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Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AJ10

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Allium munzii* (Munz's onion)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the federally endangered *Allium munzii* (Munz's onion) pursuant to the Endangered Species Act of 1973, as amended (Act). We propose to designate 227 acres (ac) (92 hectares (ha)) of critical habitat of Federal land in western Riverside County, California. We excluded 1,068 ac (433 ha) from proposed critical habitat within approved habitat conservation plans (HCPs) and the draft Western Riverside Multiple Species HCP (MSHCP), Riverside County, California.

We hereby solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise this proposal prior to final designation to incorporate or address new information received during public comment periods.

DATES: We will accept comments until August 3, 2004. Public hearing requests must be received by July 19, 2004.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, CA 92009.

2. You may hand-deliver written comments and information to our Carlsbad Fish and Wildlife Office, at the above address, or fax your comments to 760/731-9618.

3. You may send your comments by electronic mail (e-mail) to fw1cfwoalmu@r1.fws.gov. For directions on how to submit electronic filing of

comments, see the "Public Comments Solicited" section.

All comments and materials received, as well as supporting documentation used in preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Carlsbad Fish and Wildlife Office (telephone 760/431-9440; facsimile 760/431-9618).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

It is our intent that any final action resulting from this proposal will be as accurate as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Maps of essential habitat not included in the proposed critical habitat are available for viewing by appointment during regular business hours at the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section) or on the Internet at <http://carlsbad.fws.gov>. On the basis of public comment, during the development of the final rule we may find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2), or not appropriate for exclusion, and in all of these cases, this information would be incorporated into the final designation. We particularly seek comments concerning:

(1) The reasons why any areas should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species resulting from the designation;

(2) Specific information on the amount and distribution of *Allium munzii* and its habitat, and which habitat or habitat components are essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in or adjacent to the areas proposed and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other potential impacts resulting from the proposed designation, in particular, any impacts on small entities;

(5) Most of the lands we have identified as essential for the conservation of *Allium munzii* are proposed for exclusion as critical habitat. Eighteen of 19 known occurrences of this species have been proposed for exclusion from this

proposed designation of critical habitat because they are within approved HCPs or the draft Western Riverside MSHCP. These areas are proposed for exclusion from critical habitat because we believe the value of excluding these areas outweighs the value of including them. We specifically solicit comment on the inclusion or exclusion of such areas and: (a) Whether these areas are essential; (b) whether these areas warrant exclusion; and (c) the basis for excluding these areas as critical habitat (section 4(b)(2) of the Act); and

(6) Whether our approach to designate critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods. Please submit electronic comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: RIN 1018-AJ10" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your internet message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 760-431-9440. Please note that the e-mail address, fw1cfwoalmu@r1.fws.gov, will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Preamble

Designation Of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the ESA, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of conservation resources. The Service's present system for designating critical habitat is driven by litigation rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, "Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7."

Currently, only 445 species, or 36 percent, of the 1,244 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,244 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits regarding critical habitat designation, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with

which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits and to comply with the growing number of adverse court orders. As a result, the Service's own to proposals to undertake conservation actions based on biological priorities are significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for additional public participation beyond those minimally required by the Administrative Procedures Act (APA), the Act, and the Service's implementing regulations, or to take additional time for review of comments and information to ensure the rule has addressed all the pertinent issues before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed. This in turn fosters a second round of litigation in which those who will suffer adverse impacts from these decisions challenge them. The cycle of litigation appears endless, is very expensive, and in the final analysis provides little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA), all are part of the cost of critical habitat designation. These costs result in minimal benefits to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

In January 1990, *Allium munzii* was listed as a threatened species by the State of California pursuant to the California Endangered Species Act. The Service listed *A. munzii* as endangered under the Act on October 13, 1998 (63 FR 54975).

Allium munzii is a member of the Liliaceae (lily family). *A. munzii* belongs to the *A. fimbriatum* complex, a group of seven species found primarily in California (McNeal 1992), and was first referred to as *A.*

fimbriatum var. *munzii* by M. Ownbey (Munz and Keck 1959). McNeal (1992) elevated this taxon to species status based on unique morphological characteristics of the perianth (the outer parts of a flower, consisting of the calyx, corolla, and also enclosing the stamen and carpel) and ovarian crests.

Allium munzii is a bulb-forming perennial herb that annually produces a single leaf and a scapose inflorescence (a leafless flower stalk that grows directly from the ground) 0.5 to 1.2 feet (ft) (15 to 35 centimeters (cm)) tall. Each leaf is hollow and generally 1.5 times as long as the inflorescence and round (terete) in cross-section. The inflorescence is umbellate (a flat topped or rounded flower cluster where each flower stalk radiates from the same point), consisting of 10 to 35 flowers. The flowers have six white, or white with a red midvein, perianth segments that are 0.2 to 0.3 inches (in) (6 to 8 millimeters (mm)) long and become red with age. The ovary is crested with fine, irregularly dentate processes and the fruit is a three-lobed capsule (McNeal 1993). *A. munzii* can be distinguished from other members of the genus within its range by its single hollow and terete leaf, the shape of the perianth segments, flower color, and the irregularly dentate crest of the ovary.

Three to five years are required after seeds germinate for the plant to reach maturity and produce flowers (Schmidt 1980). The plants are dormant except in the spring and early summer months. Prior to flowering, a single, cylindrical leaf is produced (Munz 1974). The flowering period for this species is March to May (California Native Plant Society (CNPS) 2001). The best time to detect the species is in early May. *Allium munzii* shares its range and habitat with the similar-appearing *A. haematochiton* (red-skinned onion). Though the two species can occur within several feet of each other, the species do not interbreed (California Department of Fish and Game (CDFG) 1989). After flowering, the plant dies back to the bulb. *A. munzii* is well adapted to summer drought and varied amounts of rainfall from year to year and responds to environmental conditions in the aboveground emergence from year to year. McNeal (1992) observed that flowering in the *A. fimbriatum* complex appeared to be correlated with rains in the late fall and early winter. When rainfall is plentiful, most plants within a population bloom. When rainfall is light, most plants sprout leaves, but very few flower. There is no information regarding pollinators. No studies are available regarding seed dispersal.

