

FSC group, provided the exchange transaction is documented and certified by the head of your agency to be in the best interests of the Government and all other provisions of this part are met. The documentation must contain a determination that the item exchanged and the item acquired are historic items.

14. Revise newly redesignated § 102–39.80 to read as follows:

§ 102–39.80 What are the accounting requirements for exchange allowances or proceeds of sale?

You must account for exchange allowances or proceeds of sale in accordance with the general finance and accounting rules applicable to you. Except as otherwise authorized by law, all exchange allowances or proceeds of sale under this part will be available during the fiscal year in which the property was sold and for one fiscal year thereafter for the purchase of replacement property. Any proceeds of sale not applied to replacement purchases during this time must be deposited in the United States Treasury as miscellaneous receipts.

15. Amend newly redesignated § 102–39.85 by adding paragraph (a)(3) to read as follows:

§ 102–39.85 What information am I required to report?

* * * * *

(3) A list by Federal Supply Classification Group of property acquired under this part, to include:

- (i) Number of items acquired;
- (ii) Acquisition cost.

* * * * *

[FR Doc. E7–23887 Filed 12–10–07; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AV02

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Pecos Sunflower (*Helianthus paradoxus*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and revisions to proposal.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the proposed designation of critical habitat for *Helianthus paradoxus* (Pecos

sunflower) under the Endangered Species Act of 1973, as amended (Act). We also announce a revision to proposed critical habitat Unit 4 and clarification of Unit 5, the availability of a draft economic analysis and draft environmental assessment, and an amended required determinations section of the proposal. The draft economic analysis estimates costs associated with conservation activities for *H. paradoxus* to be approximately \$3.9 to \$4.4 million in undiscounted dollars over the next 20 years (\$193,000 to \$221,000 annualized). We are reopening the comment period to allow all interested parties to comment simultaneously on the proposed rule, our revisions to the proposed rule, the associated draft economic analysis and environmental assessment, and the amended required determinations section. You do not have to resend comments sent earlier. We will incorporate them into the public record as part of this comment period, and we will fully consider them when preparing our final determination.

DATES: We will accept public comments until January 10, 2008.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018–AV02; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments Solicited section below for more information).

FOR FURTHER INFORMATION CONTACT: Wally “J” Murphy, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Rd NE., Albuquerque, NM 87113; telephone 505/346–2525; facsimile 505/346–2542. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We will accept written comments and information during this reopened comment period on the original proposed critical habitat designation for *H. paradoxus* published in the **Federal Register** on March 27, 2007 (72 FR 14328), the revisions to proposed

critical habitat described herein (see “Changes to the Proposed Rule” section), the draft economic analysis and draft environmental assessment of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why habitat should or should not be designated as “critical habitat” for *H. paradoxus* under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the designation of critical habitat is prudent.

(2) Specific information on the amount and distribution of *H. paradoxus* habitat, including which areas occupied by the species at the time of listing and that contain features essential for the conservation of the species should be included in the designation and why, and which areas that were not occupied by the species at the time of listing are 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, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts.

(5) The existence of lands included in the proposed designation that are covered under any conservation or management plans, which we should consider for exclusion from the designation pursuant to section 4(b)(2) of the Act.

(6) Information on the benefits of including or excluding lands managed by Bitter Lake National Wildlife Refuge from the final critical habitat designation.

(7) Information on any direct or indirect impacts to the human environment as a result of designating critical habitat for *H. paradoxus*.

(8) Information on whether the draft economic analysis identifies all local costs attributable to the proposed critical habitat designation and information on any costs that have been inadvertently overlooked.

(9) Whether the draft economic analysis correctly assesses the effect on regional costs associated with any land use controls that may derive from the designation of critical habitat.

(10) Whether the draft economic analysis or draft environmental assessment makes appropriate

assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat.

(11) Whether the draft economic analysis and draft environmental assessment appropriately identify all costs and benefits that could result from the designation.

(12) Information on whether there are any quantifiable economic benefits that could result from the designation of critical habitat.

(13) Economic data on the incremental effects that would result from designating any particular area as critical habitat, since it is our intent to include the incremental costs attributed to the critical habitat designation in the final economic analysis.

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

If you submitted comments or information during the initial comment period from March 27, 2007, to May 29, 2007, on the proposed rule (72 FR 14328), please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in preparation of our final determination. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comment, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning this proposed rule, our revisions to the proposed rule, the associated draft economic analysis and draft environmental assessment of the proposed designation, and the amended required determinations section by one of the methods listed in the **ADDRESSES** section. We will not accept comments you send by e-mail or fax. Please note that we may not consider comments we receive after the date specified in the **DATES** section in our final determination.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that we will post your entire comment—including your personal identifying information—on [http://](http://www.regulations.gov)

www.regulations.gov. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Rd NE., Albuquerque, NM 87113; telephone 505/346-2525.

You may obtain copies of the original proposed rule, the draft economic analysis, and the draft environmental assessment by mail from the New Mexico Ecological Services Field Office at the address listed above or by visiting our Web site at <http://www.fws.gov/southwest/es/NewMexico/>.

Background

It is our intent to discuss only those topics directly relevant to designation of critical habitat in this proposal. For more information on *H. paradoxus*, refer to the final listing rule published in the **Federal Register** on October 20, 1999 (64 FR 56582), the *Pecos Sunflower* Recovery Plan posted at http://ecos.fws.gov/docs/recovery_plans/2005/050915.pdf, and the original proposed critical habitat designation published on March 27, 2007 (72 FR 14328).

Helianthus paradoxus was listed as a threatened species on October 20, 1999 (64 FR 56582). At the time this plant was federally listed, the Service determined that the designation of critical habitat was not prudent because we believed publication of critical habitat maps would increase the degree of threats to the species by vandalism and commercial collection. On September 27, 2005, the Forest Guardians filed suit against the Service for failure to designate critical habitat for this species (*Forest Guardians v. Hall* 2005). On March 20, 2006, a settlement was reached that requires the Service to re-evaluate our original prudence determination. The settlement stipulated that, if prudent, a proposed rule would be submitted to the **Federal Register** for publication on or before March 16, 2007, and a final rule by March 16, 2008.

On March 15, 2007, we determined that critical habitat for *Helianthus paradoxus* was prudent and we subsequently published a proposed rule (72 FR 14328) to designate critical habitat for *H. paradoxus* on March 27, 2007. We proposed five units as critical habitat in the original proposal,

encompassing approximately 1,579.3 acres (ac) (639.1 hectares (ha)). We now revise our original March 27, 2007, proposed rule (72 FR 14328) to add areas to one of the units and clarify the boundaries of another unit, as described in the “Changes to the Proposed Rule” section. As a result of these additions and revisions, the proposed critical habitat now encompasses 5,745.5 ac (3,733.4 ha).

Critical habitat is defined in section 3 of the Act as the specific areas within the geographical 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 essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We have prepared a draft economic analysis based on the March 27, 2007, proposed rule (72 FR 14328) and the revised units described in this document.

