



Billing Code 4333–15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2018–0042; FXES11130900000–167–FF09E42000]

RIN 1018-BD00

Endangered and Threatened Wildlife and Plants; Reclassification of *Layia carnosa* (Beach Layia) from Endangered to Threatened Species Status with Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reclassify the plant beach layia (*Layia carnosa*) from an endangered to a threatened species under the Endangered Species Act of 1973, as amended (Act). This proposed reclassification is based on our evaluation of the best available scientific and commercial information, which indicates that the threats acting upon beach layia continue at the population or rangewide scales, albeit to a lesser degree than at the time of listing, and we find that beach layia meets the statutory definition of a threatened species. We also propose to issue protective regulations pursuant to section 4(d) of the Act (“4(d) rule”) that are necessary and advisable to provide for the conservation of beach layia. We seek information and comments from the public regarding this proposed rule.

DATES: We will accept comments received or postmarked on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER**

INFORMATION CONTACT by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: *Written comments:* 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–R8–ES–2018–0042, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment Now!”

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R8–ES–2018–0042, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

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 **Information Requested**, below, for more information).

Availability of supporting materials: A copy of the species status assessment (SSA) report referenced throughout this document can be viewed on the Internet at <http://www.regulations.gov> under Docket No. FWS–R8–ES–2018–0042, or at the Arcata Fish and Wildlife Office’s website at <http://www.fws.gov/Arcata/>.

FOR FURTHER INFORMATION CONTACT: Jennifer Norris, Assistant Field Supervisor, Arcata Fish and Wildlife Office, 1655 Heindon Rd., Arcata, CA 95521; telephone 707–822–7201. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service

at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Peer Review

In accordance with our joint policy on peer review published in the *Federal Register* on July 1, 1994 (59 FR 34270) and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of seven appropriate specialists regarding the species status assessment (SSA) report, which informed the proposed reclassification portion of this proposed rule. The purpose of peer review is to ensure that our reclassification determination is based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in beach layia ecology, habitat, and threats to the species. We received a response from four of the seven peer reviewers, which we considered in our SSA report and this proposed rule. Additionally, we will consider all comments and information we receive during the comment period on this proposed rule as we prepare the final determination. Accordingly, the final decision may differ from this proposal.

Information Requested

We intend any final action resulting from this proposal 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 governmental agencies, Native American tribes, the scientific community, industry, or any other interested parties concerning this proposed rule. Because we will consider all comments and information we receive during the comment period, our final determination may differ from this proposal. We particularly seek comments concerning:

- (1) Reasons why we should or should not reclassify beach layia from an endangered

species to a threatened species under the Act (16 U.S.C. 1531 *et seq.*);

(2) New biological or other relevant data concerning any threat (or lack thereof) to this species (for example, those associated with climate change);

(3) New information on any efforts by the State or other entities to protect or otherwise conserve the species;

(4) New information concerning the range, distribution, and population size or trends of this species; and

(5) New information on the current or planned activities in the habitat or range that may adversely affect or benefit the species.

(6) Comments and suggestions regarding additional guidance and methods that the Service could provide or use, respectively, to streamline the implementation of the proposed 4(d) rule.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

All comments submitted electronically via <http://www.regulations.gov> will be presented on the website in their entirety as submitted. For comments submitted via hard copy, 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.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on the Internet at <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Please note that submissions merely stating support for or opposition to the reclassification action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made “solely on the basis of the best scientific and commercial data available.”

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests for a public hearing must be received by the date specified in **DATES** at the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the *Federal Register* and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service’s website, in addition to the *Federal Register*. The use of these virtual public hearings is consistent with our regulation at 50 CFR 424.16(c)(3).

Species Status Assessment

A species status assessment (SSA) team prepared an SSA report for beach layia. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of beach layia, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. As discussed above under **Peer Review**, the SSA report underwent independent peer review by scientists with expertise in beach layia ecology, habitat management, and stressors that negatively affect the species. The SSA report can be found on the Internet at <http://www.regulations.gov> under Docket No. FWS–R8–ES–2018–0042, and at the Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On June 22, 1992, we published a final rule (57 FR 27848) to list beach layia as an endangered species. On September 29, 1998, we finalized a recovery plan for this and six other coastal species (Service 1998, entire). In 2011, we completed a 5-year review (Service 2011, entire) and concluded that there was evidence to support a decision to reclassify beach layia from an endangered species to a threatened species under the Act. We announced the availability of this review on April 27, 2012 (77 FR 25112).

I. Proposed Reclassification Determination

Background

It is our intent to discuss only those topics directly related to the reclassification of beach layia in this proposed rule. For more information on the species description, life history, genetics, and habitat of beach layia, please refer to the May 8, 2018, SSA report (Service 2018, entire), which is a comprehensive assessment of the biological status of beach layia. At the time of

listing (57 FR 27848; June 22, 1992), we determined that human-induced disturbances (particularly off-highway vehicle (OHV) activity, but also other disturbances from agriculture, pedestrians, development, etc.) were significant threats to beach layia, resulting in ongoing negative population or rangewide impacts. Thus, we determined that the best available information indicated that the species was in danger of extinction throughout all of its range. Since that time, these activities have been significantly reduced, especially OHV activity, with records of the species demonstrating positive responses in abundance. Additionally, significant areas have been set aside as preserves and conservation areas. After taking into consideration our threats analysis and recovery criteria (Service 1998, pp. 43–48), we have determined that the species no longer meets the definition of an endangered species, but does meet the definition of a threatened species (likely to become an endangered species within the foreseeable future). Given this information, the best available scientific and commercial information now indicate that the species has improved to the point that it can be downlisted.

The SSA report provides a thorough account of the species' overall condition currently and into the future. In this section, we summarize the conclusions of that assessment, including: (1) The species' description, ecology, habitat, and resource needs; (2) beach layia's current condition, including population abundance, distribution, and factors affecting its viability; and (3) potential future conditions. The full report can be accessed on the Internet at <http://www.regulations.gov> under Docket No. FWS–R8–ES–2018–0042.

Species Description

Beach layia is a succulent annual herb belonging to the sunflower family (Asteraceae). Plants range up to 6 inches (in) (15.2 centimeter (cm)) tall and 16 in (40.6 cm) across (Baldwin *et al.* 2012, p. 369). Characteristics distinguishing beach layia from similar species include its

fleshy leaves; inconspicuous flower heads with short (0.08 to 0.1 in (2 to 2.5 millimeter (mm)) long) white ray flowers (occasionally purple) and yellow disk flowers; and bristles around the top of the one-seeded achene, or dry fruit (Service 1998, p. 43).

Ecology, Habitat, and Resource Needs of Beach Layia

Beach layia germinates during the rainy season between fall and mid-winter, blooms in spring (March to July), and completes its life cycle before the dry season (July – September) (Service 1998, p. 45). Populations tend to be patchy and subject to large annual fluctuations in size and dynamic changes in local distribution associated with the shifts in dune blowouts, remobilization, and natural dune stabilization that occur in the coastal dune ecosystem (Service 1998, p. 45). Beach layia plants often occur where sparse vegetation traps wind-dispersed seeds, but causes minimal shading. Seeds are dispersed by wind mostly during late spring and summer months (Service 1998, p. 45). Additionally, beach layia is self-compatible (i.e., able to be fertilized by its own pollen), capable of self-pollination, and is visited by a variety of insects that may assist in cross-pollination (Sahara 2000, entire). Although the role of pollinators is currently unclear, sexual reproduction does add to genetic diversity.

Beach layia occurs in open spaces of sandy soil between the low-growing perennial plants in the *Abronia latifolia* – *Ambrosia chamissonis* herbaceous alliance (dune mat) and *Leymus mollis* herbaceous alliance (sea lyme grass patches) (Sawyer *et al.* 2009, pp. 743–745, 958–959). Typically, the total vegetation cover in both communities is relatively sparse, and many annual species, including beach layia, colonize the space between established, tufted perennials. Beach layia can also occur in narrow bands of moderately disturbed habitat along the edges of trails and roads in dune systems dominated by invasive species.

Coastal dune systems are composed of a mosaic of vegetation communities of varying successional stages (see additional discussion in section 4.4 of the SSA report (Service 2018, pp. 9–11). Beach layia occurs in early to mid-successional communities in areas where sand is actively being deposited or eroding. Too much sand movement prevents plants from establishing, but areas with some movement on a periodic basis support early successional communities. Movement of sand by wind is essential for the development and sustainability of a dune system. Wind is also important to beach layia specifically because it is the mechanism by which seeds are dispersed. The achenes (a small, dry, one-seeded fruit that does not open to release the seed) have pappus (feathery bristles) that allow them to be carried by wind for a short distance. Although not all seeds may land on suitable habitat, this adaptation allows the small annual to spread across the landscape into uninhabited areas.

As a winter germinating annual, beach layia requires rainfall during the winter months (November through February) for germination and, although it is relatively tolerant to the drought-like conditions of upland dunes, it does need some moisture through the spring to prevent desiccation. Moisture also reduces the risk of burial, as dry sand is more mobile and mortality caused by burial has been documented (Imper 2014, p. 6).

The overall resource needs that beach layia requires in order for individuals to complete their life cycles and for populations to maintain viability are:

- (1) Sandy soils with sparse native vegetation cover,
- (2) Rainfall during the winter germination period,
- (3) Sunlight (full sun exposure for photosynthesis), and
- (4) Unknown degree of cross-pollination (to add to genetic diversity).

