

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R6-ES-2018-0055;
FF09E21000 FXES11110900000 201]

RIN 1018-BD17

Endangered and Threatened Wildlife and Plants; Threatened Species Status for Chapin Mesa Milkvetch and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list *Astragalus schmolliae* (hereafter referred to by the common name Chapin Mesa milkvetch), a plant species from southwestern Colorado, as a threatened species under the Endangered Species Act of 1973 (Act), as amended, and to designate critical habitat. If we make this rule final as proposed, the effect of this rule will be to add this species to the List of Endangered and Threatened Plants and to designate critical habitat for the species. In total, we propose to designate approximately 3,635 acres (1,471 hectares) in Montezuma County in southwestern Colorado as critical habitat for the species. We also announce the availability of a draft economic analysis of the proposed designation of critical habitat for Chapin Mesa milkvetch.

DATES: We will accept comments received or postmarked on or before November 16, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by November 2, 2020.

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-R6-ES-2018-0055, 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-R6-ES-2018-0055, 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 *Public Comments*, below, for more information).

Document availability: The draft economic analysis is available at <http://www.regulations.gov> under Docket No. FWS-R6-ES-2018-0055, and at the Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at <http://www.regulations.gov> under Docket No. FWS-R6-ES-2018-0055, and at the Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the Field Office set out above, and may also be included in the preamble and/or at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ann Timberman, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Ecological Services Field Office, 445 W. Gunnison Ave., Suite 240, Grand Junction, CO 81501-5711; telephone 970-628-7181. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if a species is determined to be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register**. Critical habitat shall be designated, to the maximum extent prudent and determinable, for any species determined to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designations and revisions of critical habitat can only be completed by issuing a rule.

This rule proposes to list the Chapin Mesa milkvetch as a threatened species

and proposes critical habitat necessary for the conservation of the species. Chapin Mesa milkvetch is a candidate species for which we have on file sufficient information on biological vulnerability and threats to support preparation of a listing proposal, but for which development of a listing proposal had been precluded by other higher priority listing activities. This proposed rule and the associated species status assessment report (SSA report) reassess all available information regarding status of and threats to the Chapin Mesa milkvetch.

The basis for our action. Under the Act, we can determine that a species is an endangered or threatened species based on any of five 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. We have determined that the primary drivers of the Chapin Mesa milkvetch's current and future condition are the increased frequency of large, high-intensity wildfires; increasing presence of invasive, nonnative plants, especially cheatgrass (*Bromus tectorum*); and the interaction between these elements (Factor A).

Any species that is determined to be an endangered or a threatened species shall, to the maximum extent prudent and determinable, have habitat designated that is considered to be critical habitat. Section 4(b)(2) of the Endangered Species Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat.

Supporting analyses. We prepared an analysis of the economic impacts of the proposed critical habitat designation and hereby announce the availability of the draft economic analysis for public review and comment.

We conducted a species status assessment (SSA) for the Chapin Mesa milkvetch, with input and information provided by Mesa Verde National Park, the Colorado Natural Heritage Program, and the Ute Mountain Ute Tribe. The results of this assessment are summarized in an SSA report, which represents a compilation of the best scientific and commercial data available concerning the status of the species,

including the past, present, and future stressors to this species (Service 2018, entire). Additionally, the SSA report contains our analysis of required habitat and the existing conditions of that habitat.

Peer review. We sought comments from independent specialists on our SSA report for the Chapin Mesa milkvetch to ensure that we base our listing determination and critical habitat proposal on scientifically sound data, assumptions, and analyses. We received feedback from five experts that have knowledge and/or experience with the species or similar species biology as peer review of the SSA report. The reviewers were generally supportive of our approach and made suggestions and comments that strengthened our analysis. We incorporated these comments into the SSA report, which can be found at <http://www.regulations.gov> under Docket No. FWS-R6-ES-2018-0055.

Information Requested

Public Comments

Any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned 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 determinations may differ from this proposal. We particularly seek comments concerning:

(1) Chapin Mesa milkvetch's biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for nutrition, reproduction, and dispersal;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any

threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information to inform the following factors such that a designation of critical habitat may be determined to be not prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(b) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(d) No areas meet the definition of critical habitat.

(6) Specific information on:

(a) The amount and distribution of Chapin Mesa milkvetch habitat;

(b) What areas, that were occupied at the time of listing and that contain the physical or biological features essential to the conservation of the species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species. We particularly seek comments regarding:

(i) Whether occupied areas are inadequate for the conservation of the species; and,

(ii) Specific information that supports the determination that unoccupied areas will, with reasonable certainty, contribute to the conservation of the species and, contain at least one physical or biological feature essential to the conservation of the species.

(7) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(8) Information on the projected and reasonably likely impacts of climate change on the Chapin Mesa milkvetch and proposed critical habitat.

(9) Any probable economic, national security, or other relevant impacts of designating any area as critical habitat that may be included in the final designation, and the benefits of including or excluding areas that may be impacted.

(10) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts.

(11) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. We are particularly interested in information on proposed Unit 4, located on Ute Mountain Ute Tribal land; this unit is managed as a Tribal Park, which limits human disturbance (Scott Clow (Ute Mountain Ute Tribe) 2017, pers. comm.). In addition, the Tribe has recently developed a conservation plan for Chapin Mesa milkvetch, which we will consider as appropriate in our determination on whether to exclude Unit 4 from the final critical habitat designation.

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

(13) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(14) Whether the measures outlined in the proposed 4(d) rule are necessary and advisable to provide for the conservation of Chapin Mesa milkvetch.

(15) Whether it would be necessary and advisable to incorporate any additional prohibitions from section 9(a)(2) of the Act into the 4(d) rule for Chapin Mesa milkvetch, such as the prohibitions related to import to and export from the United States, or prohibitions related to interstate or foreign commerce.

(16) How Mesa Verde National Park's September 2018 conservation plan for Chapin Mesa milkvetch may impact the species, and whether the plan is

sufficiently certain to be implemented and certain to be effective.

(17) How the Ute Mountain Ute Tribe's January 2020 conservation plan for Chapin Mesa milkvetch may impact the species, and whether the plan is sufficiently certain to be implemented and certain to be effective.

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.

Please note that submissions merely stating support for or opposition to the 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 a threatened species must be made "solely on the basis of the best scientific and commercial data available."

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**.

If you submit information via <http://www.regulations.gov>, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>.

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

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register** (see **DATES** above). Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, 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).

Peer Review

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270) and the Service's August 22, 2016, Director's Memo on the Peer Review Process, we sought the expert opinions of five appropriate and independent specialists regarding the SSA report upon which this proposed rule is based. The purpose of peer review is to ensure that our listing determination and critical habitat designation are based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in Chapin Mesa milkvetch or similar species biology, habitat, and ecology. Peer-review comments will be available along with other public comments in the docket for this proposed rule (at <http://www.regulations.gov>, Docket No. FWS-R6-ES-2018-0055).

Previous Federal Actions

Federal action for the Chapin Mesa milkvetch (then known by the common name Schmoll's milkvetch) began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, presented to Congress on January 9, 1975, identified the Chapin Mesa milkvetch as endangered (House Document 94-51, pp. 57-58). On July 1, 1975, the Service published in the **Federal Register** (40 FR 27824) our acceptance of the Smithsonian report as a petition within the context of the Act, giving notice of our intention to review the status of the plant taxa therein.

On June 16, 1976, the Service proposed to list approximately 1,700 vascular plant taxa, including the Chapin Mesa milkvetch, as Endangered pursuant to section 4 of the Act (41 FR 24524). In 1978, amendments to the Act required that all proposals more than 2 years old be withdrawn, providing a 1-year grace period to proposals already more than 2 years old. On December 10, 1979, the Service withdrew the portion of the June 16, 1976, proposed rule that had not been made final, which removed the Chapin Mesa milkvetch

from proposed status but retained the species as a candidate plant taxon that may qualify for listing under the Act (44 FR 70796).

On December 15, 1980, the Service identified Chapin Mesa milkvetch as a category 2 candidate "currently under review" (45 FR 82480). On November 28, 1983, the Chapin Mesa milkvetch was moved to the "taxa no longer under review" list, and given a 3C rank indicating the species was proven to be more abundant or widespread than previously believed or not subjected to an identifiable threat (48 FR 53640). Subsequently, despite the conclusions of the 1983 review, the species was still included as a category 2 species on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144). The category 2 species designation was defined as taxa for which information in the possession of the Service indicated that proposing to list as endangered or threatened is possibly appropriate, but for which sufficient data on biological vulnerability and threat were not currently available to support proposed rules.

In the Candidate Notice of Review (CNOR) published on February 28, 1996 (61 FR 7596), we announced a revised list of plant and animal taxa that were regarded as candidates for possible addition to the Lists of Endangered and Threatened Wildlife and Plants. The revised candidate list included only former Category 1 species. All former Category 2 species were dropped from the list in order to reduce confusion about the conservation status of these species and to clarify that the Service no longer regarded these species as candidates for listing. Since the Chapin Mesa milkvetch was a Category 2 species, it was no longer recognized as a candidate species as of the February 28, 1996, CNOR.

On July 30, 2007, we received a petition dated July 24, 2007, from Forest Guardians (now WildEarth Guardians) requesting that the Service list as either endangered or threatened 206 species, including the Chapin Mesa milkvetch, that occurred in our Mountain Prairie Region (Forest Guardians 2007, pp. 1-37).

On March 19, 2008, WildEarth Guardians filed a complaint (1:08-CV-472-CKK) indicating that the Service failed to comply with its mandatory duty to make a preliminary 90-day finding on their two multiple species petitions—one for the Mountain-Prairie Region, and one for the Southwest Region (*WildEarth Guardians v. Kempthorne* 2008, case 1:08-CV-472-CKK). On March 13, 2009, the Service

and WildEarth Guardians filed a stipulated settlement in the District of Columbia Court, agreeing that the Service would submit to the **Federal Register** a finding as to whether WildEarth Guardians' petition presents substantial information indicating that the petitioned action may be warranted for 38 Mountain-Prairie Region species, including Chapin Mesa milkvetch by August 9, 2009 (*WildEarth Guardians vs. Salazar* 2009, case 1:08-CV-472-CKK).

On August 18, 2009, we published our finding that the petition presented substantial information to indicate that listing the Chapin Mesa milkvetch (then known as Schmoll's milkvetch) may be warranted based on threats from fire, nonnative species invasions, road construction, grazing, and drought (74 FR 41649).