The draft economic analysis considers the potential economic effects of all actions related to the conservation of *Helianthus paradoxus*, including costs associated with sections 4, 7, and 10 of the Act, as well as those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for *H. paradoxus* in proposed critical habitat units. The draft analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect lost economic opportunities associated with restrictions on land use (opportunity costs). This analysis also

addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this draft analysis looks retrospectively at costs that have been incurred since the date this species was listed as threatened (October 20, 1999; 64 FR 56582), and considers those costs that may occur in the 20 years following designation of critical habitat (i.e., 2007 to 2026).

The draft economic analysis is intended to quantify the economic impacts of all potential conservation efforts for *Helianthus paradoxus*; some of these costs will likely be incurred regardless of whether critical habitat is designated. This analysis estimated economic impacts resulting from the implementation of *H. paradoxus* conservation efforts in four categories: (a) Treatment of non-native species; (b) wetland filling and development; (c) livestock management; and (d) road maintenance. Over the 20-year period 2007 to 2026, the draft economic analysis finds that costs associated with conservation activities within these four categories are estimated at \$3.9 to \$4.4 million in undiscounted dollars over the next 20 years (\$193,000 to \$221,000 annualized). The present value of these impacts is \$3.3 million to \$3.6 million (\$186,000 to \$213,000 annualized), using a discount rate of three percent; or \$2.5 million to \$2.9 million (\$205,000 to \$225,000 annualized), using a discount rate of seven percent.

As stated earlier, we solicit data and comments from the public on this draft economic analysis, as well as on all aspects of the proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

Changes to the Proposed Rule

We proposed five units as critical habitat for *Helianthus paradoxus*. The original proposed critical habitat in our March 27, 2007, proposed rule (72 FR 14328), and the additional proposed areas of critical habitat as described below, constitute our best assessment of areas that meet the definition of critical

habitat under section 3(5)(a) of the Act. In the proposed regulation section of this notice, we provide maps and textual descriptions of the boundaries for Subunits 4a and 4b. These descriptions and maps are in addition to those published in our March 27, 2007, proposed rule, and thus included in the proposed critical habitat designation. We have also provided clarification on our Unit 5 description below.

Subunits 4a and 4b are in close proximity with or connected to Unit 4 described in the original proposed rule. Below, we present brief descriptions of the two subunits, the primary constituent elements (PCEs) they contain, and reasons why they meet the definition of critical habitat for *Helianthus paradoxus*. Within areas occupied by *H. paradoxus* at the time of listing and containing sufficient PCEs to support *H. paradoxus*'s life processes, we previously identified the Bitter Lake National Wildlife Refuge (portion of Subunit 4a) and the associated Refuge Farm (Subunit 4b) as areas that do not require special management or protections. As a result, these areas were not originally proposed to be included in the critical habitat designation. However, we have reconsidered our preliminary analysis of section 3(5)(a) of the Act and special management or protection needs of the PCEs on these refuge lands, and are now proposing to include these areas as critical habitat. However, we are considering their exclusion from the final designation pursuant to section 4(b)(2) of the Act.

In addition to the revision of proposed critical habitat, we have provided a clarified unit description for Unit 5. In the Unit 5 description found in the preamble of the proposed rule (72 FR 14328), we identified that Unit 5 contained a small group of plants downstream of The Nature Conservancy's Diamond Y Spring Preserve at a nearby highway right-of-way. This right-of-way site should not have been included in the unit description, for this small area is not known to be able to support sufficient numbers of plants to be considered stable (Blue Earth Ecological Consultants, Inc., 2007b, p 3; Poole 2006, p. 3). While the Unit 5 description in the preamble of the proposed rule was incorrect, the map and textual boundary description for Unit 5 found in the proposed regulation section did not include the right-of-way site and thus is still accurate.

Below, we present brief descriptions of these three areas (Subunits 4a and 4b, and Unit 5), and reasons why they meet the definition of critical habitat for *Helianthus paradoxus* (see "Criteria

Used To Identify Critical Habitat" in the March 27, 2007, proposed rule (72 FR 14328)).

Revised and New Unit Descriptions

Unit 4: Roswell/Dexter

Subunit 4a includes 3,572.2 ac (1,445.6 ha) of Bitter Lake National Wildlife Refuge/City of Roswell land located in Chaves County, New Mexico. This subunit is located approximately 5 miles (mi) (8 kilometers (km)) northeast of the city of Roswell.

One of the largest *Helianthus paradoxus* populations occurs on the Bitter Lake National Wildlife Refuge in New Mexico on Federal lands managed by the Service. Several hundred thousand to a few million plants occur nearly continuously along the shores and small islands of all the artificial lakes in the southern unit of the refuge. Also, a few small patches of plants occur on the west side of Bitter Lake Playa and adjacent springs on Lost River.

This area was occupied at the time of listing and has been visited by species experts during four or more seasons. These experts found the site occupied by *Helianthus paradoxus* on every visit (Ulibarri 2006a, p. 1; Sivinski 2007a, p. 2; Blue Earth Ecological Consultants, Inc. 2007a, p. 3). This area is currently occupied by the species and contains all of the PCEs essential to the conservation of the species. As noted, the portion of this subunit within Bitter Lake National Wildlife Refuge is proposed as critical habitat, but is being considered for exclusion from the final designation. Please see "Application of Section 4(b)(2) of the Act" section below for additional discussion.

Subunit 4b includes 686.2 ac (277.7 ha) of land within the Bitter Lake National Wildlife Refuge Farm (Refuge Farm). This subunit is located in Chaves County, New Mexico, approximately 5 mi (8 km) east of Roswell on the west side of the Pecos River.

Subunit 4b consists of a few large patches with several thousand plants on alkaline seeps behind the dikes on the western edge of the Refuge Farm south of Highway 380. This land is owned and managed by the Service as a grain farm and feeding area for migratory birds. The eastern portion of the Refuge Farm is a marshy spring-seep area that contains a large population of *Helianthus paradoxus*. The wet soils in this population are not cultivated.

This Refuge Farm subunit was occupied at the time of listing and has been visited by species experts during four or more seasons. The experts found the site occupied by *Helianthus*

paradoxus on every visit (Ulibarri 2006b, p. 1; Sivinski 2007a, p. 2; Blue Earth Ecological Consultants, Inc. 2007a, p. 3). This subunit is currently occupied by the species and contains all of the PCEs essential to the conservation of the species. As noted, the portion of this subunit within Bitter Lake National Wildlife Refuge is proposed as critical habitat, but is being considered for exclusion from the final designation. Please see “Application of Section 4(b)(2) of the Act” section below for additional discussion.

Unit 5: West Texas

Unit 5 includes 239.7 ac (97.0 ha) located solely on Diamond Y Spring in Pecos County, Texas. The unit is located approximately 12 mi (20 km) north-northwest of Fort Stockton, Texas.

