loads and neck moments than those into tempered glass. Impacts into standard tempered glass resulted in axial loads that were comparable to those into the advanced glazings. For each neck injury measure, the lowest neck injury measurements were obtained from the tempered glass impacts.

On July 19, 2000 (65 FR 44710), NHTSA published a request for comments on the agency's second advanced glazing status report (DOT docket NHTSA–2000–7066). NHTSA received 96 comments from auto manufacturers, suppliers, safety groups, a vehicle extraction specialist, an engineering service, and private individuals. NHTSA has carefully analyzed the information provided in the comments. The automotive manufacturers commented that advanced glazing may induce head, neck and lacerative injuries and recommended that NHTSA focus on occupant containment efforts by means of side curtain air bags. All other commenters believed that advanced glazings would enhance the overall safety performance of vehicles. The private citizens did not provide technical data, but they favored the use of advanced glazing in side and rear windows of vehicles based on their belief that up to 1,300 lives may be saved each year. The manufacturers indicated that advanced glazing benefits assume a 66% belt use rate and the benefits would dramatically decline with increased seat belt use.

II. Agency Decision

In the House of Representatives Conference Report on H.R. 4475, Department of Transportation and Related Agencies Appropriation Act, 2001, Congress noted that NHTSA had been considering the utility of advanced side glazing since 1991, and directed NHTSA to complete and issue a final report on advanced side glazing. In November 2001, NHTSA completed that directive and published a final report, ''Ejection Mitigation Using Advanced Glazing.'' Based on its rulemaking efforts and research documented in the report, NHTSA concludes that there is no reasonable possibility of proposing regulatory requirements for advanced glazing in the foreseeable future due to safety and cost concerns.

Two primary reasons for this conclusion are the advent of other ejection mitigation systems, such as side air curtains and the need to develop performance standards for them, and the fact that advanced side glazing in some cases appears to increase the risk of neck injury. In addition, advanced side glazing would require modifications to, or the addition of, window frames on the side of vehicles and result in smaller side windows. For vehicles with framed windows, NHTSA estimates it would cost between $48 and $79 to modify the two front side windows. However, many vehicles today are produced without framed windows. NHTSA has no cost estimates for modifying windows without frames to accept advanced glazing. In addition, NHTSA has no cost estimates for modifying rear side windows for advanced side glazing. Advanced side glazing would require modifications to the design of all vehicles currently being produced to make their windows smaller, and the costs of such a design modification would be significant.

Given these concerns, NHTSA believes it would be more appropriate to devote its research and rulemaking efforts with respect to ejection mitigation to projects other than advanced glazing. Thus, the agency will not continue to examine a potential requirement for advanced side glazing. The focus will shift from advanced glazing to the development of more comprehensive, performance-based test procedures. If such procedures prove feasible, NHTSA will focus its efforts on establishing the safety performance that must be achieved. For these reasons, NHTSA has decided to terminate rulemaking on the issue of advanced glazing.

Issued on: June 13, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–15356 Filed 6–17–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG96

Endangered and Threatened Wildlife and Plants; Critical Habitat Designation for Two Larkspurs From Coastal Northern California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Delphinium bakeri* (Baker's larkspur) and *Delphinium luteum* (yellow larkspur). Approximately 1,786 hectares (ha) (4,412 acres (ac)) are proposed for designation of critical habitat. We are proposing to include approximately 740 ha (1,828 ac) within two units located in Marin and Sonoma counties, California, as critical habitat for *Delphinium bakeri,* and 1,046 ha (2,584 ac) within four units also located in Marin and Sonoma counties, California, as critical habitat for *Delphinium luteum.* Critical habitat receives protection from 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 4 of the Act requires us to consider economic and other relevant impacts when 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 and our approaches to handling any future habitat conservation plans. We may revise this proposal prior to final designation to incorporate or address new information received during the comment period.

DATES: We will accept comments until August 19, 2002. Public hearing requests must be received by August 2, 2002.

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

You may submit written comments and information or hand-deliver comments to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W—2605, Sacramento, CA 95825.

You may also send comments by electronic mail (e-mail) to *fw1bakers_yellow_larkspur@fws.gov.* See the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Wayne White, Field Supervisor, Sacramento Fish and Wildlife Office, at the above address: telephone 916/414–6600; facsimile 916/414–6710.

SUPPLEMENTARY INFORMATION:

Background

Delphinium bakeri is a perennial herb in the buttercup family (Ranunculaceae) that grows from a thickened, tuber-like, fleshy cluster of roots. The stems are

hollow, erect, and grow to 65 centimeters (cm) (26 inches (in)) tall. Shallowly five-parted leaves occur primarily along the upper third of the stem and are green (as opposed to withering) at the time the plant flowers. The flowers are irregularly shaped. The five sepals (members of the outermost set of flower parts) are conspicuous, bright dark blue or purplish, with the rear sepal elongated into a spur (hollow, often cone-shaped, projection). The inconspicuous petals occur in two pairs. The lower pair is oblong and blue-purple; the upper pair is oblique (having unequal sides or an asymmetric base) and white. Seeds are produced in several dry, many-seeded fruits which split open at maturity on only one side (i.e., follicles). *Delphinium bakeri* flowers from April through May (Warnock 1993). *Delphinium bakeri* can be differentiated from other members of the genus by its crenate leaf margins (margins notched or scalloped so as to form rounded teeth), leaves that are not withering at time of flowering, and flowers that are loosely arranged (California Native Plant Society (CNPS) 1977).

Ewan (1942) described *Delphinium bakeri* based on type material collected by Milo Baker in 1939 from ''Coleman Valley, Sonoma Co., California.'' In the most recent treatment, Warnock (1993) retained the taxon as a full species. *Delphinium bakeri* has only been known from three locations—Coleman Valley in southern Sonoma County; near the town of Tomales in northern Marin County, and approximately 10 kilometers (km) (6 miles (mi)) east of Tomales Bay in northern Marin County. *Delphinium bakeri* is thought to have been extirpated from Coleman Valley and from near Tomales. At the only known extant population, approximately 10 km (6 mi) east of Tomales Bay, the number of individuals has varied from 0 to 64 individuals over the last 20 years (CNDDB 2001).

Delphinium bakeri occurs on decomposed shale from 90 to 205 meters (m) (295 to 672 feet (ft)) in elevation (California Natural Diversity Database (CNDDB) 2001). The collection from the type locality in Coleman Valley was described by Joseph Ewan as growing ''along fence rows and in heavy low brush'' (Ewan 1942). Two species listed as growing with *D. bakeri* at the type locality were *Potentilla elata* [now known as *Horkelia californica* ssp. *dissita* (California honeydew)] and *Ranunculus orthorynchus* (straightbeak buttercup) (Ewan 1942). No information is reported for the associated species or habitat for the other occurrence from near Tomales that is thought to be extirpated (CNDDB 2001).

The single extant (currently existing, not extirpated or destroyed) occurrence of *Delphinium bakeri* grows in mesic (moderate moisture) conditions along an extensive north-facing slope under an overstory that includes *Umbellularia californica* (California bay), *Aesculus californica* (California buckeye), and *Quercus agrifolia* (coastal live oak). Other native plants associated with *D. bakeri* at this site include—*Baccharis pilularis* ssp. *consanguinea* (coyotebrush), *Symphorcarpos* cf. *rivularis* (snowberry), *Rubus ursinus* (California blackberry), *Pteridium aquilinum* (braken fern), *Polystichum munitum* (Sword fern), *Pityrogramma triangularis* (goldback fern), *Dryopteris arguta* (coastal woodfern), *Adiantum jordanii* (maidenhair fern), and *Polypodium glycyrrhiza* (licorice fern) (CNDDB 2001). The property is privately owned but Sonoma County has a right-of-way along the road. Pollinators have not specifically been identified for *D. bakeri,* but pollinators for species in the genus *Delphinium* typically are large hymenoptera, especially *Bombus* ssp. (bumblebees) (Guerrant 1976).

Even in 1942, Ewan noted that the habitat of *Delphinium bakeri* was formerly more abundant, but had been reduced by cultivation (Ewan 1942). Habitat conversion, grazing, and roadside maintenance activities have extirpated two of the three known occurrences of *D. bakeri* in Marin and Sonoma counties (CDFG 1994). The type locality is thought to have been extirpated by a dairy ranch. The single extant population is threatened by road work such as right-of-way maintenance (including use of herbicides), overcollection, and sheep grazing (CNDDB 2001). Because of its extreme range restriction to a single population and small population size of the one remaining occurrence, *D. bakeri* is extremely vulnerable to extinction from random natural events, such as unseasonal fire or insect outbreaks (Shaffer 1981; Primack 1993).

Delphinium luteum is a perennial herb in the buttercup family (Ranunculaceae) that grows from thin tuberous roots up to 30 cm (12 in) long to a height of 55 cm (22 in) tall. The leaves are mostly basal, fleshy, and green at the time of flowering. The flowers are cornucopia-shaped. The five conspicuous sepals are bright yellow, with the posterior sepal elongated into a spur. The inconspicuous petals occur in two pairs. The upper petals are narrow and unlobed; the lower petals are oblong to ovate (egg-shaped). The fruit is a follicle. *D. luteum* flowers from March to May. *Delphinium luteum* is distinguished from other *Delphinium* by its yellow flowers and its erect seed follicles (CNPS 1977). In contrast to typical pollinators for the genus *Delphinium,* potential pollinators for *D. luteum* are Allen's hummingbirds, which have been observed visiting *D. luteum* flowers. In addition, the flower shape and sucrose-dominated nectar are consistent with characteristics of species that are typically pollinated by hummingbirds (Guerrant 1976).

Heller (1903) described *Delphinium luteum* based on type material collected from ''grassy slopes about rocks, near Bodega Bay, along the road leading to the village of Bodega'' in Sonoma County. Although Jepson (1975) reduced *D. luteum* to a variety of *D. nudicaule* (red larkspur), it is currently recognized as a full species (Warnock 1993).

