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Dated: December 22, 1998.

Donald Barry,

Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF37

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Huachuca Water Umbel, a Plant

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Lilaeopsis schaffneriana* ssp. *recurva*, the Huachuca water umbel, a plant. Proposed critical habitat includes a total of 83.9 kilometers (52.1 miles) of streams or rivers in Cochise and Santa Cruz counties, Arizona. If this proposal is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments until March 1, 1999. We will hold a public hearing on this proposed rule; we will publish the date and location of this hearing in the **Federal Register** and local newspapers at least 15 days prior to the hearing.

ADDRESSES: Send comments and materials to the Field Supervisor, Arizona Ecological Services Field Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona, 85021–4951. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Tom Gatz, Endangered Species Coordinator, at the above address (telephone 602/640–2720 ext. 240; facsimile 602/640–2730).

SUPPLEMENTARY INFORMATION:

Background

Lilaeopsis schaffneriana ssp. *recurva* (referred to as *Lilaeopsis* in this proposed rule), the Huachuca water umbel, is a plant found in cienegas (desert marshes), streams and springs in southern Arizona and northern Sonora, Mexico, typically in mid-elevation wetland communities often surrounded by relatively arid environments. These communities are usually associated with perennial springs and stream headwaters, have permanently or seasonally saturated highly organic soils, and have a low probability of flooding or scouring (Hendrickson and Minckley 1984). Cienegas support diverse assemblages of animals and plants, including many species of limited distribution, such as *Lilaeopsis* (Hendrickson and Minckley 1984, Lowe 1985, Ohmart and Anderson 1982, Minckley and Brown 1982).

Cienegas, perennial streams, and rivers in the desert southwest are extremely rare. The Arizona Game and Fish Department (1993) recently estimated that riparian vegetation associated with perennial streams comprises about 0.4 percent of the total land area of Arizona, with present riparian areas being remnants of what once existed. The State of Arizona (1990) estimated that up to 90 percent of the riparian habitat along Arizona's major desert watercourses has been lost, degraded, or altered in historical times. *Lilaeopsis* occupies small portions of these rare habitats.

Lilaeopsis is an herbaceous, semiaquatic to occasionally fully aquatic perennial plant with slender, erect leaves that grow from creeping rhizomes. The leaves are cylindrical, hollow with no pith, and have septa (thin partitions) at regular intervals. The yellow-green or bright green leaves are generally 1–3 millimeters (mm) (0.04–0.12 inches (in.)) in diameter and often 3–5 centimeters (cm) (1–2 in.) tall, but can reach up to 20 cm (8 in.) tall under favorable conditions. Three to 10 very small flowers are borne on an umbel that is always shorter than the leaves. The fruits are globose, 1.5–2 mm (0.06–0.08 in.) in diameter, and usually slightly longer than wide (Affolter 1985). The species reproduces sexually through flowering and asexually from rhizomes (root-like stems); the latter probably being the primary reproductive mode. An additional dispersal opportunity occurs as a result of the dislodging of clumps of plants which then may reroot at different sites along streams.

Lilaeopsis schaffneriana spp. *recurva* was first described by A.W. Hill based on the type specimen collected near Tucson in 1881 (Hill 1926). Hill applied the name *Lilaeopsis recurva* to the specimen, and the name prevailed until Affolter (1985) revised the genus. Affolter applied the name *L. schaffneriana* ssp. *recurva* to plants found west of the continental divide.

Previous Federal Action

We included *Lilaeopsis schaffneriana* ssp. *recurva,* then under the name *L. recurva,* as a category 2 candidate in our November 28, 1983 (45 FR 82480), and September 27, 1985 (50 FR 39526), plant notices of review. Category 2 candidates were defined as those taxa for which we had data indicating that listing was possibly appropriate but for which we lacked substantial information on vulnerability and threats to support proposed listing rules. In our February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144), notices, we included *Lilaeopsis* as a category 1 candidate. Category 1 candidates were defined as those taxa for which we had sufficient information on biological vulnerability and threats to support proposed listing rules but for which issuance of proposals to list were precluded by other higher-priority listing activities. Beginning with our combined plant and animal notice of review published in the **Federal Register** on February 28, 1996 (61 FR 7596), we discontinued the designation of multiple categories of candidates and only taxa meeting the definition of former category 1 candidates are now recognized as candidates for listing purposes.

On June 3, 1993, we received a petition, dated May 31, 1993, from a coalition of conservation organizations (Suckling *et al.* 1993) to list *Lilaeopsis* and two other species as endangered species pursuant to the Act. On December 14, 1993, we published a notice of 90-day finding that the petition presented substantial information indicating that listing of *Lilaeopsis* may be warranted, and requested public comments and biological data on the status of the species (58 FR 65325).

On April 3, 1995, we published a proposal (60 FR 16836) to list Lilaeopsis and two other species as endangered, and again requested public comments and biological data on their status. After consideration of comments and information received during the comment period, we listed *Lilaeopsis* as endangered on January 6, 1997.

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, we designate critical habitat at the time we determine a species to be endangered or threatened.

At the time of listing, we determined that any potential benefits of critical habitat beyond that of listing, when weighed against the negative impacts of disclosing site-specific localities, did not yield an overall benefit to the species, and, therefore, that designation of critical habitat was not prudent.

On October 31, 1997, Southwest Center for Biological Diversity filed a lawsuit in Federal District Court in Arizona against the Department of Interior for failure to designate critical habitat for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) and *Lilaeopsis* (Southwest Center for Biological Diversity v. Bruce Babbitt, Secretary of the Department of the Interior; CIV 97–704 TUC ACM). On October 7, 1998, Alfredo C. Marquez, Senior U.S. District Judge, issued an order stating that ''There being no evidence that designation of critical habitat for the pygmy-owl and water umbel is not prudent, the Secretary shall, without further delay, decide whether or not to designate critical habitat for the pygmy-owl and water umbel based on the best scientific and commercial information available.''

On November 25, 1998, in response to the Plaintiff's motion to clarify his initial order, Judge Marquez further ordered ''that within 30 days of the date of this Order, the Secretary shall issue the Proposed Rules for designating critical habitat for the pygmy-owl and water umbel . . . and that within six months of issuing the Proposed Rules, the Secretary shall issue final decisions regarding the designation of critical habitat for the pygmy-owl and water umbel.''

Absent the court's order, the processing of this proposed rule would not conform with our Fiscal Year 1998 and 1999 Listing Priority Guidance, published on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which we will process rulemakings giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants; second priority (Tier 2) to processing final determinations on proposals to add species to the lists, processing new listing proposals, processing administrative findings on petitions (to add species to the lists, delist species, or reclassify listed species), and processing a limited number of proposed and final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed and final rules designating critical habitat. The Service's Southwest Region is currently working on Tier 2 actions; however, we are undertaking this Tier 3 action in order to comply with the above-mentioned court order.

Habitat Characteristics

The physical and biological habitat features essential to the conservation of *Lilaeopsis* include a riparian plant community that is stable over time and relatively free of nonnative species, a stream channel that is stable and subject to periodic flooding, refugial sites (sites safe from catastrophic flooding), and a permanently wetted substrate (soil) for growth and reproduction of the plant.

Lilaeopsis has an opportunistic strategy that ensures its survival in healthy riverine systems, cienegas, and springs. In upper watersheds that generally do not experience scouring floods, Lilaeopsis occurs in microsites (small isolated sites) where competition between different plant species is low. At these sites, *Lilaeopsis* occurs on wetted soils interspersed with other plants at low density, along the periphery of the wetted channel, or in small openings in the understory. The upper Santa Cruz River and associated springs in the San Rafael Valley, where a population of *Lilaeopsis* occurs, is an example of a site that meets these conditions. The types of microsites required by *Lilaeopsis* were generally lost from the main stems of the San Pedro and Santa Cruz Rivers when channel entrenchment occurred in the late 1800s. Habitat on the upper San Pedro River is recovering, and *Lilaeopsis* has recently recolonized small reaches of the main channel.

