Billin

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2021–0041; FF09E21000 FXES1111090FEDR 223]

RIN 1018–BE65

Endangered and Threatened Wildlife and Plants; Endangered Species for Prostrate Milkweed 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 the prostrate milkweed (*Asclepias prostrata*), a plant species from Texas, as an endangered species and designate critical habitat under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the prostrate milkweed. After a review of the best available scientific and commercial information, we find that listing the species is warranted. Accordingly, we propose to list the prostrate milkweed as an endangered species. If we finalize this rule as proposed, it would add this species to the List of Endangered and Threatened Plants and extend the Act's protections to the species. We also propose to designate critical habitat for the prostrate milkweed under the Act. In total, approximately 691.3 acres (279.8 hectares) in Starr and Zapata Counties, Texas, fall within the boundaries of the proposed critical habitat designation. We also announce the availability of a draft economic analysis of the proposed designation of critical habitat for prostrate milkweed.

DATES: We will accept comments received or postmarked on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments submitted electronically using the Federal eRulemaking Portal (see

ADDRESSES, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

(1) *Electronically*: Go to the Federal eRulemaking Portal: *https://www.regulations.gov*. In the Search box, enter the docket number or RIN for this rulemaking (presented above in the document headings). For best results, do not copy and paste either number; instead, type the docket number or RIN into the Search box using hyphens. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on "Comment."

(2) *By hard copy*: Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R2–ES–2021–0041, U.S. Fish and Wildlife Service, MS: PRB/3W, 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 *https://www.regulations.gov*. This generally means that we will post any personal information you provide us (see **Information Requested**, below, for more information).

Availability of supporting materials: The species status assessment report and the draft economic analysis are available at *https://www.regulations.gov* under Docket No. FWS–R2–ES–2021–0041. For the critical habitat designation, the coordinates or plot points or both from which the maps are generated are included in the decision file and are available at *https://www.fws.gov/southwest/es/TexasCoastal/*, at *https://www.regulations.gov* under Docket No. FWS–R2–ES–2021–0041, and at the Texas Coastal Ecological Services Field Office (see **FOR FURTHER INFORMATION**

CONTACT). Any additional tools or supporting information that we may develop for the critical habitat designation will also be available at the Service website and field office set out above and may also be included in this preamble and/or at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Chuck Ardizzone, Field Supervisor, Texas Coastal Ecological Services Field Office, 17629 El Camino Real Suite 211, Houston, TX 77058; telephone 281–286–8282. 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 we determine that a species warrants listing, we are required to promptly publish a proposal in the Federal Register, unless doing so is precluded by higher-priority actions and expeditious progress is being made to add and remove qualified species to or from the List of Endangered and Threatened Wildlife and Plants. The Service will make a determination on our proposal within 1 year. If there is substantial disagreement regarding the sufficiency and accuracy of the available data relevant to the proposed listing, we may extend the final determination for not more than six months. To the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designation of critical habitat can only be completed by issuing a rule.

What this document does. We propose to list the prostrate milkweed as an endangered species under the Act, and we propose the designation of critical habitat for the species.

The basis for our action. Under the Act, we may determine that a species is an

endangered or threatened species because of 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 competition from introduced invasive grass; habitat loss and degradations from root-plowing and conversion of native vegetation to improved buffelgrass pasture; habitat loss from right of way (ROW) construction and maintenance from energy development and road and utility construction; habitat loss from border security development and enforcement activities (Factor A); and the demographic and genetic consequences of small population sizes (Factor E) are threats to the prostrate milkweed.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as: (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Information Requested

We intend that 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 governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(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 that the regulations identify as reasons why designation of critical habitat may 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; or

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

(6) Specific information on:

(a) The amount and distribution of prostrate milkweed habitat;

(b) What areas, that are 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) Any additional areas occurring within the range of the species, including Starr and Zapata Counties, Texas, that should be included in the designation because they (1) are occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations, or (2) are unoccupied at the time of listing and are essential for the conservation of the species;

(d) 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

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

(i) Regarding whether occupied areas are adequate for the conservation of the species;

(ii) Providing specific information regarding whether or not unoccupied areas would, 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; and

(iii) Explaining whether or not unoccupied areas fall within the definition of "habitat" at 50 CFR 424.02 and why.

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

(8) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(9) 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 and any additional information regarding probable economic impacts that we should consider.

(10) 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, in particular for the critical habitat units on privately owned lands. If you think we should exclude any additional areas, please provide credible information regarding the existence of a meaningful economic or other relevant impact supporting a benefit of exclusion.

(11) 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.

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 *https://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 *https://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 *https://www.regulations.gov*.

Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species is threatened instead of endangered, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. For critical habitat, our final designation may not include all areas proposed, may

include some additional areas that meet the definition of critical habitat, and may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion.

Public Hearing

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

Previous Federal Actions

On June 25, 2007, we received a petition, dated June 18, 2007, from Forest Guardians (now WildEarth Guardians) that included the prostrate milkweed. On December 16, 2009, we published a 90-day finding (74 FR 66866) that the petition presented substantial information that prostrate milkweed may be warranted for listing. At that time, we initiated a status review of the species.

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the prostrate milkweed. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. In accordance with our joint policy on peer review published in the *Federal Register* on July

1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of six appropriate specialists regarding the SSA report. The Service received two responses. The Service also sent the SSA report to one partner, a botanist from the Texas Parks and Wildlife Department, and received a review from this partner.

I. Proposed Listing Determination

Background

A thorough review of the taxonomy, life history, and ecology of the prostrate milkweed (*Asclepias prostrata*) is presented in the SSA report (Service 2020, entire). Prostrate milkweed is an herbaceous, flowering plant in the Apocynaceae (dogbane) family. It is native to Texas, USA, and Tamaulipas and eastern Nuevo León, Mexico.

Prostrate milkweed is a perennial species with cream, yellow, greenish, or pinkish flowers (Blackwell 1964, p. 178). This species is distinctive in its prostrate habit; the leaves and stems sprawl outward along the surface of the ground. It is found in open spaces with full sun, and with little to no competition from surrounding plants (Poole and Janssen 1997, p. 117). It occurs in a subtropical, semiarid climate in sparsely vegetated habitats, including grasslands, savannas, and open areas of the Tamaulipan shrubland ecological region, on level or gently sloping uplands (Singhurst *et al.* 2015, p. 25; Carr 2011, pp. 37–38; Damude and Poole 1990, p. 13; Strong and Williamson 2015, p. 36). Prostrate milkweed occurs primarily in deep, loose, sandy soils formed over sandstone or indurated caliche (hardened soil layer cemented by calcium and magnesium carbonates) (Carr 2011, pp. 37–38; Strong and Williamson 2015, p. 36).

Like all milkweeds, prostrate milkweed flowers have a unique and complex structure and pollination system. Pollinators are attracted to the copious nectar produced deep within the flower. To reach the nectar, insects of a particular size are forced against the flower's central stalk in such a way that pollinia, which are sack-like structures full of

pollen grains, adhere to their legs. When the insect visits another flower of the same species, the pollinia are often wedged against the stigma (the receptive female structure) and detach, thus delivering a large load of pollen and effecting fertilization. The closely-related zizotes milkweed, *Asclepias oenotheroides*, is effectively pollinated by very large wasps called tarantula hawks (species of *Pepsis* and *Hemipepsis*), and it is likely that these wasps and large bees also pollinate prostrate milkweed. Due to their relatively large size and the abundance of nectar produced by the flowers, these pollinators are able to fly relatively large distances between nectar sources (Gathman and Tscharntke 2002, entire; Greenleaf *et al*. 2007, entire). Hence, it is likely that prostrate milkweed can reproduce even when individuals are widely distributed at very low densities, due to the uniquely effective pollination system, large nectar reward, and large forage range of its pollinators.