Delphinium luteum inhabits coastal prairie and coastal scrub, which typically have no overstory, at elevations ranging from sea level to about 100 m (300 ft) within northwestern Marin and southwestern Sonoma counties, California (CNDDB 2001). The species occurs on moderate to steep slopes with evidence of some level of disturbance, including landslides of various ages, in close proximity (Guerrant 1976, CNDDB 2001). Roots of *D. luteum* are both tuberous, long and thin, an unusual combination in this genus which may provide an advantage in thin, unstable soils (Weaver 1919 as cited in Guerrant 1976). Typical soil types supporting *D. luteum* include the Kneeland series in Sonoma County and the Yorkville series in Marin County. These soils derive from sandstone or shale, and share qualities of rapid runoff and high erosion potential (U.S. Department of Agriculture (USDA) 1972, Soil Conservation Service (SCS) 1985). The most recently documented populations of *D. luteum* (those seen in the 1980's or later) tend to grow on north-facing slopes in canyon complexes with steep sides (LSA Associates (LSA) 1997, CNDDB 2001). Presumably the more shaded north-facing slopes provide a moister microclimate, while the steep-sloped canyon walls increase the likelihood of erosion and landslides in the vicinity. Only two potential exceptions to this trend are evident in the CNDDB: one population near Tomales, California, is mapped on a south-facing slope, while a relatively nearby population does not appear to grow near any steep-sloped canyon walls. Both these populations are in proposed critical habitat Unit L4,

described below. The first population has not been documented since 1983, and its mapped location is precise to a one-fifth mile (0.32 km) radius. This could put its actual location across the canyon on a north-facing slope. The other population is growing in a road cut, which might provide erosional and soil disturbance characteristics similar to those near canyon walls (CNDDB 2001).

Temperatures in the region inhabited by *Delphinium luteum* are moderated by fog, which keeps summers relatively cool and winters relatively warm compared to inland habitats. Much of the coastal prairie in this species' range has been grazed for over a century, and is now characterized by a mixture of non-native annuals and forbs and native prairie plants. Native plants listed as occurring with *D. luteum* include *Arabis blepharophylla* (rose rockcress), *Calochortus tolmei* (Tolmei startulip), *Mimulus aurantiacus* (orange bush monkeyflower), *Dudleya caespitosa* (sea lettuce), *Polypodium californicum* (California polyploidy), and *Eriogonum parviflorum* (sea cliff buckwheat) (CNDDB 2001).

Eleven occurrences of *Delphinium luteum* have been reported in the CNDDB (2001). Only six of these have been documented since the early 1980's, however. Of the remaining five occurrences, three have not been documented since 1935 or earlier, another is based entirely on unsupported and undated information found on a 1979 map, and the fifth was a questionable identification never confirmed by a second siting (CNDDB 2001). The six more recently documented occurrences grow in three separate drainages; one in Sonoma County and two in Marin County. These groupings form the basis of three of the four critical habitat units we are proposing. (See Units L1, L2 and L4, below). A final population, not yet documented in CNDDB, occurs in a third Marin County drainage (David Amme, California Department of Transportation, *in litt.* 2002; D. Amme, pers. comm. 2002), and forms the basis of critical habitat Unit L3, as described below.

Recent surveys have not found many plants in any of these populations. The largest number recorded by CNDDB is 134 plants for one of the Marin County populations in 1993. The total number of *Delphinium luteum* individuals may be less than 300 (CNDDB 2001, David Amme, pers. comm. 2002). Each recently documented population faces one or more potential threats to its existence, including overcollection, road widening, unmanaged sheep grazing, fire suppression, and hybridization with another *Delphinium* species (B. Guggolz, pers. comm. 1995; CNDDB 2001). Additionally, the combination of few populations, small numbers of individuals within each population, narrow range, and restricted habitat makes *D. luteum* susceptible to extirpation in significant portions of its range from random natural events such as unseasonal fire, drought, disease, or other natural occurrences (Shaffer 1981; Primack 1993).

Previous Federal Action

Federal actions on the two plant species began when the Secretary of the Smithsonian Institution, as directed by section 12 of the Act, prepared a report on those native U.S. plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94–51), was presented to Congress on January 9, 1975, and included *Delphinium bakeri* and *D. luteum* as endangered. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) accepting the report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act and of our intention to review the status of the plant taxa named in the report. On June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) determining approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Delphinium bakeri* and *D. luteum* were included in this June 16, 1976, **Federal Register** document.

In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposed rules already more than 2 years old. On December 10, 1979, we published a notice (44 FR 70796) of the withdrawal of the portion of the June 16, 1976, proposed rule that had not been made final, along with four other proposals that had expired. We published an updated Notice of Review (NOR) for plants on December 15, 1980 (45 FR 82480). This NOR included *Delphinium bakeri* and *D. luteum* as category 1 candidates (species for which data in our possession was sufficient to support proposals for listing).

On February 15, 1983, we published a notice (48 FR 6752) of our prior finding that the listing of *Delphinium bakeri* and *D. luteum* was warranted but precluded in accordance with section 4(b)(3)(B)(iii) of the Act as amended in 1982. Pursuant to section 4(b)(3)(C)(i) of the Act, this finding must be recycled annually, until the species is either proposed for listing or the petitioned action is found to be not warranted. Each October from 1983 through 1994, further findings were made that the listing of *D. bakeri* and *D. luteum* were warranted, but that the listing of these species was precluded by other pending proposals of higher priority.

On November 28, 1983, we published a supplement to the plant NOR (48 FR 53640). This supplement changed *Delphinium bakeri* and *D. luteum* from category 1 to category 2 candidates (species for which data in our possession indicate listing was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support proposed rules).

The plant NOR was revised again on September 27, 1985 (50 FR 39526). *Delphinium bakeri* and *D. luteum* were again included as category 2 candidates. Another revision of the plant NOR was published on February 21, 1990 (55 FR 6184). In this revision *D. bakeri* and *D. luteum* were included as category 1 candidates and remained as category 1 candidates in the plant NOR published on September 30, 1993 (58 FR 51144). Upon publication of the February 28, 1996, NOR (61 FR 7596), we ceased using category designations and included *D. bakeri* and *D. luteum* as candidate species. Candidate species are those for which we have on file sufficient information on the biological vulnerability and threats to support proposals to list them as threatened or endangered. On June 19, 1997, we published a proposed rule in the **Federal Register** (62 FR 33383) to list *D. bakeri* and *D. luteum* as endangered.

On June 17, 1999, our failure to issue final rules for listing *Delphinium bakeri* and *D. luteum* and seven other plant species as endangered or threatened, and our failure to make a final critical habitat determination for the nine species was challenged in *Southwest Center for Biological Diversity and California Native Plant Society* v. *U.S. Fish and Wildlife Service and Bruce Babbitt* (Case No. C99–2992 (N.D.Cal.). The final rule listing *D. bakeri* and *D. luteum* as endangered species was published in the **Federal Register** on January 26, 2000 (65 FR 4156). On May 22, 2000, the judge signed an order for the Service to propose critical habitat for the species by September 30, 2001. In mid-September 2001, plaintiffs agreed to an extension of this due date for *D. bakeri* and *D. luteum* until June 10, 2002, for the proposed critical habitat designation and March 10, 2003, for the final critical habitat designation.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed in accordance with section 4 of this Act, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Section 7(a)(2) of the Act requires Federal agencies to consult with the Service to insure that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of habitat determined to be critical to a species. Section 7 of the Act also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

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

Section 4 of the Act requires that we designate critical habitat at the time of listing, to the extent such habitat is determinable at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we often may not have sufficient information to identify all areas which are essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life-cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will attempt to not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), which provide essential life-cycle needs of the species. However, we may be restricted by our minimum mapping unit or mapping scale.

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

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

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas that support newly discovered populations in the future, but are outside the critical habitat designation will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 prohibitions, as determined on the basis of the best available information at the time of the action. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act and regulations at 50 CFR 424.12, we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Delphinium bakeri* and *D. luteum.* We reviewed available information that pertains to the habitat requirements of these species including data from research and survey observations; regional Geographic Information System (GIS) coverages (*e.g.,* soils, known locations, vegetation, land ownership); information from herbarium collections such as CalFlora ((http://www.calflora.org); data from CNDDB

(2001); and data collected from project-specific and other miscellaneous reports submitted to us. This included information from our final rule listing *D. bakeri* and *D. luteum* as endangered (65 FR 4156), the CNDDB (2001), soil survey maps (Soil Conservation Service 1972, 1985), certified soil GIS layers for Marin County, geologic formation maps, 1993 digital orthophotoquarterquads, and discussions with botanical experts who have worked closely with these plant species. We also conducted site visits at one historical occurrence of *D. bakeri* and five historical occurrences of *D. luteum;* and one extant occurrence of *D. bakeri* and three extant occurrences of *D. luteum* (to the extent we could visit the habitat without going onto private land).

Mapping

We delineated the proposed critical habitat units by using data layers in a GIS format with all the known *Delphinium bakeri* and *D. luteum* occurrences from the CNDDB (2001) and other sources (D. Amme, *in litt.* 2002; D. Amme, pers. comm. 2002). We created additional data layers to reflect vegetation types using aerial photographs, GIS data for Marin soils (Natural Resource Conservation Service (NRCS) 2001), and recent development using satellite imagery (CNES/SPOT Image Corporation (SPOT) 2001). We created an additional data layer by digitizing Kneeland soils data for Sonoma County from USGS 1972. These data layers were laid over a base of USGS 3.75′ digital orthophotographic quarter quadrangle images.

In selecting areas of proposed critical habitat, we made an effort to avoid developed areas such as houses, intensive agricultural areas such as row crops, vineyards and orchards, and lands unlikely to contain the primary constituent elements for *Delphinium bakeri* or *D. luteum.* However, we did not map critical habitat in sufficient detail to exclude all developed areas. Developed areas within the boundaries of the mapped units, such as buildings, roads, parking lots, railroads, airport runways and other paved areas, lawns, and other urban landscaped areas will not contain one or more of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger a section 7 of the Act consultation, unless they affect the species or primary constituent elements in adjacent critical habitat.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), 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—space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. All areas proposed as critical habitat for *Delphinium bakeri* and *D. luteum* are within the historical range and contain one or more of these physical or biological features (primary constituent elements) essential for the conservation of the species.

Much of what is known about the specific physical and biological requirements of *Delphinium bakeri* and *D. luteum* is described in the Background section of this proposed rule. The proposed critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *D. bakeri* and *D. luteum* throughout their ranges and to provide those habitat components essential for the conservation of these species. These habitat components provide for—(1) Individual and population growth, including sites for germination, pollination, reproduction, and seed dispersal; (2) areas that allow gene flow and provide connectivity or linkage between populations including open spaces and disturbed areas that in some instances may also contain non-native plant species; (3) areas that provide basic requirements for growth such as water, light, minerals; and (4) areas that support populations of pollinators and seed dispersal organisms.

