(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: May 31, 2005.

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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; Designation of Critical Habitat for *Allium munzii* (Munz's onion)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate 176 acres (ac) (71 hectares (ha)) of Federal land as critical habitat for the Federally endangered *Allium munzii* (Munz's onion) pursuant to the Endangered Species Act of 1973, as amended (Act). The designated critical habitat is within the Cleveland National Forest at Elsinore Peak in western Riverside County, California.

DATES: This rule becomes effective on July 7, 2005.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours, at the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, CA 92009 (telephone: 760/431–9440). The final rule, economic analysis (EA), and map will also be available via the Internet at *http://carlsbad.fws.gov*.

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

SUPPLEMENTARY INFORMATION:

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 473 species, or 38 percent of the 1,253 listed species in the U.S. under the jurisdiction of the Service, have designated critical habitat.

We address the habitat needs of all 1,253 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. In the case of listed plants, such as *Allium munzii*, Section 9 of the Act prohibits any person subject to the jurisdiction of the United States from removing and reducing to possession any such species from areas under Federal jurisdiction; maliciously damaging or destroying any such species on such area; or removing, cutting, digging up, or damaging or destroying any such species on any other area in knowing violation of any law or regulation of any state or in the course of any violation of a State criminal trespass law. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that two courts found our definition of adverse modification to be invalid (March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit, *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, F.3d 434, and the August 6, 2004, Ninth Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*). In response to these decisions, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the 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 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 that 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 deadlines. 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 are 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

We intend to discuss only those topics directly relevant to the designation of critical habitat in this final rule. For more information on *Allium munzii*, please refer to the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54975), proposed critical habitat rule published in the **Federal Register** on June 4, 2004 (69 FR 31569), and the notice of availability of the draft economic analysis (DEA) and reopening of the public comment period for *Allium munzii* published in the **Federal Register** on December 1, 2004 (69 FR 69878).

Previous Federal Action

Please refer to the proposed rule to designate critical habitat for *Allium munzii* (69 FR 31569) and the notice of availability of the draft economic analysis and reopening of the public comment period for *Allium munzii* (69 FR 69878) for more information on previous Federal actions concerning Munz's onion.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for *Allium munzii* (69 FR 31569) and the notice of availability of the draft economic analysis and reopening of the public comment period for *Allium munzii* (69 FR 69878). We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule.

During the comment period that opened on June 4, 2004, and closed on August 3, 2004, we received 7 comment letters directly addressing the proposed critical habitat designation: 3 from peer reviewers, 1 from a Federal agency, and 3 from organizations or individuals. During the comment period that opened on December 1, 2004, and closed on January 3, 2005, we received 4 comment letters directly addressing the proposed critical habitat designation and the draft economic analysis. Of these latter comments, 1 was from a Federal agency, and 3 were from organizations. One commenter concurred with the designation of critical habitat for *Allium munzii* and 8 commenters recommended modifications to the proposed designation. Comments received were grouped into general issues specifically relating to the proposed critical habitat designation for *Allium munzii* and are addressed in the following summary and incorporated into the final rule as appropriate. We did not receive any requests for a public hearing.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from five knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from three of the peer reviewers. The peer reviewers provided additional information, clarifications, and suggestions to improve the final critical habitat rule. These recommendations included clarification of occurrences, improvements to the primary constituent elements, identification of essential occurrences, and correction of factual errors. Two of the peer reviewers recommended that the essential habitat and occurrences within the Western Riverside County Multiple-Species Habitat Conservation Plan (MSHCP) be designated as critical habitat. One of the peer reviewers agreed with the designation of critical habitat at Elsinore Peak and expressed cautious support of the areas excluded within the Western Riverside County MSHCP under section 4(b)(2) of the Act. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for *Allium munzii*, and addressed them in the following summary.

Peer Reviewer Comments

Comment 1. Two peer reviewers disagreed with our exclusion of critical habitat within the Western Riverside County MSHCP based on our justification of the ''presumed effectiveness of approved and draft habitat conservation plans, in particular, the Western Riverside County MSHCP,'' and their concerns that ''known localities within the jurisdiction of the MSHCP currently have no established reserves, or proposed management procedures for this species.''

Our Response. Under section 4(b)(2) of the Act, the ''Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such areas as part of critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned.'' We evaluated the benefits of excluding critical habitat against the benefits of including critical habitat within approved Habitat Conservation Plans (HCPs), including the Western Riverside County MSHCP, the Rancho Bella Vista HCP, and the Long-Term Stephen's Kangaroo Rat (SKR) HCP. A major benefit of exclusion is that it will allow us to continue to work with the signatory agencies in Riverside County (for the Western Riverside County MSHCP) in a spirit of cooperation and partnership and to encourage landowners, local jurisdictions, and other entities to work cooperatively with us to develop HCPs in other areas. A possible benefit of including critical habitat on such lands is education about the species and its habitat needs. However, we considered that this educational benefit has largely already been met by the public participation process that occurred in the development of approved HCPs, including the Western Riverside County MSHCP, and therefore, that this would not be a particularly important benefit of critical habitat designation. Maps depicting the distribution and location of *Allium munzii* are widely available to the public as part of the Western Riverside County MSHCP planning process. We have concluded, therefore, that the benefits of excluding critical habitat from such lands exceed the value of including the lands as critical habitat. See additional discussion under ''Exclusions Under Section 4(b)(2) of the Act.''

Our approval of the Western Riverside County MSHCP indicates our strong belief that the plan will be effective in conserving *Allium munzii.* The Western Riverside County MSHCP provides specific conservation objectives to ensure that suitable habitat and known populations of *Allium munzii* will persist. Under the Western Riverside County MSHCP, at least 21,260 ac (8,604 ha) of modeled habitat for *Allium munzii* will be included in the MSHCP Conservation Area. The permittees will implement management and monitoring practices within the Additional Reserve Lands, including surveys for *Allium munzii.* Cooperative management and monitoring are anticipated on public and PQP lands. Surveys for *Allium munzii* will be conducted at least every 8 years to verify occupancy at a minimum of 75 percent of the known locations. If surveys document that the distribution of *Allium munzii* has

declined below this 75 percent threshold, management measures will be triggered, as appropriate, to meet the species-specific objectives. Other management actions described in the MSHCP include addressing competition with non-native plant species, clay mining, off-road vehicle use, and disking activities. Implementation of these management actions will help to avoid and minimize adverse effects to *Allium munzii.* Thus, the Western Riverside County MSHCP establishes reserves and management procedures for *Allium munzii.*

The Western Riverside County MSHCP provides a greater level of management for *Allium munzii* on private lands than would designation of critical habitat on private lands. The designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Section 7(a)(2) of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of any endangered or threatened species or destroy or adversely modify critical habitat. Critical habitat designation on private (non-Federal) lands would not obligate or trigger any requirement by a private (non-Federal) landowner to manage their lands to conserve *Allium munzii.*

All known occurrences of this species would be protected: (1) By approved HCPs (Rancho Bella Vista and SKR HCPs); (2) on existing PQP lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County MSCHP; and (3) in areas where a conservation strategy authorized through the section 7 consultation process has provided for protection and long-term management of *Allium munzii.* Thus, we have concluded that the exclusion of such lands would not result in the extinction of *Allium munzii.* Please see ''Relationship of Critical Habitat to Approved Habitat Conservation Plans and Other Approved Conservation Strategies'' for a more detailed discussion.

Comment 2. Two peer reviewers recommended that critical habitat be designated for additional known occurrences/populations and areas of suitable clay soils. These are: (1) Known occurrences at Harford Springs and Harford Springs County Park and adjacent clay habitat on the Gavilan Plateau (Elemental Occurrence (EO) 2); (2) all of the occurrences on and adjacent to Estelle Mountain (EO 9); (3) an occurrence south of Steele Peak (no element occurrence identified, possibly EO 15); (4) all of the habitat on Elsinore Peak and all localities on Elsinore Peak (EO 13); (5) an occurrence in the Temescal Wash near Indian Wash, and the area between Indian Wash and Horsethief Wash south of DePalma Road in Temescal Canyon (EO3 and EO8); (6) occurrences on the southern flank of Alberhill Mountain (EO 6); (7) occurrences on Bachelor Mountain (EO 12); and (8) an occurrence on North Domenigoni Hills (EO 10).

