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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2010–0071; 4500030114]

RIN 1018–AX16

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Lepidium papilliferum*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are amending our proposal to designate critical habitat for *Lepidium papilliferum* (slickspot peppergrass) under the Endangered Species Act (Act). In total, approximately 24,808 hectares (61,301 acres) in Ada, Payette, Elmore, and Owyhee Counties in Idaho fall within the boundaries of the revised proposed critical habitat designation. If we finalize this rule as proposed, the effect of this regulation will be to designate critical habitat for *Lepidium papilliferum*

under the Act.

DATES: We will accept comments received or postmarked on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below) must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final determination.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. In the Search box, enter FWS–R1–ES–2010–0071, which is the docket number for this rulemaking. You may submit a comment by clicking on “Comment Now!”

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R1–ES–2010–0071; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments **only** by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Acting State Supervisor, U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709; telephone 208–378–5243; facsimile 208–378–5262. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We intend that any final action resulting from this revised proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning any new information pertaining to critical habitat for this species that has become available since the May 10, 2011, publication of our proposed rule to designate critical habitat for *Lepidium papilliferum* (76 FR 27184). Comments previously submitted on the proposed critical habitat designation need not be resubmitted; they have already been incorporated into the public record and will be fully considered in the final decision.

We particularly seek comments concerning the following:

(1) New scientific information regarding critical habitat for this species, including the addition of recently identified areas that meet our definition of critical habitat for the species that has become available since the May 10, 2011, publication of our proposed rule to designate critical habitat for *Lepidium papilliferum* (76 FR 27184).

(2) Whether the benefits of excluding any particular area from critical habitat outweigh the benefits of including that area in critical habitat under section 4(b)(2) of the Act, after considering both the potential impacts and benefits of the proposed critical habitat designation. Under section 4(b)(2) of the Act, we may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species. We therefore request specific information on:

- The benefits of including recently identified areas in the final designation and supporting rationale,
- The benefits of excluding any recently identified areas from the final designation and supporting rationale, and
- Whether any specific exclusions may result in the extinction of the species and why.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. Comments and materials we receive, as well

as some of the supporting documentation we used in preparing this proposed rule, will be available for public inspection on <http://www.regulations.gov>; all of our supporting documentation is available by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. You may request at the top of your document that we withhold personal information such as your street address, phone number, or e-mail address from public review; however, we cannot guarantee that we will be able to do so.

Background and Previous Federal Actions

In this document, we intend to discuss only those topics directly relevant to updating the 2011 proposed critical habitat rule for *Lepidium papilliferum*. For more information on previous Federal actions concerning *Lepidium papilliferum*, refer to the proposed designation of critical habitat published in the **Federal Register** on May 10, 2011 (76 FR 27184) (2011 proposed critical habitat rule).

On October 8, 2009, we listed *Lepidium papilliferum* as a threatened species throughout its range under the Act (74 FR 52014). On November 16, 2009, Idaho Governor C. L. “Butch” Otter, the Idaho Office of Species Conservation, Theodore

Hoffman, Scott Nicholson, and L.G. Davison & Sons, Inc., filed a complaint in the U.S. District Court for the District of Columbia challenging the 2009 final listing rule under the Administrative Procedure Act and the Endangered Species Act. Subsequently, the issue was transferred to the U.S. District Court for the District Court of Idaho (Court), and the parties involved consented to proceed before a Magistrate Judge. On August 8, 2012, the Court vacated the final rule listing *Lepidium papilliferum* as a threatened species under the Act, with directions that the case be remanded to the Service for further consideration consistent with the Court's opinion (*Otter v. Salazar*, Case No. 1:11-cv-00358-CWD (D. Idaho)).

During the period of the 2009 litigation, we published the 2011 proposed critical habitat rule; the comment period closed on July 11, 2011. On June 1, 2011, the Service received a request from Idaho's Governor C.L. "Butch" Otter requesting a 60-day extension to the comment period. On July 7, 2011, we published a notice extending the initial comment period through September 9, 2011 (76 FR 39807). We also requested comments on the proposed critical habitat designation and associated draft economic analysis during a second comment period that opened October 26, 2011, and closed on December 12, 2011 (76 FR 66250).

Rulemaking on the proposed critical habitat was suspended following the Court's ruling vacating the listing. However, elsewhere in today's issue of the **Federal Register**, we have published a document announcing our reconsideration of the listing of *Lepidium papilliferum* relative to the issues remanded by the Court; rulemaking on the listing has,

therefore, been reopened. Accordingly, we are reopening the rulemaking on our proposed rule to designate critical habitat for the species (76 FR 27184; May 10, 2011).

Changes From Proposed Rule

Since the publication of our May 10, 2011, proposed rule, we have received information regarding some additional areas that meet our definition of critical habitat for *Lepidium papilliferum*. To ensure that we are considering the best scientific data available in our final decision, in this document we present new scientific information that has become available to us since our 2011 proposed critical habitat rule, describe those additional areas that we believe meet the definition of critical habitat for the species, revise the proposed rule to include this new information, and seek public comment on the additional areas we are proposing as critical habitat. Should the listing of *L. papilliferum* become final, in accordance with the requirements of the Act, we will proceed with the promulgation of a final rule designating critical habitat for the species.