On December 15, 2010, we published a 12-month finding for both the Chapin Mesa milkvetch (then known as Schmoll's milkvetch) and the Skiff milkvetch (*Astragalus microcymbus*), announcing our finding that listing of both species was warranted, but precluded by higher priority actions (75 FR 78514). As a result of this finding, the Chapin Mesa milkvetch was added to the list of candidate species and assigned a listing priority number of 8, indicating that the species faced threats of moderate magnitude that were considered imminent, including nonnative cheatgrass invasion, wildfires, management of fire and fuels, and drought. Since that time, we have reassessed the status of the species annually through the CNOR process. In 2015, the common name "Chapin Mesa milkvetch" replaced the common name "Schmoll's milkvetch" for the species, and in the 2015 CNOR (80 FR 80584; December 24, 2015), we accepted Chapin Mesa milkvetch as the new common name for the species; we have used that common name in all subsequent reviews pertaining to the species.

Background

A thorough review of the taxonomy, range and distribution, life history, and ecology of the Chapin Mesa milkvetch is presented in the SSA report (Service 2018, pp. 3–14; available at <http://www.regulations.gov> at Docket No. FWS-R6-ES-2018-0055), and is briefly summarized here. Chapin Mesa milkvetch is a narrow endemic, upright, perennial herb primarily found on the tops of mesas in Southwestern Colorado in Montezuma County on land administered by Mesa Verde National Park and Ute Mountain Ute Tribal Park. Chapin Mesa milkvetch is a member of

the family Fabaceae (legume family) and was known by the common name Schmoll's milkvetch prior to 2015. The stems of Chapin Mesa milkvetch are purplish below, green above, tall (45 to 60 centimeters (cm)), branching from the base, with short, stiff, appressed hairs (lying closely and flatly against the plant's surface) on the foliage. Leaves are pinnate with 11 to 13 linear leaflets, 1 to 2 millimeters (mm) wide, and 1 to 3 cm long. Flowers are yellowish-white or cream colored, and 12 to 13 cm long with bracts that extend under the flower that have black hairs. The distinguishing characteristic of the species is the leathery pod (Service 2018, pp. 3–4).

Chapin Mesa milkvetch's global distribution is constrained almost entirely to Chapin Mesa within Mesa Verde National Park and the Ute Mountain Ute Tribal Park in southern Colorado, with some outlying areas on neighboring Park Mesa and West Chapin Spur (Rondeau 2017, p. 1). Chapin Mesa milkvetch habitat occupies approximately 2,000 acres (ac) (809 hectares (ha)) in Mesa Verde National Park (CNHP 2010, pp. 12–19; Anderson 2004, pp. 25, 30). While the species has been observed on the Ute Mountain Tribal Park, it is unclear at this time how much occupied habitat occurs there, because surveys have not been done in recent years. The habitat for Chapin Mesa milkvetch is dense pinyon-juniper woodland of mesa tops, with deep, reddish, loess soil (Service 2018, p. 8). Pinyon-juniper trees are easily killed by fires and are slow to regenerate (Romme *et al.* 2003, p. 344.). The historical fire regime of the pinyon-juniper woodlands on the mesa tops of the Mesa Verde area is characterized by lightning-caused, infrequent (~400-year rotation), stand-replacing fires, as opposed to low-severity, stand-thinning fires (Romme *et al.* 2003, p. 338; Floyd *et al.* 2004, p. 286).

This species is believed to consist of one large, interconnected population. Like many rare plants, Chapin Mesa milkvetch is globally rare, but is locally abundant throughout its occupied habitat (Rondeau 2017, p. 1). We do not have precise or recent data pertaining to total population size for the species, even within Mesa Verde National Park (Service 2018, p. 4–5). Although regular monitoring has occurred in Mesa Verde National Park since 2001 in established monitoring plots, the demography plots do not represent a random sample, and cannot be used to estimate population size or overall population density (Service 2018, p. 4).

Chapin Mesa milkvetch plants emerge in early spring and usually begin

flowering in late April or early May. Flowering continues into early or mid-June; fruit set begins in late May and occurs through June; and by late June, most fruits, while still attached to the plant, have opened and released their seeds (Service 2018, p. 7). During very dry years, like many other *Astragalus* species, the plants can remain dormant with no above-ground growth (Colyer 2003 in Anderson 2004, p. 11). Chapin Mesa milkvetch requires pollination by insects to set fruit; the flowers require a strong insect for pollination because the insect must force itself between the petals of the papilionaceous (butterfly shaped) flowers (Green 2012, p. 2).

Spring and winter (snow) precipitation that is greater than 25 percent below the 30-year average (1971–2000) (*i.e.*, greater than 3.24 inches and 3.46 inches, respectively) provides appropriate soil moisture for the Chapin Mesa milkvetch. The emergence and density of Chapin Mesa milkvetch are strongly tied to winter precipitation. Years with "wet" winters (precipitation falling primarily as snow) precede high density counts, and years with dry winters translate to low or no emergence (Rondeau 2017, p. 3). Climate requirements for seedling emergence and survival are not well known; however, we infer that spring moisture is also critical, as seedling survival relies on growing deep roots quickly (Rondeau 2017, p. 9). It is likely that winter moisture coupled with winter temperature is also important for seedlings due to available soil moisture for seedling survival (Rondeau 2017, p. 16).

Regulatory and Analytical Framework

Regulatory Framework

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.

The Act does not define the term "foreseeable future," which appears in the statutory definition of "threatened species." Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable

future on a case-by-case basis. The term foreseeable future extends only so far into the future as the Services can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. "Reliable" does not mean "certain"; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological status review for the species, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. It does, however, provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS-R6-ES-2018-0055 on <http://www.regulations.gov>.

To assess Chapin Mesa milkvetch viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more

representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability, including the uncertainties associated with these.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. This process used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this section, we review the biological condition of the species and its resources, and its influences, to assess the species' overall viability and the risks to that viability.

To evaluate the biological status of the Chapin Mesa milkvetch both currently and into the future, we assessed a range of conditions to consider the species' resiliency, redundancy, and representation (together, the 3Rs). Since Chapin Mesa milkvetch is considered to consist of one large population, for the purposes of our analysis, we divided the range of Chapin Mesa milkvetch into four representative units, which are further broken down into subunits. The Chapin Mesa milkvetch needs multiple, resilient subunits distributed across its range to maintain its persistence into the future and to avoid extinction (Service 2018, pp. 8–14). A number of factors influence whether Chapin Mesa milkvetch subunits are considered to be resilient to stochastic events. These factors include: (1) Sufficient population size (density); (2) recruitment of Chapin Mesa milkvetch into the population, as evidenced by the presence of all life stages at some point during the growing season; and (3) connectivity between populations (Service 2018, pp. 12–13).

We evaluated a number of stressors that influence the health and resiliency

of Chapin Mesa milkvetch populations, such as competition with nonnative, invasive plant species (*i.e.*, cheatgrass, musk thistle, etc.); wildfire; drought; fire management activities; development of infrastructure; trampling; herbivory; and effects of climate change (Service 2018, pp. 14–24). We found that the primary drivers influencing the species' condition are the increased frequency of large, high-intensity wildfires; increasing presence of invasive, nonnative plants, especially cheatgrass; and the interaction between these elements, as explained further in the SSA report (Service 2018, p. 14–30). Five large, high intensity fires in the last two decades have occurred on most of the park and a large portion of the adjacent Mesa Verde cueasta (*i.e.*, long, sloping ridge), resulting in burns on a total of 38,704 acres (Floyd *et al.* 2004, p. 270, 283); and a total of approximately 760.5 acres of Chapin Mesa milkvetch habitat that has been burned in Mesa Verde National Park. The invasion of nonnative plant species, which compete with Chapin Mesa milkvetch for space, nutrients, and water, is facilitated by the increased frequency of burns as well as the creation of fire breaks that has occurred within Chapin Mesa milkvetch habitat (CNHP 2006, p.4). Cheatgrass and other invasive nonnative plant species have already invaded different parts of the species range to varying degrees. Cheatgrass was not found in unburned woodland monitoring plots, whereas cheatgrass invasion ranges from 8–58% cover in the burned monitoring plots (Rondeau 2017, p. 11). In addition, the risk of severe fire is expected to increase in the future, with potential for increases in the average frequency, intensity, and size of fires (Rondeau *et al.* 2017, Appendix D, pp. 15–21).

As described above, we divided the range of Chapin Mesa milkvetch into four representative units (Chapin Mesa, West Chapin Spur, Park Mesa, and Ute Mountain Ute Tribal Park) (Service 2018, pp. 24–26). Having a greater number of self-sustaining units distributed across the known range of the species is associated with an overall higher viability of the species into the future. We consider to be the most resilient those units without nonnative, invasive species and development of infrastructure, and with a sufficient percentage of pinyon-juniper canopy cover, an intact native understory, sufficient percentage of seedling survival, and sufficient levels of winter and spring precipitation (Service 2018, pp. 24–34). Our analysis found that all Chapin Mesa milkvetch analysis units

currently have moderate levels of resiliency, with one large unburned subunit in good condition.

The viability of the Chapin Mesa milkvetch depends on maintaining multiple, self-sustaining units over time. Climate change models forecast warmer temperatures and a decrease in precipitation, or change in the timing and type of precipitation by the year 2035 (Rondeau *et al.* 2017, Appendix D, p. 15–21; Service 2018, pp. 35–36). Monitoring data have shown that “wet” winters precede high Chapin Mesa milkvetch density counts, and dry winters translate to low or no emergence of Chapin Mesa milkvetch in the spring (Service 2018, p. 26). Data collected by the Colorado Natural Heritage Program (CNHP) over 14 years of monitoring have revealed a strong correlation between winter precipitation (as snow) and the density of Chapin Mesa milkvetch plants (Service 2018, p. 26).

Given our uncertainty regarding the future effects of climate change, as well as the other stressors, we projected the resiliency, redundancy, and representation of Chapin Mesa milkvetch under three plausible future scenarios. Our projections incorporate three climate scenarios developed for the North Central Climate Science Center in Fort Collins, Colorado for the San Juan Basin in Southwestern Colorado; Hot and Dry, Moderately Hot, and Warm and Wet (Rondeau *et al.* 2017, Appendix D, p. 15–21). This represents the best available scientific information on potential future climate conditions within the range of Chapin Mesa milkvetch, because it is downscaled for this specific region.

The scenarios we evaluated for Chapin Mesa milkvetch are as follows (scenarios are discussed in greater detail in the SSA report (Service 2018, pp. 36–38)):

- *Scenario 1 (“Optimistic”)*: Continuation of the current land management conditions under a “warm and wet” future climate change model (RCP 4.5 emissions model);
- *Scenario 2 (“Moderate”)*: Slight increase in fire management activities (*i.e.*, fuels reduction) and infrastructure development under a “moderately hot” future climate change model (RCP 8.5 emissions model); and
- *Scenario 3 (“Pessimistic”)*: Significant increase in fire management activities and infrastructure development under a “hot and dry” future climate change model (RCP 8.5 emissions model).

We evaluated each of these scenarios in terms of how it would be expected to impact resiliency, redundancy, and representation of the species by the year

2035. We selected the year 2035 for our evaluation of future scenarios based on available climate projections specific to the San Juan Basin in southwestern Colorado, where Chapin Mesa milkvetch habitat occurs.

