seed germination and seedling growth, and alter hydrological function.

The biological soil crust, also known as a microbiotic crust or cryptogamic crust, is another component of quality habitat for slickspot peppergrass. Such crusts are commonly found in semiarid and arid ecosystems, and are formed by living organisms, primarily bryophytes (mosses), lichens, algae, and cyanobacteria (blue-green algae), that bind together surface soil particles (Moseley 1994, p. 9; Johnston 1997, p. 4). Microbiotic crusts play an important

role in stabilizing the soil and preventing erosion, increasing the availability of nitrogen and other nutrients in the soil, and regulating water infiltration and evaporation levels (Johnston 1997, pp. 8–10). In addition, an intact crust appears to aid in preventing the establishment of invasive plants (Brooks and Pyke 2001, p. 4, and references therein; see also Serpe *et al.* 2006, pp. 174, 176). These crusts are sensitive to disturbances that disrupt crust integrity, such as compression due to livestock trampling or off-road vehicle (ORV) use, and are also vulnerable to damage by fire. Recovery from disturbance is possible but occurs very slowly (Johnston 1997, pp. 10–11).

The native, semiarid sagebrush-steppe habitat of southwestern Idaho where slickspot peppergrass is found can be divided into two plant associations, each dominated by the shrub Wyoming big sagebrush (*Artemisia tridentata* ssp. *wyomingensis*): (1) Wyoming big sagebrush—Thurber's needlegrass (*Achnatherum thurberianum* (formerly *Stipa thurberiana*)); and (2) Wyoming big sagebrush—bluebunch wheatgrass (*Agropyron spicatum*) habitat types. The perennial bunchgrasses Sandberg's bluegrass (*Poa secunda*) and bottlebrush squirreltail (*Sitanion hysrix*) are commonly found in the understory of these habitats, and the species basin big sagebrush (*Artemisia tridentata* ssp. *tridentata*), grey rabbitbrush (*Chrysothamnus nauseosus*), green rabbitbrush (*Chrysothamnus viridiflorus*), strict buckwheat (*Eriogonum strictum*), bitterbrush (*Purshia tridentata*), and little-leafed horsebrush (*Tetradymium glabrata*) form a lesser component of the shrub community. Under relatively undisturbed conditions, the understory is populated by a diversity of perennial bunchgrasses and forbs, including species such as Indian ricegrass (*Achnatherum* (formerly *Oryzopsis*) *hymenoides*), common yarrow (*Achillea millefolium*), varileaf phacelia (*Phacelia heterophylla*), Pursh's milkvetch (*Astragalus purshii*), longleaf phlox (*Phlox longifolia*), and purple threeawn (*Aristida purpurea* var. *longiseta*).

Slickspot peppergrass is primarily an outcrossing species requiring pollen from separate plants for more successful fruit production; it exhibits low seed set in the absence of insect pollinators (Robertson 2003, p. 9; Robertson and Klemash 2003, p. 339; Robertson and Ulappa 2004, p. 1707; Billinge and Robertson 2008, pp. 1005–1006). Slickspot peppergrass is capable of self-pollinating, however, with a selfing rate (rate of self-pollination) of 12 to 18 percent (Billinge 2006, p. 40; Robertson *et al.* 2006, p. 40). Known slickspot peppergrass insect pollinators include several families of bees (Hymenoptera), including Apidae, Halictidae, Sphecidae, and Vespidae; beetles (Coleoptera), including Dermestidae, Meloidae, and Melyridae; flies (Diptera), including Bombyliidae, Syrphidae, and Tachinidae; and others (Robertson and Klemash 2003, p. 336; Robertson and Leavitt 2011, p. 383). Seed set does not appear to be limited by the abundance of pollinators (Robertson *et al.* 2004, p. 14). However, studies have shown a strong positive correlation between insect diversity and the number of slickspot peppergrass flowering at a site (Robertson and Hannon 2003, p. 8). Measurement of fruit set per visit revealed considerable variability in the effectiveness of pollination by different types of insects.

Since slickspot peppergrass has a wide array of insect pollinators, general pollinator management practices for conservation of pollinators should be practiced at sites designated as critical habitat. These practices include maintaining ''a diversity of native plants whose blooming times overlap to provide flowers for foraging throughout the seasons; nesting and egg-laying sites, with appropriate nesting materials; sheltered, undisturbed places for hibernation and overwintering; and a landscape free of poisonous chemicals'' (Shepherd *et al.* 2003, pp. 49–50). An intact native sagebrush community, as opposed to a monoculture of nonnative annual grasslands such as cheatgrass, is more likely to support a wider array of pollinators. Many pollinators depend on native plants and may be unable to access resources from introduced species; many bees, for example, not only require large numbers of flowers to provide nectar and pollen, but also need a variety of flowering plants to sustain them throughout the growing season (Kearns and Inouye 1997, p. 298).

To ensure that sufficient habitat and a diversity of native flowering plants are available to support the pollinator community required for the viability of slickspot peppergrass populations, we determined that each EO should be surrounded by a minimum pollinator use area extending 250 meters (m) (820 feet (ft)) from the periphery. We chose this extent as a reasonable estimate of the area needed to sustain an active pollinator community for slickspot peppergrass. Although the species is served by a variety of pollinators, we delineated this pollinator-use area based on one of slickspot peppergrass's important pollinators with a relatively limited flight distance, the solitary bee, assuming that potential pollinators with long-range flight capabilities would be capable of using this habitat as well. Research suggests that solitary bees have fairly small foraging distances (Steffan-Dewenter *et al.* 2002, pp. 1427–1429; Gathmann and Tscharntke 2002, p. 762); a study by Gathmann and Tscharntke suggested a maximum foraging range between 150 and 600 m (495 and 1,970 ft). Based on this data, we chose 250 m (820 ft) as a reasonable mid-range estimate of the distance needed to provide sufficient habitat for the pollinator community.

The areas proposed as critical habitat will ensure maintenance and continuity of foraging habitats for insect pollinators adjacent to occupied slick spots, which helps to increase seed viability and production and is essential for maintaining genetic diversity in the species over the long term. Additionally, the provision of sufficient native sagebrush-steppe habitat protects slickspot peppergrass from wildfire, nonnative plant invasions, and colonization by harvester ants, and it helps to maintain local ecosystem characteristics within the larger landscape, which are crucial for protecting the species and its persistent seed bank. The seed bank is an essential feature of slickspot peppergrass's biology because it provides the species with resilience in the face of stochastic impacts and variation in environmental conditions.

*Summary of Essential Physical and Biological Features*

Based on our current knowledge of habitat characteristics required to sustain the species' life-history processes, we determine that the physical or biological features of critical habitat specific to slickspot peppergrass are:

(1) Ecologically functional microsites or ''slick spots'' that are characterized by:

(a) High sodium and clay content, and a three-layer soil horizonation sequence, for successful seed germination, seedling growth, and maintenance of the seed bank. The surface horizon consists of a thin, silty, vesicular, pored (small cavity) layer that forms a physical crust (the silt layer). The subsoil horizon is a restrictive clay layer with an abruptic (referring to an abrupt change in texture) boundary with the surface layer, that is natric or natric-like in properties (a type of argillic (clay-based) horizon with distinct structural and chemical features) (the restrictive layer). The second argillic subsoil layer (that is less distinct than the upper argillic horizon) retains moisture through part of the year (the moist clay layer); and

(b) Sparse vegetation, with introduced, invasive, nonnative plant species cover absent or limited to low to moderate levels.

(2) Relatively intact, native Wyoming big sagebrush (*Artemisia tridentata* ssp. *wyomingensis*) vegetation assemblages, represented by native bunchgrasses, shrubs, and forbs, within 250 m (820 ft) of slickspot peppergrass element occurrences to protect slick spots and slickspot peppergrass from disturbance from wildfire, slow the invasion of slick spots by nonnative species and native harvester ants, and provide the habitats needed by slickspot peppergrass' pollinators.

(3) A diversity of native plants whose blooming times overlap to provide pollinator species with flowers for foraging throughout the seasons and to provide nesting and egg-laying sites; appropriate nesting materials; and sheltered, undisturbed places for hibernation and overwintering of pollinator species. In order for genetic exchange of slickspot peppergrass to occur, pollinators must be able to move freely between slick spots. Alternative pollen and nectar sources (other plant species within the surrounding sagebrush vegetation) are needed to support pollinators during times when slickspot peppergrass is not flowering, when distances between slick spots are large, and in years when slickspot peppergrass is not a prolific flowerer.

(4) Sufficient pollinators for successful fruit and seed production, particularly pollinator species of the sphecid and vespid wasp families, species of the bombyliid and tachnid fly families, honeybees, and halictid bee species, most of which are solitary insects that nest outside of slick spots in the surrounding sagebrush-steppe vegetation, both in the ground and within the vegetation.

**Special Management Considerations or Protections**

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection.

A detailed discussion of the threats affecting the physical and biological features essential to the conservation of slickspot peppergrass, and that may require special management consideration or protection, can be found in the final listing rule published in the **Federal Register** on October 8, 2009 (74 FR 52014), the 2016 final rule reinstating threatened status for the species under the Act (81 FR 55058, Aug. 17, 2016), and in the recently completed SSA report (USFWS 2020, pp. 59–83, 85–103). The primary threats to the physical and biological features for slickspot peppergrass include the following direct and indirect effects: the current wildfire regime (*i.e.,* increasing frequency, size, and duration), invasive, nonnative plant species (for example, cheatgrass), and habitat loss and fragmentation due to agricultural and urban development. One of the indirect threats experienced by slickspot peppergrass is the negative impact on insect pollinators caused by conversion and fragmentation of native habitats due to invasive, nonnative plant species and various forms of development. Another indirect threat is the potential increase in seed predation by harvester ants resulting from the conversion of sagebrush-steppe to grasslands. Livestock pose a threat to slickspot peppergrass, primarily through mechanical damage to individual plants and slick spot habitats; however, current livestock management conditions and associated conservation measures address this potential threat such that it does not pose a significant risk to the viability of the species as a whole. Other, less significant factors that have the potential to impact the species include the effects from rangeland revegetation projects, wildfire management practices, recreation, and military use.

Special management to protect the proposed critical habitat areas and the features essential to the conservation of slickspot peppergrass from the effects of the current wildfire regime may include preventing or restricting the establishment of invasive, nonnative plant species, post-wildfire restoration with native plant species, and reducing the likelihood of wildfires affecting the nearby plant community components. Local fire agencies can achieve the latter by providing a rapid response or mutual support agreement for wildfire control.

Special management to protect the features essential to the conservation of slickspot peppergrass in the areas proposed as critical habitat from the effects of invasive, nonnative unseeded plant species and seeded nonnative plants (also referred to as ''highly competitive nonnative seeded plants'' (USFWS 2020, p. 68)) may include the following: (1) Protecting remnant blocks of native vegetation, (2) educating the public about invasive, nonnative species, (3) supporting research and funding for nonnative plant species control and native species restoration, (4) preventing or restricting the establishment of nonnative plant species, (5) washing vehicles prior to travel into areas containing slickspot peppergrass, and (6) reducing the likelihood of wildfires.

Special management to protect the features essential to the conservation of slickspot peppergrass from the effects of livestock use in the areas proposed as critical habitat may include conservation measures and actions to minimize the effects of livestock use on these lands. Existing conservation plans and land use plans contain numerous measures to avoid, mitigate, and monitor the effects of livestock use on slickspot peppergrass. Livestock-grazing conservation measures implemented through the State of Idaho CCA; State of Idaho *et al.* 2006, *in litt.,* pp. 31–61) and the Mountain Home Air Force Base Integrated Natural Resources Management Plan (INRMP; Air Force 2017, p. 192) apply to all Federal and State-managed lands within the occupied range of slickspot peppergrass (approximately 96 percent of the total occupied area). Existing conservation measures include prescribing a minimum distance for the placement of salt and water troughs, identifying livestock use restrictions to reduce trampling of slick spots during wet periods, constructing fences, or potentially modifying current livestock use. We recognize the potential for negative impacts to slickspot peppergrass populations and slick spots that may result from seasonal, localized trampling events. However, under current management conditions, we do not consider livestock use to pose a significant threat to slickspot peppergrass. We encourage the continued implementation of conservation measures and associated monitoring to ensure potential impacts of livestock trampling to slickspot peppergrass are avoided or minimized.

Special management to protect the features essential to the conservation of slickspot peppergrass from the effects of residential and agricultural development in the areas proposed may include creating managed plant reserves and open spaces; limiting disturbances to and within suitable habitats; increasing compliance inspections with permit holders; requiring project fencing with adjacent construction activities; disallowing new roads; and evaluating the need for and conducting restoration or revegetation of native plants in open spaces, plant preserves, or disturbed areas, such as cuts for powerlines.

Special management to protect the features essential to the conservation of slickspot peppergrass in the areas proposed as critical habitat from the effects of Owyhee harvester ant seed

predation may include the following: (1) Protecting remnant blocks of native vegetation that include shrubs, (2) educating the public about wildfire, (3) supporting research and funding for nonnative plant species control and native shrub restoration, and (4) reducing the likelihood of wildfires.

The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of slickspot peppergrass. Activities with a Federal nexus that may affect those areas outside of critical habitat, such as development, agricultural, or road construction activities, are still subject to review under section 7 of the Act if they may affect slickspot peppergrass. The prohibitions of section 9 of the Act include the import or export of listed species, and the removal to possession or malicious damage or destruction of a species under Federal jurisdiction (16 U.S.C. 1538(a)(2)).

**Criteria and Methodology Used to Identify Critical Habitat**

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are not currently proposing to designate any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that meet the definition of critical habitat.

We based our criteria for the identification of critical habitat units on IDFG's systematic assessment of on field data collected from summer 2012 through spring 2016. In the case of slickspot peppergrass, EOs are groups of slickspot peppergrass plants that all occur within 1 km (0.6 mi) of each other; that is, all slickspot peppergrass plants within a 1-km (0.6-mi) distance of one another are aggregated into a single EO (Colket and Robertson 2006, *in litt.,* pp. 1–2; Kinter and Miller 2016, p. 1). The IDFG used NatureServe guidance to rank EOs based on three factors: size, condition, and landscape context (Kinter and Miller 2016, p. 3). Each EO for slickspot peppergrass is given a ranking of A, B, C, D, E, F, H, or X by the INHP; higher rankings (the highest rank is A) indicate sites with greater habitat quality and larger population sizes, which we infer are more likely to persist and sustain the species. Rankings of B, BC, C, CD, and D refer to states of decreased abundance and quality of detectable plants, native plant community, habitat condition, and overall landscape context within 1 km (0.6 mi) of occupied slick spots. Plant abundance and habitat quality decrease as the rankings move from B to D, with a B ranking signifying a greater number of plants and better habitat conditions and a D ranking signifying few plants and poor conditions. Areas ranked E are those records with confirmed slickspot peppergrass presence but for which no additional habitat information is available. F rankings indicate areas where slickspot peppergrass was previously found, but no individuals were found when last visited by a qualified surveyor. Areas ranked H indicate historical occurrences where old location information is too vague to allow the EO to be found again. X rankings connote extirpated occurrences due to habitat destruction associated with development or agricultural conversion. See our 2011 proposed critical habitat rule (76 FR 27193, May 10, 2011) for further explanation of the ranking system.

