VI. Statutory and Executive Orders Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rulemaking does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

WDNR did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an environmental justice analysis, as is described above in section V. titled, ''Environmental Justice Considerations.'' The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 13, 2024.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2024–05783 Filed 3–18–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2023–0102; FXES1111090FEDR–245–FF09E21000]

RIN 1018–BF72

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Bushy Whitlow-Wort and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the bushy whitlow-wort (*Paronychia congesta*), a perennial herbaceous plant species from northwestern Jim Hogg County in south Texas, as an endangered species under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the bushy whitlow-wort. After a review of the best available scientific and commercial information, we find that listing the species is warranted. We also propose to designate critical habitat for the bushy whitlow-wort under the Act. In total, approximately 41.96 acres (16.98 hectares) in Jim Hogg County, Texas, fall within the boundaries of the proposed critical habitat designation. We announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for bushy whitlow-wort. If we finalize this rule as proposed, it would extend the Act's protections to the species and its designated critical habitat.

DATES: We will accept comments received or postmarked on or before May 20, 2024. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by May 3, 2024.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R2–ES–2023–0102, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule

box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R2–ES–2023–0102, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

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

Availability of supporting materials: Supporting materials, such as the species status assessment report, are available at *https://www.regulations.gov* at Docket No. FWS–R2–ES–2023–0102. For the proposed critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file for this critical habitat designation and are available at *https://www.regulations.gov* at Docket No. FWS–R2–ES–2023–0102.

FOR FURTHER INFORMATION CONTACT: Chuck Ardizzone, Field Supervisor, Texas Coastal Ecological Services Field Office, 17629 El Camino Real, Suite 211, Houston, TX 77058; telephone 281–286–8282. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. In compliance with the Providing Accountability Through Transparency Act of 2023, please see Docket No. FWS–R2–ES–2023–0102 on *https://www.regulations.gov* for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act (16 U.S.C. 1531 *et seq.*), a species warrants listing if it meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range). If we determine that a species warrants listing, we must list the species promptly and designate the species' critical habitat to the maximum extent prudent and determinable. We have determined that the bushy whitlow-wort meets the Act's definition of an endangered species; therefore, we are proposing to list it as such and proposing a designation of its critical habitat. Both listing a species as an endangered or threatened species and making a critical habitat designation can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. We propose to list the bushy whitlow-wort as an endangered species under the Act, and we propose the designation of critical habitat for the species.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We have determined that the bushy whitlow-wort is endangered due to threats from wind energy development (Factor A) and the demographic and genetic consequences of low population redundancy and small population sizes (Factor E).

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

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for nutrition, reproduction, or pollination;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns and the locations of any additional populations of this species;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Threats and conservation actions affecting the species, including:

(a) Factors that may be affecting the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors;

(b) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species; and

(c) Existing regulations or conservation actions that may be addressing threats to this species.

(3) Additional information concerning the historical and current status of this species.

(4) Specific information on:

(a) The amount and distribution of bushy whitlow-wort habitat;

(b) Any additional areas that should be included in the critical habitat designation because they (i) are occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection, or (ii) are unoccupied at the time of listing and are essential for the conservation of the species;

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

(d) Whether occupied areas are adequate for the conservation of the

species. We seek this information to help us evaluate the potential to include areas not occupied at the time of listing in the critical habitat designation. Please provide specific information regarding whether or not unoccupied areas would, with reasonable certainty, contribute to the conservation of the species and contain at least one physical or biological feature essential to the conservation of the species. We also seek comments or information regarding whether areas not occupied at the time of listing qualify as habitat for the species.

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

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

(7) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts and any additional information regarding probable economic impacts that we should consider.

(8) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. If you think we should exclude any additional areas, please provide information supporting a benefit of exclusion.

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

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

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made solely on the basis of the best scientific and commercial data available, and section 4(b)(2) of the Act directs that the Secretary shall designate critical habitat on the basis of the best scientific data available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

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

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

Our final determinations may differ from this proposal because we will consider all comments we receive during the comment period as well as any information that may become available after this proposal. Based on the new information we receive (and, if relevant, any comments on that new information), we may conclude that the species is threatened instead of endangered, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. For critical habitat, our final designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, or may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion and exclusion will not result in the extinction of the species. In our final rule, we will clearly explain our rationale and the basis for our final decisions, including why we made changes, if any, that differ from this proposal.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

We recognized the bushy whitlow-wort as a candidate for listing under the Act in 1975 (40 FR 27824; July 1, 1975) and 1985 (50 FR 39526; September 27, 1985). The species was removed from the candidate list twice, in 1980 (45 FR 82480; December 15, 1980) and 2006 (71 FR 53756; September 12, 2006), due to insufficient information about its biological vulnerability and threats.

In 2007, we received a petition to list 475 species, including bushy whitlow-wort, in the southwestern United States as endangered or threatened under the Act. In 2009, in response to this petition, we published a 90-day finding that the petitioned action may be warranted (74 FR 66866; December 16, 2009). Therefore, we initiated review of the status of the species to determine if the petitioned action is warranted.

Peer Review

A species status assessment (SSA) team prepared an SSA report for the bushy whitlow-wort. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species.

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we solicited independent scientific review of the information contained in the bushy whitlow-wort SSA report. We sent the SSA report to eight independent peer reviewers and received no responses. We did, however, receive one review from Texas Parks and Wildlife Department, which provided information on wind turbines near bushy whitlow-wort populations. This information prompted us to reevaluate the immediacy of the threat of wind development, as further discussed below.

I. Proposed Listing Determination

Background

The SSA report (USFWS 2023, pp. 1–7) presents a thorough review of the taxonomy, life history, and ecology of bushy whitlow-wort (*Paronychia congesta*).

Bushy whitlow-wort is a perennial herbaceous plant in the carnation family (*Caryophyllaceae*) that has only been found in a very small area of northwestern Jim Hogg County in south Texas. The Texas Parks and Wildlife Department's (TPWD's) Natural Diversity Database (TXNDD) maintains geographic and population data of bushy whitlow-wort and other plant and animal species of conservation concern in Texas. These data are organized by standard geographical units for populations and habitats called ''element occurrences'' (EOs). Only two small EOs of bushy whitlow-wort have been found, and they are referred to as E.O. 1 and E.O. 2. The two EOs cover a total area of 41.96 acres (ac) (16.98 hectares (ha)) and are only 1.3 miles (mi) (2.1 kilometers (km)) apart; when the disturbed areas of the Farm to Market (FM) 649 right-of-way (ROW), unpaved ranch roads, and cleared pipeline ROWs are removed, the occupied area is 41.96 acres (16.98 hectares). There are only 12 documented observations of the two EOs from 1963 through 2020. The maximum numbers of individuals observed at the two EOs are about 2,000 individuals at E.O. 1 in 1987, and 1,904 individuals at E.O. 2 in 1994 (TXNDD 2017, unpaginated). At other times, surveyors recorded from 0 to 633 individuals (TXNDD 2017, unpaginated). This variation may have been due, in part, to the withering of the diminutive plant's stems during drought, making them undetectable; at most, the tufted mounds of foliage stand less than 10 inches (in) (25 centimeters (cm)) tall.