We anticipate that the largest Chapin Mesa milkvetch representative unit, Chapin Mesa, will continue to be occupied under all three scenarios, but with reduced levels of resiliency (Service 2018, pp. 38–42). This species inherently has, and has likely always had, a low level of redundancy and representation due to its endemism. Because there is only one large representative unit (Chapin Mesa) and three very small representative units (West Chapin Spur, Park Mesa, and Ute Mountain Ute Tribal Park), this species is at some risk from stochastic and catastrophic events, and may have low adaptability to changing conditions (Service 2018, p. 42).

The SSA report (Service 2018, entire) contains a more detailed discussion of our evaluation of the biological status of the Chapin Mesa milkvetch and the influences that may affect its continued existence. Our conclusions are based upon the best available scientific and commercial data.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. Our assessment of the current and future conditions encompasses and incorporates the threats individually and cumulatively. Our current and future condition assessment is iterative because it accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Determination of Chapin Mesa Milkvetch 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 “endangered species” or “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.” For a more detailed discussion on the factors considered when determining whether a species meets the definition of “endangered species” or “threatened species” and our analysis on how we determine the foreseeable future in making these decisions, please see the *Regulatory Framework* section above.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Chapin Mesa milkvetch. Potential stressors to the Chapin Mesa milkvetch that we evaluated include invasive, nonnative plants (Factor A); wildfires (Factor A); post-fire mitigation (Factor A); wildfire and fuels management (Factor A); trampling and herbivory (Factors A and C); development of infrastructure (Factor A); drought (Factor A); and effects of climate change (Factor A) (Service 2018, pp. 14–24). There is no evidence that overutilization (Factor B) of Chapin Mesa milkvetch, disease (Factor C), or other natural or manmade factors affecting the species (Factor E) are occurring. Existing regulatory mechanisms (Factor D) are discussed below. We evaluated each potential stressor, including its source, affected resources, exposure, immediacy, geographic scope, magnitude, and impacts on individuals and populations, and our level of certainty regarding this information, to determine which stressors were likely to be drivers of the species’ current condition (Service 2018, Appendix A).

Our analysis found that the primary drivers of the Chapin Mesa milkvetch current and future condition are the increased frequency of large, high-intensity wildfires; increasing presence of invasive, nonnative plants, especially cheatgrass; and the interaction between these elements, as explained further in the SSA report (Service 2018, p. 14–30), and summarized here. Invasive, nonnative plants compete with Chapin Mesa milkvetch for space, nutrients, and water, and their invasion has been facilitated by the increased frequency of burns, as well as the creation of fire breaks, that has occurred within Chapin Mesa milkvetch habitat (CNHP 2006, p. 4). Wildfire affects Chapin Mesa milkvetch and its habitat by eliminating the fire-sensitive pinyon-juniper woodlands and native understory that the species needs (Service 2018, p. 26), thereby opening up habitat to be colonized by nonnative grasses and

clonal shrub species. Pinyon-juniper woodlands that have been burned extensively by wildfires in the past two decades are being replaced by significant invasions of nonnative species (Floyd *et al.* 2006, p. 1). Cheatgrass was not found in unburned woodland monitoring plots, whereas cheatgrass invasion ranges from 8–58% cover in the burned monitoring plots (Rondeau 2017, p. 11). We do not have percent cover information on other invasive species within Chapin Mesa milkvetch habitat at this time. The abundance of grasses, especially cheatgrass, western wheatgrass (*Pascopyrum smithii*), and smooth brome (*Bromus inermis*), within the species’ habitat is outside the natural range of variation, resulting in a lack of bare ground and biological soil crust, and preventing natural succession or return to the pinyon-juniper woodland habitat that Chapin Mesa milkvetch needs, and also reducing the reproductive vigor of Chapin Mesa milkvetch (Rondeau 2017, pers. comm.).

Cheatgrass and other invasive, nonnative plant species have already invaded different parts of the species’ range to varying degrees. Five large, high-intensity fires in the last two decades have occurred mostly in Mesa Verde National Park and a large portion of the adjacent Mesa Verde cuesta (*i.e.*, long, sloping ridge) (Floyd *et al.* 2004, pp. 270, 283). A total of approximately 760.5 acres has burned out of the approximately 2,000 ac of Chapin Mesa milkvetch habitat in Mesa Verde National Park. Climate projections for the San Juan Basin, Colorado, where Chapin Mesa milkvetch occurs, include increased temperatures, more intense and longer lasting heat waves, a longer fire season with greater frequency and extent of fires, and an increased probability of drought (Rondeau *et al.* 2017, p. 8). These factors will likely exacerbate the frequency and extent of catastrophic wildfires and the invasion of cheatgrass on Chapin Mesa milkvetch habitat in the future.

Regulatory mechanisms (Factor D) and other management efforts by the National Park Service (NPS) and Ute Mountain Ute Tribe provide some benefit to Chapin Mesa milkvetch, as the species is located entirely within Mesa Verde National Park and the Ute Mountain Ute Tribal Park. However, these efforts have not been able to ameliorate the threat of catastrophic wildfires and nonnative, invasive species. The NPS Organic Act of 1916 (54 U.S.C. 100101 *et seq.*), as amended, states that the NPS “shall promote and regulate the use of the National Park System by means and measures that

conform to the fundamental purpose of the System units, which purpose is to conserve the scenery, natural and historic objects, and wild life in the System units and to provide for the enjoyment of the scenery, natural and historic objects, and wild life in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.” The NPS Organic Act has provided some benefit to the species by limiting many forms of human disturbance and development that might otherwise occur in unprotected areas. However, other management activities conducted within the Park, such as fuels and fire management, and the development of visitor-related infrastructure, may have direct and indirect impacts to the species. While fuels reduction activities may help decrease the likelihood of catastrophic fires, they may also have detrimental impacts such as trampling, creating surface disturbances and altering ecological conditions, or facilitating nonnative species invasion (Service 2018, pp. 19–22). The development of existing infrastructure, such as roads, parking lots, a wastewater treatment facility, and buildings within the Park has resulted in a loss of approximately 2 percent of Chapin Mesa milkvetch habitat (Service 2018, pp. 19, 23). Several additional infrastructure and fire management projects are planned or under consideration within Mesa Verde National Park (Service 2018, pp. 19, 22–23).

We do not have information regarding management or regulatory mechanisms on the Ute Mountain Ute Tribal Park. However, the fact that the species’ habitat occurs within a Tribal Park may provide some protections, as the Tribe restricts human activities and land uses within this area. The Tribal Park unit has limited road access in Chapin Mesa milkvetch habitat; however, it is not often used, except for guided tours (Service 2018, p. 32). This has likely limited the extent of any habitat loss or other human-caused disturbances to the species’ habitat.

In September 2018, Mesa Verde National Park finalized a conservation plan (Park plan) for Chapin Mesa milkvetch, which outlines how the Park will implement fire management activities, development of infrastructure, and conservation efforts to benefit Chapin Mesa milkvetch (Mesa Verde National Park, 2018). Once Mesa Verde National Park completes an implementation schedule for this recently finalized plan, the Park plan may be sufficiently certain to be implemented and sufficiently certain to be effective that it may be considered as

part of our final listing determination for the species. The goal of the Park plan is to benefit the species, and decrease the risk of the threats discussed above. Therefore, we seek public comment on this plan, whether it meets our Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (68 FR 15100, March 28, 2003) and how it may impact Chapin Mesa milkvetch. Once an implementation schedule for the Park plan has been completed, we will fully evaluate its certainty of implementation and certainty of effectiveness under the PECE policy and its anticipated impact on the species as part of our final determination on the status of Chapin Mesa milkvetch.

Similarly, in January 2020, the Ute Mountain Ute Tribe finalized a conservation plan (Tribal plan) for Chapin Mesa milkvetch, which was adopted by Resolution by the Ute Mountain Ute Tribal Council in February 2020 (Ute Mountain Ute Tribe, 2020). The Tribal plan identifies conservation strategies the Tribe will use on the Ute Mountain Ute Indian Reservation to enhance the resiliency, redundancy, and representation of Chapin Mesa milkvetch. The Tribal Plan calls for management decisions that mitigate direct and indirect impacts to the species and result in the distribution of the species across high-quality, contiguous habitat spanning a range of ecological conditions. We will continue to work with the Tribe to determine whether the Tribal plan may be sufficiently certain to be implemented and sufficiently certain to be effective that it can be considered as part of our final listing determination for the species. Therefore, we seek public comment on this plan, whether it meets our PECE Policy (68 FR 15100, March 28, 2003) and how it may impact Chapin Mesa milkvetch.

The Act defines an endangered species as any species that is “in danger of extinction throughout all or a significant portion of its range” and a threatened species as any species that “is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” We find that the Chapin Mesa milkvetch is likely to become endangered within the foreseeable future throughout all of its range. While the species currently has one large subunit with high levels of resiliency (the Chapin Mesa unburned subunit) (Service 2018, entire), as a narrow endemic with a limited range, the species as a whole has low levels of redundancy, making it vulnerable to future catastrophic events such as fire,

which are projected to occur with greater frequency and extent.

The Chapin Mesa representative unit encompasses 97 percent of the range within Mesa Verde National Park, and one or more catastrophic events could potentially affect the entire unit, or even multiple units, by eliminating or degrading the habitat conditions that the Chapin Mesa milkvetch needs to survive and successfully reproduce. Five large, high-intensity fires have already occurred in the immediate vicinity of Chapin Mesa milkvetch habitat within the last two decades. Given the increasing prevalence of nonnative, invasive species such as cheatgrass, and climate change projections, the frequency and intensity of fires is expected to increase in the future. The high potential for a future catastrophic event that could affect all or a large portion of the species’ range puts the Chapin Mesa milkvetch at increased risk of extinction in the foreseeable future. We consider the foreseeable future for the Chapin Mesa milkvetch to be approximately through the year 2035, based on available climate data specific to the San Juan Basin in Southwestern Colorado, where Chapin Mesa milkvetch habitat occurs, as discussed above. Thus, after assessing the best available information, we determine that Chapin Mesa milkvetch 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.

We find that the Chapin Mesa milkvetch is not currently in danger of extinction throughout its range because the species currently has a large representative subunit (the unburned Chapin Mesa subunit) that is considered highly resilient, based on the quality of habitat conditions for Chapin Mesa milkvetch. This large area of habitat (1,265 acres (512 hectares)) and good conditions in this subunit likely provide the Chapin Mesa milkvetch some ability to currently withstand stochastic events, such as drought, that are within the normal range of yearly variation, and to complete its life cycle. Therefore, the risk of extinction is currently low, and the species is not currently in danger of extinction throughout its range. However, the risk of one or more future catastrophic events such as severe wildfire occurring puts the species at risk of extinction in the foreseeable future due to its limited redundancy.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we find that the increased

frequency of large, high-intensity wildfires (Factor A); the increasing presence of invasive, nonnative plants, especially cheatgrass (Factor A); and the interaction between these elements put Chapin Mesa milkvetch at risk of extinction throughout its range in the foreseeable future due to its limited redundancy. Thus, after assessing the best available information, we determine that the Chapin Mesa milkvetch 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.