For this rule, we included all slickspot peppergrass EOs with INHP rankings of B, BC, C, and CD in the proposed critical habitat except for 2 EOs that lack the PBFs essential to the conservation of the species (see below for further discussion of these 2 EOs). Since 2006, there have been no A- or AB-ranked EOs of slickspot peppergrass (Kinter and Miller 2016, p. 8; Colket *et al.* 2006, p. 11; IDFG's Idaho Fish and Wildlife Information System database (IDFG Database 2019)). We considered areas with rankings of B, BC, C, and CD to provide the PBFs essential to the conservation of the species, as they are the EOs most likely to provide for viable populations of slickspot peppergrass that will contribute to the conservation and recovery of the species. Each EO provides one or more of the PBFs as described in the proposed rule. Seventy-five EOs (24 B-ranked, 4 BC-ranked, 39 C-ranked, and 8 CD-ranked) met our criteria for critical habitat designation as they were identified as CD-ranked or better. We did not include sites ranked D or lower in the critical habitat designation due to the poor condition of the habitat within these sites, the lower viability of the small slickspot peppergrass populations remaining at such sites, and the fragmented nature of the surrounding landscape.

Two CD-ranked EOs (EO 23 and EO 57) are not considered for critical habitat designation as the PBFs essential to the conservation of the species are not present in these two EOs. The most recent IDFG assessment surveys found that these two EOs are dominated by invasive nonnative plants, and associated IDFG survey maps showed no slick spot microsites located within these EOs. Furthermore, slick spot microsites observed in the vicinity of EO 57 were described as essentially invisible due to high cheatgrass or forage kochia (*Kochia prostrata*) cover (IDFG 2016, EO 57 Rare Plant Observation Form). Increased cover of cheatgrass, an invasive nonnative annual grass species, is associated with reduced abundance of slickspot peppergrass (Sullivan and Nations 2009, pp. 109–112; Bond 2017, p, 12). Forage kochia, a highly competitive nonnative seeded species, can dominate slick spot microsites and has been documented to displace slickspot peppergrass (Debolt 2002, *in litt.,* entire; Colket 2009, pp. 16, 22, 130; Gray 2011, pp. 67–68; Kinter *et al.* 2014, p. 13). Therefore, we dropped these two CD-ranked EOs from consideration for critical habitat designation.

The total number of EOs (75 EOs) included in this revision reflects the merging of two C-ranked EOs (EOs 19 and 41) into B-ranked EO 18. Note that EOs 19 and 41 were distinct when IDFG began their EO assessment study, and have since been merged with EO 18 (Kinter and Miller 2016, p. 49). IDFG retained these two EOs as distinct throughout their study for consistency across their field notes, data, photos, maps, and tables. Thus, IDFG's EO assessment report shows a total of 41 C-ranked EOs (Kinter and Miller 2016, pp. 62–65), in contrast to the 39 C-ranked EOs described here.

Since our 2014 revised critical habitat proposal (79 FR 8402, Feb. 12, 2014), ten EOs decreased in ranking (now ranked D), so they no longer meet our critical habitat criteria; these EOs have been removed from this revised critical habitat proposal. Twenty-two EOs and two sub-EOs (sub-EOs are discrete patches or subpopulations within a larger EO as described by NatureServe 2002) had improved rankings (now ranked CD or higher) that resulted in their inclusion in this revised critical habitat proposal. Kinter and Miller (2016, p. 46) indicated that, while some of the improved ranks may be due to positive changes in the assigned values for EO size, condition, and/or landscape context, it should be noted that the previous assessment (Colket et al. 2006, entire) evaluated some EOs based on a field visit to only part of the EO, and other EOs were evaluated based on reports in the INHP database at that

time. For their 2016 EO assessment study, IDFG conducted intensive field assessments across entire EOs whenever possible to inform the EO-ranking assessment process. For example, searching a larger portion of the EO could result in additional plants being found and a larger value for the 'EO size' rank factor, which would result in an 'improved' EO rank (Kinter and Miller 2016, p. 49). In addition, 30 EOs that previously lacked sufficient information to be ranked as A through D in 2006 were assigned new rankings in 2016 (Kinter and Miller 2016, p. i); some of these newly ranked EOs meet our critical habitat designation criteria.

Table 1 identifies each EO we are proposing to remove from, or incorporate into, this critical habitat proposal; their rankings used in our 2014 revised critical habitat proposal (79 FR 8404, Feb. 12, 2014); and their current rankings as described in IDFG's 2016 EO assessment report (Kinter and Miller 2016, Table 5).

TABLE 1—PROPOSED ADDITION OR REMOVAL OF SLICKSPOT PEPPERGRASS CRITICAL HABITAT AREAS BASED ON 2016 ELEMENT OCCURRENCE ASSESSMENTS

| Critical habitat unit or subunit name | EO No. | EO ranking used in 2014 revised critical habitat proposal | 2016 EO ranking |
|---|---|---|---|
| Unit 1—Payette County | | | |
| Proposed Additions | EO 69 | D | C |
| Proposed Removals | | | |
| Unit 2—Ada County—Subunit 2a | | | |
| Proposed Additions | EO 36 | D | C |
| Proposed Removals | EO 108 | BC | D |
| Unit 2—Ada County—Subunit 2b | | | |
| Proposed Additions | EO 43 | D | CD |
| | EO 58 | D? | CD |
| Proposed Removals | | | |
| Unit 2—Ada County—Subunit 2c | | | |
| Proposed Additions | EO 49 | F | C |
| | EO 102 | D | C |
| Proposed Removals | EO 22 | C | D |
| Unit 2—Ada County—Subunit 2d | | | |
| Proposed Additions | EO 28 | D | C |
| | EO 119 | Not ranked | CD |
| Proposed Removals | | | |
| Unit 3—Elmore County—Subunit 3a | | | |
| Proposed Additions | EO 15 | D | C |
| Proposed Removals | EO 31 | C | D |
| | EO 112 | C | D |
| Unit 3—Elmore County—Subunit 3b | | | |
| Proposed Additions | EO 121 | (previously unknown EO discovered in August 2014). | C |
| Proposed Removals | EO 51 | BC | D |
| | EO 62 | C | D |
| | EO 113 | C | D |
| | EO 117 | C | D |
| Unit 3—Elmore County—Subunit 3c | | | |
| Proposed Additions | EO 63 | D | C |
| | EO 106 | Not ranked | CD |
| Proposed Removals | | | |
| Unit 4—Owyhee County | | | |
| Proposed Additions | EO 73 | D | CD |
| | EO 75 | F | B |
| | EO 78 | F | C |
| | EO 79 | F | C |
| | EO 81 | E | BC |
| | EO 83 | E | B |
| | EO 87 | E | C |
| | EO 90 | E | C |
| | EO 91 | E | CD |
| | EO 94 | E | C |
| | sub-EO 701 | D | C |
| | sub-EO 703 | D | C |
| Proposed Removals | EO 80 | B | D |
| | EO 95 | C | D |

Note: The "?" qualifier is used with the most appropriate rank if there is incomplete information on the EO size, condition, and/or landscape context factors.

Critical habitat unit boundaries for Subunits 2a, 2b, 2c, 3a, 3b, and 3c and Unit 4 were revised to incorporate critical habitat areas associated with eight EOs (EOs 15, 36, 49, 58, 63, 73, 106, and 121). Critical habitat areas associated with these eight EOs are located wholly or partially outside of critical habitat unit boundaries

described in the 2011 proposed critical habitat rule (76 FR 27194–27198, May 10, 2011) and the 2014 revised proposed critical habitat rule (79 FR 8404, Feb. 12, 2014). While the critical habitat unit boundaries for Subunits 2a, 2b, 2c, 3a, 3b, and 3c and Unit 4 have been revised, the area currently proposed as critical habitat within these unit boundaries has decreased from our 2014 revised critical habitat proposal (79 FR 8402, Feb. 12, 2014).

As in the 2011 proposed critical habitat rule (76 FR 27184, May 10, 2011) and the 2014 revised proposed critical habitat rule (79 FR 8402, Feb. 12, 2014), all lands we are proposing for designation as critical habitat are currently occupied by slickspot peppergrass and contain physical and biological features essential to the conservation of the species that may require special management considerations or protection. See the Proposed Critical Habitat Designation section of the 2011 proposed critical habitat rule (76 FR 27194–27198, May 10, 2011) for more information.

In the 2009 final listing rule (74 FR 52014, Oct. 8, 2009), we described the total area of known EOs (that is, area covered by the EOs themselves) as being approximately 6,500 ha (16,000 ac). This area reflects only the immediate known locations of individuals of the plant, as recognized in the IDFG Database as of 2009, and is a small portion of the overall geographic range of the species. In the 2011 proposed critical habitat rule, we described in detail the criteria used to identify critical habitat, including a 250-m (820-ft) buffer around EO polygons to provide sufficient area for pollinator support and to minimize disturbance to the plant's habitat (76 FR 27193–27194, May 10, 2011). With the proposed addition and removal of EOs associated with the 2016 EO rankings, the total area now proposed for designation as critical habitat is 17,049 ha (42,129 ac), which represents a 31 percent decrease from the total area (24,808 ha (61,301 ac)) of our 2014 revised critical habitat proposal (79 FR 8402, Feb. 12, 2014).

For this revision, we relied on GIS-based location information (polygons) that more precisely maps areas that meet the biological definition of critical habitat than did our previous mapping methodology, which used the Public Land Survey System Quarter-Quarter section method. This GIS-based method involves delineation of A- through CD-ranked slickspot peppergrass EOs surrounded by 250-m (820-ft) pollinator buffers, creating polygons that include only those areas that meet our definition of critical habitat for the species. In contrast, critical habitat maps in 2011 and 2014 were created by selecting all Quarter-Quarter sections that intersected with A- through CD-ranked EOs or their surrounding 250-m (820-ft) pollinator buffers. The use of Quarter-Quarter sections, which represent land survey boundaries rather than biologically based boundaries, resulted in large areas outside of the GIS-generated polygons being included as proposed critical habitat in the 2011 proposed critical habitat rule (76 FR 27184, May 10, 2011) and the 2014 revised proposed critical habitat rule (79 FR 8402, Feb. 12, 2014). Use of GIS-based information represents a more precise method of delineating critical habitat that does not include extraneous areas.

The use of A- through CD-ranked EO polygons and their surrounding 250-m (820-ft) pollinator buffers to create a more biologically sound critical habitat designation method is feasible, and is consistent with current Service regulations (77 FR 25611, May 1, 2012; 81 FR 7414, Feb. 11, 2016; 84 FR 45020, August 27, 2019) as well as with other recent Service critical habitat rules (*e.g.,* White Bluffs bladderpod (78 FR 76995, Dec. 20, 2013), Oregon spotted frog (81 FR 29336, May 11, 2016)). In addition, the State of Idaho provided comments in 2011 indicating that use of the Quarter-Quarter methodology for critical habitat designation resulted in more area than was biologically required for the species. One commenter also indicated that the maps based on the Quarter-Quarter critical habitat delineation methodology did not relate to the ''essential elements'' necessary to conserve slickspot peppergrass. We agree with these commenters, and because critical habitat regulations changed in 2012 to facilitate use of GIS-based polygons for critical habitat mapping (77 FR 25611, May 1, 2012), we used the GIS-based polygon method for our current proposed critical habitat revision as described herein.

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features essential for slickspot peppergrass. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We propose to designate as critical habitat lands that we have determined are occupied at the time of listing (*i.e.,* currently occupied) and that contain one or more of the physical or biological features that are essential to support life-history processes of the species. Four units and seven subunits are proposed for designation based on one or more of the physical or biological features being present to support slickspot peppergrass's life-history processes. All units and subunits contain all of the identified physical or biological features and support multiple life-history processes.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. These are new maps of the critical habitat units that have changed since the 2011 proposed critical habitat rule (76 FR 27184, May 10, 2011) and the 2014 revised proposed critical habitat rule (79 FR 8402, Feb. 12, 2014). We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based, as well as maps illustrating the changes from the previously proposed unit boundaries, available to the public on *http://www.regulations.gov* at Docket No. FWS–R1–ES–2010–0071 or at *http://www.fws.gov/idaho.* As noted above, all four units and associated subunits contain additional areas we determined meet our definition of critical habitat. Similarly, critical habitat Units 2 (Subunits 2a and 2c), 3 (Subunits 3a and 3b), and 4 had some areas removed from consideration as critical habitat because, based on 2016 EO assessments, these areas no longer meet our criteria for critical habitat designation.

**Revised Proposed Critical Habitat Designation**

We are proposing four units as critical habitat for slickspot peppergrass. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for slickspot peppergrass. The

four areas we propose as critical habitat are the: (1) Payette County Unit, (2) Ada County Unit, (3) Elmore County Unit, and (4) Owyhee County Unit. The approximate areas and land ownership of each proposed critical habitat unit and associated subunits, if any, are shown in Table 2.

Because of our use of GIS-based critical habitat polygon methodology, rather than the Public Land Survey System Quarter-Quarter section method, the total area proposed for critical habitat designation is reduced by about 31 percent, from 24,808 ha (61,301 ac) in 2014 to the currently proposed 17,049 ha (42,129 ac). This reduction is directly related to focusing the areas proposed for designation to specific EOs and their surrounding pollinator buffers, rather than to the land survey boundaries associated with use of the Quarter-Quarter sections method for critical habitat mapping, which resulted in inclusion of large areas that do not necessarily meet our definition of critical habitat for the species. The current revised critical habitat extends across the known range of the species, and will continue to provide the PBFs essential to the conservation of the species. The reduced area of the current revised critical habitat proposal is the result of increased mapping precision and includes all occupied locations (A-through CD- ranked EOs and their surrounding 250-m pollinator buffers) where PBFs currently occur.

Based on the new EO assessment information and the use of a GIS-based methodology for critical habitat mapping, we have updated the previous proposed critical habitat maps. This update results in a proposal to designate a total of 17,049 ha (42,129 ac) of critical habitat for slickspot peppergrass in four units in Payette, Gem, Ada, Elmore, and Owyhee Counties in Idaho. We are proposing no new units; however, the boundaries of six subunits and one unit (subunits 2a, 2b, 2c, 3a, 3b, and 3c and Unit 4) have been revised to include additional areas that meet our critical habitat criteria. The areas currently proposed for critical habitat include 14,327 ha (35,403 ac) of U.S. Bureau of Land Management (BLM) lands; 119 ha (294 ac) of Bureau of Reclamation (BOR) lands; 1,200 ha (2,965 ac) of State lands; 281 ha (694 ac) of municipal lands; and 1,122 ha (2,773 ac) of private lands (areas do not add up to precisely 17,049 ha (42,129 ac) due to rounding). The approximate area totals for this revised critical habitat proposal by unit, subunit, and landownership category are shown in Table 2.