Fertilized flowers of prostrate milkweed produce capsules with about 100 seeds each. The seeds have long, silky, white hairs and are dispersed by wind (Damude and Poole 1990, pp. 4–5; Richardson and King 2011, p. 76). Seed production of milkweeds is often resource limited (La Rosa and Conner 2017, p. 151); resources for prostrate milkweed include rainfall, pollinators, and open, sparsely vegetated habitat.

Prostrate milkweed remains as tubers, up to 12 inches (in) (30 centimeters (cm)) underground that are dormant during long droughts. New stems are stimulated to emerge from the soil by infrequent, heavy rainfall, and set seed following wildfire or, historically, a passing herd of bison has cleared competing grasses and forbs, and the deluges of tropical storms briefly replenish moisture. The species exists where competition from other plants is periodically reduced by wildfire or grazing. These life-history traits allow the species to rebound after periods of inhospitable conditions, and well-managed livestock grazing, which simulates the effects of bison, and rangeland management, including brush thinning and prescribed burning, can return an unsuitable area to conditions more suitable for prostrate milkweed. As a result, sufficiently resilient

prostrate milkweed populations may be maintained on well-managed rangelands. Livestock grazing is the primary economic use of privately-owned land throughout the range of prostrate milkweed in Texas and northeast Mexico, although the management regime of these rangelands is unknown. This adaptation also enables prostrate milkweed to occur along mowed road rights-of-way (ROWs) and in rangelands where soils are intact. Therefore, while there may be prostrate milkweed populations on these rangelands, we do not have evidence that they are present, nor do we have information that the grazing is managed in such a way as to promote resilient populations. However, it is unlikely to remain where soils are disturbed by plowing, bulldozing, or road grading because this destroys the tubers, preventing any plant regrowth.

In the United States, prostrate milkweed occurs in south Texas from northwest Zapata County to the vicinity of Roma, in Starr County. All known U.S. populations are within 8 miles of the Rio Grande (Strong and Williamson 2015, pp. 34–35). In Mexico, known locations for this species occur in isolated pockets widely scattered in northern Tamaulipas and eastern Nuevo León, many over 100 miles (mi) (160 kilometers (km)) from the Rio Grande (Strong and Williamson 2015, p. 35). The historical range of prostrate milkweed is unknown; therefore, it is presumed to be approximately the same as the current range in southern Texas and northern Mexico. However, the distribution of populations throughout this range may have been more abundant in the past.

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 Service 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 review of the best scientific and commercial data regarding the status of 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. However, it does 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 FWS–R2–ES–2021–0041 on *https://www.regulations.gov* and at *https://www.fws.gov/southwest/es/TexasCoastal/*.

To assess prostrate milkweed 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.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the 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. Throughout all of these stages, we 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 discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

For the prostrate milkweed to maintain viability, its populations or some portion thereof must have sufficient resiliency, redundancy, and representation. Several factors influence the resiliency of prostrate milkweed populations, including abundance and recruitment rate, in addition to elements of the species' habitat that determine whether prostrate milkweed populations can grow. These resiliency factors and habitat elements are discussed in detail in the SSA report and summarized here.

Species Needs

Abundance—Prostrate milkweed abundance is difficult to assess due to its ability to remain dormant for multiple years until the necessary environmental conditions occur. Individual plants may emerge only a few times per decade, and not all plants will emerge at the same time (Price 2005, pers. comm.; Best 2017, pers. comm.). Therefore, we considered populations to be extant if plants have been observed within the past 40 years (Hammerson *et al.* 2008, entire; Strong 2020, pers. comm.) and with available habitat (i.e., not paved over) or with restorable habitat (i.e., nonnative grass could be removed).

Populations of prostrate milkweed must be large enough to have a high probability of enduring random demographic and environmental variation. For example, species or populations may be classified as vulnerable when the probability of persisting

100 years is less than 90 percent (Mace and Lande 1991, p. 151). This metric of population resilience, called minimum viable population (MVP), refers to the smallest population size that has a high probability of surviving over a specified period of time. Calculations of MVP require data that are not currently available for prostrate milkweed. As a practical alternative, we estimated the likely MVP range of prostrate milkweed by comparing it to species with similar life-history traits for which MVPs have been calculated (Pavlik 1996, p. 137). This method estimates a highly resilient population of prostrate milkweed has 1,600 or more adult individuals (Service 2020, p. 38).

Determinations of MVP usually consider the effective population size, rather than total number of individuals (Pavlik 1996, entire); 10 genetically identical individuals (for example, clones or ramets) would have an effective population size of one. Because prostrate milkweed is likely self-incompatible and does not appear to form clonal colonies, the effective population size is likely to be nearly the same as the total population size.

Recruitment Rate—A stable or increasing population requires recruitment rates that equal or exceed mortality rates (Service 2020, p. 38). All stages of recruitment, from flowering and seed production to germination and establishment, occur when the soil has available moisture. The porous soils of prostrate milkweed habitat dry quickly after a single heavy thunderstorm. Based on observations of other perennial forbs in this ecosystem, recruitment probably occurs during periods of extended rainfall, meaning multiple rain events over a period of several weeks (Service 2020, p. 38). These events are rare in this semiarid region. Consequently, we expect that successful recruitment may occur only once or a few times per decade. Similarly, most mortality probably occurs during years of extended drought. Hence, both recruitment and mortality would have strong pulses and observed population sizes would vary widely from year to year, leading to potentially spurious interpretations of demographic trends (Service 2020, p. 38).

Populations of prostrate milkweed require habitats that also support healthy populations of large native bees and wasps (Service 2020, p. 38). Native bees in turn require a diversity and abundance of native forb and shrub species that provide pollen and nectar. Tarantula hawks (*Pepsis* spp. and *Hemipepsis* spp.) may also be important pollinators of prostrate milkweed; tarantula hawks require healthy populations of their prey species, tarantulas (Best 2020, pers. comm.).

Prostrate milkweed populations require competition from grasses and forbs to be periodically reduced (Service 2020, p. 38). This requirement, which has been observed in other milkweed species, may be an adaptation to wildfire (Baum and Sharber 2012, pp. 968–971). Although mowing or livestock grazing can also reduce competition, it is likely that prostrate milkweed is adapted to grasslands that were sustained by periodic wildfires (Service 2020, p. 39).

Canopy Cover—Canopy cover refers to shade from trees, shrubs, prickly pear cactuses, or tall (>1 meter (m)) grass. Resilient prostrate milkweed populations need an open canopy with little or no herbaceous cover (Service 2020, p. 3). Therefore, the species may occur in areas that mimic historical wildfire or grazing, such as along mowed road rights-of-way (Service 2020, p. 3).

Ground Cover—Ground cover refers to vegetation growing at the herbaceous layer (approximately <1 m) that would compete with prostrate milkweed plants for resources. Resilient prostrate milkweed populations need an open canopy with little or no herbaceous cover, so there is little competition with other plants (Service 2020, p. 3).