Determination of 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) (*Center for Biological Diversity*), 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 *Center for Biological Diversity*, 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 the Chapin Mesa milkvetch, 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.

Chapin Mesa milkvetch is a narrow endemic that functions as a single, contiguous population and occurs

within a very small area. As described in the SSA Report (Service 2018, p. 4), the species' global distribution is constrained almost entirely to Chapin Mesa in southern Colorado, with some outlying subunits on neighboring Park Mesa and West Chapin Spur (Rondeau 2017, p. 1). Chapin Mesa milkvetch habitat occupies approximately 2,000 ac (809 ha) in Mesa Verde National Park (CNHP 2010, pp. 12–19; Anderson 2004, p. 25, 30). This species is considered to consist of one large interconnected population, and like many rare plants, Chapin Mesa milkvetch is globally rare, but is locally abundant throughout its occupied habitat (Rondeau 2017, p. 1). Thus, there is no biologically meaningful way to break this limited range into portions, and the threats that the species faces affect the species throughout its entire range. This means that no portions of the species' range have a different status from its rangewide status. Therefore, no portion of the species' range can provide a basis for determining that the species is in danger of extinction in a significant portion of its range, and we determine 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).

Determination of Status

Our review of the best available scientific and commercial information indicates that the Chapin Mesa milkvetch meets the definition of a threatened species. Therefore, we propose to list the Chapin Mesa milkvetch as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the

species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary of the Interior (*i.e.*, range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.*, migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas

within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific areas, we focus on the specific features that are essential to support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for

Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and

substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Prudence Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

There is currently no imminent threat of take attributed to collection or vandalism identified under Factor B for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. We have determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to the Chapin Mesa milkvetch and that those threats in some way can be addressed by section 7(a)(2) consultation measures. The species occurs wholly in the jurisdiction of the United States and we are able to identify areas that meet the definition of critical habitat. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) have been met and because there are no other circumstances the Secretary has identified for which this designation of critical habitat would be not prudent we

have determined that the designation of critical habitat is prudent for the Chapin Mesa milkvetch.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the Chapin Mesa milkvetch is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking, or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of "critical habitat."

When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the Chapin Mesa milkvetch.

Physical or Biological Features

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. The regulations at 50 CFR 424.02 define "physical or biological features essential to the conservation of the species" as:

The features that occur in specific areas and that are essential to support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

For example, physical features might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding

or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic needed to support the life history of the species. In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

Our SSA report for the Chapin Mesa milkvetch provides the scientific information upon which this proposed critical habitat designation is based (Service 2018). A thorough account of the ecological needs of the Chapin Mesa milkvetch can be found in the SSA report (Service 2018, chapter 2), and is briefly summarized here in the context of the physical or biological features that are essential to the conservation of the species.

Space for Individual and Population Growth

Habitat: Chapin Mesa milkvetch occurs in dense pinyon-juniper woodlands of mesa tops in the Mesa Verde area and the Ute Mountain Ute Tribal Park. Chapin Mesa milkvetch is found in both old-growth and recent lightly burned pinyon-juniper woodlands. The species occurs at elevations between 6,500 to 7,500 feet (ft) (1,981 to 2,286 meters (m)). Pinyon-juniper canopy cover is an essential habitat component for Chapin Mesa milkvetch because it provides shelter from direct sunlight and freezing winter conditions. Areas of sufficient pinyon-juniper canopy cover (40 percent cover or more) provide for better habitat, and, therefore, more resilient populations.

Intact native understory is important for Chapin Mesa milkvetch because it supports pollinators and contributes to ecosystem stability. Intact native understory is comprised of four

components: Biological soil crust, native wildflowers, bare ground, and duff (dead plant material). Intact native understory communities consist of native plants, including *Purshia tridentata* (bitterbrush), *Poa fendleriana* (muttongrass), *Penstemon linarioides* (Colorado narrowleaf beardtongue), *Opuntia polyacantha* (plains pricklypear), *Yucca baccata* (yucca), *Comandra umbellata* (bastard toadflax), *Pedicularis centranthera* (Great Basin lousewort), *Polygonum sawatchense* (Sawatch knotweed), *Lupinus ammophilus* (sand lupine), *Astragalus scopulorum* (Rocky Mountain milkvetch), *Artemisia tridentata* (big sagebrush), *Juniperus osteosperma* (Utah juniper), and *Pinus edulis* (pinyon pine) (Peterson 1981, p. 13).

Space for pollinators: Chapin Mesa milkvetch requires pollination by insects to set fruit; flowers require a strong insect for pollination because the insect must force itself between the petals of the papilionaceous flowers (Green 2012, p. 2). The long-horned bee (*Eucera fulvitaris*), Anthophorid bees, and Bombyliid flies have been observed pollinating Chapin Mesa milkvetch. These large pollinators are essential to Chapin Mesa milkvetch for long-term successful reproduction and conservation of the plant. We have identified pollinators and their associated habitats as an essential biological feature for Chapin Mesa milkvetch.

Soils: Chapin mesa milkvetch grows primarily in deep, reddish, loess (loosely packed, windblown sediment) soils, with a loam to sandy loam texture.

Climate: As discussed above, spring and winter (snow) precipitation that is greater than 25 percent below the 30-year average (1971–2000) (*i.e.*, greater than 3.24 inches and 3.46 inches, respectively) provides appropriate soil moisture for the Chapin Mesa milkvetch. The emergence and density of Chapin Mesa milkvetch are strongly tied to winter precipitation. Years with “wet” winters (precipitation falling primarily as snow) precede high density counts, and years with dry winters translate to low or no emergence (Rondeau 2017, p. 3). Climate requirements for seedling emergence and survival are not well known; however, we infer that spring moisture is also critical, as seedling survival relies on growing deep roots quickly (Rondeau 2017, p. 9). It is likely that winter moisture coupled with winter temperature is also important for seedlings due to available soil moisture for seedling survival (Rondeau 2017, p. 16).

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of the Chapin Mesa milkvetch from studies of this species’ habitat, ecology, and life history as described above. Additional information can be found in the Chapin Mesa Milkvetch Species Status Assessment Report (Service 2018). We have determined that the following physical or biological features are essential to the conservation of the Chapin Mesa milkvetch:

(1) Deep, reddish, loess soils with a loam to sandy loam soil texture.

(2) Pinyon juniper canopy cover of at least 40 percent.

(3) Elevations from 6,500 to 7,500 feet (1,981 to 2,286 meters), primarily on mesa tops.

(4) Intact native understory with plant communities that are reflective of historical community composition, and with biological soil crust, bare ground, and duff present.

(5) Habitat for pollinators, including:

(a) Nesting and foraging habitats that are suitable for a wide array of large pollinators and their life-history requirements; and

(b) Connectivity between areas that allow pollinators to move from site to site within each subpopulation of Chapin Mesa milkvetch.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of the Chapin Mesa milkvetch may require special management considerations or protections to reduce the following threats: Competition with nonnative, invasive plant species (*i.e.*, cheatgrass, musk thistle, etc.); wildfire; fire management activities; development of infrastructure; and the effects of drought and climate change. Management activities that could help ameliorate these threats include, but are not limited to, invasive species management; fuels reduction and thinning; and timing restrictions on these activities, as well as habitat restoration projects.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data

available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are proposing to designate critical habitat in areas within the geographical area occupied by the species at the time of listing. We consider any proposed unit “occupied” if the plant persists within the unit, as explained below.

Currently occupied habitat areas on West Chapin Spur and Park Mesa are confined to small patches (ranging in size from 8 to 52 acres). The area surrounding these occupied patches appears to contain similar habitat, although the species has not been found there. Chapin Mesa milkvetch requires large pollinators, and the small patches of occupied habitat on West Chapin Spur and Park Mesa may not, by themselves, provide enough habitat to support pollinators. In addition, these patches of occupied habitat likely have low resiliency to stochastic events due to their small size. The areas surrounding these patches are also included within the proposed occupied units because they provide space for population expansion that would increase the resiliency of these units, provide connectivity between individual patches of occupied habitat, and support the large pollinators that Chapin Mesa milkvetch needs to support reproduction.

The SSA report contains much of the information used to identify critical habitat for the Chapin Mesa milkvetch, which includes existing State and National Park monitoring data, population status surveys, and relevant Geographic Information Systems (GIS) layers (Service 2018).

Areas Occupied at the Time of Listing

The proposed critical habitat designation includes all areas that are known to be occupied by the species, based on survey data by CNHP. We consider any proposed unit “occupied” if the plant occurs within the unit. The units all contain the physical or biological features within their boundaries (although not all of the physical or biological features may be found in every location within each occupied unit), and include parts of Chapin Mesa, West Chapin Spur, and Park Mesa. As the data on occupied areas within the Ute Mountain Ute

Tribal Park are very coarse scale and not recent (from 1987), we refine the boundaries of this proposed unit to only include areas on Chapin Mesa, where the species is actually known to occur, as described below.

Areas Outside of the Geographic Range at the Time of Listing

We are not currently proposing to designate any areas outside the geographical area occupied by the Chapin Mesa milkvetch.

Summary

In summary, for areas within the geographic area occupied by the species at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

Areas that are considered to be occupied at the time of listing, and that contain the physical or biological features to support life-history functions that are essential for the conservation of the species. These areas are consistent with the identified representative units in the SSA report that were derived using GIS polygons from CNHP. However, the Ute Mountain Ute Tribal Park unit (proposed Unit 4) was further refined to exclude valleys and other mesa tops where the species has not previously been found. While we recognize this unit has artificially straight boundaries on the north and west sides, this is based on the best available information on occupied areas within the Ute Mountain Ute Tribal Park. Areas that surround the occupied areas in the Park Mesa Unit (proposed Unit 2) and the West Chapin Spur Unit (proposed Unit 3) that contain the physical or biological features to support life-history functions that are essential for the conservation of the species are included in this proposed critical habitat designation. These proposed units were derived using: (1) An 800-meter (0.5-mile) distance around occupied polygons to provide for sufficient supporting habitat for the Chapin Mesa milkvetch’s insect pollinators (Walther-Hellwig, K. and R. Frankl. 2000, pp. 299–306); (2) specific elevation ranges of 7,090–7,411 ft (2,161–2,259 m) and 6,952–7,126 ft (2,119–2,172 m), respectively, that are within the elevation ranges occupied by the species; and (3) vegetation type. These elevations were determined through a GIS exercise that identified the high and low points of both Park Mesa and West Chapin Spur; this was done to exclude drainages and valleys, where the species is not known to persist, from the occupied units.

