



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2013–0049; 4500030113]

RIN 1018–AZ33

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Diplacus vandenbergensis* (Vandenberg Monkeyflower)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; revision and reopening of the comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the proposed rule to designate critical habitat for *Diplacus vandenbergensis* (Vandenberg monkeyflower). We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for *D. vandenbergensis* and an amended required determinations section of the proposal. In addition, in this document, we are proposing revised unit names for the four previously described subunits, and a revised acreage for one subunit based on information we received on the proposal. These revisions result in an increase of approximately 24 acres (10 hectares) in the proposed designation of critical habitat. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated DEA, the amended

required determinations section, and the unit revisions described in this document.

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

DATES: The comment period for the proposed rule published October 29, 2013 (at 78 FR 64446), is reopened. We will consider comments on that proposed rule or the changes to it proposed in this document that we receive or that are 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** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES:

Document availability: You may obtain copies of the proposed rule and the associated DEA (Industrial Economics, Incorporated (IEc) 2014; Service 2014) on the internet at <http://www.regulations.gov> at Docket No. FWS–R8–ES–2013–0049 or by mail from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Written comments: 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 Docket No. FWS–R8–ES–2013–0049 (the docket number for the proposed critical habitat rule).

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments

Processing, Attn: FWS–R8–ES–2013–0049; 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: Stephen P. Henry, Acting Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA, 93003; telephone 805–644–1766; facsimile 805–644–3958. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed designation of critical habitat for *Diplacus vandenbergensis* (hereafter referred to as Vandenberg monkeyflower) that was published in the **Federal Register** on October 29, 2013 (78 FR 64446), our DEA (which comprises an economics screening memorandum (IEc 2014) and the Service’s Incremental Effects Memorandum (Service 2014)) of the proposed designation, the amended required determinations provided in this document, and the revisions to the names and one unit as described in this document. We will consider information and recommendations from all interested

parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) (Act), including whether there are threats to the species from human activity, the degree those threats can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(2) Specific information on:

(a) The amount and distribution of Vandenberg monkeyflower and its habitat;

(b) What may constitute “physical or biological features essential to the conservation of the species,” within the geographical range currently occupied by the species;

(c) Where these features are currently found;

(d) Whether any of these features may require special management considerations or protection;

(e) What areas currently occupied by the species and that contain features essential to the conservation of the species should be included in the designation and why; and

(f) What areas not occupied at the time of listing are essential for the conservation of the species and why.

(3) Land use designations and current or planned activities in the areas occupied by the species or proposed to be designated as critical habitat, and possible impacts of

these activities on this species and proposed critical habitat.

(4) Comments or information that may assist us in identifying or clarifying the primary constituent elements (PCEs).

(5) Information on the projected and reasonably likely impacts of climate change on Vandenberg monkeyflower and proposed critical habitat.

(6) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(7) Information on the extent to which the description of economic impacts in the DEA is a reasonable estimate of the probable economic impacts.

(8) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(9) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. We specifically seek comments on the following:

(a) Whether the existing management plans for Burton Mesa Ecological Reserve and La Purisima Mission State Historic Park (SHP) provide a conservation benefit to

Vandenberg monkeyflower and its habitat. We also seek comments on whether there is a reasonable expectation that the conservation management strategies and actions in these management plans will be implemented into the future.

(b) Whether or not to exclude the Burton Ranch area from the final critical habitat designation. Burton Ranch is a residential development project on private land that borders the Burton Mesa Ecological Reserve. We included Burton Ranch in our proposed critical habitat because the area met our criteria for designating critical habitat for Vandenberg monkeyflower. In comments on the proposed designation, the developers of Burton Ranch requested that this land be excluded from critical habitat.

(c) Whether or not to exclude a portion of the Burton Mesa Ecological Reserve, at a site where the Vandenberg Village Community Services District (VVCSD) is considering installation of new water wells. In comments on the proposed designation, the VVCSD requested exclusion of 106 acres (ac) (43 hectares (ha)) for the purpose of installing new water wells to replace their existing wells. The land VVCSD requested to exclude is within the Burton Mesa Ecological Reserve and owned and managed by the State of California. Vandenberg monkeyflower is known to occur within the 106-ac (43-ha) area.