Unit 5 consists of several hundred thousand to one million plants found on

The Nature Conservancy’s Diamond Y Spring Preserve and a contiguous parcel of private land. This site was occupied by the species at the time of its listing. This site has been visited by species experts during four or more seasons and has been documented to be occupied by *Helianthus paradoxus* on every visit (Poole 2006, p. 2). This unit is currently occupied by the species (Blue Earth Ecological Consultants, Inc. 2007b, p. 3) and contains all of the PCEs essential to the conservation of the species.

The land within The Nature Conservancy’s Diamond Y Spring Preserve was purchased to protect Diamond Y Spring Preserve and other rare or endangered aquatic species in the Diamond Y Spring system. This habitat is managed for the conservation of such species (Service 2005, p. 12). Diamond Y Spring Preserve has recently

expanded from 1,500 to 4,000 ac (607 to 1619 ha). However, *Helianthus paradoxus* on the Preserve is threatened by water withdrawal occurring outside the Preserve. On the adjacent private land, *H. paradoxus* is also threatened by water withdrawal, plus wetland filling and development, and livestock grazing during the growing and flowering season. As a result, special management or protections may be required to minimize these threats. At this time, we are not aware of any completed management plans that address *H. paradoxus* in this area.

Table 1 shows the areas occupied by *Helianthus paradoxus* at the time of listing, those areas that are currently occupied, and the threats to the primary constituent elements that may require special management or protections.

TABLE 1.—THREATS AND OCCUPANCY IN AREAS CONTAINING FEATURES ESSENTIAL TO THE CONSERVATION OF HELIANTHUS PARADOXUS

Geographic area/unit	Threats requiring special management or protections	Occupied at the time of listing	Currently occupied
Unit 1. West-Central New Mexico			
Subunit 1a. Rancho del Padre Spring Cienega	Water withdrawal, wetland filling and development, incompatible livestock management.	Yes	Yes.
Subunit 1b. Grants Salt Flat Wetland	Wetland filling and development, encroachment by nonnative vegetation, incompatible livestock management.	Yes	Yes.
Subunit 1c. Pueblo of Laguna	Water withdrawal, incompatible livestock management, encroachment by nonnative vegetation.	Yes	Yes.
Unit 2. La Joya-La Joya State Wildlife Management Area	Encroachment by nonnative vegetation	No	Yes.
Unit 3. Santa Rosa			
Subunit 3a. Blue Hole Cienega/Blue Hole Fish Hatchery Ponds.	Encroachment by nonnative vegetation; on City land, wetland filling and recreation use, mowing to edges of ponds, dredging ponds and filling of wetlands.	Yes	Yes.
Subunit 3b. Westside Spring	Next to major road, water withdrawal, wetland filling and development, encroachment by nonnative vegetation.	No	Yes.
Unit 4. Roswell/Dexter			
Subunit 4a. Bitter Lake National Wildlife Refuge/City of Roswell Land.	Water withdrawal; on City land, wetland filling and development, incompatible livestock management.	Yes	Yes.
Subunit 4b. Bitter Lake National Wildlife Refuge Farm	Water withdrawal	Yes	Yes.
Subunit 4c. Oasis Dairy	Water withdrawal, wetland filling and development, incompatible livestock management.	Yes	Yes.
Subunit 4d. Lea Lake at Bottomless Lakes State Park	Campgrounds and human trampling, encroachment by nonnative vegetation.	Yes	Yes.
Subunit 4e. Dexter Cienega	Water withdrawal, wetland filling and development, incompatible livestock management.	Yes	Yes.
Unit 5. West Texas-Diamond Y Spring	Water withdrawal, wetland filling and development, incompatible livestock management.	Yes	Yes.

The approximate area encompassed within each proposed critical habitat unit is shown in Table 2.

TABLE 2.—CRITICAL HABITAT UNITS PROPOSED FOR HELIANTHUS PARADOXUS AND AREAS CONSIDERED FOR EXCLUSION FROM THE FINAL DESIGNATION

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

Geographic area/unit	Land ownership	Proposed critical habitat areas in acres (hectares)	Areas considered for exclusion in acres (hectares)
Unit 1. West-Central New Mexico			
Subunit 1a. Rancho del Padre Spring Cienega	Private and Tribal	25.5 (10.3).	Undefined. ¹
Subunit 1b. Grants Salt Flat Wetland	Private	62.5 (25.3).	
Subunit 1c. Pueblo of Laguna	Tribal	Undefined ¹	
Unit 2. La Joya-La Joya State Wildlife Management Area.	State of New Mexico	854.3 (345.7).	
Unit 3. Santa Rosa			
Subunit 3a. Blue Hole Cienega/Blue Hole Fish Hatchery Ponds.	State of New Mexico and City of Roswell.	133.9 (54.2).	
Subunit 3b. Westside Spring	Private	6.4 (2.6).	
Unit 4. Roswell/Dexter			
Subunit 4a. Bitter Lake National Wildlife Refuge/ City of Roswell Land.	U.S. Fish and Wildlife Service and City of Roswell.	3,572.2 (1,445.6)	3,480 (1408.3).
Subunit 4b. Bitter Lake National Wildlife Refuge Farm ..	U.S. Fish and Wildlife Service.	686.2 (277.7)	686.2 (277.7).
Subunit 4c. Oasis Dairy	Private	103.9 (42.0).	
Subunit 4d. Lea Lake at Bottomless Lakes State Park ..	State of New Mexico	19.5 (7.9).	
Subunit 4e. Dexter Cienega	Private	41.4 (16.8).	
Unit 5. West Texas-Diamond Y Spring	Private	239.7 (97.0).	
Total Acres (Hectares)	5,745.5 (3,733.4)	

¹ This subunit consists of areas along the Rio San Jose located on the Pueblo of Laguna. Due to the sensitivity of tribal lands, the acreage for this subunit is undetermined at this time. However, on the basis of our partnership with the Pueblo, and in anticipation of completion of the Pecos Sunflower Draft Management Plan, Pueblo of Laguna, this subunit is being considered for exclusion from the final critical habitat designation under section 4(b)(2) of the Act.

Application of Section 4(b)(2) of the Act—Bitter Lake National Wildlife Refuge

Under section 4(b)(2), in considering whether to exclude a particular area from designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. In the original proposed rule, we addressed a number of general issues that are relevant to the exclusions under section 4(b)(2) of the Act that we are considering (72 FR 14328). In addition, we have conducted a draft economic analysis and draft environmental assessment analyzing the potential impacts of the proposed critical habitat designation and related factors, which are available for public review and comment. Based on public comment on these documents and the proposed designation, additional areas may be excluded from final critical habitat by the Secretary under the provisions of section 4(b)(2) of the Act. This is provided for in the Act and in

our implementing regulations at 50 CFR 424.19.

We have determined that areas managed by Bitter Lake National Wildlife Refuge (Refuge) meet the definition of critical habitat for *Helianthus paradoxus*. The Refuge has developed and completed a Comprehensive Conservation Plan (CCP) that provides the framework for protection and management of all trust resources, including federally listed species and sensitive natural habitats. We believe that there is minimal benefit from designating critical habitat for *H. paradoxus* within Refuge lands because these lands are protected areas for wildlife, and are currently managed for the conservation of wildlife, including threatened and endangered species, specifically *H. paradoxus*. Below we provide a description of the management being provided by the Refuge for the conservation of *H. paradoxus* within areas proposed for designation as critical habitat.