One of the peer reviewers did not recommend critical habitat for the occurrences at Skunk Hollow (Rancho Bella Vista HCP) (EO 4), Briggs and Scott Roads (EO 14), or Indian Truck Trail and De Palma Roads (Sycamore Creek) (EO 7) because of the small size, fragmentation, and impacts to these populations. The peer reviewers did not provide the EO numbers for these populations and we attempted to match their descriptions with the EO for our response.

Our Response. Considered together, the three categories of (1) approved HCPs (Rancho Bella Vista and SKR HCPs); (2) existing PQP lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County MSCHP; and (3) lands where conservation strategies approved through the section 7 consultation process have provided protection, long-term management, and funding to conserve *Allium munzii* provide a significant level of conservation for *Allium munzii.* Thus, all of the occurrences of *Allium munzii* within (1) approved HCPs (Rancho Bella Vista and SKR); (2) existing PQP lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County MSCHP; and (3) on lands where conservation strategies approved through the section 7 consultation process have provided protection, long-term management, and funding to conserve *Allium munzii.*

Within PQP lands, the species occurs on lands in: (1) The southern border of Harford Springs County Park (owned by the County of Riverside) (EO 2); (2) Barry Jones Wetland Mitigation Bank (previously called the Skunk Hollow Wetland Mitigation Bank) (private lands) (EO 4); (3) Lake Mathews—Estelle Mountain Reserve northwest of the Estelle Mountain summit in the Gavilan Hills (owned by the County of Riverside) (EO 9); (4) Southwestern Riverside County Multi-Species Reserve (SRCMSR) in the north Domenigoni Hills on either side of Old Mine Road (owned by the Metropolitan Water District) (EO 10); (5) SRCMSR lands at Lake Skinner (owned by the Bureau of Land Management and Metropolitan Water District) (EO 11); (6) SRCMSR lands on the south slope of Bachelor Mountain (owned by the Metropolitan Water District) (EO 12); and (7) Elsinore Peak on the Cleveland National Forest (EO 13).

Within proposed conceptual reserve lands, lands specifically targeted to be included within the Reserve, and/or within the Narrow Endemic Plant Species Survey Area, the plant occurs in: (1) Private lands across Ida Leona Road in the Gavilan Hills adjacent to Harford Springs County Park (EO 2); (2) private land immediately adjacent to the Sycamore Creek development, northwest of I–15 and Indian Truck Trail Road, in Temescal Canyon (EO 3 and EO 8); (3) Upper Dawson Canyon in the Gavilan Hills (EO 5); (4) private land on the south side of Alberhill Mountain, west of I–15, in the City of Lake Elsinore (EO 6); (5) private land east of I–15, west of De Palma's Italian Village, between Indian Canyon and Horsethief Canyon (EO7); (6) west of Lindenberger Road, 0.8 miles (mi) south of Scott Road, southeast of Sun City on a 36.3-ac (15 ha) parcel conserved as the result of a conservation strategy approved through the section 7 consultation process regarding a Sempra gas pipeline (Service 2001) and on a 65.5-ac (27 ha) parcel conserved as a result of a conservation strategy approved through the section 7 consultation process associated with the Warmington development (Service 2002) (EO 14); (7) northern boundary of the City of Lake Elsinore, within the North Peak Specific Plan Area on lands purchased and conserved by Riverside County (EO 15); (8) 1.2 mi northeast of the intersection of Lake Street and I–15 (EO 16); (9) land owned by Metropolitan Water District of Southern California on the north slope of Bachelor Mountain (EO 17); (10) Temescal Valley, west of I–15, between Nichols Road and Riverside Drive, on a low hill adjacent to Collier Marsh (Alberhill Marsh); and (11) near Temescal Wash (EO 18).

In addition, at least 21,260 ac (8,604 ha) of modeled habitat for *Allium munzii* will be included in the MSHCP Conservation Area (Service 2004). According to the Western Riverside County MSHCP, at least 13 localities within Temescal Valley and the southwestern portion of Plan Area, including the following Core Areas, are to be included within the MSHCP Conservation Area (County of Riverside 2002): (1) Harford Springs Park (EO 2); and (2) a population on private lands in Temescal Valley (EO 5), Alberhill (EO 6), De Palma Road (EO 7), Estelle Mountain (EO 9), Domenigoni Hills (EO

10), Lake Skinner (EO 11), Bachelor Mountain (EO 12), Elsinore Peak (EO 13), Scott Road (EO 14), North Peak (EO 15), and northeast of Alberhill (EO 16). Populations that are currently on public lands or within preservation areas include Harford Springs Park (about half the plants and habitat) (EO 2) and at Estelle Mountain (EO 7), North Domenigoni Hills (EO 10), Bachelor Mountain (two populations) (EO 11 and EO 12), North Peak (EO 15), and Cleveland National Forest lands at Elsinore Peak (EO 13) (County of Riverside 2002).

The occurrence at the Sycamore Creek development (EO 3 and EO 8) receives management (funded through the homeowners' association; the management plan is to be provided to the resource agencies prior to any construction actions by the developer) as part of a conservation strategy approved through the section 7 consultation process. The occurrence on private lands west of Lindenberger Road (EO 14) receives management as part of a conservation strategy approved through section 7 consultation processes for a Southern California Gas Company gas pipeline and the Warmington development.

Thus, the nine occurrences recommended to be designated as critical habitat by the peer reviewers (EO 2, EO 3, EO 8, EO 6, EO 9, EO 10, EO 12, EO 13, and EO 15) are already conserved (1) within approved HCPs (Rancho Bella Vista and SKR HCPs); (2) on existing PQP lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County MSCHP; and (3) on lands where conservation strategies approved through the section 7 consultation process have provided protection, long-term management, and funding to conserve *Allium munzii*. We have excluded these lands, except for the occurrence on U.S. Forest Service lands, under section 4(b)(2) of the Act in this final rule.

Comment 3. One peer reviewer noted that the large population of *Allium munzii* on State of California lands immediately adjacent to the Cleveland National Forest lands at Elsinore Peak is subject to increasing levels of off-highway vehicle (OHV) use. The commenter expressed concern that excluding this area from critical habitat may lead to further OHV (and other) damage to this population and would not give the State of California incentive to prevent this impact.

Our Response. The Cleveland National Forest requested approval from the State Lands Commission to place barriers on State lands to discourage unauthorized OHV use in this area (U.S. Forest Service 2002). We do not agree that the exclusion of critical habitat from the State lands may lead to further OHV damage or that the designation of critical habitat would give the State an incentive to prevent this activity. Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Activities lacking any Federal nexus, such as OHV activity on State lands, would not be affected by the critical habitat designation.

Comment 4. One peer reviewer suggested that the Service ''needs to designate areas that are ''critical'' to the species, and review the current management and protection procedures.

Our Response. The definition of critical habitat includes areas containing the physical or biological features (1) essential to the conservation of the species and (2) which may require special management considerations or protection. If the physical or biological features are not essential or may not require special management considerations or protection, then the area would not meet the definition of critical habitat. Please see ''Special Management Considerations and Protection'' for a further discussion of this subject.

Comment 5. Two peer reviewers (and a public review commenter) questioned the number and description of occurrences of *Allium munzii* described in the proposed rule.

Our Response. The proposed rule stated that there are 19 occurrences of *Allium munzii* according to the California Natural Diversity Database (CNDDB) (CNDDB 2004). We have reviewed the CNDDB records to clarify any discrepancies in the number of occurrences of *Allium munzii* (Service 2003). The CNDDB reported 21 element occurrences (EO) (Service 2003). Of these records, EO 1 is extirpated and EO 19 is an error. Thus, we concluded that there were 19 occurrences. Our further review of the CNDDB indicates that EO 20 and EO 21 are older records and have not been recently verified, and EO 3 and EO 8 may represent the same population and should be treated as a single occurrence. Hence, in the final rule, we describe 16 extant populations of *Allium munzii* (see also ''Criteria Used to Identify Critical Habitat'' for a listing of these 16 populations).

Comments Related to Designation and Exclusion of Critical Habitat

Comment 1. Several commenters disagreed with our exclusion of critical habitat within approved HCPs including the Western Riverside County MSHCP. They stated that we did not provide any scientific or biological reasons for not including critical habitat within the boundaries of HCPs including the Western Riverside County MSHCP.

Our Response. We disagree. Please see our response to Peer Reviewer Comment 1 for a detailed explanation.