The conservation of *Delphinium bakeri* and *D. luteum* is dependent upon a number of factors, including the conservation and management of sites where existing populations grow, the establishment of *D. bakeri* at a new location to provide insurance against stochastic (randomly occurring) events, the maintenance of normal ecological functions within these sites, and the preservation of the connectivity between sites to maintain recent levels of gene flow between sites through pollinator activity and seed dispersal agents.

Based on our knowledge to date, the primary constituent elements of critical habitat for *Delphinium bakeri* consist of:

(1) Soils that are derived from decomposed shale;

(2) Plant communities that support associated species, including, but not limited to: *Umbellularia californica* (California bay), *Aesculus californica* (California buckeye), and *Quercus agrifolia* (coastal live oak). Other native plants associated with *D. bakeri* include—*Baccharis pulularis* ssp. *consanguinea* (coyotebrush), *Symphorcarpos* cf. *rivularis* (snowberry), *Rubus ursinus* (California blackberry), *Pteridium aqulinum* (braken fern), *Polystichum munitum* (Sword fern), *Pityrogramma triangularis* (goldback fern), *Dryopteris arguta* (coastal woodfern), *Adiantum jordanii* (maidenhair fern), and *Polypodium glycyrrhiza* (licorice fern); and

(3) Mesic (moderate moisture) conditions on extensive north-facing slopes.

Based on our knowledge to date, the primary constituent elements of critical habitat for *Delphinium luteum* consist of:

(1) Plant communities that support the appropriate associated species, including north coastal scrub or coastal prairie communities;

(2) Soils derived from sandstone or shale, with rapid runoff and high erosion potential, such as Kneeland or Yorkville series soils;

(3) Generally north aspected areas near steep-sloped canyon walls; and

(4) Habitat upslope and downslope from known populations to maintain disturbance such as occasional rock slides or soil slumping that the species appears to require.

Criteria Used to Identify Critical Habitat

We identified critical habitat areas essential for the conservation of *Delphinium bakeri* in the one location it currently is known to occur in Marin County, as well as in the Coleman Valley area in Sonoma County, where the species was historically found. We are including the Coleman Valley site in our proposal, despite the fact that *D. bakeri* is thought to be extirpated from this location because it is one of very few locations where *D. bakeri* has ever been observed. We did not include the third such location near Tomales, California, however, because our information is too vague to accurately identify the site. We believe that reintroduction of *D. bakeri* at the Coleman Valley site (Unit B1) is essential for the species' survival due to the extremely limited range of *D. bakeri,* its small population size (0 to 64 individuals over the last 20 years), and the high degree of threat from chance

catastrophic events (Shaffer 1981, 1987; Primack 1993, Meffe and Carroll 1994). Such events are a concern when the number of populations or geographic distribution of a species is severely limited, as is the case with *D. bakeri.* Establishment of a second location for *D. bakeri* is important in reducing the risk of extinction due to such catastrophic events.

We identified critical habitat for *Delphinium bakeri* by mapping the distribution of the known occurrences of the species with respect to distance from the coast, location within watersheds, soil series associations, aspect of the slopes and watersheds, position on slopes, our field observations of the soil conditions at each location, and our field observations of the plant associations found in the area of each location. We then drew an initial critical habitat demarcation that included the appropriate soils, vegetation, and watershed. We mapped the proposed units to include the upslope and downslope areas that would be important to the maintenance of the primary constituent elements essential for the conservation of the species.

We identified critical habitat areas essential to the conservation of *Delphinium luteum* in the areas where it is known to occur in Marin and Sonoma counties. Due to the limited number of populations of *D. luteum* and the high degree of threat from catastrophic events, we believe that all areas with recently documented occurrences are essential for the conservation of this species. In addition, the Center for Plant Conservation (2002) recommends that additional populations be established and managed for this species. Some areas within the proposed critical habitat units may be suitable sites for such introductions. All four *D. luteum* units (L1, L2, L3 and L4) are occupied by the species.

Five of the six proposed critical habitat units for *Delphinium bakeri* and *D. luteum* contain at least one extant occurrence of the species for which the unit was drawn. All of the units also contain areas that are currently considered unoccupied or that are of uncertain occupancy. These unoccupied areas are included within the units because they provide areas into which populations might expand, provide connectivity or linkage between populations within a unit, maintain ecological and landscape processes upon which the species depend, and support populations of pollinators and seed dispersal organisms. They also provide areas into which the species may be introduced. As discussed above, we believe that establishing a second location for *D. bakeri* is essential for the conservation of the species because it will reduce the probability that the plant may be extirpated by catastrophic events. The one unoccupied unit proposed encompasses the type location (Colman Valley location) for *D. bakeri.* We believe that this is appropriate, when considering establishment of new locations, to look first to areas where the species was once known to occur, rather than to completely new areas. Establishment of additional *D. luteum* locations has been recommended by the Center for Plant Conservation (2002).

As a rule, we drew boundary lines for *Delphinium luteum* critical habitat units to include all areas of the same soil type and in the same canyon system as the enclosed population(s). Although all but one recently documented population of *D. luteum* occurs on basically north-facing slopes, we consistently included as critical habitat both sides of the canyons which contain *D. luteum.* This was because the folds and side canyons common to these sites can produce localized north aspected areas even on generally south aspected canyon walls. Including both sides of the canyons where the plant occurs can also make management of the units easier, and provide a wider range of microhabitats for potential population expansion.

Some units contained features which caused us to modify our general rule of drawing boundaries based on the same soil type and canyon system as the known population. In Unit L3, the soil boundaries conformed well to the canyon boundaries, and also included areas of steep-sloped canyon walls, so no further manipulation was necessary. Unit L1 soil boundaries included several branching canyons with numerous coastal drainage outlets, so we included those canyons which drained to roughly the same location and excluded the others. In Unit L2, the soil boundaries conformed well to the drainage, but because the area thus enclosed was very small and unbranched, and because the same soil type also occurred with suitable habitat in a separate drainage less than half a mile away, we extended the boundaries of the unit to include the north-facing slopes of the second drainage as bounded by the suitable soil type. The resulting unit is still the smallest of the four, and by including this small area of nearby habitat we can provide the resident *D. luteum* population an opportunity to colonize a new area. Given the susceptibility of *D. luteum* populations to extirpation by random, uncontrollable events, the establishment of new populations is essential to the continuing survival of the species.

Unit L4 contains the population growing in a road-cut away from steep-sloped canyon walls, as well as the population mapped on a south-facing slope. It also includes a third population which is located in typical habitat but which the CNDDB lists as ''possibly extirpated'' due to the inability of several surveys to relocate it since 1982. All three populations are mapped as growing on different soil types (CNDDB 2001). However, with two exceptions, all soil types in the area share the rapid run-off and high erosion potential with which *D. luteum* is associated. The two exceptions are the canyon floor and a small area at the head of the canyon where the walls are not steeply sloped. We are including these areas for contiguity of the unit and because both of them abut the location of the population located in the road cut. Taken together, the various soil types conform well to the main canyon boundaries (SCS 1985) and include all the habitat requirements of the species, so we have drawn Unit L4 largely according to the soil boundaries as they extend down the main canyon. We did not extend the unit up either of two large side canyons because those areas neither contain *D. luteum* populations nor a soil type common to all the populations in the unit.

Special Management Considerations

As noted in the Critical Habitat section, ''special management considerations or protection'' is a term that originates in the definition of critical habitat. We believe the proposed areas may require special management considerations or protection because *Delphinium bakeri* and *D. luteum* occupy an extremely localized range. Potential threats to the habitat of *D. bakeri* include overcollection, application of herbicides, and sheep grazing. Potential threats to the habitat of *D. luteum* include overcollection, road widening, sheep grazing, fire suppression and hybridization.

Additional special management is not required if adequate management or protection is already in place. Adequate special management considerations or protection is provided by a legally operative plan or agreement that addresses the maintenance and improvement of the primary constituent elements important to the species and manages for the long-term conservation of the species. Currently, no plans meeting these criteria have been developed for *Delphinium bakeri* or *D. luteum.*

Special management considerations or protections may be needed to maintain the primary constituent elements for *Delphinium bakeri* or *D. luteum* within the units being proposed as critical habitat. In some cases, protection of the existing habitat and current ecological processes may be sufficient to ensure that populations of the plants are maintained at those sites, and that they have the ability to reproduce and disperse in surrounding habitat. In other cases, however, active management may be needed to maintain the primary constituent elements for the two *Delphinium* species. We have outlined below the most likely kinds of special management and protection that these taxa may require. The following actions apply to both *Delphinium* species, unless otherwise noted.

(1) In all plant communities where these taxa occur, invasive, nonnative species need to be actively controlled.

(2) The quality of water must be maintained to keep it free from deleterious levels of herbicides or other chemical or organic contaminants.

(3) Certain areas where these species occur may need to be fenced to protect them from accidental or intentional trampling by humans and livestock.

(4) Aerial application of herbicides and insecticides need to be curtailed in the critical habitat. Exposure from drift needs to be avoided.

(5) The appropriate level of soil disturbance needs to be maintained (this applies only to *Delphinium luteum*).

(6) Existing hydrologic conditions may need to be protected by avoiding activities that cause a change in surface or subsurface water flows.

Proposed Critical Habitat Designation

The proposed critical habitat areas described below constitute our best assessment at this time of the areas needed for the conservation of *Delphinium bakeri* and *D. luteum.* Critical habitat being proposed for *D. bakeri* includes one occupied unit in Marin County, which contains the only currently known location of *D. bakeri* and a second unit in Sonoma County we believe includes the type locality for *D. bakeri.* The second unit is essential because establishment of a second location for *D. bakeri* is important in reducing the risk of extinction due to catastrophic events. Critical habitat being proposed for *D. luteum* includes four units that currently are occupied. These units together contain all the *D. luteum* populations documented since the 1980's. Critical habitat proposed for *D. bakeri* includes 740 ha (1,828 ac), with 418 ha (1,032 ac) in Marin County and 322 ha (796 ac) in Sonoma County. Critical habitat proposed for *D. luteum* includes 1,046 ha (2,584 ac), with 554 ha (1,369 ac) in Sonoma County and 492 ha (1,215 ac) in Marin County.