Lilaeopsis can occur in backwaters and side channels of streams and rivers, and in nearby springs. After a flood, *Lilaeopsis* can rapidly expand its population and occupy disturbed habitat until interspecific competition exceeds its tolerance. This response was recorded at Sonoita Creek in August 1988, when a scouring flood removed about 95 percent of the *Lilaeopsis* population (Gori *et al.* 1990). One year later, *Lilaeopsis* had recolonized the stream and was again co-dominant with *Rorippa nasturtium-aquaticum* (watercress) (Warren *et al.* 1991).

The expansion and contraction of *Lilaeopsis* populations appears to depend on the presence of ''refugia'' where the species can escape the effects of scouring floods, a watershed that has an unaltered flow regime, and a healthy riparian community that stabilizes the channel. Two patches of *Lilaeopsis* on the San Pedro River were lost during a winter flood in 1994 and the species had still not recolonized that area as of May of 1995, demonstrating the dynamic and often precarious nature of occurrences within a riparian system (Al Anderson, Grey Hawk Ranch, *in litt.* 1995).

Density of *Lilaeopsis* plants and size of populations fluctuate in response to both flood cycles and site characteristics. Some sites, such as Black Draw, have a few sparsely distributed clones, possibly due to the dense shade of the even-aged overstory of trees and deeply entrenched channel. The Sonoita Creek population occupies 14.5 percent of a 500.5 square-meter (sq-m) (5,385 square-foot (sq-ft)) patch of habitat (Gori *et al.* 1990). Some populations are as small as 1–2 sq-m (11–22 sq-ft). The Scotia Canyon population, by contrast, has dense mats of leaves. Scotia Canyon contains one of the larger *Lilaeopsis* populations, occupying about 57 percent of the 1,450-m (4,756-ft) perennial reach (Gori *et al.* 1990; Jim Abbott, Coronado National Forest, *in litt.* 1994).

While the extent of occupied habitat can be estimated, the number of individuals in each population is difficult to determine because of the intermeshing nature of the creeping rhizomes and the predominantly asexual mode of reproduction. A ''population'' of *Lilaeopsis* may be composed of one or many genetically distinct individuals.

Introduction of *Lilaeopsis* into ponds on the San Bernardino National Wildlife Refuge (Refuge) appears to be successful (Warren 1991). In 1991, *Lilaeopsis* was transplanted from Black Draw into new ponds and other Refuge wetlands. Transplants placed in areas with low plant density expanded rapidly (Warren 1991). In 1992, *Lilaeopsis* naturally colonized a pond created in 1991. However, as plant competition increased around the perimeter of the pond, the *Lilaeopsis* population decreased. This response seems to confirm observations (Kevin Cobble, San Bernardino National Wildlife Refuge, pers. comm. 1994; and Peter Warren, Arizona Nature Conservancy, pers. comm. 1993) that other species such as Typha sp. will out-compete *Lilaeopsis*.

Lilaeopsis has been documented from 25 sites in Santa Cruz, Cochise, and Pima counties, Arizona, and in adjacent Sonora, Mexico, west of the continental divide (Saucedo 1990, Warren *et al.* 1989, Warren *et al.* 1991, Warren and Reichenbacher 1991). The plant has been extirpated from six of the sites. The 19 extant sites occur in 4 major watersheds—San Pedro River, Santa Cruz River, Rio Yaqui, and Rio Sonora. All sites are between 1,148–2,133 m (3,500–6,500 ft) elevation. New information received during the comment periods and in section 7

conferences and consultations for proposed Federal actions has indicated that some of these sites are larger in extent than previously known. This is likely due to the dynamic nature of riparian habitats.

Nine *Lilaeopsis* populations occur in the San Pedro River watershed in Arizona and Sonora, on sites owned or managed by private landowners, the Fort Huachuca Military Reservation, the Coronado National Forest, and the Bureau of Land Management's (BLM) Tucson Field Office. Two extirpated populations in the upper San Pedro watershed occurred at Zinn Pond in St. David and the San Pedro River near St. David. Cienega-like habitats were probably common along the San Pedro River prior to 1900 (Hendrickson and Minckley 1984, Jackson *et al.* 1987), but these habitats are now largely gone. Surveys conducted for wildlife habitat assessment have found several discontinuous clumps of *Lilaeopsis* within the upper San Pedro River where habitat was present in 1996 prior to recent flooding (Mark Fredlake, BLM, pers. comm. 1996).

The four *Lilaeopsis* populations in the Santa Cruz watershed probably represent very small remnants of larger populations that may have occurred in the extensive riparian and aquatic habitat formerly existing along the river. Before 1890, the spatially intermittent, perennial flows on the middle Santa Cruz River most likely provided a considerable amount of habitat for *Lilaeopsis* and other aquatic plants. The middle section of the Santa Cruz River mainstem is about a 130-kilometer (km) (80-mile (mi)) reach that flowed perennially from the Tubac area south to the United States/Mexico border and intermittently from Tubac north to the Tucson area (Davis 1986).

Davis, Jr. (1982) quotes from the July 1855, descriptive journal entry of Julius Froebel while camped on the Santa Cruz River near Tucson: ''* * * rapid brook, clear as crystal, and full of aquatic plants, fish, and tortoises of various kinds, flowed through a small meadow covered with shrubs. * * *.'' This habitat and species assemblage no longer occurs in the Tucson area. In the upper watershed of the middle Santa Cruz River, the species is now represented only by a single population in two short reaches of Sonoita Creek. A population at Monkey Spring in the upper watershed of the middle Santa Cruz River has been extirpated, although suitable habitat exists (Warren *at el.* 1991).

Lilaeopsis remains in small areas (generally less than 1 sq-m (10.8 sq-ft)) in Black Draw, Cochise County, Arizona. Transplants from Black Draw have been successfully established in nearby wetlands and ponds. Recent renovation of House Pond on private land near Black Draw extirpated the population on that pond.

Two *Lilaeopsis* populations occur in the Rio Yaqui watershed. The species was recently discovered at Presa Cuquiarichi, in the Sierra de los Ajos, several miles east of Cananea, Sonora (Tom Deecken, Coronado National Forest, pers. comm. 1994). A population in the Rio San Bernardino in Sonora was also recently extirpated (Gori *et al.* 1990). One *Lilaeopsis* population occurs in the Rio Sonora watershed at Ojo de Agua, a cienega in Sonora at the headwaters of the river (Saucedo 1990).

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under Act is no longer necessary.

Section 4(b)(2) of the Act requires us to base critical habitat proposals upon the best scientific and commercial data available, taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in the extinction of the species (section 4(b)(2) of the Act).

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas, both occupied and unoccupied, that contain or could develop the essential habitat features (primary constituent elements), described below, and that are essential for the conservation of a listed species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide additional protection to areas where significant threats to the species have been identified. Critical habitat receives protection from the prohibition against destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Section 7(a)(2) of the Act prohibits Federal agencies from funding, authorizing, or carrying out actions likely to jeopardize the continued existence of a threatened or endangered species, or that are likely to destroy or adversely modify critical habitat. ''Jeopardize the continued existence'' is defined as an appreciable reduction in the likelihood of survival and recovery of a listed species. ''Destruction or adverse modification'' of critical habitat occurs when a Federal action significantly reduces the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of ''jeopardy'' to the species and ''adverse modification'' of critical habitat are similar.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for critical habitat are most appropriately addressed in recovery plans and management plans, and through section 7 consultations.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. Areas that do not currently contain all of the primary constituent elements but that could develop them in the future may be essential to the conservation of the species and may be designated as critical habitat.