Comment 2. A commenter recommended that critical habitat be expanded to include important populations within HCP areas, including the extensive population on Alberhill, Harford County Park and adjacent lands, and North Peak.

Our Response. We disagree. Please see our response to Peer Reviewer Comment 2 for a detailed explanation.

Comment 3. A commenter stated that the Cleveland National Forest should not be designated as critical habitat because these lands are within the boundary of the Western Riverside County MSHCP.

Our Response. We agree that the Cleveland National Forest lands are within the Western Riverside County MSHCP Plan Area. However, unlike private landowners and local jurisdictions, Federal agencies, such as the U.S. Forest Service, do not receive take authorization for any species covered by the Western Riverside County MSHCP. While lands within the Cleveland National Forest were considered as part of the environmental baseline, the U.S. Forest Service is not a signatory agency to the Western Riverside County MSHCP, nor is it they bound to comply with the regional HCP. Thus, we have only excluded private lands within the Western Riverside County MSHCP from critical habitat designation in this and other final critical habitat designation rules.

Comments Related to the Economic Analysis of Critical Habitat

Comment 1. We received several comment letters related to the draft economic analysis (DEA) and proposed designation of critical habitat for the Lake Elsinore Advanced Pumped Storage Project (LEAPS).

Our Response. We analyzed the information contained in the comment letters, soil maps, aerial photography, and distribution of *Allium munzii* populations along the easternmost edge of the proposed critical habitat unit. No known populations of *Allium munzii* occur within the LEAPS transmission line corridor, and the nearest population is west of the corridor on soils mapped as Bosanko clay (identified as a clay soil in the primary constituent element #1) and Las Posas gravelly loam (identified as a soil series of sedimentary or igneous origin with a clay subsoil in

primary constituent element #1). The soil maps indicate that the LEAPS transmission corridor crosses soils mapped as Cieneba-rock outcrop complex and the available information indicates that *Allium munzii* does not occur on this soil type. Thus, we have not included the LEAPS transmission corridor in the designation of critical habitat in the final rule. Since no critical habitat is being designated within the LEAPS transmission corridor, we did not, and do not need to, consider economic impacts related to the LEAPS project.

Comment 2. A commenter stated that the DEA fails to clearly state that critical habitat has no legal implications on private lands and no burden on his/her property absent Federal nexus.

Our Response. A description of the legal implications of critical habitat can be found in this Final Rule under ''Effects of Critical Habitat Designation.''

Comment 3. We received several comments concerning the scope of the economic analysis. One commenter stated that distributing costs among other endangered species likely to co-exist with *Allium munzii* violates the co-extensive analysis that is required, while another commenter stated that the cost of *Allium munzii* conservation should not include costs associated with the listing of *Allium munzii* or other regulatory requirements (such as NEPA) that afford protection to the species.

Our Response. The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for *Allium munzii.* The Act defines critical habitat to mean those specific areas that are essential to the conservation of the species. The Act also defines conservation to mean the use of all methods and procedures necessary to bring any endangered species or threatened species to the point at which the measures of the Act are no longer necessary. Thus we interpret the Act to mean that the economic analysis should include all of the economic impacts associated with the conservation of the species, which may include some of the effects associated with listing because the species was listed prior to the proposed designation of critical habitat. We note that the Act generally requires critical habitat to be designated at the time of listing, and, that had we conducted an economic analysis at that time, the impacts associated with listing would not be readily distinguishable from those associated with critical habitat designation.

The DEA discusses other relevant regulations and protection efforts for other listed species that include *Allium munzii* and its habitat. In general, the analysis errs conservatively in order to make certain the economic effects have not been missed. It treats as ''co-extensive'' other Federal and State requirements that may result in overlapping protection measures (*e.g.*, California Environmental Quality Act) for the plant. In some cases, however, non-habitat-related regulations will limit land use activities within critical habitat in ways that will directly or indirectly benefit *Allium munzii* or its habitat (*e.g.*, local zoning ordinances). These impacts were not considered to be ''co-extensive'' with *Allium munzii* listing or designation for two reasons. First, such impacts would occur even if *Allium munzii* were not listed. Second, we must be able to differentiate economic impacts solely associated with the conservation of *Allium munzii* and its habitat in order to understand whether the benefit of excluding any particular area from *Allium munzii* critical habitat outweighs the benefit of including the area.

The economic analysis distributes the cost of conserving *Allium munzii* habitat equally among the number of other listed species likely to co-exist with *Allium munzii* as indicated by the historical consultations. None of the past *Allium munzii* consultations focused solely on Munz's onion but rather on other listed animal species co-occurring in the area. Within a biological opinion that covers several species, we are unable to accurately segregate out the cost for an individual species from the rest of the species covered in the biological opinion.

Comment 5. A few commenters stated that the DEA failed to address the implications of the *Gifford Pinchot Task Force v. United States Fish and Wildlife Service* (USFWS), 378 F.3d 1059, 1069 (Ninth Circuit 2004) ruling on future *Allium munzii* conservation costs.

Our Response: The Service notes that a recent Ninth Circuit judicial opinion, *Gifford Pinchot Task Force* v. *USFWS*, has invalidated the Service's regulation defining destruction or adverse modification of critical habitat. The Service is currently reviewing the decision to determine what effect it (and to a limited extent *Center for Biological Diversity* v. *Bureau of Land Management* (Case No. C–03–2509–SI, N.D. Cal.)) may have on the outcome of consultations pursuant to section 7 of the Act.

Comment 6. A commenter stated that additional explanation should be provided concerning the reasons behind the cost variation for the three historical real estate projects involving Service consultation on *Allium munzii.*

Our Response. The EA estimates the historical costs associated with the *Allium munzii* conservation efforts on real estate development projects based on information contained within the three past consultations that included *Allium munzii* (Rancho Bella Vista, Sycamore Creek development, and the Warmington Murrieta Scott Road LLC subdivision). Each consultation addressed the impacts of the proposed action not only to *Allium munzii* but also to other listed species. The impacts to each project varied based on the amount of habitat being affected and the degree of impact. In general, projects that had to preserve more habitat had higher economic costs because the land could not be put to its highest economic use.

Comment 7. A commenter stated that the DEA overestimates the historical cost associated with the conservation of *Allium munzii* because it inappropriately assumes that the cost affiliated with the conservation of *Allium munzii* is equally weighted with the other covered species when in fact conservation efforts for animal species involve higher costs than plant species.

Our Response. While animal species may in fact involve higher level of monitoring and active management efforts, the DEA errs conservatively in order to make certain the past economic effects associated with the conservation of *Allium munzii* have not been understated.

Comment 8. A commenter stated that the $30,000 estimate for *Allium munzii*'s portion of the Western Riverside MSHCP preparation cost is an overestimation, because the section in the document addressing the plant is boilerplate rather than compiled from detailed research.

Our Response. The DEA estimates the portion of the MSHCP preparation cost attributable to *Allium munzii* by equally distributing the total cost of the MSHCP preparation among 145 species covered by the MSHCP. While other covered species may in fact involve higher level of research and documentation, the DEA errs conservatively in order to make certain economic effects have not been understated. Although this is a simplistic approach for estimating the historical coextensive cost for *Allium munzii*, we do not believe that the error introduced by this method will have a significant effect on our final critical habitat decision.

Comment 9. A commenter stated that the DEA fails to acknowledge any benefit of conserving a species that is threatened by extinction from

developments. The same commenter also requested that the final EA incorporate a quantitative estimate of benefits of open space since conservation of *Allium munzii* contributes to overall preservation of open space.

Our Response. Section 4(b)(2) of the Act requires the Secretary to designate critical habitat based on the best scientific data available after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. Our approach for estimating economic impacts includes both economic efficiency and distributional effects. The measurement of economic efficiency is based on the concept of opportunity costs, which reflects the value of goods and services foregone in order to comply with the effects of the designation (*e.g.*, lost economic opportunity associated with restrictions on land use). Where data are available, our analyses do attempt to measure the net economic impact. For example, the analysis recognizes the potential for benefits associated with the preservation of open space. It describes that in certain cases real estate development that effectively incorporates the *Allium munzii* habitat set-aside on-site might realize a value premium typically associated with additional open space. Any such premium will offset land preservation costs borne by landowners/developers. However, while this scenario remains a possibility, reliable data revealing the premium that the market places on nearby open space in Southern California is not readily available. Moreover, the value premium associated with habitat preservation is likely to be limited given that recreational uses associated with habitat preserves may be generally restricted to low-impact activities.