Status and Distribution

Allium munzii is endemic to mesic clay soils in western Riverside County, California, throughout the foothills east of the Santa Ana Mountains extending south and east to the low hills south of Hemet (Roberts 1993; U.S. Fish and Wildlife Service 1998; CNDDDB 2000; Natural Resource Consultants (NRC) 2000). Currently there are 19 occurrences of *Allium munzii* according to the California Natural Diversity Database (CNDDDB 2004). One historical population in the CNDDDB was lost to development, however, the extent of the historical distribution of this plant is unknown.

At the time of listing, the Service estimated the total population to be approximately 20,000 to 70,000 individuals. Six populations are large (around 2,000 or more individuals) and cover as much as 20 ac (8 ha). The largest populations are at Harford County Park and adjacent private lands (20,000 to 50,000 individuals altogether), Alberhill (at least 7,700 individuals), Elsinore Peak (~5,000 individuals), Dawson Canyon (~2,000 individuals), Estelle Mountain (at least 2,000 individuals), and Bachelor Mountain (over 3,000 individuals). Most populations contain fewer than 1,000 individuals, and occupy areas ranging from several square feet to less than 2.5 ac (several square meters to less than 1 ha).

Threats

As much as 80 to 90 percent of the suitable habitat for this species has been lost to agriculture, urbanization, and clay mining (California Department of Fish and Game 1989). Populations continue to be threatened by housing and business development, dry land farming activities, off-road vehicle activity, clay mining, and competition with non-native plants (Roberts 1993; U.S. Fish and Wildlife Service 1998; CNDDDB 2003).

Clay pit mining has affected and continues to threaten *Allium munzii* populations. The largest disturbance resulting from clay mining operations have been west of Alberhill and northwest of Indian Truck Trail. At least three smaller historic clay mining areas are known from Dos Lagos (Butterfield Station) east of Temescal Wash, Estelle Mountain, and north Domenigoni Hills. Clay mining activities are ongoing in the area northwest of Alberhill and continue to threaten the large population there.

The native perennial and annual grasslands found on most clay soils in western Riverside County have been

negatively affected by grazing activities and a frequent fire return interval. Even conserved areas that are protected through other rules and regulations are at risk of trampling and foraging primarily by sheep, which have been known to escape onto the Estelle Mountain areas containing the onion. Historic grazing has also led to invasion by non-native grasses and forbs over large areas. Fire and atmospheric nitrification of soil (resulting from air pollution) may each play a role in advancing the invasion of non-native grasses. Many of the native grasslands and a large portion of the sage scrub areas in western Riverside have been replaced by non-native annual grasses and forbs by repeated cycles of fire, grazing and nitrification. Competition with non-native grasses is a threat to *Allium munzii* because the non-native annual grasses form a dense cover that is more difficult for the *A. munzii* to penetrate than cover provided by the more patchily distributed native grasses or open sage scrub and chaparral communities.

Historic and recent housing and business development, road building, and road maintenance threaten *Allium munzii* populations. The Sycamore Creek housing development, for example, impacted a portion of the adjacent population, and development of a freeway interchange at Indian Truck Trail is known to have significantly reduced one population. Existing roads have bisected *A. munzii* populations or reduced population numbers significantly at Gavilan Hills, Alberhill, Di Palma, and Indian Truck Trail.

Off-road vehicle activity can trample onions and alter soil conditions. The Elsinore Peak population has been negatively affected by off-road vehicle activity. Off-road vehicle activity remains a threat to almost every remote occurrence of this species. Utility development has negatively affected *Allium munzii* populations at Elsinore Peak and Scott Road. Due to the large number of anthropogenic activities within occupied habitat, development and maintenance of these facilities remains a threat to the species where they intersect with suitable habitat. Right-of-way maintenance activities, such as mowing or grubbing, can result in degradation of population viability if repeatedly conducted during the spring and summer growth period.

Previous Federal Action

We published the final rule to list *Allium munzii* as endangered in the **Federal Register** on October 13, 1998 (63 FR 54975). The listing was based on a variety of factors including habitat

destruction and fragmentation from agricultural and urban development, clay mining, off-road vehicle activity, cattle and sheep grazing, weed abatement, fire suppression practices, and competition from alien plant species. A Recovery plan for this species has not yet been completed.

At the time of listing, we concluded that designation of critical habitat for *Allium munzii* was not prudent because such designation would not benefit the species. On November 15, 2001, a lawsuit was filed against the Department of the Interior (DOI) and the Service by the Center for Biological Diversity and California Native Plant Society, challenging our “not prudent” determinations for eight plants including *A. munzii* (No. CV-01-2101) (*CBD et al. v. USDOJ*). A second lawsuit asserting the same challenge was filed against DOI and the Service by the Building Industry Legal Defense Foundation (BILD) on November 21, 2001 (No. CV-01-2145) (*BILD v. USDOJ*). Both cases were consolidated on March 19, 2002, and all parties agreed to remand the critical habitat determinations to the Service for additional consideration. In an order dated July 1, 2002, the U.S. District Court for the Southern District of California directed us to reconsider our not prudent finding and publish a proposed critical habitat rule for *A. munzii*, if prudent, on or before May 30, 2004. This proposed rule complies with the court’s ruling. We have reconsidered our not prudent finding, and now believe that critical habitat designation may provide educational information to individuals, local and State governments, and other entities engaged in long-ranging planning, since areas essential to the conservation of the species are more clearly defined and, to the extent currently feasible, the primary constituent elements of the habitat necessary to the conservation of the species are identified.

Critical Habitat

Section 3(5)(A) of the Act defines critical habitat as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. “Conservation” means the use of all methods and procedures that are

necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands. Under section 7 of the Act, Federal agencies must consult with the Service on activities they undertake, fund, or permit that may affect critical habitat and lead to its destruction or adverse modification. However, the Act prohibits unauthorized take of listed species and requires consultation for activities that may affect them, including habitat alterations, regardless of whether critical habitat has been designated. We have found that the designation of critical habitat provides little additional protection to most listed species.

To be included in a critical habitat designation, habitat must be either a specific area within the geographic area occupied by the species on which are found those physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)) and which may require special management considerations or protection, or be specific areas outside of the geographic area occupied by the species which are determined to be essential to the conservation of the species. Section 3(5)(c) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species."

Regulations at 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species. When we designate critical habitat, we may not have the information necessary to identify all areas which are essential for the conservation of the species. Nevertheless, we are required to designate those areas we consider to be essential, using the best information available to us. Accordingly, we do not designate critical habitat in areas outside the geographic area occupied by

the species unless the best available scientific and commercial data demonstrate that unoccupied areas are essential for the conservation needs of the species.