The few recorded observations of bushy whitlow-wort have yielded some, but limited, information about its life history. The species flowers from spring to late summer, in response to rainfall, and produces tiny, one-seeded fruits. We know nothing about the pollinators, pollination biology, seed dispersal, seed dormancy, seed germination, rates of recruitment, mortality, demographic trends, reproductive age, or lifespan of bushy whitlow-wort. However, the woody rootstocks reveal that the species is clearly perennial, and possibly long-lived. Therefore, it is possible that, if bushy whitlow-wort does have low or sporadic recruitment, this may be compensated by long average lifespans.

The two documented populations of bushy whitlow-wort occupy nearly barren, exposed, sloping outcrops of calcareous rock and/or indurated caliche along the boundary of the Goliad and Catahoula geological formations. ''Caliche'' is a word of Spanish origin that generally refers to soils or minerals of whitish appearance. However, the term has a specific geological meaning, referring to soil strata of calcium carbonate that precipitated as water evaporated from the soil. In contrast, limestone consists of calcium carbonate deposits that formed in ocean sediments. Caliche strata often form in arid regions; those of the Goliad formation formed in an arc parallel to the present Gulf of Mexico (Baskin and Hulbert 2008, pp. 93, 96–97).

This geological transition zone from the Goliad to Catahoula formations is known locally as the Bordas Escarpment. In the vicinity of the bushy whitlow-wort populations, elevations drop about 151 feet (ft) (46 meters (m)) from northeast to southwest; these slopes occur along the uppermost reaches of the Arroyo Veleño watershed, a seasonal watercourse that flows into the Rio Grande at Zapata, Texas. The Goliad formation contains deposits of clay, sandstone, marl, caliche, limestone, and conglomerate. The older Catahoula formation contains deposits of clay, mudstone, volcanic tuff (*i.e.* rock formed from volcanic ash), volcanic conglomerate, sandstone, and sand, with some gypsum and calcareous concretions. In some places, outcrops of Goliad caliche overlie deep beds of Catahoula tuff. These tuff deposits are often calichified (Galloway et al. 1977, p. 37). Bushy whitlow-wort is likely to be a geo-endemic species that is restricted to exposed outcrops of Goliad formation caliche or calcareous rock; alternatively, it may be even more highly restricted to exposed calcareous tuff that occurs in specific places along the Goliad–Catahoula boundary. The species is likely to be a geo-endemic that is uniquely adapted to the soil or geological features that occur there.

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. In 2019, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add, remove, and reclassify endangered and threatened species and the criteria for designating listed species' critical habitat (84 FR 45020; August 27, 2019). On the same day, the Service also issued final regulations that, for species listed as threatened species after September 26, 2019, eliminated the Service's general protective regulations automatically applying to threatened species the prohibitions that section 9 of the Act applies to endangered species (84 FR 44753; August 27, 2019). Our analysis for this decision applied the regulations that are currently in effect, which include the 2019 revisions. However, we proposed further revisions to these regulations on June 22, 2023 (88 FR 40764). In case those revisions are finalized before we make a final status determination for this species, we have also undertaken an analysis of whether the decision would be different if we were to apply those proposed revisions. We concluded that the decision would have been the same if we had applied the proposed 2023 regulations. The analyses under both the regulations currently in effect and the regulations after incorporating the June 22, 2023, proposed revisions are included in our decision file.

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies.

To assess bushy whitlow-wort's viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency is the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy is the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation is the ability of the species to adapt to both near-term and long-term changes in its physical and biological environment (for example, climate conditions, pathogens). In general, species viability will increase with increases in resiliency, redundancy, and representation (Smith et al. 2018, p. 306). Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time which we then used to inform our regulatory decision.

The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R2–ES–2023–0102 on *https://www.regulations.gov* and at *https://ecos.fws.gov/ecp/species/6441.*

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Species Needs

Our knowledge of the requirements of bushy whitlow-wort individuals is limited because the species has been observed on very few occasions and in only two places. We know nothing about the breeding system, pollinators, pollination biology, seed dispersal, seed dormancy, seed germination, rates of recruitment, mortality, demographic trends, reproductive age, or lifespan. Although we have no data on the reproductive age or average lifespans of individuals, the woody rootstocks are evidence that individuals are perennial and possibly long-lived.

Individuals flower as early as April or as late as August in response to rainfall; the timing and amount of rainfall are likely to be important. Although we have no data to quantify these requirements, the average annual precipitation in the area where bushy whitlow-wort occurs is 23.8 in (60.4 cm), with the greatest amounts from May to July and September to October (NCDC 2020, entire). The average daily maximum temperature exceeds 95 degrees Fahrenheit (°F) (35 degrees Celsius (°C)) from June through August, and the average frost-free period is from February 8 to December 11 (307 days) (Texas Almanac 2020, p. 2).

Bushy whitlow-wort is adapted to the hot, semi-arid, subtropical climate of the Tamaulipan shrublands of south Texas, where the dominant vegetation consists of dense, spiny shrubs reaching 4 to 6 ft (1.2 to 1.8 m) in height. However, within this shrubland ecosystem, the species has only been found in nearly barren rocky outcrops, along slopes of the Bordas Escarpment. These outcrops consist of calcified volcanic tuff formed

along the exposed contact of the Goliad and Catahoula geological formations. The sites are mostly barren because it is difficult for roots to penetrate the calcified tuff, and the nearly white rocks reflect and intensify sunlight. Since the species has not been found elsewhere, it appears to require this type of substrate. Since not found elsewhere, the species may be more specifically restricted to outcrops of exposed calichified volcanic tuff in discrete locations along the boundary of the Goliad and Catahoula geological formations. The occupied sites occur in areas classified as Zapata soils and Cuevitas-Randado association; these soil types, or soils with very similar descriptions, occur in at least six other south Texas counties.

We developed a potential habitat model based on the distribution of the geological, soil, and slope features because the bushy whitlow-wort is likely a geo-endemic that is uniquely adapted to such features. The model is based on only two population sites, and is a hypothesis based on the very limited available data on the species' habitat and distribution. This model indicates that a range of thousands to tens of thousands of hectares of potential habitat exist in south Texas; the largest clusters of potential habitat are in Webb, Jim Hogg, Zapata, and Starr Counties. Based on available botanical surveys, we estimate that less than 1 percent of this potential habitat has been surveyed by botanists qualified to identify the species. Nevertheless, extensive plant surveys have been conducted where caliche outcrops occur on tracts of the Lower Rio Grande Valley National Wildlife Refuge in southern Starr and southwestern Hidalgo Counties, and bushy whitlow-wort has never been reported there.

Accordingly, while the model indicates a large potential range, the fact that the species has been found in very limited portions of this range, even when surveyed, indicates that the potential range is smaller than the model would suggest. A reason for such limitation may be that the calcification of volcanic tuff deposits is a phenomenon that occurs sporadically along the boundary of the Goliad and Catahoula formations, and if we assume that bushy whitlow-wort is more specifically restricted to outcrops of calcareous tuff, its potential habitats would be only a small portion of the estimated potential habitat. This model could be improved if this species had been documented at more sites or by using additional geographic layers that explain the species' distribution. However, we are not aware of a data layer that specifically delineates areas of exposed calcareous tuff or any other geographic data layers that explain the distribution of bushy whitlow-wort. While this potential habitat model helps us determine where the species may be found and helps guide future surveys, the best available information indicates that the species is unlikely to occur throughout the areas predicted by the model.

In order to characterize the viability of bushy whitlow-wort, we evaluated population needs for resiliency, redundancy, and representation. For habitat and demographic factors influencing resiliency, we assessed the habitat condition, the number of mature individuals, and the demographic trends of the populations.