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

If you submitted comments or information on the proposed rule (78 FR 64446) during the initial comment period from October 29, 2013, to December 30, 2013, please

do not resubmit them. Any such comments are incorporated as part of the public record of this rulemaking proceeding, and we will fully consider them in the preparation of our final determination. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. This document contains revisions to the proposed rule; in addition, the final decision may differ from this revised proposed rule, based on our review of all information received during this rulemaking proceeding.

You may submit your comments and materials concerning the proposed rule or DEA (IEc 2014; Service 2014) by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the website. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you submit a hardcopy comment 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.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed listing, proposed critical habitat, and DEA, will be available for public inspection on <http://www.regulations.gov> at Docket Number FWS–R8–ES–2013–0049, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule to

designate critical habitat and the DEA (IEc 2014; Service 2014) on the Internet at <http://www.regulations.gov> at Docket Number FWS–R8–ES–2013–0049, or by mail from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

It is our intent to discuss only those topics directly relevant to the proposed designation of critical habitat for Vandenberg monkeyflower (78 FR 64446) in this document. For more information on previous Federal actions concerning Vandenberg monkeyflower, refer to the proposed listing rule (78 FR 64840) that published in the **Federal Register** on October 29, 2013. Both proposed rules are available online at <http://www.regulations.gov> (at Docket No. FWS–R8–ES–2013–0078 for the proposed listing and Docket No. FWS–R8–ES–2013–0049 for the proposed critical habitat designation) or from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

On October 29, 2013, we published a proposed rule to designate critical habitat for Vandenberg monkeyflower (78 FR 64446). We proposed to designate approximately 5,785 ac (2,341 ha) in four subunits as critical habitat for Vandenberg monkeyflower in Santa Barbara County, California. That proposal had an initial 60-day comment period ending December 30, 2013. This document announces proposed revisions of the subunit names (now called units) and acreage of one unit (Encina, Unit 3) described in the

October 29, 2013, proposed rule to designate critical habitat. In a separate rulemaking, we proposed to list Vandenberg monkeyflower as an endangered species on October 29, 2013 (78 FR 64840). If the listing and critical habitat rules are finalized, we anticipate submitting for publication in the **Federal Register** a final critical habitat designation for Vandenberg monkeyflower by October 2014.

Critical Habitat

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

Revisions to Proposed Critical Habitat Designation

On October 29, 2013, we proposed critical habitat for Vandenberg monkeyflower in four subunits, consisting of approximately 5,785 ac (2,341 ha) in Santa Barbara County, California (78 FR 64446). We are now revising the ‘subunit’ designation used in the October 29, 2013, proposed rule to ‘unit’ for added clarity for the public and to be consistent with critical habitat naming across the nation. The revised unit names are: Unit 1 (Vandenberg), Unit 2 (Santa Lucia), Unit 3 (Encina), and Unit 4 (La Purisima). Additionally, we are revising the proposed designation to include an additional 24 ac (10 ha) for a total of approximately 5,809 ac (2,351 ha) (see Table 1). The added acreage occurs north of Davis Creek in the parcel designated as open space at Clubhouse Estates, consisting of maritime chaparral mixed with oak woodland and scrub vegetation that is contiguous with the Burton Mesa Ecological Reserve. This area was added to the proposed critical habitat designation because it contains the physical and biological features essential to the conservation of Vandenberg monkeyflower, and also supports a portion of a population of Vandenberg monkeyflower. We propose this increase based on new information received from several commenters who pointed out that we had omitted a portion of a parcel along the boundaries of Unit 3 (Encina). Apart from the acreages and ownership percentages provided in the Unit 3 description in the October 29, 2013, proposed rule, the general information in the Unit 3 description in that proposal remains unchanged.

Table 1—Revisions to proposed critical habitat units for Vandenberg monkeyflower. (Area estimates reflect all land within critical habitat unit boundaries).

Proposed Critical Habitat Unit	Land Ownership by Type	October 29, 2013, Proposed Critical Habitat in Acres (Hectares)	Current Proposed Revised Acres (Hectares)	Change from 10/29/2013 Proposal (Acres (Hectares))
1. Vandenberg Unit	Federal	277 (75)	277 (112)	0 (0)
2. Santa Lucia Unit	State	1,422 (576)	1,422 (576)	0 (0)
	Local Agency	10 (4)	10 (4)	0 (0)
	Private	52 (21)	52 (21)	0 (0)
3. Encina Unit	State	1,460 (591)	1,460 (591)	0 (0)
	Local Agency	24 (10)	24 (10)	0 (0)
	Private	516 (209)	540 (218)	+24 (+10)
4. La Purisima Unit	State	1,792 (725)	1,792 (725)	0 (0)
	Local Agency	4 (2)	4 (2)	0 (0)
	Private	228 (92)	228 (92)	0 (0)
Revised Totals for All 4 Units¹	Federal	277 (112)	277 (112)	0 (0)
	State	4,674 (1,892)	4,674 (1,892)	0 (0)
	Local Agency	38 (16)	38 (16)	0 (0)
	Private	796 (322)	820 (332)	+24 (+10)
	TOTAL	5,785 (2,341)	5,809 (2,351)	0 (0)