TABLE 2—REVISED PROPOSED CRITICAL HABITAT UNITS AND AREA (HECTARES (ACRES)) BY LAND OWNERSHIP FOR SLICKSPOT PEPPERGRASS

[Note: Area estimates reflect the total area of all proposed critical habitat polygons located within individual critical habitat unit or subunit boundaries. Area estimates for both the current revised critical habitat proposal and the 2014 revised proposed critical habitat rule (79 FR 8404–8405; Feb. 12, 2014) are shown for comparison. Area sizes may not sum due to rounding.]

| *Critical habitat unit or subunit* | Federal ha (ac) | | State ha (ac) | | Municipal (county and city) ha (ac) | | Private ha (ac) | | Total ha (ac) | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Current revision | 2014 revision | Current revision | 2014 revision | Current revision | 2014 revision | Current revision | 2014 revision | Current revision | 2014 revision |
| *Unit 1—Payette County Total* | 268 (664) | 273 (675) | 0 (0) | 0 (0) | 0 (0) | 0 (0) | 19 (46) | 16 (40) | 287 (710) | 289 (715) |
| *Unit 2—Ada County Total* | 4,669 (11,536) | 5,984 (14,789) | 847 (2,092) | 1,182 (2,921) | 281 (694) | 414 (1,023) | 529 (1,307) | 674 (1,663) | 6,325 (15,628) | 8,254 (20,396) |
| *Subunit 2a* | 335 (828) | 660 (1,632) | 0 (0) | 0 (0) | 215 (531) | 338 (835) | 329 (814) | 291 (719) | 879 (2,173) | 1,289 (3,186) |
| *Subunit 2b* | 3,075 (7,598) | 3,802 (9,396) | 69 (170) | 114 (281) | 0 (0) | 0 (0) | 0.2 (0.4) | 115 (283) | 3,144 (7,768) | 4,031 (9,960) |
| *Subunit 2c* | 438 (1,081) | 512 (1,265) | 49 (122) | 98 (241) | 66 (163) | 76 (188) | 144 (357) | 235 (580) | 697 (1,723) | 921 (2,274) |
| *Subunit 2d* | 821 (2,029) | 1,010 (2,496) | 728 (1,800) | 970 (2,399) | 0 (0) | 0 (0) | 55 (136) | 33 (81) | 1,604 (3,965) | 2,013 (4,977) |
| *Unit 3—Elmore County Total* | 2,899 (7,165) | 3,933 (9,725) | 75 (185) | 97 (239) | 0.1 (0.3) | 0 (0) | 575 (1,420) | 419 (1,035) | 3,549 (8,771) | 4,449 (10,999) |
| *Subunit 3a* | 725 (1,793) | 760 (1,878) | 0.6 (1) | 0 (0) | 0.1 (0.3) | 0 (0) | 280 (693) | 241 (596) | 1,007 (2,488) | 1,001 (2,474) |
| *Subunit 3b* | 449 (1,108) | 1,044 (2,579) | 74 (184) | 97 (239) | 0 (0) | 0 (0) | 66 (163) | 49 (120) | 589 (1,455) | 1,190 (2,938) |
| *Subunit 3c* | 1,725 (4,264) | 2,132 (5,268) | 0 (0) | 0 (0) | 0 (0) | 0 (0) | 228 (564) | 129 (319) | 1,954 (4,828) | 2,261 (5,587) |
| *Unit 4—Owyhee County Total* | 6,609 (16,332) | 11,213 (27,709) | 278 (688) | 600 (1,482) | 0 (0) | 0 (0) | 0 (0) | 0 (0) | 6,888 (17,020) | 11,813 (29,191) |
| *Critical Habitat Unit Totals* | 14,446 (35,697) | 21,403 (52,898) | 1,200 (2,965) | 1,879 (4,642) | 281 (694) | 414 (1,023) | 1,122 (2773) | 1,109 (2,738) | 17,049 (42,129) | 24,808 (61,301) |

All critical habitat units and subunits have been revised from our 2011 proposed critical habitat rule (76 FR 27184, May 10, 2011) and the 2014 revised proposed critical habitat rule (79 FR 8402, Feb. 12, 2014) to include only those areas that currently meet our critical habitat criteria; addition and removal of critical habitat areas associated with 2016 EO assessments are shown in Table 1. This revised critical habitat proposal also varies from the 2011 proposed critical habitat rule (76 FR 27184, May 10, 2011) and the 2014 revised proposed critical habitat rule (79 FR 8402, Feb. 12, 2014) by including the expansion of EO 18 due to discovery of additional subpopulations and the subsequent merging of EOs 19 and 41 into EO 18 (IDFG Database 2016, EO 18) and a reduction in size of EO 64 associated with a mapping error (Kinter and Miller 2016, p. 9).

We present brief descriptions of all proposed critical habitat units, identify the EOs included in each, and provide the reasons why they meet the definition of critical habitat for slickspot peppergrass, below. Information regarding species abundance, vegetation community, conservation measures, and threats for each individual EO is

available in IDFG's 2016 EO Assessment report (Kinter and Miller 2016, entire).

*Unit 1: Payette County*

Unit 1 (Payette County Unit) consists of 287 ha (710 ac) located within portions of Payette and Gem counties. The northern boundary of Unit 1 is approximately 7.0 km (4.3 mi) south of New Plymouth, Idaho. Currently, 268 ha (664 ac) are federally managed by the BLM Four Rivers Field Office area, and 19 ha (46 ac) are privately owned. This unit is composed of five slickspot peppergrass EOs: 66, 68, 69, 70, and 114, all of which were occupied at the time of species listing. Unit 1 critical habitat polygons contain all PBFs: Slick spot microsites, suitable vegetation composition and structure, sufficient habitat components to support insect pollinators, and insect pollinators to allow for sufficient fruit and seed production. Unit 1 is important to the conservation of the species because it contains the northernmost occurrences for slickspot peppergrass and potentially has the highest numbers of individual plants. This unit helps to maintain the geographical range of the species and provide opportunity for population growth. Unit 1 also provides a core population of the species. We consider a core population to be an EO or sub-EO that has been assessed as A- or B-ranked, which NatureServe describes as having excellent or good estimated viability (Kinter and Miller 2016, p. 7). In Unit 1, special management is required to address the threats posed by the current wildfire regime, invasive nonnative plant species, incompatible livestock use, and residential and agricultural development. These threats are being addressed or coordinated with our partners and landowners, including BLM and BLM livestock permittees, to implement needed actions for species recovery.

*Unit 2: Ada County*

Unit 2 (Ada County Unit) consists of 6,325 ha (15,628 ac) divided into four subunits: 2a, 2b, 2c, and 2d. Approximately 4,669 ha (11,536 ac) of this unit are federally managed, of which 4,634 ha (11,450 ac) are managed by the BLM and 35 ha (86 ac) are managed by the BOR, 847 ha (2,092 ac) are managed by the State of Idaho, 210 ha (419 ac) are managed by Ada County, 66 ha (163 ac) are managed by the City of Boise, 5 ha (11 ac) are managed by the City of Eagle, and 529 ha (1,307 ac) are on private lands. This unit is composed of 24 slickspot peppergrass EOs split among the 4 subunits. All subunits contain the PBFs essential for the conservation of the species, as described in more detail below. This unit is important to the conservation of slickspot peppergrass because it contains a large remaining intact area of sagebrush-steppe habitat that has experienced little impact from wildfire.

*Subunit 2a*

Subunit 2a contains the city of Eagle, Idaho, and the southern boundary of the subunit is approximately 1.8 km (1.1 mi) northwest of Boise, Idaho. It is composed of seven EOs: 36, 38, 52, 65, 76, 107, and 118, all of which were occupied at the time of species listing. This subunit contains the Ada County Landfill Complex (Cole 2008, entire). Approximately 335 ha (828 ac) of subunit 2a are federally managed by BLM, 210 ha (419 ac) are municipal lands managed by Ada County, 5 ha (11 ac) are municipal lands managed by the City of Eagle, and 329 ha (814 ac) are privately owned. Subunit 2a is important to the conservation of the species because it contains several large populations of slickspot peppergrass in the Eagle and Boise Foothills area. This subunit helps to maintain the geographical range of the species and provide opportunity for population growth. Subunit 2a also provides a core population of the species. Subunit 2a critical habitat polygons contain all PBFs: Slick spot microsites, suitable vegetation composition and structure, sufficient habitat components to support insect pollinators, and insect pollinators to allow for sufficient fruit and seed production. In Subunit 2a, special management is required to address the threats posed by the current wildfire regime, invasive nonnative plant species, incompatible livestock use, and residential and agricultural development. A portion of the subunit has also been impacted by human recreation associated with the construction of authorized and unauthorized trails for mountain biking and hiking (some slick spots have already been impacted).

*Subunit 2b*

The northern boundary of Subunit 2b is approximately 3.2 km (2.0 mi) south of Kuna, Idaho. Subunit 2b is composed of five EOs: 18, 24, 25, 43, and 58, all of which were occupied at the time of species listing. Approximately 3,075 ha (7,598 ac) of this subunit are federally managed by BLM, 69 ha (170 ac) are managed by the State of Idaho, and 0.2 ha (0.4 ac) are privately owned. BLM lands in Subunit 2b are within the Morley Nelson Snake River Birds of Prey National Conservation Area. Subunit 2b is important to the conservation of the species because it contains EO 18, which supports high numbers of individual plants. This subunit helps to maintain the geographical range of the species and provide opportunity for population growth. Subunit 2b also provides a core population of the species. Although impacted by past fires, Subunit 2b critical habitat polygons contain all PBFs: Slick spot microsites, suitable vegetation composition and structure, sufficient habitat components to support insect pollinators, and insect pollinators to allow for sufficient fruit and seed production. In Subunit 2b, special management is required to address the threats posed by the current wildfire regime, invasive nonnative plant species, incompatible livestock use, and residential and agricultural development. These threats are being addressed or coordinated with our partners and landowners, including BLM and BLM livestock permittees, to implement needed actions for species recovery.

*Subunit 2c*

The northern boundary of Subunit 2c is approximately 6.0 km (3.7 mi) southwest of Boise, Idaho. It is composed of five EOs: 32, 48, 49, 64, and 102, all of which were occupied at the time of species listing. Subunit 2c comprises primarily BLM lands within the Four Rivers Field Office area, private lands, and municipal lands associated with the Boise Airport. Approximately 438 ha (1,081 ac) of this subunit are federally managed by BLM, 49 ha (122 ac) are managed by the State of Idaho, 66 ha (163 ac) are municipal lands managed by the City of Boise, and 144 ha (357 ac) are privately owned. Subunit 2c is important to the conservation of the species because it provides for connectivity between species populations at the eastern and western portions of the species' range. This subunit helps to maintain the geographical range of the species and provide opportunity for population growth. Subunit 2c also provides a core population of the species. Subunit 2c critical habitat polygons contain all PBFs: Slick spot microsites, suitable vegetation composition and structure, sufficient habitat components to support insect pollinators, and insect pollinators to allow for sufficient fruit and seed production. In Subunit 2c, special management is required to address the threats posed by the current wildfire regime, invasive nonnative plant species, incompatible livestock use, and residential and agricultural development. These threats are being addressed or coordinated with our

partners and landowners, including BLM and BLM livestock permittees, to implement needed actions for species recovery.

*Subunit 2d*

The northern boundary of subunit 2d is approximately 23.0 km (14.3 mi) southeast of Boise, Idaho. Subunit 2d is composed of seven EOs: 27, 28, 67, 72, 77, 104, and 119, all of which were occupied at the time of species listing. Approximately 821 ha (2,029 ac) of this subunit are federally managed, of which 786 ha (1,943 ac) are managed by BLM and 35 ha (86 ac) are managed by BOR, 729 ha (1,800 ac) are managed by the State of Idaho, and 55 ha (136 ac) are privately owned. Proposed critical habitat within this subunit abuts that portion of EO 27 located within the Idaho Army National Guard-administered Orchard Combat Training Center (OCTC, formerly known as the Orchard Training Area). EO 27 supports some of the most intact sagebrush steppe habitat and some of the highest numbers of slickspot peppergrass plants rangewide; because of the implementation of an INRMP on OCTC, we determined in 2011 that the 4,644 ha (11,525 ac) of the OCTC that met our definition of critical habitat were exempt from designation of critical habitat under section 4(a)(3)(B)(i) of the Act (see Exemptions in the 2011 proposed critical habitat rule (76 FR 27200–27201, May 10, 2011)). Through use of GIS-based critical habitat designation methodology, we have determined that 3,455 ha (8,537 ac) within the OCTC currently meet our definition of critical habitat; however, these 3,455 ha (8,537 ac) are exempt from critical habitat designation under section 4(a)(3)(B)(i) of the Act (see Exemptions and *Consideration of National Security Impacts* sections below).

Subunit 2d is located in part within the boundary of the BLM Morley Nelson Snake River Birds of Prey National Conservation Area, which also contains the Idaho Army National Guard's OCTC. Subunit 2d is important to the conservation of the species due to its proximity to that portion of EO 27 located primarily within the OCTC boundary. This subunit helps to maintain the geographical range of the species and provide opportunity for population growth. Subunit 2d also provides a core population of the species. Subunit 2d critical habitat polygons contain all PBFs: Slick spot microsites, suitable vegetation composition and structure, sufficient habitat components to support insect pollinators, and insect pollinators to allow for sufficient fruit and seed production. In Subunit 2d, special management is required to address the threats posed by the current wildfire regime, invasive nonnative plant species, incompatible livestock use, and residential and agricultural development. These threats are being addressed or coordinated with our partners and landowners, including BLM, Idaho Army National Guard, the State of Idaho, and BLM livestock permittees, to implement needed actions for species recovery.

*Unit 3: Elmore County*

Unit 3 (Elmore County Unit) consists of 3,549 ha (8,771 ac) divided into three subunits: 3a, 3b, and 3c. Approximately 2,900 ha (7,165 ac) of this unit are federally managed, of which 2,815 ha (6,957 ac) are managed by BLM and 64 ha (208 ac) are managed by BOR, 75 ha (185 ac) are managed by the State of Idaho, and 574 ha (1,420 ac) are privately owned. This unit is composed of 16 slickspot peppergrass EOs. All subunits contain the PBFs essential for the conservation of the species, as described in more detail below. Unit 3 is important to the conservation of the species because it contains EOs with higher quality habitat, represents a substantial portion of the species' range, and contains several EOs with high numbers of slickspot peppergrass individuals. Special management to address the threat posed by the current wildfire regime, invasive nonnative plant species, incompatible livestock use, and residential and agricultural development is required in Unit 3.

*Subunit 3a*

The northern boundary of Subunit 3a is approximately 6.3 km (3.9 mi) south of Mayfield, Idaho, while the southern boundary is approximately 19.6 km (12.2 mi) northwest of Mountain Home, Idaho. Subunit 3a is composed of three EOs: 15, 20, and 30, all of which were occupied at the time of species listing. Approximately 726 ha (1,793 ac) of this subunit are federally managed, of which 702 ha (1,734 ac) are managed by BLM and 24 ha (59 ac) are managed by BOR, and 281 ha (693 ac) are privately owned. Subunit 3a is bisected by Interstate 84 and old Highway 30; past burns and associated drill-seeding of crested wheatgrass (*Agropyron cristatum*) are evident in portions of the subunit.

This subunit contains PBFs essential to the conservation of slickspot peppergrass. Subunit 3a is important to the conservation of the species because it contains some EOs supporting high numbers of slickspot peppergrass plants. This subunit helps to maintain the geographical range of the species and provide opportunity for population growth. Subunit 3a also provides a core population of the species. Subunit 3a critical habitat polygons contain all PBFs: Slick spot microsites, suitable vegetation composition and structure, sufficient habitat components to support insect pollinators, and insect pollinators to allow for sufficient fruit and seed production. Special management to address the threat posed by the current wildfire regime, invasive nonnative plant species, incompatible livestock use, off-road vehicle use, and residential and agricultural development is required in Subunit 3a. These threats are being addressed or coordinated with our partners and landowners, including BLM, the State of Idaho, BLM livestock permittees, and private landowners, to implement needed actions for species recovery.