Risk Factors for Prostrate Milkweed

We reviewed the potential risk factors (i.e., threats, stressors) that may affect prostrate milkweed now and in the future. In this proposed rule, we will discuss only those factors in detail that could meaningfully impact the status of the species. Those risks that are not known to have effects on prostrate milkweed populations, such as

quarrying/mining, hybridization, pollinator decline, and climate change, are not discussed here but are evaluated in the SSA report. The primary risk factors (i.e., threats) affecting the status of prostrate milkweed are: (1) Competition from introduced invasive grasses (Factor A from the Act); (2) habitat loss from root-plowing and conversion of native vegetation to pasture (Factor A); (3) habitat loss from ROW construction and maintenance from energy development and road and utility construction (Factor A); (4) habitat loss from border security development and enforcement activities (Factor A); and (5) the demographic and genetic consequences of small population sizes and population fragmentation (Factor E).

Competition from Nonnative Invasive Grasses

Nonnative invasive grass species displace native plants by competing for water, nutrients, and light, and their dense root systems prevent germination of native plant seeds (Texas Invasives 2019, unpaginated). Buffelgrass (*Pennisetum ciliare*) is a perennial bunchgrass introduced from Africa that is now one of the most abundant introduced grasses in south Texas, and the most prevalent invasive grass within the range of prostrate milkweed. Since the 1950s, Federal and State land management agencies have promoted buffelgrass as a forage grass in south Texas (Smith 2010, p. 113). Buffelgrass is very well-adapted to the hot, semi-arid climate of south Texas due to its drought resistance and ability to aggressively establish in heavily grazed landscapes (Smith 2010, p. 113). Buffelgrass continues to be planted in areas affected by drought and overgrazing to stabilize soils and to increase rangeland productivity. Buffelgrass often creates homogeneous monocultures by out-competing native plants for essential resources (Lyons *et al.* 2013, p. 8), and it produces phytotoxins in the soil that inhibit the growth of neighboring native plants (Vo 2013, unpaginated). Furthermore, prescribed burning used for brush control promotes buffelgrass forage production in south Texas (Hamilton and Scifres 1982, p. 11).

Most prostrate milkweed plants have been observed where buffelgrass is absent or at low densities (Eason 2019, pers. comm.; Strong 2019, pers. comm.). On national wildlife refuge lands, prostrate milkweed was found in areas where native grass was still dominant, but not where buffelgrass or woody vegetation was present in dense stands (Best 2005, p. 3). The unpaved ROWs on private lands in south Texas for oil and gas wells, wind farms, service roads, pipelines, and powerlines could benefit prostrate milkweed through the periodic mowing of road margins. However, disturbed soils along ROWs are rapidly colonized by buffelgrass.

The Texas Natural Diversity Database (TXNDD) lists invasive species, primarily buffelgrass, as a pervasive threat of extreme severity to prostrate milkweed. The TXNDD defines a pervasive threat as one that affects all or most (71–100 percent) of a species' populations, occurrences, or extent. An extreme level of severity is one that is likely to destroy or eliminate occurrences or habitat or reduce population sizes by 71–100 percent (TXNDD 2016). It is likely that buffelgrass has negatively impacted all Texas populations (TXNDD 2019–2020, entire; Eason 2019, pers. comm.; Kieschnick 2019, pers. comm.; Santore 2019, unpaginated). Competition from buffelgrass is the greatest threat to prostrate milkweed.

Root-Plowing and Conversion of Native Grassland and Savanna

Root-plowing is a brush control method that uses powerful tracked vehicles to excavate the roots of woody plants with heavy steel subsoil rippers that dig several feet into the ground. The dead trees and shrubs are then burned, and the root-plowed soils are planted with buffelgrass for livestock grazing. Root-plowing and conversion to buffelgrass pasture is a widely conducted practice in south Texas and northeast Mexico, occurring in much of the potential habitat of prostrate milkweed. Extensive areas of recently root-plowed lands can be identified in aerial photographs. These practices have been and are still subsidized by the United States Department of Agriculture (USDA)

Natural Resources Conservation Service and its precursor, the USDA Soil Conservation Service.

Root-plowing temporarily reduces the encroachment of woody plants into the grassland component of former savannas. The conversion of native habitats to improved pastures dominated by buffelgrass or other introduced grasses greatly reduces the abundance and diversity of most native grass and forb species (Woodin *et al.* 2010, p. 1). Very few, if any, prostrate milkweed plants survive following root-plowing and buffelgrass planting. This is likely due to the excavation and desiccation of most tubers during root-plowing; subsequently, the few remaining individuals decline due to competition from dense buffelgrass cover.

Conversely, prostrate milkweed occurs in well-managed rangelands, provided that the soil was not previously root-plowed or otherwise disturbed (Service 2020, p. 53). Most milkweed species are unpalatable to cattle, and often increase in abundance on grazed lands. Livestock, including cattle, sheep, and horses, graze preferentially on grasses and forbs (broad-leaved herbaceous plants), including buffelgrass, and non-toxic herbaceous plants, and therefore reduce competition with prostrate milkweed from these plants (Service 2020, p. 41). In addition to grazing, livestock may also reduce competition with prostrate milkweed by trampling herbaceous plants (Service 2020, p. 41). Because prostrate milkweed is often observed in the wheel ruts of dirt roads, it appears to be unusually tolerant of trampling; thus, the effect of livestock trampling is minimal (Service 2020, pp. 41–42). Periodic livestock grazing reduces competition from native and introduced grasses. In South Texas, over-grazed rangelands typically become invaded by woody plants, reducing the habitat suitability for prostrate milkweed. Hence, management practices that promote sustainable grazing of native grasses are beneficial to prostrate milkweed (Service 2020, p. 41).

Road and ROW Construction and Maintenance

Oil and gas exploration and wind energy development are occurring at a rapid pace in Starr and Zapata Counties. Seismic exploration and the construction of roads and caliche pads for oil and gas wells and wind turbines can destroy plants and their habitats within the construction footprint (Reemts *et al.* 2014, pp. 123 and 125; Leslie 2016, p. 49). Additionally, graded service roads and other permanent structures may indirectly affect the hydrology of surrounding habitats by diverting and channeling water through drainage culverts. Invasive buffelgrass quickly colonizes disturbed roadsides, then invades adjacent habitats. Heavy vehicle traffic during oil and gas well drilling and wind farm construction may increase the frequency of road maintenance, such as grading or widening (Peña 2019, pers. comm.). Grading or blading a caliche road involves scraping the road's surface with a large heavy blade to remove ruts and roadside vegetation. Increased frequency of road maintenance that removes above-ground portions of plants could reduce or eliminate prostrate milkweed flower and fruit production. Conversely, grading or blading of caliche roads conducted during the milkweed's dormant periods may benefit the species by temporarily reducing competition from grasses and forbs (TXNDD 2019, p. 11). TXNDD (2019) ranks road expansion as a pervasive threat (affects all or most (71–100 percent) of a species' populations, occurrences, or extent) of extreme severity to prostrate milkweed.

All or parts of nine prostrate milkweed occurrences are in the margins of improved highway ROWs. All of these highway ROW populations have declined since they were first observed, likely due to the frequency of soil disturbance and invasive grass competition (Service 2020, p. 40). In addition, from 2010 to 2012, Texas Department of Transportation (TxDOT) widened segments of U.S. Highway 83 that affected at least three known prostrate milkweed sites: Arroyo del Tigre Grande, Mission Mier a Visita, and Arroyo Roma (Strong and Williamson 2015, p. 51; Paradise 2019, pers. comm.). TxDOT has also scheduled additional road widening or construction at five

known prostrate milkweed populations: Arroyo del Tigre Grande, Arroyo del Tigre Chiquito, Arroyo de los Mudos, Mission Mier a Visita, and Arroyo Roma (TxDOT 2019, unpaginated). U.S. Customs and Border Protection (CBP) has scheduled road improvements at the prostrate milkweed population site located in the Arroyo Morteros tract of the Lower Rio Grande Valley National Wildlife Refuge (NWR) (Vallejo 2019, pers. comm.).