Note: Area sizes may not sum due to rounding.

1-This total does not include 4,159 ac (1,683 ha) of lands within Vandenberg AFB that were identified as areas that meet the definition of critical habitat but are exempt from critical habitat designation under section 4(a)(3)(B) of the Act (see **Exemptions** section of proposed critical habitat rule that published on October 29, 2013 (78 FR 64446)).

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the

species.

When considering the benefits of inclusion for an area, we consider, among other factors, the additional regulatory benefits that an area would receive through the analysis under section 7 of the Act addressing the destruction or adverse modification of critical habitat as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of identifying areas containing essential features that aid in the recovery of the listed species, and any ancillary benefits triggered by existing local, State, or Federal laws as a result of the critical habitat designation.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to incentivize or result in conservation; the continuation, strengthening, or encouragement of partnerships; and the implementation of a management plan. In the case of Vandenberg monkeyflower, the benefits of critical habitat include public awareness of the presence of the species, the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for Vandenberg monkeyflower. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken, authorized, funded, or otherwise permitted by Federal agencies. We have not proposed to exclude any areas from critical habitat.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we

consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios “with critical habitat” and “without critical habitat.”

The “without critical habitat” scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (e.g., under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (i.e., conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when

evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct an optional 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from the proposed designation of critical habitat (Service 2014). The information contained in our IEM was then used to develop a screening analysis (IEc 2014) of the probable effects of the designation of critical habitat for Vandenberg monkeyflower. In the screening analysis of the proposed designation of critical habitat, we focused our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (i.e., absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. This screening analysis (IEc 2014) combined with the information contained in our IEM (Service 2014) are what we consider our DEA of the proposed

critical habitat designation for Vandenberg monkeyflower, which is summarized in the narrative below.

Executive Orders 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the Executive Orders' regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable. We assess, to the extent practicable, the probable impacts, if sufficient data are available, to both directly and indirectly impacted entities. Potential incremental economic impacts associated with the following categories of activities could occur in Vandenberg monkeyflower proposed critical habitat: (1) Conservation or restoration activities; (2) utilities management (e.g., maintenance of an existing pipeline); (3) fire management; (4) transportation (e.g., maintenance of existing roads); (5) recreation; or (6) development (Service 2014, pp. 4–6, 10). We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement.

Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where Vandenberg monkeyflower is present, Federal agencies will be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species, if the Vandenberg monkeyflower is listed under the Act. If we finalize the proposed critical habitat designation and listing rule, consultations to avoid the destruction or adverse

modification of critical habitat would be included in the consultation process that will also consider jeopardy to the listed species. Therefore, disproportionate impacts to any geographic area or sector are not likely as a result of this critical habitat designation.

In our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (i.e., difference between the jeopardy and adverse modification standards) for Vandenberg monkeyflower (Service 2014, pp. 7–19). Because the designation of critical habitat for Vandenberg monkeyflower was proposed concurrently with the listing, it is more difficult at this time to discern which conservation efforts are attributable to the species being listed and those that will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical and biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would constitute jeopardy to Vandenberg monkeyflower would also likely adversely affect the essential physical and biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species (Service 2014, pp. 7–19). This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

Summary Findings of the Draft Economic Analysis (DEA)

Critical habitat designation for Vandenberg monkeyflower is unlikely to generate costs exceeding \$100 million in a single year. Data limitations prevent the quantification of critical habitat benefits (IEc 2014, pp. 3, 22, 24).

All proposed units are considered occupied. However, Vandenberg monkeyflower is an annual plant that may only be expressed above ground once a year or even less frequently (Service 2014, p. 15). Even though all proposed units contain Vandenberg monkeyflower seed banks below ground, some project proponents may not be aware of the presence of the species absent a critical habitat designation. The characteristics of the plant make it difficult to determine whether future consultations will result from the presence of the listed species or designated critical habitat.