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, effects to national security, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties or other entities that develop HCPs, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Section 4 of the Act requires that we designate critical habitat on the basis of what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside

their designated critical habitat areas may still result in jeopardy findings in some cases. 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, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Criteria for Defining Essential Habitat

All of the areas known to support *Allium munzii* are considered essential habitat for this species. *A. munzii* is known only from a narrow geographic range and within that range is limited to clay soils. There are currently 19 occurrences of this plant known to exist. One known historical occurrence has been lost to agriculture and urban development; others have been degraded or reduced in size. Due to the limited range and distribution of this species and the degradation of known populations of this species, preservation of all the known occurrences is essential for its conservation. The majority of the known occurrences are in the Gavilan Hills, the Gavilan Plateau, and the Temescal Valley regions of Riverside County. Other populations are found near Elsinore Peak, the Domenigoni Hills, Paloma Valley, Bachelor Mountain, and Skunk Hollow. It is possible that there are populations of this species that have gone undetected in Riverside County due to the cryptic nature of this species. Plants are only obvious in April and May when in flower, and plants do not often flower in years of low rainfall.

Primary Constituent Elements

In accordance with section 3(5)(A)(I) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These features 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 germination or seed dispersal; and habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

The specific biological and physical features, otherwise referred to as the primary constituent elements, that

comprise *Allium munzii* habitat are based on specific components that provide for the essential biological components of the species as described below.

Allium munzii is restricted to mesic clay soils in western Riverside County, California, along the southern edge of the Perris basin. The clay soils are scattered in a band several miles wide and extending 40 miles from Gavilan Hills to west of Temescal Canyon and Lake Elsinore at the eastern foothills of the Santa Ana Mountains and along the Elsinore Fault Zone to the southwestern foothills of the San Jacinto Mountains near Lake Skinner and Vail Lake. Clay soil associations include Altamont, Auld, Bosanko, Claypit and Porterville clay soil types. At least one population (Bachelor Mountain) was reported by Bramlet in 1991 to be associated with pyroxenite outcrops instead of clay (California Natural Diversity Data Base (CNDDB) 2003). Rounded cobbles and boulders are embedded within the clay, which has a sticky, adobe consistency when wet and large cracks when dry. *A. munzii* is typically found on the more mesic sites within the clay deposits (Boyd 1988). The clay deposits typically support grassland vegetation within a surrounding scrub community.

Allium munzii occurs at elevations from 984 to 3,511 feet (ft) (300 to 1,070 meters (m)), and on level or slightly sloping lands.

Allium munzii is typically found in open native grasslands and, increasingly, non-native grasslands which can be either the dominant community or found in a mosaic with Riversidean sage scrub, scrub oak chaparral, chamise chaparral, coast live oak woodland, or peninsular juniper woodland and scrub (Holland 1986). Based upon the dominant species, these plant communities where *A. munzii* is found have been further divided into series which include, but are not limited to, California annual grassland, nodding needlegrass, purple needlegrass, foothill needlegrass, black sage, white sage, California buckwheat, California buckwheat-white sage, California sagebrush, California sagebrush-black sage, California sagebrush-California buckwheat, mixed sage, chamise, chamise-black sage, coast live oak, scrub oak, and California juniper (Sawyer and Keeler-Wolf 1994).

A characteristic "clay soil flora" is associated with the island-like clay deposits in southwestern Riverside County. This includes perennial herbs, such as *Fritillaria biflora* (chocolate lily), *Harpagonella palmeri* (Palmer's grappling hook), *Chorizanthe polygonoides* var. *longispina* (knot-weed

spine flower), *Sanicula bipinnatifida* (purple sanicle), *S. arguta* (snakeroot), *Lomatium utriculatum* (common lomatium), *L. dasycarpum* (lace parsnip), *Dodecatheon clevelandii* (Cleveland's shooting star), *Bloomeria crocea* (goldenstar), *Chlorogalum parviflorum* (soaproot), *Dudleya multicaulis* (many-stemmed dudleya), *Allium haematochiton* (red-skinned onion) and *A. munzii* (Boyd 1988).

Pursuant to our regulations, we are required to identify the known physical and biological features, *i.e.*, primary constituent elements, essential to the conservation of *Allium munzii*, together with a description of any critical habitat that is proposed. In identifying the primary constituent elements, we used the best available scientific and commercial data available. The physical ranges described in the primary constituent elements may not capture all of the variability that is inherent in natural systems that support *A. munzii*. The primary constituent elements determined essential to the conservation of *A. munzii* are:

(1) Clay soil series of sedimentary origin (*e.g.*, Altamont, Auld, Bosanko, Claypit, Porterville), or clay lenses of such which may be found as unmapped inclusions in other soil series, or soil series of sedimentary or igneous origin with a clay subsoil (*e.g.*, Cajalco, Las Posas, Vallecitos); found on level or slightly sloping landscapes; generally between the elevations of 985 ft and 3,500 ft (300 m and 1,068 m) above mean sea level (AMSL); and as part of open native or non-native grassland plant communities and "clay soil flora" which can occur in a mosaic with Riversidean sage scrub, chamise chaparral, scrub oak chaparral, coast live oak woodland, and peninsular juniper woodland and scrub; or

(2) Alluvial soil series of sedimentary or igneous origin (*e.g.*, Greenfield, Ramona, Placentia, Temescal) and terrace escarpment soils found as part of alluvial fans underlying open native or non-native grassland plant communities which can occur in a mosaic with Riversidean sage scrub generally between the elevations of 985 ft and 3,500 ft (300 m and 1,068 m) above mean sea level (AMSL); or Pyroxenite deposits of igneous origin found on Bachelor Mountain as part of non-native grassland and Riversidean sage scrub generally between the elevations of 985 ft and 3,500 ft (300 m and 1,068 m) above mean sea level (AMSL); and

(3) Clay soils or other soil substrate as described above with intact, natural surface and subsurface structure that have been minimally altered or unaltered by ground-disturbing

activities (*e.g.*, disked, graded, excavated, re-contoured).

All areas proposed as critical habitat for *Allium munzii* are within the geographic area occupied by the species and contain one or more primary constituent elements (*e.g.*, soil, associated plant community) essential for its conservation.