For habitat condition, we consider high-quality habitats to be those that have undisturbed soil and geologic profiles and intact native vegetation. Prior soil or geological disturbance and less than 20 percent invasive plant cover characterize populations with moderate habitat quality, while recent or extensive soil or geological disturbance and greater than 20 percent invasive plant cover is considered characteristic of populations with low-quality habitat.

A bushy whitlow-wort population with high resiliency would be large enough to have a high probability of surviving a prescribed period of time. The minimum viable population (MVP) is defined as a population that would have greater than 90 percent probability of persistence over 100 years (Mace and Lande 1991, p. 151). Using a method for estimating plant MVPs (Pavlik 1996, p. 137) that incorporates our knowledge of various life-history factors, we estimate that the MVP for bushy whitlow-wort is approximately 1,300 reproductively mature individuals (USFWS 2023, p. 20). Based on this information, we estimate that a high condition population would have more than 1,300 individuals, a moderate condition population would range from 650 to 1,300 individuals, and a low condition population would have fewer than 650 individuals.

Stable or increasing demographic trends over time are indicative of populations in good condition. This means that recruitment of new individuals is at least as great as mortality. Population resiliency also relies on sufficient numbers of individuals that are not too closely related or too widely dispersed for effective pollination, outcrossing, and seed production. Thus, high condition populations have greater net recruitment than net mortality over a 10-year period, while low resiliency populations have lower net recruitment than net mortality. If such demographic trends are unknown, we considered this to be indicative of moderate condition.

Determination of population sizes and numbers requires a method for delineating populations. However, we currently have no data to estimate the extent of gene flow for bushy whitlow-wort through pollination and seed dispersal. We adopted a provisional minimum separation distance of 0.6 mi (1.0 km) to delineate populations of bushy whitlow-wort, based on standards applied by TXNDD and NatureServe when the limits of gene flow are unknown (NatureServe 2002, p. 26).

Redundancy indicates the number of populations and their distribution over the species' range. Species that have more populations distributed over a broader geographic range have a greater chance of surviving catastrophic events. Greater redundancy increases the probability that at least some populations will survive catastrophic events, such as extended drought. These populations should be distributed over the species' known range. For bushy whitlow-wort, we know of only two populations located 1.3 mi (2.1 km) apart.

Representation refers to the breadth of genetic diversity and environmental adaptation necessary to conserve long-term adaptive capability. Populations must have enough genetic diversity to be able to adapt and survive when threatened by new pathogens, competitors, or changing environmental conditions. Furthermore, inbreeding increases within populations that lack genetic diversity; if the species is susceptible to inbreeding depression, this would lead to a loss of individual fitness, reduced reproductive output, higher mortality, and population decline. If the breeding system requires outcrossing, seed production and recruitment would decline within populations that lack genetic diversity. We do not know of any differentiation in representation in the two bushy whitlow-wort populations.

Threats

The development of new oil and gas wells and infrastructure is a source of threats to the known populations of bushy whitlow-wort that is of low immediacy, but potentially high severity and large extent. Wind energy development is a severe source of threats throughout the species' range. These sources of threats can cause long-term impacts to the natural landscape, including the loss of native vegetative cover and soil compaction, and may include contamination of sites with

petroleum or chemical wastes used in drilling operations. In addition, the proliferation of roads supporting this development accelerates the spread of invasive plants, such as buffelgrass (*Pennisetum ciliare*). These threats, their sources, and their effects to bushy whitlow-wort are summarized below.

We also considered other threats to the species. Urban and residential development and cattle grazing are not significant sources of threats to the species. Climate changes will likely affect bushy whitlow-wort in complex ways, but we cannot currently project the net effect of positive and negative interactions.

Loss of Native Vegetative Cover and Soil Compaction

The development of new oil and gas wells, wind turbine sites, and associated access roads, pipelines, and power lines requires the complete removal of existing vegetation and the restructuring of the soil profile with bulldozers, road graders, and steam rollers. Even after well sites are abandoned, the compaction caused by the operation of heavy machinery and tractor-trailers impedes plant growth for many years. Plants do not establish or grow well in compacted soils because their roots cannot penetrate far into compacted material. Soil compaction also impedes the infiltration of water into the soil, leading to increased runoff and the formation of gully erosion, which may remove soil and uproot vegetation well beyond the original construction sites.

Invasive Species

Nonnative, invasive grass species displace native plants by competing for water, nutrients, and light, and their dense root systems prevent germination of native plant seeds (Texas Invasives 2019, unpaginated). Buffelgrass is a perennial bunchgrass introduced from Africa in 1946 that has been widely planted in south Texas for livestock forage. It is now one of the most abundant introduced grasses in south Texas. Buffelgrass rapidly colonizes disturbed soils, such as along roadways, and the wind-borne seeds allow it to spread further into intact habitats; it often creates homogeneous monocultures by out-competing native plants for essential resources (Best 2009, p. 310; Lyons et al. 2013, p. 8), and it produces phytotoxins in the soil that inhibit the growth of neighboring native plants (Vo 2013, unpaginated).

Both EO 1 and EO 2 are close to FM 649 and are vulnerable to buffelgrass colonization. EO 2 is bisected by highway FM 649, which converted about 1.6 ha (4.0 ac) of habitat to pavement and graded right-of-way. In 2014, no bushy whitlow-wort individuals were observed during a survey of the public ROW of FM 649 where it transects EO 2 (Strong and Williamson 2015, p. 126; TXNDD 2017, unpaginated). However, this ROW had recently been graded and was partially colonized by buffelgrass. Bushy whitlow-wort may have been eradicated from the ROW by disturbance and buffelgrass competition.

Oil and Gas Development

Bushy whitlow-wort habitat occurs within areas of extensive oil and gas exploration and extraction. An area of intensive energy development in northern Zapata County is about 13 mi (21 km) west of the bushy whitlow-wort populations. Occupied and potential bushy whitlow-wort habitats are also about 18.6–31.0 mi (30–50 km) southeast of the Eagle Ford shale area of oil and natural gas production. Large reserves of oil and natural gas remain in the Eagle Ford shale, and fluctuation in petroleum markets may lead to new well production there, and perhaps also in the vicinity of bushy whitlow-wort habitats. We cannot project the likelihood of if or when this will occur. Petroleum and gas development in the Eagle Ford shale is not likely to have a direct effect on bushy whitlow-wort habitats, since they are physically separated, but renewed development of petroleum reserves that may underlie these habitats could cause their destruction and degradation. Oil and gas well development includes road building and ROW maintenance, and it increases the risk of contamination of these habitats. As a result, there are long-term impacts to the natural landscape, including the loss of native vegetative cover and soil compaction, as well as the potential contamination of sites with petroleum or chemical wastes used in drilling operations. In addition, the proliferation of roads supporting this development accelerates the spread of invasive plants, such as buffelgrass.

Contaminants

Petroleum or chemical wastes used in drilling operations can contaminate sites either through direct impacts to existing plants, or indirectly through soil contamination. Soil contamination may lead to absorption of toxic materials, which may result in death of individual plants or may impact a plant's uptake of nutrients that are necessary for its growth and overall health.