Correction to the Proposed Critical Habitat for Lepidium papilliferum

In the 2011 proposed critical habitat rule, the Service proposed to designate 23,374 ha (57,756 ac) as critical habitat for *Lepidium papilliferum* in four units in Ada, Elmore, Payette, and Owyhee Counties in Idaho. However, this amount was inadvertently overestimated due to a slight calculation error that resulted from an overlapping of polygons within the geographic information systems (GIS). This overlap

of data resulted in the accidental inclusion of 291 ha (716 ac) of additional area in the proposal. The actual area of critical habitat in the 2011 proposed critical habitat rule should have been reported as 23,083 ha (57,040 ac).

*New Information Related to the Proposed Critical Habitat for *Lepidium papilliferum**

As described in our 2011 proposed critical habitat rule, we based our criteria for the identification of critical habitat for *Lepidium papilliferum* on the element occurrence (EO) rankings of the Idaho Natural Heritage Program (INHP). We included all *L. papilliferum* element occurrences (EOs) with rankings of C or higher in the proposed critical habitat. We considered areas with these rankings to provide the physical and biological features essential to the conservation of the species, as they are the EOs most likely to provide for viable populations of *L. papilliferum* that will contribute to the conservation and recovery of the species. Each EO provides one or more of the PCEs as described in the proposed rule (note there are no *L. papilliferum* EOs ranked higher than B at present). We did not include sites ranked D or lower in the critical habitat designation due to the poor condition of the habitat around D-ranked sites, the low viability of the small *L. papilliferum* populations remaining at such sites, and the fragmented nature of the surrounding landscape.

Recent survey efforts have located a few additional sites occupied by *Lepidium papilliferum* within the range of the species. According to Idaho Fish and Wildlife Information System (IFWIS; formerly Idaho Natural Heritage Program (INHP)) data,

eight new EOs have been located. In addition to these new EOs, some existing EOs have been expanded and in some cases merged with other EOs to meet the definition of an EO (a grouping of occupied slickspots that occur within 1 kilometer (km) (0.6 miles (mi)) of each other).

Based on the rankings of the new EOs, we have determined that seven of the eight new EOs, all of which are occupied by *Lepidium papilliferum*, meet the definition of critical habitat and contain the physical and biological features essential to conserve the species. These include one BC-ranked EO (EO 118), one BD-ranked EO (EO 114), three C-ranked EOs (EO 112, 115, 116), and two CD-ranked EOs (EO 113, 117) (IFWIS data from January 2013). The eighth EO was ranked D, and, therefore, did not meet our definition of critical habitat. The reopened comment period will provide all interested parties with an additional opportunity to submit written comments on this revised proposed rule, specifically regarding the new proposed EOs that have been included based on the best scientific data that has become available since the 2011 proposal (May 10, 2011; 76 FR 27184).

Revised Critical Habitat Units

Based on this new information, we have updated the previous proposed critical habitat maps, and hereby revise our May 10, 2011, proposal to designate critical habitat for *Lepidium papilliferum* (76 FR 27184) to include 1,725 ha (4,261 ac) of additional area that meets our definition of critical habitat, as described above. This amendment results

in a proposal to designate a total of 24,808 ha (61,301 ac) of critical habitat for *Lepidium papilliferum* in four units in Payette (Unit 1), Ada (Unit 2), Elmore (Unit 3), and Owyhee (Unit 4) Counties in Idaho. We are proposing no new units. The additional areas proposed for critical habitat include 1,588 ha (3,926 ac) of U.S. Bureau of Land Management (BLM) lands; 23 ha (58 ac) of Bureau of Reclamation (BOR) lands; 35 ha (87 ac) of State lands; and 76 ha (188 ac) of private lands (areas do not add precisely to 1,725 ha (4,261 ac) due to rounding).

Units that have been revised to include additional area since the 2011 proposed critical habitat rule include: Unit 1—addition of EO 114; Unit 2, Subunit 2a—addition of EO 118, Subunit 2b—the expansion of EOs 18, 24, and 25; and Unit 3, Subunit 3a—expansion of EO 30 and addition of EO 112, Subunit 3b—expansion of EOs 51 and 62, and addition of EOs 113, 115, 116, and 117. See table 1 for the revised area totals of proposed critical habitat by units and subunits, and land ownership. (The GIS calculation error in the proposed rule, noted above, has been corrected in the totals within table 1).

TABLE 1. Revised proposed critical habitat units and area (hectares (acres)) by land ownership for *Lepidium papilliferum*. [Area estimates reflect all land within critical habitat unit boundaries.]