The value of open space, along with other ancillary benefits, reflects broader social values, which are not the same as economic impacts. While the Secretary must consider economic and other relevant impacts as part of the final decision-making process under section 4(b)(2) of the Act, the Act explicitly states that it is the government's policy to conserve all threatened and endangered species and the ecosystems upon which they depend. Thus we believe that explicit consideration of broader social values for the species and its habitat, beyond the more traditionally defined economic impacts, is not necessary as Congress has already clarified the social importance for us. As a practical matter, we note the difficulty in being able to develop credible estimates of such values as they are not readily observed through typical market transactions.

Comment 10. A commenter stated that the DEA should explain how future management costs of *Allium munzii* habitat were estimated given that management requirements have not been clearly identified by the Western Riverside MSHCP/Natural Community Conservation Plans (NCCP).

Our Response. The MSHCP budget reveals an average annual management cost of approximately $84 per acre, in 2004 dollars. Because the MSHCP does not list specific management requirements for *Allium munzii*, the Service relies on this overall per-acre cost to estimate future management cost for *Allium munzii.* We believe this to be a reasonable estimate to use in forecasting conservation costs.

Comment 11. A commenter stated that, contrary to a statement made in the DEA that not every acre in the habitat contains *Allium munzii* or the primary constituent elements of habitat, the essential habitats all have primary constituent elements by definition.

Our Response. This statement has been corrected in the EA.

Comments From States

Section 4(i) of the Act states, the Secretary shall submit to the State agency a written justification for her failure to adopt regulations consistent with the State agency's comments or petition. The California Department of Fish and Game (CDFG) did not provide comments on the proposed rule to designate critical habitat for *Allium munzii* or the draft economic analysis for critical habitat for *Allium munzii.* In the case of other proposed rules for critical habitat, CDFG has supported the exclusion of NCCPs/HCPs that covered the particular species of interest. Consistent with their previous comments on other critical habitat rules, we have excluded critical habitat for *Allium munzii* from lands within the Western Riverside County MSHCP and other approved HCPs. No State lands are designated as critical habitat for *Allium munzii.*

Summary of Changes From Proposed Rule

We are not including critical habitat along the eastern boundary of the Western Riverside County Unit because the area does not contain the primary constituent elements for *Allium munzii.* The soil maps indicate that the LEAPS transmission corridor crosses soils mapped as Cieneba-rock outcrop complex and the available information indicates that *Allium munzii* does not occur on this soil type. Thus, we have not included the LEAPS transmission corridor in the designation of critical habitat in the final rule. This revision has resulted in a reduction from the proposed critical habitat of 227 ac (92 ha) to 176 ac (71 ha) in the final rule.

Critical Habitat

Critical habitat is defined in section 3 of the Act 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. No specific areas outside the geographical area occupied by *Allium munzii* at the time of listing are designated as critical habitat in this final rule. The area designated as critical habitat (Elsinore Peak in the Cleveland National Forest) was described in the final listing rule (63 FR 54975).

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are 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. Such designation does not allow government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or

protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).) Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographic area occupied by the species at the time of listing. An area currently occupied by the species but that was not known to be occupied at the time of listing will likely be essential to the conservation of the species and, therefore, will be included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. They require Service 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 is generally the listing package for the species. Additional information sources include 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, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. 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.

Methods

As required by section 4(b)(1)(A) of the Act, we used the best scientific and commercial data available in determining areas that are essential to the conservation of *Allium munzii.* These included data from research and survey observations published in peer-reviewed articles and other documents, 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 were evaluated and considered in the development of the final designation for *Allium munzii.* We designated no areas outside of the geographic area presently occupied by the species.

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.

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.

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 are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and that may require special management considerations and protection. These 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, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific primary constituent elements or biological and physical features required for *Allium munzii* are derived from the biological needs of the species as described in the background section of the proposed critical habitat rule (69 FR 31569).

Space for Individual and Population Growth and Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements

Allium munzii is restricted to mesic clay soils in western Riverside County, California, along the southern edge of the Perris basin (primary constituent elements #1 and #2). 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. Clay soil associations include Altamont, Auld, Bosanko, Claypit and Porterville clay soil types. At least one population (North Domenigoni Hills) was reported by Bramlet in 1991 to be associated with pyroxenite outcrops instead of clay (CNDDB 2003). Rounded cobbles and boulders are embedded within clay, which has a sticky, adobe consistency when wet and large cracks when dry. *Allium munzii* is typically found on the more mesic sites within the clay deposits (Boyd 1988). These mesic areas

within 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.

The Western Riverside County Unit contains Bosanko clay soils identified as a clay soil series of sedimentary origin as well as Las Posas gravelly loam (identified as a soil series of sedimentary or igneous origin with a clay subsoil) at a suitable elevation for this species (primary constituent element #1 and #3). This unit is also within open native and non-native grassland plant communities (primary constituent element #1). The soils, aspect, elevation, and plant communities present in this unit provide space for individual and population growth. The soils, aspect, and elevation of the unit (primary constituent element #3) provide food, water, air, light, minerals and other nutritional and physiological requirements for *Allium munzii*.

Sites for Reproduction, Germination, or Pollination

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, the plant communities where *Allium 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 herbaceous annuals, such as *Harpagonella palmeri* (Palmer's grappling hook), *Chorizanthe polygonoides* var. *longispina* (knot-weed spine flower), *Achyrachaena mollis*, *Ancistrocarphus filagineus*, *Convolvulus simulans* (small-flowered morning-glory), *Erodium macrophyllum*, and *Microseris doulasii* spp. *Platycarpha* (small-flowered microseris), and herbaceous perennials, such as *Fritillaria biflora* (chocolate lily), *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). The plant communities within this unit provide sites for reproduction, germination, or pollination.

Disturbance, Protection, and the Historical Geographical Distributions

The area designated as critical habitat is within the Cleveland National Forest (see also *Western Riverside County Unit, Riverside County, California* for a description of this unit). This locality represents the southwesternmost and highest elevation occurrence of *Allium munzii*. The Elsinore Peak population is considered to be the most undisturbed and pristine of any of the known occurrences of this species (Boyd and Mistretta 1991) (primary constituent element #2). This population is estimated to be more than 1,000 plants and is ranked as a top conservation priority by a working group assembled by the California Department of Fish and Game (Mistretta 1993). The Forest Service developed the *Allium munzii* Species Management Guide to ensure that ''National Forest lands are managed to maintain viable populations of all native plants and animals'' (U.S. Forest Service 1992). Thus, this location represents a significant habitat that is protected from disturbance and is within the historical geographical distribution of this species.

Primary Constituent Elements for Allium munzii

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that primary constituent elements for *Allium munzii* are:

(1) Clay soil series of sedimentary origin (*e.g.*, Altamont, Auld, Bosanko, Claypit, Porterville), or clay lenses (pockets of clay soils) of such that 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 that 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) 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) 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); and,

(4) Within areas of suitable clay soils, microhabitats that are moister than surrounding areas because of (A) north or northeast exposure or (B) seasonally available moisture from surface or subsurface runoff.

All areas designated as critical habitat for Allium munzii are within the geographic area occupied by the species, were known to be occupied at the time of listing, and contain one or more primary constituent elements (*e.g.*, soil, associated plant community) essential for its conservation.