Wind Energy Development

The occupied and potential habitats of bushy whitlow-wort are closely aligned with areas of the highest average wind speed in South Texas; consequently, they have high potential for wind energy development. Wind power generation continues to grow in south Texas, including major new proposed wind farms in Jim Hogg and Zapata Counties (Contreras 2019, entire; Bordas Renewable Energy 2020, unpaginated; Corso 2020, entire). Wind farm development entails land clearing for arrays of wind turbines, access roads, and power lines. Since 2015, more than 1,000 wind turbines (Hoen et al. 2018, entire) have been constructed in the seven-county area of south Texas where we identified potential habitat, and new construction continues at a very rapid pace. Twenty-one turbines are located from 0.5 to 2.6 mi (0.8 to 4.2 km) from the known EOs of bushy whitlow-wort, and about 20 new turbines have been proposed, but not yet permitted, within this immediate area. In other regions of the United States, only about 19 percent of proposed wind projects are completed (DOE 2021, p. 3); nevertheless, Texas has installed more wind capacity than any other U.S. State in recent years (DOE 2022, p. 6), and the Electric Reliability Council of Texas, Inc. (ERCOT) projects total wind generation capacity additions ranging from 13,700 megawatts (MW) to 27,100 MW, the equivalent of 4,500 to 9,000 turbines, over the next 15 years in their long-term system assessment (ERCOT 2022, p. 7). The development of new wind farms and the concomitant land disturbance is an immediate threat to the known populations of bushy whitlow-wort, and a single development project could easily destroy a large portion of the species' known resources.

Grazing and Other Agricultural Uses

The two known occupied habitats of bushy whitlow-wort have been used for livestock grazing for many years. Given that cattle are not attracted to the barren rock outcrops where the species occurs, the impact of trampling should be negligible, and we conclude that cattle grazing is not a significant threat to the species' survival. The very shallow soils of occupied populations are underlaid by indurated caliche along steep slopes and are not suitable for row crops or other agricultural uses. Thus, we do not anticipate habitat losses due to a change in agricultural use.

Urban Development

One of the two EOs was bisected by highway FM 649 in 1954; we estimate that the highway construction and ROW destroyed about 4.03 ac (1.63 ha) of habitat. We are not aware of planned highway construction that would affect the occupied habitats. Due to the low population density in rural Jim Hogg County and the distance to population centers, currently there are no projected habitat losses to urban and residential development.

Climate Changes

To evaluate how the climate of bushy whitlow-wort habitats may change, we used the National Climate Change Viewer (U.S. Geological Survey 2020, unpaginated) to compare past and projected future climate parameters of annual mean maximum temperature, annual mean precipitation, and annual evaporative deficit for Jim Hogg County, Texas. The magnitude of projected changes varies widely, depending on which scenario of future greenhouse gas emissions is used.

We do not know how these projected climate changes, forecast by the range of models and emissions scenarios, will affect the interactions of bushy whitlow-wort with its habitat and associated plant and animal community. Higher temperatures and increasing evaporative deficit could reduce the species' growth, reproduction, and survival. Alternatively, these changes could increase the areas of nearly barren, exposed outcrops, thus increasing the amount of available habitat. Warmer winters might extend the growing season to the species' benefit. Climate changes might affect bushy whitlow-wort differently from species it competes with, such as the introduced, invasive buffelgrass. Thus, although it is likely that the projected climate changes will affect the viability of bushy whitlow-wort, we cannot confidently project what the net result of beneficial and detrimental effects will be.

Current Conditions

To assess resiliency, we considered habitat quality, the number of mature individuals, and the demographic trends of the two populations. Habitats have been moderately disturbed in the past by gravel roads and petroleum infrastructure (EO 1) and a highway ROW (EO 2) but are otherwise intact. Additionally, habitats have been minimally disturbed by invasive plant cover due to their isolated location and rocky nature. Given this level of disturbance and minimal invasive plant cover, we consider current habitat to be in the moderate-quality condition category.

Surveyors estimated about 2,000 individuals at EO 1 in 1987 and extrapolated 1,904 individuals at EO 2 in 1994. The only recent census, in 2014, detected 633 individuals in a very small portion of one EO, representing less than 5 percent of the total area of the EOs. Although we do not know the current size of either population, since the habitats are relatively intact, the best available information indicates that both exceed the MVP level of 1,300 individuals, resulting in a high-condition category for this demographic factor (USFWS 2023, p. 31).

We have no information on demographic trends. However, given continued presumed presence of the bushy whitlow-wort at the two EOs, we assumed that net recruitment is approximately equal to net mortality resulting in a moderate-condition category for this demographic factor (USFWS 2023, p. 31). Combining the current conditions of these habitat and demographic factors (*i.e.* moderate condition for habitat quality, high condition for number of mature individuals, and moderate condition for demographic trends) we conclude that bushy whitlow-wort has two moderately resilient populations.

Bushy whitlow-wort has low redundancy with only two known moderately resilient populations located 1.3 mi (2.1 km) apart. The degree of representation remains unknown, and we do not know of any differentiation in representation in the two populations. Additionally, small, isolated populations are more vulnerable to catastrophic losses caused by random fluctuations in recruitment (demographic stochasticity) or variations in rainfall or other environmental factors (environmental stochasticity) (USFWS 2016, p. 20). Small, reproductively isolated populations are susceptible to the loss of genetic diversity, to genetic drift, and to inbreeding (Barrett and Kohn 1991, pp. 3–30). There may not have been any recent gene flow between the two known populations of bushy whitlow-wort, and they may already suffer from genetic bottlenecks, genetic drift, inbreeding, and loss of allelic diversity (USFWS 2023, p. 25).

Future Scenarios

As part of the SSA, we also developed three future scenarios to capture the range of uncertainties regarding future threats and the projected responses by bushy whitlow-wort. Our scenarios assumed energy development and climate change would have either limited or no impacts on the species or extensive adverse impacts in the future. Because we determined that the current condition of the bushy whitlow-wort is consistent with an endangered species (see Determination of Bushy Whitlow-Wort's Status, below), we are not presenting the results of the future scenarios in this proposed rule. Please refer to the SSA report (USFWS 2023, pp. 32–35) for the full analysis of future scenarios.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have analyzed the cumulative effects of identified threats and conservation actions on the species. To assess the current and future condition of the species, we evaluate the effects of all the relevant factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Determination of Bushy Whitlow-Wort's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the Act's section 4(a)(1) factors, we found that there are only two known EOs of bushy whitlow-wort with a combined occupied area of

41.96 ac (16.98 ha) (the area we consider occupied does not include the FM 649 ROW, the beds of unpaved ranch roads, or cleared pipeline ROWs). With only two moderately resilient populations and the small area of occurrence, the species is extremely vulnerable to both natural and anthropogenic impacts. Since the two EOs are only 1.3 mi (2.1 km) apart, this vulnerability is exacerbated by their close proximity.

Bushy whitlow-wort currently has low population redundancy, as only two EOs of bushy whitlow-wort have been documented. The demographic and genetic consequences of small population sizes (Factor E) put the species at a higher risk of extinction due to the threats described above. A single event, such as prolonged drought, or a single development project could easily destroy a large portion of the species' known remaining resources. The close proximity of the two EOs increases this vulnerability.