In contrast, all or parts of three prostrate milkweed occurrences are in the margins of unpaved rural roads. These relatively stable populations have persisted in narrow strips of native vegetation between the gravel or caliche roadbeds and the fence lines of adjacent private properties. The soils in these narrow, naturally vegetated strips have never been excavated, and they have relatively little buffelgrass cover.

The installation of natural gas pipelines and fiber-optic cables has removed prostrate milkweed plants in the Dolores and Arroyo del Tigre Chiquito populations in the past (Damunde and Poole 1990, p. 32; Boydston 1993, unpaginated; Campos 1993, unpaginated). In 1995, Southwestern Bell installed a fiber-optic cable in the Highway 83 ROW, 2.6 miles south of the Webb-Zapata County line, which removed at least 100 individuals at the Dolores population (Service 1995, p. 1). In 1993, prior to the fiber-optic cable installation, this population was estimated to have 100 to 200 individuals (TXNDD 2019, entire) and was the largest known population of prostrate milkweed.

In summary, prostrate milkweed faces risks from ROWs and road construction and maintenance associated with oil and gas activities, wind energy development, and utility and pipeline corridor construction.

Border Security Development and Enforcement Activities

All known Texas populations of prostrate milkweed are within 9 miles (14.5 km) of the Texas–Mexico border. To address border security concerns, additional border barrier construction was proposed in the Rio Grande Valley, including the Arroyo

Morteros tract of the Lower Rio Grande Valley NWR. Should border wall construction occur, and depending on the alignment, construction could remove prostrate milkweed plants that occur within the construction footprint. Additionally, CBP plans to improve roads across this tract (Vallejo 2019, pers. comm.) and may also install new drag strips along existing roads. Drag strips are 13- to 16-foot (ft) (4- to 5-m) -wide swaths cleared of all vegetation and regularly scraped to keep the soil surface loose, in order to detect recent foot traffic. Due to the high gypsum content, soils in this area are extremely vulnerable to gully erosion. Hence, the unvegetated, continually disturbed drag strips may exacerbate soil erosion and impact a much wider area. TXNDD ranks drag strip construction within prostrate milkweed populations as a small threat (defined as a threat that affects 1–10 percent of the total population or occurrences or extent) with an extreme level of severity (likely to destroy or eliminate occurrences or habitat, or reduce population by 71–100 percent) (TXNDD 2016). Consequently, the construction of border barriers, roads, and drag strips are potential threats of high magnitude to prostrate milkweed populations, depending on their alignment, design, and proximity to populations and local topography.

Native plant populations are legally protected on NWRs and, if listed under the Act, have additional legal protections from federally funded or regulated actions. However, a provision of the REAL ID Act of 2005 gives the Secretary of Homeland Security authority to waive other Federal laws, including the Endangered Species Act, in order to expedite construction of border barriers. Therefore, border barrier construction on private and public lands is exempt from consultation with the Service under section 7 of the Act. During the previous phase of border barrier construction, beginning in 2007, the Department of Homeland Security (DHS) and the Service coordinated to establish best management practices for the federally listed plants and animals in the project

impact area (DHS 2008); nevertheless, these best management practices did not address prostrate milkweed.

Small Population Sizes and Population Fragmentation

Small, isolated populations are more vulnerable to catastrophic losses caused by random fluctuations in recruitment (demographic stochasticity) or variations in rainfall or other environmental factors (environmental stochasticity) (Service 2016, p. 20). Small, reproductively isolated populations are susceptible to the loss of genetic diversity, to genetic drift, and to inbreeding (Barrett and Kohn 1991, pp. 3−30). Due to the small size and isolation of prostrate milkweed populations, several may already suffer from genetic bottlenecks, genetic drift, inbreeding, and loss of allelic diversity.

In addition to population size, it is likely that population density and connectivity also influence population viability (Service 2020, p. 51). Prostrate milkweed is very likely to be an obligate outcrosser (fertilization between different individuals), as are most other *Asclepias* species, which requires that genetically compatible individuals be clustered within the forage range of the native pollinators for reproduction to occur (Service 2020, p. 51). While the specific pollinators of this species have not been revealed, they are likely to be large bees or wasps, and the forage range could be up to several kilometers. If this is the case, viable populations of prostrate milkweed could be dispersed at very low densities over relatively large areas, provided that they lie within fairly contiguous habitats that are traversed by pollinating insects. Thus, the small, isolated clusters of prostrate milkweed that have been documented, principally along public roads that slice through large expanses of potential habitat on private lands, may represent only tiny fractions of larger, highly dispersed populations (Service 2020, p. 51).

Based strictly on the available scientific data, the documented populations of prostrate milkweed are all far below the estimated MVP level and may be affected by the

demographic and genetic consequences of small population sizes and by fragmentation of populations.

Summary

Our analysis of the past, current, and future influences on the needs of prostrate milkweed for long-term viability revealed several threats that pose a risk to current and future viability: competition from introduced invasive grass (buffelgrass); root-plowing of rangelands; development of new oil and gas wells, wind energy farms, roads, pipelines, and utility corridors; development of new border barriers and drag strips; and the demographic and genetic consequences of small population sizes and population fragmentation. Conversely, well-managed livestock grazing of rangeland is compatible with management of prostrate milkweed habitat and may actually benefit this species.

Species Condition

The current condition of prostrate milkweed takes into account the current status and risks to its populations. In the SSA report, for each population, we developed and assigned condition categories for two demographic factors and two habitat factors that are important for viability of prostrate milkweed. The condition scores for each factor were then used to estimate the probability of persistence over the next 30 years. Populations were rated high, moderate, or low when that probability is greater than 90 percent, between 60 and 90 percent, or between 10 and 60 percent, respectively. Functionally extirpated populations are not expected to persist over 30 years or are already extirpated.

There are 24 populations of prostrate milkweed remaining in Starr and Zapata Counties, Texas, and in Tamaulipas and eastern Nuevo León, Mexico (see Table 1, below). The species range extends more than 200 miles (320 kilometers) from northwest to southeast. In Texas, one population, Dolores, is somewhat isolated in northern Zapata County, with the nearest known population approximately 25 miles (40 km) away. In Mexico, eight known populations are located in isolated pockets widely scattered in

Tamaulipas and eastern Nuevo León. However, botanists have only surveyed a small proportion of the species' range. Furthermore, the species remains dormant and undetectable except for short periods of time after infrequent, heavy rainfall. Consequently, although the species is certainly rare, its actual abundance is difficult to determine. It is likely that, historically, populations occurred between these areas, connecting the populations in Texas and Mexico. Because they are widely separated, natural gene flow or reestablishment following disturbance is very unlikely between the 24 known populations. Based upon our analysis of current conditions of these 24 extant populations, none are in high condition, 5 are in moderate condition, and 19 are in low condition.

Table 1.—Summary of current condition for prostrate milkweed.