The Refuge was established on October 8, 1937, by Executive Order 7724 “as a refuge and breeding ground for migratory birds and other wildlife.” The Refuge Recreation Act (16 U.S.C. 460k *et seq.*) identifies the refuge as

being suitable for incidental fish and wildlife-oriented recreational development, the protection of natural resources, and the conservation of endangered species or threatened species. The Wilderness Act of 1964 (16 U.S.C. 1131–1136) directs the Service to “maintain wilderness as a naturally functioning ecosystem” on portions of the Refuge. While the Refuge was originally established to save wetlands vital to the perpetuation of migratory birds, the isolated gypsum springs, seeps, and associated wetlands protected by the Refuge have been recognized as providing the last known habitats in the world for several unique species. Management emphasis of the Refuge is placed on the protection and enhancement of habitat for endangered species and Federal candidate species, maintenance and improvement of wintering crane and waterfowl habitat, and monitoring and maintenance of natural ecosystem values.

The Refuge sits at a juncture between the Roswell Artesian Groundwater Basin and the Pecos River. These two systems and their interactions account for the diversity of water resources on the Refuge, including sinkholes, springs, wetlands, oxbow lakes, and riverine

habitats. The federally reserved water right for Bitter Lake National Wildlife Refuge has been signed by the State of New Mexico but awaits final approval by the Federal government, a procedural process. The Refuge is currently in negotiations with the New Mexico Office of the State Engineer, a State agency responsible for administering New Mexico's water resources, to quantify these reserved rights. This water right allows for an in-stream flow in Bitter Creek and allows the Refuge to manage impounded springs for the benefit of many species, including *Helianthus paradoxus*. This water right protects against the threat of a future water user purchasing a Pecos River Basin water right and moving the use to a location that would be detrimental to the Refuge's ability to manage for the conservation of *H. paradoxus*. While the water right does not specifically protect water for the purposes of *H. paradoxus* conservation, it combines with management under the Refuge's CCP (discussed below) to remove the threat of water withdrawal on Refuge lands.

The National Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105-57) (Refuge Improvement Act) establishes a conservation mission for refuges, gives policy direction to the Secretary of the Interior and refuge managers, and contains other provisions such as the requirement to integrate scientific principles into the management of the refuges. According to section 7(e)(1)(E) of the Refuge Improvement Act, all lands of the Refuge System are to be managed in accordance with an approved CCP that will guide management decisions and set forth strategies for achieving refuge purposes. In general, the purpose of the CCP is to provide long-range guidance for the management of National Wildlife Refuges. The Refuge Improvement Act requires all refuges to have a CCP and provides the following legislative mandates to guide the development of the CCP: (1) Wildlife has first priority in the management of refuges; (2) wildlife-dependent recreation, including hunting, fishing, wildlife observation, wildlife photography, environmental education, and environmental interpretation, are the priority public uses of the refuge system, and shall be allowed when compatible with the refuge purpose; and (3) other uses have lower priority in the refuge system and are only allowed if not in conflict with any of the priority uses and determined appropriate and compatible with the refuge purpose.

The CCP must also be revised if the Secretary determines that conditions that affect the refuge or planning unit

have changed significantly. In other words, a CCP must be followed once it is approved, and regularly updated in response to environmental changes or new scientific information.

The Bitter Lake National Wildlife Refuge has a final CCP that was approved in September 1998. The CCP serves as a management tool to be used by the Refuge staff and its partners in the preservation and restoration of the ecosystem's natural resources. The plan is intended to guide management decisions for 15 years, and sets forth strategies for achieving Refuge goals and objectives within that timeframe. In 2013, the plan will not expire, but will undergo review, and any needed revisions will be incorporated at that time. Key goals of the CCP related to *Helianthus paradoxus* include the following:

(1) To restore, enhance, and protect the natural diversity on the Refuge including threatened and endangered species by:

(a) Appropriate management of habitat and wildlife resources on Refuge lands and

(b) Strengthening existing and establishing new cooperative efforts with public and private stakeholders and partners; and

(2) To restore and maintain selected portions of a hydrological system that more closely mimics the natural processes along the reach of the Pecos River adjacent to the Refuge by:

(a) Restoration of the river channel, as well as restoration of threatened, endangered, and special concern species, and

(b) Control of exotic species and management of trust responsibilities for maintenance of plant and animal communities and to satisfy traditional recreational demands (Service 1998, pp. 5, 46-52).

Specific objectives related to these goals include: (1) The restoration of populations of aquatic species designated as endangered, threatened, or of special concern to a sustainable level (*Helianthus paradoxus* is specifically mentioned in this goal); and (2) following existing recovery plan objectives to monitor and study threatened or endangered species, their habitat requirements, exotic species encroachment, and human-induced impacts to prevent further decline and loss (Service 1998, pp. 49-52).

In summary, we believe that the Refuge lands are being adequately protected and managed for the conservation of *Helianthus paradoxus* and that current management provides a conservation benefit to this species and its PCEs. Furthermore, we believe that

there is minimal benefit from designating critical habitat for *H. paradoxus* on Refuge lands because, as explained in detail above, these lands are already managed for the conservation of the species. On the basis of this management, we intend to consider lands within the Bitter Lake National Wildlife Refuge and the associated Refuge Farm containing populations of *H. paradoxus* for exclusion from the final critical habitat designation pursuant to section 4(b)(2) of the Act. We will complete a full analysis of the benefits of excluding and the benefits of including these lands prior to making a final decision.

Required Determinations—Amended

In our March 27, 2007, proposed rule (72 FR 14328), we indicated that we would defer our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders was available in the draft economic analysis. Those data are now available for our use in making these determinations. In this notice we are affirming the information contained in the proposed rule concerning Executive Order (E.O.) 13132, E.O. 12988, the Paperwork Reduction Act, and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). Based on the information made available to us in the draft economic analysis, we are amending our Required Determinations, as provided below, concerning E.O. 12866 and the Regulatory Flexibility Act, E.O. 13211, E.O. 12630, and the Unfunded Mandates Reform Act.

Regulatory Planning and Review

In accordance with E.O. 12866, this document is a significant rule because it may raise novel legal and policy issues. Based on our draft economic analysis of the proposed designation of critical habitat for *Helianthus paradoxus*, costs related to conservation activities for *H. paradoxus* pursuant to sections 4, 7, and 10 of the Act are estimated at \$3.9 to \$4.4 million in undiscounted dollars over the next 20 years (\$193,000 to \$221,000 annualized). The present value of these impacts is \$3.3 million to \$3.6 million (\$186,000 to \$213,000 annualized), using a discount rate of three percent; or \$2.5 million to \$2.9 million (\$205,000 to \$225,000 annualized), using a discount rate of seven percent. Therefore, based on our draft economic analysis, we have determined that the proposed

designation of critical habitat for *H. paradoxus* would not result in an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule or accompanying economic analysis.