*Subunit 3b*

The boundaries of Subunit 3b include the city of Mountain Home, Idaho, while the northern boundary is approximately 55.7 km (34.6 mi) southeast of Boise, Idaho. Subunit 3b is composed of nine EOs: 2, 21, 29, 50, 61, 115, 116, 120, and 121, all of which were occupied at the time of species listing. Approximately 449 ha (1,109 ac) of this subunit are federally managed, of which 421 ha (1,040 ac) are managed by BLM and 28 ha (69 ac) are managed by BOR, 74 ha (184 ac) are managed by the State of Idaho, and 66 ha (163 ac) are privately owned. BLM lands within Subunit 3b are located within both the Four Rivers Field Office area and the Morley Nelson Birds of Prey National Conservation Area. Subunit 3b is important to the conservation of the species because it provides connectivity between other units across the range of the species. This subunit helps to maintain the geographical range of the species and provide opportunity for population growth. Subunit 3b also provides a core population of the species. Subunit 3b critical habitat polygons contain all PBFs: Slick spot microsites, suitable vegetation composition and structure, sufficient habitat components to support insect pollinators, and insect pollinators to allow for sufficient fruit and seed production. Subunit 3b contained substantial biological soil crust cover and relatively low cheatgrass cover; however, a wildfire that occurred in the area in 2012 (USFWS 2013, p. 3) likely reduced habitat quality in the subunit. In Subunit 3b, special management is required to address the threats posed by the current wildfire regime, invasive nonnative plant species, incompatible

livestock use, and residential and agricultural development. These threats are being addressed or coordinated with our partners and landowners, including BLM, the State of Idaho, BLM livestock permittees, and private landowners, to implement needed actions for species recovery.

*Subunit 3c*

The southern boundary of Subunit 3c is approximately 1.6 km (1.0 mi) northeast of Hammett, Idaho, while the western boundary is 19.6 km (12.2 mi) southeast of Mountain Home, Idaho. This subunit is composed of four EOs: 8, 26, 63, and 106, all of which were occupied at the time of species listing. Approximately 1,725 ha (4,264 ac) of this subunit are federally managed, of which 1,694 ha (4,184 ac) are managed by BLM and 32 ha (80 ac) are managed by BOR, and 228 ha (564 ac) are privately owned. BLM lands in Subunit 3c are primarily within the Four Rivers Field Office area. Subunit 3c is important to the conservation of the species because it contains the northeastern-most occurrences for slickspot peppergrass and has two EOs with large numbers of individual plants. This subunit helps to maintain the geographical range of the species and provide opportunity for population growth. Subunit 3c also provides a core population of the species. Subunit 3c critical habitat polygons contain all PBFs: Slick spot microsites, suitable vegetation composition and structure, sufficient habitat components to support insect pollinators, and insect pollinators to allow for sufficient fruit and seed production. Biological soil crust cover is high in some areas of the subunit. In Subunit 3c, special management is required to address the threats posed by the current wildfire regime, invasive nonnative plant species, incompatible livestock use, recreational use, and residential and agricultural development. These threats are being addressed or coordinated with our partners and landowners, including BLM, the State of Idaho, BLM livestock permittees, and private landowners, to implement needed actions for species recovery.

*Unit 4: Owyhee County*

Unit 4 (Owyhee County Unit) consists of 6,888 ha (17,020 ac). The northern boundary of Unit 4 is approximately 83.8 km (52.1 mi) south of Mountain Home, Idaho, while the eastern boundary is 52.0 km (32.3 mi) west of Rogerson, Idaho. This unit is important to the conservation of slickspot peppergrass because it contains the largest amount of contiguous habitat with little fragmentation or development; it helps maintain the geographical range of the species and provide opportunity for population growth; and provides a core population of the species composed of 11 of the 19 sub-EOs within the EO 16 metapopulation, including sub-EO 704. This unit is composed of 19 EOs (EOs 73, 74, 75, 78, 79, 81, 83, 84, 85, 87, 90, 91, 92, 93, 94, 96, 97, 98, 99) and 11 sub-EOs (sub-EOs 700, 701, 702, 703, 704, 706, 712, 715, 716, 720, 725), which are components of the EO 16 metapopulation. The EO 16 metapopulation is a ''parent'' EO to all sub-EOs numbered 700 or greater. EO 16 contains a total of 19 sub-EOs, 11 of which meet our criteria for critical habitat designation. Each of these EOs and sub-EOs were occupied at the time of species listing. About 6,610 ha (16,332 ac) of this unit are federally managed by the BLM Jarbidge Field Office, while 278 ha (688 ac) are managed by the State of Idaho. The majority of sub-EO 704 is located within the Mountain Home Air Force Base's Juniper Butte Range (Juniper Butte Range). We determined in 2011 that 4,611 ha (11,393 ac) within Juniper Butte Range met our definition of critical habitat; however, these 4,611 ha (11,393 ac) were exempt from critical habitat designation under section 4(a)(3)(8)(i) of the Act (see Exemptions in the 2011 proposed critical habitat rule (76 FR 27201, May 10, 2011)). Using our current GIS-based critical habitat mapping methodology, 3,831 ha (9,466 ac) within the Juniper Butte Range currently meet our definition of critical habitat and are exempt from critical habitat designation under section 4(a)(3)(B)(i) of the Act (see Exemptions and *Consideration of National Security Impacts* sections below).

Unit 4 critical habitat polygons contain all PBFs: Slick spot microsites, suitable vegetation composition and structure, sufficient habitat components to support insect pollinators, and insect pollinators to allow for sufficient fruit and seed production. In Unit 4, special management is required to address the threats posed by the current wildfire regime, invasive nonnative plant species, and incompatible livestock use. These threats are being addressed or coordinated with our partners and landowners, including BLM and BLM livestock permittees, to implement needed actions for species recovery (portions of Unit 4 contain past drill-seedings of crested wheatgrass (*Agropyron cristatum*) and other highly competitive nonnative species).

**Effects of Critical Habitat Designation**

*Section 7 Consultation*

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final regulation with a revised definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

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. Examples of actions that are subject to the Act's section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation. The Bureau of Land Management has conducted section 7 compliance on slickspot peppergrass proposed critical habitat since it was initially proposed in 2011.

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to

adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying 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 formal consultation under the Act on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation, we have listed a new species or designated critical habitat that may be affected by the Federal action, or the action has been modified in a manner that affects the species or critical habitat in a way not considered in the previous consultation. In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

*Application of the ''Destruction or Adverse Modification'' Standard*

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Services may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat include, but are not limited to: Actions that would remove a significant number of slick spot microsites, a significant portion of remnant native sagebrush steppe habitat, or a significant amount of pollen and nectar source plants, and actions that would result in significant ground disturbance. Such activities could include, but are not limited to, residential and commercial development, infrastructure projects, and conversion to agricultural fields. These activities could permanently eliminate or reduce the habitat necessary for the growth and reproduction of slickspot peppergrass.

**Exemptions**

*Application of Section 4(a)(3) of the Act*

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an INRMP by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws. The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the proposed critical habitat designation for slickspot peppergrass to determine if they are exempt under section 4(a)(3)(B)(i) of the Act. The following areas are Department of Defense (DoD) lands with completed, Service-approved INRMPs within the proposed critical habitat designation.

*Approved INRMPs*

Military activities within the range of slickspot peppergrass include ordnance-impact areas, training activities, and military development. Military-training activities occur at, or near, four EOs: Three at the OCTC on the Snake River Plain, and a portion of one EO at the Juniper Butte Range on the Owyhee Plateau. INRMPs have been developed and implemented for both the Juniper Butte Range and the OCTC. The INRMPs provide management direction and conservation measures to address or eliminate the effects from military-training exercises on slickspot peppergrass and its habitat. Both the Idaho Army National Guard (Kinter et al. 2014, p. i) and the U.S. Air Force (Conley 2018, p. 3) conduct annual monitoring to ensure impacts to the species due to training activities are either avoided or minimized.

Idaho Army National Guard—Orchard Combat Training Center

The Idaho Army National Guard's OCTC on the Snake River Plain has an

INRMP in place that provides a conservation benefit for slickspot peppergrass. This INRMP has been in place for this military training facility since 1997. Because the 2013 INRMP is over 5 years old, the OCTC is currently managed under an Operational INRMP that includes continued implementation of all slickspot peppergrass conservation measures from the 2013 INRMP pending completion of the OCTC INRMP revision later in 2020 (Baun 2020, *in litt.,* entire). The OCTC contains 7,213 ac (2,919 ha) of occupied slickspot peppergrass habitat, 7,163 ac (2,899 ha) of which represents nearly 60 percent of the highest quality occupied slickspot peppergrass habitat in the Snake River Plain region. The continuing high quality of this habitat suggests the conservation measures are effective in maintaining generally-intact, native-plant vegetation and limiting anthropogenic disturbances on the OCTC (Sullivan and Nations 2009, p. 91).

The INRMP for the OCTC provides a framework for managing natural resources. Conservation measures included in the INRMP avoid or minimize impacts on slickspot peppergrass, slick spot microsites, and sagebrush-steppe habitat while allowing for the continued implementation of the Idaho Army National Guard's mission. These measures include management actions such as restricting off-road motorized vehicle use, intensive wildfire suppression efforts, and the restriction of ground-operated military training to areas where the plants are not found. For example, the INRMP includes objectives for maintaining and improving slickspot peppergrass habitat and restoring areas damaged by wildfire. The plan specifies that the OCTC will use native species and broadcast seeding, collecting, and planting small amounts of native seed not commercially available, and will monitor the success of seeding efforts (National Guard 2013, pp. 104, 107–108). Since 1991, the OCTC, using historical records, has restored several areas using native seed and vegetation that was present prior to past wildfires.

The Idaho Army National Guard continues to use restoration methods that avoid or minimize impacts to slickspot peppergrass or its habitat, with an emphasis on maintaining representation of species that were present in presettlement times (National Guard 2013, p. 34). Since 1987, the Idaho Army National Guard has demonstrated that efforts to suppress wildfire and the use of native species with minimal ground-disturbing activities are effective in reducing the wildfire threat, as well as in reducing rates of spread of nonnative, invasive species associated with wildfire management activities (National Guard 2013, p. 34). In 2008, the Idaho Army National Guard also initiated maintenance on a series of identified fuel breaks on the OCTC. These fuel breaks are designed to act as barriers to prevent fires that might be ignited by military training activities from spreading into adjacent slickspot peppergrass habitat (USBLM 2008, p. 20).

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the Idaho Army National Guard's OCTC INRMP and that conservation efforts identified in the INRMP are being actively implemented, are effective, and will provide a benefit to slickspot peppergrass occurring in habitats within or adjacent to the OCTC. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3)(B)(i) of the Act. Through use of GIS-based critical habitat designation methodology, we have determined that 3,455 ha (8,537 ac) within the OCTC currently meet our definition of critical habitat; however, we are not including these 3,455 ha (8,537 ac) of habitat in this proposed critical habitat designation because of this exemption.

Mountain Home Air Force Base—Juniper Butte Range

The U.S. Air Force, Mountain Home Air Force Base, which includes the Juniper Butte Range in the Owyhee Plateau region, has an INRMP that has been in place for this military training facility since 2004. The Mountain Home Air Force Base 2017 INRMP remains active. The U.S. Air Force manages 818 ha (2,021 ac) of occupied slickspot peppergrass habitat within the Juniper Butte Range. Conservation measures and implementation actions for slickspot peppergrass include reseeding disturbed areas with native vegetation, eradicating noxious weeds prior to their spreading, cleaning vehicles and equipment to remove nonnative invasive plants, avoiding pesticide use within 8 m (25 ft) of slick spots, and delaying livestock turnout onto the range if slick spot microsites are saturated (Air Force 2017, pp. 183–185, 189, 191–192, 200). The INRMP contains specific measures developed to minimize the impacts from military training at the local level, or general measures designed to improve the ecological condition of native, sagebrush-steppe vegetation at a landscape scale, inclusive of areas supporting slickspot peppergrass, while allowing for the continued implementation of the Air Force mission. For example, the U.S. Air Force has a number of ongoing efforts to address wildfire prevention and suppression on the entire 4,913 ha (12,141 ac) Juniper Butte Range. Prevention measures that are implemented on the Juniper Butte Range include reducing standing fuels and weeds, planting fire-resistant vegetation in areas with a higher potential for ignition sources, such as along roads, and using wildfire indices to determine when to restrict military activities when the wildfire hazard rating is extreme (Air Force 2017, pp. 215–218). As a result of implementing these measures, the threat from wildfire to slickspot peppergrass associated with U.S. Air Force training activities has been effective in reducing fires within the Juniper Butte Range.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the U.S. Air Force INRMP for the Juniper Butte Range (Mountain Home Air Force Base) and that conservation efforts identified in the INRMP are being implemented, are effective, and will provide a conservation benefit to slickspot peppergrass occurring in habitats within or adjacent to the Juniper Butte Range. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3)(B)(i) of the Act. Through use of our current GIS-based critical habitat mapping methodology, 3,831 ha (9,466 ac) within the Juniper Butte Range currently meet our definition of critical habitat and are exempt from critical habitat designation; however, we are not including these 3,831 ha (9,466 ac) of habitat in this proposed critical habitat designation because of this exemption.

We previously determined in 2011 that 4,664 ha (11,525 ac) of the Idaho Army National Guard's OCTC and 4,611 ha (11,393 ac) of the Mountain Home Air Force Base's Juniper Butte Range that met our critical habitat criteria were exempt from the critical habitat designation under section 4(a)(3)(B)(i) of the Act, based on their development and implementation of INRMPs (76 FR 27201, May 10, 2011). The areas determined to be exempt from critical habitat designation under section 4(a)(3)(B)(i) of the Act have been recalculated to incorporate our current GIS-based critical habitat mapping methodology. For this revised proposal, 3,455 ha (8,537 ac) of the Idaho Army National Guard's OCTC and 3,831 ha

(9,466 ac) of the Juniper Butte Range that met our critical habitat criteria are exempt from the critical habitat designation (Table 3). The acreage exempted within both INRMPs appears to be greater than the occupied habitat because the occupied habitat is based purely on EO acreage, and does not include the surrounding sagebrush-steppe habitat that would be included in critical habitat to provide for sufficient pollinator populations and protection of the slickspot peppergrass populations from other impacts, such as wildfire or recreational use.

TABLE 3—EXEMPTIONS BY CRITICAL HABITAT UNIT UNDER 4(a)(3)(B)(i)

[Areas described in our 2011 proposed critical habitat rule using the Quarter-Quarter critical habitat mapping methodology are also provided for comparison purposes]

| Critical habitat unit | Specific area | Areas meeting the definition of critical habitat in hectares (acres) | | Areas exempted in hectares (acres) | |
|---|---|---|---|---|---|
| | | Current revised proposal | 2011 proposal | Current revised proposal | 2011 proposal |
| 2 | Orchard Combat Training Center | 3,455 ha (8,537 ac) | 4,664 ha 11,525 ac | 3,455 ha (8,537 ac) | 4,664 ha 11,525 ac |
| 4 | Juniper Butte Range | 3,831 ha (9,466 ac) | 4,611 ha (11,393 ac) | 3,831 ha (9,466 ac) | 4,611 ha (11,393 ac) |

**Exclusions**

*Application of Section 4(b)(2) of the Act*

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless the Secretary determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

The first sentence in section 4(b)(2) of the Act requires that we take into consideration the economic, national security, or other relevant impacts of designating any particular area as critical habitat. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion will not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive due to the protection from destruction or adverse modification as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion we consider, among other things, whether exclusion of a specific area is likely to result in conservation or in the continuation, strengthening, or encouragement of partnerships. In the case of slickspot peppergrass, the benefits of critical habitat include public awareness of the presence of slickspot peppergrass and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the species due to the protection from destruction or adverse modification of critical habitat. Additionally, continued implementation of a management plan that provides equal to or more conservation than a critical habitat designation would reduce the benefits of including that specific area in the critical habitat designation.