Population Name	Current Condition
Dolores	Low
14493	Low
14491	Low
Arroyo del Tigre Grande	Moderate
Arroyo del Tigre Chiquito	Low
FM 2098	Low
Falcon	Low
Los Alvaros	Moderate
Arroyo Morteros Tract	Moderate
Los Arrieros Loop	Low
Arroyo de los Mudos	Low
Mission Mier a Visita	Low
San Julián Road	Moderate
FM 3167	Moderate
Arroyo Roma	Low
Arroyo Ramirez Tract	Low
Rancho La Coma	Low

Population Name	Current Condition
Road to Guerrero Viejo	Low
Carboneras	Low
Punta de Alambre	Low
Intersection of 101–180	Low
Rio El Catán	Low
Rancho Loreto North	Low
Rancho Loreto South	Low

The two demographic factors used to analyze resiliency of prostrate milkweed populations are abundance and recruitment rate. Related to abundance, a highly resilient population of prostrate milkweed has 1,600 or more adult individuals, a moderately resilient population has from 800 to 1,600 mature individuals, and a population with less than 800 mature individuals has low resilience (Service 2020, p. 38). Prostrate milkweed populations have high resiliency if the recruitment rate is greater than or equal to 25 percent of individuals producing viable seeds per year. Moderately resilient populations have recruitment rates of between 15 and 24 percent per year, and populations with low resiliency have recruitment rates of less than 15 percent per year (Service 2020, p. 57).

The two habitat factors used to analyze resiliency of prostrate milkweed populations were canopy cover and ground cover. Highly resilient populations have less than 30 percent canopy cover and have all bare ground or are sparsely vegetated with mostly native grass and/or forbs. Moderately resilient populations have between 30 and 60 percent canopy cover and are sparsely vegetated with a mixture of native and nonnative grasses and/or forbs. Minimally resilient populations have between 61 and 100 percent canopy cover and a dense ground cover of native or introduced grasses and forbs and little or no bare ground (Service 2020, p. 57).

Redundancy is low for this species due to low numbers of populations in moderate to high condition for resiliency, making prostrate milkweed populations vulnerable to extirpations from catastrophic events. Because buffelgrass invasion is prevalent in this area, ecological diversity among the known populations is limited. Further, the populations are isolated and widespread across the range, and therefore gene flow among the populations is limited. As a consequence of these current conditions, the viability of the prostrate milkweed now primarily depends on maintaining and restoring the remaining isolated populations and potentially discovering or reintroducing new populations where feasible.

As part of the SSA, we also developed three plausible future scenarios to capture the range of uncertainties regarding future threats and the projected responses by the prostrate milkweed. Our scenarios included a continuing conditions scenario, which incorporated the current risk factors continuing on the same trajectory that they are on now. We also evaluated a conservation scenario and a scenario with increased stressors. Because we determined that the current condition of the prostrate milkweed is consistent with an endangered species (see Determination of Species Status, below), we are not presenting the results of the future scenarios in this proposed rule. Please refer to the SSA report (Service 2020) for the full analysis of future scenarios.

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. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then 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 Prostrate Milkweed Status

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

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we found that, of the 24 known prostrate milkweed populations remaining, 19 are small and isolated and are low resiliency, and five have moderate resiliency and connection to other populations, and none have high resiliency. Several factors pose a threat to prostrate milkweed, including competition from introduced invasive grass; habitat loss and degradations from root-plowing and conversion of native vegetation to improved buffelgrass pasture; habitat loss from ROW construction and maintenance from energy development and road and utility construction; habitat loss from border security development and enforcement activities

(Factor A from the Act); and the demographic and genetic consequences of small population sizes (Factor E).

All the aforementioned threats are currently affecting the known populations of prostrate milkweed. Buffelgrass has already negatively impacted all of the Texas populations (TXNDD 2019–2020, entire; Eason 2019, pers. comm.; Kieschnick 2019, pers. comm.; Santore 2019, unpaginated) and will continue to do so in the future. Habitat loss and degradation from root-plowing and conversion of native vegetation to improved buffelgrass pasture has also already been occurring for many years (Service 2020, p. 40). Habitat loss from ROW construction and maintenance from energy development and road and utility construction has already been observed from oil and gas development occurring in Zapata County. As of November 2019, no wind turbines, oil or gas well pads, pipelines, or energy service roads have been constructed directly within known prostrate milkweed populations. However, some Starr County prostrate milkweed populations are less than 2.0 km (1.2 mi) from existing wind turbines (Service 2020, pp. 42–43), and a few wind energy farms are expected to be constructed in the future, which could lead to additional habitat loss. Habitat loss from border security development and enforcement activities has occurred in recent years and is expected to continue into the future. And, finally, the demographic and genetic consequences of small population sizes is a current threat to the prostrate milkweed. This situation is not expected to change into the future.

In addition to the current threats, redundancy and representation are also limited. There are twenty-four known populations that are distributed widely across its range, and the majority of those populations are currently in low condition. Should a catastrophic event occur, the populations are vulnerable to extirpation because they are small and isolated from each other. The small, reproductively isolated populations are also susceptible to the loss of genetic diversity, genetic drift, and inbreeding due to random

fluctuations in recruitment (demographic stochasticity) or variations in rainfall or other environmental factors (environmental stochasticity). Because of the overall species' current resiliency, redundancy, and representation, prostrate milkweed is currently in danger of extinction throughout all of its range. We do not find the species meets the definition of a threatened species because the species has already shown low levels in current resiliency, redundancy, and representation due to the threats mentioned above. Thus, after assessing the best available information, we determine that prostrate milkweed is in danger of extinction throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that the prostrate milkweed is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the prostrate milkweed warrants listing as endangered throughout all of its range, our determination is consistent with the decision in Center for Biological Diversity v. Everson, 2020 WL 437289 (D.D.C. Jan. 28, 2020), in which the court vacated the aspect of the Final Policy on Interpretation of the Phrase "Significant Portion of Its Range" in the Endangered Species Act's Definitions of "Endangered Species" and "Threatened Species" (79 FR 37578; July 1, 2014) that provided the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range.

Determination of Status

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

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. Section 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 consists of preparing draft and final recovery plans, beginning with the development of a recovery outline and making it available to the public within 30 days of a final listing determination. 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 ("downlisting") or removal from protected

status ("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 (*https://www.fws.gov/endangered*), or from our Texas Coastal 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 Texas would be eligible for Federal funds to implement management actions that promote the protection or recovery of the prostrate milkweed. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/grants*.

Although the prostrate milkweed 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 U.S. Fish and Wildlife Service.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered plants. The prohibitions of section 9(a)(2) of the Act, codified at 50 CFR 17.61, make it illegal for any person subject to the jurisdiction of the United States to: import or export; remove and reduce to possession from areas under Federal jurisdiction; maliciously damage or destroy on any such area; remove, cut, dig up, or damage or destroy on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law; deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means

whatsoever and in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce an endangered plant. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered plants under certain circumstances. Regulations governing permits are codified at 50 CFR 17.62. With regard to endangered plants, a permit may be issued for scientific purposes or for enhancing the propagation or survival of the species. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

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 agricultural and silvicultural practices, including herbicide and pesticide use, that are carried out in accordance with any existing regulations, permit and label requirements, and best management practices; and

(2) Normal residential landscaping activities on non-Federal lands; and

(3) Recreational use with minimal ground disturbance.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act if they are not authorized in accordance with applicable law; this list is not comprehensive:

(1) Unauthorized handling, removing, trampling, or collecting of prostrate milkweed on Federal land; and

(2) Removing, cutting, digging up, or damaging or destroying prostrate milkweed in knowing violation of any law or regulation of the State of Texas or in the course of any violation of a State criminal trespass law.