Further, E.O. 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A-4, September 17, 2003). Pursuant to Circular A-4, once it has been determined that the Federal regulatory action is appropriate, the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. We believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

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 (SBREFA) (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until

we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

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

To determine if the proposed *Helianthus paradoxus* critical habitat designation would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., residential and commercial development and agriculture). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

In the draft economic analysis of the proposed critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of *Helianthus paradoxus* and proposed designation of its critical habitat. This analysis estimated prospective economic impacts due to the implementation of *H. paradoxus* conservation efforts in four

categories: (a) Treatment of non-native species; (b) wetland filling and development; (c) livestock management; and (d) road maintenance. We determined from our analysis that the economic impacts of the designation on small entities are expected to be borne primarily by modifications to wetland filling and development activities. We assumed that if owners of parcels containing designated critical habitat face land use restrictions that preclude development on some or all of the parcel, the value of the properties will be reduced, essentially eliminating the option that those areas be developed. This draft economic analysis assumes that, in a high-end scenario, the entirety of forecast impacts would be borne by one small developer. The one small developer estimated to be affected represents approximately 20 percent of total small developers in the region. The total potential impact resulting from land use restrictions on development activities is forecast to be, at most, \$290,000 over 20 years, or approximately \$20,000 annually. Assuming the annual revenues of an average small developer in Cibola County are \$400,000, the total potential impact resulting from the proposed designation would amount to approximately 5.0 percent of typical annual sales of one entity. Consequently, we certify that the designation of critical habitat for *H. paradoxus* will not result in a significant economic impact on a substantial number of small business entities. Please see the "Economic Analysis" section above and the draft economic analysis itself for a more detailed discussion of potential economic impacts.

Executive Order 13211—Energy Supply, Distribution, or Use

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, or use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed designation of critical habitat for *Helianthus paradoxus* is considered a significant regulatory action under Executive Order 12866 because it raises novel legal and policy issues. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute "a significant adverse effect" when compared without the regulatory action under consideration. The draft economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in

the draft economic analysis, energy-related impacts associated with *H. paradoxus* conservation activities within proposed critical habitat are not expected. As such, the proposed designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use and a Statement of Energy Effects is not required.

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

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments," with two exceptions. It excludes "a condition of federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies

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

(b) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of \$100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The proposed designation of critical habitat imposes no obligations on State or local governments. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. As such, a Small Government Agency Plan is not required.

Executive Order 12630—Takings

In accordance with E.O. 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for *Helianthus paradoxus*. Critical habitat designation 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. We conclude that this designation of critical habitat for *H. paradoxus* does not pose significant takings implications.

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

It is our position that, outside the Jurisdiction of the Tenth Federal Circuit, we do not need to prepare environmental analyses as defined by NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal**

Register on October 25, 1983 (48 FR 49244). This assertion was upheld by the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 516 U. S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of *H. paradoxus*, under the Tenth Circuit ruling in *Catron County Board of Commissioners v. U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we conduct an environmental assessment under NEPA for the proposed critical habitat designation. The draft environmental assessment for this proposal is now available (<http://www.fws.gov/southwest/es/NewMexico/>). We solicit data and comments from the public on this draft document (See **FOR FURTHER INFORMATION CONTACT** section).

References Cited

To obtain a complete list of all references we cited in this rulemaking, contact the Field Supervisor, New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

Author(s)

The primary authors of this package are staff of the New Mexico Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 72 FR 14328, March 27, 2009, 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. Critical habitat for *Helianthus paradoxus* (Pecos sunflower) in § 17.96(a), which was proposed to be added on March 27, 2007, at 72 FR 14346, is proposed to be amended by:

- a. Revising paragraph (5), including the text and the map;
- b. Revising the text in paragraphs (6)(iii) and (v);
- c. Revising the text in paragraph (7)(ii);
- d. Revising the text in paragraphs (8)(ii) and (iv);

e. Revising the text in paragraph (9)(i) and the text and map in paragraph (9)(ii);

f. Redesignating paragraphs (9)(iii) through (9)(viii) as paragraphs (9)(v) through (9)(x);

g. Adding new paragraphs (9)(iii) and (iv), including a map;

h. Revising the text in newly designated paragraphs (9)(vi), (viii), and (x); and

i. Revising the text in paragraph (10)(ii) as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

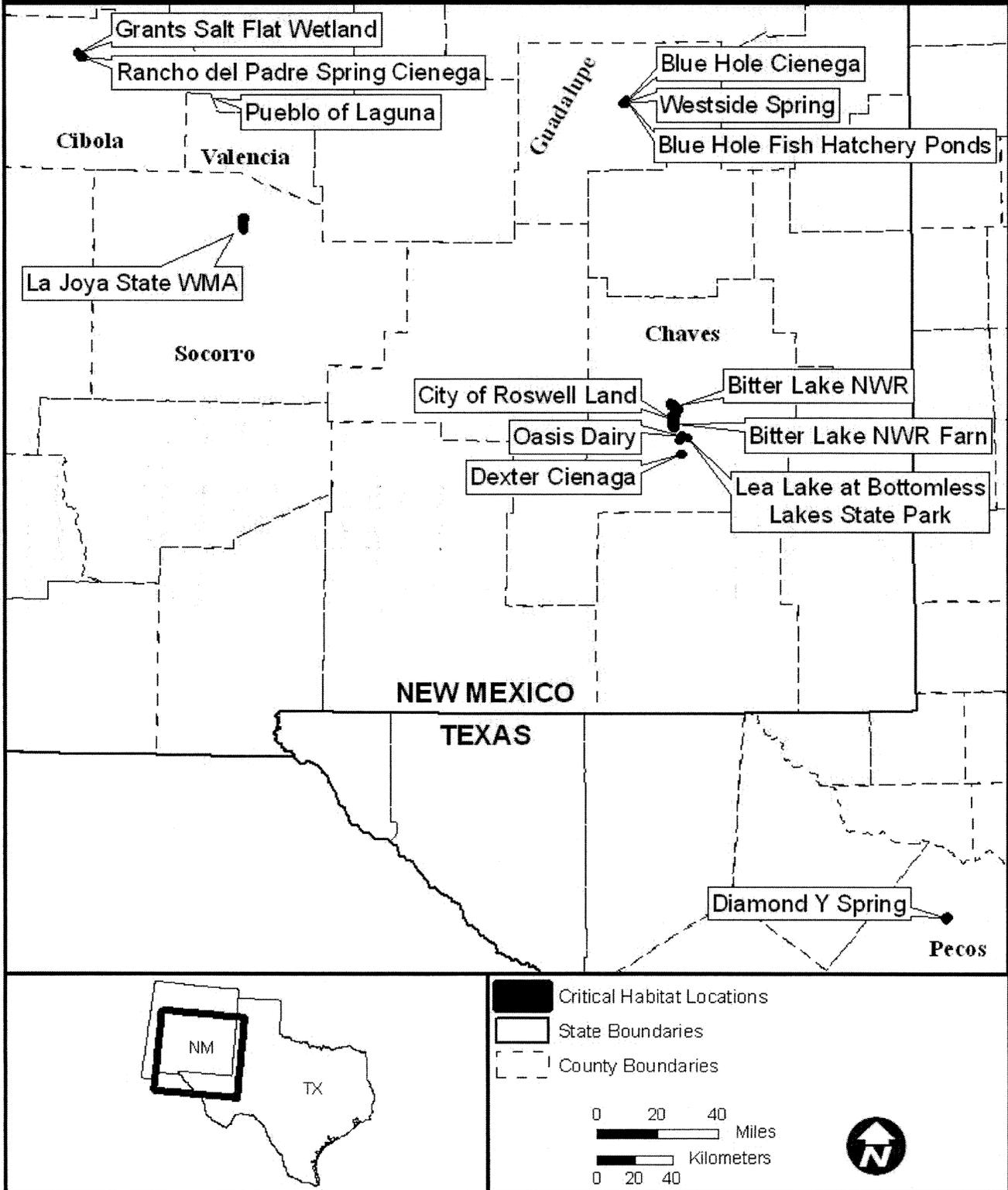
Family Asteraceae: *Helianthus paradoxus* (Pecos sunflower)

