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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; correction and reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the revised proposed rule to designate critical habitat for *Lepidium papilliferum* (slickspot peppergrass) under the Endangered Species Act (Act or ESA). In addition, we correct some minor errors in the revised proposed rule published on February 12, 2014. In total, approximately 24,808 hectares (61,301 acres) in Ada, Gem, Payette, Elmore, and Owyhee Counties in Idaho fall within the boundaries of the revised proposed critical habitat designation. We are reopening the comment period to allow all interested parties an opportunity

to comment. Comments previously submitted need not be resubmitted, as they will be fully considered in the preparation of our final rule.

**DATES:** We are reopening the comment period on the revised proposed rule published in the Federal Register on February 12, 2014 (79 FR 8402). In order to fully consider and incorporate public comment in the final determination, we request submission of comments by **[INSERT DATE 45 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 that date.

**ADDRESSES:** *Document availability:* You may obtain copies of the revised proposed rule to designate critical habitat for *Lepidium papilliferum* on the Internet at <http://www.regulations.gov> at Docket No. FWS–R1–ES–2010–0071, or by mail from the Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

*Comment submission:* You may submit written comments by one of the following methods:

(1) Electronically: Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Search for 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:** Mike Carrier, 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 will accept written comments and information during this reopened comment period on our revised proposed rule to designate critical habitat for *Lepidium papilliferum* (slickspot peppergrass) that published in the **Federal Register** on February 12, 2014 (79 FR 8402). Any final action regarding the designation of critical habitat for *L. papilliferum* 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 governmental agencies, Native American tribes, the scientific community, industry, general public, and other interested parties on our revised 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); and

(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.

We will consider all comments and information received during our preparation of a final designation of critical habitat for *Lepidium papilliferum*. Accordingly, the final decision may differ from the proposal.

Please note that comments merely stating support for or opposition to the actions under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(2) of the Act directs that the Secretary designate critical habitat on the basis of the best scientific data available.

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. If you submit information via *<http://www.regulations.gov>*, your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *<http://www.regulations.gov>*.

Please include sufficient information with your comments to allow us to verify any scientific information you include. Comments and materials received, as well as some of the supporting documentation used in the preparation of a final decision, will be available for public inspection on *<http://www.regulations.gov>*. All information we use in making our decision is available by appointment, during normal business hours, at the 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 (see **FOR FURTHER INFORMATION CONTACT**).

## **Background**

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 (76 FR 27184, May 10, 2011); 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, on February 12, 2014, we published in the **Federal Register** a document announcing our reconsideration of the listing of *Lepidium papilliferum* relative to the issues remanded by the Court (79 FR 8416); rulemaking on the listing has, therefore, been

reopened. At that time, we also reopened the rulemaking on our proposed rule to designate critical habitat for the species, and presented some revisions to the proposed critical habitat (February 12, 2014; 79 FR 8402). We initially opened a 30-day comment period in association with our revised proposed rule to designate critical habitat for *L. papilliferum*; that comment period ended on March 14, 2014. On February 13, 2014, we received a request from the Idaho Governor's Office of Species Conservation to extend the comment period an additional 45 days. We are reopening the comment period to allow the public additional opportunity to provide input on our revised proposed rule to designate critical habitat for *L. papilliferum*. Elsewhere in today's **Federal Register**, we are concurrently reopening the comment period on our reconsideration of the final rule listing *L. papilliferum* as a threatened species throughout its range.

#### *Corrections to the Revised Proposed Critical Habitat for Lepidium papilliferum*

In this document, we correct some errors in our February 12, 2014, revised proposed rule to designate critical habitat for *Lepidium papilliferum* (79 FR 8402). On page 8404 of that revised proposed rule, in the third column under the section *Revised Critical Habitat Units*, the amounts of State and private lands included in the additional areas identified as critical habitat are incorrect. These areas are erroneously described as including 35 ha (87 ac) of State lands and 76 ha (188 ac) of private lands. The correct amounts should be 32 ha (80 ac) of State lands and 82 ha (203 ac) of private lands. The sentence in question should, therefore, read as follows: "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; 32 ha (80

ac) of State lands; and 82 ha (203 ac) of private lands (areas do not add precisely to 1,725 ha (4,261 ac) due to rounding).”

In addition, we did not explain that the addition of a single element occurrence in Unit 1 of the revised proposed critical habitat in Payette County actually extends the area of that unit into adjacent Gem County. The revised proposed critical habitat for *Lepidium papilliferum* is thus found in five (not four) counties in Idaho: Ada, Elmore, Gem, Owyhee, and Payette Counties. The map of Unit 1 published with the revised proposed critical habitat rule (79 FR 8402, p. 8408) correctly depicts the critical habitat unit as extending from Payette County across the county line into Gem County to incorporate a single element occurrence of *L. papilliferum*. The area of proposed critical habitat in Gem County is 16 ha (40 ac) of Federal (BLM) lands. The total acreage of Unit 1 is unchanged from the 289 ha (715 ac) identified in the revised proposed rule. However, of that amount, 273 ha (675 ac) are in Payette County, and 16 ha (40 ac) are in Gem County.

### **Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

**Dated:** April 10, 2014.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

Billing Code 4310-55

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