When we evaluate a management plan or conservation agreement during our consideration of the benefits of inclusion, we assess a variety of factors, including but not limited to, whether the plan or agreement is finalized, how it provides for the conservation of the essential physical or biological features, whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan or conservation agreement will be implemented into the future, whether the conservation strategies in the plan or agreement are likely to be effective, and whether the plan or agreement contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we will evaluate whether certain lands in the proposed critical habitat units are appropriate for exclusion from the final designation under section 4(b)(2) of the Act. If the analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then the Secretary may exercise his discretion to exclude the lands from the final designation.

We are considering whether to exclude private, State, and municipal lands under section 4(b)(2) of the Act from the final critical habitat designation for slickspot peppergrass. To inform our decision, we specifically

solicit comments on the inclusion or exclusion of such areas. In the paragraphs below, we provide information related to our consideration of these lands for exclusion under section 4(b)(2) of the Act.

*Consideration of Economic Impacts*

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we previously prepared an analysis of the economic impacts of the proposed critical habitat designation and related factors. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.''

The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For this particular designation, we developed an economic analysis. The draft economic analysis, dated July 22, 2011, was made available for public review and comment from October 26, 2011, through December 12, 2011 (76 FR 66250, Oct. 26, 2011). Following the close of the comment period, the final analysis (dated March 12, 2012) of the potential economic effects of the designation took into consideration the public comments and any new information (IEC 2012). The final economic analysis is available at *http://www.regulations.gov* under the docket number for this rulemaking, which is FWS–R1–ES–2010–0071.

The final economic analysis concluded that critical habitat designation would not likely affect levels of economic activity or conservation measures being implemented within the proposed critical habitat area. The analysis stated that the primary reason critical habitat is unlikely to generate economic impacts beyond administrative costs of consultation is that approximately 85.8 percent of the proposed critical habitat is Federal land managed by the BLM, which is a party to a binding conservation agreement established for the purpose of slickspot peppergrass conservation; all projects and activities occurring on these public lands within the proposed critical habitat, including livestock management, wildfire and invasive species management, and determining the placement of utility and transportation rights-of-way, are already subject to section 7 consultation for slickspot peppergrass (IEC 2012, p. ES–5). Following the application of our revised mapping methodology, BLM administers Federal lands that encompass approximately 84.7 percent of the current critical habitat proposal. We consider this 1.1 percent decrease in the current percentage of proposed critical habitat administered by BLM to be inconsequential relative to the conclusions of the 2012 economic analysis. Unless unforeseen changes occur to existing conservation measures or the management of land use activities, the incremental impacts of critical habitat designation described in the 2012 final economic analysis would continue to be limited to additional administrative costs of section 7 consultations for Federal agencies (primarily BLM), associated with considering the potential for adverse modification of critical habitat.

These costs were estimated to be $14,200 annually or $161,000 over a 20-year period (IEC 2012, pp. ES–5, ES–6). Though costs for consultations may have incrementally increased since 2012 (due to inflation and other economic factors), we do not expect the revised critical habitat to have any meaningful practical effect on consultation costs because BLM, as the primary Federal agency that conducts section 7 consultation on the potential effects of their actions on the species, continues to simultaneously enter into section 7 conference regarding Federal actions that may also affect proposed critical habitat. The BLM has indicated that any increase in cost associated with critical habitat section 7 compliance would be limited to increases in BLM staff costs, which have been minimal since 2012 when the economic analysis was completed, but not an increase in time needed to conduct section 7 compliance (Kershaw 2020, pers. comm.). Reduction in the 2020 proposed critical habitat acreage and addition of some new critical habitat areas are not expected to increase or decrease the number of section 7 consultations and associated costs. The majority of critical habitat acreage reductions associated with updated mapping methodology as well as the majority of critical habitat expansions associated with new EOs and subEOs are located in the BLM Jarbidge Field Office area. Most new projects in the Jarbidge Field Office area are BLM livestock grazing permit renewals for large, landscape-scale allotments that encompass from almost 2,833 to over 48,157 ha (7,000 to over 119,000 ac). While total critical habitat acreage would be reduced within these large allotments, costs are not anticipated to increase as consultation for both the species and its critical habitat would still be completed for these upcoming BLM permit renewals. Thus, there has been no significant increase or decrease in BLM administrative costs for slickspot peppergrass critical habitat section 7 compliance relative to the 2012 economic analysis, we conclude that the 2012 economic analysis remains valid for slickspot peppergrass proposed critical habitat.

Similarly, it remains unlikely that activities on private lands will result in additional section 7 consultations. In our final economic analysis, we did not anticipate additional consultation under section 7 on non-Federal lands; however, in the case that Federal permitting or funding is required for future projects on private lands, consultation considering effects of the project on slickspot peppergrass will occur and critical habitat designation will not likely affect the outcome of these consultations (IEC 2012, p. 4–4). In the eight years since the 2012 economic analysis, there has been a single section 7 consultation associated with Federal permitting on private lands

occupied by slickspot peppergrass. Should additional consultations occur after the final critical habitat designation, we anticipate that critical habitat will not likely affect the outcome of these future consultations IEC 2012, (pp. 4–4) for the following reasons. As the final economic analysis stated, within the non-Federal portion (14.2 percent) of the proposed critical habitat area, project proponents and land managers are already aware of the presence of the listed slickspot peppergrass and the need to consult for projects with a Federal nexus (IEC 2012, pp. 4–2). We do not foresee a circumstance in which critical habitat designation will change the outcome of future consultations, because activities with a Federal nexus are already undertaking section 7 consultation considering impacts on slickspot peppergrass and it is ''not possible for us to differentiate any measures implemented solely to minimize impacts to individual [plant]s from those implemented to minimize impacts to the critical habitat'' (IEC 2012, p. 4–2). The changes in the area designated as critical habitat between the 2011 proposed rule (76 FR 27184, May 10, 2011) and this revised proposed rule are not anticipated to lead to an outcome different than what was anticipated in our 2012 analysis. Therefore, the conclusions of the 2012 final economic analysis apply to this revision of our critical habitat proposal.

Our current proposal includes a net increase of 13 ha (35 ac) of additional private lands proposed for critical habitat designation relative to our 2014 proposal (79 FR 8402, Feb. 12, 2014). We believe that the relatively small amount of occupied area on private lands proposed here (1,122 ha (2,773 ac)) is not likely to alter the results of the existing economic analysis of the designation because section 7 consultation for activities on private lands will continue to be unlikely. The current overall total area of this revised proposed critical habitat on Federal lands has been reduced by about 31 percent from the total acreage in the 2014 revised proposed critical habitat rule (79 FR 8402, Feb. 12, 2014); the majority of this reduced Federal land area is located in Unit 4.

All projects and activities occurring on public lands within proposed critical habitat are already subject to section 7 consultation for the species. However, due to the relatively large areas encompassed by BLM actions within Unit 4 (livestock management, wildfire and invasive species management, and placement of utility and transportation rights-of-way), a similar number of BLM projects will continue to require section 7 consultation on effects to both critical habitat and the species despite the reduction of BLM proposed critical habitat acres in Unit 4. We conclude that the incremental impacts of our current revised proposed designation of critical habitat for slickspot peppergrass will similarly be limited to the additional administrative costs of section 7 consultations associated with considering the potential for adverse modification of critical habitat, and that administrative costs of section 7 consultations will not change from levels described in the 2012 final economic analysis.

The final economic analysis is available at *http://www.regulations.gov* under the docket number for this rulemaking, which is FWS–R1–ES–2010–0071. We encourage submission of additional economic impact information through the public comment period, as such information may identify areas that may be considered for exclusion from the final critical habitat designation under section 4(b)(2) of the Act (see **ADDRESSES**). During the development of a final designation, we will consider the information presented in the DEA and an additional information on economic impacts received during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19.

*Consideration of National Security Impacts*

Under section 4(b)(2) of the Act, we consider the impact to national security that may result from a designation of critical habitat. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for slickspot peppergrass are not owned, managed, or utilized by the DoD or the Department of Homeland Security, except for those exempted above under section 4(a)(3) of the Act. Therefore, we anticipate no impact on national security or homeland security. However, during the development of a final designation, we will consider any additional information received through the public comment period on the impacts of the proposed designation on national security or homeland security to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19.

*Consideration of Other Relevant Impacts*

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether there are permitted conservation plans covering the species in the area such as HCPs, SHAs, or CCAAs, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with tribal entities; in this instance, the proposed designation does not include tribal lands or trust resources. We also consider any social impacts that might occur because of the designation.

We have determined that there are currently no HCPs, SHAs, or CCAAs in the proposed critical habitat area. Therefore, we are not proposing the exclusion of any areas in the proposed critical habitat for slickspot peppergrass on the basis of permitted plans. However, during the development of a final designation, we will consider any additional information received through the public comment period on the whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19 on the basis of permitted plans.

Private or Other Non-Federal Conservation Plans or Agreements and Partnerships, in General

We sometimes exclude specific areas from critical habitat designations based in part on the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships. A conservation plan or agreement describes actions that are designed to provide for the conservation needs of a species and its habitat, and may include actions to reduce or mitigate negative effects on the species caused by activities on or adjacent to the area covered by the plan. Conservation plans or agreements can be developed by private entities with no Service involvement, or in partnership with the Service.

We evaluate a variety of factors to determine how the benefits of any exclusion and the benefits of inclusion are affected by the existence of private or other non-Federal conservation plans or agreements and their attendant

partnerships when we undertake a discretionary section 4(b)(2) exclusion analysis. A non-exhaustive list of factors that we will consider for non-permitted plans or agreements is shown below. These factors are not required elements of plans or agreements, and all items may not apply to every plan or agreement.

(1) The degree to which the plan or agreement provides for the conservation of the species or the essential physical or biological features (if present) for the species;

(2) Whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan or agreement will be implemented;

(3) The demonstrated implementation and success of the chosen conservation measures;

(4) The degree to which the record of the plan supports a conclusion that a critical habitat designation would impair the realization of benefits expected from the plan, agreement, or partnership;

(5) The extent of public participation in the development of the conservation plan;

(6) The degree to which there has been agency review and required determinations (*e.g.,* State regulatory requirements), as necessary and appropriate;

(7) Whether National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) compliance was required; and

(8) Whether the plan or agreement contains a monitoring program and adaptive management to ensure that the conservation measures are effective and can be modified in the future in response to new information.

*2006 Candidate Conservation Agreement (2006 CCA)*—In response to our 2011 proposed critical habitat rule (76 FR 27184, May 10, 2011), we received a request from the State of Idaho to exclude State lands covered by their CCA. The BLM, State of Idaho Governor's Office of Species Conservation, IDFG, Idaho Department of Lands, Idaho National Guard, and several nongovernmental cooperators signed a CCA in 2003 (State of Idaho *et al.* 2006, *in litt.*) and renewed the plan in 2006 (State of Idaho *et al.* 2006, *in litt.*). The CCA as signed in 2006 included rangewide efforts that were intended to address the need to maintain and enhance slickspot peppergrass habitat; reduce intensity, frequency, and size of natural- and human-caused wildfires; minimize loss of habitat associated with wildfire-suppression activities; reduce the potential of nonnative plant species invasion from wildfire; minimize habitat loss associated with rehabilitation and restoration techniques; minimize the establishment of invasive nonnative species; minimize habitat loss or degradation from off-highway vehicle use; mitigate the negative effects of military training and other associated activities on the OCTC; and minimize the impact of ground disturbances caused by livestock penetrating trampling when soils are saturated (State of Idaho *et al.* 2006, *in litt.,* p. 3).

We receive annual reports from the BLM regarding their implementation of CCA conservation measures. In addition, annual IDFG Habitat Integrity and Population monitoring includes collection of habitat condition and management threshold data, which are used to inform potential adaptive management actions within EOs. We will consider the most recent information regarding implementation and effectiveness of the 2006 CCA conservation measures from BLM, IDFG, and other sources, including whether any new measures have been added. Therefore, we request information with respect to the ongoing implementation of the CCA and the performance or completion of any additional activities that provide for the conservation of slickspot peppergrass under the CCA. Based on current information and any information submitted during the comment period, we will consider whether to exclude State lands that are covered by the CCA under section 4(b)(2).

*Private Lands and Memoranda of Agreements (MOAs*)—In our 2011 proposed critical habitat rule (76 FR 27184, May 10, 2011), we also considered applying section 4(b)(2) of the Act to currently occupied private lands, which represented only about 5 percent of the overall 2011 proposed designation (76 FR 27202, May 10, 2011) (currently, private lands constitute about 7 percent of our revised total proposed designation). In our 2011 proposal, we requested specific information concerning any current signed conservation or management plans on private lands that we should consider for exclusion from the designation under section 4(b)(2). We received comments from the State of Idaho and private landowners in response, requesting exclusion of private lands. However, to date, we have not received any information pertaining to current plans covering private lands that we could use in the mandatory weighing and balancing analysis of the benefits of inclusion versus the benefits of exclusion we must perform in an exclusion analysis.

Certain private landowners previously signed MOAs committing to implementing a subset of conservation measures identified in the CCA described above. Six MOAs between nongovernmental cooperators and the State of Idaho for conservation of slickspot peppergrass covering approximately 17,045 acres of private lands were in place from 2004 through December 2007. We are not aware that these MOAs have been reissued or renewed. A GIS analysis that examined the locations of the MOA lands relative to this proposed critical habitat revision found that MOA lands that overlap with the current revised proposed critical habitat were limited to a single 40-acre parcel located within one of the six MOAs. We request information from private landowners on any additional acreages, updates to, or renewals of these MOAs under the 2006 CCA, or any other conservation efforts currently being undertaken or implemented. This information will be used in any consideration of exclusion of private lands under section 4(b)(2) of the Act.

*Summary of Exclusions*

We are not considering any exclusions at this time from the proposed revised designation under section 4(b)(2) of the Act based on economic impacts, national security impacts, or other relevant impacts such as partnerships, management, or protection afforded by cooperative management efforts. Some areas within the proposed revised designation are included in management plans such as the 2006 CCA. Our final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. 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, provided the exclusion will not result in the extinction of this species. In this revised proposed rule we are seeking input from the public as to whether or not the Secretary should exclude State or private lands covered under applicable conservation plans from the final critical habitat designation (see **ADDRESSES** for instructions on how to submit comments and Information Requested for the types of input we seek).

**Required Determinations**

*Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

*Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA determined that the 2011 proposed rule was not significant (76 FR 27203, May 10, 2011). This revised proposed rule is substantively similar to the 2011 proposed rule and proposes to designate less acreage as critical habitat. Thus, we determine that this revised proposed rule is not significant under the Executive Order 12866 criteria.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this revised proposed rule in a manner consistent with these requirements.

*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 of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), 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 effects 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 the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and 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 whether 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.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself and, therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the Agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated if we adopt this revised proposed critical habitat designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required.

*Executive Order 13771*

This proposed rule is not an E.O. 13771 (''Reducing Regulation and Controlling Regulatory Costs'') (82 FR 9339, February 3, 2017) regulatory action because this proposed rule is not significant under E.O. 12866.

*Energy Supply, Distribution, or Use—Executive Order 13211*

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that the designation of this proposed critical habitat would significantly affect energy supplies, distribution, or use. Furthermore, although it does include areas where powerlines and power facility construction and maintenance may occur in the future, it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a 'significant regulatory action' under the Unfunded Mandates Reform Act. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is 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 *et seq.*), we make the following findings:

(1) This proposed 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 two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''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; Aid to Families with Dependent Children 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. While 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, 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 onto State governments.

(2) We do not believe this rule would significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments and, as such, a Small Government Agency Plan is not required.

*Takings—Executive Order 12630*

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for slickspot peppergrass in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that, if adopted, this designation of critical habitat for slickspot peppergrass does not pose significant takings implications for lands within or affected by the designation.