Throughout our analysis (IEc, 2014, entire), we have considered two scenarios:

(1) *Low-end scenario*. Project proponents identify the monkeyflower at their site, and most costs and benefits are attributable to listing the species.

(2) *High-end scenario*. Costs and benefits are attributed to the designation of critical habitat.

Projects with a Federal nexus within Vandenberg monkeyflower proposed critical habitat are likely to be rare. We project fewer than three projects annually, associated with the Lompoc Penitentiary, the existing oil pipeline and utilities running through the Burton Mesa Ecological Reserve, and road projects using Federal funding (Iec 2014, pp. 3, 12). In the high-end scenario, costs in a single year are likely to be on the order of magnitude of tens to hundreds of thousands of dollars (IEc 2014, pp. 3, 12). In the low-

end scenario, assuming above-ground expression of the monkeyflower, total costs in a single year will likely be less than \$100,000.

The potential exists for critical habitat to trigger additional requirements under the California Environmental Quality Act (CEQA). In the low-end scenario, impacts at all sites except the Burton Ranch Specific Plan area would be attributed to listing Vandenberg monkeyflower. In the high-end scenario, properties that could experience relatively larger impacts include the Burton Ranch Specific Plan area (Unit 3), potentially developable parcels along the northern border of Vandenberg Village (Units 2 and 3), the Freeport-McMoRan parcels overlapping the state-designated Lompoc Oil Field (Units 2 and 3), and preferred sites for new drinking water wells in the Burton Mesa Ecological Reserve (Unit 3). Given the value of possible impacts in these areas, we conclude that designating critical habitat for Vandenberg monkeyflower will not generate costs that exceed \$100 million in a single year (i.e., the threshold according to Executive Order 12866 for determining if the costs and benefits of regulatory actions may have a significant economic impact in any one year).

Additional information and discussion regarding our economic analysis is available in our DEA (IEc 2014, entire; Service 2014, entire) available on the Internet at <http://www.regulations.gov> at Docket No. FWS-R8-ES-2013-0049.

As stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we

may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Required Determinations—Amended

In our October 29, 2013, proposed rule (78 FR 64446), we indicated that we would defer our determination of compliance with several statutes and executive orders until we had evaluated the probable effects on landowners and stakeholders and the resulting probable economic impacts of the designation. Following our evaluation of the probable incremental economic impacts resulting from the designation of critical habitat for Vandenberg monkeyflower, we have amended or affirmed our determinations below. Specifically, we affirm the information in our proposed rule concerning Executive Orders (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951). However, based on our evaluation of the probable incremental economic impacts of the proposed designation of critical habitat for Vandenberg monkeyflower, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et*

seq.) and E.O. 12630 (Takings).

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

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency publishes 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. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5

million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

The Service’s current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are required to evaluate the potential incremental impacts of rulemaking only on those entities directly regulated by the rulemaking itself, and therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the proposed

critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation for Vandenberg monkeyflower would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

E.O. 12630 (Takings)

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Vandenberg monkeyflower in a takings implications assessment. As discussed above, the designation of critical habitat directly affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. The DEA found that no significant economic impacts are likely to result from the designation of critical habitat for Vandenberg monkeyflower. Because the Act's critical habitat protection requirements apply only to Federal agency actions,

few conflicts between critical habitat and private property rights should result from this designation. Based on information contained in the DEA and described within this document, it is not likely that economic impacts to a property owner would be of a sufficient magnitude to support a takings action. Therefore, the takings implications assessment concludes that this designation of critical habitat for Vandenberg monkeyflower does not pose significant takings implications for lands within or affected by the designation.

Authors

The primary authors of this notice are the staff members of the Pacific Southwest Regional Office (Region 8), with assistance from staff of the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service.

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 October 29, 2013, at 78 FR 64446, 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; 4201–4245, unless otherwise noted.