Delphinium bakeri and *D. luteum* are known only to occur on private lands. We are not aware of any Tribal lands in or near our proposed critical habitat units for *D. bakeri* and *D. luteum.* However, should we learn of any Tribal lands in the vicinity of the critical habitat designation subsequent to this proposal, we will coordinate with the Tribes before making a final determination as to whether any Tribal lands should be included as critical habitat for *D. bakeri* or *D. luteum.*

A brief description of each unit and our reasons for proposing those areas as critical habitat are presented below.

Unit B1: Coleman Valley, Sonoma County, California

This unit is located near Coleman Valley Road west of the town of Occidental, approximately 8.3 km (5 mi) from the coast. The 322 ha (796 ac) unit is bounded on the north side by Coleman Valley Road and represents an area either near or at the original type locality for *Delphinium bakeri.* The location of the type locality for *D. bakeri* was somewhat vague, and only identified the location as Coleman Valley. However, this unit contains an extensive north-facing slope with mesic vegetation similar to the extant location of *D. bakeri,* with the addition of coastal redwood. The Coleman Valley location of *D. bakeri* represented the northern most extent of the range of this species. As discussed above, this unit is essential for the conservation of *D. bakeri* because it provides a second area separate from the existing population for *D. bakeri* into which it can be reintroduced. We believe it is important to have a second unit to reduce the likelihood that the species may become extinct as the result of a catastrophic event. A second geographically separate unit can provide protection from chance events such as disease that can destroy the only remaining population.

Unit B2: Salmon Creek, Marin County, California

This unit is near the Marshall-Petaluma Road in Marin County approximately 10 km (6 mi) from the coast. This 418 ha (1,032 acre) unit is bounded on the north side by Salmon Creek and contains an extensive north-facing slope that is essential to maintaining the mesic conditions needed for *Delphinium bakeri.* Land in this unit is privately owned with a County right-of-way along the road. This unit is essential for the survival of *D. bakeri* because it contains the only known extant occurrence of *D. bakeri* and represents the southernmost extent of the range of this species.

Unit L1: Bodega Bay, Sonoma County, California

Unit L1 consists of 554 ha (1,369 ac) south of Bay Hill Road, near the town of Bodega in Sonoma County, California. This unit is comprised of Kneeland series soils, coastal prairie and scrub habitat, and is within the fog belt that moderates the climate. This unit is essential to the conservation of *D. luteum* because it contains about thirty percent of the roughly 220 total remaining individual plants (based on the most recent population totals provided by CNDDB and by the discoverer of the Unit L3 population (CNDDB 2001; D. Amme, pers. comm. 2002)). Because so few *D. luteum* plants remain, all are essential to the continued survival and recovery of the species. In addition, this unit is important to the conservation of the species because it contains two of very few remaining sites at which the species has been recently observed. Due to the limited number of populations of *D. luteum* and the high degree of threat from catastrophic events, we believe that all recently documented occurrences are essential for the conservation of this species.

Unit L2: Estero Americano, Marin County, California

Unit L2 is located just south of Estero Americano on the Marin County coast. This 133 ha (328 ac) unit contains one occurrence of *Delphinium luteum,* with about 134 individual plants at last count (CNDDB 2001). It is located on Yorkville series soils that support coastal prairie and coastal scrub habitat, and is within the fog belt that moderates the climate. This unit is essential for the survival of *D. luteum* because it contains the single largest population of the plant, with more than half of all the individuals in the entire species. Because so few *D. luteum* plants remain, all are essential to the continued survival and recovery of the species. In addition, this unit is important to the conservation of the species because it contains one of very few remaining sites at which the species has been recently observed. Due to the limited number of populations of *D. luteum* and the high degree of threat from catastrophic events, we believe that all recently documented occurrences are essential for the conservation of this species.

Unit L3: Estero de San Antonio, Marin County, California

Unit L3 is located near the mouth of the Estero de San Antonio in Marin County, and includes steep sloped canyon walls composed of Yorkville series soils on both sides of the water channel, with coastal prairie and coastal scrub habitat and temperatures moderated by fog. This 166 ha (411 ac) unit contains one population of *Delphinium luteum* discovered in 1993 and not yet recorded in the CNDDB. This unit is important because it contains a recently documented but little known population, and its position roughly halfway between Unit L4 to the south and Units L1 and L2 to the north may help to prevent the genetic isolation of Unit L4. It also contains the largest continuous area of Yorkville soils of all the units. Yorkville soils are important because, between units L2 and L3, these soils support roughly two thirds of all individual *D. luteum* plants. Because a large proportion of the remaining *D. luteum* individuals occur on Yorkville soils, we believe these soils are an indicator of situations in which the plants are likely to survive and reproduce. Therefore, we believe it is important to protect areas which contain these soils.

Unit L4: Tomales, Marin County, California

Unit L4 is located approximately 1.4 km (1 mi) south of the town of Tomales in Marin County. This 193 ha (476 ac) unit consists of coastal prairie and coastal scrub within the fog belt. It contains three populations of *Delphinium luteum,* but two of the populations have not been documented since the early 1980's and one of these has been listed as ''possibly extirpated'' by the CNDDB. The ''possibly extirpated'' population may also have actually consisted of hybrids of *D. luteum* and *D. nudicaule* (red larkspur). The third population occurs on a road embankment rather than in the vicinity of canyon walls. This population was documented as recently as 2000, and was genetically tested and confirmed to be a non-hybrid, but only one plant was seen at that time (CNDDB 2001). This unit is important to the conservation of the species because it contains one of very few remaining sites at which the species has been recently observed. Due to the limited number of populations of *D. luteum* and the high degree of threat from catastrophic events, we believe that all recently documented occurrences are essential for the conservation of this species. In addition, this unit is important because it represents the southernmost extent of the range of *D. luteum.* The population growing in the road embankment may also provide important information on the characteristics of managed soil disturbances which can support *D. luteum.* Such information would be of great help in recovering the species.

TABLE 1.—APPROXIMATE AREAS OF PROPOSED *Delphinium bakeri* AND *D. luteum* CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY LAND OWNERSHIP

Species (unit)	Private	Total
D. bakeri (B1)	322 ha (796 ac)	322 ha (796 ac)
D. bakeri (B2)	418 ha (1,032 ac)	418 ha (1,032 ac)
D. luteum (L1)	554 ha (1,369 ac)	554 ha (1,369 ac)
D. luteum (L2)	133 ha (328 ac)	133 ha (328 ac)
D. luteum (L3)	166 ha (411 ac)	166 ha (411 ac)
D. luteum (L4)	193 ha (476 ac)	193 ha (476 ac)

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, permit, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist Federal agencies in eliminating conflicts that may be caused by their proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

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

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

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

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

Activities on Federal lands that may affect *Delphinium bakeri* or *D. luteum* or their critical habitat will require section 7 of the Act consultation. Activities on private, State, county, or lands under local jurisdictions requiring a permit from a Federal agency, such as a permit from the Corps under section 404 of the Clean Water Act, a section 10(a)(1)(B) of the Endangered Species Act permit from the Service, or some other Federal action, including funding (*e.g.,* Federal Highway or Federal Emergency Management Act funding), will continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat for both the conservation of *Delphinium bakeri* or *D. luteum.* Within critical habitat, this pertains only to those areas containing the primary constituent elements. We note that such activities may also jeopardize the continued existence of the species.

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

(1) Ground disturbances which destroy or degrade primary constituent elements of the plant (*e.g.,* clearing, tilling, grading, construction, road building, mining, etc.);

(2) Activities which directly or indirectly affect *Delphinium bakeri* or *D. luteum* plants (*e.g.,* herbicide application, heavy off-road vehicle use, introductions of non-native herbivores, significant unmanaged grazing during times when *D. bakeri* or *D. luteum* is producing flowers or seeds, etc.);

(3) Activities which significantly degrade or destroy *Delphinium bakeri* pollinator populations (*e.g.,* pesticide applications); and

(4) Activities that would appreciably change the rate of erosion of soils for *Delphinium luteum* such as slope stabilization; residential and commercial development, including road building and golf course installation; and vegetation manipulation such as clearing and grubbing upslope from *D. luteum.*

Designation of critical habitat could affect the following agencies or actions—development on private lands requiring permits from Federal agencies, such as 404 permits from the U.S. Army Corps of Engineers or permits from other Federal agencies such as Housing and Urban Development, authorization of release of biological control agents by the U.S. Department of Agriculture, road construction by Federal Highway Administration, watershed management activities of the Natural Resource Conservation Service, and authorization of Federal grants or loans.

Where federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans submitted by the applicant to secure a permit to take according to section 10(a)(1)(B) of the Act would be subject to take authorization within the Service's internal section 7 consultation on the habitat conservation plan. Other listed species that occur in the same general area as the *Delphinium luteum* include the Myrtle's silverspot butterfly (*Speyeria zerene myrtleae*) and the California red-legged frog (*Rana aurora draytonii*).

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** 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, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181 (telephone 503/231–6131; FAX 503/231–6243).

Relationship to Habitat Conservation Plans and Other Planning Efforts

Currently, no habitat conservation plans (HCPs) exist that include *Delphinium bakeri* or *D. luteum* as covered species. Subsection 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances, the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. Although ''take'' of listed plants is not prohibited by the Act, listed plant species may also be covered in an HCP for wildlife species.

In the event that future HCPs covering *Delphinium bakeri* or *D. luteum* are developed within the boundaries of the designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of these species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *D. bakeri* or *D. luteum.* The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks.

We will provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of *Delphinium bakeri* or *D. luteum* and appropriate management for those lands. Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit

issuance will not destroy or adversely modify critical habitat.

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 when such exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day public comment period on the draft economic analysis and proposed rule at that time.

Public Comments Solicited

We intend 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 benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of *Delphinium bakeri* and *D. luteum* and their habitats, and which habitats are essential to the conservation of these 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 *Delphinium bakeri* and *D. luteum* 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) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods: (1) You may submit written comments and information to the Field Supervisor at the address provided in the **ADDRESSES** section above; (2) You may also comment via the electronic mail (e-mail) to *bakers_yellow_larkspur@fws.gov.* Please submit e-mail comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include ''Attn: [1018–AG96] and your name and return address in your e-mail message.'' If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Sacramento Fish and Wildlife Office at phone number (916) 414–6600. Please note that the Internet address *bakers_yellow_larkspur@fws.gov* will be closed out at the termination of the public comment period; and (3) You may hand-deliver comments to our Sacramento office (see **ADDRESSES** section above).