Species Distribution and Abundance

For the purposes of our analysis as summarized in our SSA report (Service 2018, entire), we grouped the populations by ecoregions based on average annual rainfall (precipitation is directly correlated with abundance for this species), habitat characteristics, and distance between population centers. The North Coast Ecoregion contains the largest and most resilient populations and receives the highest average annual rainfall. The Central Coast Ecoregion receives less rain than the North Coast but more than the South Coast, and is comprised of three small populations on the Monterey peninsula that are less resilient due to low abundance, although habitat quality is high at two of the sites. The South Coast Ecoregion, both historically and currently, consists of a single population on the Vandenberg Air Force Base (AFB). Average annual rainfall varies across the three ecoregions. Rainfall in the North Coast Ecoregion is around 38 in (96 cm), while the Central Coast Ecoregion receives 20 in (51 cm), and the South Coast Ecoregion receives 14 in (36 cm) (National Oceanic and Atmospheric Administration (NOAA) 2017).

Historical distribution of beach layia is similar to that known currently, while abundance values have increased, primarily due to increased survey efforts, amelioration of some threats, and a better understanding of the species' reproduction pattern following years with high amounts of rainfall. The current distribution includes populations spread across dune systems in the following geographic areas (ecoregions) covering more than 500 miles (mi) (805 kilometers (km)) of shoreline in northern, central, and southern California (see figures 7–13 and table 2 in the SSA report (Service 2018, pp. 15–24)):

- North Coast Ecoregion:

Humboldt County—Freshwater Lagoon Spit, Humboldt Bay area, mouth of the Eel River, McNutt Gulch, and mouth of the Mattole River

Marin County—Point Reyes National Seashore

- Central Coast Ecoregion:

Monterey County—Monterey Peninsula

- South Coast Ecoregion:

Santa Barbara County—Vandenberg AFB (located on part of the Guadalupe-Nipomo Dunes)

Of the known historical populations, four are considered extirpated, including the San Francisco population, the Point Pinos population in the Monterey area, and two populations north of the Mad River in Humboldt County. All currently extant populations were known at the time of listing and when the recovery plan was finalized (1992 and 1998, respectively), with the exception of the Freshwater Lagoon population discovered in 2000, at the far northern extent of the species' range (see table, below). The total number of individuals across the range of the species reported in the recovery plan was 300,000. However, sampling data collected at the Lanphere Dunes that same year yielded an estimate of over one million plants for that subpopulation alone, which indicates the estimate in the recovery plan was substantially lower than the actual number of individuals (Pickart 2018, pers. comm.).

Current conditions and trend information (when available) are summarized below for the 13 extant populations (including the North Spit Humboldt Bay population that is comprised of 8 subpopulations and the largest proportion of plants throughout the species' range). Information about extirpated populations is also shown in the table, below. Additional information on current conditions of these populations, as well as information about the four extirpated populations, is found in section 7.0 of the SSA report (Service 2018, pp. 25–38).

Table of beach layia’s historical and current populations, subpopulations, ownership, and abundance estimates, based on the best available scientific and commercial information.

Population	Subpopulation	Status	Ownership	2017 Acres	2017 Abundance Estimate
NORTH COAST ECOREGION (Humboldt County)					
Freshwater Lagoon Spit		Extant	National Park Service	3 ¹	842 ¹
Mouth of Little River		Extirpated ²	California State Parks	0	N/A
Mouth of Mad River		Extirpated ²	Humboldt County	0	N/A
North Spit Humboldt Bay	Mad River Beach	Extant	Humboldt County, Humboldt Bay National Wildlife Refuge (Refuge)	unknown	unknown
	Bair/Woll	Extant	Refuge, Private	13 ³	unknown
	Lanphere Dunes	Extant	Refuge	33 ³	1.3 million ³
	Ma-le’l North	Extant	Refuge	29 ³	1.3 million ³
	Ma-le’l South	Extant	Bureau of Land Management (BLM)	48 ³	2.1 million ³
	Manila North	Extant	Friends of the Dunes, Manila Community Services District	82 ³	1.4 million ³
	Manila South	Extant	Private	47 ³	unknown
	Samoa/Eureka Dunes	Extant	BLM, City of Eureka	49 ³	6.7 million ³
Elk River		Extant	City of Eureka	15 ³	468,000
South Spit Humboldt Bay		Extant	California Department of Fish and Wildlife (CDFW), BLM	83 ³	6.1 million ³
North Spit Eel River		Extant	CDFW	37 ³	4.7 million ³
South Spit Eel River		Extant	Wildlands Conservancy	1.5 ³	11,307 ⁴
McNutt Gulch		Extant	Private	1 ⁵	unknown
Mouth of Mattole River		Extant	BLM	27 ²	3.1 million ⁶
NORTH COAST ECOREGION (Marin County)					
Point Reyes NS		Extant	National Park Service	146 ⁷	2.7 million ⁷
CENTRAL COAST ECOREGION (San Francisco County)					
San Francisco		Extirpated		0	N/A
CENTRAL COAST ECOREGION (Monterey County)					
Point Pinos		Extirpated	City of Pacific Grove	0	N/A

Asilomar State Beach		Extant	California State Parks	0.17 ⁸	1,541 ⁸
Indian Village Dunes		Extant	Private	0.55 ⁹	1,200 ¹⁰
Signal Hill Dunes		Extant	Private	1 ⁵	unknown
SOUTH COAST ECOREGION (Santa Barbara County)					
Vandenberg AFB		Extant	Department of Defense	0.83 ¹¹	5,069 ¹¹

¹Census and mapping conducted by the National Park Service (Julian 2017, pers. comm.).

²California Natural Diversity Database (California Natural Diversity Database (CNDDDB); 2017).

³Mapping and population estimate conducted by the Arcata Fish and Wildlife Office, 2017.

⁴Census conducted by the Arcata Fish and Wildlife Office (Goldsmith 2017, pers. obs.).

⁵Actual amount of occupied habitat not determined; conservative estimate.

⁶Estimate based on average density from monitoring data collected by BLM (Hassett 2017, pers. comm.).

⁷Point Reyes NS, mapping from 2001–2003 and 2017 sampling conducted in Abbots Lagoon area (Parsons 2017, pers. comm.).

⁸Mapping and census conducted by California State Parks (Gray 2017, pers. comm.).

⁹Mapping conducted as part of a capstone project by a student at Monterey Bay State University (Johns 2009).

¹⁰Estimate provided by consultant (Dorrell-Canepa 2017).

¹¹Mapping and census conducted by Santa Barbara Botanic Garden (Schneider and Calloway 2017).

Freshwater Lagoon Spit Population

This is the northern-most population of beach layia, which was discovered during spring 2000, in northern Humboldt County at Redwood National Park, currently encompassing approximately 3 acres (ac) (1.2 hectares (ha)) (Julian 2017, pers. comm.). A census of the population has been conducted every year since 2000, and results indicate the population and individual patches fluctuate substantially, with a peak of 11,110 plants recorded in 2003, and as few as 263 plants in 2014 (Julian 2017, pers. comm.) (see figure 14 in the SSA report). The overall trend of this population is declining, likely due to drought conditions and high cover of native grasses (red fescue (*Festuca rubra*)) adversely affecting its resource needs (i.e., reduction of area of sparse vegetative cover and sunlight).

North Spit Humboldt Bay Population

Mad River Beach Subpopulation: The Mad River Beach subpopulation is the northern-most subpopulation (one of eight) within the North Spit Humboldt Bay population (hereafter referred to as “North Spit”). There is little information available for this subpopulation, which resides on Humboldt County-owned land south of the mouth of the Mad River, as well as the nearby Humboldt Bay National Wildlife Refuge-owned Long parcel. Beach layia is fairly abundant and widely distributed within the dune mat habitat in this area (Goldsmith 2018, pers. obs.). However, the vegetation community is dominated by invasive, nonnative species including European beachgrass (*Ammophila arenaria*), annual grasses (ripgut brome (*Bromus diandrus*) and quaking grass (*Briza maxima*)), and yellow bush lupine (*Lupinus arboreus*) (Goldsmith 2018, pers. obs.). The subpopulation is conservatively estimated to encompass approximately 1 ac (0.4 ha), although abundance, distribution, and trend information is unknown. Suitable habitat

is limited due to overstabilization caused by a heavy invasion of invasive nonnative species. No efforts to restore ecosystem function are currently under way, nor does the County or Refuge have any restoration planned at this time.

Bair/Woll Subpopulation: This subpopulation occurs on the Refuge-owned Bair parcel and privately owned Woll parcel; acquisition and restoration of the entire subpopulation is a high priority for the Refuge (Refuge 2013, p. 2). The majority of the area is dominated by nonnative, invasive species including European beachgrass, iceplant (*Carpobrotus edulis* and *C. chilensis*), yellow bush lupine, and annual grasses (Pickart 2018, pers. comm.). To date, restoration has occurred on the southwest corner of the Bair parcel. The subpopulation encompasses approximately 13 ac (5.3 ha), although abundance and trend information, and adequacy of resource needs—beyond the visible reduction of sparse vegetative cover—are unknown.

Lanphere Dunes Subpopulation: This subpopulation occurs on the Lanphere Dunes Unit of the Refuge and encompasses a conservative estimate of approximately 33 ac (13 ha) (Service 2017, unpublished data). Restoration has been underway since the 1980s, including removal of invasive plants in an effort to restore ecosystem function. Ongoing nonnative species removal/maintenance appears necessary in this area to ensure that beach layia's resource needs are met. Over the years, this population of beach layia has responded positively to restoration actions and negatively to lack of rainfall in the winter months (see figure 15 in the SSA report). In 2017, abundance was estimated for both Lanphere Dunes and Ma-le'i North (see below) at approximately 1 million individual plants (Pickart 2017, pers. comm.).