2. Amend § 17.96(a) by revising paragraphs (5), (6), and (7) in the entry proposed for “Family Phrymaceae: *Diplacus vandenbergensis* (Vandenberg monkeyflower)” at 78 FR 64446, to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

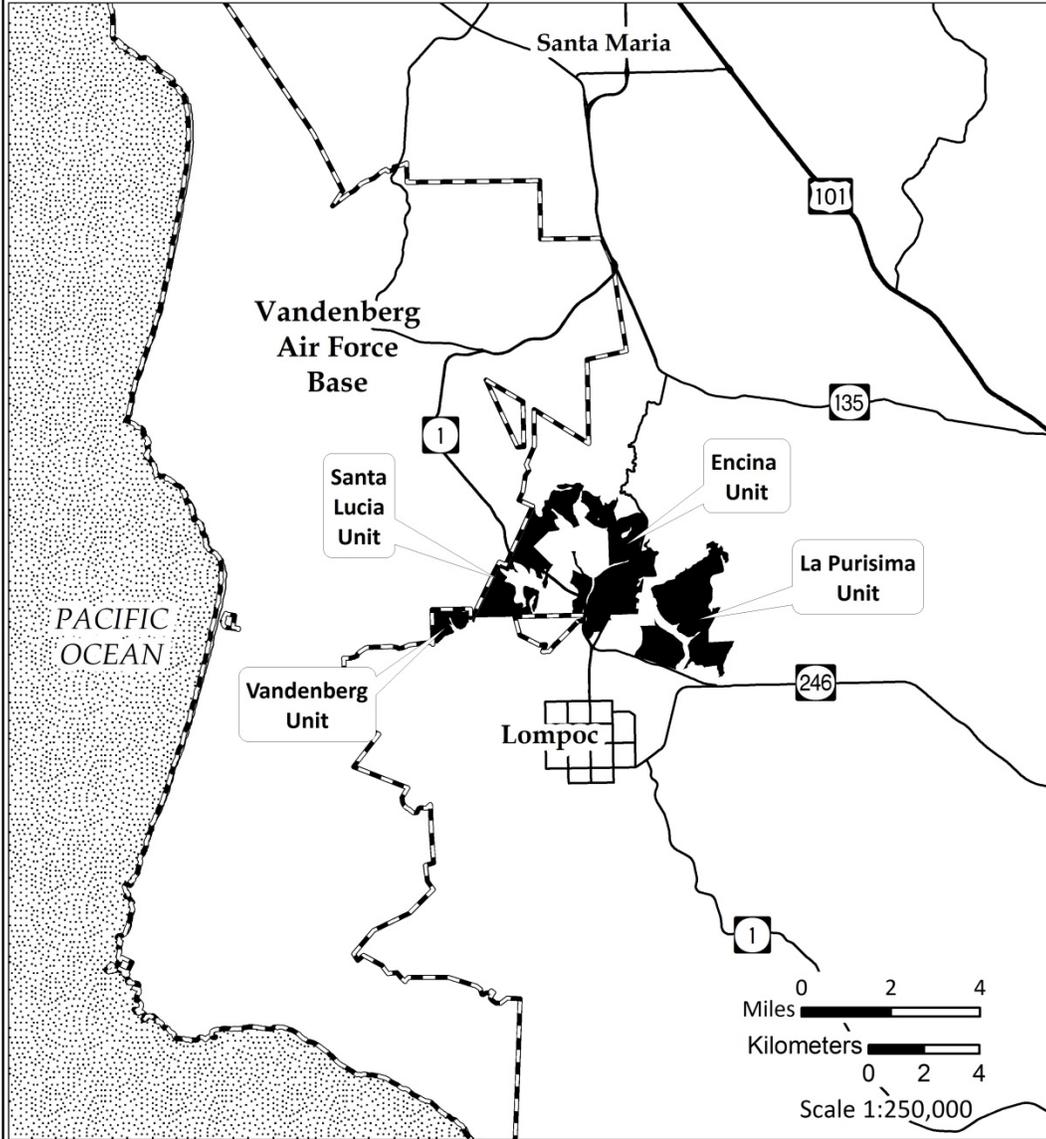
* * * * *

Family Phrymaceae: *Diplacus vandenbergensis* (Vandenberg monkeyflower)

* * * * *

(5) Index map follows:

Critical Habitat for Vandenberg Monkeyflower

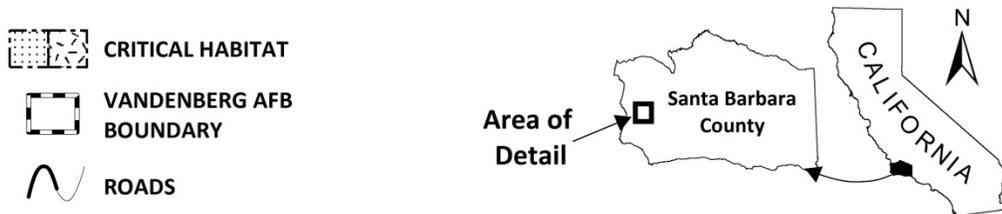
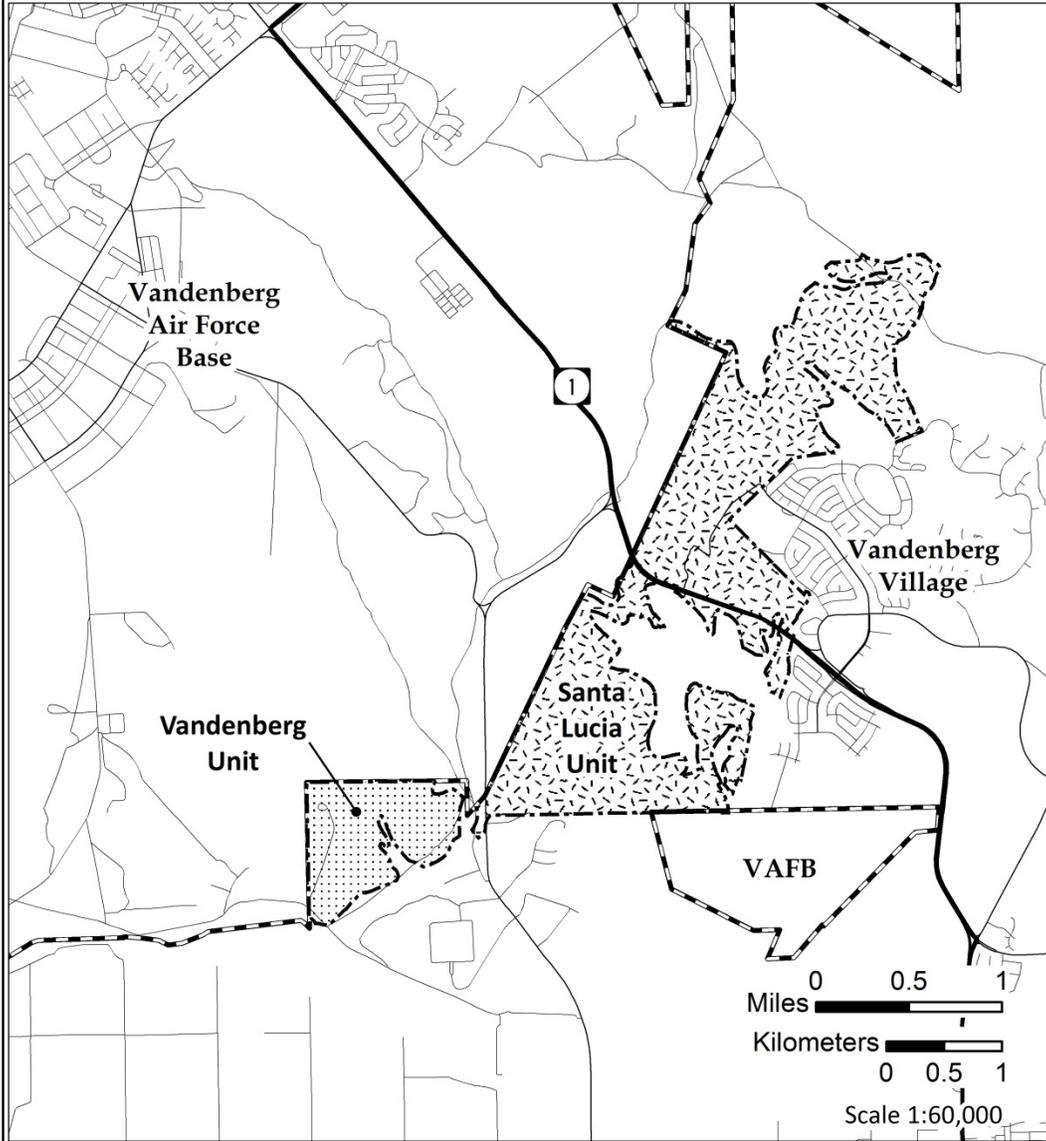