* * * * *

(5) *Note:* Index map for *Helianthus paradoxus* (Pecos sunflower) critical habitat units follows:

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Critical Habitat for the Pecos Sunflower Index Map



- (6) * * *
- (iii) Note: Map of subunits 1a and 1b for *Helianthus paradoxus* (Pecos sunflower) critical habitat follows:
- * * * * *
- (v) Note: Map of subunit 1c for *Helianthus paradoxus* (Pecos sunflower) critical habitat follows:
- * * * * *
- (7) * * *
- (ii) Note: Map of unit 2 for *Helianthus paradoxus* (Pecos sunflower) critical habitat follows:
- * * * * *
- (8) * * *
- (ii) Note: Map of subunit 3a for *Helianthus paradoxus* (Pecos sunflower) critical habitat follows:
- * * * * *
- (iv) Note: Map of subunit 3b for *Helianthus paradoxus* (Pecos sunflower) critical habitat follows:
- * * * * *
- (9) * * *
- (i) Subunit 4a for *Helianthus paradoxus*, Bitter Lake National Wildlife Refuge/City of Roswell Land, Chaves County, New Mexico. From USGS 1:24,000 quadrangle Bitter Lake, lands bounded by the following UTM NAD83 coordinates (meters E, meters N): 553362, 3705257; 553381, 3705283; 553418, 3705283; 553444, 3705255; 553427, 3705221; 553405, 3705160; 553392, 3705130; 553383, 3705102; 553383, 3705076; 553392, 3705037; 553442, 3705004; 553457, 3704987; 553465, 3704961; 553437, 3704931; 553429, 3704909; 553407, 3704896; 553357, 3704881; 553329, 3704836; 553316, 3704760; 553316, 3704643; 553342, 3704529; 553349, 3704455; 553347, 3704404; 553334, 3704362; 553342, 3704308; 553370, 3704265; 553418, 3704241; 553470, 3704235; 553528, 3704291; 553621, 3704345; 553686, 3704358; 553805, 3704429; 553841, 3704466; 553887, 3704557; 553947, 3704609; 553982, 3704710; 554021, 3704786; 554079, 3704838; 554168, 3704829; 554224, 3704775; 554280, 3704790; 554334, 3704868; 554351, 3704926; 554410, 3705025; 554492, 3705034; 554589, 3705001; 554658, 3704947; 554775, 3704878; 554900, 3704854; 554943, 3704785; 554974, 3704688; 555032, 3704604; 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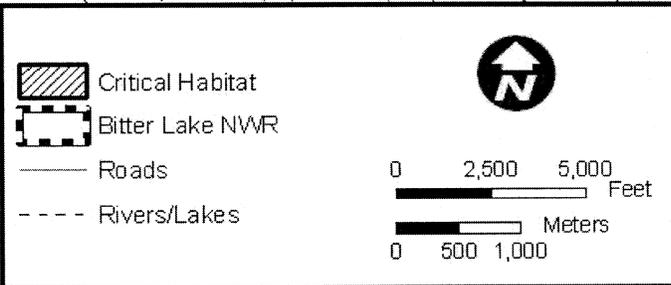
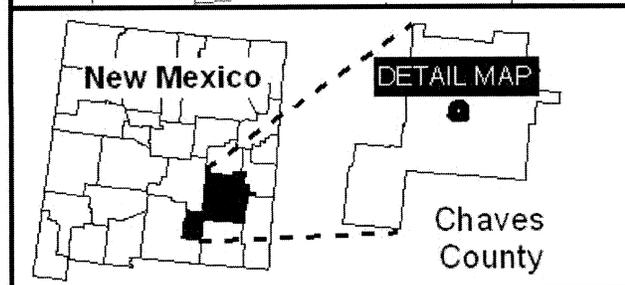
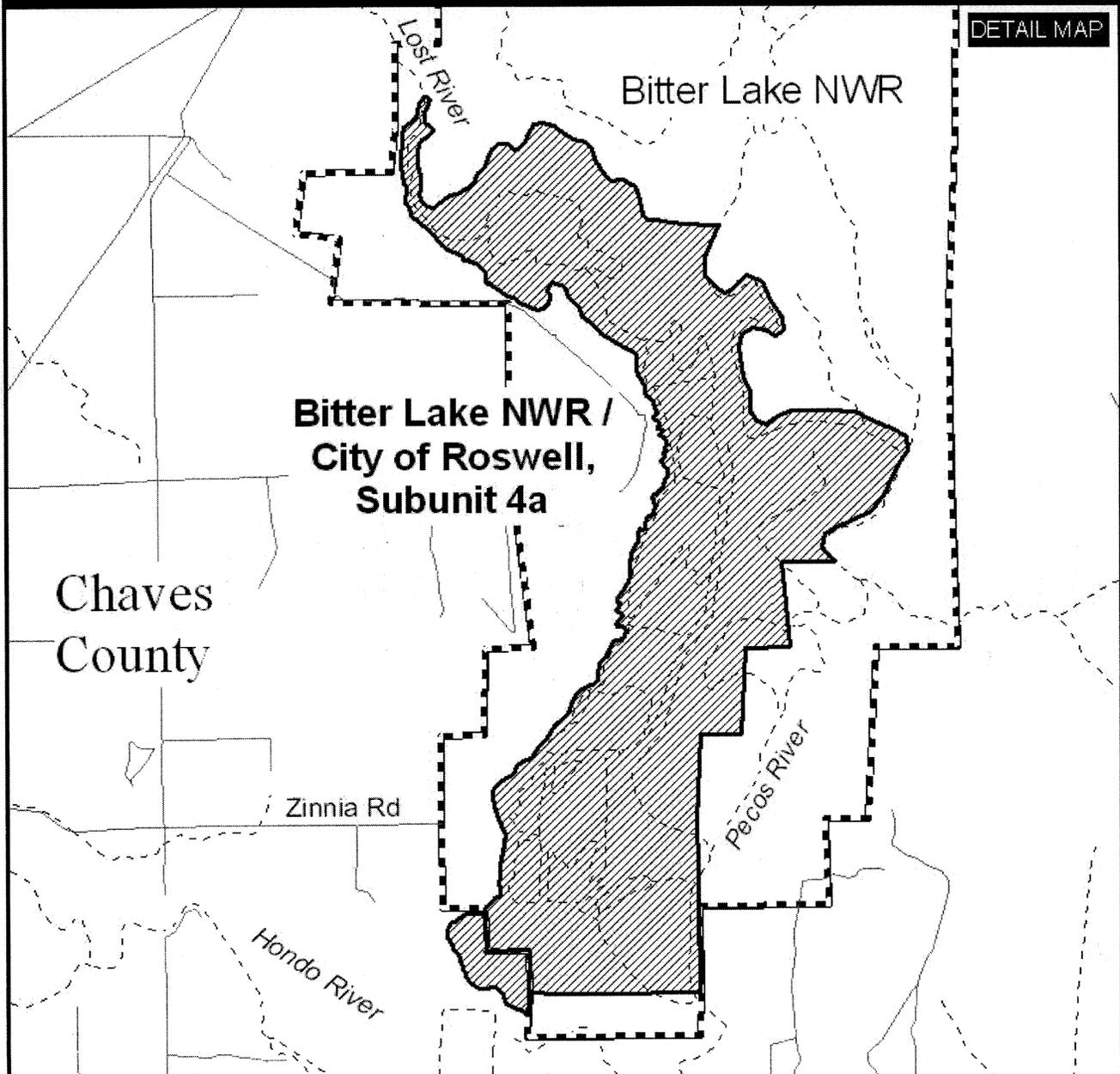
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553895, 3697563; 553916, 3697574;