In particular, the occupied habitats of bushy whitlow-wort are closely aligned with areas of high potential for wind energy development (Factor A), and major proposed wind farms in Jim Hogg and Zapata Counties will entail land clearing for arrays of wind turbines, access roads, and power lines, thereby reducing available habitat for bushy whitlow-wort. The development of new wind farms and the concomitant clearing of habitat is an immediate, severe threat to the known populations of bushy whitlow-wort and potential habitat throughout the species' range. We used the best scientific and commercial data available to analyze the bushy whitlow-wort's current conditions. Based on this information we have concluded that the species is in danger of extinction throughout all of its range due to the severity, extent, and immediacy of threats currently impacting the species. We find that a threatened species status is not appropriate because bushy whitlow-wort has an extremely limited geographic range, the species' populations are very small, those populations are currently at risk of losing habitat from ongoing wind energy development. The threats to the species are currently ongoing and occurring across the entire range of the species. Due to the limited number of populations and the immediate threats to those populations, the species is in danger of extinction currently. Thus, after assessing the best available information, we determine that the bushy whitlow-wort is in danger of extinction throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so within the foreseeable future throughout all or a significant portion of its range. We have determined that the bushy whitlow-wort is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the bushy whitlow-wort warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020), which vacated the provision of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37578; July 1, 2014) providing that if the Service determines that a species is threatened throughout all of its range, the Service will not analyze whether the species is endangered in a significant portion of its range.

Determination of Status

Our review of the best available scientific and commercial information indicates that the bushy whitlow-wort meets the Act's definition of an endangered species. Therefore, we propose to list the bushy whitlow-wort as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies, including the Service, and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery outline, draft recovery plan, final recovery plan, and any revisions will be available on our website as they are completed (*https://www.fws.gov/program/endangered-species*), or from our Texas Coastal Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Texas would be eligible for Federal funds to implement management actions that promote the protection or recovery of the bushy whitlow-wort. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/service/financial-assistance*.

Although the bushy whitlow-wort is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7 of the Act is titled Interagency Cooperation and mandates all Federal action agencies to use their existing authorities to further the conservation purposes of the Act and to ensure that their actions are not likely to jeopardize the continued existence of listed species or adversely modify critical habitat. Regulations implementing section 7 are codified at 50 CFR part 402.

Section 7(a)(2) states that each Federal action agency shall, in consultation with the Secretary, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Each Federal agency shall review its action at the earliest possible time to determine whether it may affect listed species or critical habitat. If a determination is made that the action may affect listed species or critical habitat, formal consultation is required (50 CFR 402.14(a)), unless the Service concurs in writing that the action is not likely to adversely affect listed species or critical habitat. At the end of a formal consultation, the Service issues a biological opinion, containing its determination of whether the Federal action is likely to result in jeopardy or adverse modification.

In contrast, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. Although the conference procedures are required only when an action is likely to result in jeopardy or adverse modification, action agencies may voluntarily confer with the Service on actions that may affect species proposed for listing or critical habitat proposed to be designated. In the event that the subject species is listed, or the relevant critical habitat is designated, a conference opinion may be adopted as a biological opinion and serve as compliance with section 7(a)(2) of the Act.

Examples of discretionary actions for the bushy whitlow-wort that may be subject to conference and consultation procedures under section 7 are land management or other landscape-altering activities on Federal lands administered by the Texas Department of Transportation (TxDOT), including maintenance of the ROW of Highway FM 649 or other highway maintenance activities, within the vicinity of the known bushy whitlow-wort populations, as well as actions on State, Tribal, local, or private lands within the vicinity of the known bushy whitlow-wort populations that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation. Federal agencies should coordinate with the local Service Field Office (see **FOR FURTHER INFORMATION CONTACT**) with any specific questions on section 7 consultation and conference requirements.

II. Critical Habitat

Background

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

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

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

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

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

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

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

Critical habitat receives protection under section 7 of the Act through the requirement that each Federal action agency ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Rather, designation requires that, where a landowner requests Federal agency funding or authorization for an action that may affect an area designated as critical habitat, the Federal agency consult with the Service under section 7(a)(2) of the Act. If the action may affect the listed species itself (such as for occupied critical habitat), the Federal agency would have already been required to consult with the Service

even absent the designation because of the requirement to ensure that the action is not likely to jeopardize the continued existence of the species. Even if the Service were to conclude after consultation that the proposed activity is likely to result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

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

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

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

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

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

Physical or Biological Features Essential to the Conservation of the Species

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

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

Surface Geology

The two documented populations of bushy whitlow-wort occupy exposed slopes of calcareous rock and/or indurated caliche along the boundary of the Goliad geological formation and the Catahoula and Frio Clay (undivided) geological formation (Turner 1983, p. 5;

Damude and Poole 1990, pp. 9, 10, 12; Poole et al. 2007, p. 333).

Soils

Soils in the vicinity of the known bushy whitlow-wort populations are classified as Zapata soils (Soil Conservation Service 1974, p. 17; Natural Resources Conservation Service (NRCS) 2020, unpaginated). The representative Zapata soil profile consists of grayish-brown fine sandy loam at and near the surface (0 to 2 in (0 to 5 cm) deep); brown sandy clay loam below that (2 to 8 in (5 to 20 cm) deep); and indurated, laminar, pinkish-white caliche below that (more than 8 in (20 cm) deep). The occupied sites are also very near or overlay areas of Cuevitas-Randado Association soils. A representative profile has brown and reddish-brown fine sandy loam near the surface (from 1 to 9 in (2.5 to 23 cm) deep), and indurated, laminar, white caliche below that (more than 9 in (23 cm) deep). Clearly, Zapata and Cuevitas-Randado Association soils are very similar. Although the immediate area of occupied sites has very little soil, such areas of exposed rock are included within these soil map unit polygons.

Plant Community

The plant community associated with bushy whitlow-wort is an open shrubland with the tallest plants reaching 4 to 6 ft (1.2 to 1.8 m) in height (Damude and Poole 1990, pp. 12, 13). Within this shrubland community, bushy whitlow-wort occurs primarily in nearly barren openings on exposed limestone, caliche, or calcareous tuff, where the nearly white rocks reflect and intensify sunlight.

Nonnative, invasive grass species displace native plants by competing for water, nutrients, and light, and their dense root systems prevent germination of native plant seeds (Texas Invasives 2019, unpaginated). Buffelgrass is widely planted in south Texas for livestock forage and frequently displaces native grasses and herbaceous plants (Best 2009, pp. 310–311).

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of bushy whitlow-wort from studies of the species' habitat, ecology, and life history as described below. Additional information can be found in the SSA report (USFWS 2023, entire; available on *https://www.regulations.gov* under Docket No. FWS–R2–ES–2023–0102). We have determined that the following physical or biological features are essential to the conservation of bushy whitlow-wort:

(1) Exposed outcrops of calcified tuff,

(2) Undisturbed or minimally disturbed soil horizons, and

(3) Openings within shrubland communities that do not contain or have low levels of buffelgrass.

Special Management Considerations or Protection

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

The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: Nonnative, invasive grass; ROW construction and maintenance from energy development; and road and utility construction. Habitats have been moderately disturbed in the past by gravel roads, petroleum infrastructure, and a highway ROW, but they are otherwise intact. Management activities that could ameliorate these threats include, but are not limited to: Nonnative, invasive grass control; protection from activities that disturb the soil; and propagation and reintroduction of plants in restorable areas. These management activities would protect the physical or biological features for the species by reducing soil disturbance, limiting the impacts of competition with buffelgrass, and potentially increasing population sizes.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are not currently proposing to designate any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that meet the Act's definition of critical habitat. Bushy whitlow-wort needs additional populations to reduce the likelihood of extinction, but there are no public lands in the area and we have limited access to privately owned lands and little information regarding lands that would be good candidates for introductions in the species' range. Therefore, we are not able to identify additional locations that contain at least one of the physical or biological features essential to the conservation of the species and that may have a reasonable certainty of contributing to conservation at this time.