When determining proposed critical habitat boundaries, we made every

effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the Chapin Mesa milkvetch. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is made final as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We are proposing for designation of critical habitat lands that we have determined are occupied at the time of listing (*i.e.*, currently occupied) and contain the physical or biological features that are essential to support life-history processes of the Chapin Mesa milkvetch. We are proposing four units for designation based on the physical or biological features being present to support Chapin Mesa milkvetch’s life-history processes. These units all contain the physical or biological features to support Chapin Mesa milkvetch within their boundaries (although not all of the physical or biological features may be found in every location within each unit).

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in Proposed Regulation Promulgation. We include more detailed information on the boundaries of the proposed critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on <http://www.regulations.gov> at Docket No. FWS–R6–ES–2018–0055, and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT**, above).

Proposed Critical Habitat Designation

We are proposing four units as critical habitat for the Chapin Mesa milkvetch. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Chapin Mesa milkvetch. The areas we

propose as critical habitat are: (1) Chapin Mesa Unit; (2) Park Mesa Unit; (3) West Chapin Spur Unit; and (4) Ute

Mountain Ute Tribal Park Unit. Table 1 displays the occupancy status of the units, landownership, and approximate

areas of the proposed designated areas for Chapin Mesa milkvetch.

TABLE 1—PROPOSED CRITICAL HABITAT UNITS AND OCCUPANCY OF CHAPIN MESA MILKVETCH

Unit No.	Unit name	Occupancy/presence	Ownership	Acres (hectares)
1	Chapin Mesa	Occupied	Mesa Verde National Park	1,976 (800)
2	Park Mesa	Occupied	Mesa Verde National Park	417 (167)
3	West Chapin Spur	Occupied	Mesa Verde National Park	101 (41)
4	Ute Mountain Ute Tribal Park	Occupied	Ute Mountain Ute Tribal Park	1,141 (462)
Total				3,635 (1,471)

We present brief descriptions of all proposed units, and reasons why they meet the definition of critical habitat for the Chapin Mesa milkvetch, below.

Unit 1: Chapin Mesa

Unit 1 consists of 1,976 ac (800 ha) on the northern end of Chapin Mesa that is within Mesa Verde National Park (MVNP). Chapin Mesa milkvetch is distributed, at some level, throughout this entire unit; this unit contains the physical or biological features essential to the conservation of the species. This is the largest unit that contains large areas of intact habitat; however, the physical or biological features are not distributed equally throughout the unit. This unit may require special management considerations or protections to address threats such as wildfire, development of infrastructure, wildfire and fuels reduction activities, livestock removal activities, maintenance of park infrastructure, and weed management activities.

Unit 2: Park Mesa

Unit 2 consists of 417 ac (167 ha) on neighboring Park Mesa (to the northeast of Chapin Mesa) that is within MVNP. Chapin Mesa milkvetch is sparsely distributed throughout this unit; this unit contains the physical or biological features essential to the conservation of the species. This unit may require special management considerations or protections to address threats such as weed management activities, wildfire, wildfire and fuels reduction activities, and livestock removal activities.

Unit 3: West Chapin Spur

Unit 3 consists of 101 ac (41 ha) on neighboring West Chapin Spur (to the west of Chapin Mesa) that is within MVNP. Chapin Mesa milkvetch is sparsely distributed throughout this unit. This unit contains the physical or biological features essential to the conservation of the species; however, the habitat in this unit was highly altered by the Long Mesa Fire of 2002,

leaving small areas of intact habitat where Chapin Mesa milkvetch persists. This unit may require special management considerations or protections to address threats such as weed management activities, wildfire, wildfire and fuels reduction activities, and livestock removal activities.

Unit 4: Ute Mountain Ute Tribal Park

Unit 4 consists of 1,141 ac (462 ha) on the southern end of Chapin Mesa that is within the Ute Mountain Ute Tribal Park. Chapin Mesa milkvetch is distributed throughout this unit; this unit contains the physical or biological features essential to the conservation of the species. This unit contains large areas of intact habitat. This unit may require special management considerations or protections to address threats such as weed management activities, wildfire, wildfire and fuels reduction activities, and livestock removal activities.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final regulation with a revised definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat

as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define “reasonable and prudent alternatives” (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director of the Service's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

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

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation, we have listed a new species or designated critical habitat that may be affected by the Federal action, or the action has been modified in a manner that affects the species or critical habitat in a way not considered in the previous consultation. In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the "Adverse Modification" Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities

involving a Federal action that may violate 7(a)(2) of the Act by destroying or adversely modifying such designation.

Activities that the Services may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would remove or significantly alter habitat. Such activities could include, but are not limited to, road maintenance, recreation or maintenance of recreational trails, wildfire and fuels reduction activities, development of infrastructure, infrastructure maintenance, weed management activities, and livestock removal activities (as a result of trespass issues from cattle and wild horses). These activities could eliminate or reduce intact habitat or result in loss of Chapin Mesa milkvetch plants.

(2) Actions that would result in the introduction, spread, or augmentation of nonnative, invasive plant species. Such activities could include, but are not limited to, post fire seeding activities or weed management activities. These activities could introduce or open habitat up for nonnative, invasive plant species that compete with Chapin Mesa milkvetch for space and nutrients.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under [section 101 of the Sikes Act (16 U.S.C. 670a)], if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation." There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation.

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

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the

benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive due to the protection from destruction of adverse modification as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

In the case of Chapin Mesa milkvetch, the benefits of critical habitat include public awareness of the presence of Chapin Mesa milkvetch and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for Chapin Mesa milkvetch due to protection from destruction or adverse modification of critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. Continued implementation of an ongoing management plan that provides equal to or more conservation than a critical habitat designation would reduce the benefits of including that specific area in the critical habitat designation.

We evaluate the existence of a conservation plan when considering the benefits of inclusion. We consider a variety of factors, including, but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion,

we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

The final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES**).

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land and water uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both “with critical habitat” and “without critical habitat.” The “without critical habitat” scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.*, under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.*, conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the

species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species.

In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Chapin Mesa milkvetch (Abt Associates 2018). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.*, absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that would protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that would be already subject to such protections and are, therefore, unlikely to incur incremental economic impacts.

Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The screening analysis also assesses whether units are unoccupied by the species and may require additional management or conservation efforts as a result of the critical habitat designation for the species which may incur incremental economic impacts. This screening analysis, combined with the information contained in our IEM, is what we consider our draft economic analysis of the proposed critical habitat designation for the Chapin Mesa milkvetch and is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely to be affected by the critical habitat designation. In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the Chapin Mesa milkvetch, first we identified, in the IEM dated May 2, 2018, probable incremental economic impacts associated with the following categories of activities: (1) Federal lands management activities (National Park Service); (2) road and trail construction and maintenance; (3) wildfire and fuels reduction activities; (4) weed management activities; (5) livestock removal activities; (6) development of infrastructure and maintenance; and (7) recreation (including camping, hiking, and biking). We considered each activity or category individually. Additionally, we considered whether the activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If Chapin Mesa milkvetch is listed under the Act, in areas where the species is present, Federal agencies already would be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designation (*i.e.*, difference between the jeopardy and adverse modification standards) for the Chapin Mesa milkvetch. Because the designation of critical habitat for Chapin

Mesa milkvetch is being proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which would result solely from the designation of critical habitat.

However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to the Chapin Mesa milkvetch would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the Chapin Mesa milkvetch totals approximately 3,635 ac (1,471 ha), of which approximately 69 percent is owned and managed by the Federal Government (located within MVNP) and approximately 31 percent is owned and managed by the Ute Mountain Ute Tribe. Actions that may affect the species or its habitat would also affect designated critical habitat, and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of Chapin Mesa milkvetch. Therefore, only administrative costs are expected for the approximately 69 percent of the proposed critical habitat designation that occurs on Federal lands. Administrative costs include the additional effort from the Service and the federal action agency to consider critical habitat for Chapin Mesa milkvetch in a section 7 consultation that already considers the presence of Chapin Mesa milkvetch. The remaining 31 percent of the proposed critical habitat designation is found in remote areas, where limited activity takes place, on Tribal lands.

The proposed critical habitat designation for the Chapin Mesa milkvetch is unlikely to generate costs exceeding \$100 million in a single year, because the species is present in all of the proposed critical habitat areas, and

the only incremental costs that are predicted are the administrative costs of considering adverse modification during section 7 consultations, as noted above (Abt Associates 2018). No additional Federal or Tribal laws are expected to be triggered due to the proposed designation of critical habitat, and no State or local laws or regulations apply, as the proposed designation is solely on Federal and Tribal lands. Stigma effects are likely to be minimal because National Park Service and Ute Mountain Ute Tribal Reservation regulations already limit land uses in all proposed critical habitat units.

There is no information to indicate that any concentration of impacts to any geographic area or sector is likely (Abt Associates 2018). Unit 1 (the Chapin Mesa unit) has greater potential for section 7 consultations because of the number of projects that could affect the species, relative to the other units, which are more remote. However, the incremental costs of those section 7 consultations are likely to be very small. In summary, we conclude that the proposed critical habitat designation for Chapin Mesa milkvetch is unlikely to generate incremental costs exceeding \$100 million in a single year.

As we stated earlier, we are soliciting data and comments from the public on the draft economic analysis, as well as all aspects of the proposed rule and our required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Exclusions

Based on the information provided by entities seeking exclusion, as well as any additional public comments we receive, we will evaluate whether certain lands in the proposed critical habitat Unit 4 (Ute Mountain Ute Tribal Park) are appropriate for exclusion from the final designation under section 4(b)(2) of the Act. If the analysis indicates that the benefits of excluding lands from the final designation outweigh the benefits of designating those lands as critical habitat, then the Secretary may exercise his discretion to exclude the lands from the final designation.

We are considering whether or not to exclude proposed Unit 4 (Ute Mountain Ute Tribal Park unit) under section 4(b)(2) of the Act from the final critical

habitat designation for the Chapin Mesa milkvetch. In that proposed unit, 1,141 ac (462 ha) meet the definition of critical habitat, but are all being considered for possible exclusion from the final critical habitat designation, as they occur within a Tribal Park where human activity and land uses are restricted, as explained further below. In addition, the Tribe has finalized a conservation plan intended to benefit the conservation of Chapin Mesa milkvetch and its habitat, and we will consider this Tribal plan as appropriate in our determination on whether to exclude this unit. We specifically solicit comments on the inclusion of this area in, or the exclusion of this area from, the final critical habitat designation. In the paragraphs below, we provide a detailed analysis of our consideration of these lands for exclusion under section 4(b)(2) of the Act.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared an analysis of the economic impacts of the proposed critical habitat designation and related factors. The Service has identified the following land-use activities that may affect Chapin Mesa milkvetch proposed critical habitat within Federal lands: road maintenance, recreation or maintenance of recreational hiking trails, fire management plans, development of infrastructure, and infrastructure maintenance. Within Tribal lands, the Service has not identified any activities that may affect the Chapin Mesa milkvetch due to the remoteness of the proposed critical habitat unit and because the Tribe restricts visitor activities and land uses within the area containing proposed Unit 4.