II. 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 (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). Additionally, our regulations at 50 CFR 424.02 define the word "habitat" as, for the purposes of designating critical habitat only, "the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support one or more life processes of a species."

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. Designation also does not allow the government or public to access private lands, nor does designation 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 Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must 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 occupied 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. The implementing regulations at 50 CFR 424.12(b)(2) further delineate unoccupied critical habitat by setting out three specific parameters: (1) when designating critical habitat, the Secretary will first evaluate areas occupied by the species; (2) 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; and (3) 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.

As the regulatory definition of "habitat" reflects (50 CFR 424.02), 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) the prohibitions found in section 9 of the Act. 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 the 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 those planning efforts calls for a different outcome.

Prudency 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.

As discussed earlier in this document, there is currently no imminent threat of 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. In our SSA and proposed listing determination for prostrate milkweed, we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to prostrate milkweed and that those threats in some way can be addressed by section 7(a)(2) consultation measures. We are able to identify areas that meet the definition of critical habitat where the species occurs in the United States. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) have been met and because the Secretary has not identified other circumstances for which this designation of critical habitat would not be prudent, we have determined that the designation of critical habitat is prudent for prostrate milkweed.

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 prostrate milkweed 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 prostrate milkweed.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features (PBFs) that are essential to the conservation of the species and that 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 essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline 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 essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we 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.

Geological Substrate and Soils

Prostrate milkweed grows in well-drained sandy soils of the Tamaulipan shrubland region of south Texas and northeast Mexico (Service 2020, pp. 22–26). In Starr and Zapata Counties, Texas, the soils of documented sites overlie Eocene and Oligocene sandstones and clays of the Laredo, Yegua, and Jackson geological formations (Stoeser *et al*. 2005). In some occupied sites, a stratum of indurated caliche may also be present; in south Texas, caliche refers to soil strata of precipitated calcium carbonate formed during the early Pliocene (Spearing 1998, pp. 258, 398; Baskin and Hulbert, Jr. 2008, p. 93). Soil types of these occupied sites include deep eolian Hebbronville sands, Copita fine sandy loam, Brennan fine sandy loam, eroded Maverick soils, Catarina clay, and Zapata soils (USDA 1972; USDA 2011). Elevated levels of gypsum are present at some sites.

The climate of the Tamaulipan shrubland region is subtropical and semi-arid. Much of the region's precipitation occurs during infrequent periods of heavy rainfall that interrupt prolonged spells of very hot, dry weather. Rainfall readily infiltrates into the

well-drained sandy soils of prostrate milkweed habitats, but moisture does not persist long in these soils. Many occupied sites have underlying strata of sandstone; these barriers to root growth limit the establishment of trees and taller shrubs. The growth of many plant species is also limited by high soil gypsum concentrations in some occupied sites. The rapid drying of soil, impenetrable rock strata, and high gypsum are all factors that reduce competition from woody plants, grasses, and other herbaceous plants.

Prostrate milkweed forms tubers underground that are able to persist in a dormant condition for one to several years. The species responds very quickly to rainfall; the tubers sprout new stems that emerge, flower, and set seed in a matter of weeks, and the plants store carbohydrates, minerals, and water in tubers. Then the above-ground portions die back during hot, dry weather. Prostrate milkweed does not occur in areas of higher rainfall or where moisture persists longer in deeper silty or clayey soils. The species does not persist when occupied sites develop a dense shrub overstory or dense cover of grasses. We conclude that prostrate milkweed is endemic to sites where it escapes competition from other plants through its unique adaptation to ephemeral soil moisture, prolonged drought, and tolerance of high gypsum concentrations.

Therefore, well-drained sandy soil overlying sandstone or indurated caliche strata is an essential physical feature of prostrate milkweed critical habitats. A high soil gypsum concentration contributes to the habitat suitability of some sites by reducing competition, and is an essential physical feature.

Ecological Community

Within the Tamaulipan shrubland ecological region, prostrate milkweed inhabits arid subtropical grasslands and shrub savannas. It requires an open canopy, where there is little or no shade from trees and shrubs, and relatively little competition from grasses and herbaceous plants; the estimated combined cover of woody plants, grasses, and herbaceous plants at a site in Zapata County was less than 30 percent (Damude and Poole

1990, p. 16). It is likely that naturally occurring wildfires, in the past, maintained the relatively open structure of these plant communities (Scifres and Hamilton 1993, pp. 8–21). We have observed an increased abundance of other Texas species of *Asclepias*, including antelope horns *(A. asperula),* Emory's milkweed *(A. emoryi),* zizotes milkweed *(A. oenotheroides),* and wand milkweed *(A. viridiflora),* during the first few years after sites have burned; this fire-following effect has been described for green milkweed *(A. viridis)* (Baum and Sharber 2012, entire). Prostrate milkweed, like other milkweeds, may also be stimulated to grow and flower after wildfires have reduced competition.

Most *Asclepias* species require outcrossing for effective fertilization of flowers. All *Asclepias* species have highly specialized pollination mechanisms that require animal pollinators to carry pollen from one individual to another. Although the effective pollinators of prostrate milkweed have not been determined, these are likely to include large bees and wasps. For example, the closely related zizotes milkweed is effectively pollinated by very large wasps called tarantula hawks (*Pepsis* spp. and *Hemipepsis* spp.) (Service 2020, pp. 17, 35–36). Therefore, prostrate milkweed habitats must also support populations of large bees and wasps that, in turn, require abundant, diverse sources of pollen and nectar. Much like milkweeds, many pollen and nectar plants are fire followers that are most abundant in sites that burn periodically, but decline when fires are infrequent.

Buffelgrass is an African grass that is widely planted in south Texas for livestock forage. Buffelgrass is highly invasive, and frequently displaces native grasses and herbaceous plants (Best 2009, pp. 310–311), including prostrate milkweed (Service 2020, pp. 39–40) and the pollen and nectar plants needed to support pollinator populations. The majority of prostrate milkweed plants have been observed in disturbed soils where buffelgrass is absent or at low densities (Eason 2019, pers. comm.; Strong 2019, pers. comm.). Prostrate milkweed requires an open canopy with less than 30 percent cover of

native and nonnative grasses and herbaceous plants combined (Damude and Poole 1990, p. 16); so, assuming nonnative buffelgrass is more prevalent, we estimate that 20 percent or less cover of buffelgrass is at a low enough density for prostrate milkweed to survive. Therefore, prostrated milkweed habitats must also have less than 20 percent cover of buffelgrass for prostrate milkweed to have access to sufficient resources such as sunlight.

In summary, the essential biological features of prostrate milkweed critical habitats are: (1) open savannas and grasslands of the Tamaulipan shrubland ecological region; (2) vegetation composition that includes abundant, diverse pollen and nectar plants and healthy populations of native bee and wasp species; and (3) less than 20 percent cover of buffelgrass. Periodic prescribed burning may be necessary to maintain the open structure and diverse composition of the species' habitats.

Summary of Essential Physical or Biological Features

Additional information can be found in the SSA report (Service 2020, available on *https://www.regulations.gov* under Docket No. FWS–R2–ES–2021–0041). We have determined that the following physical or biological features are essential to the conservation of prostrate milkweed:

(1) Well-drained sandy soil overlying strata of sandstone or indurated caliche;

(2) High soil gypsum concentration;

(3) Open savannas and grasslands of the Tamaulipan shrubland ecological region;

(4) Vegetation composition that includes abundant, diverse pollen and nectar plants and healthy populations of native bee and wasp species; and

(5) Less than 20 percent cover of buffelgrass.