Section 3(5)(C) of the Act generally requires that not all areas potentially occupied by a species be designated as critical habitat. Therefore, not all areas containing the primary constituent elements are necessarily essential to the

conservation of the species. Areas that contain one or more of the primary constituent elements, but that are not included within critical habitat boundaries, may still be important to a species' conservation and may be considered under other parts of the Act or other conservation laws and regulations.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to, the following:

- 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 of offspring, germination, or seed dispersal; and
- Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements of critical habitat for *Lilaeopsis* include, but are not limited to, the habitat components that provide:

(1) Sufficient perennial base flows to provide a permanently wetted substrate for growth and reproduction of *Lilaeopsis*;

(2) A stream channel that is stable and subject to periodic flooding that provides for rejuvenation of the riparian plant community and produces open microsites for *Lilaeopsis* expansion;

(3) A riparian plant community that is stable over time and in which nonnative species do not exist or are at a density that has little or no adverse effect on resources available for *Lilaeopsis* growth and reproduction; and

(4) Refugial sites in each watershed and in each stream reach, including but not limited to springs or backwaters of mainstem rivers, that allow each population to survive catastrophic floods and recolonize larger areas.

We selected critical habitat areas to provide for the conservation of *Lilaeopsis* throughout the remaining portion of its geographic range in the United States. At least one segment of critical habitat is proposed in each watershed containing the species, with the exception of the Rio Yaqui watershed where the plants are found on the San Bernardino National Wildlife Refuge. That population is secure under current management and, therefore, does not require special management considerations or protection.

Proposed Critical Habitat Designation

The proposed critical habitat areas described below, combined with protected areas either known or suspected to contain some of the primary constituent elements but not proposed as critical habitat, constitute our best assessment at this time of the areas needed for the species' conservation. However, the Arizona Plant Recovery Team will be providing guidance on the recovery planning for this species and may provide additional guidance regarding the significance of areas proposed for critical habitat as well as additional areas not yet proposed. Upon the team's completion of recovery planning guidance, we will evaluate the recommendations and reexamine if and where critical habitat is appropriate.

Critical habitat being proposed for *Lilaeopsis* includes areas that currently sustain the species and areas that do not currently sustain the species but offer recovery habitat. Protection of this proposed critical habitat would be essential for the conservation of the species. The species is already extirpated from a significant portion of its historical range. Eight disjunct areas are being proposed as critical habitat; all proposed areas are in Santa Cruz and Cochise counties, Arizona, and include stream courses and adjacent areas out to the beginning of upland vegetation.

The following general areas are proposed as critical habitat (see legal descriptions for exact critical habitat boundaries): approximately 2.0 km (1.25 mi) of Sonoita Creek southwest of Sonoita; approximately 4.4 km (2.7 mi) of the Santa Cruz River on both sides of Forest Road 61, plus approximately 3 km (1.9 mi) of an unnamed tributary to the east of the river; approximately 5.4 km (3.4 mi) of Scotia Canyon upstream from near Forest Road 48; approximately 1.1 km (0.7 mi) of Sunnyside Canyon near Forest Road 117 in the Huachuca Mountains; approximately 6.1 km (3.8 mi) of Garden Canyon near its confluence with Sawmill Canyon; approximately 3.5 km (2.2 mi) at Lone Mountain Canyon, plus approximately 1.7 km (1.0 mi) of an unnamed tributary and 1.8 km (1.1 mi) of Bear Creek; an approximate 0.7-km (0.4-mi) reach of Joaquin Canyon; and approximately 54.2 km (33.7 mi) of the San Pedro River from the perennial flows reach north of Fairbank (1991 DWR) to 200 m south of Hereford, San Pedro Riparian National Conservation Area.

Although the majority of the land being proposed for critical habitat designation is under Federal administration and management, some riparian systems on private land are being proposed. The Sonoita Creek segment and the San Rafael Valley segment within the Santa Cruz River drainage are privately owned. The sites in the Huachuca Mountains (Scotia, Sunnyside, Bear, Joaquin and a tributary of Lone Mountain, canyons) are managed by the Coronado National Forest. The San Pedro Riparian National Conservation Area is managed by the BLM. The Garden Canyon segment is managed by the Fort Huachuca Military Reservation.

We are not proposing critical habitat for the four populations occurring in Mexico because areas outside the United States are not considered for critical habitat designation (50 CFR 424.12(h)). Also, a population occurring on Turkey Creek, Canelo Hills is small and the habitat is probably not capable of supporting a large population. Similarly, the spring sites of Sawmill Spring, Sycamore Spring, Mud Spring and Freeman Springs also are too small to support large stable populations. We believe these isolated sites are not essential to the conservation of the species and, therefore, are not including them in proposed critical habitat.

Available Conservation Measures

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

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action

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

Section 7(a)(4) of the Act and regulations at 50 CFR 402.10 require Federal agencies to confer with us on any action that is likely to result in destruction or adverse modification of proposed critical habitat. Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated. Consequently, some Federal agencies may request conference with us on actions for which formal consultation has been completed. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

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

Activities on Federal lands that may affect *Lilaeopsis* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, would also be subject to the section 7 consultation process. Federal actions not affecting the species, as well as actions on non-Federal lands that are not federally funded or permitted would not require section 7 consultation.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of *Lilaeopsis* is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Such activities may include but are not limited to:

(1) Activities such as damming, water diversion, channelization, excess groundwater pumping, or other actions that appreciably decrease base flow and appreciably reduce the wetted surface area of perennial rivers or springs;

(2) Activities that alter watershed characteristics in ways that would appreciably reduce groundwater recharge or alter natural flooding regimes needed to maintain natural, dynamic riparian communities. Such activities adverse to *Lilaeopsis* could include, but are not limited to, vegetation manipulation such as chaining or harvesting timber; maintaining an unnatural fire regime either through fire suppression or too frequent or poorly-timed prescribed fires; mining; military maneuvers including bombing and tank operations; residential and commercial development, including road building; and livestock overgrazing;

(3) Activities that appreciably degrade or destroy native riparian communities, including but not limited to livestock overgrazing, clearing, cutting of live trees, introducing or encouraging the spread of nonnative species, and heavy recreational use; and

(4) Activities that appreciably alter stream channel morphology such as sand and gravel mining, road construction, channelization, impoundment, overgrazing by livestock, watershed disturbances, off-road vehicle use, heavy or poorly planned recreational use, and other uses.

Designation of critical habitat could affect the following agencies and/or actions including, but not limited to, managing recreation, road construction, livestock grazing, granting rights-of-way, timber harvesting, and other actions funded, authorized, or carried out by the Forest Service or BLM. Permitting of some military activities on Fort Huachuca may be affected by designation. Development on private or State lands requiring permits from Federal agencies, such as 404 permits from the U.S. Army Corps of Engineers, would also be subject to the section 7 consultation process.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Arizona Ecological Services Field Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103 (telephone (505) 248–6920, facsimile (505) 248–6922).

Economic Analysis

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

Public Comments Solicited

It is our intent that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

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

(2) Specific information on the amount and distribution of *Lilaeopsis* habitat, and what habitat is essential to the conservation of the species and why;

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

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

(5) Economic and other values associated with designating critical habitat for *Lilaeopsis* such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, ''existence values,'' and reductions in administrative costs); and

(6) The methodology we might use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

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

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final determination may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. We intend to schedule one public hearing regarding this proposal. We will announce the date, time and place of that hearing in the **Federal Register** and local newspapers at least 15 days prior to the hearing.