During the development of a final designation, we will consider any additional economic impact information we receive during the public comment period, and, as such, areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Impacts on National Security and Homeland Security

In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the Chapin Mesa milkvetch are not owned, managed, or utilized by the Department of Defense or the Department of Homeland Security, and, therefore, we anticipate no impact on

national security. Consequently, the Secretary does not intend to exercise his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

Tribal Lands

There are several Executive Orders, Secretarial Orders, and policies that relate to working with Tribes, as described further below. These guidance documents generally confirm our trust responsibilities to Tribes, recognize that Tribes have sovereign authority to control Tribal lands, emphasize the importance of developing partnerships with Tribal governments, and direct the Service to consult with Tribes on a government-to-government basis.

A joint Secretarial Order that applies to both the U.S. Fish and Wildlife Service and the National Marine Fisheries Service, Secretarial Order 3206, “American Indian Tribal Rights, Federal—Tribal Trust Responsibilities, and the Endangered Species Act” (June 5, 1997) (S.O. 3206), is the most comprehensive of the various guidance documents related to Tribal relationships and Act implementation, and it provides the most detail directly relevant to the designation of critical habitat. In addition to the general direction discussed above, S.O. 3206 explicitly recognizes the right of Tribes to participate fully in the listing process, including designation of critical habitat. The appendix (sec. 3(B)(4)) to the Order also states, “Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of the listed species

can be achieved by limiting the designation to other lands.” In light of this instruction, when we undertake a discretionary 4(b)(2) exclusion analysis, we will always consider exclusions of Tribal lands under section 4(b)(2) of the Act prior to finalizing a designation of critical habitat, and will give great weight to Tribal concerns in analyzing the benefits of exclusion.

However, S.O. 3206 does not preclude us from designating Tribal lands or waters as critical habitat, nor does it state that Tribal lands or waters cannot meet the Act’s definition of “critical habitat.” We are directed by the Act to identify areas that meet the definition of “critical habitat” (*i.e.*, areas occupied at the time of listing that contain the essential physical or biological features that may require special management or protection and unoccupied areas that are essential to the conservation of a species), without regard to landownership. While S.O. 3206 provides important direction, it expressly states that it does not modify the Secretaries’ statutory authority.

Ute Mountain Ute Tribal Management or Conservation Plan or Partnership: Proposed Unit 4 of Chapin Mesa milkvetch critical habitat occurs entirely within Ute Mountain Ute Tribal lands, managed as a Tribal Park. The Tribe allows only limited human activities within the Tribal Park, such as guided tours, and there is limited road access within Chapin Mesa milkvetch habitat in this area (Service 2018, p. 32). This type of management by the Tribe has likely protected the Chapin Mesa milkvetch and its habitat from most human-caused disturbance and development. In addition, in January 2020, the Ute Mountain Ute Tribe finalized a conservation plan for Chapin Mesa milkvetch, which identifies conservation strategies the Tribe will use on the Ute Mountain Ute Indian Reservation to enhance the resiliency, redundancy, and representation of Chapin Mesa milkvetch. We will evaluate the certainty of implementation and effectiveness of this Tribal plan, and how it may impact the species, along with the protections already provided by existing management of Tribal Park. We intend to give strong consideration to exclusion of proposed critical habitat unit 4 from our final critical habitat determination.

A final determination on whether the Secretary will exercise his discretion to exclude this area from critical habitat for the Chapin Mesa milkvetch will be made when we publish the final rule designating critical habitat. We will take into account public comments and

carefully weigh the benefits of exclusion versus inclusion of this area.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies; private organizations; and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species.

The recovery planning process involves the identification of actions that are necessary to halt or reverse the species’ decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems. Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (*i.e.*, “downlisting”) or removal from the Lists of Endangered and Threatened Wildlife and Plants (*i.e.*, “delisting”), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental

organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (<http://www.fws.gov/angered>), or from our Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (e.g., restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands. If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the State of Colorado would be eligible for Federal funds to implement management actions that promote the protection or recovery of the Chapin Mesa milkvetch. Information on our grant programs that are available to aid species recovery can be found at: <http://www.fws.gov/grants>.

Although the Chapin Mesa milkvetch is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of

proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the National Park Service (Mesa Verde National Park).

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 Chapin Mesa milkvetch's 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 as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of the Chapin Mesa milkvetch. As discussed in the Summary of Biological Status and Threats section, the Service has concluded that the Chapin Mesa milkvetch is at risk of extinction within the foreseeable future primarily due to the increased frequency of large, high-intensity wildfires; increasing presence of invasive, nonnative plants, especially cheatgrass; and the interaction between these elements. The provisions of this proposed 4(d) rule would promote conservation of the Chapin Mesa milkvetch by encouraging management of the landscape in ways that meet land management considerations while meeting the conservation needs of the Chapin Mesa milkvetch. The provisions of this rule are one of many tools that the Service will use to promote the conservation of the Chapin Mesa milkvetch. This proposed 4(d) rule would apply only if and when the Service makes final the listing of the Chapin Mesa milkvetch as a threatened species.

Provisions of the Proposed 4(d) Rule

The proposed 4(d) rule would make it illegal for any person subject to the jurisdiction of the United States to remove and reduce to possession the species 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 Chapin Mesa milkvetch by prohibiting activities that would be detrimental to the species.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened plants under certain circumstances. Regulations governing permits are codified at 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 for 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 proposed 4(d) rule only addresses Federal Endangered Species Act requirements, and would not change any prohibitions provided for by State law. Additionally, 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 Chapin Mesa milkvetch. However, the consultation process may be further streamlined through planned programmatic consultations between Federal agencies and the Service for these activities. This proposed 4(d) rule would apply only if and when the Service makes final the listing of Chapin Mesa milkvetch as threatened.

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).

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within

the range of the species proposed for listing. Based on the best available information, the following actions are unlikely to result in a violation of section 9, if these activities are carried out in accordance with existing regulations and permit requirements; this list is not comprehensive:

(1) Normal nonnative, invasive species control practices, such as herbicide use, which are carried out in accordance with any existing regulations, permit and label requirements, and best management practices;

(2) Annual monitoring efforts; and

(3) Additional surveys to understand the extent of occupied habitat.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act; this list is not comprehensive:

(1) Unauthorized damage or collection of Chapin Mesa milkvetch from lands under Federal jurisdiction; and

(2) Destruction or degradation of the species' habitat on lands under Federal jurisdiction, including the intentional introduction of nonnative organisms that compete with, consume, or harm Chapin Mesa milkvetch.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

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:

- (1) Be logically organized;
- (2) Use the active voice to address readers directly;
- (3) Use clear language rather than jargon;
- (4) Be divided into short sections and sentences; and
- (5) 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 the rule, your comments should be as specific as possible. For example, you should tell us the numbers 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.

Regulatory Planning and Review *(Executive Orders 12866 and 13563)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has waived their review regarding their significance determination of this proposed rule.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Executive Order 13771

We do not believe this proposed rule is an E.O. 13771 ("Reducing Regulation and Controlling Regulatory Costs") (82 FR 9339, February 3, 2017) regulatory action because we believe this rule is not significant under E.O. 12866; however, the Office of Information and Regulatory Affairs has waived their review regarding their E.O. 12866 significance determination of this proposed rule.

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

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual

basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this proposed critical habitat designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

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

rulemaking, the Service certifies that, if promulgated, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

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

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that this proposed designation of critical habitat will significantly affect energy supplies, distribution, or use. We are not aware of any energy-related activities or facilities within the boundaries of the proposed critical habitat designation. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

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

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.), we make the following findings:

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of

assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding,” and the State, local, or tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7.

While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because all of the lands being proposed for critical habitat designation are either Federal or Tribal lands. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Chapin Mesa milkvetch in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of

critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this designation of critical habitat for Chapin Mesa milkvetch would not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies in Colorado. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule would not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government.

The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may

affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the species. The proposed areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

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

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 et seq.) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when

the range of the species includes States within the Tenth Circuit, such as that of Chapin Mesa milkvetch, under the Tenth Circuit ruling in *Catron County Board of Commissioners v. U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we undertake a NEPA analysis for critical habitat designation. We invite the public to comment on the extent to which this proposed regulation may have a significant impact on the human environment, or fall within one of the categorical exclusions for actions that have no individual or cumulative effect on the quality of the human environment. We will complete our analysis, in compliance with NEPA, before finalizing this proposed rule.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

There are Tribal lands within the Ute Mountain Ute Tribal Park included in this proposed designation of critical habitat, representing one of the four units and 31 percent of the proposed critical habitat designation. Using the criteria found in *Criteria Used To Identify Critical Habitat*, we have determined that the area proposed for designation on Tribal lands is occupied and contains the physical or biological features essential to the conservation of the species. We have coordinated with the Ute Mountain Ute Tribe regarding the species status assessment that informed this proposed listing determination, and provided the Tribe with an opportunity to review the SSA report. We will continue to coordinate with the Tribe throughout the development of the final listing determination and designation of critical habitat for Chapin Mesa

milkvetch, and we will evaluate the conservation plan for Chapin Mesa milkvetch that was finalized by the Tribe in January 2020. We will give strong consideration to excluding Tribal lands from the final critical habitat designation to the extent consistent with the requirements of 4(b)(2) of the Act.

References Cited

A complete list of references cited in this rulemaking is available on the internet at <http://www.regulations.gov> and upon request from the Colorado Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Mountain Prairie Regional Office and the Colorado Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—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(h) by adding an entry for “*Astragalus schmolliae*” in alphabetical order under FLOWERING PLANTS to the List of Endangered and Threatened 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>Astragalus schmolliae</i> . *	* Chapin Mesa milkvetch. *	* Wherever found .. *	* T .. *	* [Federal Register citation when published as a final rule]; 50 CFR 17.73(c); ^{4d} 50 CFR 17.96(a). ^{CH} *

■ 3. Add § 17.73 to read as set forth below:

§ 17.73 Special rules—flowering plants.

- (a) [Reserved]
- (b) [Reserved]
- (c) *Astragalus schmolliae* (Chapin Mesa milkvetch).

(1) *Prohibitions.* The following prohibitions that apply to endangered plants also apply to Chapin Mesa milkvetch. Except as provided under paragraph (c)(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) Remove and reduce to possession from areas under Federal jurisdiction, as set forth at § 17.61(c)(1) for endangered plants.

(ii) 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.