Ma-le'i North Subpopulation: This subpopulation resides directly south of the Lanphere Dunes on the Ma-le'i North Dunes Unit of the Refuge and comprises the northern end of the Ma-le'i Cooperative Management Area (CMA), the southern portion of which is cooperatively

owned/managed by BLM (see *Ma-le'l South Subpopulation*, below). Nonnative plants (i.e., European beachgrass, annual grasses, iceplant, and yellow bush lupine) require continued control to maintain the open/sparse vegetative cover and adequate sunlight needs that beach layia relies on. The total subpopulation area is approximately 29 ac (11.7 ha) (Service 2017, unpublished data).

Ma-le'l South Subpopulation: Extending immediately south of the Ma-le'l North subpopulation, the Ma-le'l South subpopulation is approximately 48 ac (19.4 ha), had an estimate of approximately 2 million individuals in 2017, and is owned/managed by BLM. Restoration has produced positive results in favor of beach layia persistence, although periodic maintenance of nonnative, invasive plants is necessary (Wheeler 2017, pers. comm.) to ensure the open/sparse vegetative cover resource need that beach layia relies on. Additionally, the best available data indicate this subpopulation is less abundant during drought years (2012–2015), followed by a positive spike in abundance following a winter of substantial rainfall (Wheeler 2017, pers. comm.) (see also figure 16 in the SSA report). The results of this subpopulation's monitoring (i.e., that beach layia is less abundant during drought years and more abundant following winters with heavy rainfall) are likely representative of the species across its entire range, based on the best available data to date regarding the species ecology and life history characteristics.

Manila North Subpopulation: This subpopulation encompasses two areas within close proximity to each other on lands owned/managed by the Manila Community Services District (CSD) and the nonprofit organization known as Friends of the Dunes. The total estimated subpopulation (both areas) was approximately 1.4 million individuals in 2017 and occupies approximately 82 ac (33 ha). Efforts have been made to remove nonnative, invasive species, but

the efforts have not been consistent and many areas have been re-invaded. Active management is needed to ensure the open/sparse vegetative cover and adequate sunlight needs that beach layia relies on are available.

Manila South Subpopulation: This subpopulation is immediately south of the north population but resides on private property, encompassing approximately 47 ac (19 ha) as reported most recently in 2017 (Service 2017, unpublished data). The area is dominated with nonnative, invasive European beachgrass, iceplant, and annual grasses. Abundance and trend information, and adequacy of resource needs—beyond the visible reduction of area of sparse vegetative cover—are unknown.

Samoa/Eureka Dunes Subpopulation: This subpopulation is the southern extent/limit of the North Spit (Humboldt Bay) population, encompassing approximately 49 ac (20 ha) on lands owned/managed by both BLM and the City of Eureka and was estimated to include over 6 million individuals in 2017. The BLM lands occupied by the species are managed to provide both an Endangered Species Protection Area and an open OHV use area. The remainder of the City's occupied habitat includes an additional OHV use area, an industrial zoned area containing an operational airport facility, and an 84-ac (34-ha) parcel under conservation easement known as the Eureka Dunes Protected Area held by the Center for Natural Lands Management. Some of this subpopulation has been restored; however, nonnative, invasive species continue to envelop open areas where beach layia plants occur. Some monitoring data recently available indicate the protected areas harbor a higher density of beach layia compared to the OHV area, including increased density of beach layia over the past 2 years, which correlates with increased precipitation over this same time frame (BLM 2016b). Similar to the monitoring results discussed in the Ma-le'i South Subpopulation, above, the results of this subpopulation's

monitoring (i.e., beach layia occurring at higher densities in the restored, protected areas compared to heavily impacted OHV areas, and high densities of beach layia plants correlating with years that have heavy annual rainfall) are likely representative of the species across its entire range, based on the best available data to date regarding the species' ecology and life-history characteristics.

Elk River Population

This population is owned and managed by the City of Eureka on the east shore of Humboldt Bay at the mouth of Elk River (see figure 8 in the SSA report). The spit is approximately 1.2 mi (1.9 km) long by up to 0.1 mi (0.16 km) wide, and beach layia occupies approximately 15 ac (6 ha) and was estimated to include 468,000 individuals in 2017 (Service 2017, unpublished data). Trend information is not available, although a recent survey in 2017 indicates the area is dominated by nonnative, invasive European beachgrass (Goldsmith 2017, pers. obs.).

South Spit Humboldt Bay Population

The 5-mi (8-km) stretch of dune that supports beach layia extends south from Humboldt Bay's entrance to the base of Table Bluff (see Figure 8 in the SSA report). The majority of this population is owned by the California Department of Fish and Wildlife (CDFW) as the Mike Thompson Wildlife Area, and the remainder is owned by BLM, which also manages the entire population (BLM 2014b, p. 3). The best available information suggests this population has increased in size since 2003, currently encompassing 83 ac (34 ha) with a population estimate of approximately 6 million plants (Service 2017, unpublished data). The steady increase in occupied beach layia habitat over time is due to the continued restoration effort to remove nonnative, invasive European beachgrass and iceplant (BLM 2014b, p. 7; Wheeler 2017, pers.

comm.). Additionally, monitoring data available from two plots established in 2008 indicate increased density of beach layia following restoration, decreased density during recent drought years, and a subsequent increased density with high levels of annual precipitation (BLM 2014b, p. 15). These monitoring data suggest that beach layia density increases dramatically following restoration, that density settles to a more moderate level as native plants fill in the previously invaded habitat, and that density is also strongly correlated to rainfall.

North Spit Eel River Population

Located immediately south of the South Spit Humboldt Bay Population, this population encompasses 37 ac (15 ha) of conserved lands within the CDFW's Eel River Wildlife Area and was estimated to include 4.7 million individuals in 2017 (Service 2017, unpublished data). The area is dominated by nonnative, invasive species including European beachgrass, iceplant, yellow bush lupine, and annual grasses. Trend information and adequacy of resource needs—beyond the visible reduction of area of sparse vegetative cover—are unknown.

South Spit Eel River Population

On the south side of the Eel River mouth, this population occurs on an area owned and managed by the Wildlands Conservancy, encompassing approximately 1.5 ac (0.6 ha) of occupied beach layia habitat and 11,307 plants as recorded in 2017 (Service 2017, unpublished data). It is likely that beach layia occurs in other areas of the property, although additional survey data do not yet exist. The area harbors nonnative, invasive European beachgrass that is reducing the availability of open sandy areas for beach layia to persist.

McNutt Gulch Population

This population was discovered in 1987, on private property near the mouth of McNutt Gulch. Varied numbers of plants have been recorded, ranging from 200 to 500 plants (CNDDDB

2017; Imper 2018, pers. comm.), although a complete survey has not yet occurred. The occupied area is estimated to be less than 1 ac (0.4 ha) (Imper 2018, pers. comm.). A comparison of current and historical aerial photos indicate encroachment of European beachgrass. At this time, there is no beach layia trend information available.

Mouth of Mattole River Population

This is the southern extent of the known beach layia populations within Humboldt County. This population occupies approximately 27 ac (11 ha) within part of the King Range National Conservation Area and was estimated to include 3.1 million individuals in 2017 (Hassett 2017, pers. comm.). The area is owned and managed by BLM and is located 35 mi (56 km) south of the entrance to Humboldt Bay. Monitoring data available from 2017 indicate this population had a spike in abundance that year compared to the previous year (estimated to be 725,000 individuals) that correlates to an increase in precipitation (Hassett 2017, pers. comm.).

Point Reyes Population

The next known population of beach layia to the south is located in Marin County, 200 mi (322 km) south of Humboldt Bay, in the dunes between Kehoe Beach Dunes and the Point Reyes lighthouse at Point Reyes (Service 1998, p. 44; figure 11 in the SSA report). This large dune system contains approximately 146 ac (59 ha) of dunes occupied by beach layia within 14 geographically concentrated areas, based on mapping conducted since 2001 (Point Reyes 2010, unpaginated). However, some of those areas were no longer occupied in 2017 (Goldsmith 2017, pers. obs.). The population was estimated to be 2.7 million in 2017 though varying levels of survey intensity over the years hamper our ability to track population trends (Parsons 2017, pers. comm.). However, sampling conducted from 2015–2017 in the Abbots Lagoon area, which includes recently restored areas, estimate increasing abundance (Parsons 2017, pers. comm.),

which also correlates with an increase in precipitation. Restoration is ongoing and includes removal of nonnative, invasive European beachgrass and iceplant, which occur at various densities throughout the 14 subpopulations (Parsons 2017, pers. comm.).

Asilomar State Beach Population

The northern-most extant population in Monterey County was previously thought to be extirpated but was rediscovered in 1990 (Service 1998, p. 44). Since the time of the first survey effort in 1994, in which 192 plants were found, subsequent survey efforts found the abundance to remain relatively static within the same geographical footprint (Service 2011, p. 22; Gray 2017, pers. comm.). Most recently in 2017, the occupied beach layia habitat consisted of a sparse layer of native dune mat vegetation with no presence of nonnative, invasive species (Dorrell-Canepa 2017, pers. comm.). A total of 1,541 plants were counted within 0.17 ac (688 m²) (Gray 2017, pers. comm.). This 2017 count is the highest on record for this population, possibly correlated with the high amount of rainfall during the germination period. This population appears to be stable given its consistent year-to-year presence and relative protection from threats.