Executive Order 12866

Executive order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this notice easier to understand including answers to questions such as the following: (1) Are the requirements in the notice clearly stated? (2) Does the notice contain technical language or jargon that interferes with the clarity? (3) Does the format of the notice (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the ''Supplementary Information'' section of the preamble helpful in understanding the notice? What else could we do to make the notice easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may e-mail your comments to this address: Execsec@ios.doi.gov.

Required Determinations

1. Regulatory Planning and Review

In accordance with Executive Order 12866, this action was submitted for review by the Office of Management and Budget. Following issuance of this proposed rule, we will prepare an economic analysis to determine the economic consequences of designating the specific areas identified as critical habitat. If our economic analysis reveals that the economic impacts of designating any area as critical habitat outweigh the benefits of designation, we will exclude those areas from consideration, unless such exclusion will result in the extinction of the species. In the economic analysis, we will address any possible inconsistencies with other agencies' actions and any effects on entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule will not raise novel legal or policy issues.

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

In the economic analysis, we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities.

3. Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)).

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

4. Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In the economic analysis, we will address any effects to small governments resulting from designation of critical habitat and any Federal mandate of $100 million or greater in any year.

5. Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This proposed rule, if made final, will not ''take'' private property and will not alter the value of private property. Critical habitat designation is only applicable to Federal lands and to private lands if a Federal nexus exists. We do not designate private lands as critical habitat unless the areas are essential to the conservation of a species.

6. Federalism

This proposed rule, if made final, will not affect the structure or role of States, and will not have direct, substantial, or significant effects on States. As previously stated, critical habitat is only applicable to Federal lands and to non-Federal lands when a Federal nexus exists. If our economic analysis reveals that the economic impacts of designating any area of State concern as critical habitat outweigh the benefits of designation, we will exclude those areas from consideration, unless such exclusion will result in the extinction of the species.

7. Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. The Office of the Solicitor also will review the final determination for this proposal. We will make every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

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

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

9. National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act. We have determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment. This proposed designation of critical habitat, and the resulting final determination, will not require any actions that will affect the environment. No construction or destruction in any form is required under the provisions of critical habitat.

10. 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) and 512 DM 2: We understand that we must relate to federally recognized Tribes on a Government-to-Government basis. Secretarial Order 3206 American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act states that ''Critical habitat shall not be designated in such areas [an area that may impact Tribal trust resources] unless it is determined essential to conserve a listed species. In designating critical habitat, the Service shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands.'' The proposed designation of critical habitat for the water umbel does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Arizona Ecological Services Field Office (see **ADDRESSES** section).

Authors. The primary authors of this notice are Jim Rorabaugh and Angela Brooks (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

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

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

2. In § 17.12(h) revise the entry for ''*Lilaeopsis schaffneriana ssp. recurva*'' under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		
Lilaeopsis schaffneriana ssp. *recurva*.	Huachuca water umbel.	U.S.A. (AZ), Mexico	Apiaceae	E	600	17.96(a)	NA
*	*	*	*	*	*		

3. In § 17.96 add critical habitat for *Lilaeopsis schaffneriana ssp. recurva*, Huachuca water umbel, as the first entry under paragraph (a) to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

Family Apiaceae: *Lilaeopsis schaffneriana* ssp. *recurva* (Huachuca water umbel)

1. Critical habitat units are depicted for Santa Cruz and Cochise counties, Arizona, on the maps below.

2. Critical habitat includes the stream courses identified on the maps below and adjacent areas out to the beginning of upland vegetation.

3. Within these areas, the primary constituent elements include, but are not limited to, the habitat components which provide—(1) Sufficient perennial base flows to provide a permanently wetted substrate for growth and reproduction of *Lilaeopsis schaffneriana* ssp. *recurva*; (2) A stream channel that is stable and subject to periodic flooding that provides for rejuvenation of the riparian plant community and produces open microsites for *Lilaeopsis* expansion; (3) A riparian plant community that is stable over time and in which nonnative species do not exist or are at a density that has little or no adverse effect on resources available for *Lilaeopsis* growth and reproduction; and (4) Refugial sites in each watershed and in each stream reach, including but not limited to springs or backwaters of mainstem rivers, that allow each population to survive catastrophic events and recolonize larger areas.

Map Unit 1. Santa Cruz County, Arizona. From USGS 7.5′ quadrangle map Sonoita, Arizona. Gila and Salt Principal Meridian, Arizona: T. 20 S., R. 16 E., beginning at a point on Sonoita Creek in sec. 34 at approx. 31° 39′ 19″ N latitude and 110° 41′ 52″ W longitude proceeding downstream (westerly) to a point in sec. 33 at approx. 31° 39′ 07″ N latitude and 110° 42′ 46″ W longitude covering approx. 2 km (1.25 mi.).

Map Unit 2. Santa Cruz County, Arizona. From USGS 7.5′ quadrangle map Lochiel, Arizona. That portion of the Santa Cruz River beginning in the San Rafael De La Zanja Grant approx. at 31° 22′ 30″ N latitude and 110° 35′ 45″ W longitude downstream (southerly) to Gila and Salt Principal Meridian, Arizona, T. 24 S., R. 17 E., through secs. 11 and 14, to the south boundary of sec. 14 covering approx. 4.4 km (2.7 mi.). Also, a tributary that begins in T. 24 S., R. 17 E., sec. 13 at approx. 31° 21′ 10″ N latitude and 110° 34′ 16″ W longitude downstream (southwesterly) to its confluence with the Santa Cruz River covering approx. 3 km (1.9 mi.).

Map Unit 3. Cochise County, Arizona. From USGS 7.5′ quadrangle map Huachuca Peak, Arizona. Gila and Salt Principal Meridian, Arizona: That portion of Scotia Canyon beginning in T. 23 S., R. 19 E., sec. 3 at approx. 31° 27′ 19″ N latitude and 110° 23′ 44″ W longitude downstream (southwesterly) through secs. 10, 9, 16 and to approx. 31° 25′ 22″ N latitude and 110° 25′ 22″ W longitude in sec. 21 covering approx. 5.4 km (3.4 mi.).

Map Unit 4. Cochise County, Arizona. From USGS 7.5′ quadrangle map Huachuca Peak, Arizona. Gila and Salt Principal Meridian, Arizona: That portion of Sunnyside Canyon beginning in T. 23 S., R. 19 E., on the east boundary of sec. 10 downstream (southwesterly) to the south boundary of sec. 10 covering approx. 1.1 km (0.7 mi.).

Map Unit 5. Cochise County, Arizona. From USGS 7.5′ quadrangle map Miller Peak, Arizona. That portion of Garden Canyon in the Fort Huachuca Military Reservation beginning at approx. 31° 27′ 13″ N latitude and 110° 22′ 33″ W longitude downstream (northwesterly) to approx. 31° 28′ 45″ N latitude and 110° 20′ 11″ W longitude covering approx. 6.1 km (3.8 mi.).

Map Unit 6. Cochise County, Arizona. From USGS 7.5′ quadrangle map Miller Peak, Arizona. Gila and Salt Principal Meridian, Arizona: That portion of Lone Mountain Canyon beginning at a point in T. 23 S., R. 19 E., sec. 25 at approx. 31° 24′ 13″ N latitude and 110° 21′ 54″ W longitude downstream south through sec. 36 to a point in T. 24 S.,

R. 19 E., sec. 1 at approx. 31° 22′ 30″ N latitude and 110°21′ 47″ W longitude covering approx. 3.5 km (2.2 mi.). Also, an unnamed tributary beginning at a point in T. 23 S., R. 19 E., sec. 25 at approx. 31° 24′ 08″ N latitude and 110° 21′ 32″ W longitude downstream (southwesterly) to its confluence with Lone Mountain Canyon covering approx. 1.7 km (1.0 mi.). Also, that portion of Bear Creek beginning at a point in T. 23 S., R. 20 E., sec. 30 at approx. 31° 23′ 44″ N latitude and 110° 21′ 14″ W longitude downstream (southerly) through sec. 31, and T. 23 S., R. 19 E., sec. 36 to its confluence with Lone Mountain Canyon covering approx. 1.8 km (1.1 mi.).