In summary, for areas within the geographical area occupied by the species at the time of listing, we delineated critical habitat unit boundaries using the E.O. boundaries established by the TXNDD; however, we did not include areas of disturbed soils (the ROW of FM 649, roadbeds of unpaved ranch roads, and cleared pipeline ROWs) that no longer contain the physical and biological features and that, due to repeated disturbance, are unlikely to be restored in the future.

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

We propose to designate as critical habitat lands that we have determined are occupied at the time of listing (*i.e.,* currently occupied) and that contain one or more of the physical or biological features that are essential to support the life-history processes of the species.

Units are proposed for designation based on one or more of the physical or biological features being present to support bushy whitlow-wort's life-history processes. Both proposed units contain all of the identified physical or biological features and support multiple life-history processes.

The proposed critical habitat designation is defined by the map, as modified by any accompanying regulatory text, presented at the end of

this document under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *https://www.regulations.gov* at Docket No. FWS–R2–ES–2023–0102.

Proposed Critical Habitat Designation

We are proposing two units as critical habitat for bushy whitlow-wort. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for bushy whitlow-wort. The two areas we propose as critical habitat are TXNDD EOs in Jim Hogg County. The table below shows the proposed critical habitat units and the approximate area of each unit. All units are occupied.

TABLE OF PROPOSED CRITICAL HABITAT UNITS FOR BUSHY WHITLOW-WORT

[Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit	Land ownership by type	Size of unit in acres (hectares)	Occupied?
1. EO 1	Private	35.38 (14.32)	Yes.
2. EO 2	Private	6.57 (2.66)	Yes.
Total		41.96 (16.98)	

Note: Area sizes may not sum due to rounding.

We present brief descriptions of the two proposed units, and reasons why they meet the definition of critical habitat for bushy whitlow-wort, below.

Unit 1: E.O. 1

Unit 1 consists of 35.38 ac (14.32 ha) in a geographic cluster of three polygons on private land within the boundaries of E.O. 1 in northwest Jim Hogg County. In this proposed unit, we do not include the FM 649 ROW or unvegetated roadbeds that are frequently driven on or are maintained by road grading, as these areas no longer contain the essential physical and biological features and they are unlikely to be restored in the future. Unit 1 was delineated through observation of recent orthographically corrected aerial photographs (USDA–FPAC–BC–APFO Aerial Photography Field Office 2018, unpaginated). The unit is occupied by the species and contains all of the physical or biological features essential to the conservation of bushy whitlow-wort. Areas adjacent to this unit contain a public ROW that is affected by invasive, nonnative buffelgrass. Therefore, special management may be required to reduce invasion of nonnative species.

Unit 2: E.O. 2

Unit 2 consists of 6.57 ac (2.66 ha) in a geographic cluster of 10 polygons on private land within the boundaries of E.O. 2 in northwest Jim Hogg County. In this proposed unit, we do not include unvegetated roadbeds that are frequently driven on or are maintained by road grading, as these areas no longer contain the essential physical and biological features and they are unlikely to be restored in the future. Unit 2 was delineated through observation of recent orthographically corrected aerial photographs (USDA–FPAC–BC–APFO Aerial Photography Field Office 2018, unpaginated). The unit is occupied by the species and contains all of the physical or biological features essential to the conservation of bushy whitlow-wort. This unit has been moderately disturbed in the past by gravel roads and petroleum infrastructure. Therefore, special management may be required to reduce invasion of nonnative species.

Effects of Critical Habitat Designation

Section 7 Consultation

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

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

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

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

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

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

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

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

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate consultation if any of the following four conditions occur: (1) the amount or extent of taking specified in the incidental take statement is exceeded; (2) new information reveals effects of the action that may affect

listed species or critical habitat in a manner or to an extent not previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion or written concurrence; or (4) a new species is listed or critical habitat designated that may be affected by the identified action. The reinitiation requirement applies only to actions that remain subject to some discretionary Federal involvement or control. As provided in 50 CFR 402.16, the requirement to reinitiate consultations for new species listings or critical habitat designation does not apply to certain agency actions (*e.g.,* land management plans issued by the Bureau of Land Management) in certain circumstances.

Destruction or Adverse Modification of Critical Habitat

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

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

Activities that we may, during a consultation under section 7(a)(2) of the Act, consider likely to destroy or adversely modify critical habitat include, but are not limited to, actions that would degrade or destroy native plant communities. Such activities could include, but are not limited to, the construction of: roadways; wind, oil, and gas production sites; powerlines; pipelines; or other infrastructure developments. These activities could disturb the soil or could introduce or increase buffelgrass and other invasive grasses in the vicinity of bushy whitlow-wort individuals.

Exemptions

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

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act Improvement Act of 1997 (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. No DoD lands with a completed INRMP are within the proposed critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. Exclusion decisions are governed by the regulations at 50 CFR 424.19 and the Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (hereafter, the ''2016 Policy''; 81 FR 7226, February 11, 2016), both of which were developed jointly with the National Marine Fisheries Service (NMFS). We also refer to a 2008 Department of the Interior Solicitor's opinion entitled, ''The Secretary's Authority to Exclude Areas from a Critical Habitat Designation under Section 4(b)(2) of the Endangered Species Act'' (M–37016).

In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. In our final rules, we explain any decision to exclude areas, as well as all decisions not to exclude, to make clear the rational basis for our decision. We describe below the process that we use for taking into consideration each category of impacts and any initial analyses of the relevant impacts.

Consideration of Economic Impacts

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

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

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O.

regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. Section 3(f) of E.O. 12866, as amended by E.O. 14094, identifies four criteria when a regulation is considered a ''significant regulatory action,'' and requires additional analysis, review, and approval if met. The criterion relevant here is whether the designation of critical habitat may have an economic effect of $200 million or more in any given year (section 3(f)(1)). Therefore, our consideration of economic impacts uses a screening analysis to assess whether a designation of critical habitat for bushy whitlow-wort is likely to exceed the economically significant threshold.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the bushy whitlow-wort (Industrial Economics, Inc. (IEc) 2023, entire.). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographical areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes any probable incremental economic impacts where land and water use may already be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species.

Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The presence of the listed species in occupied areas of critical habitat means that any destruction or adverse modification of those areas is also likely to jeopardize the continued existence of the species. Therefore, designating occupied areas as critical habitat typically causes little if any incremental impacts above and beyond the impacts of listing the species. As a result, we generally focus the screening analysis on areas of unoccupied critical habitat (unoccupied units or unoccupied areas within occupied units). Overall, the screening analysis assesses whether designation of critical habitat is likely to result in any additional management or conservation efforts that may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM constitute what we consider to be our draft economic analysis (DEA) of the proposed critical habitat designation for the bushy whitlow-wort; our DEA is summarized in the narrative below.