Indian Village Dunes Population

The second of three populations in Monterey County, the Indian Village Dunes population occurs on restored dune habitat owned by the Pebble Beach Company, most recently (2017) estimated at 1,200 plants on 0.55 ac (0.2 ha) (Dorrell-Canepa 2017, pers. comm.). Trends on distribution and abundance are not available, beyond one additional 2009 survey result of 1,783 plants over the same size acreage. This area is preserved through a conservation easement, and restoration activities have occurred and the habitat consists of sparse native vegetation.

Signal Hill Dunes Population

This southern-most population within Monterey County is located less than 1 mi (1.6 km) south of the Indian Village Dunes population and is also owned by Pebble Beach Company. No recent survey information exists. The best available information is from a 2001 survey effort indicating plants occurring in five semi-isolated areas (Zander Associates 2001, p. 7), likely encompassing less than 1 ac (0.4 ha). No information is known regarding adequacy of the area to meet the species' resource needs.

Vandenberg AFB Population

The southern-most population of beach layia occurs on Vandenberg AFB in Santa Barbara County, separated by a distance of approximately 235 mi (378 km) from the Signal Hill Dunes population. This area receives less annual rainfall than the Central and North Coast Ecoregions (i.e., 14 in (36 cm) as compared to 20 in (51 cm) and 38 in (96 cm), respectively) (NOAA 2017). In both 2012 and 2016, a census of all known occupied habitat was conducted and 2,397 and 1,855 plants were counted, respectively. Most recently, in 2017, a total of 5,069 plants were counted (Schneider and Calloway 2017, p. 6). Due to varying levels of survey effort, there is no beach layia population trend information for this entire population, although the number of beach layia within a restoration area on the south side of the AFB demonstrates wide fluctuations in population size from year to year, which is often correlated to the amount of rainfall (see table 4 in the SSA report). Although restoration of beach layia habitat on Vandenberg AFB has occurred and is expected to continue into the future, it is highly stabilized due to the presence of nonnative, invasive species, including iceplant, European beachgrass, and veldt grass (*Ehrharta erecta*) (Schneider and Calloway 2017, p. 14), thus reducing the open sandy areas that beach layia relies on.

Summary of Factors Affecting Beach Layia

The Act directs us to determine whether any species is an endangered species or a threatened species because of any factors affecting its continued existence. Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an “endangered species” or a “threatened species.” The Act defines an endangered species as a species that is “in danger of extinction throughout all or a significant portion of its range,” and a threatened species as a species that is “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” The Act requires that we determine whether any species is an “endangered species” or a “threatened species” because of any of the following factors:

- (A) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (B) Overutilization for commercial, recreational, scientific, or educational purposes;
- (C) Disease or predation;
- (D) The inadequacy of existing regulatory mechanisms; or
- (E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species’ continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term “threat” to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term “threat” includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those

that affect individuals through alteration of their habitat or required resources (stressors). The term “threat” may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an “endangered species” or a “threatened species.” In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an “endangered species” or a “threatened species” only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

In our determination, we correlate the threats acting on the species to the factors in section 4(a)(1) of the Act. We summarize the SSA for beach layia (Service 2018, entire) below.

Determining whether the status of a species has improved to the point that it can be downlisted (i.e., reclassified from endangered to threatened) or delisted (i.e., removed from listed status) requires consideration of whether the species meets the definition of either endangered species or threatened species contained in the Act. For species that are already listed as endangered species or threatened species, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species

in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections.

As stated previously, at the time of listing (57 FR 27848; June 22, 1992), we determined that human-induced disturbances (particularly OHV activity, but also other disturbances from agriculture, pedestrians, development, etc.) were significant threats to beach layia, resulting in ongoing negative population or rangewide impacts; thus, we determined that the best available information indicated that the species was in danger of extinction throughout all of its range. Since that time, these activities have been significantly reduced, especially OHV activity, with records of the species subsequently demonstrating positive responses in abundance. Additionally, significant areas have been set aside, including preserves, conservation areas, and conservation easements.

This current analysis considers the beneficial influences on beach layia, as well as the potential risk factors (i.e., threats) that are either remaining or new and could be affecting beach layia now or in the future. In this proposed rule, we will discuss in detail only those factors that could meaningfully impact the status of the species. The primary risk factors affecting beach layia are the present and threatened modification or destruction of its habitat from overstabilization/competition with invasive species (Factor A from the Act), modification of its habitat from changing climate conditions (Factor E), modification of its habitat from human-influenced erosion/high level of disturbance (e.g., recreation) (Factor A), and modification of its habitat from vertical land movement/shoreline erosion (i.e., varying levels of uplift and subsidence, as described below) (Factor A). Additional threats to the species include development (Factor A) and herbivory/disease (Factor C); however, our analysis shows that while these threats may be impacting individual beach layia plants, they are not having species-

wide impacts. For a full description of all identified threats, refer to chapter 8 of the SSA report (Service 2018, pp. 38–48).

Overstabilization/Competition with Invasive Species

Areas described as overstabilized in this document (and discussed in detail in section 8.2.1 of the SSA report (Service 2018, pp. 41–43)) have high vegetation cover and restricted sand movement either due to presence of nonnative, invasive species or presence of species (native or nonnative) that move in after an area is stabilized by invasive species.

Overstabilization caused by invasive species, as defined here, is a different ecological process from natural succession in which native vegetation changes over time from the semi-stable dune mat community to more stabilized communities. Both overstabilization and natural succession have a negative impact on the abundance of beach layia because the species requires open sand to colonize an area (see *Ecology, Habitat, and Resource Needs of Beach Layia*, above). At this time, the best available information indicates that large portions of the range of beach layia have been made unsuitable by overstabilization and competition with both native and nonnative invasive species (Service 2017 pp. 41–43). However, dune systems that are naturally succeeding often still contain areas of semi-stable dunes—although they may shift over time—that are suitable for beach layia.

One population—the Freshwater Lagoon Spit—is the only beach layia population that is currently impacted by stabilization caused by native species, i.e., red fescue (Samuels 2017, pers. comm.). Although no measures are in place to address the stabilization effects, there is an experimental project underway to remove native species in order to create more suitable habitat for beach layia (Samuels 2017, pers. comm.).

The remainder of beach layia's range is subject to past introduction and invasion of its habitat by a variety of nonnative, invasive plant species (Service 1998, p. 45), which is one reason why the species was listed as an endangered species (57 FR 27848; June 22, 1992). These nonnative species adversely affect the long-term viability of coastal dune plants, including the entire distribution of beach layia (with the exception of the Freshwater Lagoon Spit population, as described above), through either direct competition for space (56 FR 12323; March 22, 1991); stabilization of the dunes (56 FR 12318; March 22, 1991); and in some cases, enrichment of the soils, which then stimulate invasion by other aggressive species (Maron and Connors 1996, p. 309; Pickart *et al.* 1998, pp. 59–68). Nonnative, invasive species are currently present at all populations throughout the species' range, although to a lesser degree at the Lanphere Dunes, Ma-le'i North, and Ma-le'i South subpopulations; the Mouth of Mattole River population; and Asilomar State Beach and Indian Village Dunes populations due to restoration activities. The most common invasive species (European beachgrass, iceplant, yellow bush lupine, and riggut brome) in dune systems throughout the range of beach layia are described in section 8.2.1.1 of the SSA report (Service 2018, pp. 42–43). The high level of invasion throughout the range of beach layia suggests these taxa will continue to invade beach layia habitat (i.e., invasive plants occur at varying densities within and adjacent to all extant populations), necessitating routine and long-term management actions. Many of the invasive plants have been mapped within the various dune systems occupied by beach layia (Johns 2009, p. 24; Point Reyes 2015, p. i; Mantech SRS Technologies 2018, p. 1), and there have been efforts for their removal or control (Service 2011, p. 10; Point Reyes 2015, p. 105; Mantech SRS Technologies 2018, p. 1). However, much potentially suitable habitat for beach layia remains to be restored, as identified in the 1992 recovery plan (i.e., the portion of the species' range where the majority of occurrences

are including the Mouth of the Mad River, the greater part of the North and South Spits of Humboldt Bay, Elk River Spit, the North and South Spits of the Eel River, McNutt Gulch, as well as Point Reyes, Signal Hill Dunes, and Vandenberg AFB (recovery criterion 2, see section 11.0)), in addition to routine maintenance to control this threat into the future.

Overall, over-stabilization and competition with native or nonnative, invasive species are reducing the availability of sandy soils with sparse vegetative cover, causing beach layia throughout its range to compete for open sandy space, sunlight, and rainfall during its winter germination period. Efforts at some locations to remove invasive species (such as, but not limited to, European beachgrass, iceplant, yellow bush lupine, and ripgut brome) that are adversely affecting resources needed by beach layia are reducing these negative influences and thus have improved the species' current resiliency at many populations. However, the ability of land managers to continue manage the ongoing threat of invasive species into the future is uncertain.

Changing Climate Conditions

Changes in weather patterns have been observed in recent years and are predicted to continue (Frankson *et al.* 2017, p. 1). This can include extreme events such as multi-year droughts or heavy rain events (Frankson *et al.* 2017, pp. 2–5). All of these have the potential to remove, reduce, and degrade habitat, as well as remove individual plants, reduce germination and survival rates, and reduce fecundity. The best available scientific and commercial information at this time does not indicate how historical changes in climate may have affected beach layia, although recent drought conditions have had a negative impact on population size (BLM 2016a, p. 6; ManTech SRS Technologies 2016, p. 29).