Unit or Subunit	Federal	State	Municipal (County and City)	Private	Total
Unit 1— Payette County Total	273 (675)	0	0	16 (40)	289 (715)
Unit 2—Ada County Total	5,984 (14,789)	1,182 (2,921)	414 (1,023)	674 (1,663)	8,254 (20,396)
2a	660 (1,632)	0	338 (835)	291 (719)	1,289 (3,186)
2b	3,802	114	0	115	4,031

	(9,396)	(281)		(283)	(9,960)
2c	512 (1,265)	98 (241)	76 (188)	235 (580)	921 (2,274)
2d	1,010 (2,496)	970 (2,399)	0	33 (81)	2,013 (4,977)
Unit 3—Elmore County Total	3,933 (9,725)	97 (239)	0	419 (1,035)	4,449 (10,999)
3a	760 (1,878)	0	0	241 (596)	1,001 (2,474)
3b	1,044 (2,579)	97 (239)	0	49 (120)	1,190 (2,938)
3c	2,132 (5,268)	0	0	129 (319)	2,261 (5,587)
Unit 4—Owyhee County Total	11,213 (27,709)	600 (1,482)	0	0	11,813 (29,191)
All Units	21,403 (52,898)	1,879 (4,642)	414 (1,023)	1,109 (2,738)	24,808 (61,301)

As in the May 10, 2011, proposed rule (76 FR 27184), all lands being proposed for designation as critical habitat are currently occupied by *Lepidium papilliferum* and contain features essential to support the life-history needs of the species that may require special management considerations or protection. See the Proposed Critical Habitat Designation section of the proposed rule for details (76 FR 27184; May 10, 2011).

In the 2009 final listing rule ((74 FR 52014; October 8, 2009), we described the total area of known EOs (that is, area covered by the EOs themselves) as being approximately 6,500 ha (16,000 ac). This area reflects only the immediate known locations of individuals of the plant, as recognized in the IFWIS database, and is a small portion of the overall geographic range of the species. In the May 10, 2011, proposed critical habitat rule (76 FR 27184), we described in detail the criteria used to identify critical habitat, including a 250-m radius around each EO to provide sufficient area for

pollinator support and to minimize disturbance to the plant's habitat. This, along with the additional area resulting from inclusion of the recently discovered EOs, make up the total area now proposed for designation as critical habitat of 24,808 ha (61,301 ac).

In the rule portion of this document, we present new maps of the critical habitat units that have changed since the May 10, 2011, proposed rule (76 FR 27184). Maps illustrating the changes from the previously proposed unit boundaries are available on the Internet at <http://www.regulations.gov> at Docket No. FWS-R1-ES-2010-0071 or at <http://www.fws.gov/idaho>. As noted above, the units that reflect the additional areas determined to meet our definition of critical habitat are Unit 1; Unit 2 (Subunits 2a and 2b); and Unit 3 (Subunits 3a and 3b).

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this proposed revised critical habitat designation and are available at <http://www.fws.gov/idaho>, at <http://www.regulations.gov> at Docket No. FWS-R1-ES-2010-0071, and at the Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the Fish and Wildlife Service website and Field Office set out above, and may also be included at <http://www.regulations.gov>.

The reopened comment period will provide all interested parties with an additional opportunity to submit written comments on this revised proposed rule,

specifically regarding the new proposed EOs that have been included based on the best scientific data that has become available since the 2011 proposed critical habitat rule.

Required Determinations

The draft economic analysis of the proposed designation concluded that critical habitat designation for *Lepidium papilliferum* is not likely to affect economic activity or conservation measures being implemented within the proposed critical habitat area (IEC 2011, p. ES-5). Because all areas proposed for critical habitat were occupied by the species, and most of the area proposed is on BLM lands, the estimated incremental impacts of critical habitat designation were limited to additional administrative costs of section 7 consultations associated with considering the potential for adverse modification of critical habitat (IEC 2011, p. ES-5). Activities on private lands were determined to be unlikely to be subject to section 7 consultation (IEC 2011, p. ES-6).

Based on these earlier determinations, we believe that the addition of the relatively small amount of occupied area proposed here is unlikely to significantly alter the results of the existing economic analysis of the designation, and we conclude that the incremental impacts of the revised proposed designation of critical habitat for *L. papilliferum* will similarly be limited to the additional administrative costs of section 7 consultations associated with considering the potential for adverse modification of critical habitat. Therefore, in this document, we affirm the required determinations made in the May 10, 2011, proposed rule (76 FR 27184).