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

Peer Review

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

We will consider all comments and information received during the 60-day comment period on this proposed rule 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. Requests for public hearings must be made within 45 days of the date of publication of this proposal within the **Federal Register**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

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

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant

rule and was reviewed by the Office of Management and Budget (OMB). The Service is preparing a draft economic analysis of this proposed action. The Service will use this analysis to meet the requirement of section 4(b)(2) of the ESA to determine the economic consequences of designating the specific areas as critical habitat and excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such areas as part of the critical habitat, unless failure to designate such area as critical habitat will lead to the extinction of *Delphinium bakeri* or *D. luteum.* This analysis will be available for public comment before finalizing this designation. The availability of the draft economic analysis will be announced in the **Federal Register**.

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

This discussion is based upon the information regarding potential economic impact that is available to the Service at this time. This assessment of economic effect may be modified prior to final rulemaking based upon development and review of the economic analysis being prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This analysis is for the purposes of compliance with the Regulatory Flexibility Act and does not reflect the position of the Service on the type of economic analysis required by *New Mexico Cattle Growers Assn.* v. *U.S. Fish & Wildlife Service* 248 F.3d 1277 (10th Cir. 2001).

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

We must determine whether the proposed rulemaking will affect a substantial number of small entities. Small entities include small organizations, such as independent non-profit 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. If the proposed rulemaking will affect a substantial number of small entities, we must determine if there will be a significant economic impact on them.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.,* housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider 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 critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where these species are present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Delphinium bakeri* or *D. luteum.* If this critical habitat designation is finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where these species are present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, we have only completed one conference and one consultation on *Delphinium bakeri* and *D. luteum* since they were proposed for listing. As a result, the requirement to reinitiate consultation for ongoing projects will not affect a substantial number of small entities.

When the species are clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act. Because *Delphinium bakeri* and *D. luteum* have been listed only a relatively short time and there have been few activities with Federal involvement in these areas during this time, there is not a detailed history of consultations based on the listing of these species. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the critical habitat designation.

No Federal lands are included in this proposed critical habitat designation, so this rule will not affect any small entities involved in grazing or other activities on Federal lands. On private lands, activities that lack Federal involvement would not be affected by the critical habitat designation. Current activities of an economic nature that occur on private lands in the area encompassed by this proposed designation are primarily agricultural, such as livestock grazing and farming. Because these areas are zoned rural and not near cities or towns, multiple-unit residential or commercial development is unlikely. Therefore, Federal agencies such as the Economic Development Administration, which is occasionally involved in funding municipal projects elsewhere, is unlikely to be involved in projects in these areas. In rural regions of Sonoma and Marin counties, previous consultations under section 7 of the Act between us and other Federal agencies

most frequently involved the U.S. Army Corps of Engineers (ACOE) or the Federal Highway Administration (FHWA). In FHWA consultations, the applicant is either the California State Department of Transportation or the County, neither of which is considered a small entity as defined here. The ACOE consultations involve wetlands or waterways and occur due to the presence of species (or their critical habitat) that spend at least part of their life in aquatic habitats. *Delphinium bakeri* and *D. luteum* are upland plant species and unlikely to be the subject of consultations with the ACOE, unless the project is very large and would include wetlands otherwise not associated with these species. In agricultural areas, the Natural Resources Conservation Service (NRCS) occasionally funds activities on farms or ranches that require consultation with us. We have not had any formal consultations with the NRCS on this type of project within Marin or Sonoma counties over the past 5 years. Sonoma and Marin counties encompass about 1.3 million acres of land and support over 35 listed species. Based on the low level of past activity, we expect few consultations with the NRCS or other Federal agencies on the 4,412 acres of non-Federal lands proposed in this rule. For these reasons, the Service determines that the number of small entities likely to be affected by this rule will not be substantial.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer ''reasonable and prudent alternatives.'' Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or would result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Secondly, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. However, the Act does not prohibit the take of listed plant species or require terms and conditions to minimize adverse effect to critical habitat. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to gather information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have a very limited consultation history for *Delphinium bakeri* and *D. luteum* we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats they face, especially as described in the final listing rule and in this proposed critical habitat designation, as well as our experience with similar listed plants in California. In addition, the State of California listed *D. bakeri* and *D. luteum* as rare species under the California Endangered Species Act in 1978, and we have also considered the kinds of actions required through State consultations for this species. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, management of competing non-native species, restoration of degraded habitat, construction of protective fencing, and regular monitoring. These measures are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this proposed rule would result in a significant economic effect on a substantial number of small entities. It would not affect a substantial number of small entities. The entire designation likely involves fewer than 100 privately owned parcels; many of these parcels are located in areas where likely future land uses are not expected to result in Federal involvement or section 7 consultations. As discussed earlier, most of the private parcels within the proposed designation are currently being used for agricultural purposes and, therefore, are not likely to require any Federal authorization. In the remaining areas, Federal involvement—and thus section 7 consultations, the only trigger for economic impact under this rule—would be limited to a subset of the area proposed. The most likely Federal involvement could include ACOE permits, permits we may issue under section 10(a)(1)(B) of the Act, FHWA funding for road improvements, and voluntary watershed management and restoration project funding by NRCS.

This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected frequently enough to affect a substantial number of small entities. Even when it does occur, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. We anticipate that the kinds of reasonable and prudent alternatives that we would provide can usually be implemented at low cost. Therefore, we are certifying that the proposed designation of critical habitat for *Delphinium bakeri* and *D. luteum* will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

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

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

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on

regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

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

The Service will use the economic analysis to evaluate consistency with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the two *Delphinium* species from Marin and Sonoma counties, California in a preliminary takings implication assessment. This preliminary assessment concludes that this proposed rule does not pose significant takings implications. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with the Department of the Interior policy, we requested information from, and coordinated development of this critical habitat designation with, the appropriate State resource agencies in California. Where the species are present, the designation of critical habitat imposes no additional restrictions to those currently in place, and therefore, has little environmental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what federally sponsored activities may occur it may assist these local governments in long range planning (rather than waiting for case-by-case section 7 consultation to occur).

Civil Justice Reform

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

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

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose new recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined we do not need to prepare an Environmental Assessment or an Environmental Impact Statement, as defined by the National Environmental Policy Act of 1969 with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. We have determined that there are currently no Tribal lands essential for the conservation of *Delphinium bakeri* or *D. luteum* because they do not support populations, nor do they provide essential habitat. Therefore, critical habitat for *D. bakeri* and *D. luteum* has not been designated on Tribal lands.

References Cited

A complete list of all references cited herein is available upon request from the Sacramento Fish and Wildlife Office (see **ADDRESSES** section)

Author

The primary authors of this proposed rule are staff of the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. In § 17.12(h) revise the entries for ''Delphinium luteum'' and for ''Delphinium bakeri,'' 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							

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	
Delphinium bakeri	Baker's larkspur	U.S.A. (CA)	Ranunculaceae	E	681	17.96(b)	NA
Delphinium luteum ...	Yellow larkspur	U.S.A. (CA)	Ranunculaceae	E	681	17.96(b)	NA
*	*	*	*	*	*	*	

3. In § 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, amend paragraph (b) by adding critical habitat for *Delphinium bakeri* and for *Delphinium luteum* in alphabetical order under Family Ranunculaceae to read as follows:

§ 17.96 Critical habitat—plants.

* * * * *

(b) * * *

Family Ranunculaceae: *Delphinium bakeri* (Baker's larkspur)

(1) Critical habitat units are depicted for Sonoma and Marin counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Delphinium bakeri* are the habitat components that provide:

(i) Soils that are derived from decomposed shale;

(ii) Plant communities that support associated species, including, but not limited to: *Umbellularia californica* (California bay), *Aesculus californica* (California buckeye), and *Quercus agrifolia* (coastal live oak). Other native plants associated with *D. bakeri* include—*Baccharis pulularis* ssp. *consanguinea* (coyotebrush), *Symphorcarpos* cf. *rivularis* (snowberry), *Rubus ursinus* (California blackberry), *Pteridium aqulinum* (braken fern), *Polystichum munitum* (Sword fern), *Pityrogramma triangularis* (goldback fern), *Dryopteris arguta* (coastal woodfern), *Adiantum jordanii* (maidenhair fern), and *Polypodium glycyrrhiza* (licorice fern); and

(iii) Mesic conditions on extensive north-facing slopes.

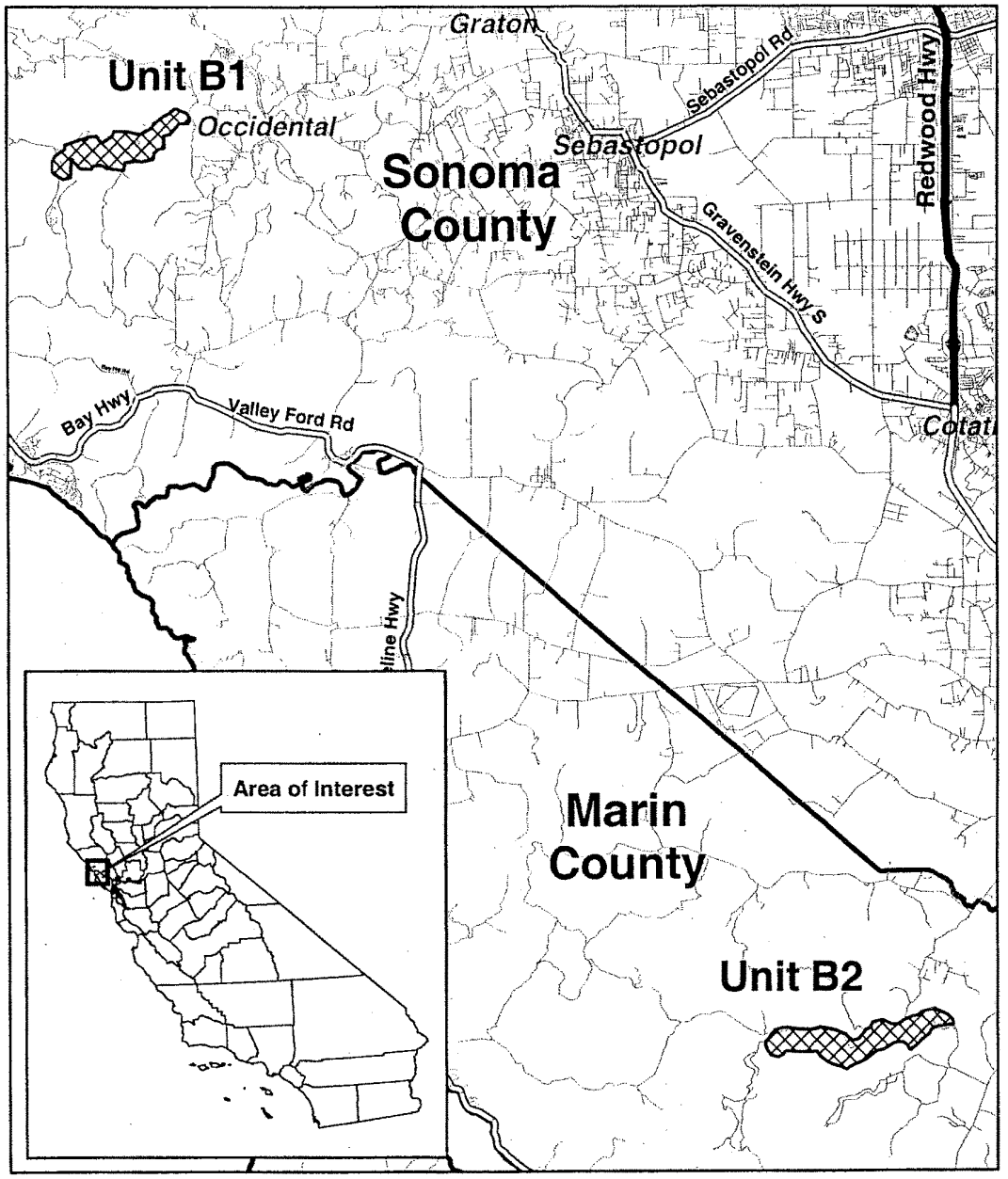
(3) Critical habitat does not include existing man-made features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical Habitat Map Units.