The best available information indicates that recent drought conditions (2012–2016) negatively influenced the abundance of beach layia (e.g., lack of rainfall for germination,

reduced fecundity, desiccation during dry periods in the growing season) across the species' range (BLM 2016a, p. 6; BLM 2014b, p. 16; Pickart 2017, pers. comm.; Gray 2017, pers. comm.; ManTech SRS Technologies 2018, p. 9). A subsequent increase in abundance was seen in 2017, corresponding with the increase in rainfall at the end of this multi-year drought period, indicating the seedbank for the species has some ability to withstand multi-year droughts. However, at this point in time the full longevity of the seedbank is unknown; therefore, it is impossible to predict whether the species could withstand even longer drought periods or whether drought conditions could reach a point at which the seedbank would no longer be viable. All that can be reasonably concluded from the available information is that multi-year droughts have a negative effect on beach layia abundance, reducing above-ground vegetative growth, and that the seedbank for the species appears to be able to withstand at least four years of consecutive drought and then regenerate new vegetative growth once more normal rainfall patterns return (noting a tendency for the species to experience a spike in abundance following a drought).

The Intergovernmental Panel on climate change states it is likely that the intensity and duration of droughts will increase on a regional to global scale (IPCC 2014, p. 53). We used the California Climate and Hydrology Change Graphs, a graphing tool that presents climate and hydrology data from the California Basin Characterization Model (BCM) dataset (Flint *et al.* 2013, entire), to analyze the potential impact of drought on beach layia in the future. Four future climate scenarios demonstrate a range of precipitation and temperatures projected by the 18 scenarios available from the BCM. We chose to use the climatic water deficit calculations because they take into account changes in air temperature, solar radiation, and evapotranspiration, and can be used as an estimate of drought stress on plants (Stephenson 1998, p. 857). There are large uncertainties with respect to future precipitation levels (some scenarios predict a hot dry future while others predict a hot wet future). While climatic water deficit magnitudes vary across the models, the trends are

consistent in that all projections indicate increasing values. Climatic water deficit values, both historical (1931–2010) and projected (2021–2050), are higher in watersheds in the Central and South Coast Ecoregions. The South Coast Ecoregion has the highest values and is therefore considered to be the most vulnerable to stress caused by drought, followed by the Central Coast Ecoregion, and then the Point Reyes population at the southern end of the North Coast Ecoregion. The three watersheds in Humboldt County (which encompass all of the North Coast Ecoregion populations except Point Reyes) are least likely to be stressed by drought, both currently and into the future, but the trend in climatic water deficit is still increasing. See section 8.2.2.1 of the SSA report for additional discussion regarding impacts associated with drought.

While no definitive conclusions can be drawn about the potential for drought alone to result in permanent loss of beach layia populations, a compounding factor with changing climate conditions is the relationship to invasive plant species. Many of the invasive species that negatively affect beach layia or its habitat, such as European beachgrass and iceplant, are drought tolerant (Hertling and Lubke 2000, pp. 522–524; Hilton *et al.* 2005, pp. 175–185, Earnshaw *et al.* 1987, pp. 421–432). During a multi-year drought, it is possible that invasive species could persist and spread into areas where beach layia declined, resulting in less open space habitat for germination of beach layia when a sufficient amount of rainfall returns (assuming the seedbank survives).

The high level of abundance of beach layia in 2017 suggests that the potential for invasive species to take over habitat and exclude beach layia regeneration is not a significant threat, at least for drought periods up to four years in duration. However, the likelihood of the increased duration and intensity of drought into the future increases the potential for this outcome, which could be particularly problematic for those populations in the Central and South Coast Ecoregions.

In addition to drought, rising sea levels caused by changing climate conditions can lead to removal or reduction of habitat, and the removal of individual plants, seedbanks, and whole populations. However, an analysis conducted using RCP 8.5 and local sea level rise projections for 2050 based on the methodology developed by Kopp *et al.* (2014, pp. 384–393) as presented in *Rising Seas in California* (Griggs 2017, entire) suggests that rising seas are not likely to significantly influence beach layia into the foreseeable future, and it is unknown how changes in sea levels may have affected the species in the past. Likewise, projections for the lower emission scenario indicate that rising seas under RCP 4.5 are not likely to negatively influence beach layia (Griggs 2017, entire). For more information on the analysis conducted on the effects of sea level rise, please refer to section 10.3.2 of the SSA (Service 2017 pp. 52–58)

Erosion/High Level of Disturbance

Erosion of soil in a dune system can be caused by many factors, and any form of erosion or heavy soil disturbance can result in the removal of beach layia habitat, individual plants, and seedbank. Erosion and disturbance of beach layia habitat discussed in this document is associated with high levels of disturbance caused by pedestrian, equestrian, OHV, and grazing activity.

First, the best available information suggests that trampling from both pedestrian and equestrian activities occur at insignificant levels at most populations throughout beach layia's range, with the possible exception of the Signal Hill Dunes population on the Monterey Peninsula (Service 2011, p. 11), although that current level of impact is unknown. Monitoring data and anecdotal evidence consistently indicate a strong preference by beach layia for moderately disturbed habitat adjacent to roads and trails (whether pedestrian or equestrian) in what otherwise would be unoccupied habitat (Service 2011, p. 11). Dispersed equestrian use has been allowed at the South Spit Humboldt Bay population since BLM began management of the

area in 2002, and beach layia abundance has remained high, suggesting that dispersed equestrian use, at least where large areas of occupied habitat are concerned, is compatible with large populations (Wheeler 2017, pers. comm.).

Second, OHV activity within beach layia habitat across the species' range is significantly reduced since the time of listing. Most occupied habitat is restricted from OHV use with the exception of five populations in Humboldt County. Monitoring data from one recent study confirm lower beach layia abundance within riding areas as compared to preserved areas that are closed to OHV use and managed to reduce threats to the species (BLM 2016a; BLM 2016b; Hassett 2017, pers. comm.; see also figure 17 in the SSA report). Additionally, within the OHV riding area, beach layia is restricted to the edges of trails, and the remainder of the habitat is overstabilized and dominated by invasive vegetation. It is possible that the higher beach layia abundance in the protected areas of the study could have more to do with invasive species management than eliminating the direct impacts of OHV use (Wheeler 2017, pers. comm.).

Finally, livestock trampling was identified as a threat when beach layia was listed (57 FR 27848). Livestock trampling previously occurred at the Mouth of Mattole River population, but fencing was replaced in 1997, thereby eliminating this threat (BLM 2014a, p. 5). Additionally, livestock were removed from the South Spit Eel River population that occurs on the Wildlands Conservancy Preserve (Allee 2018, pers. comm.). At this time, the only populations that are exposed to livestock are the McNutt Gulch population (Imper 2018, pers. comm.) and some portions of the Point Reyes population (Parsons 2018, pers. comm.). Observations made at Point Reyes suggest that livestock trampling is negatively impacting portions of the population there (Goldsmith 2018, personal observation). The current status of the McNutt Gulch population is unknown.

Overall, the best available scientific and commercial information suggests that human-induced disturbances are not resulting in significant, negative, population-wide or rangewide impacts given most beach layia habitat is under some level of protection and responds well to slight disturbance. However, some risk to the species' viability in the North Coast Ecoregion populations remains for some populations in the form of trampling or crushing of individuals plants.

Vertical Land Movement/Shoreline Erosion

Uplift or subduction (i.e., the geological process that occurs at convergent boundaries of tectonic plates where one plate moves under another and is forced to sink due to gravity into the mantle) both during and between seismic events can affect whether a beach/shoreline is prograding (i.e., advancing toward the sea as a result of the accumulation of waterborne sediment) or eroding. Vertical land movement (VLM) is site specific and is influenced by a number of factors. A study conducted in the Humboldt Bay area indicates that direction and magnitude differ depending on location, although most areas around the bay, including areas near beach layia habitat, are subsiding (Patton *et al.* 2017, pp. 26–27). Removal or reduction of both habitat and individual plants can be caused by sea level rise associated with subduction while uplift may counterbalance those effects. Sudden movements associated with earthquakes can cause tsunamis, which have the potential to remove habitat and whole populations in one event.

As with many ecosystems, dunes often undergo periods of cyclic stabilization and rejuvenation (Pickart and Sawyer 1998, p. 4). Rejuvenation events can be the result of changes in relative sea level, which in turn are attributed, at least in the past, to tectonic activity, including tsunamis (such as the following, as cited in Pickart and Sawyer 1998: Vick 1988, Pacific

Watershed Associates 1991, Clarke and Carver 1992, and Komar and Shih 1993). Both uplift and subsidence can theoretically trigger reactivation of dunes, with the former potentially building or expanding dunes through increased sediment supply, while the latter can destroy dunes through increased wave action or limit the expansion of new dunes (Pickart and Sawyer 1998, p. 4). The southern end of the North Spit Humboldt Bay population and the South Spit Eel River population are particularly vulnerable to shoreline erosion (McDonald 2017, pp. 10–13).

The San Andreas Fault, which runs along the eastern edge of Point Reyes and runs parallel to the Monterey Peninsula, regularly experiences plate movements. A vulnerability assessment conducted for Point Reyes indicates that the portion of shoreline where beach layia occurs has a high to very high vulnerability index (Pendleton *et al.* 2005, pp. 3, 15), suggesting that this population is subject to removal of occupied habitat caused by shoreline erosion. Similarly, the Monterey coastline where beach layia occurs has been shaped by varying levels of uplift and subsidence (Revell Coastal 2016, p. 2-1). The dunes at Asilomar are less vulnerable to erosion compared to those on the northern portion of the peninsula (EMC Planning Group 2015, figure 5). The best available information does not suggest any current or historical VLM or shoreline erosion for the Monterey Peninsula; thus, areas where beach layia occur appear relatively safe. No VLM/shoreline erosion information is available for Vandenberg AFB. While some populations are more at risk than others to lose habitat via VLM based on historical data, coastal dune habitat will always be threatened by the potential loss of large expanses of habitat caused by subduction events or tsunamis.