Methods

In determining areas that are essential to conserve *Allium munzii*, we used the best scientific and commercial data available. These included data from research and survey observations published in peer-reviewed articles, regional Geographic Information System (GIS) vegetation, soil, and species coverages (including layers for Riverside County), and data compiled in the CNDDB. In addition, information provided in comments on the proposed critical habitat designation and draft economic analysis will be evaluated and considered in the development of the final designation for *A. munzii*.

After all the information about the known occurrences of *Allium munzii* was compiled, we created maps indicating the essential habitat associated with each of the occurrences. We used the information outlined above to aid in this task. The essential habitat was mapped using GIS and refined using topographical and aerial map coverages. These essential habitat areas were further refined by discussing each area in detail with Fish and Wildlife Service biologists familiar with each area. Areas not containing the primary constituent elements were not included in the boundaries of proposed critical habitat whenever possible.

After creating a GIS coverage of the essential areas, we created legal descriptions of the essential areas. We used a 100-meter grid to establish Universal Transverse Mercator (UTM) North American Datum 27 (NAD 27) coordinates which, when connected, provided the boundaries of the essential areas. The areas were then analyzed with respect to section 4(b)(2) of the Act, and any applicable and appropriate exclusions were made. The remaining essential areas are the proposed critical habitat. The essential areas, an elaboration on the exclusions, and the specific areas proposed for critical habitat are described below.

Special Management Considerations or Protection

As we undertake the process of designating critical habitat for a species, we first evaluate lands defined by those physical and biological features essential to the conservation of the

species for inclusion in the designation pursuant to section 3(5)(A) of the Act. Secondly, we then evaluate lands defined by those features to assess whether they may require special management considerations or protection. As discussed throughout this proposed rule, *Allium munzii* and its habitat are threatened by a multitude of factors. Threats to those features that define essential habitat (primary constituent elements) are caused by various types of development, dry-land farming activities, off-road vehicle activity, clay mining, and competition with non-native plants. Habitat loss continues to be the greatest threat to *A. munzii*. It is essential for the survival of this species to protect those features that define the remaining essential habitat, through purchase or special management plans, from irreversible threats and habitat conversion. We believe the area proposed for designation as critical habitat may require some level of management and/or protection to address the current and future threats to *A. munzii* and maintain the primary constituent elements essential to its conservation to ensure the overall recovery of the species.

Relationship to Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data available after taking into consideration the economic impact, effects to national security, and any other relevant impact, of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined, following an analysis, that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. Consequently, we may exclude an area from designated critical habitat based on economic impacts, effects to national security, or other relevant impacts such as preservation of conservation partnerships, if we determine the benefits of excluding an area from critical habitat outweigh the benefits of including the area in critical habitat, provided the action of excluding the area will not result in the extinction of the species.

In our critical habitat designations we have used the provisions outlined in section 4(b)(2) of the Act to evaluate those specific areas that are proposed for designation as critical habitat and those areas which are subsequently finalized (*i.e.*, designated). We have

applied the provisions of this section of the Act to lands essential to the conservation of the subject species to evaluate them and either exclude them from final critical habitat or not include them in proposed critical habitat. Lands which we have either excluded from or not included in critical habitat based on those provisions include but are not limited to those covered by: (1) Legally operative HCPs that cover the species and provide assurances that the conservation measures for the species will be implemented and effective; (2) draft HCPs that cover the species, have undergone public review and comment, and provide assurances that the conservation measures for the species will be implemented and effective (*i.e.*, pending HCPs); (3) Tribal conservation plans that cover the species and provide assurances that the conservation measures for the species will be implemented and effective; (4) State conservation plans that provide assurances that the conservation measures for the species will be implemented and effective; and (5) Service National Wildlife Refuge System Comprehensive Conservation Plans that provide assurances that the conservation measures for the species will be implemented and effective. Within the essential habitat for *Allium munzii* there are no tribal lands or lands owned by the Department of Defense.

Relationship of Critical Habitat to Approved Habitat Conservation Plans and Draft Western Riverside Multiple Species Habitat Conservation Plan (MSHCP)

As described above, section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic and national security impacts, when designating critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. Development of an HCP is a prerequisite for the issuance of an incidental take permit pursuant to section 10(a)(1)(B) of the Act. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take.

HCPs vary in size and may provide for incidental take coverage and conservation management for one or many federally listed species. Additionally, more than one applicant may participate in the development and implementation of an HCP. The areas occupied by *Allium munzii* include approved HCPs and the Western

Riverside MSHCP that address multiple species, cover a large area, and have many participating permittees. Large regional HCPs expand upon the basic requirements set forth in section 10(a)(1)(B) of the Act because they reflect a voluntary, cooperative approach to large-scale habitat and species conservation planning. Many of the large regional HCPs in southern California have been, or are being, developed to provide for the conservation of numerous federally listed species and unlisted sensitive species and the habitat that provides for their biological needs. These HCPs address impacts in a planning area and create a preserve design within the planning area. Over time, areas in the planning area are developed according to the HCP and the area within the preserve is acquired, managed, and monitored. These HCPs are designed to implement conservation actions to address future projects that are anticipated to occur within the planning area of the HCP in order to reduce delays in the permitting process.

In the case of approved regional HCPs (*e.g.*, those sponsored by cities, counties or other local jurisdictions) wherein *Allium munzii* is a covered species, a primary goal is to provide for the protection and management of habitat essential for the conservation of the species while directing development to non-essential areas. The regional HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *A. munzii*. The process also enables us to construct a habitat preserve system that provides for the biological needs and long-term conservation of the species.

Completed HCPs and their accompanying Implementing Agreements (IA) contain management measures and protections for identified preserve areas that protect, restore, and enhance the value of these lands as habitat for *Allium munzii*. These measures include explicit standards to minimize any impacts to the covered species and its habitat. In general, HCPs are designed to ensure that the value of the conservation lands are maintained, expanded, and improved for the species that they cover.

In approving these HCPs, the Service has provided assurances to permit holders that once the protection and management required under the plans are in place and for as long as the permit holders are fulfilling their obligations under the plans, no additional mitigation in the form of land or financial compensation will be required of the permit holders and in some cases,

specified third parties. Similar assurances will be extended to future permit holders in accordance with the Service's HCP Assurance ("No Surprises") rule codified at 50 CFR 17.22(b)(5) and (6) and 17.32(b)(5) and (6).