Criteria Used To Identify Critical Habitat

All areas known to support extant populations of *Allium munzii* are considered essential habitat for the species because they include those physical or biological features essential to the conservation of the species and which may require special management considerations or protection. *Allium munzii* is known only from a narrow geographical range and, within that range, is limited to clay soils. Currently 16 populations of this plant are known to exist. Extant populations of *Allium munzii* occur at the following locations: (1) Southern border of Harford Springs County Park and extending onto private lands across Ida Leona Road in the Gavilan Hills (population estimates from surveys between 1986 and 1998 range from 2,000 to 51,000 plants) (EO 2); (2) private land immediately adjacent to the Sycamore Creek development, northwest of I–15 and Indian Truck Trail Road, in Temescal Canyon

(estimate of approximately 300 plants) (EO 3 and 8); (3) Barry Jones Wetland Mitigation Bank (Skunk Hollow Wetland Conservation Bank) (approximately 250 plants) (EO 4); (4) private land on the south flank of Upper Dawson Canyon in the Gavilan Hills (estimate of approximately 2,000 plants) (EO 5); (5) private land on the south side of Alberhill Mountain, west of I–15, in the City of Lake Elsinore (estimate of approximately 7,700 plants) (EO 6); (6) private land east of I–15, west of De Palma's Italian Village, between Indian Canyon and Horsethief Canyon (estimate of approximately 1,000 plants) (EO7); (7) Lake Mathews—Estelle Mountain Reserve northwest of the Estelle Mountain summit in the Gavilan Hills (estimate of approximately 2,000 plants based on a 1986 survey) (EO 9); (8) Southwestern Riverside County Multi-Species Reserve (SRCMSR) in the north Domenigoni Hills on either side of Old Mine Road (estimate of approximately 440 plants) (EO 10); (9) south slope of Bachelor Mountain, along a maintenance road associated with Lake Skinner Dam (population estimates from surveys conducted between 1989 and 1992 range from 200 and 4,400 plants) (EO 11); (10) south slope of Bachelor Mountain, about a mile east of the population described above (#9) (estimate of approximately 150 plants) (EO 12); (11) Elsinore Peak, west of the City of Lake Elsinore, on the Cleveland National Forest and adjacent State of California lands (population estimate of more than 1,000 plants) (EO 13); (12) west of Lindenberger Road, 0.8 miles south of Scott Road, southeast of Sun City on a 36.3-acre (15 ha) parcel and on a 65.5-acre (27 ha) associated with the Warmington development (estimate of approximately 1,000 plants prior to project impacts) (EO 14); (13) northern boundary of the City of Lake Elsinore, within the North Peak Specific Plan Area on lands purchased and conserved by Riverside County (estimate of several thousand plants) (EO 15); (14) private lands northeast of Alberhill, 1.0 miles north of I–15 and 1.2 miles northeast of the intersection of Lake Street and I–15 (estimate of approximately 300 plants) (EO 16); (15) land owned by Metropolitan Water District of Southern California on the north slope of Bachelor Mountain (estimate of 2 plants) (EO 17); and (16) Temescal Valley, west of I–15, between Nichols Road and Riverside Drive, on a low hill adjacent to Collier Marsh (Alberhill Marsh) and near Temescal Wash (population estimate not known) (EO 18).

We are designating critical habitat on lands we have determined were occupied at the time of listing and contain the primary constituent elements and those additional areas found to be essential to the conservation of *Allium munzii*.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. We often exclude non-Federal public lands and private lands that are covered by an existing operative HCP and executed implementation agreement (IA) under section 10(a)(1)(B) of the Act from designated critical habitat because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act. All but one occurrence of *Allium munzii* are in areas subject to: (1) Management plans related to approved HCPs (Rancho Bella Vista and SKR HCPs); (2) existing PQP lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County MSCHP; and (3) conservation strategies approved through the section 7 consultation process that have provided protection, long-term management, and funding to conserve *Allium munzii*.

When determining critical habitat boundaries, we made every effort to avoid designating developed areas such as buildings, paved areas, radio and communication towers, and other structures that lack PCEs for *Allium munzii*. Any such structures inadvertently left inside designated critical habitat boundaries are not considered part of the designated unit. This also applies to the land on which such structures sit directly. Therefore, Federal actions limited to these areas would not trigger section 7 consultations, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

A brief discussion of the area designated as critical habitat is provided in the description below. Additional detailed documentation concerning the essential nature of this area is contained in our supporting record for this rulemaking.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be essential for conservation may require special management considerations or protections. 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 rule, *Allium munzii* and its habitat are threatened by a number 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 *Allium 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.

The Western Riverside County Unit is entirely on Federal lands within the Cleveland National Forest (Cleveland NF). The Cleveland NF has developed a Species Management Guide for *Allium munzii* (*Allium munzii*) (Guide) (U.S. Forest Service 1992). The Guide, plus subsequent documentation from Cleveland NF (U.S. Forest Service 2002), describes threats to *Allium munzii* from off-road vehicles, competition from non-native plants, wildfire management, development, habitat fragmentation, and species viability. The ongoing and pervasive nature of these threats demonstrates that the PCEs for *Allium munzii* require ongoing special management considerations or protection within this unit. For example, maintaining the integrity of the clay soils (primary constituent elements #1 and #2) to support *Allium munzii* requires the ongoing efforts by the Forest Service to control unauthorized off-road vehicle use and grazing in habitats occupied by *Allium munzii*. Grazing would have unacceptably high impacts on *Allium munzii* through trampling and compaction of the soil, and enhancement of non-native grass species populations (U.S. Forest Service 1992). Protecting surrounding lands from development, grading, and erosion that maintain the mesic microhabitat conditions require continued management oversight by the Forest Service (primary constituent element

#3). In addition, fire management to sustain *Allium munzii* is under Forest Service control.

The Guide includes a large number of management actions designed to reduce these specific threats to *Allium munzii* within the Cleveland NF: (1) Future development at the Elsinore Peak electronic site will be designed to avoid adverse effects to *Allium munzii*; (2) illegal off-road vehicle activity in the Elsinore Peak area of the Trabuco Ranger District and other areas of *Allium munzii* habitat, as needed, will be eliminated through construction of barriers and fencing; (3) future management of the slopes of Elsinore Peak and other areas of *Allium munzii* habitat allows minimal development; (4) fire management of habitat includes a number of specific prescriptions (*e.g.*, related to ''free-burn'' areas, fuelbreaks and fire suppression activities, earth-moving on slopes, location of fire camps, and site rehabilitation after fire; (5) the parcel of land in Section 36 that supports *Allium munzii* will be a high priority target for acquisition in future land exchanges; (6) the Cleveland NF will confer with California Department of Fish and Game and the Service regarding possible outplantings of *Allium munzii* and monitor outplantings; and (7) no new grazing allotments or special use permits for grazing will be issued for the Elsinore Peak area.

The occurrences on non-Federal lands that are: (1) Within approved HCPs (Rancho Bella Vista and SKR HCPs); (2) on existing PQP lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County MSCHP; and (3) on lands where conservation strategies approved through the section 7 consultation process have provided protection, long-term management, and funding to conserve *Allium munzii* may require special management considerations or protection. Occurrences within the Western Riverside County MSHCP are threatened by competition with non-native plant species, clay mining, off-road vehicle use, and disking activities. The Western Riverside County MSHCP proposes that the Reserve Managers will manage known and future occurrences of this species to minimize these threats, and the persistence of 75 percent of the known locations will be monitored every 8 years. Other management actions described in the Western Riverside County MSHCP include addressing competition with non-native plant species, clay mining, off-road vehicle use, and disking activities.

The Rancho Bella Vista HCP provides both interim and long-term management to address threats to PCEs from development, invasive plants, trampling and fire. The SKR HCP provides for the establishment of core reserves, adaptive management of the reserve, and management and restoration of habitats for the Stephens' kangaroo rat. The core preserves and management plans reduce threats to the PCEs for Munz's onion by protecting habitat and limiting fragmentation of habitat from future urban and agricultural development; controlling trespass and unauthorized uses of preserve lands by the installation of barriers, gates, signage, and fences; fire management plans including fire break management, fire controls, and fire suppression logistics; and controlling recreation. Protecting habitat will maintain and minimize disturbances to suitable soils and vegetation communities associated with *Allium munzii.* Access and recreation management will protect occurrences of *Allium munzii* from impacts by off-highway vehicles and trampling. The fire management planning will avoid occurrences and maintain the vegetation communities associated with *Allium munzii.*

The occurrence at the Sycamore Creek development (EO 3 and EO 8) was threatened by activities that would disturb or remove vegetation and Altamont clay soils. The occurrence on private lands west of Lindenberger Road (EO 14) was faced with similar threats to vegetation and soil disturbance and removal. Prior to the conservation of this occurrence, this population may have been affected by light grazing and/or dry land farming (CNDDB 2003).

Critical Habitat Designation

Designated 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) of the Act. As a result, only Federal lands are designated as critical habitat. Table 1 depicts areas determined to be essential to the *Allium munzii*, lands being excluded from critical habitat pursuant to section 4(b)(2) of the Act, and the approximate area designated as critical habitat for the *Allium munzii* by land ownership.