Map Unit 7. Cochise County, Arizona. From USGS 7.5′ quadrangle maps Montezuma Pass, Arizona, Campini Mesa, Arizona. Gila and Salt Principal Meridian, Arizona: that portion of Joaquin Canyon beginning at a point in T. 24 S., R. 19 E., sec. 14 at approx. 31° 20′ 53″ N latitude and 110° 22′ 40″ W longitude downstream (southwesterly) to a point in sec. 13 at approx. 31° 20′ 37″ N latitude and 110° 22′ 27″ W longitude covering approx. 0.7 km (0.4 mi.).

Map Unit 8. Cochise County, Arizona. From USGS 7.5′ quadrangle maps: Hereford, Ariz.; Tombstone SE, Ariz.; Nicksville, Ariz.; Lewis Springs, Ariz.; Fairbank, Ariz.; Land, Ariz. Gila and Salt Principal Meridian, Arizona: That portion of the San Pedro River beginning in the San Rafael Del Valle Grant at a point approx. 200 meters upstream (south) of the Hereford Road bridge at approx. 31°26′ 16″ N latitude and 110° 06′ 24″ W longitude continuing downstream (northerly) through the San Rafael Del Valle Grant; T. 21 S., R. 22 E.; T. 21 S., R 21 S.; through the San Juan De Las Boquilla y Nogales Grant to a point at approx. 31° 48′ 28″ N latitude and 110° 12′ 32″ W longitude covering approx. 54.2 km (33.7 mi.).

Note: Maps follow:

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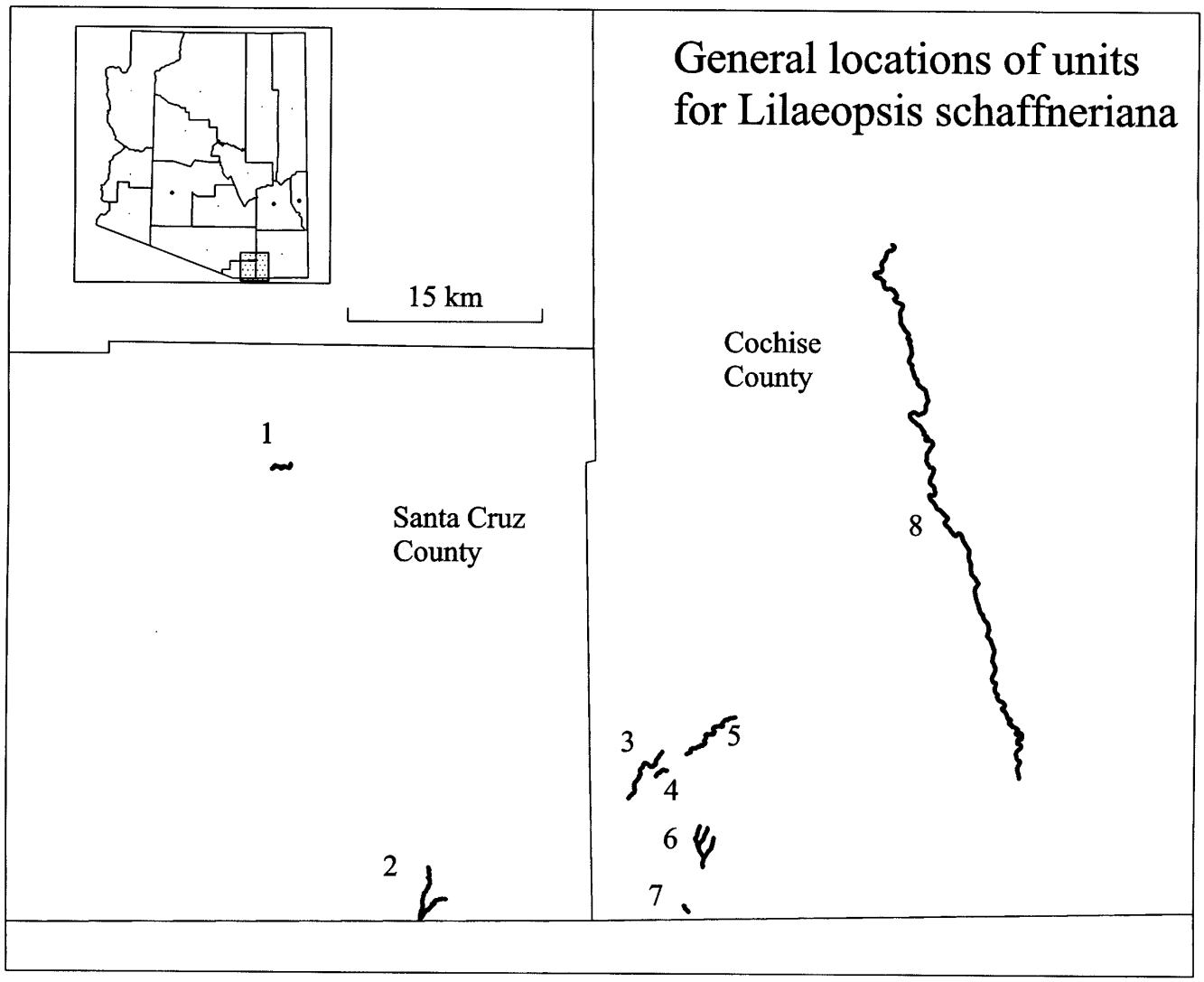
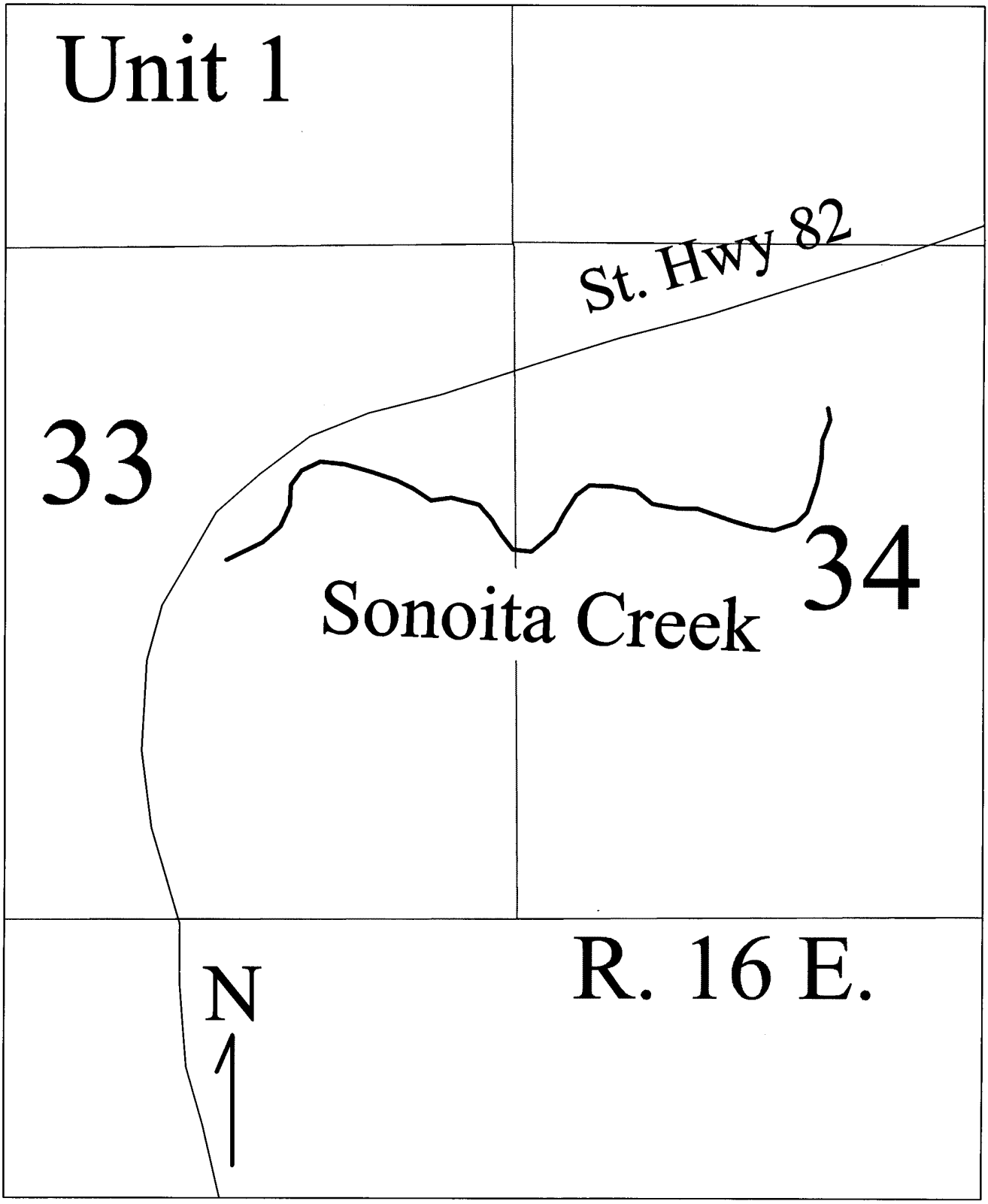