Portions of the proposed critical habitat within approved and legally operative HCPs or Natural Community Conservation Plan (NCCP)/HCPs in which *Allium munzii* is a covered species warrant exclusion from the designation of critical habitat under section 4(b)(2) of the Act. We believe that in most instances, the benefits of excluding legally operative HCPs from the proposed critical habitat designations will outweigh the benefits of including them. We have considered but not proposed critical habitat within the Rancho Bella Vista, North Peak Development Project, and Lake Matthews HCPs. All of these HCPs are for a small number of private landowners. *A. munzii* is a covered species in these HCPs.

Draft Western Riverside MSHCP

The Draft Western Riverside MSHCP has been in development for several years. Participants in this HCP include 14 cities; the County of Riverside, including the Riverside County Flood Control and Water Conservation Agency, Riverside County Transportation Commission, Riverside County Parks and Open Space District, and Riverside County Waste Department; the California Department of Parks and Recreation; and the California Department of Transportation. The Western Riverside MSHCP is also being proposed as a subregional plan under the State's NCCP and is being developed in cooperation with the California Department of Fish and Game. Within the 1.26 million-acre (510,000 ha) planning area of the MSHCP, approximately 153,000 ac (62,000 ha) of diverse habitats are proposed for solely conservation uses. The proposed conservation of 153,000 ac (62,000 ha) will complement other existing natural and open space areas that are already conserved through other means (e.g., State Parks, Forest Service, and County Park lands).

The County of Riverside and the participating jurisdictions have signaled their sustained support for the Western Riverside MSHCP as evidenced by the November 5, 2002, passage of a local bond measure to fund the acquisition of land in support of the MSHCP. On November 14, 2002, a Notice of Availability of a Draft Environmental Impact Report (EIS/EIR) and Receipt of and Application for an Incidental Take

Permit was published in the **Federal Register** (67 FR 69236). Public comment on these documents was accepted until January 14, 2003. Subsequently, on June 17, 2003, the County of Riverside Board of Supervisors voted unanimously to support the completion of the Western Riverside MSHCP.

Conservation actions within the Western Riverside MSHCP planning area will be implemented to promote the long-term conservation of *Allium munzii*. Although the MSHCP is not yet completed and implemented, significant progress has been achieved in the development of this HCP, including the preparation of the EIS/EIR, the solicitation of public review and comment, and the preparation of final documents. We are proposing to exclude from the proposed critical habitat designation the non-Federal lands covered by the draft Western Riverside MSHCP. This includes all known occurrences except one, which is on lands managed by the Forest Service. We are proposing to designate critical habitat on Federal lands within the planning area boundary of the Western Riverside MSHCP because the activities of Federal agencies are not covered under the section 10(a)(1)(B) permit. In the event that the Western Riverside MSHCP does not provide the coverage for this species, we will include these essential areas in the final designation of critical habitat.

Specific conservation objectives are provided in the Western Riverside MSHCP to ensure that suitable habitat and known populations of the *Allium munzii* will persist. Conservation objectives for *A. munzii* are: (1) Include in the MSHCP Conservation Area at least 13 localities, including the two whole and two partial populations currently outside the MSHCP Conservation Area; (2) include in the MSHCP Conservation Areas the Additional Reserve Lands (as defined in the MSHCP), public/quasi-public (PQP) lands (as defined in the MSHCP), and *A. munzii* habitat identified in the MSHCP. Given the presently known *A. munzii* localities, all of the known populations will be conserved; (3) implement management and monitoring practices within the Additional Reserve Lands including surveys for the *A. munzii*. Cooperative management and monitoring is anticipated on PQP Lands; (4) *A. munzii* is considered a Narrow Endemic Plant Species (defined in section 6 of the Riverside MSHCP; requires specific consideration in the plan). Thus, until such time as the Additional Reserve Lands are assembled and conservation objectives for this species are met, surveys will be

conducted as part of the project review process for public and private projects where suitable habitat for *A. munzii* is present within Narrow Endemic Plant Species Survey Area (NEPSSA) 1 and 4.

Other management actions described in the draft Western Riverside MSHCP include addressing competition with non-native plant species, clay mining, off-road vehicle use, and disking activities. This management will help maintain *Allium munzii* populations and habitat.

The following represents our rationale for excluding the proposed critical habitat within approved HCPs and the Draft Western Riverside MSHCP.

(1) Benefits of Inclusion

The principal benefit of any designated critical habitat is that federally funded or authorized activities in such habitat that require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. Where HCPs are in place, our experience indicates that this benefit is small or nonexistent. Currently approved and permitted HCPs and NCCP/HCPs are designed to ensure the long-term survival of covered species within the plan area. In an approved HCP or NCCP/HCP, lands we ordinarily would define as critical habitat for covered species will normally be protected in reserves and other conservation lands by the terms of the HCP or NCCP/HCP and their IAs. These HCPs or NCCP/HCPs and IAs include management measures and protections for conservation lands designed to protect, restore, and enhance their value as habitat for covered species, and thus provide benefits well in excess of those that would result from a critical habitat designation.

(2) Benefits of Exclusion

The benefits of excluding lands within HCPs from critical habitat designation include carrying out the assurances provided by the Service to landowners, communities, and counties in return for their voluntary adoption of the HCP, including relieving them of the additional regulatory burden that might be imposed by critical habitat. Many HCPs, particularly large regional HCPs take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery objectives for listed species that are covered within the plan area. Additionally, many of these HCPs provide conservation benefits to unlisted, sensitive species. Imposing an additional regulatory review after an

HCP is completed solely as a result of the designation of critical habitat may undermine conservation efforts and partnerships in many areas. In fact, it could result in the loss of species' benefits if participants abandon the voluntary HCP process because it may result in additional regulations requiring more of them than other parties who have not voluntarily participated in species conservation. Designation of critical habitat within the boundaries of approved HCPs could be viewed as a disincentive to those entities currently developing HCPs or contemplating them in the future.