References Cited

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this revised proposed rulemaking are the staff members of the Idaho Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1977, as amended (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended on May 10, 2011, at 76 FR 27184, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

2. Amend § 17.96(a) by revising paragraphs (5), (6), (7), (8), and (9) in the entry proposed for “*Lepidium papilliferum* (Slickspot Peppergrass)” at 76 FR 27184 to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

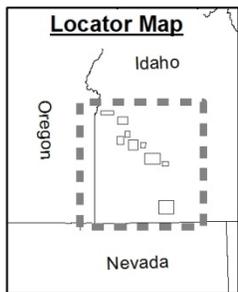
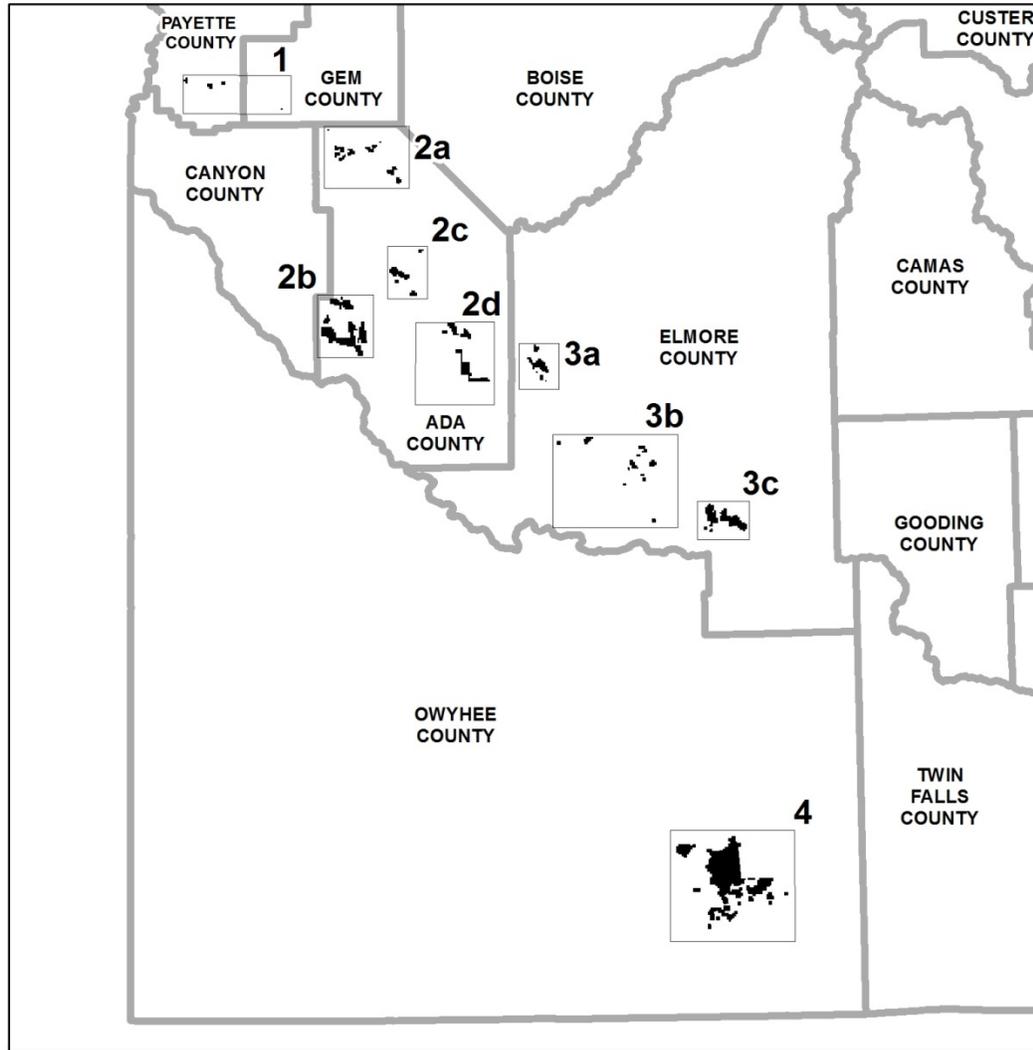
* * * * *

Family Brassicaceae: *Lepidium papilliferum* (Slickspot Peppergrass)

* * * * *

(5) Index map of critical habitat units for *Lepidium papilliferum* (slickspot peppergrass) follows:

Critical Habitat for *Lepidium papilliferum* (slickspot peppergrass)