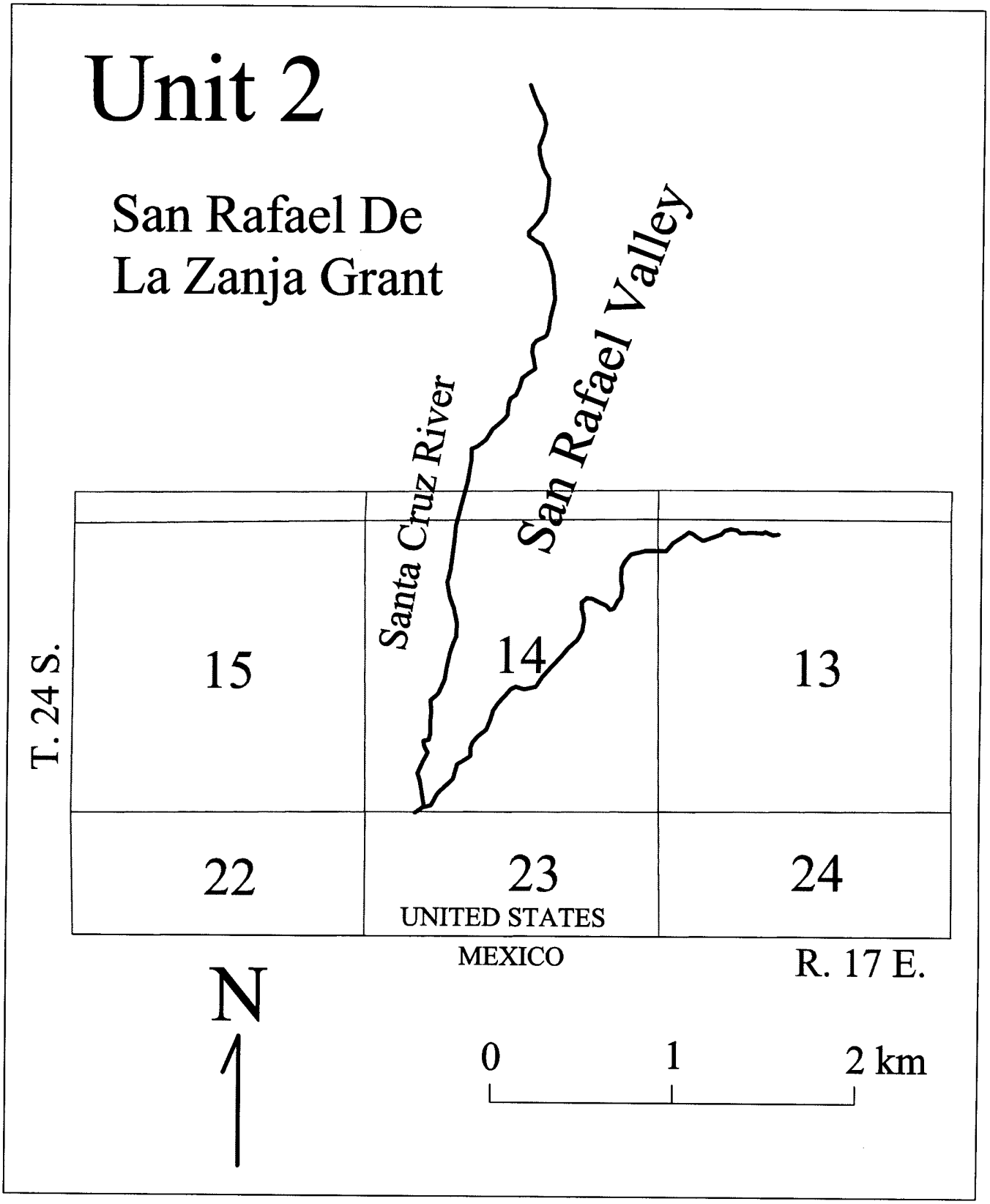
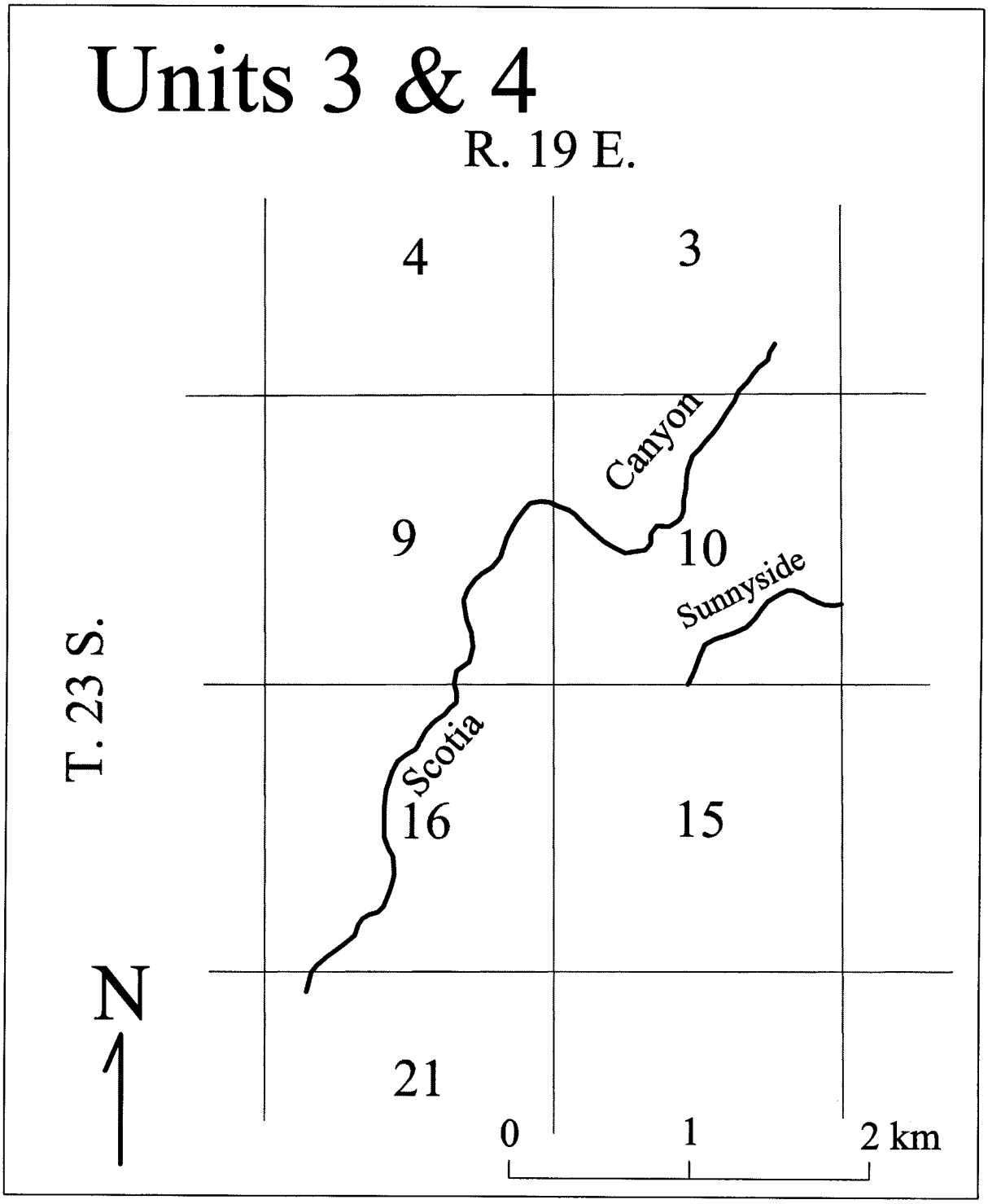
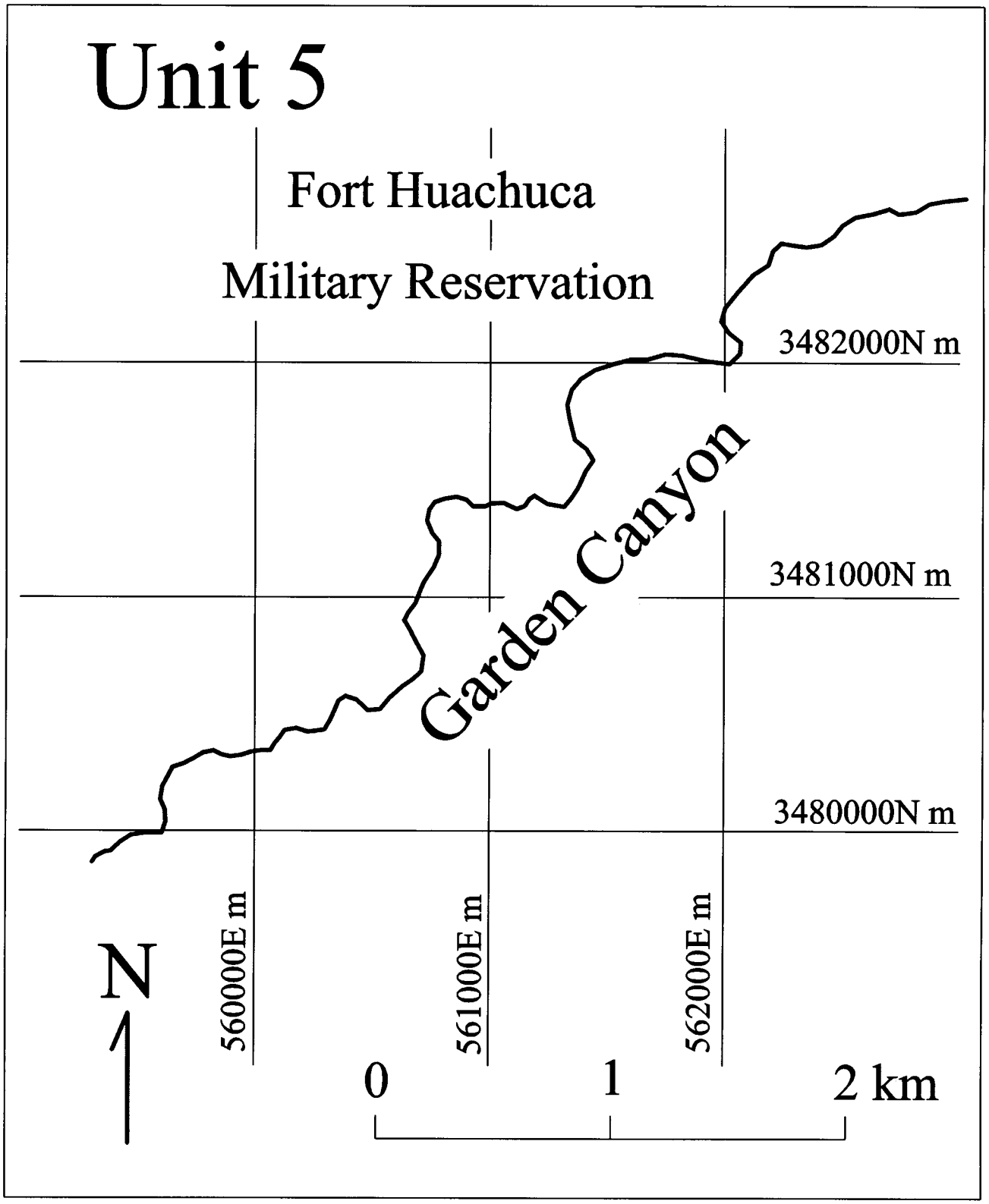
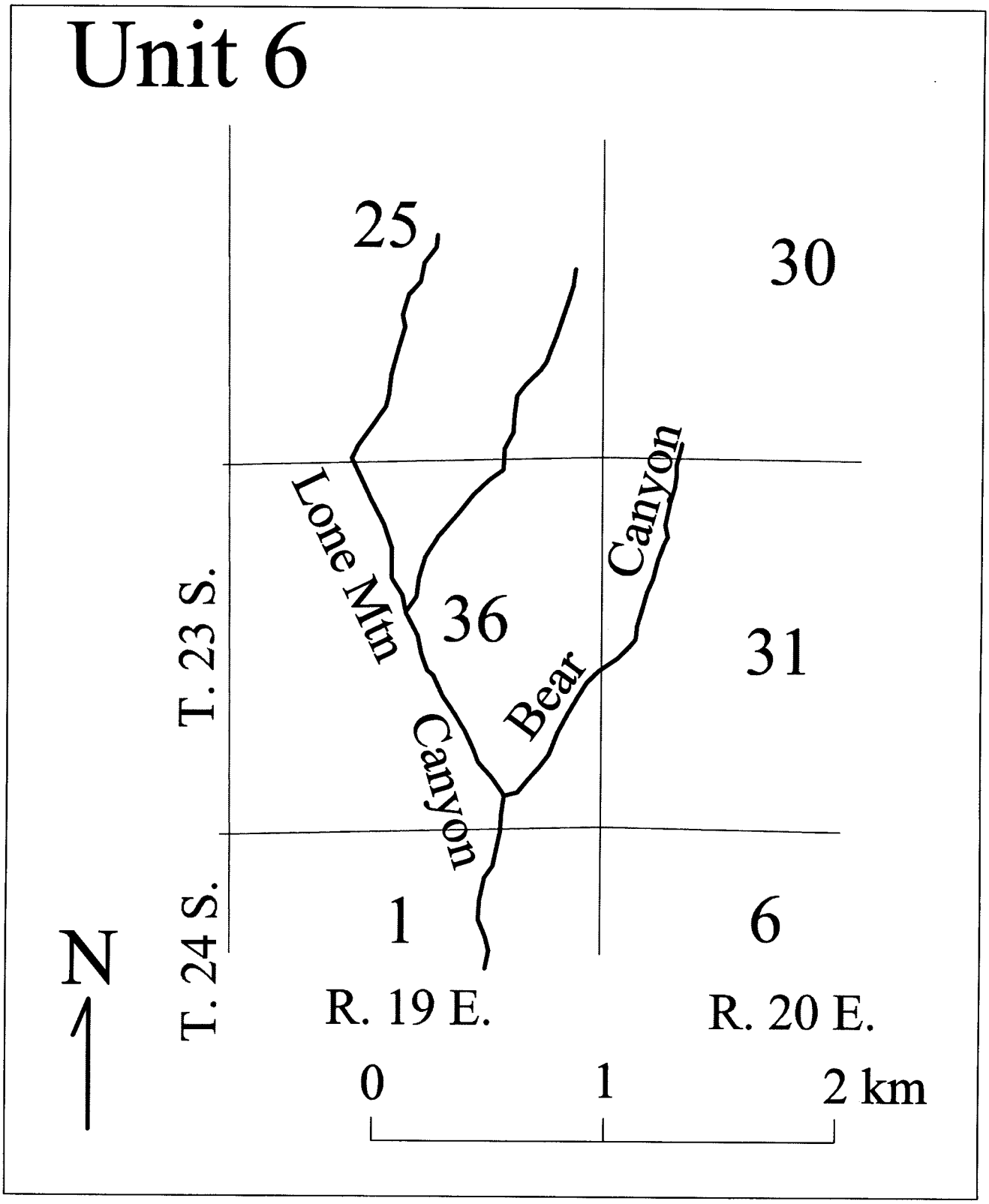