*Federalism—Executive Order 13132*

In accordance with E.O. 13132 (Federalism), this revised proposed rule does not have significant federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies in Idaho. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the revised proposed rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While 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, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

*Civil Justice Reform—Executive Order 12988*

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the revised proposed rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the revised proposed rule identifies the elements of physical or biological features essential to the conservation of the species. The proposed areas of critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This revised proposed rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit *(Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We have determined that no tribal lands fall within the boundaries of the proposed critical habitat for slickspot peppergrass, so no tribal lands would be affected by the proposed designation.

**References Cited**

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* in Docket No. FWS–R1–ES–2010–0071 and upon request from the Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

**Authors**

The primary authors of this proposed rulemaking are the staff members of the Idaho Fish and Wildlife Office.

**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—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245; unless otherwise noted.

■ 2. In § 17.96, as proposed to be added in alphabetical order under Family Brassicaceae on May 10, 2011, at 76 FR 27184, the critical habitat for ''*Lepidium papilliferum* (Slickspot Peppergrass)'', is revised to read as follows:

**§ 17.96 Critical habitat—plants.**

(a) *Flowering plants.*

* * * * *

Family Brassicaceae: *Lepidium papilliferum* (Slickspot Peppergrass)

(1) Critical habitat units are depicted for Payette, Gem, Ada, Elmore, and Owyhee Counties, Idaho, on the maps in this entry.

(2) Within these areas, the specific physical or biological features essential to the conservation of slickspot peppergrass consist of four components:

(i) Ecologically functional microsites or ''slick spots'' that are characterized by:

(A) A high sodium and clay content, and a three-layer soil horizonation sequence, which allows for successful seed germination, seedling growth, and maintenance of the seed bank. The surface horizon consists of a thin, silty vesicular, pored (small cavity) layer that forms a physical crust (the silt layer). The subsoil horizon is a restrictive clay layer, with an abruptic (referring to an abrupt change in texture) boundary with the surface layer, that is natric or natric-like in properties (a type of argillic (clay-based) horizon with distinct structural and chemical features); this is the restrictive layer. The second argillic subsoil layer (that is less distinct than the upper argillic horizon) retains moisture through part of the year (the moist clay layer); and

(B) Sparse vegetation, with introduced, invasive, nonnative plant species cover absent or limited to low to moderate levels.

(ii) Relatively intact, native Wyoming big sagebrush (*Artemisia tridentata* ssp. *wyomingensis*) vegetation assemblages, represented by native bunchgrasses, shrubs, and forbs, within 250 m (820 ft) of slickspot peppergrass element occurrences to protect slick spots and slickspot peppergrass from disturbance from wildfire, slow the invasion of slick spots by nonnative species and native harvester ants, and provide the habitats needed by slickspot peppergrass' pollinators.

(iii) A diversity of native plants whose blooming times overlap to provide pollinator species with flowers for foraging throughout the seasons and to provide nesting and egg-laying sites; appropriate nesting materials; and sheltered, undisturbed places for hibernation and overwintering of pollinator species. In order for genetic exchange of slickspot peppergrass to occur, pollinators must be able to move freely between slick spots. Alternative pollen and nectar sources (other plant species within the surrounding sagebrush vegetation) are needed to support pollinators during times when slickspot peppergrass is not flowering, when distances between slick spots are large, and in years when slickspot peppergrass is not a prolific flowerer.

(iv) Sufficient pollinators for successful fruit and seed production, particularly pollinator species of the sphecid and vespid wasp families, species of the bombyliid and tachnid fly families, honeybees, and halictid bee species, most of which are solitary insects that nest outside of slick spots in the surrounding sagebrush-steppe vegetation, both in the ground and within the vegetation.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas), cultivated agricultural fields, areas dominated by turf grass such as parks, and the land on which they are located existing within the legal boundaries on [EFFECTIVE DATE OF THE FINAL RULE].

(4) *Critical habitat map units.* Data layers defining map units were created using Geographic Information Systems feature classes of Element Occurrences (EOs). These EO data were provided by the IDFG Database. For GIS analyses, we

dissolved a 250-meter exterior insect pollinator buffer on the EO polygon base, and calculated acreages based on these dissolved, buffered polygons. Critical habitat polygon outlines are exaggerated (using 1 or 2 point size, depending on map scale) to allow viewers to better see them. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site *http://www.fws.gov/idaho,* at *http://www.regulations.gov* at Docket No. FWS–R1–ES–2010–0071, and at the Idaho Fish and Wildlife Office. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map follows:

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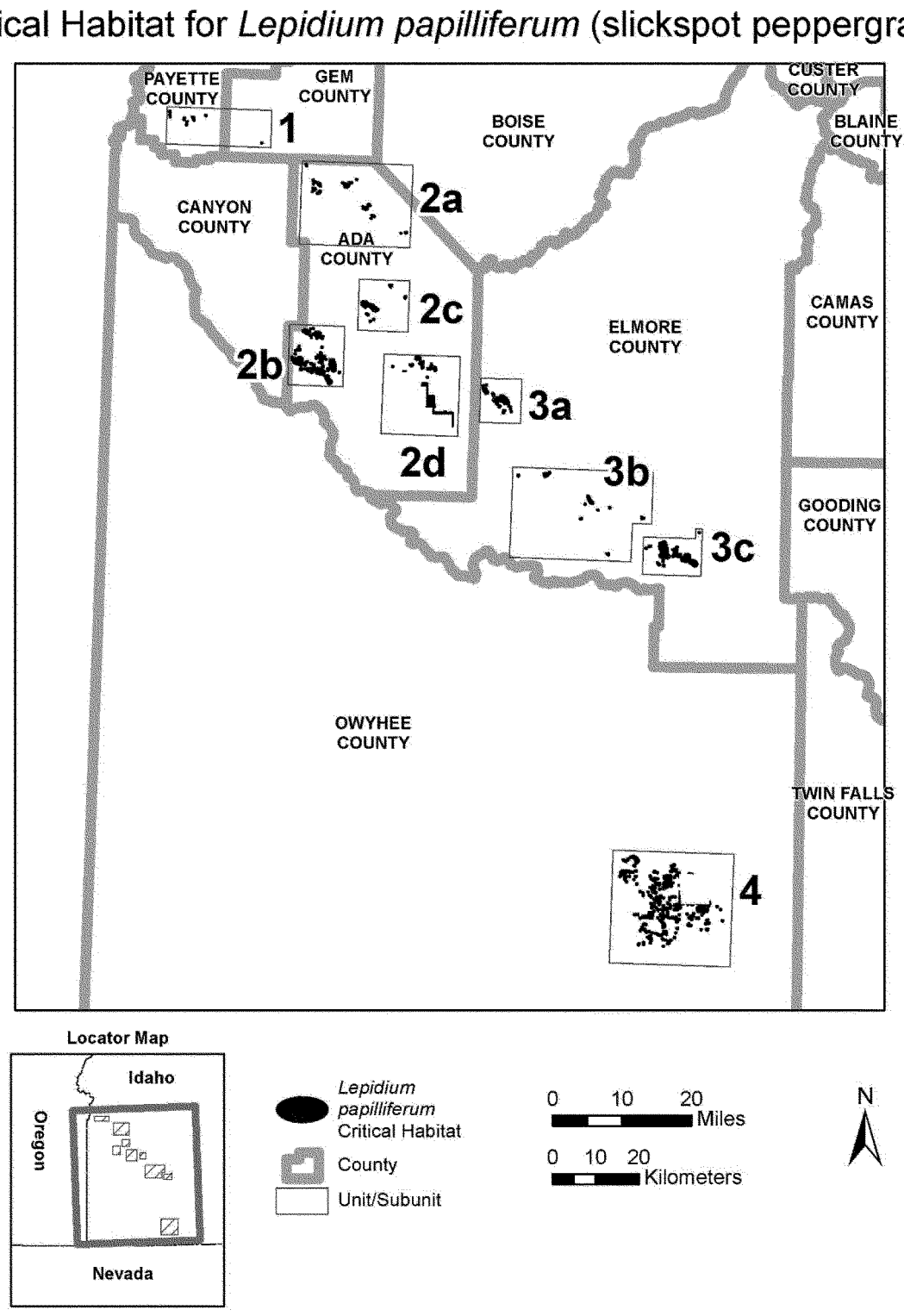
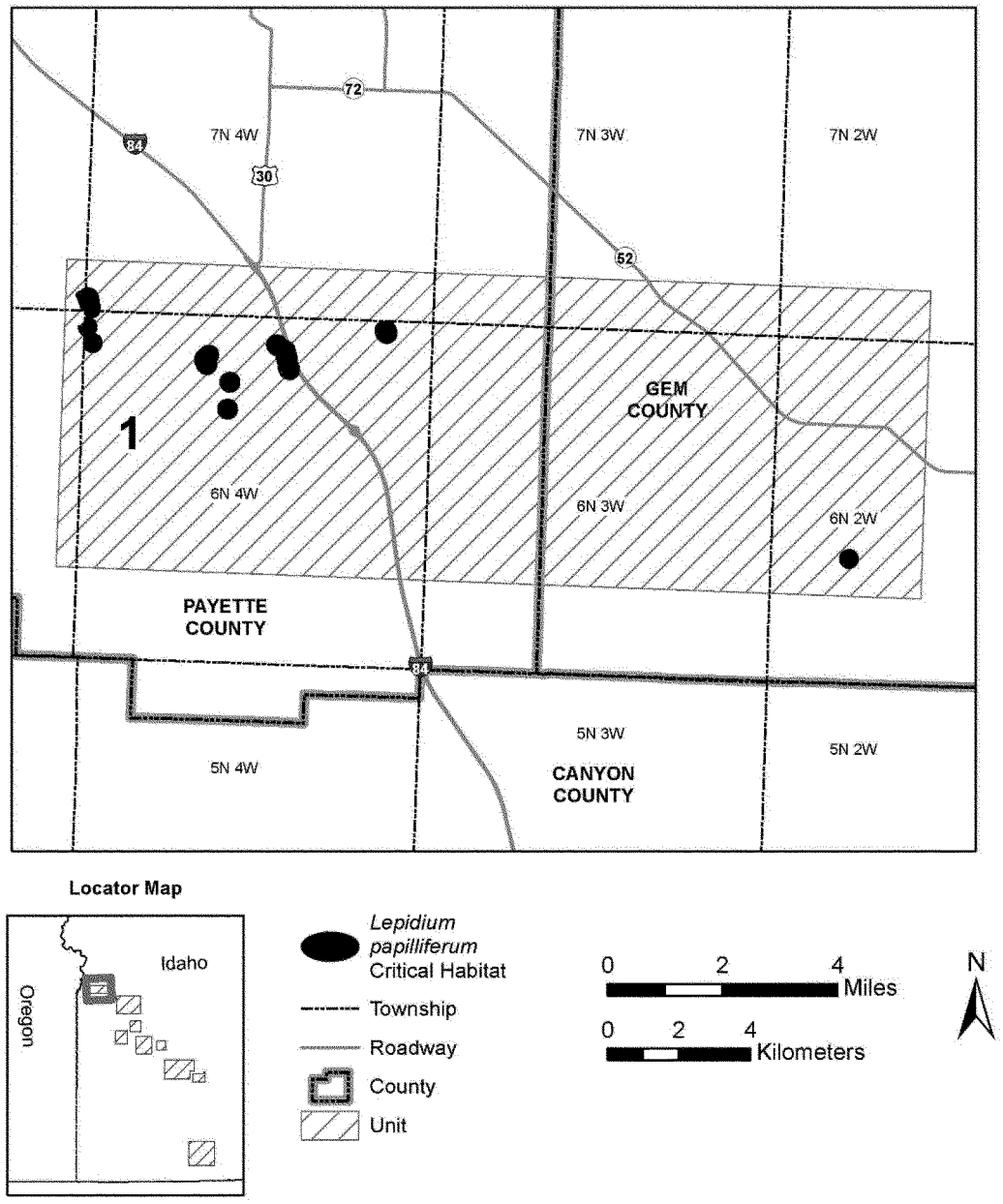


(6) Unit 1: Payette County, Idaho.

(i) *General Description:* Unit 1 consists of 287 ha (710 ac) in Payette and Gem Counties, Idaho, and is composed of lands in Federal (268 ha (664 ac)) and private ownership (19 ha (46 ac)). Federal lands within Unit 1 are in the Bureau of Land Management (BLM) Four Rivers Field Office area.

(ii) Map of Unit 1 follows:

Critical Habitat for *Lepidium papilliferum* (slickspot peppergrass)
Unit 1

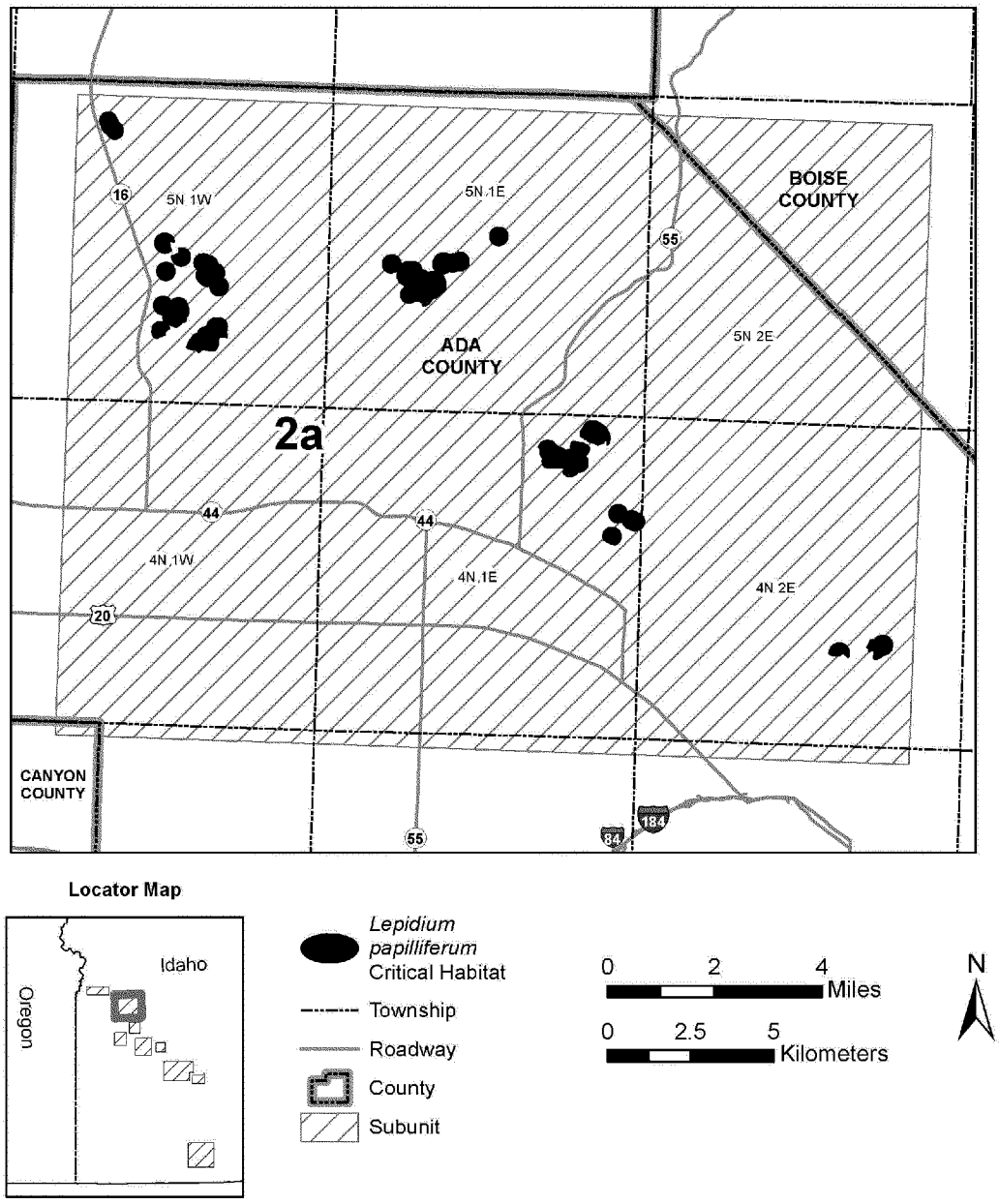



(7) Unit 2: Ada County, Idaho.