A related benefit of excluding lands within HCPs from critical habitat designation is the unhindered, continued ability to seek new partnerships with future HCP participants including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. If lands within HCP plan areas are designated as critical habitat, it would likely have a negative effect on our ability to establish new partnerships to develop HCPs, particularly large, regional HCPs that involve numerous participants and address landscape-level conservation of species and habitats. By preemptively excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Furthermore, an HCP or NCCP/HCP application must itself be consulted upon. While this consultation will not look specifically at the issue of adverse modification to critical habitat, unless critical habitat has already been designated within the proposed plan area, it will determine if the HCP jeopardizes the species in the plan area. The jeopardy analysis is similar to the analysis of adverse modification to critical habitat. In addition, Federal actions that may affect listed species or any designated critical habitat would still require consultation under section 7 of the Act. HCP and NCCP/HCPs typically provide for greater

conservation benefits to a covered species than section 7 consultations because HCPs and NCCP/HCPs assure the long-term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5 Point Policy for HCPs (64 FR 35242) and the HCP "No Surprises" regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations which, in accordance with the Provisions of the Act, are limited to requiring that the specific action being consulted upon not jeopardize the continued existence of the species. Thus, a consultation typically does not accord the lands it covers the extensive benefits a HCP or NCCP/HCP provides. The development and implementation of HCPs or NCCP/HCPs provide other important conservation benefits, including the development of biological information to guide the conservation efforts and assist in species conservation, and the creation of innovative solutions to conserve species while allowing for development.

The Western Riverside MSHCP seeks to accomplish the goals of protecting, restoring, monitoring, managing, and enhancing the habitat to benefit the conservation of *Allium munzii* through the implementation of specific conservation objectives. Excluding non-Federal lands within the MSHCP from the proposed critical habitat will provide benefits, as follows: (1) Exclusion of the lands from the final designation will allow us to continue working with the participants in a spirit of cooperation and partnership; (2) other jurisdictions, private landowners, and other entities will see the benefit of working cooperatively with us to develop HCPs, which will provide the basis for future opportunities to conserve species and their essential habitat.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated the HCPs currently approved and being implemented, and the draft Western

Riverside MSHCP within the areas being proposed as critical habitat for *Allium munzii*. Based on this evaluation, we find that the benefits of exclusion outweigh the benefits of proposing the portions of essential habitat for *A. munzii* covered by the approved HCPs and the draft Western Riverside MSHCP as critical habitat.

The exclusion of these lands from critical habitat will help preserve the partnerships that we have developed with the local jurisdictions and project proponents in the development of HCPs and NCCP/HCPs. The educational benefits of critical habitat, including informing the public of areas that are essential for the long-term survival and conservation of the species, is still accomplished from material provided on our website and through public notice and comment procedures required to establish an HCP or NCCP/HCP. The public has also been informed through the public participation that occurs in the development of many regional HCPs or NCCP/HCPs. For these reasons, we believe that proposing critical habitat has little benefit in areas covered by HCPs, provided that the HCP or NCCP/HCP specifically and adequately covers the species for which critical habitat is being proposed. We do not believe that these exclusions will result in the extinction of the species because the combination of existing preserves and the implementation of the draft Western Riverside MSHCP provide adequate conservation of this species on lands within the plan area.

Proposed Critical Habitat Designation

The proposed critical habitat includes *Allium munzii* habitat at a single location in the species' range and is located entirely within Riverside County, California. The majority of essential habitat for this species has been excluded under section 4(b)(2). As a result, only Federal lands are proposed as critical habitat. Areas proposed as critical habitat and the areas proposed for exclusion from critical habitat are summarized in Table 1.

TABLE 1.—SUMMARY OF ESSENTIAL HABITAT ACREAGE FOR *Allium munzii*.

	Federal*	Local/state	Private	Total
Essential Habitat	227 ac (92 ha)	73 ac (30 ha)	995 ac (403 ha)	1,295 ac (525 ha).
Excluded under 4(b)(2)	0 ac (0 ha)	73 ac (30 ha)	995 ac (403 ha)	1,068 ac (433 ha).
Proposed Critical Habitat	227 ac (92 ha)	0 ac (0 ha)	0 ac (0 ha)	227 ac (92 ha).

* Federal lands include U.S. Forest Service lands.

Western Riverside Unit, Riverside County, California (227 ac (92 ha))

As discussed above, the Western Riverside MSHCP, when approved, will provide for the conservation of all known occurrences of *A. munzii*. Only the habitat located on Federal lands is proposed as critical habitat. This is because the habitat is essential to the conservation of the species, but activities of Federal agencies are not covered under the section 10(a)(1)(B) permit. A map of the areas identified as essential habitat can be viewed on our Web site at <http://carlsbad.fws.gov>.

The single unit of essential habitat that we are proposing to designate as critical habitat is located in the vicinity of Elsinore Peak in the Cleveland National Forest. The easternmost stand of *Allium munzii* at this location is considered to be the most undisturbed and pristine of any of the known occurrences of this species (Boyd and Mistretta 1991). The land identified for this unit of critical habitat supports the first and third primary constituent elements discussed above. The habitat is characterized by mixed native/non-native grassland and chaparral vegetation. *A. munzii* occurs primarily in the grassland and the transitional vegetation between the grassland and chaparral. The soils are primarily mapped as Bosanko clay, Cienega-blasingame-rock outcrop complex, and Cienega-rock outcrop complex. The stands of *A. munzii* are associated with mesic microhabitats, such as the mesic exposures on cobble deposits and at the bottom of slopes. This population is estimated at 5,000 plants and is ranked as a top conservation priority by a working group assembled by the California Department of Fish and Game (Mistretta 1993).

This site represents the southwesternmost extent of the range for *Allium munzii*. The habitat at this location is high quality. This site also supports three other species of wild onion, *A. haematochiton*, *A. lacunosum*, and *A. peninsulare*. This composition of four *Allium* species at a single location is important to understanding the evolutionary history and divergence of the *Allium* genus in southern California. The southwestern portion of the essential habitat at this site is located on land that will be subject to the terms and conditions of the Western Riverside MSHCP. This portion of essential habitat has been excluded from critical habitat, and only the essential habitat on Forest Service land is proposed as critical habitat.

Effects of Critical Habitat Designation

Section 7 Consultation

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR 402. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including us, to insure that their actions are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. This requirement is met through section 7 consultation under the Act. Our regulations define "jeopardize the continued existence of" as to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02). "Destruction or adverse modification of designated critical habitat" for this species would include habitat alterations that significantly affect any of those physical or biological features that were the basis for determining the habitat to be critical.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist Federal agencies in eliminating conflicts that may be caused by their proposed actions. The conservation measures in a conference report are advisory.