As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the bushy whitlow-wort, first we identified, in the IEM dated August 2, 2022, probable incremental economic impacts associated with the following categories of activities: (1) Highway construction or maintenance; and (2) wind energy development. We considered each industry or category individually. Additionally, we considered whether the activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we list the species, in areas where the bushy whitlow-wort is present, Federal agencies would be required to consult with the Service under section 7 of the Act on activities they authorize, fund, or carry out that may affect the species. If we list the species, and at that time also finalize this proposed critical habitat designation, Federal agencies would be required to consider the effects of their actions on the designated habitat, and if the Federal action may affect critical habitat, our consultations would include an evaluation of measures to avoid the destruction or adverse modification of critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for the bushy whitlow-wort's critical habitat. Because the designation of critical habitat for bushy whitlow-wort is being proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which would result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would likely adversely affect the essential physical or biological features of occupied critical habitat are also likely to adversely affect the species itself. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the bushy whitlow-wort includes two units totaling 41.96 ac (16.98 ha). Both units are considered occupied by the bushy whitlow-wort and contain the physical and biological features essential to the conservation of the species. We are not proposing to designate any units of unoccupied habitat. Both units of the proposed designation are entirely on private land. In these areas, any actions that may affect the species or its habitat would also affect designated critical habitat, and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the bushy whitlow-wort. Therefore, the potential effects of the critical habitat designation are expected to be limited to administrative costs.

While this additional analysis will require time and resources by both the Federal action agency and the Service, it is believed that, in most circumstances, these costs would predominantly be administrative in nature and would not be significant. Total incremental costs of critical habitat designation for the bushy whitlow-wort are anticipated to be less than $1,900 per year for the next 10 years. In total, fewer than one informal consultation and fewer than one technical assistance effort are

anticipated to occur annually across both proposed critical habitat units. The designation of critical habitat is not expected to trigger additional requirements under State or local regulations, and incremental perception-related impacts appear unlikely. Thus, the annual administrative burden is unlikely to reach $200 million.

We are soliciting data and comments from the public on the DEA discussed above. During the development of a final designation, we will consider the information presented in the DEA and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under the authority of section 4(b)(2) of the Act, our implementing regulations at 50 CFR 424.19, and the 2016 Policy. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (*e.g.,* a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under the Act's section 4(a)(3)(B)(i), then national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' However, the Service must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i) because section 4(b)(2) requires the Service to consider those impacts whenever it designates critical habitat. Accordingly, if DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, we must conduct an exclusion analysis if the Federal requester provides information, including a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for bushy whitlow-wort are not owned or managed by the DoD or DHS, and, therefore, we anticipate no impact on national security or homeland security.

Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed above. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances—or whether there are non-permitted conservation agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, social, or other impacts that might occur because of the designation.

Summary of Exclusions Considered under Section 4(b)(2) of the Act

In preparing this proposal, we have determined that no HCPs or other management plans for bushy whitlow-wort currently exist, and the proposed designation does not include any Tribal lands or trust resources or any lands for which designation would have any economic or national-security impacts. Therefore, we anticipate no impact on Tribal lands, partnerships, or HCPs from this proposed critical habitat designation and thus, as described above, we are not considering excluding any particular areas on the basis of the presence of conservation agreements or impacts to trust resources.

However, if through the public comment period we receive information that we determine indicates that there are potential economic, national security, or other relevant impacts from designating particular areas as critical habitat, then as part of developing the final designation of critical habitat, we will evaluate that information and may conduct a discretionary exclusion analysis to determine whether to exclude those areas under the authority of section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19. If we receive a request for exclusion of a particular area and after evaluation of supporting information we do not exclude, we will fully describe our decision in the final rule for this action.

Required Determinations

Clarity of the Rule

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

(1) Be logically organized;

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

(3) Use clear language rather than jargon;

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

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To

better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Planning and Review (Executive Orders 12866, 13563, and 14094)

Executive Order (E.O.) 12866, as reaffirmed by E.O. 13563 and E.O. 14094, provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 14094 reaffirms the principles of E.O. 12866 and E.O. 13563 and states that regulatory analysis should facilitate agency efforts to develop regulations that serve the public interest, advance statutory objectives, and are consistent with E.O. 12866, E.O. 13563, and the Presidential Memorandum of January 20, 2021 (Modernizing Regulatory Review). Regulatory analysis, as practicable and appropriate, shall recognize distributive impacts and equity, to the extent permitted by law. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

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

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

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

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare statements of energy effects to the extent permitted by law when undertaking actions identified as significant energy actions (66 FR 28355; May 22, 2001). E.O. 13211 defines a ''significant energy action'' as an action that (i) is a significant regulatory action under E.O. 12866 or any successor order (including, most recently, E.O. 14094 (88 FR 21879; April 11, 2023)); and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy. This rule is not a significant regulatory action under E.O. 12866 or E.O. 14094. Therefore, this action is not a significant energy action, and there is no requirement to prepare a statement of energy effects for this action.

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 finding:

(1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under

entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions are not likely to destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

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

Takings—Executive Order 12630

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

Federalism—Executive Order 13132

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

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

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

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

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

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

Regulations adopted pursuant to section 4(a) of the Act are exempt from the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) and do not require an environmental analysis under NEPA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This

includes listing, delisting, and reclassification rules, as well as critical habitat designations. In a line of cases starting with *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), the courts have upheld this position.

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), E.O. 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a government-to-government basis. In accordance with Secretary's Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribal lands fall within the boundaries of the proposed critical habitat designation for the bushy whitlow-wort, so no Tribal lands would be affected by the proposed designation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Texas Coastal Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Texas Coastal Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

■ 2. In § 17.12, amend the table in paragraph (h) by adding an entry for ''*Paronychia congesta*'' in alphabetical order under FLOWERING PLANTS to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
Flowering Plants				
*	*	*	*	* * *
Paronychia congesta.	Bushy whitlow-wort.	Wherever found ..	E	[**Federal Register** citation when published as a final rule]; 50 CFR 17.96(a).[CH]
*	*	*	*	* * *

■ 3. In § 17.96, amend paragraph (a) by adding an entry for ''Family Caryophyllaceae: *Paronychia congesta* (bushy whitlow-wort)'' after the entry for ''Family Caryophyllaceae: *Arenaria ursina* (Bear Valley sandwort)'' to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Caryophyllaceae: *Paronychia congesta* (bushy whitlow-wort)

(1) Critical habitat units are depicted for Jim Hogg County, Texas, on the map in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of bushy whitlow-wort consist of the following components:

(i) Exposed outcrops of calcified tuff;

(ii) Undisturbed or minimally disturbed soil horizons; and

(iii) Openings within shrubland communities that do not contain or have low levels of buffelgrass (*Pennisetum ciliare*).

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of the final rule.

(4) Data layers defining map units were created on a base of U.S. Geological Survey digital ortho-photo quarter-quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) Zone 15N coordinates. The map in this entry, as modified by any accompanying regulatory text, establishes the boundaries of the critical habitat designation. The coordinates or plot points or both on which the map is based are available to the public at *https://www.regulations.gov* at Docket No. FWS–R2–ES–2023–0102, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