Current Condition Summary

While all of the threats discussed above have the potential to negatively influence the resiliency of beach layia populations, the threat that currently has the greatest negative impact on

populations or the species rangewide is overstabilization/competition with invasive species. This threat reduces abundance of beach layia more than any other and has the potential to have significant negative impacts to populations across the range of the species by reducing the amount of open sandy areas with sparse vegetation that it needs. Although habitat has been restored for some populations, the threat of invasive species expanding their presence throughout the species' range is always present, especially since most restored sites are near currently invaded areas, and has the potential to increase if changing climate conditions result in longer duration and higher intensity multi-year droughts. Efforts to remove nonnative or native invasive species and reverse the effects of overstabilization are ongoing throughout the species' range (Martinez *et al.* 2013, p. 159; BLM 2014b, p. 17; ManTech SRS Technologies 2016, p. 1; California Department of Parks and Recreation (CDPR) 2004, p. 3-14). However, these efforts are time consuming and costly. There are current management plans that include restoration for some populations, however, many populations have no plans for restoration and dedicated funding into the future is only available for the Asilomar State Beach population. Thus, this threat is not considered to be causing a significant negative influence across the entire range of beach layia at this time, but is reasonably likely to in the foreseeable future.

Uncertainties regarding the species' ecology and current impacts (or level of impacts) to beach layia or its habitat include (but are not limited to): Defined timelines for implementation of restoration and ongoing control of nonnative, invasive species; limiting factors for the populations in Monterey County; seedbank longevity; and the optimal disturbance regime to maximize recovery efforts (see also section 9.1.2 in the SSA report (Service 2018, p. 50)).

Potential Future Condition Summary

For the purpose of this proposed rule, we define viability as the ability of the species to sustain populations in the wild over time. This discussion explains how the stressors associated with overstabilization/competition with invasive species, changing climate conditions, erosion/high level of disturbance (e.g., recreation), and vertical land movement/shoreline erosion will influence resiliency, redundancy, and representation for beach layia throughout its current known range using the most likely plausible scenario. The future timeframes evaluated include a range of times that cover a variety of management plans that are expected to last the next 10 to 20 years and predictions for local sea level rise in the future through the year 2050. Thus, foreseeable future for this analysis is a range from approximately 15 to 30 years from current.

Suitable occupied and unoccupied habitat is limited to coastal dune systems that are subject to modification or destruction by overstabilization/competition with nonnative and native invasive species, changing climate conditions (which can result in drought and sea level rise), erosion from various disturbance activities (e.g., recreation), and VLM/shoreline erosion (see section 6.2 in the SSA report (Service 2018, pp. 14–24)). Significant habitat modification in any portion of beach layia’s range could lead to reduced population size, growth rate, and habitat quality for the affected population(s), thus resulting in a higher risk level for the species’ viability into the future. Although the threats described above are generally spread throughout the species’ range, the best available data indicate that the most vulnerable populations, given current and potential future impacts to availability of sparsely vegetated native dune mat habitat subject to periodic disturbance during the dormant season, include:

- *North Coast Ecoregion*—Freshwater Lagoon Spit, portions of North Spit Humboldt Bay (including the Mad River Beach, Bair/Woll, Manila South, and Samoa/Eureka Dunes

subpopulations), portions of South Spit Humboldt Bay, Elk River, North Spit Eel River, South Spit Eel River, McNutt Gulch, and unrestored portions of Point Reyes;

- *Central Coast Ecoregion*—Signal Hill Dunes; and
- *South Coast Ecoregion*—Vandenberg AFB.

This includes two of the three largest population centers in the North Coast Ecoregion, of which the North Spit Humboldt Bay harbors greater than 75 percent of the species' abundance rangewide (see table, above). Depending on the severity of the impacts to the resources needed by beach layia, populations or portions thereof could be lost in the future.

Populations in areas where habitat is limited or unsuitable in the future (see section 8.1 in the SSA report (Service 2018, pp. 39–41)) are likely to be more susceptible to threats that continue or worsen in the future, potentially resulting in reduced population(s) size and growth rate. Loss of habitat caused by invasion of nonnative, invasive species is the most prominent negative influence on beach layia into the future.

The populations in the Central and South Coast Ecoregions are at the greatest at risk of declines in abundance in the future based on their small size, limited distribution and expected continued threats in the future, particularly competition with nonnative, invasive species and drought stress. No projected drought trends are available; however, extreme events, including multi-year droughts, are expected to increase in likelihood into the future (Frankson et al. 2017, pp.2–5) and an analysis on climatic water deficit shows an increasing trend throughout the range of the species into the future, particularly those in the Central and South Coast Ecoregions (See section 8.2.2.1 of the SSA report).

Overall, it is likely that the most significant threat to beach layia's resiliency in the future will be continued overstabilization/competition with invasive species and, to a lesser extent,

changing climate conditions, erosion/high levels of disturbance and VLM/shoreline erosion. These threats are likely to result in a reduction in abundance of beach layia throughout its range stemming from removal, reduction, and degradation of habitat, and reduced abundance, such as from reduced germination, fecundity, and survival rates.

Many populations are likely to see a reduction in abundance of beach layia because there are no existing management activities or no management plans that provide long-term assurances that management activities will continue into the future to improve existing suboptimal habitat conditions (e.g., invasive species), especially if the species is delisted. Very few populations have been managed in such a way that the natural processes that create habitat for the species are able to operate unhindered (i.e. Lanphere and Ma-le'l). The remaining populations are dependent on continued management into the future to improve habitat conditions.

The low abundance and limited distribution of the species in the Central and South Coast Ecoregions make those populations particularly vulnerable to stochastic events, including, but not limited to, drought. It is likely that the intensity and duration of droughts will increase on a regional to global scale (IPCC 2014, p. 53). The high likelihood of increased intensity and duration of droughts in California (Frankson *et al.* 2017, pp. 2–5) is expected to negatively influence beach layia populations throughout the species' range because rain is required for germination, but particularly in the Central and South Coast Ecoregions due to high projections of climatic water deficit in those watersheds. A compounding factor in the analysis of drought effects on beach layia is that two of the most common nonnative, invasive species that compete for habitat with beach layia—European beachgrass and iceplant—are both drought tolerant (Hertling and Lubke 2000, pp. 522–524; Lechuga-Lago *et al.* 2016, pp. 8–9).

Resiliency, Redundancy, and Representation

To characterize beach layia's viability and demographic risks, we consider the concepts of resiliency, redundancy, and representation, and how the threats may negatively impact the resource needs that it relies on for survival and reproduction. Taking into account the impacts of the most significant threats and the potential for cumulative impacts to the resources that the species needs, our projections for future conditions are that beach layia's ability to withstand and bounce back from stochastic events (resiliency) is currently high and likely to remain so into the future. This resiliency is demonstrated by the increased abundance at most populations during a heavy rainfall year (e.g., 2017; table 2 in the SSA report (Service 2018, pp. 22–24)) that followed four years of drought conditions. However, this rebound in 2017 did not occur throughout all of the species' range, including at some of the smaller populations.

Of greater concern for beach layia's viability into the future is that the populations in the Central and South Coast Ecoregions are significantly smaller than the populations in the North Coast Ecoregion, thus decreasing the species' representation and redundancy in a large proportion of the species' range if these populations are lost in the future. The smaller abundance and acreage of these populations compared to the populations in the North Coast Ecoregion increases the chances of population loss in the foreseeable future, especially given the likelihood that:

(1) Overstabilization/competition with invasive species is not adequately being addressed (e.g., lack of staff and funding for invasive species control at some locations).

(2) Drought conditions are expected to worsen (continued multi-year droughts that result in reduced annual precipitation levels) across the species' range, but particularly in the Central and South Coast Ecoregions.

(3) Drought conditions can possibly benefit the abundance and spread of drought-tolerant invasive plants that are already present and adversely impacting the resources that beach layia relies on.

See section 10.3 in the SSA report (Service 2018, pp. 52–59) for additional analysis and discussion of factors influencing the viability of beach layia in the future. Taking into account the impacts of the most significant threats and the potential for cumulative impacts to the resource needs, our projections for future conditions are that beach layia’s ability to withstand and bounce back from stochastic events (resiliency) is currently high and likely to remain so into the future. Additionally, multiple populations currently spread across a wide geographic range suggest high redundancy and representation. However, at this time, the populations in the Central and South Coast Ecoregions have lower abundance than the North Coast Ecoregion populations. Given the lower abundance compared to the rest of the species range and the continued threats into the foreseeable future, the species overall ability to maintain adequate representation and redundancy into the future is low.

Recovery and Recovery Plan Implementation

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include: “[O]bjective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of [section 4 of the Act], that the species be removed from the list.” However, revisions to the list (adding, removing, or reclassifying a species) must reflect determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine

whether a species is an endangered species or threatened species (or not) because of one or more of five threat factors. Section 4(b) of the Act requires that the determination be made “solely on the basis of the best scientific and commercial data available.” Therefore, recovery criteria should help indicate when we would anticipate that an analysis of the species’ status under section 4(a)(1) would result in a determination that the species is no longer an endangered species or threatened species.