General locations of units
for Lilaeopsis schaffneriana
15 km
Cochise
County
Santa Cruz
County
1
2
3
4
5
6
7
8

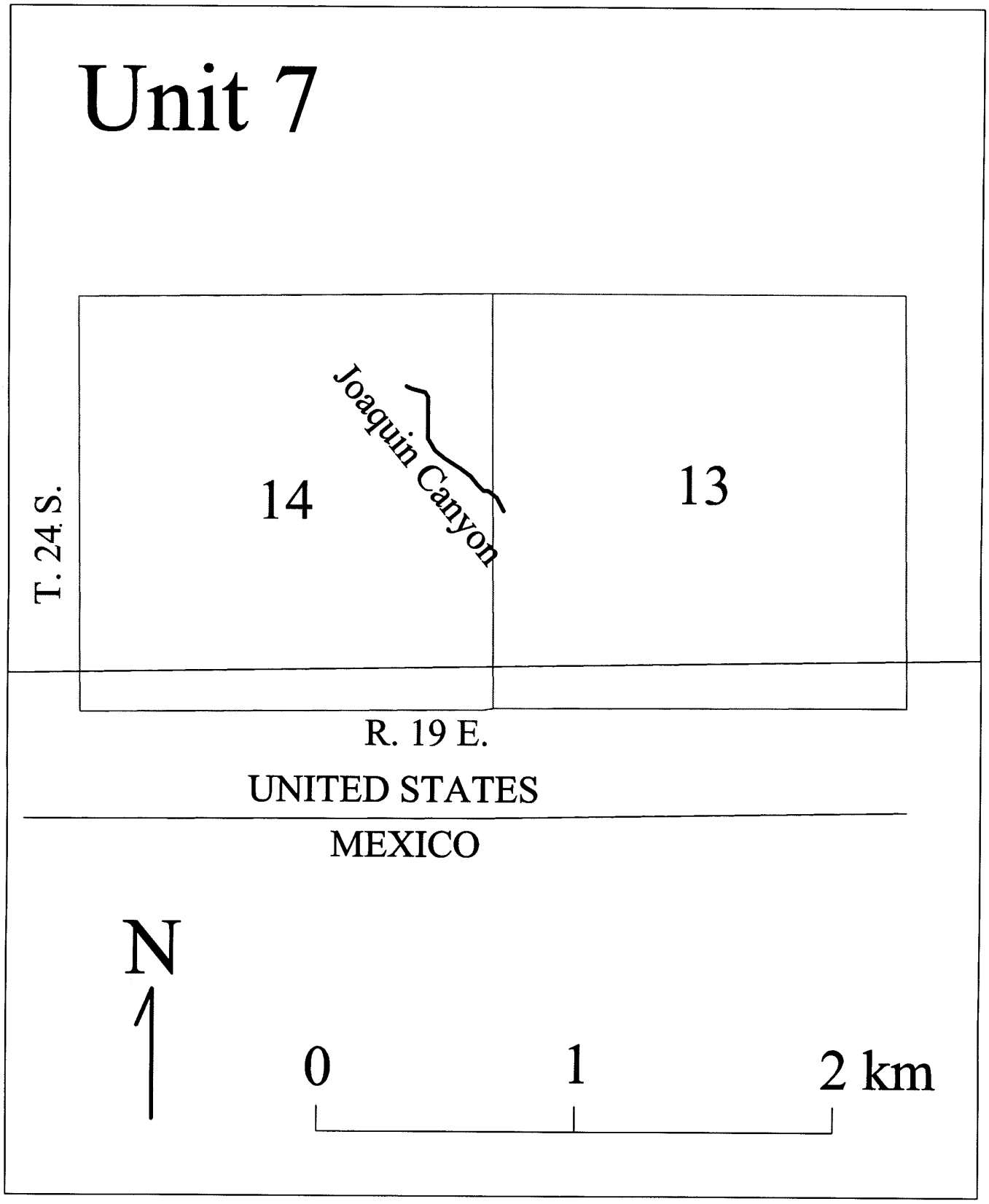

Unit 1
St. Hwy 82
33
34
Sonoita Creek
R. 16 E.
N

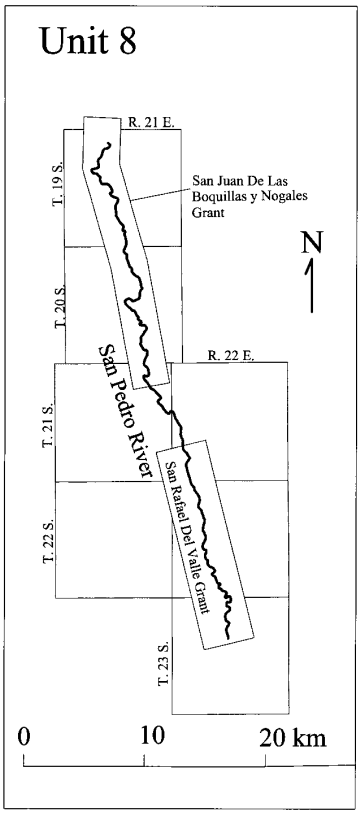

Unit 2
San Rafael De
La Zanja Grant
Santa Cruz River
San Rafael Valley
T. 24 S.
15
14
13
22
23
24
UNITED STATES
MEXICO
R. 17 E.
N
0
1
2 km


Units 3 & 4
R. 19 E.
T. 23 S.
4
3
9
10
16
15
21
Canyon
Sunnyside
Scotia
N
0
1
2 km


Unit 5
Fort Huachuca
Military Reservation
3482000N m
Garden Canyon
3481000N m
3480000N m
560000E m
561000E m
562000E m
N
0
1
2 km


Unit 6
25
30
Lone Mtn
Canyon
36
31
Bear
Canyon
T. 23 S.
T. 24 S.
1
6
N
R. 19 E.
R. 20 E.
0
1
2 km


Unit 7
Joaquin Canyon
14
13
T. 24 S.
R. 19 E.
UNITED STATES
MEXICO
N
0
1
2 km



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Dated: December 22, 1998.

Donald Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–34413 Filed 12–23–98; 3:59 pm]

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