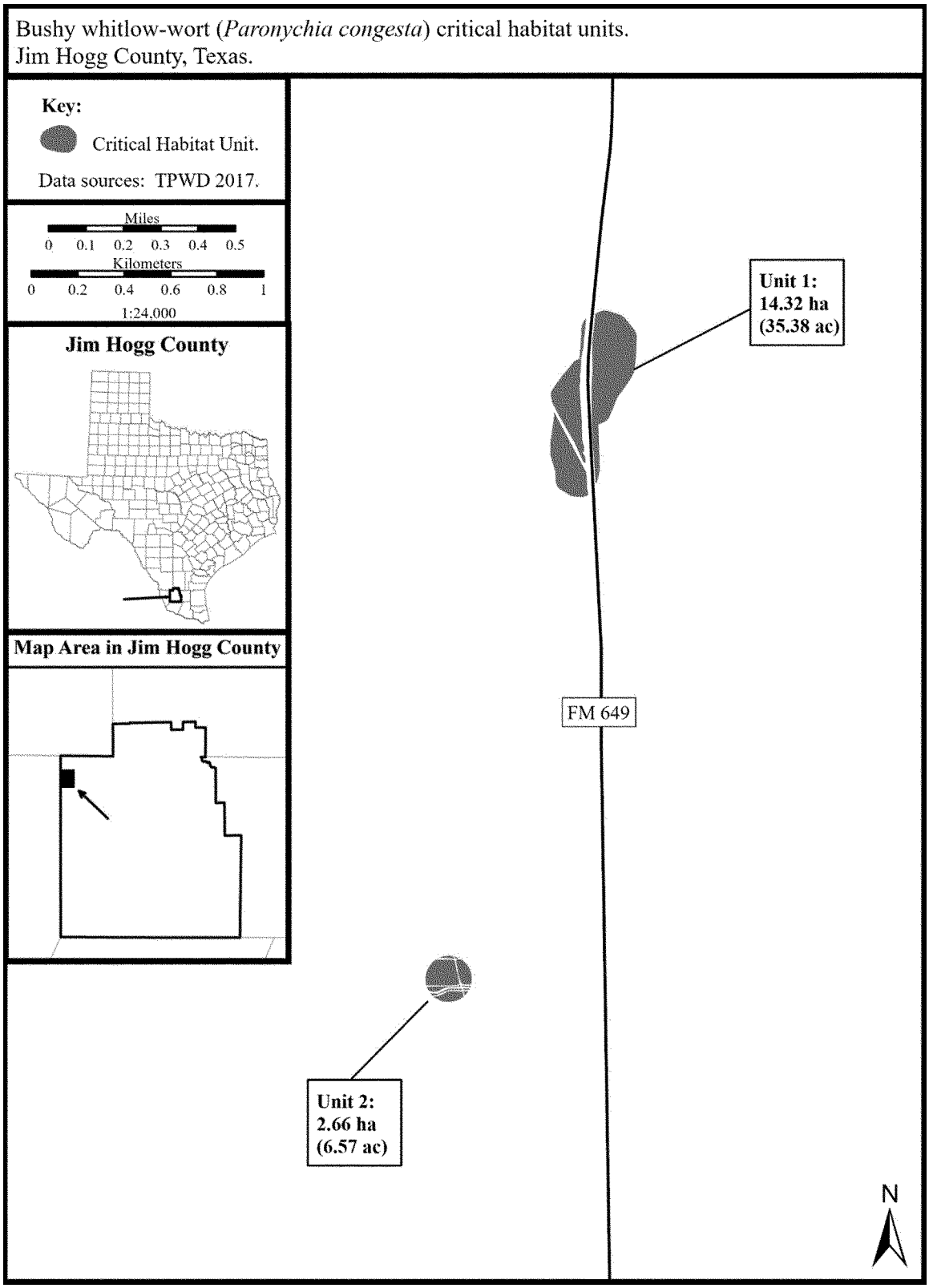
(5) Unit 1: E.O. 1; Jim Hogg County, Texas.

(i) Unit 1 consists of 35.38 ac (14.32 ha) in a geographic cluster of three polygons in northwest Jim Hogg County and is composed of lands in private ownership.

(ii) Map of Units 1 and 2 follows:

Figure 1 to Family Caryophyllaceae: *Paronychia congesta* (bushy whitlow-wort) paragraph (5)(ii)

BILLING CODE 4333–15–P


Bushy whitlow-wort (*Paronychia congesta*) critical habitat units.
Jim Hogg County, Texas.
Key:
Critical Habitat Unit.
Data sources: TPWD 2017.
Miles
0 0.1 0.2 0.3 0.4 0.5
Kilometers
0 0.2 0.4 0.6 0.8 1
1:24,000
Jim Hogg County
Map Area in Jim Hogg County
Unit 1:
14.32 ha
(35.38 ac)
FM 649
Unit 2:
2.66 ha
(6.57 ac)
N

(6) Unit 2: E.O. 2; Jim Hogg County, Texas.

(i) Unit 2 consists of 6.57 ac (2.66 ha) in a geographic cluster of 10 polygons in northwest Jim Hogg County and is composed of lands in private ownership.

(ii) Map of Unit 2 is provided at paragraph (5)(ii) of this entry.

* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2024–05700 Filed 3–18–24; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2023–0114; FF09E22000 FXES1113090FEDR 245]

RIN 1018–BH01

Endangered and Threatened Wildlife and Plants; Removal of the North Park Phacelia From the List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft post-delisting monitoring plan.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove the North Park phacelia (*Phacelia formosula*) from the Federal List of Endangered and Threatened Plants due to recovery. The best available scientific information indicates that threats to North Park phacelia identified at the time of listing in 1982 are not as significant as originally anticipated and are being adequately managed. Additionally, recent taxonomic studies have indicated that the species has four new populations and an expanded range in Colorado based on the inclusion of plants previously thought to be different species or subspecies. We find that delisting the species is warranted. Our review of the best available scientific and commercial data indicates that the threats to the North Park phacelia have been eliminated or reduced to the point that the species no longer meets the definition of an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). Accordingly, we propose to delist the North Park phacelia. We request information and comments from the public regarding this proposed rule and the draft post-delisting monitoring (PDM) plan for the North Park phacelia. If we finalize this rule as proposed, the prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to the species.

DATES: We will accept comments received or postmarked on or before May 20, 2024. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by May 3, 2024.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R6–ES–2023–0114, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R6–ES–2023–0114, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

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

Availability of supporting materials: This proposed rule and supporting documents, including the 5-year reviews, draft post-delisting monitoring plan, and the species status assessment (SSA) report, are available at *https://www.regulations.gov* under Docket No. FWS–R6–ES–2023–0114 and at the Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Nathan Darnall, Western Colorado Supervisor, U.S. Fish and Wildlife Service, Colorado Ecological Services Field Office, 445 West Gunnison Avenue, Grand Junction, CO 81501; telephone 970–628–7181. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. Please see Docket No. FWS–R6–ES–2023–0114 on *https://www.regulations.gov* for a document that summarizes this proposed rule.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, a species warrants delisting if it no longer meets the definition of an endangered species (in danger of extinction throughout all or a significant portion of its range) or a threatened species (likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range). The North Park phacelia is listed as endangered, and we are proposing to delist it because we have determined it does not meet the Act's definition of an endangered or threatened species. Delisting a species can be completed only by issuing a rule through the Administrative Procedure Act rulemaking process (5 U.S.C. 551 *et seq.*).

What this document does. This action proposes to remove North Park phacelia from the List of Endangered and Threatened Plants (*i.e.,* ''delist'' the species) based on its recovery.

The basis for our action. Under the Act, we may determine that a species is an endangered species or a threatened species because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. The determination to delist a species must be based on an analysis of the same factors.

Under the Act, we must review the status of all listed species at least once every 5 years. We must delist a species if we determine, on the basis of the best available scientific and commercial data, that the species is neither a threatened species nor an endangered species. Our regulations at 50 CFR 424.11 identify three reasons why we might determine a species should be delisted: (1) The species is extinct, (2) the species does not meet the definition of an endangered species or a threatened species, or (3) the listed entity does not meet the definition of a species. Here, we have determined that, based on an analysis of the five listing factors, the North Park phacelia has recovered and