Thus, while recovery plans provide important guidance to the Service, States, and other partners on methods of minimizing threats to listed species and measurable objectives against which to measure progress towards recovery, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of or remove a species from the Federal List of Endangered and Threatened Plants (50 CFR 17.12) is ultimately based on an analysis of the best scientific and commercial data then available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan. Below, we summarize the recovery plan goals and discuss progress toward meeting the recovery objectives and how they inform our analysis of the species’ status and the stressors affecting it.

In 1998, we finalized the Seven Coastal Plants and the Myrtle’s Silverspot Butterfly Recovery Plan, which included recovery objectives for beach layia (recovery plan; Service 1998, pp. 43–48). All of the downlisting criteria and a portion of the delisting criteria included in the recovery plan (Service 1998) applied to the entire suite of dune plant species covered by the plan. As such, some interpretation of those criteria may be warranted to account for the specific life history or other circumstances of the species in question. Therefore, we have based our

analysis on the intent of the criteria as they relate to the five factor analysis for beach layia. Based on our review of the recovery plan and the information obtained from the various management activities, surveys, and research that have occurred to date, we conclude that the status of beach layia is improved throughout its range as a result of significant protections to preserve or conserve habitat, along with land use decisions and management activities implemented by many landowners undertaken since the time of listing. See appendix A in the SSA report for a detailed account of existing regulatory mechanisms and voluntary conservation efforts (Service 2018, pp. 75–80). Our analysis indicates that the intent of the downlisting criteria has been met. Our summary analysis of the downlisting criteria follows:

Downlisting Criterion 1 (addresses Listing Factors A, D, and E): Habitat occupied by the species that is needed to allow delisting has been secured, with long-term commitments and, if possible, endowments to fund conservation of the native vegetation.

There has been significant improvement in the security of habitat occupied by beach layia since the recovery plan was prepared, including land acquisition by Federal agencies, State and local agencies, and nongovernmental organizations; adoption of local coastal plans under the California Coastal Act; and implementation of management plans that address the needs of the species. Of the estimated 595 ac (240 ha) of dunes habitat currently occupied by beach layia, approximately 91 percent is owned by Federal and State governmental entities or other land owners with existing resource management direction precluding development within sensitive dunes habitat. Despite the fact that not all entities managing beach layia habitat have been able to demonstrate their ability to continue management into the future, especially if the species is delisted, due to the significant amount of occupied dune habitat that is now on protected lands (i.e., long-term commitments of approximately 32 years, including resource management plans

that contain a restoration component), and state and federal mandates to conserve the species as long as it remains listed, we conclude that this recovery criterion has been adequately met.

Downlisting Criterion 2 (in part, addresses Listing Factors A, D and E): Management measures are being implemented to address the threats of invasive species, pedestrians, and OHVs at some sites.

The Service, BLM, National Park Service (Redwood National Park, Point Reyes), and several other land managers in the northern portion of the range, and the CDP, Department of Defense, and several other managers in the southern portion of the range have all instituted relevant management policies since the recovery plan was completed or since the species was listed. Those policies have reduced, and in many cases eliminated, the threats to beach layia posed by pedestrians and OHV activity, as well as reduced to a certain degree the threat of native and nonnative, invasive species. Because of the many management measures currently implemented across the range of beach layia to address the threats of pedestrians and OHVs, and the work conducted thus far to address the ongoing threat of invasive species, we conclude that this criterion has been adequately met.

Downlisting Criterion 3 (in part, addresses Listing Factor E): Monitoring reveals that management actions are successful in reducing threats of invasive, nonnative species.

Management actions over the past 12 years have reduced the threats from native and nonnative, invasive species, at least into the foreseeable future. Because of these successful invasive species management measures, we conclude that this criterion has been adequately met.

Downlisting Criterion 4 (in part, addresses Listing Factors A, D and E): Additional restored habitat has been secured, with evidence of either natural or artificial long-term

establishment of additional populations, and long-term commitments (and endowments where possible) to fund conservation of the native vegetation.

Commitments by land managers across beach layia's range, as described under Downlisting Criterion 1, above, have resulted in secured habitat (i.e., protected from development although native or nonnative, invasive species continue to reduce the availability of sandy soils with sparse vegetative cover) in multiple geographic areas since the recovery plan was completed. These include several protected areas on Federal, State, and local public lands, as well as land acquisition and protection (e.g., conservation easements) by nongovernmental organizations (protections are described in each population descriptions found in section 7.0 of the SSA report (Service 2018, pp. 25–38)). Additionally, restoration has been conducted with a commensurate response by beach layia (e.g., the creation of an Endangered Species Protection Area within the Samoa/Eureka Subpopulation, North Spit Humboldt Bay, Point Reyes National Seashore, Vandenberg AFB). As a result, we conclude that this criterion has been adequately met.

The intent of the delisting criteria has not yet been met for beach layia. The overarching goal for delisting beach layia includes removal of substantially all of the nonnative, invasive plants on the dunes where it occurs and securing written assurance of long-term support for continued management of the dunes, and monitoring (Service 1998, pp. 92–93). The overarching goal is to restore natural processes that have been disrupted by the presence of nonnative, invasive species to dune systems so that beach layia and other native plants adapted to those environments can persist into the future.

Determination of Beach Layia Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines “endangered species” as a species “in danger of extinction throughout all or a significant portion of its range,” and “threatened species” as a species “likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” The Act requires that we determine whether a species meets the definition of “endangered species” or “threatened species” because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

After evaluating threats to the species under the section 4(a)(1) factors, we examined the best scientific and commercial information available regarding the past, present, and future threats faced by the species. We reviewed information presented in the 2011 5-year review (Service 2011, entire), additional information that became available since the time our 2011 5-year review was completed, and other available published and unpublished information. We also consulted with species experts and land management staff who are actively managing for the conservation of beach layia.

We examined the following threats that may be affecting beach layia: development (Factor A), herbivory/disease (Factor C), overutilization/competition with invasive species (Factor A), changing climate conditions (Factor E), erosion/high level of disturbance (e.g., recreation) (Factor A), and vertical land movement/shoreline erosion (Factor A). We found no

threats associated with overutilization for commercial, recreational, scientific, or educational purposes, such as (but not limited to) collection of plants for scientific research (Factor B). We also considered and discussed existing regulatory mechanisms (Factor D) and voluntary conservation efforts as they relate to the threats that may affect beach layia (summarized within each threat discussions within chapters 8 and 10, and detailed in appendix A, of the SSA report, pp. 75–80).

The most significant factors influencing the viability of beach layia populations at the time of listing were displacement by nonnative, invasive vegetation; recreational uses such as OHV activities and pedestrians; and urban development (June 22, 1992, 57 FR 27848; Service 1998, p. 45). Currently, our analysis indicates that the level of impacts to beach layia and its habitat that placed the species in danger of extinction in 1992 (i.e., human-induced disturbances including OHV activity, agriculture, pedestrians, development, etc.) have substantially been reduced as a result of the significant commitments made by landowners to conserve lands and institute restoration activities at multiple populations throughout the species' range. However, the extensive spread of nonnative, invasive vegetation throughout the species' range remains a significant negative influence on the viability of the species. Additionally, the ability of the majority of landowners to continue management of habitat for the species into the future is uncertain, particularly if the species were to be delisted.

At the time of the 5-year review (2011) and currently, we have become aware of the potential for anthropogenic climate change to affect all biota, including beach layia. Available information indicates that temperatures are increasing and annual rainfall is reduced during some years within beach layia's range, resulting in prolonged drought conditions that negatively influence beach layia abundance. Beach layia's response to these changes should be monitored

into the future.

Of the factors identified above, overstabilization/competition with invasive species (Factor A), changing climate conditions (Factor E), erosion/high level of disturbance (e.g., recreation) (Factor A), and vertical land movement/shoreline erosion (Factor A) are the most significant threats to the species currently or into the foreseeable future. After review and analysis of the best scientific and commercial information available regarding the threats as they relate to the five statutory factors, we find that this information does not indicate that these threats are affecting individual populations or the species as a whole across its range to the extent that they currently are of sufficient imminence, scope, or magnitude to rise to the level that beach layia is in danger of extinction throughout all of its range. However, our review of information indicates that, while the overall range of the species has slightly increased since the time of listing (i.e., discovery of the northern-most population—Freshwater Lagoon Spit), the anticipated trajectory of the identified threats into the foreseeable future is likely to result in a condition whereby the abundance and density of the species across the majority of its range (including the population stronghold areas in a portion of Humboldt County) are likely to be negatively impacted.

Specifically, the best available information indicates there is a likelihood of population- and rangewide-level impacts to beach layia abundance in the foreseeable future, despite beneficial management actions at some of the populations at this time. Beach layia populations across the species' range are likely to be negatively influenced predominantly from overstabilization/competition with invasive species, in conjunction with predicted drought conditions. Our analysis reveals that one or more threats continue to act on the species at the population level, likely contributing to low abundance in most years that do not experience

substantial rainfall. Additionally, there is a lack of range expansion at some small populations (e.g., Asilomar State Beach, Indian Village Dunes, and Signal Hill Dunes populations), likely contributing to insufficient recruitment necessary for stable or, ideally, increasing populations. With respect to the remaining populations that are experiencing OHV and other recreation activities (noting this threat is substantially reduced with the exception of a few areas in the North Coast Ecoregion), the existing regulatory mechanisms are likely insufficient to manage the beach layia habitat specifically at the Signal Hill Dunes population. Overall, some disturbance appears compatible with large populations (Wheeler 2017, pers. comm.)