(i) Data layers defining map units were created on a base of USGS 7.5′ quadrangles obtained from the State of California's Stephen P. Teale Data Center. Proposed critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(ii) Map 1—Index map follows:

BILLING CODE 4310–55–P



Index Map

Delphinium bakeri

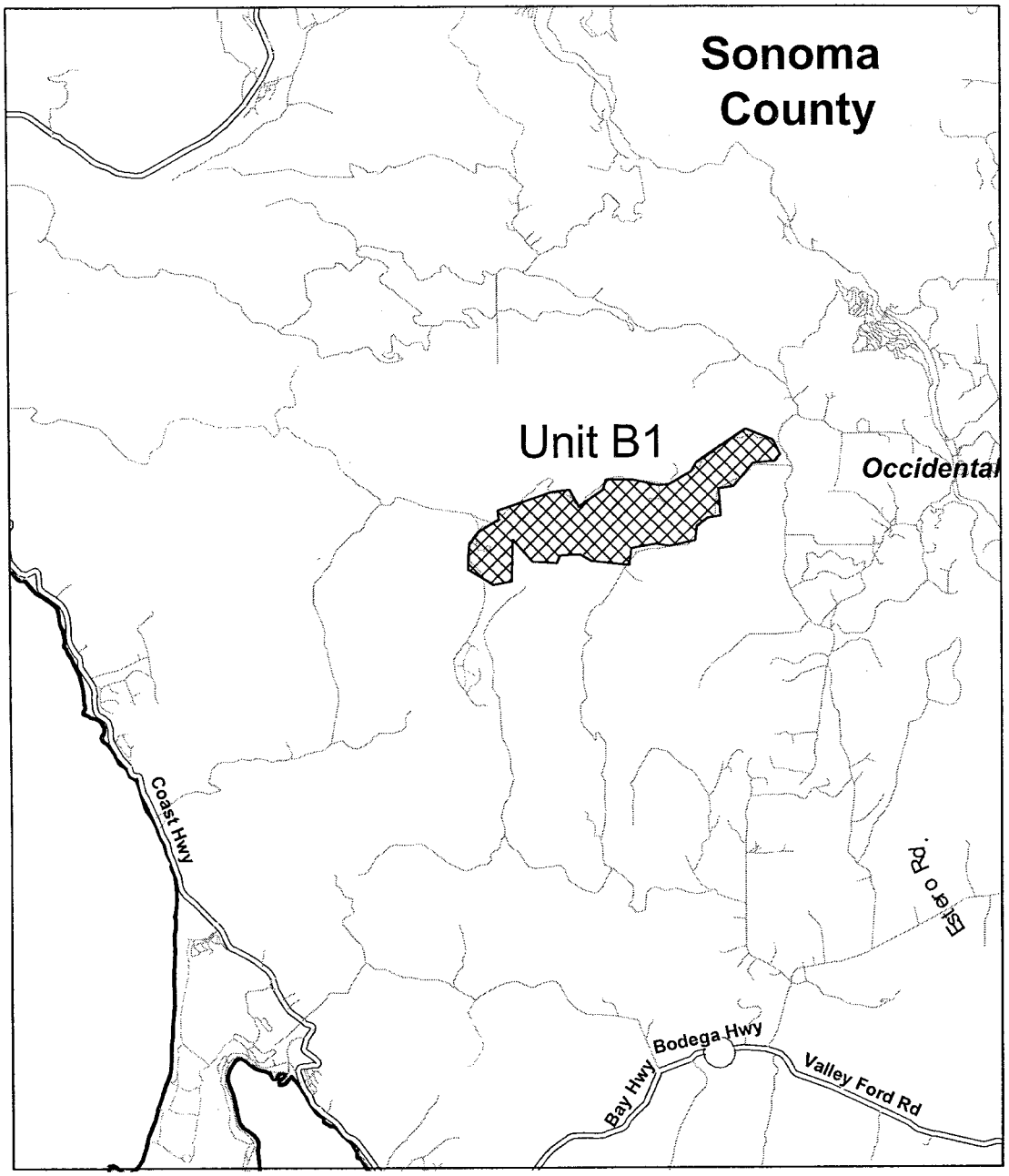
BILLING CODE 4310–55–C

(5) Unit B1: Sonoma County, California.

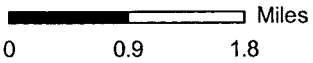
(i) From USGS 1:24,000 quadrangle maps Camp Meeker and Duncan Hills, California, land bounded by the following UTM10 NAD83 coordinates (E,N): 498360, 4249440; 498030, 4249650; 498040, 4249990; 498160, 4250150; 498430, 4250320; 498420, 4250440; 499140, 4250680; 499380, 4250710; 499510, 4250490; 499840, 4250710; 499880, 4250840; 500250, 4250840; 500580, 4250770; 500730, 4250780; 501020, 4250950; 501080, 4251070; 501360, 4251270; 501520, 4251370; 501730, 4251520; 502100, 4251370; 502190, 4251180; 502120, 4251090; 501830, 4251060; 501570, 4250750; 501380, 4250720; 501400, 4250360; 501230, 4250330; 501090, 4250220; 501070, 4250030; 500720, 4249960; 500550, 4249990; 500220, 4249930; 500190, 4249700; 499680, 4249760; 499520, 4249850; 499250, 4249830; 499210, 4249730; 498880, 4249750; 498620, 4250050; 498600, 4249490; 498360, 4249440

(ii) Map 2—Unit B1 follows:

BILLING CODE 4310–55–P



Unit B1: Critical Habitat Proposed for *Delphinium bakeri*



BILLING CODE 4310–55–C

(6) Unit B2: Marin County, California.

(i) From USGS 1:24,000 quadrangle maps Petaluma and Point Reyes NE, California, land bounded by the following UTM10 NAD83 coordinates (E,N): 521780, 4222900; 521560, 4223000; 521350, 4223070; 521230, 4223130; 520980, 4223320; 520890, 4223460; 520680, 4223430; 520220, 4223440; 520100, 4223460; 519940, 4223460; 519870, 4223360; 519720, 4223280; 519510, 4223340; 519400, 4223480; 519350, 4223630; 519360, 4223760; 519410, 4223800; 519530, 4223970; 519640, 4224090; 519830, 4224140; 519980, 4224160; 520440, 4224100; 520760, 4224100; 520990, 4224170; 521130, 4224160; 521460, 4224080; 521740, 4223960; 521820, 4223870; 521960, 4223770; 522130, 4223810; 522290, 4224000; 522320, 4224070; 522480, 4224160; 522550, 4224310; 522830, 4224380; 523160, 4224240; 523340, 4224250; 523470, 4224360; 523660, 4224430; 523750, 4224480; 523920, 4224510; 524070, 4224620; 524460, 4224710; 524860, 4224530; 525010, 4224370; 525030, 4224250; 524690, 4224190; 524590, 4224200; 524360, 4224100; 524280, 4223950; 524050, 4223780; 523920, 4223650; 523700, 4223480; 523600, 4223640; 523480, 4223720; 523210, 4223700; 522880, 4223510; 522650, 4223450; 522370, 4223230; 522170, 4223120; 522050, 4223080; 521860, 4222980; 521780, 4222900

(ii) Map 3—Unit B2 follows:

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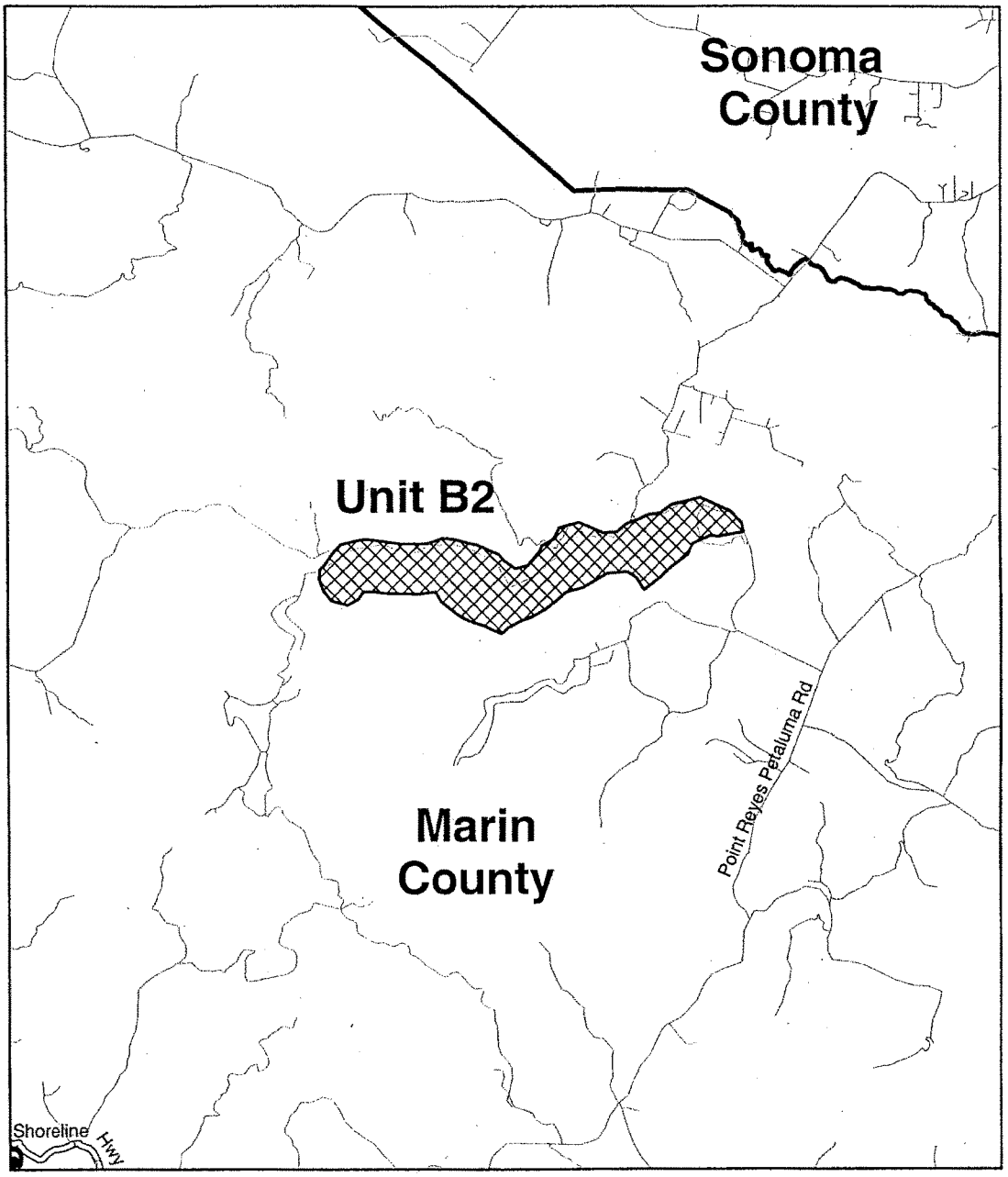
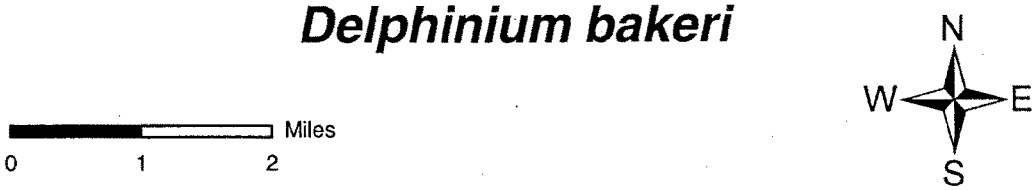


Unit B2: Critical Habitat Proposed for *Delphinium bakeri*



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Family Ranunculaceae: *Delphinium luteum* (Yellow larkspur)

(1) Critical habitat units are depicted for Sonoma and Marin counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Delphinium luteum* are the habitat components that provide:

(i) Plant communities that support the appropriate associated species, including north coastal scrub or coastal prairie communities;

(ii) Soils derived from sandstone or shale, with rapid runoff and high erosion potential, such as Kneeland or Yorkville series soils;

(iii) Generally north aspected areas near steep sloped canyon walls; and

(iv) Habitat upslope and downslope from known populations to maintain disturbance such as occasional rock slides or soil slumping that the species appears to require.

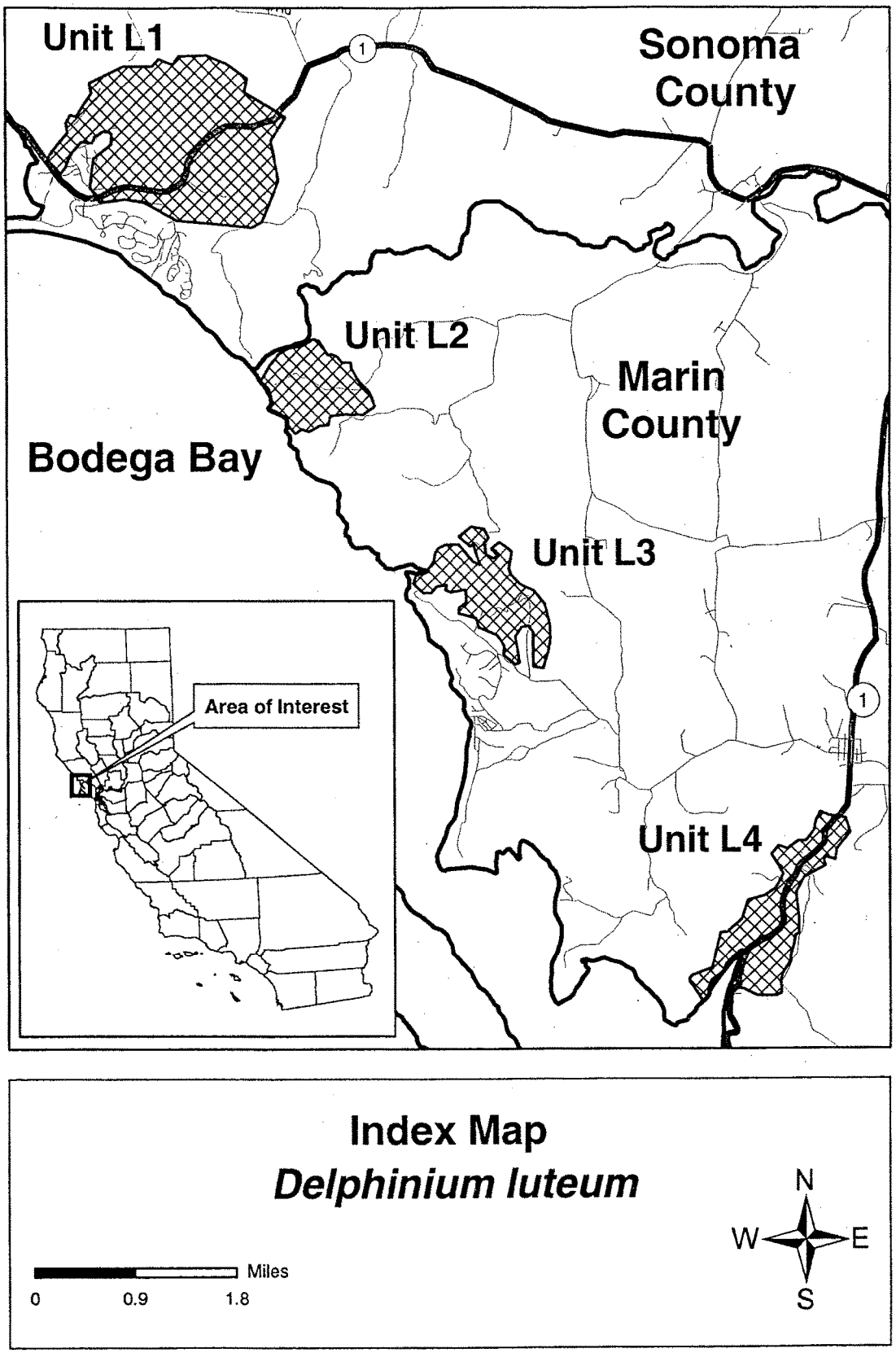
(3) Critical habitat does not include man-made existing features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical Habitat Map Units.

(i) Data layers defining map units were created on a base of USGS 7.5′ quadrangles obtained from the State of California's Stephen P. Teale Data Center. Proposed critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(i) Index map follows.

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

(5) Unit L1:-Bodega Bay, Sonoma County, California.

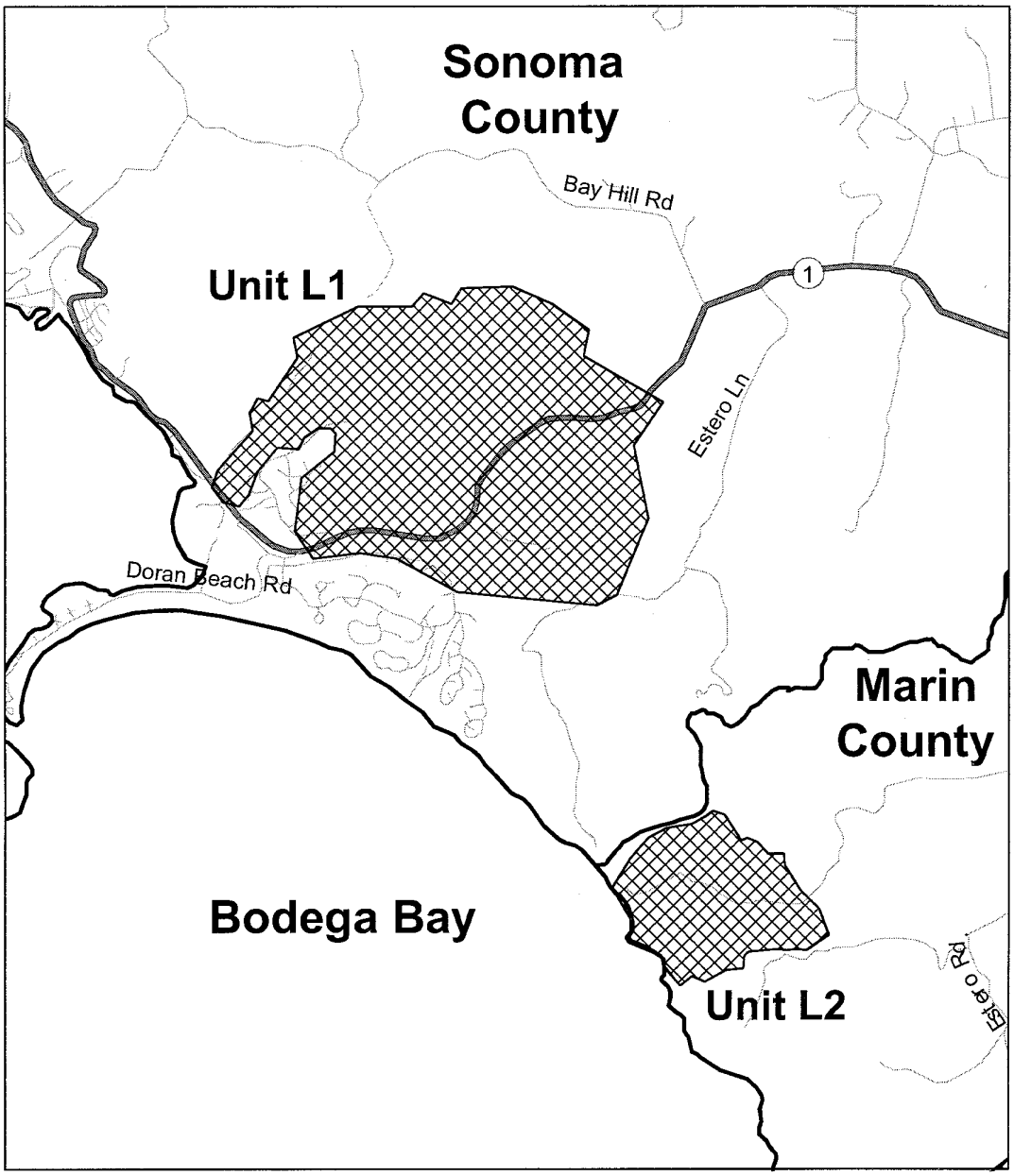
(i) From USGS 1:24,000 quadrangle map Bodega Head. Lands bounded by the following UTM10 NAD83 coordinates (E,N): 496820, 4241560; 496870, 4241690; 497130, 4241990; 497110, 4242130; 497170, 4242240; 497250, 4242220; 497470, 4242550; 497440, 4242700; 497930, 4242940; 498340, 4242940; 498430, 4243040; 498640, 4242960; 498720, 4243080; 499110, 4243090; 499410, 4242960; 499690, 4242760; 499650, 4242560; 500250, 4242210; 500030, 4241880; 500140, 4241320; 499900, 4240730; 499750, 4240650; 498690, 4240750; 498220, 4241010; 497940, 4241050; 497590, 4241010; 497450, 4241220; 497500, 4241630; 497750, 4241830; 497760, 4241970; 497720, 4242010; 497630, 4242010; 497520, 4241940; 497480, 4241850; 497320, 4241860; 497170, 4241680; 497100, 4241500; 497030, 4241410; 496910, 4241440; 496820, 4241560;