(i) *Subunit 2a General Description:* Subunit 2a consists of 879 ha (2,175 ac) in Ada County, Idaho, and is composed of lands in Federal (335 ha (828 ac)), municipal (215 ha (531 ac)), and private ownership (329 ha (814 ac)). Subunit 2a includes the Ada County Landfill Complex area.

(ii) Map of Unit 2, Subunit 2a follows:

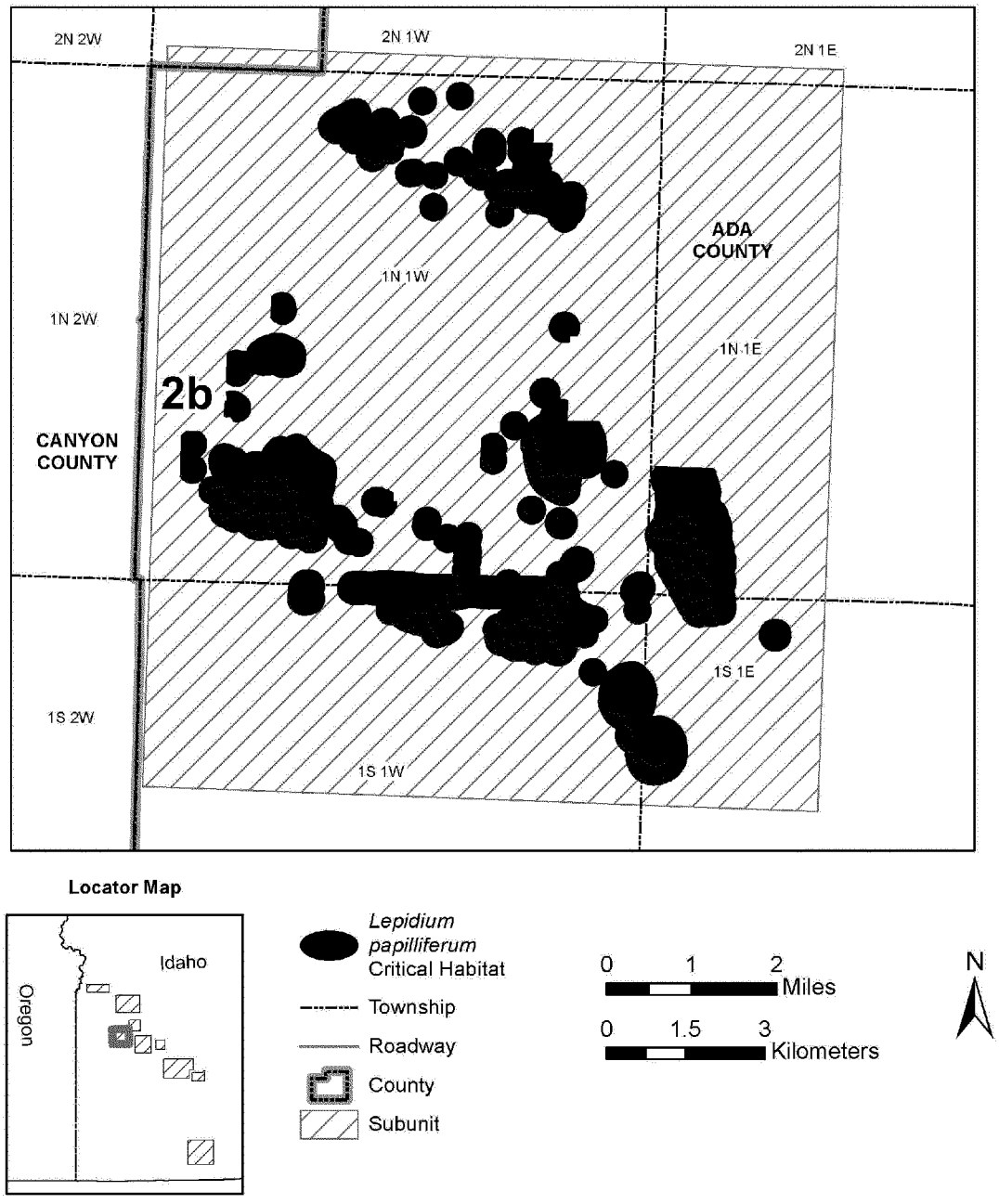
Critical Habitat for *Lepidium papilliferum* (slickspot peppergrass)
Unit 2 - Subunit a




(iii) *Subunit 2b General Description:* Subunit 2b consists of 3,144 ha (7,768 ac) in Ada County, Idaho, and is composed of lands in Federal (3,075 ha (7,598 ac)), State (69 ha (170 ac)), and private ownership (0.2 ha (0.4 ac)). Subunit 2b includes lands within the Bureau of Land Management (BLM) Morley Nelson Snake River Birds of Prey National Conservation Area south of Kuna, Idaho.

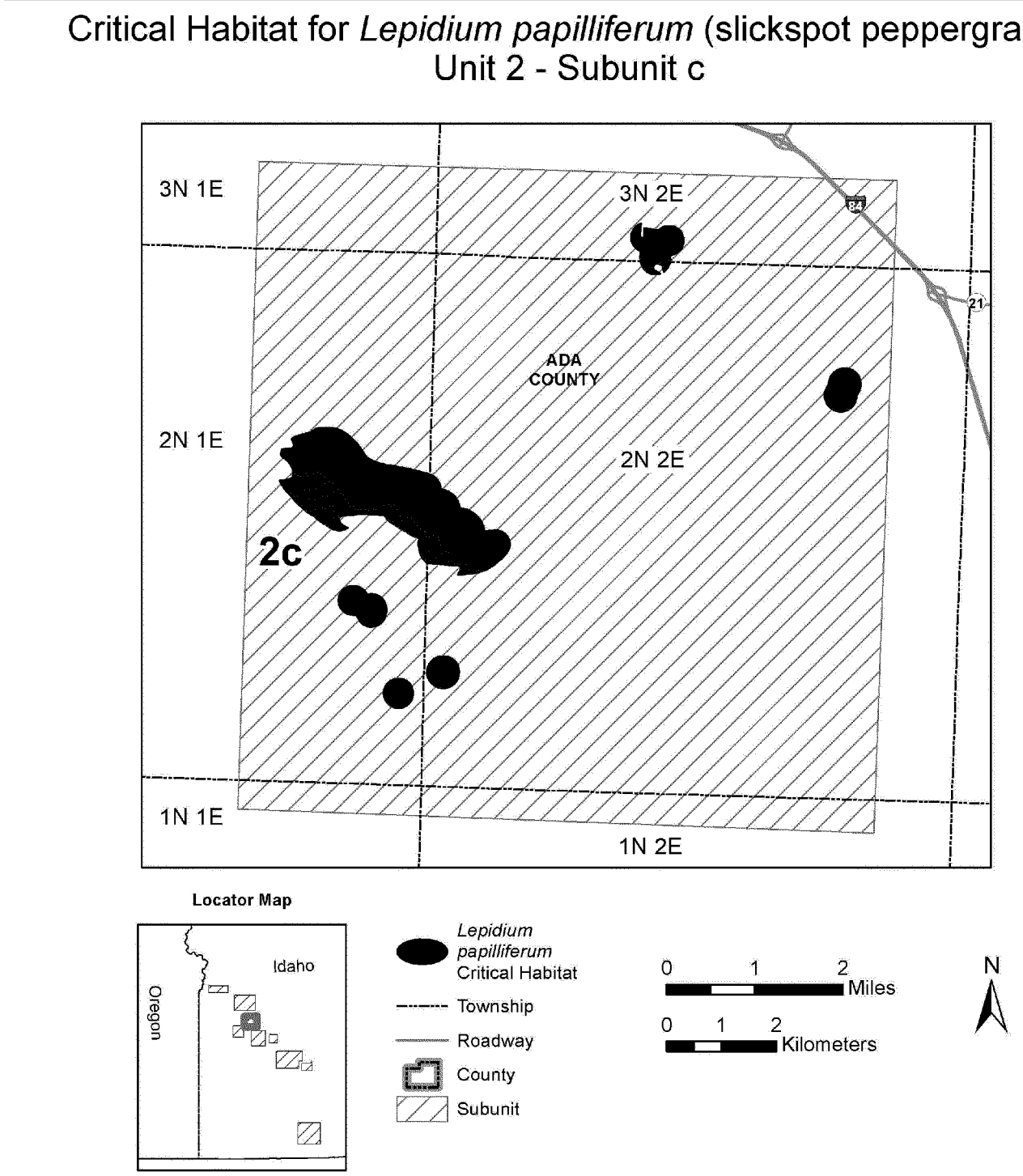
(iv) Map of Unit 2, Subunit 2b follows:

Critical Habitat for *Lepidium papilliferum* (slickspot peppergrass)
Unit 2 - Subunit b



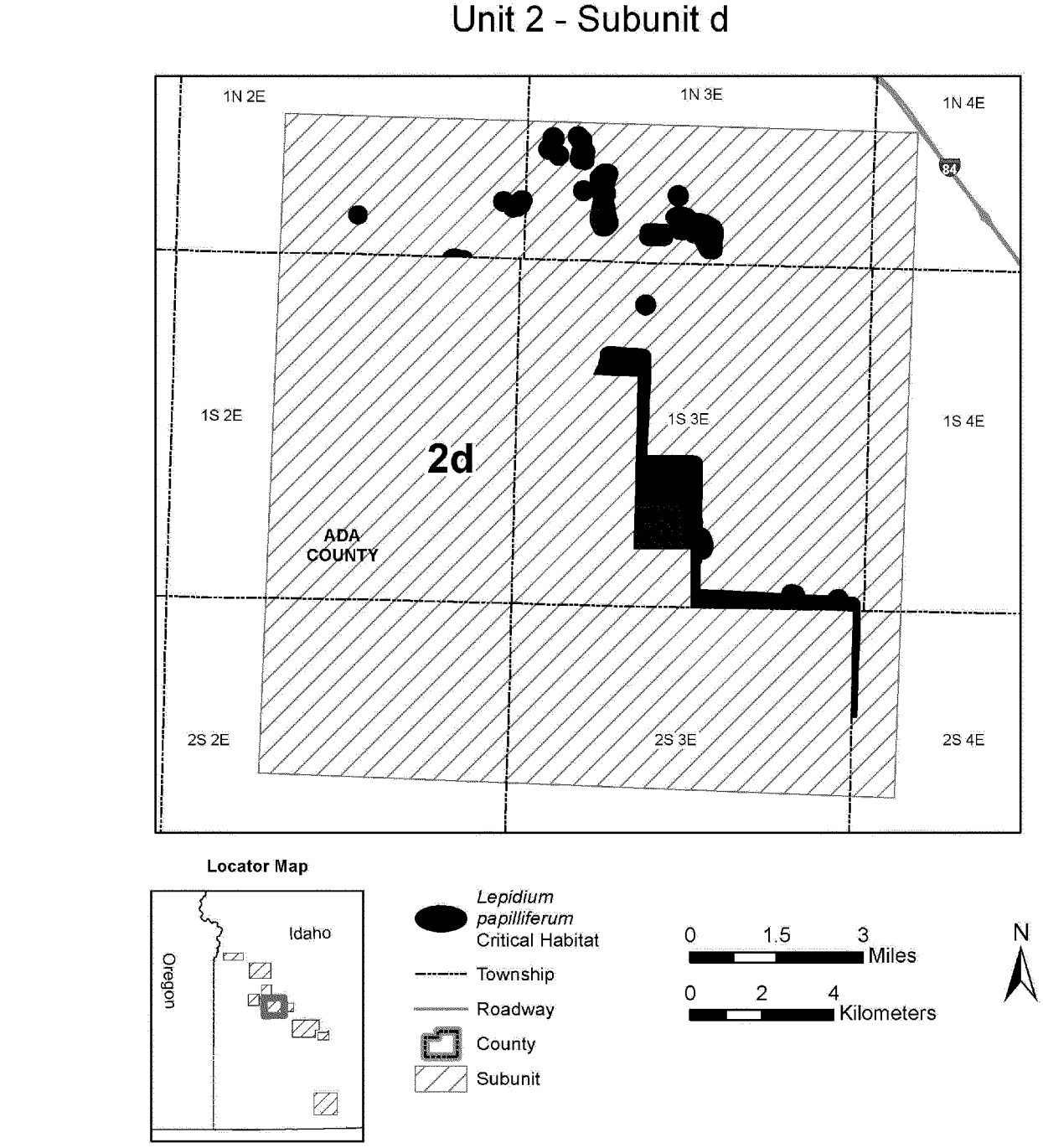

(v) *Subunit 2c General Description:* Subunit 2c consists of 697 ha (1,722 ac) in Ada County, Idaho, and is composed of lands in Federal (438 ha (1,081 ac)), State (49 ha (122 ac)), municipal (66 ha (163 ac)), and private ownership (144 ha (357 ac)). Subunit 2c includes BLM lands within the Four Rivers Field Office area, and municipal lands associated with the Boise Airport.

(vi) Map of Unit 2, Subunit 2c follows:




(vii) *Subunit 2d General Description:* Subunit 2d consists of 1,605 ha (3,965 ac) in Ada County, Idaho, and is composed of lands in Federal (821 ha (2,029 ac)), State (728 ha (1,800 ac)), and private ownership (55 ha (136 ac)). Proposed critical habitat within subunit 2d is adjacent to the Idaho Army National Guard-administered Orchard Combat Training Center (formerly known as the Orchard Training Area).