Thus, after assessing the best available information, we conclude that beach layia is not currently in danger of extinction, but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity v. Everson*, 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Everson*), vacated the aspect of the 2014 Significant Portion of its Range Policy that provided that the Services do not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and, (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the “significance” question or the “status” question

first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Everson*, we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (i.e., endangered). In undertaking this analysis for beach layia, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered.

The statutory difference between an endangered species and a threatened species is the time horizon in which the species becomes in danger of extinction; an endangered species is in danger of extinction now, while a threatened species is not in danger of extinction now but is likely to become so in the foreseeable future. Thus, we considered the time horizon for the threats that are driving the beach layia to warrant its classification as a threatened species throughout all of its range. We examined the following threats: overstabilization/competition with invasive species, changing climate conditions, erosion/high level of disturbance (e.g., recreation), and vertical land movement/shoreline erosion, including cumulative effects. While some of these threats currently exist throughout the range of the species (e.g., the presence of invasive species, recreational impacts), it is the anticipated future increase in overstabilization/competition with invasives, exacerbated by climate change-influenced drought, that is driving the threatened status of the species.

The best scientific and commercial data available indicate that the time horizon on which this heightened threat to beach layia from drought-influenced overstabilization/competition with

invasive species, and beach layia's negative response to that heightened threat, is likely to occur in the foreseeable future. In addition, the best scientific and commercial data available do not indicate that this heightened threat is more immediate in any portions of the species' range. Therefore, we determine that the beach layia is not in danger of extinction now in any portion of its range, but that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This is consistent with the courts' holdings in *Desert Survivors v. Department of the Interior*, No. 16-cv-01165-JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity v. Jewell*, 248 F. Supp. 3d , 946, 959 (D. Ariz. 2017).

Therefore, on the basis of the best available scientific and commercial information, we propose to reclassify beach layia as a threatened species throughout all of its range in accordance with sections 3(20) and 4(a)(1) of the Act.

Determination of Status

Our review of the best available scientific and commercial information indicates that beach layia meets the definition of a threatened species. Therefore, we propose to downlist beach layia from an endangered species to a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

II. Proposed Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act states that the "Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation" of species listed as threatened. The U.S. Supreme Court has noted that very similar statutory language demonstrates a large degree of deference' to the agency. *See Webster v. Doe*, 486 U.S. 592 (1988). Conservation is defined in

the Act to mean “the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary.” Additionally, section 4(d) of the Act states that the Secretary “may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1)... or 9(a)(2).” Thus, regulations promulgated under section 4(d) of the Act provide the Secretary with wide latitude of discretion to select appropriate provisions tailored to the specific conservation needs of the threatened species. The statute grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary’s discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have approved rules developed under section 4(d) that include a taking prohibition for threatened wildlife, or include a limited taking prohibition. See *Alsea Valley Alliance v. Lautenbacher*, 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council v. National Marine Fisheries Service*, 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002). Courts have also approved 4(d) rules that do not address all of the threats a species faces. See *State of Louisiana v. Verity*, 853 F.2d 322 (5th Cir. 1988). As noted in the legislative history when the Act was initially enacted, “once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species. He may, for example, permit taking, but not importation of such species,” or he may choose to forbid both taking and importation but allow the transportation of such species, as long as the prohibitions, and exceptions to those prohibitions, will “serve to conserve, protect, or restore the species concerned in accordance with the purposes of the Act” (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

The Service has developed a species-specific 4(d) rule that is designed to address the beach layia specific threats and conservation needs. Although the statute does not require the Service to make a “necessary and advisable” finding with respect to the adoption of specific prohibitions under section 9, we find that this regulation is necessary and advisable to provide for the conservation of the beach layia. As discussed in the **Determination of Beach Layia Status** section, the Service has concluded that beach layia is at risk of extinction within the foreseeable future primarily due to overstabilization/competition with invasive species and drought conditions, in addition to loss of habitat and plants at some locations from recreational disturbance and erosion (e.g., shoreline erosion, vertical land movement). The provisions of this 4(d) rule would promote conservation of beach layia by making it unlawful to remove and reduce to possession beach layia from Federal land. The provisions of this rule are one of many tools that the Service will use to promote the conservation of the beach layia. This proposed 4(d) rule would apply only if and when the Service makes final the listing of the beach layia as a threatened species.

Provisions of the 4(d) Rule

This proposed 4(d) rule would provide for the conservation of beach layia by prohibiting the following activities, except as otherwise authorized or permitted: for any person subject to the jurisdiction of the United States to remove and reduce to possession beach layia from areas under Federal jurisdiction; maliciously damage or destroy the species on any area under Federal jurisdiction; or remove, cut, dig up, or damage or destroy the species on any area under Federal jurisdiction in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law.

This proposed 4(d) rule would enhance the conservation of beach layia by prohibiting detrimental activities and allowing activities that would be beneficial to the species.

The proposed 4(d) rule only addresses Federal requirements under the Act and would not change any prohibitions provided for by State law. As explained above, the provisions included in this proposed 4(d) rule are necessary and advisable to provide for the conservation of beach layia. Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of beach layia. However, the consultation process may be further streamlined through planned programmatic consultations between Federal agencies and the Service for these activities. We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that the Service could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see **Information Requested**, above).

As discussed in the **Determination of Beach Layia Status** (above), several factors are affecting the status of beach layia. A range of activities have the potential to impact the beach layia, including: the loss of habitat and plants at some locations from recreational disturbance. Regulating these activities will help preserve the species' remaining populations, slow their rate of decline, and decrease synergistic, negative effects from other stressors.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened plants under certain circumstances. Regulations governing permits for threatened plants are codified at 50 CFR 17.72, which states that “the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species.”

That regulation also states, “The permit shall be governed by the provisions of this section unless a special rule applicable to the plan is provided in §§ 17.73 to 17.78.” We interpret that second sentence to mean that permits for threatened species are governed by the provisions of § 17.72 unless a special rule provides otherwise. We recently promulgated revisions to § 17.71 providing that § 17.71 will no longer apply to plants listed as threatened in the future. We did not intend for those revisions to limit or alter the applicability of the permitting provisions in § 17.72, or require that every special rule spell out any permitting provisions that apply to that species and special rule. To the contrary, we anticipate that permitting provisions would generally be similar or identical for most species, so applying the provisions of § 17.72 unless a special rule provides otherwise would likely avoid substantial duplication. Moreover, this interpretation brings §17.72 in line with the comparable provision for wildlife at 50 CFR 17.32, in which the second sentence states, “Such permit shall be governed by the provisions of this section unless a special rule applicable to the wildlife, appearing in §§ 17.40 to 17.48, of this part provides otherwise.” Under 50 CFR 17.72 with regard to threatened plants, a permit may be issued for the following purposes: scientific purposes, to enhance propagation or survival, for economic hardship, for botanical or horticultural exhibition, for educational purposes, or other purposes consistent with the purposes of the Act. Additional statutory exemptions from the prohibitions are found in sections 9 and 10 of the Act.

The Service recognizes the special and unique relationship with our state natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to

assist the Services in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Services shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State Conservation Agency which is a party to a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, will be able to conduct activities designed to conserve beach layia that may result in otherwise prohibited activities without additional authorization.

III. Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise this proposed rule, your comments should be as specific as possible. For example, you should tell us the names of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act

We determined that we do not need to prepare an environmental assessment or an environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the *Federal Register* on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited in this proposed rule is available on the Internet at <http://www.regulations.gov> under Docket No. FWS–R8–ES–2018–0042, or upon request from the Assistant Field Supervisor, Arcata Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the U.S. Fish and Wildlife Service Species Assessment Team and the Arcata Fish and Wildlife Office.

Lists 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—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 § 17.12 in paragraph (h) by revising the entry for “*Layia carnosa*” under FLOWERING PLANTS to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
FLOWERING PLANTS				
* * * * *				
<i>Layia carnosa</i>	Beach layia	Wherever found	T	57 FR 27848, 6/22/1992; [Federal Register citation when published as a final rule]; 50 CFR 17.73(b). ^{4d}
* * * * *				

3. Revise § 17.73 to read as follows:

§17.73 Special rules—flowering plants.

(a) [Reserved]

(b) *Layia carnosa* (beach layia).

(1) *Prohibitions.* The following prohibitions that apply to endangered plants also apply to *Layia carnosa* (beach layia). Except as provided under paragraph (b)(2) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.61(b).

(ii) Remove and reduce to possession from areas under Federal jurisdiction, as set forth at § 17.61(c)(1).

(iii) Maliciously damage or destroy the species on any areas under Federal jurisdiction, or remove, cut, dig up, or damage or destroy the species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law, as set forth at section 9(a)(2)(B) of the Act.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.61(d).

(v) Sell or offer for sale, as set forth at §17.61(e).

(2) *Exceptions from prohibitions.* The following exceptions from prohibitions apply to beach layia:

(i) The prohibitions described in paragraph (b)(1) of this section do not apply to activities conducted as authorized by a permit issued in accordance with the provisions set forth at § 17.72.

(ii) Any employee or agent of the Service or of a State conservation agency that is operating a conservation program pursuant to the terms of a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by that agency for such purposes, may, when acting in the course of official duties, remove and reduce to possession from areas under Federal jurisdiction members of beach layia that are covered by an approved cooperative agreement to carry out conservation programs.

(iii) You may engage in any act prohibited under paragraph (b)(1) of this section with seeds of cultivated specimens, provided that a statement that the seeds are of “cultivated origin” accompanies the seeds or their container.

Aurelia Skipwith

Director, U.S. Fish and Wildlife Service

[FR Doc. 2020-19026 Filed: 9/29/2020 8:45 am; Publication Date: 9/30/2020]