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by a permit under § 17.72.

(ii) Remove and reduce to possession from areas under Federal jurisdiction as set forth at § 17.71(b).

■ 4. Amend § 17.96(a) by adding an entry for “*Astragalus schmolliae* (Chapin Mesa milkvetch)” in alphabetical order under Family Fabaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Fabaceae: *Astragalus schmolliae* (Chapin Mesa milkvetch)

(1) Critical habitat units are depicted for Montezuma County, Colorado, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of Chapin Mesa milkvetch consist of the following components:

- (i) Deep, reddish, loess soils with a loam to sandy loam soil texture.
- (ii) Pinyon juniper canopy cover of at least 40 percent.
- (iii) Elevations from 6,500 to 7,500 feet (1,981 to 2,286 meters), primarily on mesa tops.

(iv) Intact native understory with plant communities that are reflective of historical community composition, and with biological soil crust, bare ground, and duff present.

(v) Habitat for pollinators, including:

(A) Nesting and foraging habitats that are suitable for a wide array of large

pollinators and their life-history requirements; and

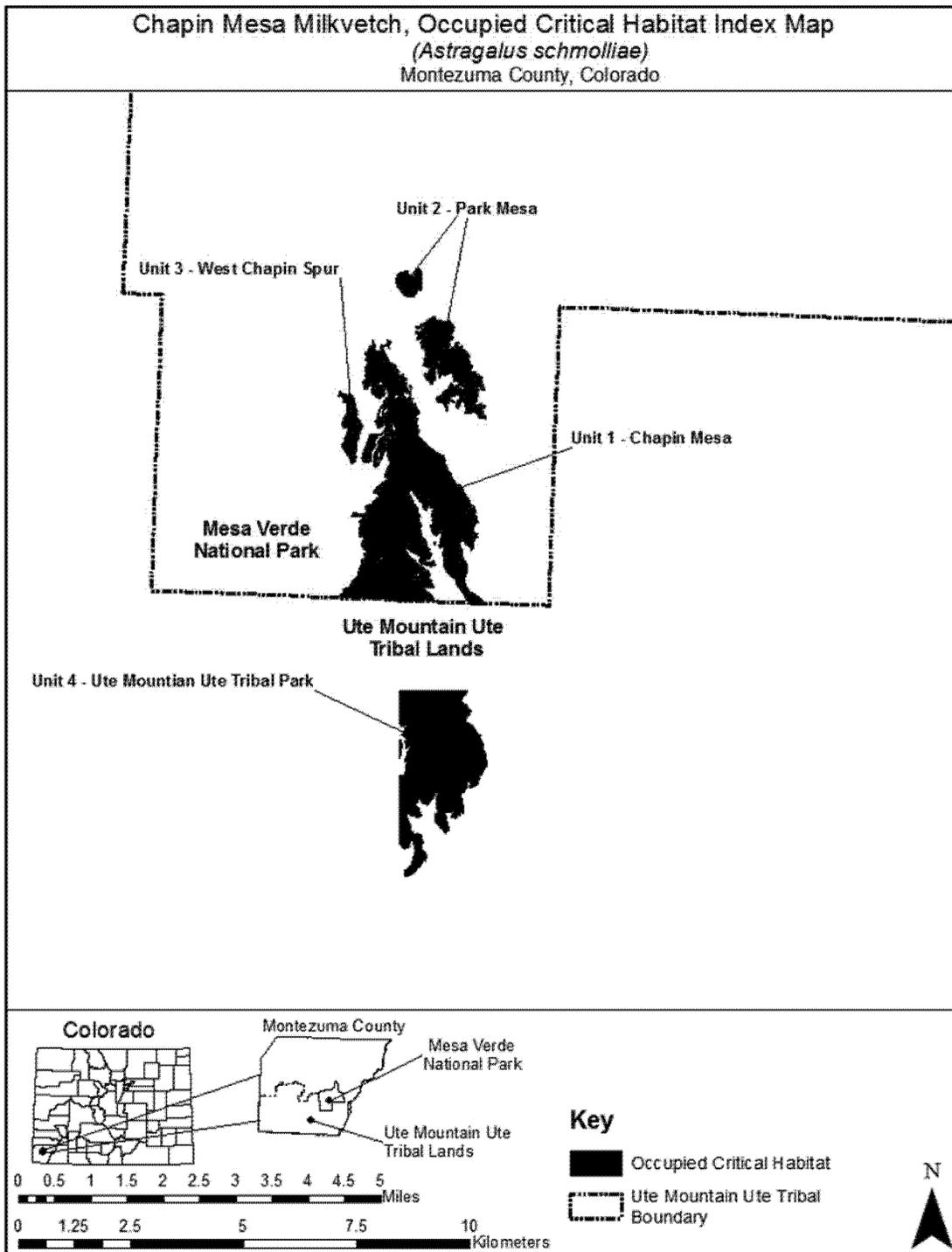
(B) Connectivity between areas that allow pollinators to move from site to site within each subpopulation of Chapin Mesa milkvetch.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on the effective date of this rule.

(4) *Critical habitat map units.* Data layers defining map units were created on a base of the National Agriculture Imagery Program aerial imagery file, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) Zone 13N coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at <http://www.regulations.gov> at Docket No. FWS–R6–ES–2018–0055 and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) *Note:* Index map follows:

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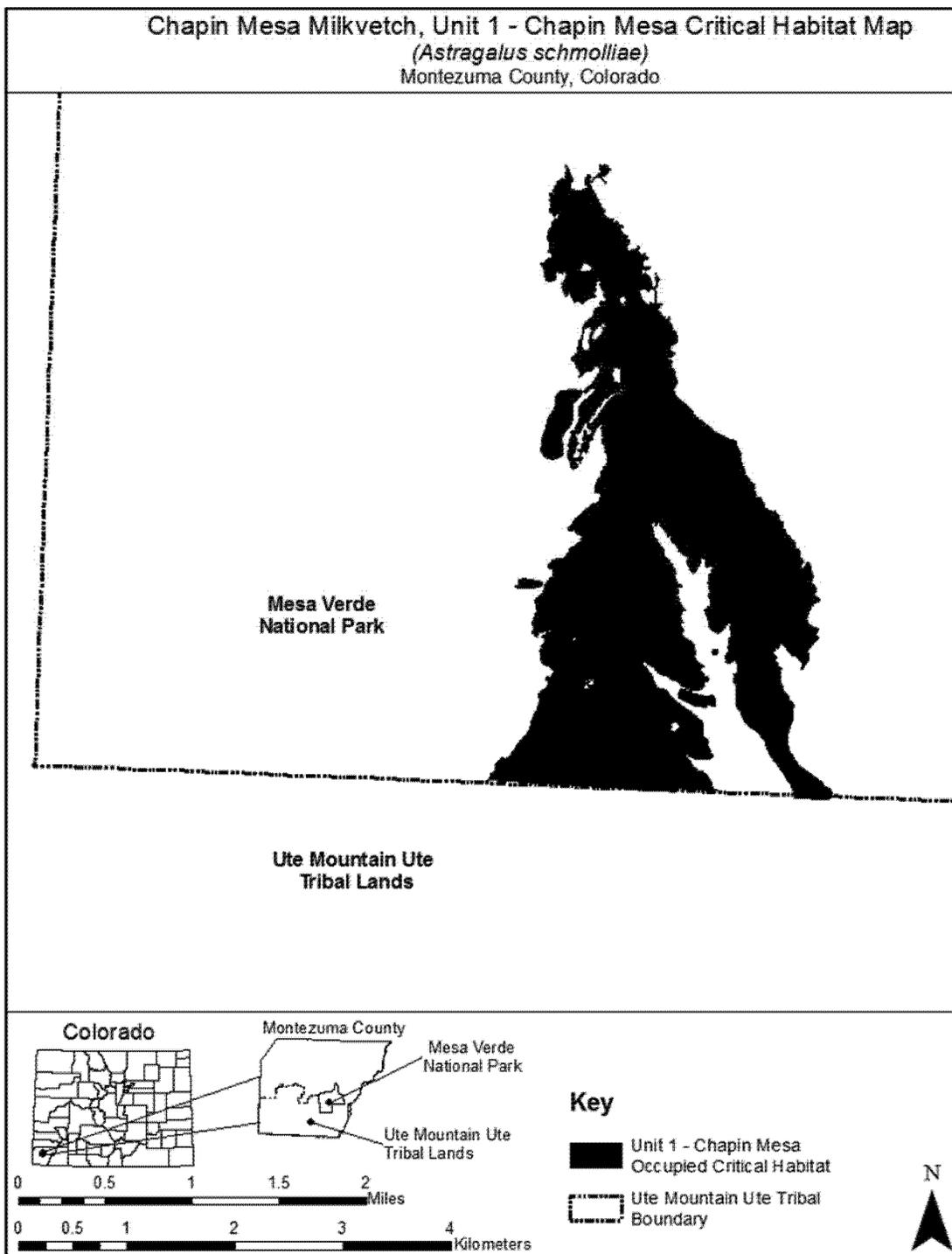


(6) *Unit 1*: Chapin Mesa, Montezuma County, Colorado.

(i) *General description*: Unit 1 consists of 1,976 acres (800 hectares) in Montezuma County, Colorado, and is

composed of lands in Mesa Verde National Park.