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 that are essential to the conservation of the species and which may require special management

considerations or protection. The features essential to the conservation of this species may require special management considerations or protection to reduce the following threats: nonnative invasive grass; root-plowing and conversion of native vegetation to buffelgrass pasture; ROW construction and maintenance from energy development and road and utility construction; border security development and law enforcement activities; and small population sizes. Management activities that could ameliorate these threats include, but are not limited to: prescribed burning, grazing, and/or brush thinning; nonnative invasive grass control; protection from activities that disturb the soil; and propagation and reintroduction of plants in restorable areas.

In summary, we find that the occupied areas we are proposing to designate as critical habitat contain the PBFs that are essential to the conservation of the species and that may require special management considerations or protection. Special management considerations or protection may be required of the Federal action agency to eliminate, or to reduce to negligible levels, the threats affecting the PBFs of each unit.

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 not currently proposing to designate any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that meet the definition of critical habitat. While prostrate milkweed needs additional populations to reduce the likelihood of extinction in the future, we are not able to identify additional locations that may have a reasonable certainty of contributing to conservation

at this time due to limited access to privately owned lands and information regarding lands that would be good candidates for introductions in the species' range.

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. First, using ArcGIS software, we identified potential habitats in Starr and Zapata Counties that have the essential features of geology and soils described above. The geographic information we obtained about the known populations exists as: (1) vegetation surveys of entire tracts of land; (2) Element Occurrence (EO) polygons represented in the TXNDD; or (3) points and lines represented in the TXNDD. We then adapted methods to delineate critical habitats for each type of geographic information.

We delineated all of the potential habitats that occur at the Arroyo Ramirez tract and the Arroyo Morteros tract of the Lower Rio Grande Valley NWR as proposed critical habitat (Units 2 and 5). The Lower Rio Grande Valley NWR comprises several disconnected land parcels, rather than one big land area, and these parcels are referred to as "tracts." The two tracts that are included in proposed Units 2 and 5 are isolated areas of refuge land. These NWR tracts are managed for the conservation of native plants and animals, and we have conducted plant surveys and have extensive knowledge of habitat suitability of these tracts.

Similarly, we delineated all of the potential habitats that occur at a private ranch (Unit 6) that is managed for wildlife and plant conservation as proposed critical habitat. The landowner has granted access for plant surveys and vegetation studies to researchers from the Texas Parks and Wildlife Department, academic institutions, and the Service. Two of the known populations are represented as polygons in the TXNDD located in the ROWs of unpaved county roads in Starr County. We have no information about the land uses or habitat suitability of areas outside these polygons. We delineated all of the potential habitats that occur within these polygons (Units 4 and 7) as proposed critical

habitat. Three of the known populations are represented as one or more points or lines in the TXNDD located on privately owned land. We have no information about the land uses or habitat suitability of areas outside the points and lines. Because critical habitats must be areas, not points or lines, we delineated all areas of potential habitat within a buffer of 50 m (164 ft) from these points and lines as proposed critical habitat units; we chose the 50-m distance because the TXNDD also used a 50-m buffer for most of these features to account for estimated geographic precision. To complete the delineations of critical habitat areas, we overlaid each critical habitat area described above on Digital Ortho-Quarter Quad aerial photographs to identify and exclude any portions of sites that consisted of unvegetated road beds that are frequently driven and are maintained by road grading, as well as structures and other developed areas that did not contain the geological and soil substrates and vegetative cover that are essential physical and biological features.

We did not include one historical observation that has only approximate location data and cannot be mapped. We also did not include any of the populations reported in the U.S. Highway 83 ROW, all of which have declined since they were first reported. For example, part of EO 3 (Dolores) along U.S. 83 had about 200 individuals in 1988; four surveys conducted from 2009 to 2017 found from 0 to 3 individuals. The degree and frequency of soil disturbance in the ROWs of improved highways has caused almost complete replacement of the native plant community with introduced species, such as buffelgrass. Hence, the essential physical and biological features are no longer present along this improved highway ROW. For the same reasons, we did not include one site in the road bed of a Starr County park where the species was last observed in 1995.

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 finalized 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 propose to designate as critical habitat lands that we have determined are occupied at the time of listing (i.e., currently occupied) and that contain one or more of the physical or biological features that are essential to support life-history processes of the species.

Units are proposed for designation based on one or more of the physical or biological features being present to support prostrate milkweed's life-history processes. Some units contain all of the identified physical or biological features and support multiple life-history processes. Some units contain only some of the physical or biological features necessary to support the prostrate milkweed's particular use of that habitat.

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 under **Proposed Regulation Promulgation**. We include more detailed information on the boundaries of the 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 *https://www.regulations.gov* at Docket No. FWS–R2–ES–2021–0041 and on our internet site *https://www.fws.gov/southwest/es/TexasCoastal/*.

Proposed Critical Habitat Designation

We are proposing eight units as critical habitat for prostrate milkweed. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for prostrate milkweed. The eight areas we

propose as critical habitat units are all TXNDD EOs: Unit 1 (EO 3), Unit 2 (EO 10), Unit 3 (EO 11), Unit 4 (EO 12), Unit 5 (EO 15), Unit 6 (EO 16), Unit 7 (EO 17), and Unit 8 (EO 22). Table 2 shows the proposed critical habitat units and the approximate area of each unit. All units are occupied.

TABLE 2. Proposed critical habitat units for prostrate milkweed. [Area estimates reflect all land within critical habitat unit boundaries.]

Critical Habitat Unit	Land Ownership by Type	Size of Unit in Acres (Hectares)	Occupied?
1 (EO 3)	County Road ROW and Private	10.51 (4.25)	Yes
2 (EO 10)	Federal– Service	105.43 (42.67)	Yes
3 (EO 11)	Private	4.0 (1.62)	Yes
4 (EO 12)	County Road ROW	4.2 (1.7)	Yes
5 (EO 15)	Federal– Service	62.49 (25.29)	Yes
6 (EO 16)	County Road ROW and Private	484.32 (196.0)	Yes
7 (EO 17)	County Road ROW and Private	19.35 (7.83)	Yes
8 (EO 22)	Private	1.04 (0.42)	Yes
Total		691.3 (279.8)	

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for prostrate milkweed below.

Unit 1: EO 3

Unit 1 consists of six areas, totaling 10.51 ac (4.25 ha), east of highway 83 in northwest Zapata County. This unit is on private land and unpaved county road ROWs. The unit is occupied by the species and contains one or more of the PBFs essential to the conservation of prostrate milkweed. Although we have no recent information on threats that affect this unit, we conclude that this unit is affected by invasive nonnative grass (buffelgrass) and road maintenance operations. Therefore, special management considerations may be required to reduce invasion of nonnative species and impacts from ROW maintenance.

Unit 2: EO 10

Unit 2 consists of 105.43 ac (42.67 ha) in the 699.4-acre Arroyo Ramirez tract of Lower Rio Grande Valley NWR. This unit is in southwestern Starr County adjacent to the Rio Grande on the U.S.–Mexico border. The entire unit is on land owned and managed by the Service. The unit is occupied by the species and contains one or more of the PBFs essential to the conservation of prostrate milkweed. This unit could be directly impacted by border barrier construction and security operations (i.e., drag strips), or indirectly impacted by channeling of runoff along the barrier during heavy rainfall, in addition to invasion of buffelgrass. Therefore, special management may be required to mitigate impacts from border security operations and nonnative grass.