553923, 3697590; thence returning to
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(ii) *Note:* Map of subunit 4a for
Helianthus paradoxus (Pecos sunflower)
critical habitat follows:

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Critical Habitat for the Pecos Sunflower Subunit 4a



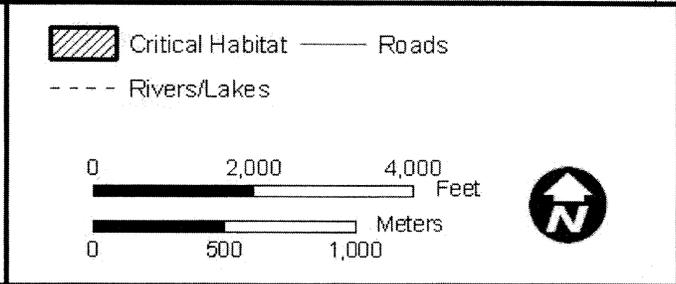
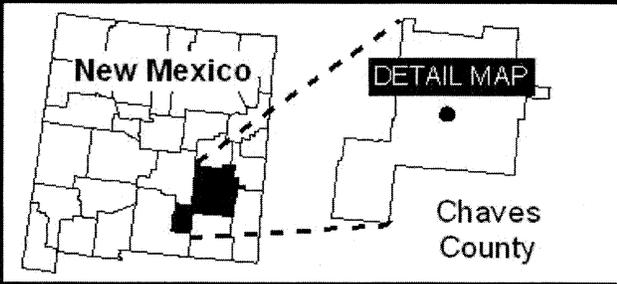
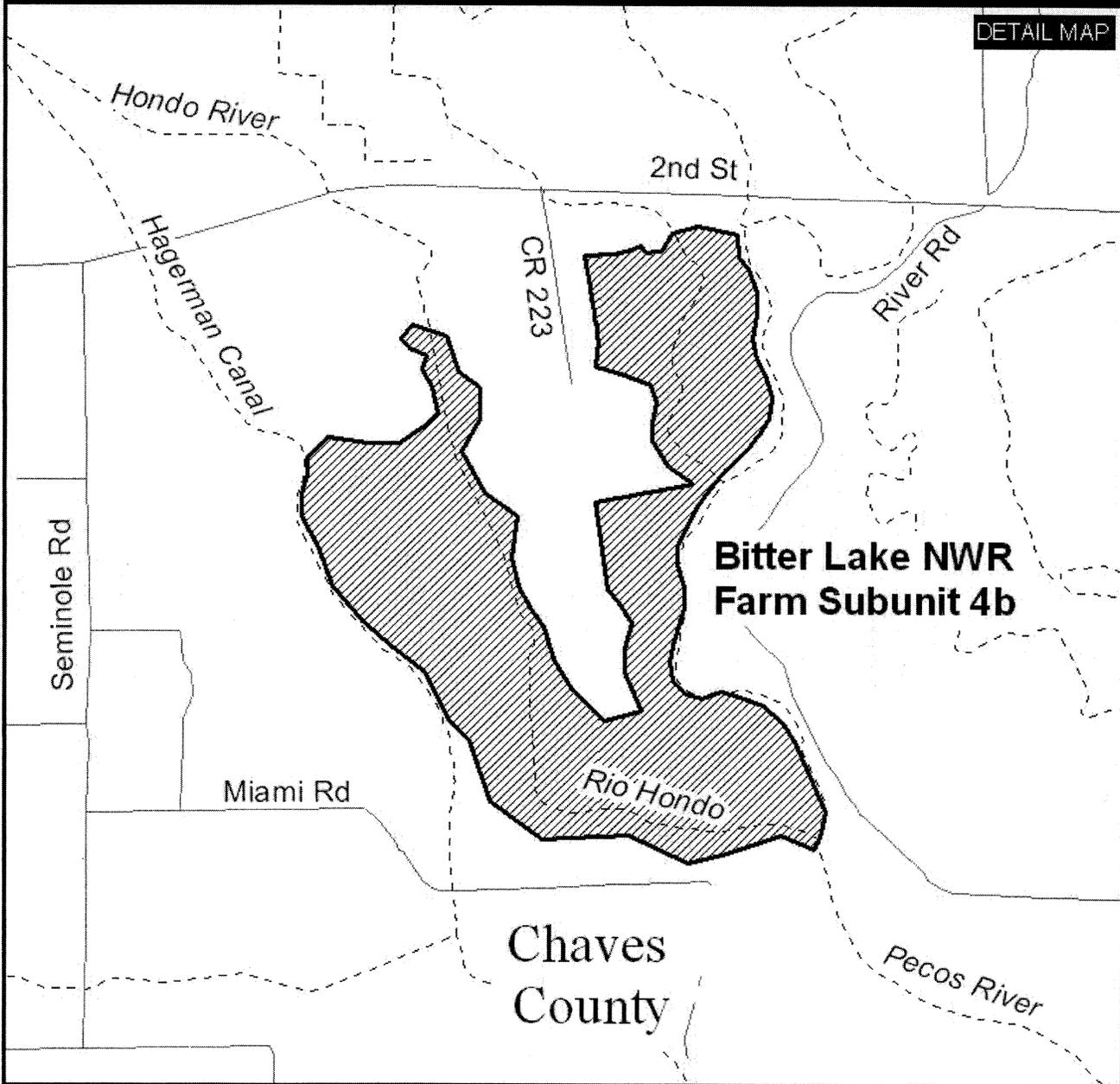
(iii) Subunit 4b for *Helianthus paradoxus*, Bitter Lake National Wildlife Refuge Farm, Chaves County, New Mexico. From USGS 1:24,000 quadrangles Bottomless Lakes and South Spring, lands bounded by the following UTM NAD83 coordinates (meters E, meters N): 555093, 3693168; 555018, 3693338; 555018, 3693440; 555053, 3693558; 554996, 3693646; 554948, 3693704; 554930, 3693796; 554886, 3694091; 555317, 3694170; 555203, 3694254; 555137, 3694364; 555137, 3694447; 555159, 3694535; 555129, 3694614; 554983, 3694672; 554890, 3694698; 554899, 3694810; 554897, 3694841; 554894, 3694878; 554885, 3694912; 554882, 3694940; 554868, 3695008; 554856, 3695090; 554839, 3695191; 554971, 3695198; 555042, 3695216; 555087, 3695235; 555104, 3695208; 555159, 3695215;