 *Lepidium papilliferum* Critical Habitat

 Subunit

 County

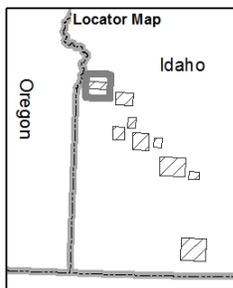
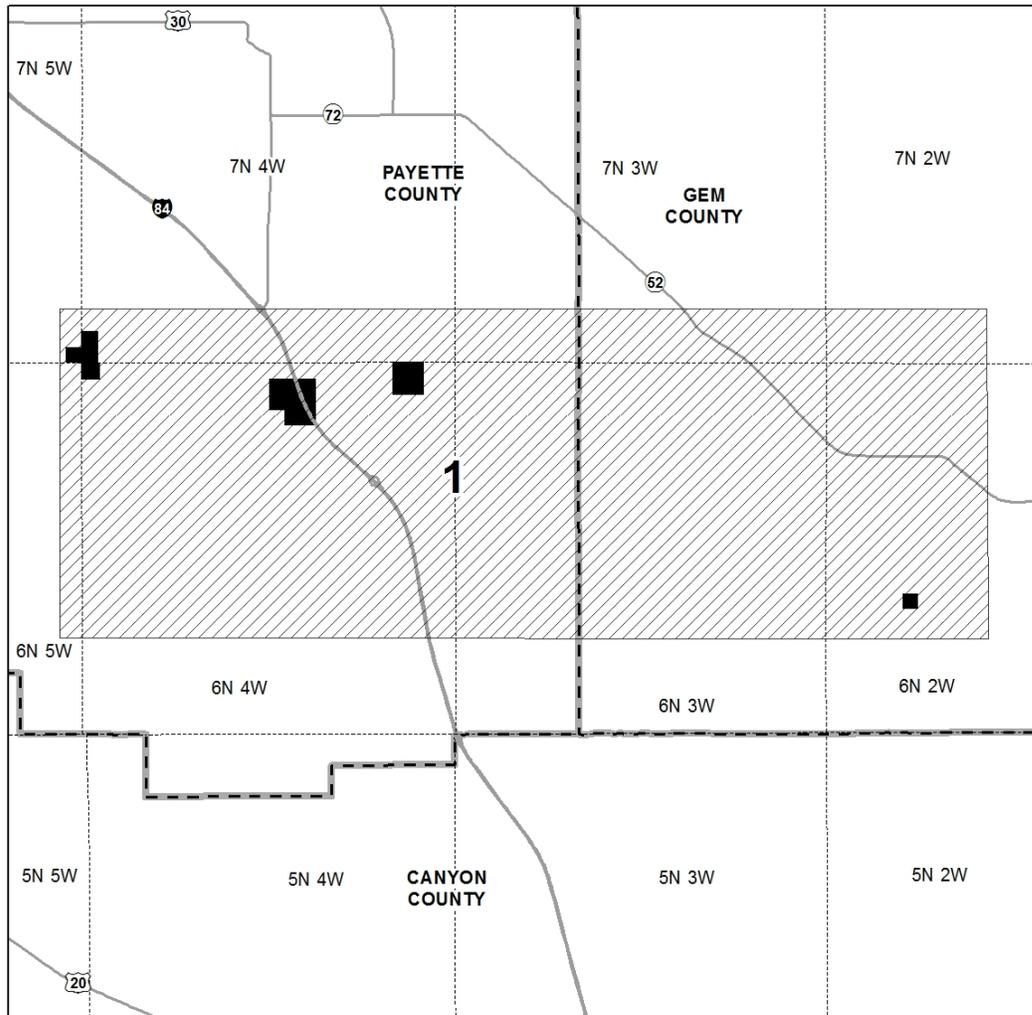
0 10 20 Miles

0 10 20 Kilometers

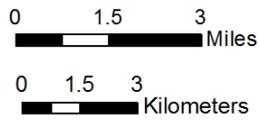


(6) Unit 1: Payette County, Idaho. Map of Unit 1 follows:

Critical Habitat for *Lepidium papilliferum* (slickspot peppergrass)
Unit 1



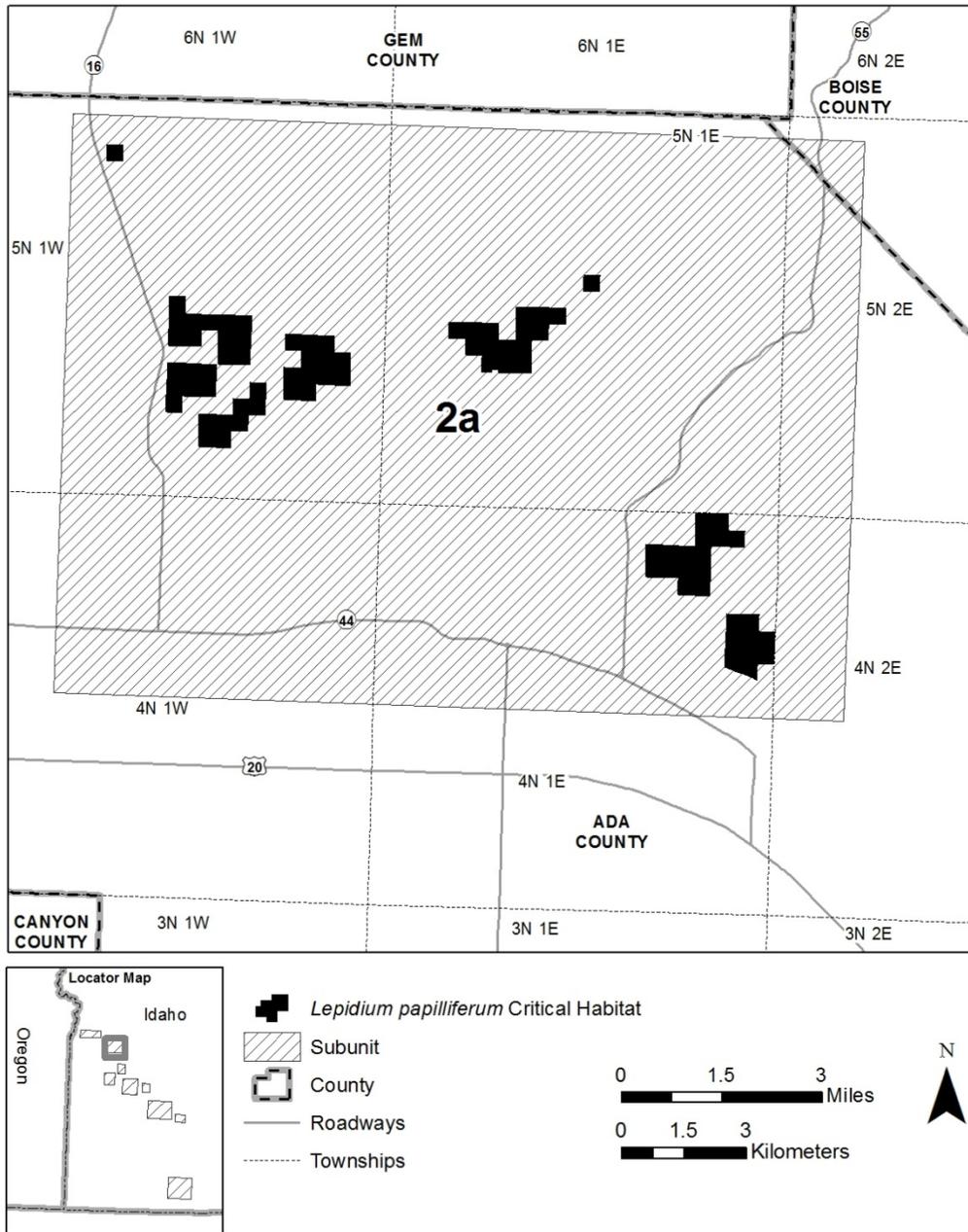
-  *Lepidium papilliferum* Critical Habitat
-  Subunit
-  County
-  Roadways
-  Townships