(ii) Map of Unit 1 follows:

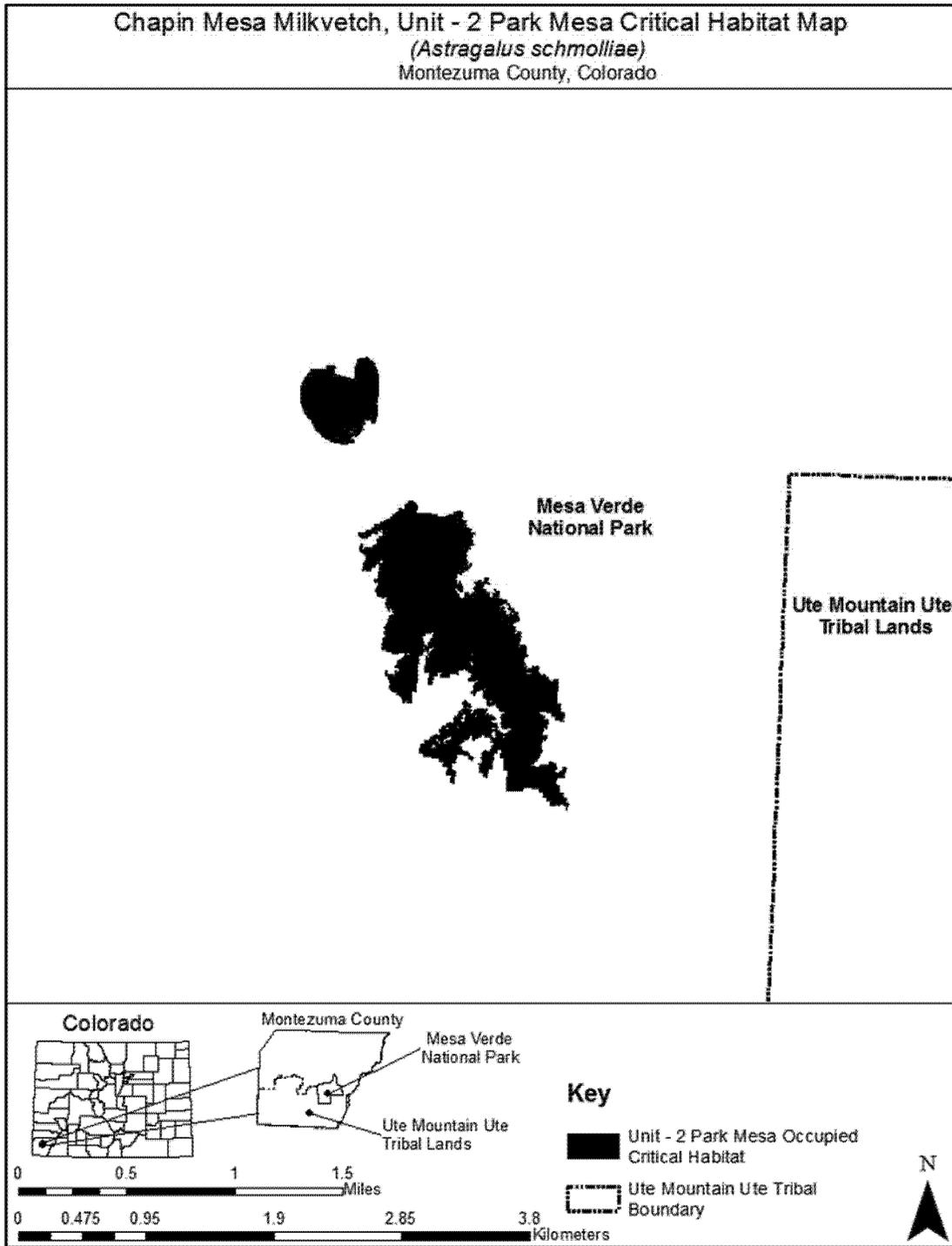


(7) Unit 2: Park Mesa, Montezuma County, Colorado.

(i) General description: Unit 2 consists of 417 acres (167 hectares) in Montezuma County, Colorado, and is

composed of lands in Mesa Verde National Park.

(ii) Map of Unit 2 follows:

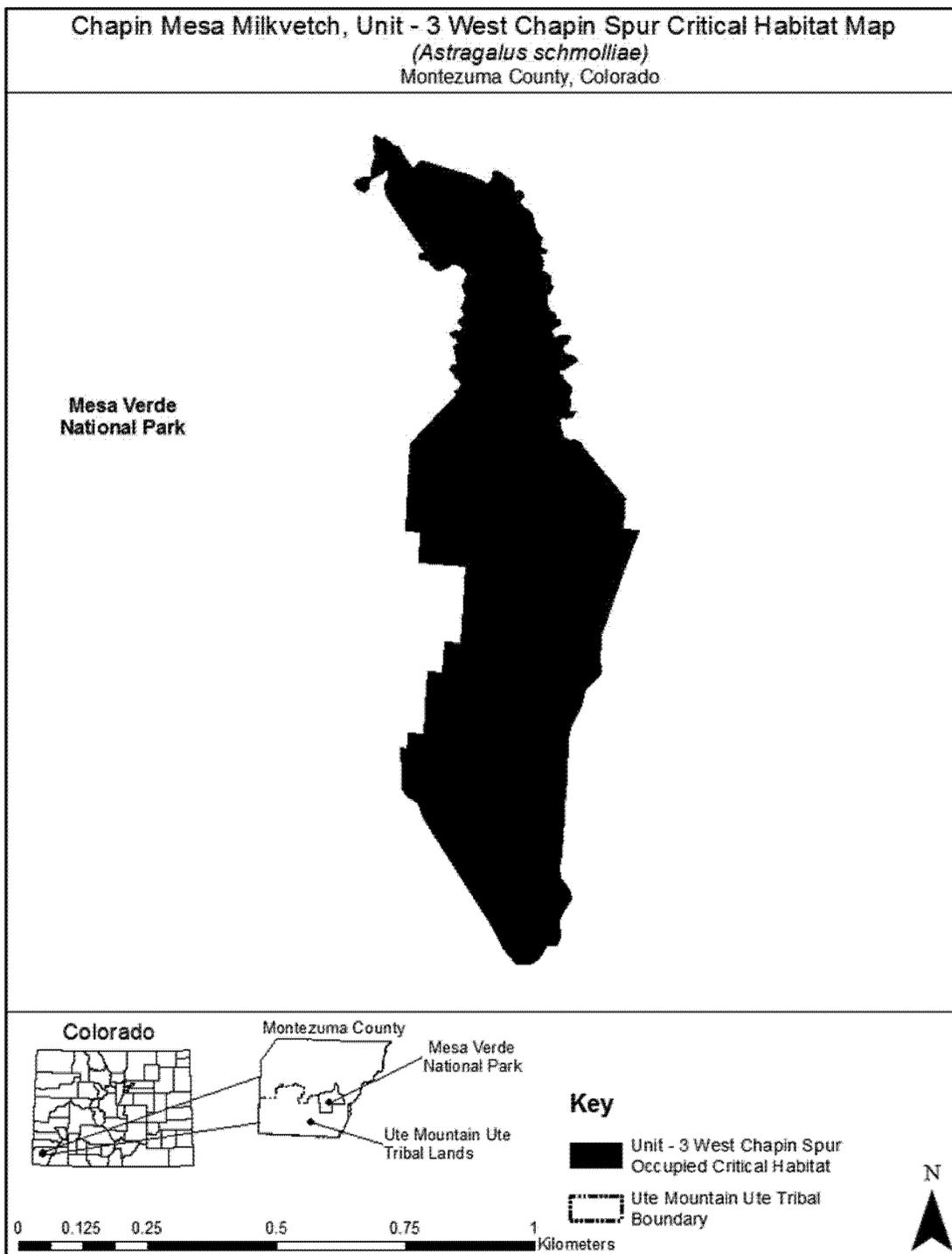


(8) Unit 3: West Chapin Spur, Montezuma County, Colorado.

(i) General description: Unit 3 consists of 101 acres (41 hectares) in Montezuma County, Colorado, and is

composed of lands in Mesa Verde National Park.

(ii) Map of Unit 3 follows:

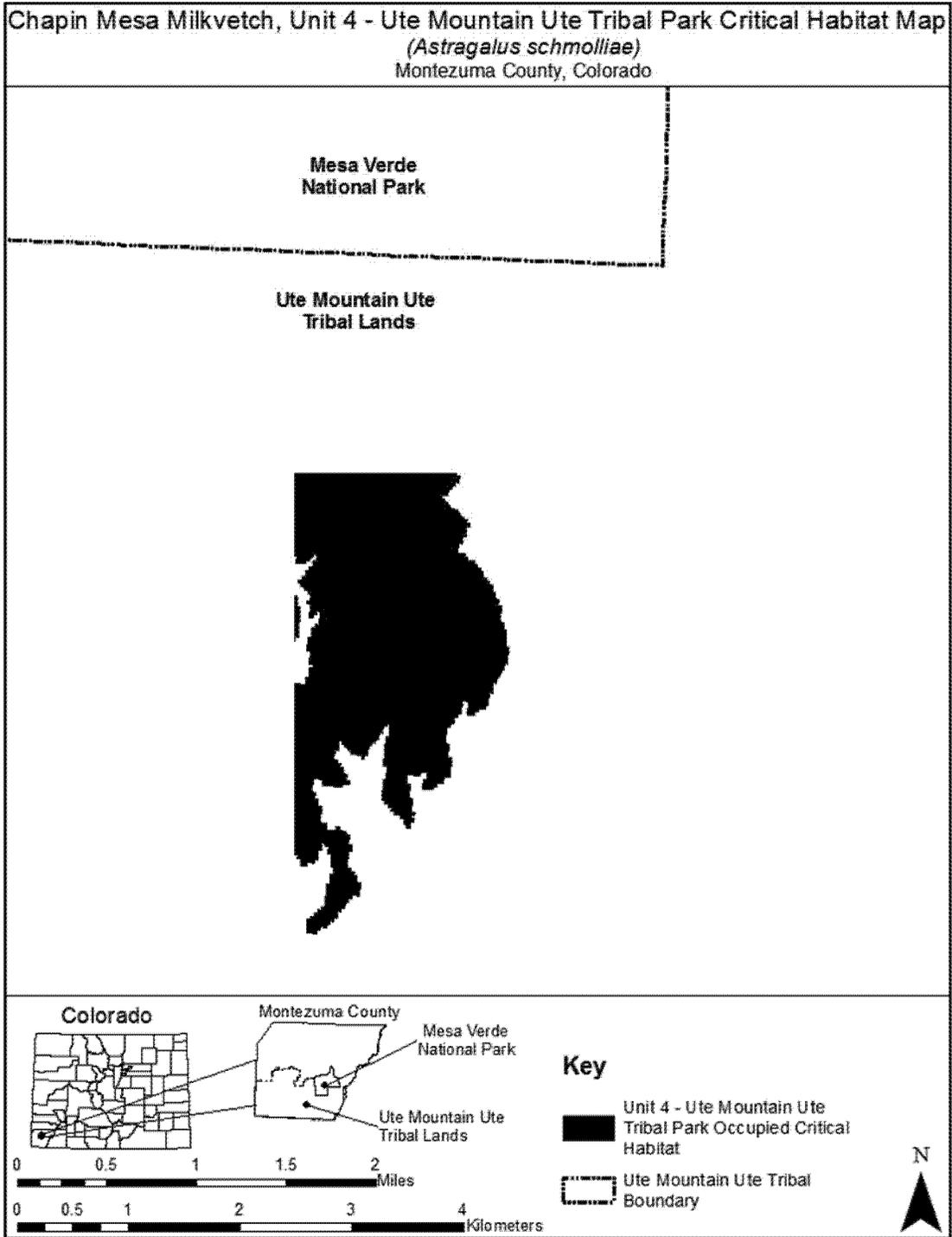


(9) *Unit 4:* Ute Mountain Ute Tribal Park, Montezuma County, Colorado.

(i) *General description:* Unit 4 consists of 1,141 acres (462 hectares) in Montezuma County, Colorado, and is

composed of lands in the Ute Mountain Ute Tribal Park.

(ii) Map of Unit 4 follows:



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Aurelia Skipwith,
Director, U.S. Fish and Wildlife Service.
 [FR Doc. 2020-19481 Filed 9-16-20; 8:45 am]
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