555176, 3695212; 555225, 3695291; 555339, 3695326; 555511, 3695287; 555515, 3695190; 555559, 3695133; 555599, 3695031; 555599, 3694930; 555581, 3694820; 555599, 3694732; 555643, 3694648; 555669, 3694556; 555652, 3694468; 555616, 3694402; 555573, 3694345; 555515, 3694288; 555462, 3694235; 555405, 3694164; 555339, 3694072; 555247, 3693901; 555247, 3693818; 555282, 3693712; 555278, 3693624; 555229, 3693457; 555216, 3693382; 555229, 3693303; 555295, 3693241; 555361, 3693219; 555441, 3693250; 555529, 3693228; 555630, 3693188; 555718, 3693118; 555771, 3693027; 555907, 3692714; 555889, 3692626; 555859, 3692547; 555709, 3692613; 555476, 3692530; 555301, 3692484; 555040, 3692613; 554657, 3692591; 554428, 3692763; 554336, 3693027; 554243, 3693128;

554133, 3693338; 554001, 3693444; 553861, 3693563; 553733, 3693721; 553667, 3693888; 553597, 3694029; 553597, 3694122; 553619, 3694219; 553619, 3694293; 553715, 3694377; 553887, 3694351; 554023, 3694355; 554142, 3694434; 554191, 3694491; 554164, 3694601; 554120, 3694681; 554142, 3694747; 554067, 3694777; 554032, 3694817; 554081, 3694881; 554230, 3694835; 554283, 3694672; 554375, 3694601; 554380, 3694456; 554296, 3694315; 554402, 3694126; 554547, 3694029; 554520, 3693841; 554555, 3693720; 554604, 3693624; 554666, 3693541; 554710, 3693396; 554780, 3693272; 554882, 3693167; 554930, 3693118; thence returning to 555093, 3693168.

(iv) *Note:* Map of subunit 4b for *Helianthus paradoxus* (Pecos sunflower) critical habitat follows:

Critical Habitat for the Pecos Sunflower Subunit 4b



* * * * *

(vi) *Note:* Map of subunit 4c for *Helianthus paradoxus* (Pecos sunflower) critical habitat follows:

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(viii) *Note:* Map of subunit 4d for *Helianthus paradoxus* (Pecos sunflower) critical habitat follows:

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(x) *Note:* Map of subunit 4e for *Helianthus paradoxus* (Pecos sunflower) critical habitat follows:

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(10) * * *

(ii) *Note:* Map of unit 5 for *Helianthus paradoxus* (Pecos sunflower) critical habitat follows:

* * * * *

Dated: November 30, 2007.

Mitchell Butler,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07-5973 Filed 12-10-07; 8:45 am]

BILLING CODE 4310-55-C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AV07; 1018-AV04

Endangered and Threatened Wildlife and Plants; Designations of Critical Habitat for the San Bernardino Kangaroo Rat (*Dipodomys merriami parvus*), *Poa atropurpurea* (San Bernardino bluegrass), and *Taraxacum californicum* (California taraxacum)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of public comment periods, and notice of public hearings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period and the scheduling of public hearings on the proposed rule to revise critical habitat for the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), and on the proposed rule to designate critical habitat for *Poa atropurpurea* (San Bernardino bluegrass) and *Taraxacum californicum* (California taraxacum) under the Endangered Species Act of 1973, as amended (Act). The reopened comment periods will provide the public; Federal, State, and local agencies; and Tribes with an additional opportunity to submit written comments on these proposed rules. Comments previously submitted for the proposed critical habitat designations for the San Bernardino

kangaroo rat, *P. atropurpurea*, or *T. californicum* need not be resubmitted as they have already been incorporated into the public record and will be fully considered in any final decisions.

DATES: *Written Comments:* We will accept comments and information until January 25, 2008, or at the public hearing. Any comments received after the closing date may not be considered in the final decisions on the designations of critical habitat.

Public Hearings: The public hearings will take place on January 10, 2008, from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m. in San Bernardino, California.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018-AV07 or 1018-AV04; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will not accept e-mail or faxes. We will accept written comments at the public hearing. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Public Hearings: The public hearings will be held at the Clarion Hotel and Convention Center, 295 North E Street, San Bernardino, CA 92401.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011; telephone 760-431-9440; facsimile 760-431-9624. If you use a telecommunications device for the deaf (TDD), call the Federal Information relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final actions resulting from these proposals will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions on these proposed rules from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning the proposed rules. We particularly seek comments on the proposed revised critical habitat designation for the San Bernardino kangaroo rat, and the proposed critical habitat designations

for *Poa atropurpurea* and *Taraxacum californicum* concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation is outweighed by the threats to each species caused by their respective designations such that the designation of critical habitat is prudent;

(2) Specific information on:

- The amount and distribution of habitat for each species;
- What areas that were occupied at the time of listing and that contain the features essential for the conservation of the species should be included in their respective designations and why; and
- What areas not occupied at the time of listing are essential to the conservation of each species and why;

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

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed revised designation for the San Bernardino kangaroo rat, and proposed critical habitat for *Poa atropurpurea* and *Taraxacum californicum* and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts; and

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

In addition, we seek the following specific comments on the proposed revised designation of critical habitat for the San Bernardino kangaroo rat:

(1a) Specific information on dispersal areas important for habitat connectivity, their role in the conservation and recovery of the subspecies, and reasons why such areas should or should not be included in the critical habitat designation;

(2a) Our proposed exclusions totaling 2,544 acres (ac) (1,029 hectares (ha)) of San Bernardino kangaroo rat habitat and whether the benefits of excluding these areas would outweigh the benefits of their inclusion under section 4(b)(2) of the Act. If the Secretary determines that the benefits of including these lands are not outweighed by the benefits of excluding them, they will not be excluded from final critical habitat;

(3a) Any proposed critical habitat areas covered by existing or proposed conservation or management plans that