- CRITICAL HABITAT
- VANDENBERG AFB BOUNDARY
- ROADS



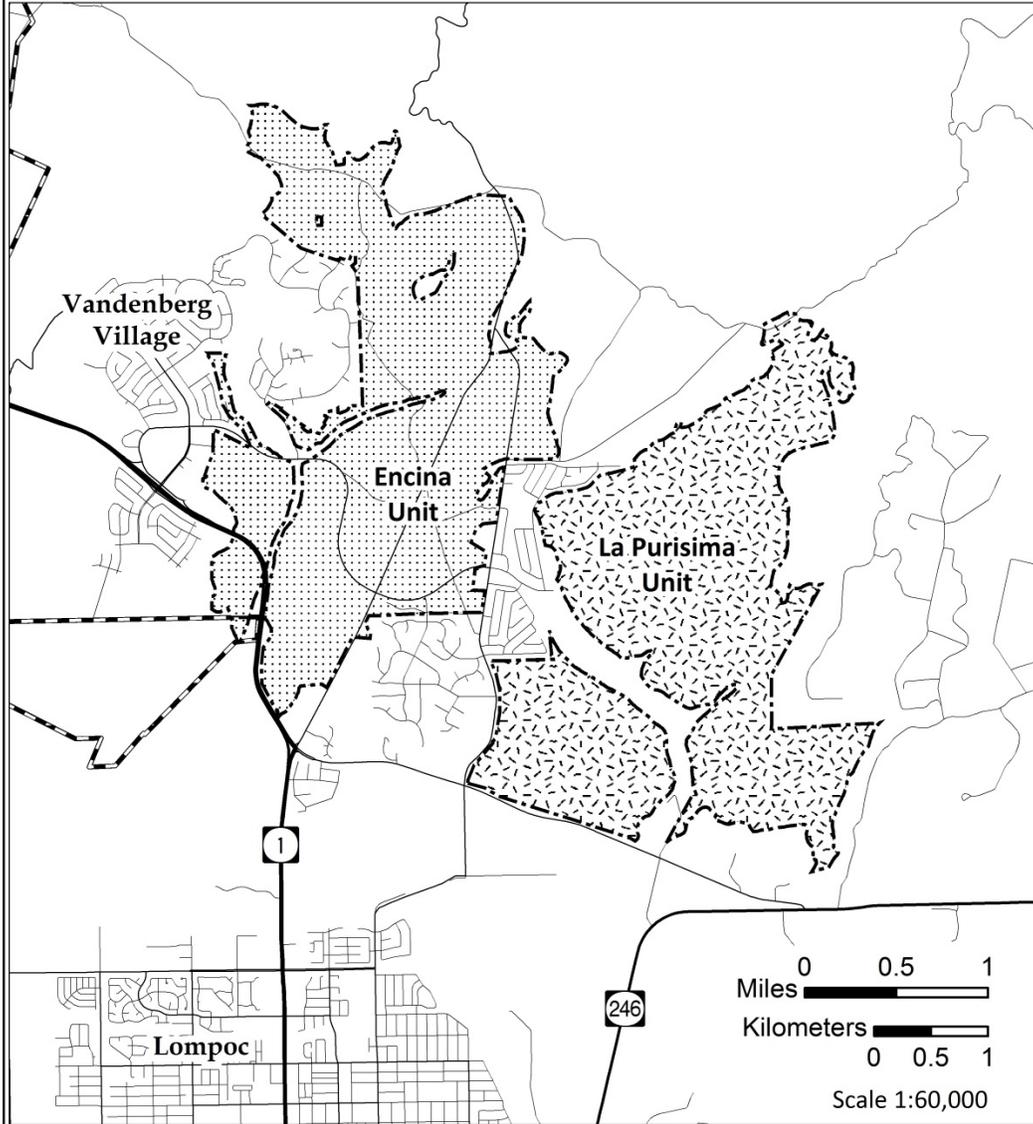
(6) Unit 1 (Vandenberg) and Unit 2 (Santa Lucia): Santa Barbara County, California. Map of Units 1 and 2, follows:

Critical Habitat for Vandenberg Monkeyflower Vandenberg and Santa Lucia Units



(7) Unit 3 (Encina) and Unit 4 (La Purisima): Santa Barbara County, California.
Map of Units 3 and 4, follows:

Critical Habitat for Vandenberg Monkeyflower Encina and La Purisima Units



-  CRITICAL HABITAT
-  VANDENBERG AFB BOUNDARY
-  ROADS



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Dated: April 24, 2014.

Rachel Jacobson,
Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

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