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

	Federal*	Local/state	Private	Total
Essential habitat	176 ac (71 ha)	73 ac (30 ha)	995 ac (403 ha)	1,244 ac (503 ha).
Excluded under 4(b)(2)	0 ac (0 ha)	73 ac (30 ha)	995 ac (403 ha)	1,068 ac (433 ha).
Designated critical habitat	176 ac (71 ha)	0 ac (0 ha)	0 ac (0 ha)	176 ac (71 ha).

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

Western Riverside County Unit, Riverside County, California (176 ac (71 ha))

As discussed above, the lands that are: (1) Approved HCPs (Rancho Bella Vista and SKR HCPs); (2) on existing PQP lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County MSCHP; and (3) on lands where conservation strategies approved through the section 7 consultation process have provided protection, long-term management, and funding to conserve *Allium munzii* currently, or will, provide for the conservation of all known occurrences of *Allium munzii.* Only the habitat located on U.S. Forest Service lands is designated as critical habitat. This area was occupied at the time of listing, contains the primary constituent elements, is essential to the conservation of the species, requires special management, and the activities of Federal agencies are not covered under the Western Riverside County MSHCP 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.*

Designated 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 primary constituent elements discussed above. The habitat is

characterized by mixed native/non-native grassland and chaparral vegetation. *Allium munzii* occurs primarily in the grassland and the transitional vegetation between the grassland and chaparral. The soils are primarily mapped as Bosanko clay, Cieneba-blasingame-rock outcrop complex, and Cieneba-rock outcrop complex. The stands of *Allium 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. haematochition*, *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 County MSHCP. All essential habitat on non-Federal lands within the Western Riverside County MSHCP Plan Area is excluded from critical habitat under section 4(b)(2) of the Act. Only the essential habitat that may require special management considerations or protection on Forest Service land is designated as critical habitat.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.2, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: Alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' We are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

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 the agency in eliminating conflicts that may be caused by the proposed action. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). The conservation recommendations in a conference report are advisory.

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

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

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

Federal activities that may affect *Allium munzii* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Highway Administration or Federal Emergency Management Agency funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the *Allium munzii.* Federal activities that, when carried out, may adversely affect critical habitat for the *Allium munzii* include, but are not limited to:

(1) Actions that would permanently alter the function of the underlying clay soil layer to hold and retain water. Damage or alternation of the clay soil layer would eliminate the function of this primary constituent element for providing space for individual and population growth and for normal behavior; water and physiological requirements; and sites for breeding, reproduction, and pollination. Actions that could permanently alter the function of the underlying soil layer to hold and retain water include, but are

not limited to, mining, grading or earthmoving work that disrupts or rips into the soil layer.

(2) Actions that would permanently degrade the plant community or the mesic microhabitats. Degradation of the plant community or microhabitat would reduce the ability of these primary constituent elements to provide space for individual and population growth; water and physiological requirements; and sites for breeding, reproduction, and pollination. Actions that could degrade these elements include, but are not limited to, erosion of sediments from fill material, and soils disturbed by grading, earthmoving work, off-highway vehicle use, grazing, vegetation removal, or road construction within the watershed of the mesic microhabitats.

(3) 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 water flow 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.*

(4) 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.

All lands designated 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 *Allium 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 N.E. 11th Ave, Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

Exclusions Under 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 (HCPs) and Other Approved Conservation Strategies

Section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic 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.

Under section 4(b)(2) of the Act, we have excluded critical habitat from non-Federal lands within: (1) Approved HCPs (Rancho Bella Vista and SKR HCPs); and (2) existing PQP lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County MSCHP. We believe the benefits of excluding lands within these legally operative HCPs from the final critical habitat designation will outweigh the benefits of including them.

In addition, we have excluded three areas where conservation strategies approved through the section 7 consultation process have provided protection, long-term management, and funding to conserve *Allium munzii.* Again, we believe the benefits of excluding these lands from the final critical habitat designation outweigh the benefits of including them. The analysis which led us to the conclusion that the benefits of excluding these areas exceed the benefits of designating them as critical habitat, and will not result in the extinction of the species, follows.

Allium munzii is a covered species under the Western Riverside County MSHCP. The Western Riverside County MSHCP has three conservation objectives to conserve and monitor *Allium munzii* populations. First, the MSHCP Conservation Area includes at least 21,260 acres of modeled habitat (grassland, coastal sage scrub, chaparral and peninsular juniper woodland between 300 and 1,000 m in the Riverside Lowlands and Santa Ana Mountains Bioregions). This will

include at least 2,070 acres of clay soils: Altamont (190 acres), Auld (250 acres), Bosanko (600 acres), Claypit (100 acres), and Porterville (930 acres) soils underlying the suitable habitat. Second, the MSHCP Conservation Area includes at least 13 occurrences within Temescal Valley and the southwestern portion of the Plan Area, including the following Core Areas: Harford Springs Park, privately owned EO 5 population in Temescal Valley, Alberhill, De Palma Rd, Estelle Mountain, Domenigoni Hills, Lake Skinner, Bachelor Mountain, Elsinore Peak, Scott Road, North Peak, and northeast of Alberhill (EO 16). Third, as part of the Western Riverside County MSHCP, surveys will be conducted for *Allium munzii* as part of the project review process for public and private projects within the Narrow Endemic Plant Species survey area where suitable habitat is present (see Narrow Endemic Plant Species Survey Area Map, Figure 6–1 of the MSHCP, Volume I). *Allium munzii* located as a result of survey efforts shall be conserved in accordance with procedures described within Section 6.1.3 of the MSHCP, Volume I. In addition, the MSHCP proposes that the Reserve Managers will manage known and future occurrences of this species for competition with non-native plant species, clay mining, off-road vehicle use, and disking activities and that the persistence of 75 percent of the known locations will be monitored every 8 years. Other management actions described in the Western Riverside County 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 Rancho Bella Vista HCP provides both interim and long-term management for *Allium munzii*. Interim management actions were initiated upon approval of the HCP and included the maintenance of existing access controls, cleanup of conserved habitat areas where unauthorized trash dumping occurred, development of an interim management plan, and implementation of project-specific impact minimization and mitigation. Long-term management included transfer of the open space to an approved management agency, assessment of exotic plants, access control, development of a fire management plan and public information programs and materials, monitoring of sensitive plants and animals, and providing annual monitoring reports to the Service.

The SKR HCP provides for the establishment of core reserves, adaptive management of the core reserves to ensure the permanent conservation, preservation, restoration of SKR and SKR habitats, and limiting projects within the core reserves. While these lands were conserved for the Stephens' kangaroo rat, the core preserves and management plans also provide a conservation benefit to *Allium munzii* by reducing threats to PCEs by ground disturbance, alteration of vegetation, and invasive plants.

We have excluded three areas where conservation strategies approved through the section 7 consultation process have provided protection, long-term management, and funding to conserve *Allium munzii*. The strategy for the Sycamore Creek Development includes avoidance, preservation, and relocation of Altamont clay soils within an area protected by a conservation easement, and interim and long-term management and funding. To address effects to *Allium munzii*, the conservation strategy includes measures to avoid and preserve 18.3 acres of Altamont clay soils on site in the conservation easement; relocate additional clay soils from the development area to the conservation easement for the purposes of restoring *Allium munzii* and Riversidean sage scrub; release additional clay soils for passive recolonization through removal of the paved surface of De Palma Road; relocate occupied clay soils within areas proposed for development to the wildlife corridor and/or other suitable conserved habitat; provide a funding mechanism to provide management of the on site conservation areas for *Allium munzii*; and prohibit the planting of invasive plant species adjacent to the corridor. The strategy for Southern California Gas Company includes the acquisition of a 36.3-acre site to conserve habitat for *Allium munzii* that includes 24.5 acres of Riversidean sage scrub and 11.82 acres of agricultural land, funding of a management endowment that assures the management of the 36.32-acres conservation area in perpetuity, and a preliminary and long-term management plan. The strategy for the Warmington Project includes avoidance and on-site conservation of the known occurrence of *Allium munzii* and adjacent potential habitat and the transfer of this 65.5-acre parcel of land to Riverside County Parks for protection and management. We concurred with the U.S. Army Corps of Engineers that the proposed project would not adversely affect *Allium munzii* because the applicant agreed to protect and conserve the known occurrence of *Allium munzii* and adjacent potential habitat in the south-central, 65.5-acre portion of the proposed site. In addition, Riverside County Parks has agreed to protect and manage this parcel for conservation.