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

in the action alter the content of the opinion (50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

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

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

Federal activities that may affect *Allium munzii* or its critical habitat will require consultation under section 7. Activities on private, State, or county lands, or lands under local jurisdictions

requiring a permit from a Federal agency, such as Federal Highway Administration or Federal Emergency Management Act funding, or a permit from the Corps under section 404 of the Clean Water Act, will continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of *Allium munzii* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat for *Allium munzii* include, but are not limited to:

(1) Removing, thinning, or destroying *Allium munzii* habitat (as defined in the primary constituent elements discussion), whether by burning, mechanical, chemical, or other means;

(2) Activities that appreciably degrade or destroy *Allium munzii* habitat (and its primary constituent elements) that could include, but are not limited to, livestock grazing, clearing, disking, farming, residential or commercial development, the spread of nonnative species, off-road vehicle use, and heavy recreational use;

(3) Activities that appreciably diminish habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, or fragmentation); and

(4) Any activity that could alter watershed or soil characteristics in ways that would appreciably alter or reduce the quality or quantity of surface and subsurface flow of water needed to maintain *Allium munzii* habitat. These activities could include, but are not limited to, altering the natural fire regime; development, including road building; livestock grazing; and vegetation manipulation such as clearing or grubbing in the watershed upslope from *A. munzii*.

(5) Road construction and maintenance, right-of-way designation,

and regulation of agricultural activities, or any activity funded or carried out by the Department of Transportation or Department of Agriculture that results in discharge of dredged or fill material, or mechanized land clearing of *Allium munzii* habitat;

(6) Sale or exchange of lands by a Federal agency to a non-Federal entity; and

(7) Licensing of construction of communication sites by the Federal Communications Commission.

All lands proposed as critical habitat are within the geographical area occupied by the species and are necessary for the conservation of *Allium munzii*. Federal agencies already consult with us on actions that may affect *A. munzii* to ensure that their actions do not jeopardize the continued existence of the species. Thus, we do not anticipate substantial additional regulatory protection will result from critical habitat designation.

If you have questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and plants and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 NE. 11th Ave, Portland, OR 97232 (telephone 503/231-2063; facsimile 503/231-6243).

Economic Analysis

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

An analysis of the economic impacts of proposing critical habitat for *Allium munzii* is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at <http://carlsbad.fws.gov>, or by contacting the Carlsbad Fish and Wildlife Office directly (see **ADDRESSES** section).

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule as we prepare our final rulemaking. Accordingly, the final designation may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (see **ADDRESSES** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand? Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW.,

Washington, DC 20240. You may e-mail your comments to this address: Exsec@ios.doi.gov.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is not a significant rule and, therefore, was not reviewed by the Office of Management and Budget (OMB). We will be preparing a draft economic analysis of this proposed action; we will use this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat and excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such areas as part of the critical habitat, unless failure to designate such area as critical habitat will lead to the extinction of *Allium munzii*. This analysis will also be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

This draft economic analysis will be made available for public review and comment before we finalize this designation. At that time, copies of the analysis will be available for downloading from the Carlsbad Fish and Wildlife Office's Internet Web site at <http://carlsbad.fws.gov> or by contacting the Carlsbad Fish and Wildlife Office directly (see ADDRESSES section).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), 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 Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation for an additional 60 days. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2))

In the draft economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of \$100 million or more; (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for *Allium munzii* is not a significant regulatory action under Executive Order 12866, and it is not expected to significantly affect energy supplies, distribution, or use because there are no pipelines, distribution facilities, power grid stations, *etc.*

within the boundaries of proposed critical habitat. 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), the Service makes the following findings:

(a) This 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, 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; AFDC 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 who receive Federal funding, assistance, or permits or who 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 on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments, because only Federal lands are involved in the proposed designation. As such, Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and, as appropriate, review and revise this assessment as warranted.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for *Allium munzii*. This preliminary assessment concludes that this proposed rule does not pose significant takings implications. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policies, we requested information from and coordinated development of this proposed critical habitat designation with appropriate State resource agencies in California.

The proposed designation of critical habitat in areas currently occupied by *Allium munzii* imposes no additional significant restrictions beyond those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The proposed designation of critical habitat may have some benefit to the

State and local resource agencies in that the areas essential to the conservation of this species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of this species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Allium munzii*.

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

This proposed rule does not contain new or revised information collection for which OMB approval is required under the Paperwork Reduction Act. Information collections associated with certain Act permits are covered by an existing OMB approval and are assigned clearance No. 1018-0094, Forms 3-200-55 and 3-200-56, with an expiration date of July 31, 2004. Detailed information for Act documentation appears at 50 CFR 17. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining our reason for this

determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

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, 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. We have determined that there are no Tribal lands essential for the conservation of *Allium munzii*. Therefore, designation of critical habitat for the *A. munzii* has not been proposed on Tribal lands.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary authors of this notice are the Carlsbad Fish and Wildlife Office staff (see **ADDRESSES** section).

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—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h) revise the entry for "Allium munzii" under "FLOWERING PLANTS" to read as follows:

17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Allium munzii	Munz's onion	U.S.A. (CA)	Liliaceae—Lily	E	650	17.96(a)	NA
*	*	*	*	*	*		*

3. In § 17.96(a), add critical habitat for *Allium munzii* in alphabetical order under Family Liliaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Liliaceae: *Allium munzii* (Munz's onion)

(1) Critical habitat unit for *Allium munzii* is depicted for Riverside County, California, on the map below.

(2) The primary constituent elements of critical habitat for *Allium munzii* are:

(i) Clay soil series of sedimentary origin (e.g., Altamont, Auld, Bosanko, Claypit, Porterville), or clay lenses of such which may be found as unmapped inclusions in other soil series, or soil series of sedimentary or igneous origin with a clay subsoil (e.g., Cajalco, Las Posas, Vallecitos); found on level or slightly sloping landscapes; generally between the elevations of 985 ft and 3,500 ft (300 m and 1,068 m) above mean sea level (AMSL); and as part of open native or non-native grassland plant communities and “clay soil flora” which can occur in a mosaic with

Riversidean sage scrub, chamise chaparral, scrub oak chaparral, coast live oak woodland, and peninsular juniper woodland and scrub; or

(ii) Alluvial soil series of sedimentary or igneous origin (e.g., Greenfield, Ramona, Placentia, Temescal) and terrace escarpment soils found as part of alluvial fans underlying open native or non-native grassland plant communities which can occur in a mosaic with Riversidean sage scrub generally between the elevations of 985 ft and 3,500 ft (300 m and 1,068 m) above mean sea level (AMSL); or Pyroxenite deposits of igneous origin found on Bachelor Mountain as part of non-native grassland and Riversidean sage scrub generally between the elevations of 985 ft and 3,500 ft (300 m and 1,068 m) above mean sea level (AMSL); and

(iii) Clay soils or other soil substrate as described above with intact, natural surface and subsurface structure that have been minimally altered or unaltered by ground-disturbing activities (e.g., disked, graded, excavated, re-contoured).