(7) Unit 2: Ada County, Idaho.

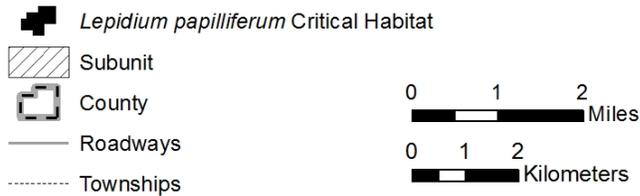
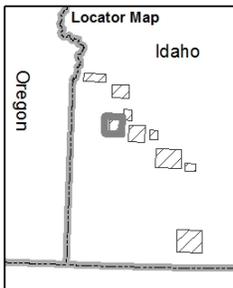
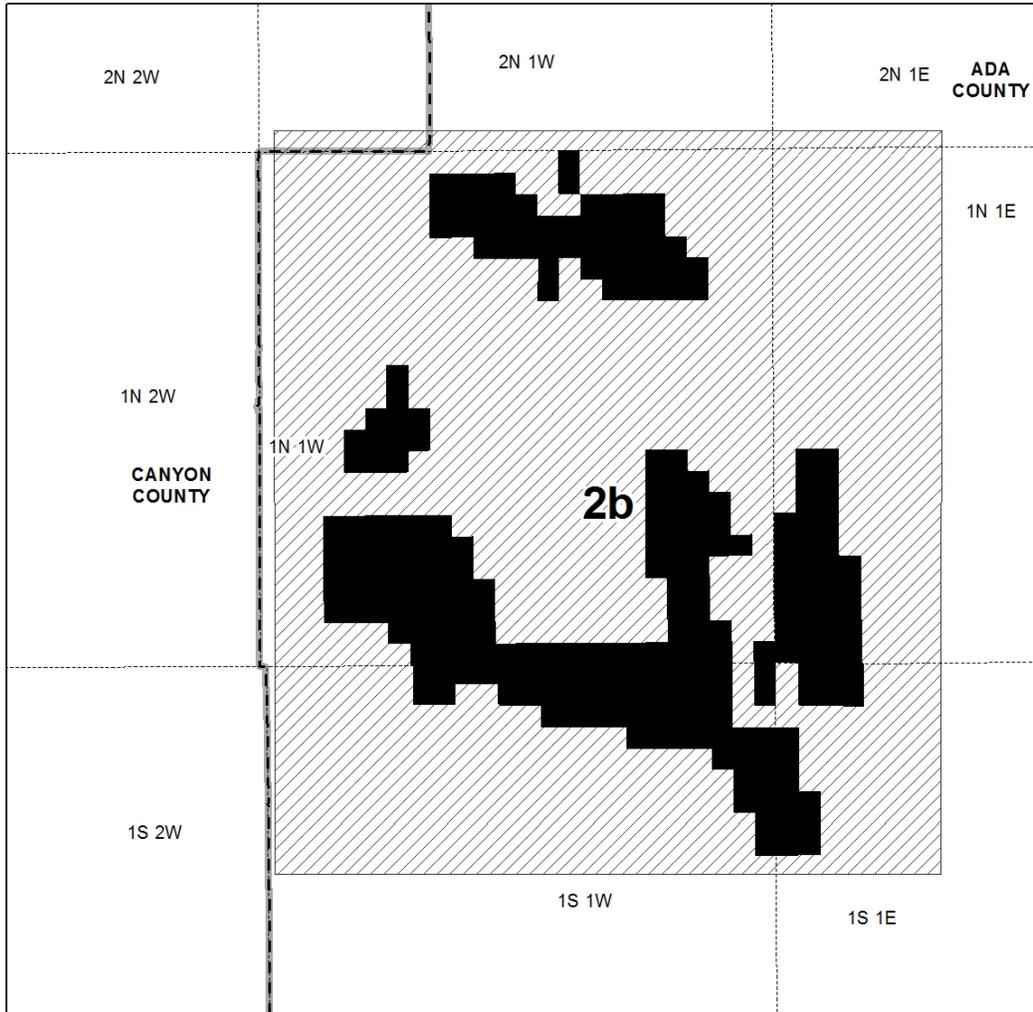
(i) Map of Unit 2, Subunit a, follows:

Critical Habitat for *Lepidium papilliferum* (slickspot peppergrass)
Unit 2 - Subunit a



(ii) Map of Unit 2, Subunit b, follows:

Critical Habitat for *Lepidium papilliferum* (slickspot peppergrass)
Unit 2 - Subunit b



(iii) Map of Unit 2, Subunit c, follows:

* * * * *

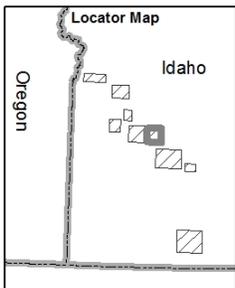
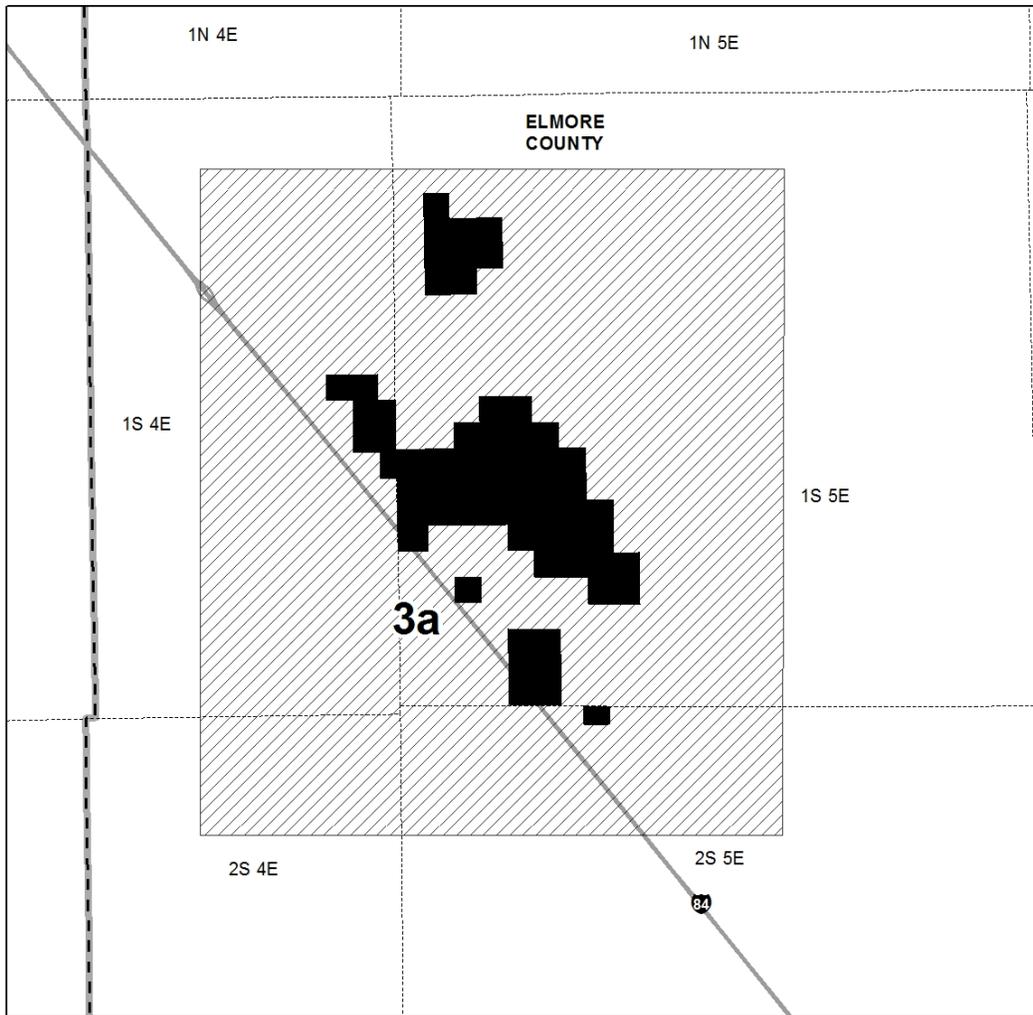
(iv) Map of Unit 2, Subunit d, follows:

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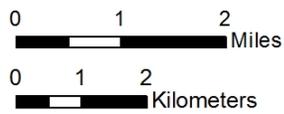
(8) Unit 3: Elmore County, Idaho.