(1) Benefits of Inclusion

A benefit of including an area as critical habitat designation is the education of landowners and the public regarding the potential conservation value of these areas. The inclusion of an area as critical habitat may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation values for certain species. However, we believe that this educational benefit has largely been achieved for *Allium munzii*. The public outreach and environmental impact reviews required under NEPA for the Rancho Bella Vista and SKR HCPs and Western Riverside County MSHCP provided significant opportunities for public education regarding the conservation of the areas occupied by *Allium munzii*. For instance, the Western Riverside County MSHCP identifies specific populations of *Allium munzii* for conservation. Therefore, we believe the education benefits which might arise from a critical habitat designation have largely already been generated as a result of the significant outreach for the Rancho Bella Vista and SKR HCPs and Western Riverside County MSHCP. Moreover, in our final listing rule (63 FR 54975), we noted that, where the species occurs, landowners are aware of its presence and status since all occurrences were known, including the populations on Forest Service land in the Cleveland National Forest, Harford Springs County Park, and lands managed by the Riverside County Habitat Conservation Agency.

The areas excluded are currently occupied by the species. If these areas were designated as critical habitat, any actions with a Federal nexus that might adversely modify the critical habitat would require a consultation with us, as explained above, in the section of this notice entitled ''Effects of Critical Habitat Designation.'' However, inasmuch as this area is currently occupied by the species, consultation for activities with a Federal nexus which might adversely impact the species, including habitat modification, would be required even without the critical habitat designation.

The Western Riverside County MSHCP provides a greater level of management for *Allium munzii* on private lands than would designation of critical habitat on private lands. Thus, consultation for Federal activities that

might adversely impact the species would be required even without the critical habitat designation. Moreover, inclusion of these non-Federal lands as critical habitat would not necessitate additional management and conservation activities that exceed the approved HCPs and their implementing agreements. The lands conserved by conservation strategies approved through the section 7 consultation process have no further Federal discretionary action and critical habitat would not result in the reinitiation of a section 7 consultation.

In summary, we believe that designating critical habitat on any non-Federal lands that are: (1) Within approved HCPs; (2) on existing PQP lands, proposed conceptual reserve design lands, and on lands targeted for conservation within the Western Riverside County MSCHP; and (3) on lands where conservation strategies approved through the section 7 consultation process have provided protection, long-term management, and funding to conserve *Allium munzii* would provide little additional Federal regulatory benefits for the species. Under the *Gifford Pinchot* decision, critical habitat designations may provide benefits to recovery of a species different than was previously believed, but it is not possible to quantify this at present. Because the excluded areas are occupied by the species, there must be consultation with the Service over any action with a Federal nexus that may affect these populations. The additional educational benefits that might arise from critical habitat designation have been largely accomplished through the process of public review and comment on the environmental impact documents which accompanied the development of the Rancho Bella Vista and SKR HCPs and Western Riverside County MSHCP.

(2) Benefits of Exclusion

The exclusion of critical habitat from non-Federal lands that are: (1) Within approved HCPs (Rancho Bella Vista and SKR HCPs); (2) on existing PQP lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County MSCHP; and (3) on lands where conservation strategies approved through the section 7 consultation process have provided protection, long-term management, and funding to conserve *Allium munzii* would benefit permit holders and landowners because they would avoid any additional regulatory costs related to complying with the critical habitat designation. Since most of the occurrences of *Allium munzii* on non-Federal lands are within the three categories stated immediately preceding, available funding would be directed towards conservation rather than toward complying with critical habitat requirements that would not provide the species with additional benefits. Excluding these lands from critical habitat would ensure that funding remains available for implementation, rather than spending limited resources on ensuring compliance with the regulatory requirements potentially triggered by a critical habitat designation that would not be likely to provide additional benefit to the species.

We also believe that excluding these lands, and thus helping landowners avoid the additional costs that would result from the designation, will foster continued cooperation and partnership needed for implementation, and also that it will contribute to a more positive climate for HCPs and other active conservation measures that provide greater conservation benefits than would result from designation of critical habitat. In our final listing rule (63 FR 54975), we noted that the designation of critical habitat on lands owned by the Riverside County Habitat Conservation Agency would not change the way those lands are managed or require specific management actions to take place, and designation could be detrimental because of potential landowner misunderstandings about the real effects of critical habitat designation on private lands.

(3) The Benefits of Exclusion Exceed the Benefits of Inclusion

We do not believe that the benefits from the designation of critical habitat for lands we have decided to exclude—a limited educational benefit and very limited regulatory benefit, which are largely otherwise provided for, as discussed above—exceed the benefits of exclusion that would allow for the avoidance of increased regulatory costs and would provide little or no benefit and a potential reduction in available implementation funding for conservation actions with partners.

We also believe that excluding these lands, and thus helping landowners avoid the additional costs that would result from the designation, will contribute to a more positive climate for HCPs and other active conservation measures which provide greater conservation benefits than would result from designation of critical habitat. We therefore find that the benefits of excluding these areas from this designation of critical habitat outweigh the benefits of including them in the designation.

(4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of the three categories—(1) lands within approved HCPs (Rancho Bella Vista and SKR HCPs); (2) existing PQP lands, proposed conceptual reserve design lands, and lands targeted for conservation within the Western Riverside County MSCHP; and (3) lands where conservation strategies approved through the section 7 consultation process have provided protection, long-term management, and funding to conserve *Allium munzii*—will not result in extinction of the species since these lands will be conserved and managed for the benefit of *Allium munzii*. Any actions with a Federal nexus that might adversely affect *Allium munzii* must undergo a consultation with the Service under the requirements of section 7 of the Act. The exclusions leave these protections unchanged. In addition, as discussed above, there are a substantial number of HCPs and other active conservation measures underway for the species, which provide greater conservation benefits than would result from a designation. There is accordingly no reason to believe that these exclusions would result in extinction of the species.

Economic Analysis

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

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for public review on December 1, 2004 (69 FR 69878). We accepted comments on the draft analysis until January 3, 2005.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for *Allium munzii*. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding

particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be coextensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis because they are considered to be part of the regulatory and policy baseline.

Only U.S. Forest Service lands at Elsinore Peak within the Cleveland National Forest were designated as critical habitat in the final rule. The economic analysis projected $33,849 in cost impacts from 2005 to 2025 from the designation of critical habitat on U.S. Forest Service lands. The analysis estimated that the future costs associated with conservation efforts for *Allium munzii* (prescribed burning, fence replacement, fencing electric tower site, and monitoring) by the U.S. Forest Service was $26,146. The administrative cost to the U.S. Forest Service associated with future section 7 consultations was estimated at $7,704. All other lands identified as essential habitat in the proposed rule were not designated as critical habitat in the final rule. No lands were excluded from critical habitat based on the economic impact under section 4(b)(2) of the Act.

The final economic analysis and supporting documents are included in our administrative record and may be obtained by contacting U.S. Fish and Wildlife Service, Branch of Endangered Species (see **ADDRESSES** section) or for downloading from the Internet at *http://carlsbad.fws.gov*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. As explained above, we prepared an economic analysis of this action. We used 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. We also used it to help determine whether to exclude any area from critical habitat, as provided for under section 4(b)(2), if we determine that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless we determine, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

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

Under the Regulatory Flexibility Act (RFA) (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 effect 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 an 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 statement of factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA also amended the RFA to require a certification statement.

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; as well as small businesses. 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 if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the 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.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect *Allium munzii*. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

The draft economic analysis (September 22, 2004) predicted potential costs for both lands included in the final designation and proposed for exclusion. In this final designation, as in the proposed designation, only U.S. Forest Service lands at Elsinore

Peak within the Cleveland National Forest were designated as critical habitat in the final rule; all other lands, namely private lands, have been excluded. Based on this analysis, it was determined that the total future impacts cost of the critical habitat designation to the Forest Service is $33,849, and the cost of past impacts is $9,101. In addition, it was projected that the Forest Service would incur an additional $7,704 in administrative costs for project modifications to forest management activities, such as access control (fencing and gating) and prescribed burning for *Allium munzii* conservation efforts.