(3) Critical habitat for *Allium munzii* does not include existing features and

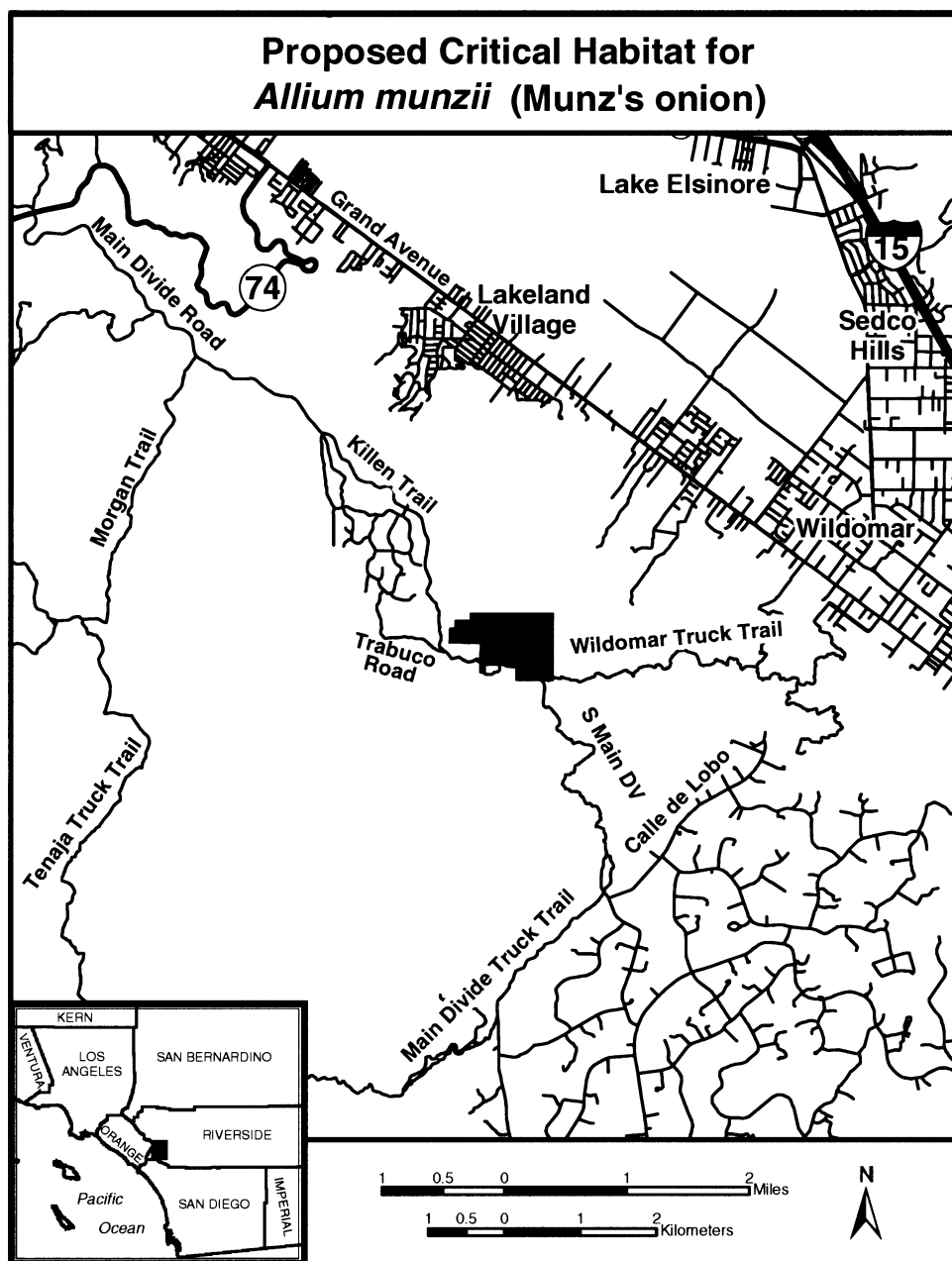
structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical habitat unit for *Allium munzii* is described below.

(i) Map Unit 1: Riverside County, California. From USGS 1:24,000 quadrangle map Wildomar, California, land bounded by the following UTM 11 NAD27 coordinates (E, N): 467900, 3718200; 469000, 3718200; 469000, 3717300; 468500, 3717300; 468500, 3717500; 468100, 3717500; 468100, 3717400; thence east to the U.S. Forest Service, Cleveland National Forest boundary at y-coordinate 3717400; thence northwest following the U.S. Forest Service, Cleveland National Forest boundary to y-coordinate 371800; thence east to 467700, 3718000; 467700, 3718100; 467900, 3718100; returning to 467900, 3718200.

(ii) **Note:** Map of critical habitat unit follows:

BILLING CODE 4310-55-P



Dated: May 27, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04-12657 Filed 6-3-04; 8:45 am]

BILLING CODE 4310-55-C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018-AT48

Marine Mammals; Native Exemptions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to amend regulations implementing the Marine Mammal Protection Act of 1972 (MMPA), as amended. This action would revise our existing definition of

“authentic native articles of handicrafts and clothing” to reflect a December 28, 1992, Court ruling, which found that our regulation defining “authentic native articles of handicrafts and clothing” is inconsistent with the MMPA.

DATES: We will consider comments on the proposed rule if received by August 3, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- By mail or hand-delivery to: Diane Bowen, Division of Federal Program Activities, U.S. Fish and Wildlife Service, Attention: Native Handicrafts, Room 400, ARLSQ, 4401 North Fairfax Drive, Arlington, Virginia 22203.