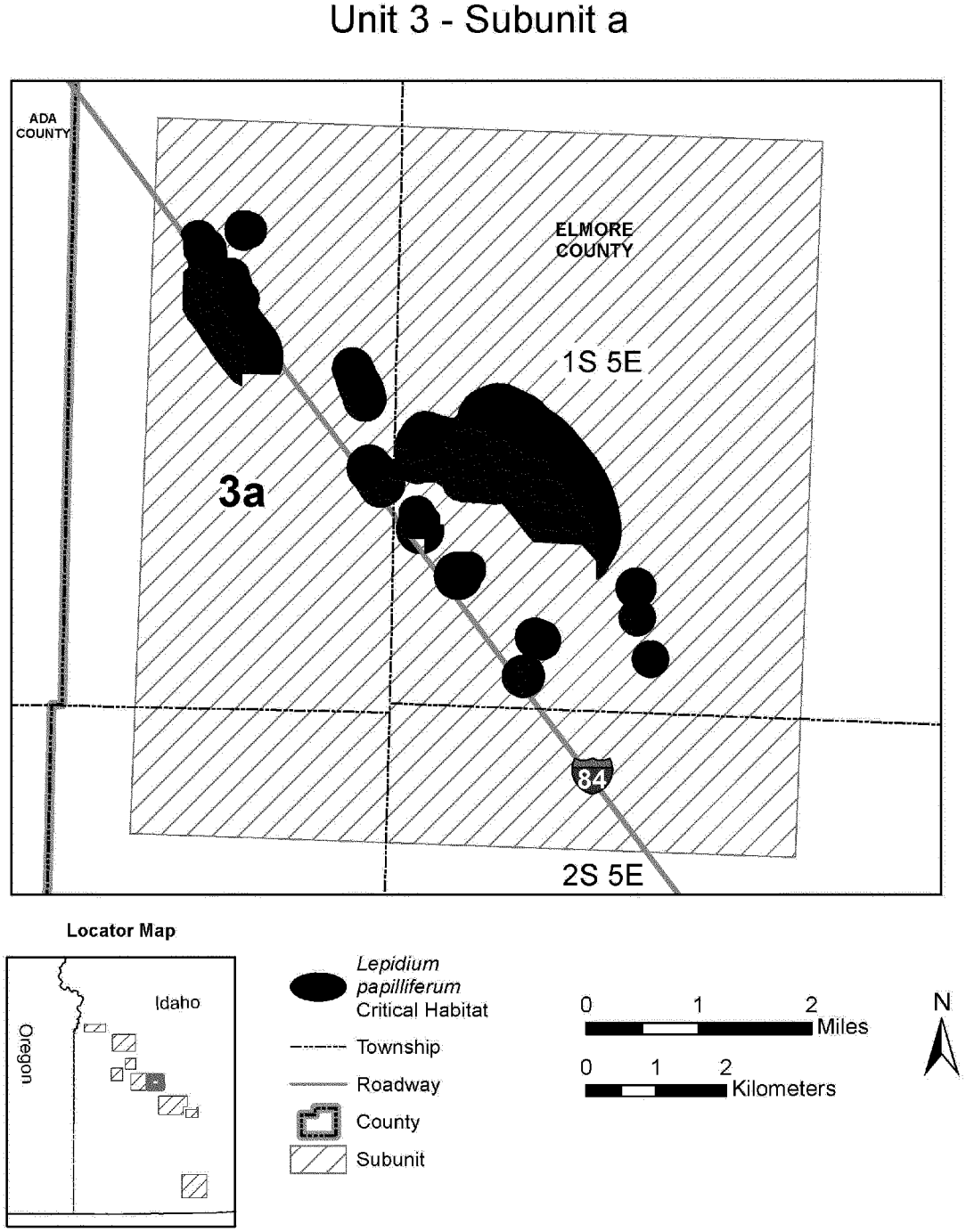
(viii) Map of Unit 2, Subunit 2d follows:




(8) Unit 3: Elmore County, Idaho.

(i) *Subunit 3a General Description:* Subunit 3a consists of 1,007 ha (2,488 ac) in Elmore County, Idaho, and is composed of lands in Federal (726 ha (1,793 ac)) and private ownership (228 ha (564 ac)), including lands within the BLM Four Rivers Field Office area.

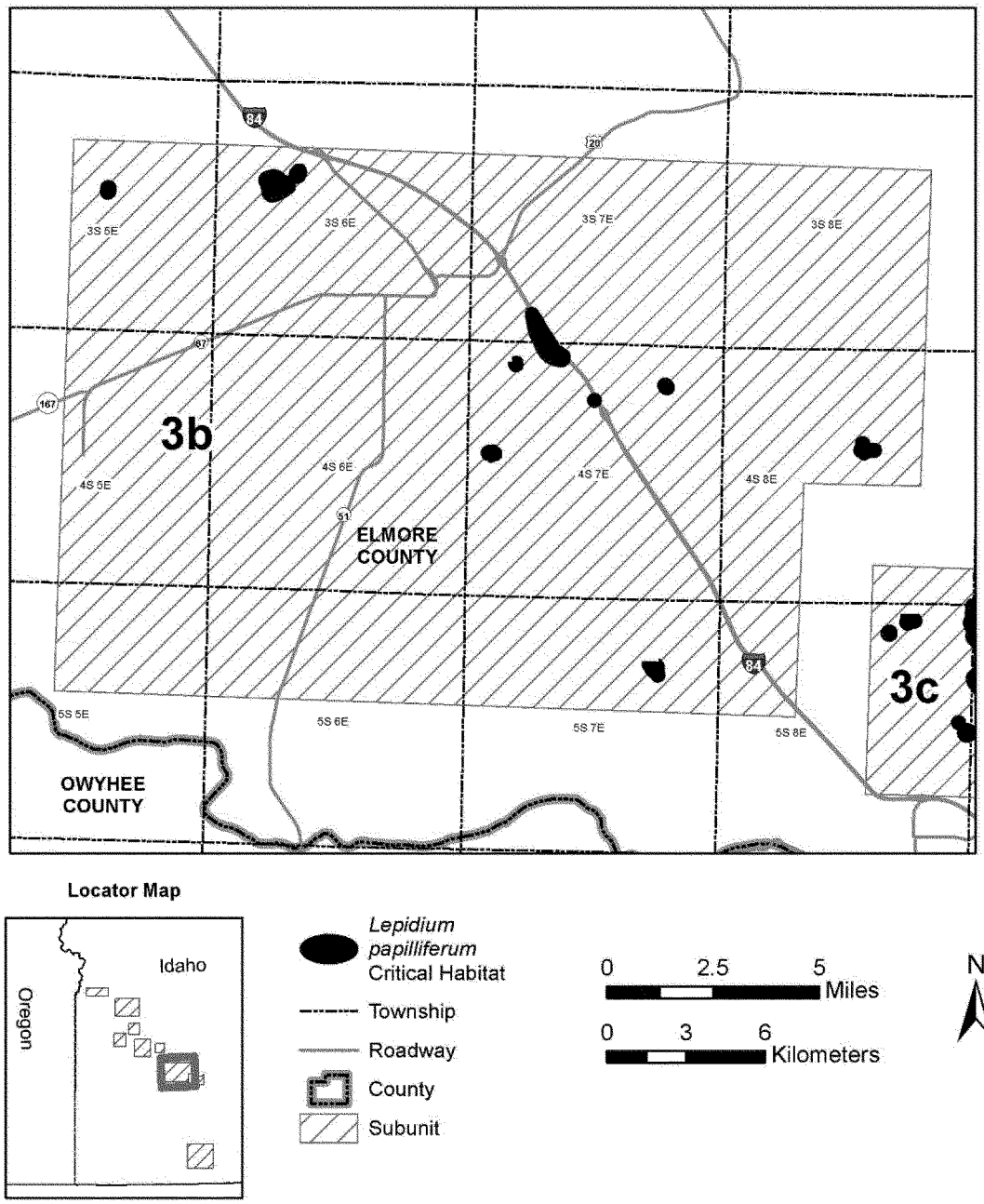
(ii) Map of Unit 3, Subunit 3a follows:




(iii) *Subunit 3b General Description:* Subunit 3b consists of 589 ha (1,455 ac) in Elmore County, Idaho, and is composed of lands in Federal (449 ha (1,108 ac)), State (74 ha (184 ac)), and private ownership (66 ha (163 ac)), including lands within the BLM Four Rivers Field Office area and the BLM Morley Nelson Birds of Prey National Conservation Area.

(iv) Map of Unit 3, Subunit 3b follows:

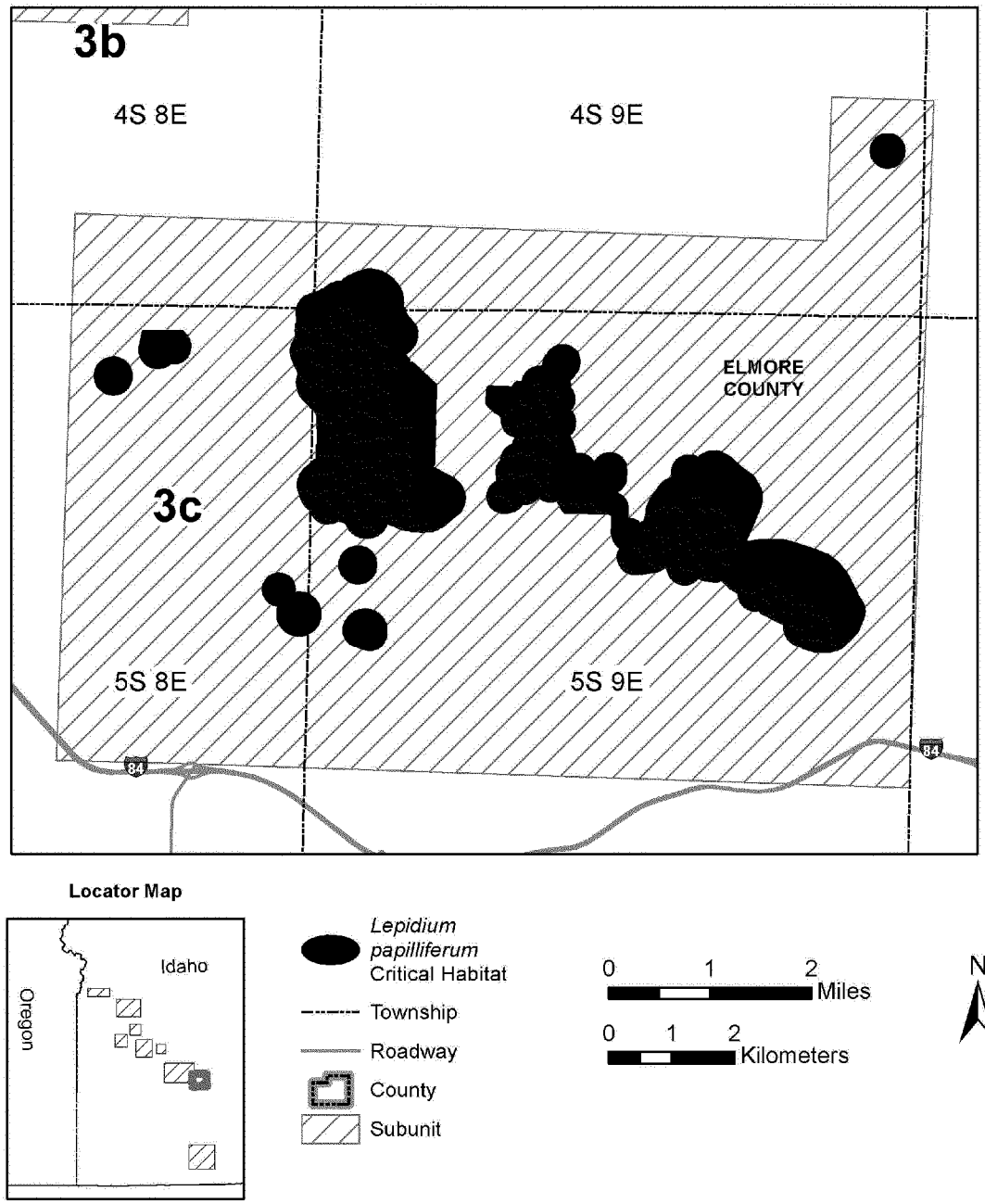
Critical Habitat for *Lepidium papilliferum* (slickspot peppergrass)
Unit 3 - Subunit b




(v) *Subunit 3c General Description:* Subunit 3c consists of 1,954 ha (4,828 ac) in Elmore County, Idaho, and is composed of lands in Federal (1,725 ha (4,264 ac)) and private ownership (228 ha (564 ac)), including lands within both the BLM Four Rivers Field Office and the Morley Nelson Birds of Prey National Conservation Area.

(vi) Map of Unit 3, Subunit 3c follows:

Critical Habitat for *Lepidium papilliferum* (slickspot peppergrass)
Unit 3 - Subunit c

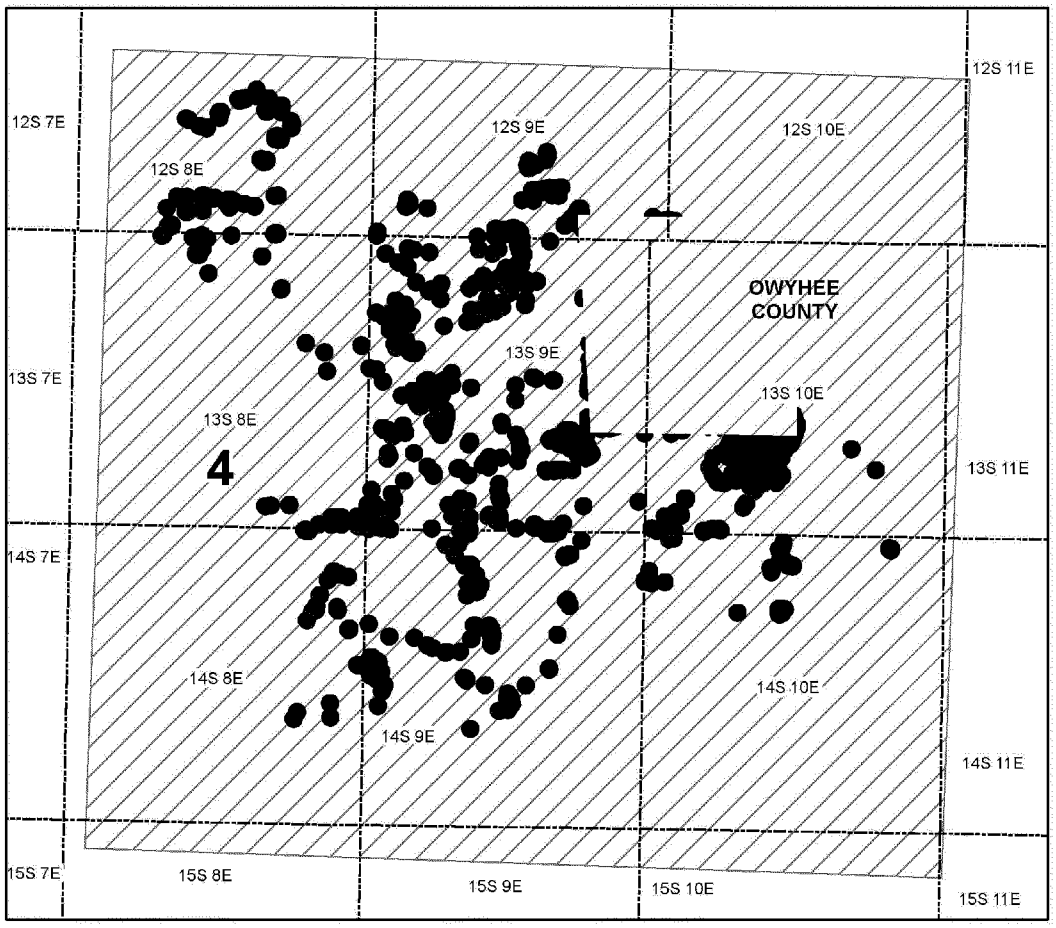



(9) Unit 4: Owyhee County, Idaho.

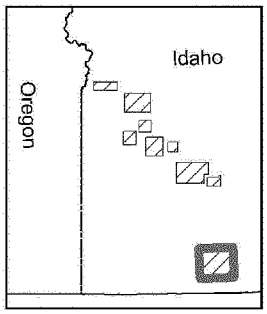
(i) *General Description:* Unit 4 consists of 6,888 ha (17,020 ac) in Owyhee County, Idaho, and is composed of lands in Federal (6,609 ha (16,332 ac)) and State (278 ha (688 ac)) ownership, including lands within the BLM Jarbidge Field Office area.

(ii) Map of Unit 4 follows:

Critical Habitat for *Lepidium papilliferum* (slickspot peppergrass)
Unit 4




Locator Map




*Lepidium papilliferum* Critical Habitat
Township
Roadway
County
Unit

0 2.5 5 Miles
0 3 6 Kilometers
N

* * * * *

**Aurelia Skipwith**
*Director, U.S. Fish and Wildlife Service.*
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