The special permit holders for the electric tower site include Riverside County, Spectrasite Communications, Inc., Comcast Corporation, and Elsinore Peak Facility Corporation. Of the four special permit holders, Elsinore Peak Facility Corporation is the only small entity. With annual revenue of $150,000, the potential impact to this small business is $250 to $1,000 (in 1 year) and represents 0.2 to 0.4 percent of the revenue. No significant impact to small entities will likely result from this final designation of critical habitat. As such, we are certifying that this designation of critical habitat would not result in a significant impact on a substantial number of small entities and that a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 with respect to 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 final rule to designate critical habitat for *Allium munzii* is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required. We have not designated critical habitat on U.S. Forest Service lands that fall within the LEAPS corridor. Our analysis indicates that the primary constituent elements are not present along the easternmost boundary of the proposed critical habitat unit and, therefore, those lands have not been designated as critical habitat.

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:

(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, 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; 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 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.

(b) We do not believe that this rule will 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. As such, Small Government Agency Plan is not required.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by *Allium munzii* imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these 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 Office of the Solicitor has determined that the 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 are designating critical habitat in accordance with the provisions of the Endangered Species Act. This final 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 rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. 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

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit [*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (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, and the Department of 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 *Allium munzii* has not been designated 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.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as follows:

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, amend paragraph (a) by adding an entry 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 (pockets of clay soils) of such that 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'' that 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 that 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) 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) 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); and,

(iv) Within areas of suitable clay soils, microhabitats that are moister than surrounding areas because of (A) north or northeast exposure or (B) seasonally available moisture from surface or subsurface runoff.

(3) Critical habitat for *Allium munzii* does not include existing features and structures, such as buildings, roads, aqueducts, railroads, airport runways, radio and communication towers, 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; 468700, 3718200; 468700, 3717800; 468850, 3717800; 468850, 3717700; 468800, 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:

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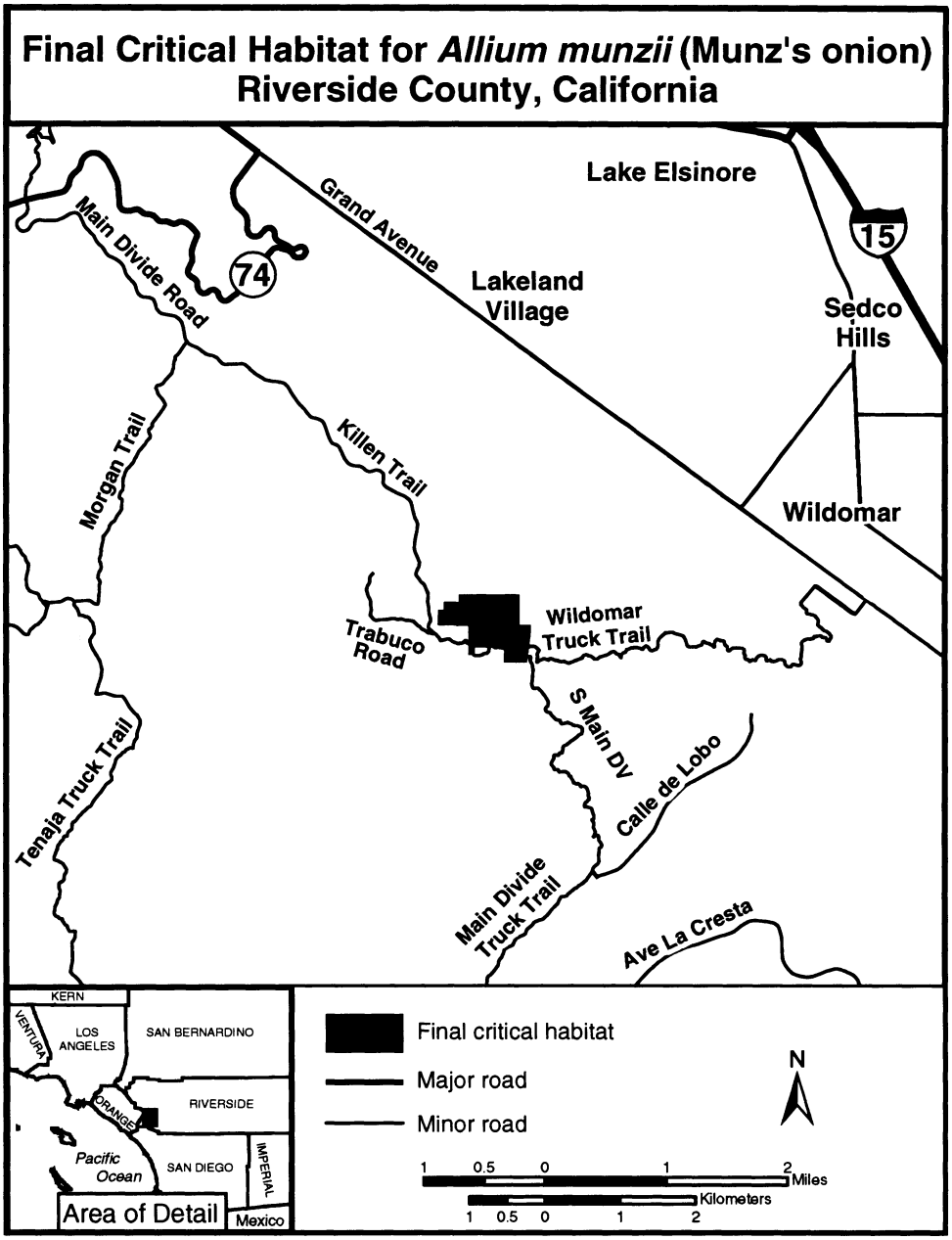

Dated: May 31, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–11167 Filed 6–6–05; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 050209033–5033–01; I.D. 053105G]

RIN 0648–AS97

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Trip Limit Reduction for Gulf of Mexico Grouper Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason action.

SUMMARY: NMFS reduces the combined trip limit for the commercial shallow-water and deep-water grouper fisheries in the exclusive economic zone of the Gulf of Mexico to 7,500 lb (3,402 kg) per trip. The intended effect of trip limit reduction is to moderate the rate of harvest of the available quotas and, thereby, reduce the adverse social and economic effects of derby fishing, enable more effective quota monitoring, and reduce the probability of overfishing.

DATES: Effective 12:01 a.m., local time, June 9, 2005, through December 31, 2005, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Phil Steele, telephone: 727–824–5305, fax: 727–824–5308, e-mail: *Phil.Steele@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for reef fish is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) that was prepared by the Gulf of Mexico Fishery Management Council. This FMP was approved by NMFS and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622. Regulations at 50 CFR 622.44(g)(1)(ii) require NMFS to reduce the commercial trip limit for Gulf deep-water and shallow-water grouper, combined, to 7,500 lb (3,402 kg) if on or before August 1 more than 50 percent of either the shallow-water grouper quota or red grouper quota is reached or is projected to be reached. Based on current statistics, NMFS has determined more than 50 percent of the 5.31 million-lb (2.41 million-kg) commercial quota for red grouper will be reached on June 8, 2005. Accordingly, NMFS is reducing the combined trip limit for deep-water grouper (misty grouper, snowy grouper, yellowedge grouper, warsaw grouper, and speckled hind) and shallow-water grouper (black grouper, gag, red grouper, yellowfin grouper, scamp, yellowmouth grouper, rock hind, and red hind) to 7,500 lb (3,402 kg) per trip in the Gulf of Mexico exclusive economic zone effective 12:01 a.m., local time, on June 9, 2005, through December 31, 2005, unless changed by further notification in the **Federal Register**.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the trip limit reduction. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.44(g)(1)(ii) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: June 1, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–11290 Filed 6–2–05; 2:30 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 050317076–5145–02; I.D. 030405C]

RIN 0648–AT01

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quota Specifications and General Category Effort Controls

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS announces the final initial 2005 fishing year specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quotas for each of the established domestic fishing categories and to set General category effort controls. This action is necessary to implement recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: The final rule is effective July 7, 2005 through May 31, 2006.

ADDRESSES: Supporting documents, including the environmental assessment (EA), final Regulatory Flexibility Act analysis, and regulatory impact review, are available by sending your request to Dianne Stephan, Highly Migratory Species (HMS) Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, One Blackburn Dr., Gloucester, MA 01930; Fax: 978–281–9340. These documents are also available from the HMS Management Division Web site at *http://www.nmfs.noaa.gov/sfa/hmspg.html* or at the Federal e-Rulemaking Portal: *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Dianne Stephan at (978) 281–9260 or email *Dianne.Stephan@noaa.gov.*

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed under the dual authority of the Magnuson-Stevens Act and ATCA. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate, to implement ICCAT recommendations. The authority to issue regulations under