(i) Map of Unit 3, Subunit a, follows:

Critical Habitat for *Lepidium papilliferum* (slickspot peppergrass)
Unit 3 - Subunit a

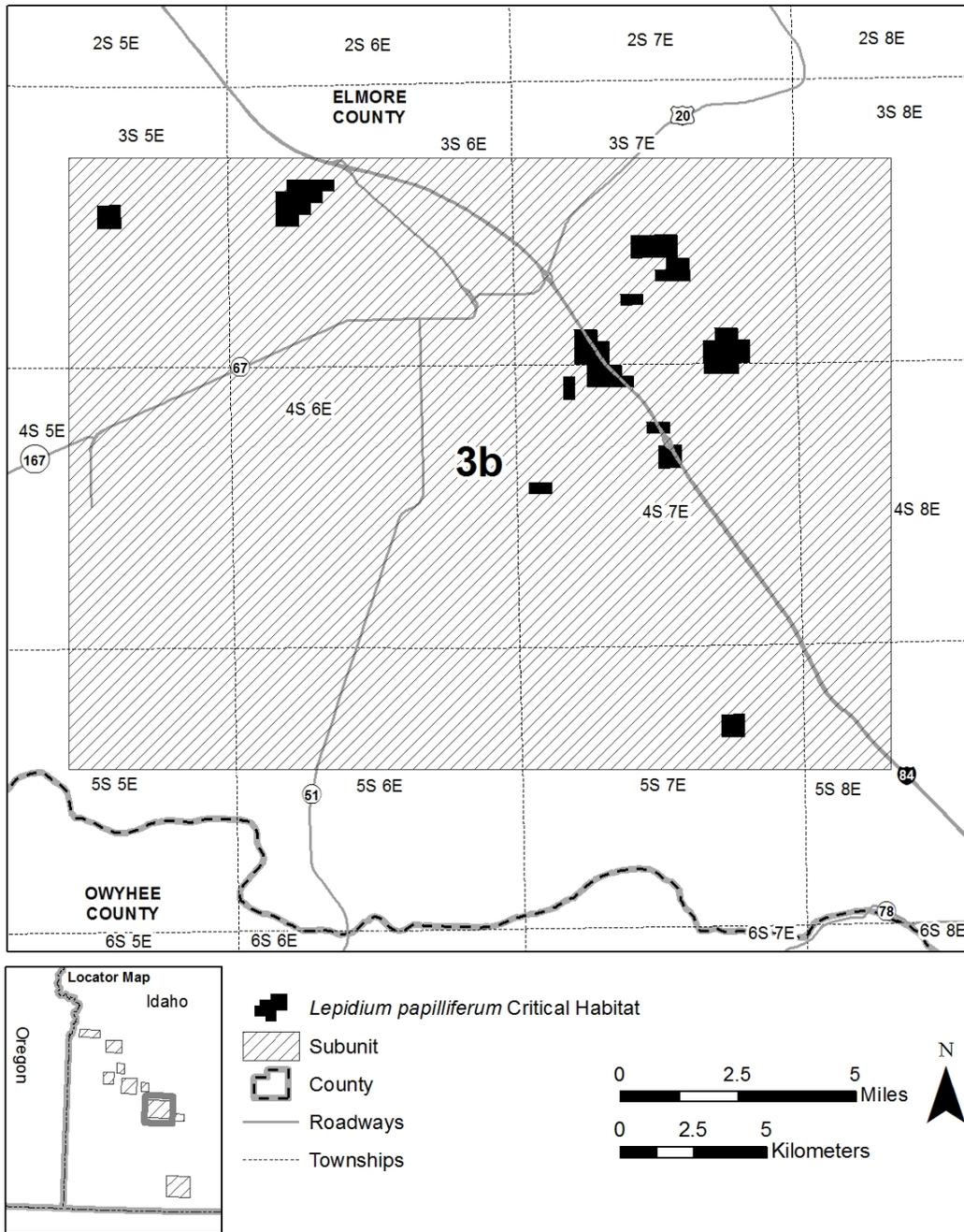


-  *Lepidium papilliferum* Critical Habitat
-  Subunit
-  County
-  Roadways
-  Townships



(ii) Map of Unit 3, Subunit b, follows:

Critical Habitat for *Lepidium papilliferum* (slickspot peppergrass)
Unit 3 - Subunit b



(iii) Map of Unit 3, Subunit c, follows:

* * * * *

(9) Unit 4: Owyhee County, Idaho. Map of Unit 4 follows:

* * * * *

Dated: February 5 2014_____

Rachel Jacobson_____

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

Billing Code 4310-55

[FR Doc. 2014-03134 Filed 02/11/2014 at 8:45 am; Publication Date: 02/12/2014]