(6) Unit L2: Estero Americano, Marin County, California.

(i) From USGS 1:24,000 quadrangle map Valley Ford. Lands bounded by the following UTM10 NAD83 coordinates (E,N): 499970, 4238100; 500010, 4238150; 500010, 4238240; 499870, 4238480; 500010, 4238710; 500140, 4238860; 500280, 4238940; 500470, 4238970; 500580, 4239030; 500630, 4239070; 500720, 4239040; 500850, 4238840; 500890, 4238860; 500970, 4238830; 501050, 4238740; 501170, 4238740; 501180, 4238650; 501300, 4238460; 501440, 4238320; 501510, 4238120; 501340, 4238000; 501270, 4238010; 501190, 4238000; 501120, 4238010; 500900, 4237990; 500870, 4237960; 500860, 4237860; 500730, 4237850; 500570, 4237760; 500470, 4237800; 500380, 4237730; 500250, 4237890; 500240, 4237940; 500180, 4237980; 499990, 4238060; 499970, 4238100

(ii) Map 2—Units L1 and L2 follows:

BILLING CODE 4310–55–P



Units L1, L2: Critical Habitat Proposed for *Delphinium luteum*

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BILLING CODE 4310–55–C

(7) Unit L3: Estero de San Antonio, Marin County, California.

From USGS 1:24,000 quadrangle map Valley Ford. Lands bounded by the following UTM10 NAD83 coordinates (E,N): 502060, 4235600; 502110, 4235750; 502230, 4235770; 502300, 4235840; 502350, 4235930; 502370, 4236030; 502410, 4236100; 502510, 4236150; 502700, 4236150; 502900, 4235910; 503010, 4235860; 502900, 4236160; 502870, 4236120; 502700, 4236260; 502880, 4236400; 503060, 4236370; 503130, 4236240; 503070, 4236180; 503090, 4236010; 503200, 4235950; 503260, 4235990; 503170, 4236090; 503280, 4236180; 503410, 4236100; 503470, 4236040; 503430, 4235810; 503460, 4235720; 503600, 4235580; 503800, 4235490; 503950, 4235300; 504020, 4235010; 504030, 4234810; 504000, 4234630; 503920, 4234390; 503780, 4234410; 503780, 4234890; 503710, 4234990; 503610, 4234970; 503520, 4234840; 503560, 4234620; 503580, 4234470; 503520, 4234440; 503350, 4234580; 503360, 4234710; 503250, 4234860; 502990, 4234970; 502950, 4235100; 502700, 4235170; 502710, 4235260; 502810, 4235330; 502800, 4235510; 502580, 4235480; 502510, 4235510; 502530, 4235580; 502390, 4235560; 502310, 4235470; 502200, 4235470; 502060, 4235600;

(8) Unit L4: Tomales, Marin County, California

(i) From USGS 1:24,000 quadrangle map Tomales. Lands bounded by the following UTM10 NAD83 coordinates (E,N): 506200, 4229650; 506000, 4229960; 506040, 4230020; 506330, 4230130; 506450, 4230630; 506550, 4230640; 506760, 4230830; 506840, 4231090; 507070, 4231150; 507230, 4231260; 507340, 4231460; 507170, 4231740; 507270, 4231860; 507400, 4231820; 507550, 4231930; 507660, 4231930; 507780, 4232080; 507810, 4232220; 507870, 4232340; 507990, 4232290; 508250, 4232250; 508320, 4232050; 508110, 4231810; 508090, 4231660; 507960, 4231700; 507920, 4231670; 507950, 4231580; 507630, 4231410; 507520, 4231200; 507560, 4230830; 507560, 4230620; 507510, 4230590; 507490, 4230470; 507440, 4230300; 507440, 4230220; 507330, 4230050; 507300, 4229930; 507320, 4229820; 507310, 4229770; 507230, 4229730; 507060, 4229730; 506960, 4229740; 506780, 4229830; 506710, 4229840; 506580, 4229790; 506600, 4229860; 506720, 4230150; 506770, 4230340; 506640, 4230230; 506460, 4230020; 506200, 4229650;

(ii) Map 7—Units L3 and L4 follows:

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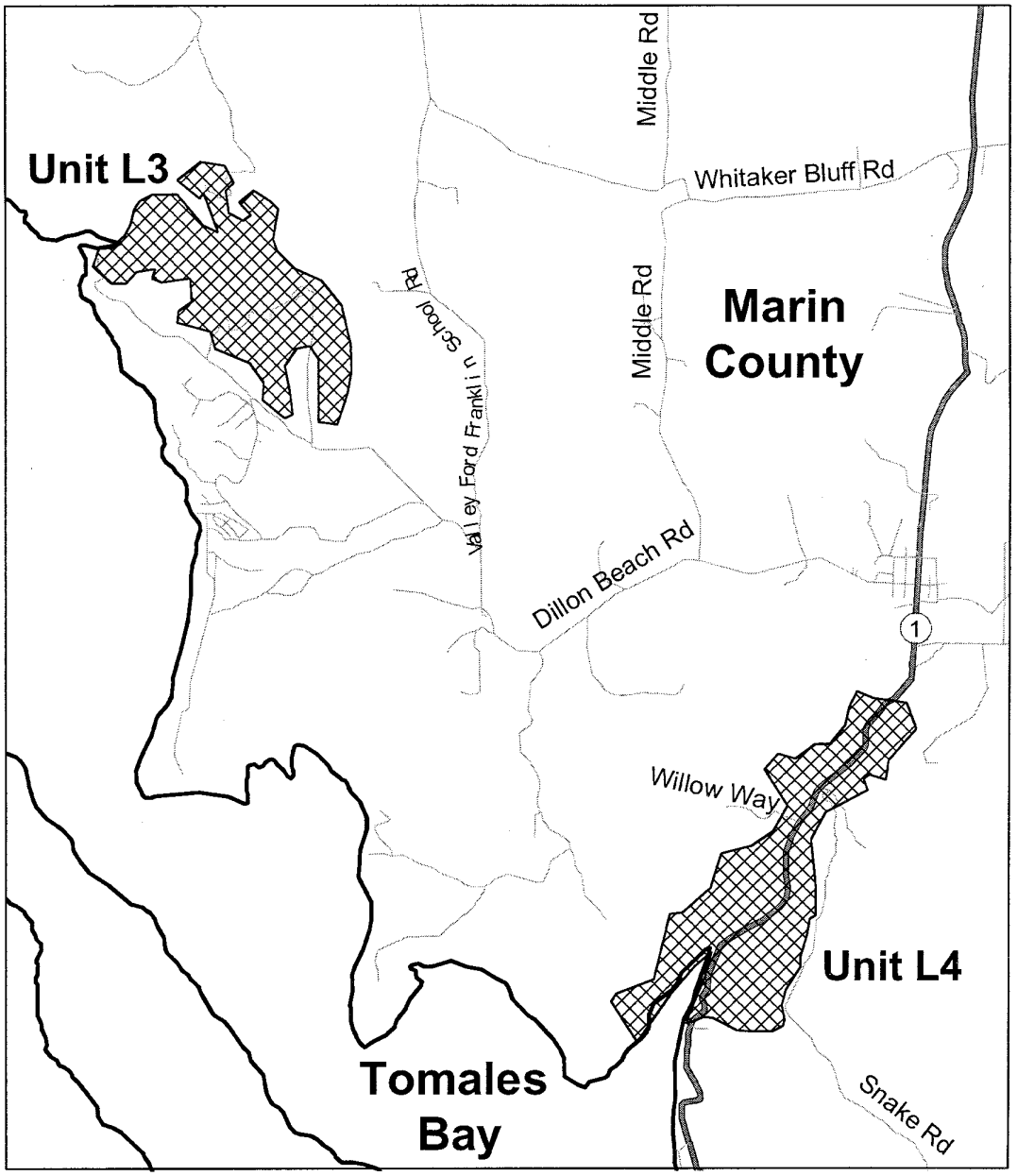

Units L3, L4: Critical Habitat Proposed for *Delphinium luteum*

Miles

0 0.75 1.5

N W E S

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Dated: June 11, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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