Unit 3: EO 11

Unit 3 consists of three areas, totaling 4.0 ac (1.62 ha), on private land in southwestern Starr County. The unit is occupied by the species and contains one or more of the PBFs essential to the conservation of prostrate milkweed. We have no recent information on threats that affect this unit.

Unit 4: EO 12

Unit 4 consists of 4.2 ac (1.7 ha) along an unpaved county road ROW in southwestern Starr County. This ROW supports a narrow strip of diverse native vegetation that has likely not been plowed, bulldozed, or graded. The unit is occupied by the species and contains one or more of the PBFs essential to the conservation of prostrate milkweed. This unit is affected by invasive nonnative grass (buffelgrass) and maintenance and operation of the county road. Therefore, special management may be required to reduce invasion of nonnative species.

Unit 5: EO 15

Unit 5 consists of 62.49 ac (25.29 ha) in the 90.8-acre Arroyo Morteros tract of the Lower Rio Grande Valley NWR. This unit is in southwestern Starr County adjacent to the Rio Grande on the U.S.–Mexico border. The entire unit is on land owned and

managed by the Service. The unit is occupied by the species and contains one or more of the PBFs essential to the conservation of prostrate milkweed. This unit could be directly impacted by border barrier construction and security operations (i.e., drag strips), or indirectly impacted by channeling of runoff along the barrier during heavy rainfall, in addition to invasion of buffelgrass. Therefore, special management may be required to mitigate impacts from border security operations and nonnative grass.

Unit 6: EO 16

Unit 6 consists of 484.32 ac (196.0 ha) entirely on the 488.5-acre private Martinez Ranch and along a county road ROW. This unit is in southern Starr County. The owner of the Martinez Ranch is a willing conservation partner in managing the property's native plants and wildlife. The unit is occupied by the species and contains one or more of the PBFs essential to the conservation of prostrate milkweed. This unit is affected by invasive nonnative grass (buffelgrass). Therefore, special management may be required to reduce invasion of nonnative species.

Unit 7: EO 17

Unit 7 consists of 19.35 ac (7.83 ha) along both sides of an unpaved county road ROW and adjacent private land in western Starr County. This ROW supports a narrow strip of diverse native vegetation that has likely not been plowed, bulldozed, or graded. The unit is occupied by the species and contains one or more of the PBFs essential to the conservation of prostrate milkweed. This unit is affected by invasive nonnative grass (buffelgrass) and maintenance and operation of the county road. Therefore, special management may be required to reduce invasion of nonnative species.

Unit 8: EO 22

Unit 8 consists of 1.04 ac (0.42 ha) on private land in central Zapata County. The unit is occupied by the species and contains one or more of the PBFs essential to the conservation of prostrate milkweed. Although we have no recent information about

threats that affect this unit, we estimate that this unit is affected by invasive nonnative grass (buffelgrass) and development and maintenance of oil and gas wells and utility corridors. Therefore, special management may be required to reduce invasion of nonnative species and impacts from ROW construction and maintenance from energy development and road and utility construction.

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 that 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 rule revising the 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.

Compliance with the requirements of section 7(a)(2) is documented 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 Service Director'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 set forth requirements for 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, if subsequent to the previous consultation: (1) if the amount or extent of taking specified in the incidental take statement is exceeded; (2) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (4) if a new species is listed or critical habitat designated that may be affected by the identified action. 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 "Destruction or 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 section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

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

(1) Actions that would degrade or destroy native plant communities. Such activities could include, but are not limited to, road building, land clearing for oil and gas exploration or other purposes, introducing and encouraging the spread of nonnative species (i.e., buffelgrass), and border security operations. However, above-ground cutting or thinning of woody plants and prescribed burning are recommended management practices for conservation of prostrate milkweed and other native grasses and forbs, and would not destroy or adversely modify critical habitats.

(2) Actions that would mechanically disturb the soil structure. Such activities could include, but are not limited to, bulldozing, root-plowing, ripping, excavating, or other mechanical operations that penetrate deep enough into the soil to cut or remove the tubers of prostrate milkweed.

(3) Actions that would increase competition from woody plants or introduced grasses. Such activities could include, but are not limited to, intentional planting of introduced grass species, such as buffelgrass, bermudagrass (*Cynodon dactylon*), or Old World bluestems (introduced species of *Dichanthium* and *Bothriochloa*).

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 (DoD), 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. No DoD lands with a completed INRMP are 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 she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she 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 the determination to exclude a particular area, 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.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. We describe

below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios 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). Therefore, the baseline 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 prostrate milkweed (Industrial Economics, Inc. (IEc) 2021, entire). 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 particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (i.e., absent critical habitat designation) and includes any probable incremental economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. 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. If the proposed critical habitat designation contains any unoccupied units, the screening analysis assesses whether those units require additional management or conservation efforts that may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM constitute what we consider to be our draft economic analysis (DEA) of the proposed critical habitat designation for the prostrate milkweed; our DEA 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 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 prostrate milkweed, first we identified, in the IEM dated March 11, 2021, probable incremental economic impacts associated with the following categories of activities: (1) construction of a new highway; and (2) potential future border wall construction. We considered each industry or category individually. Additionally, we considered whether their 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 we list the species, in areas where the prostrate milkweed is present, Federal agencies 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, when we list the species, we also finalize this proposed critical habitat designation, our consultations would include an evaluation of measures to avoid the destruction or adverse modification of critical habitat.

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 prostrate milkweed's critical habitat. Because the designation of critical habitat for

prostrate milkweed was 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 will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical 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 prostrate milkweed 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 prostrate milkweed includes eight units totaling 691.3 ac (279.8 ha). All units are considered occupied by the prostrate milkweed and contain the physical and biological features essential to the conservation of the species. We are not proposing to designate any units of unoccupied habitat. Approximately 24 percent of the proposed designation is located on Federal land, 4 percent is on county-owned ROWs, and 71 percent is on private land. In these areas, any 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 prostrate milkweed. Therefore, the potential incremental economic effects of the critical habitat designation are expected to be limited to administrative costs.

While this additional analysis will require time and resources by both the Federal

action agency and the Service, it is believed that, in most circumstances, these costs would predominantly be administrative in nature and would not be significant. Nearly all (97 percent) of the proposed critical habitat overlaps designated critical habitat for the endangered Zapata bladderpod (*Physaria thamnophila*). Proposed critical habitat also overlaps with designated critical habitat for the endangered ashy dogweed (*Thymophylla tephroleuca*) and star cactus (*Astrophytum asterias*). Because of the overall small size of the proposed critical habitat, there would likely only be a few consultations, with minor conservation efforts that would likely result in relatively low probable economic impacts. It is likely that the majority of costs would occur on two of the eight proposed critical habitat units, which are on Federal land (both are owned by the Service). Any potential future border wall construction has been paused at this time.

The probable incremental economic impacts of the prostrate milkweed critical habitat designation are expected to be limited to additional administrative effort as well as minor costs of conservation efforts resulting from a small number of future section 7 consultations. This is due to the fact that all of the proposed critical habitat areas are considered to be occupied by the species, and incremental economic impacts of critical habitat designation, other than administrative costs, are unlikely. The entities most likely to incur incremental costs are parties to section 7 consultations, including Federal action agencies and, in some cases, third parties, most frequently State agencies or municipalities. Activities we expect would be subject to consultations that may involve private entities as third parties are residential and commercial development that may occur on private lands. However, based on coordination efforts with State and local agencies, the cost to private entities within these sectors is expected to be relatively minor. We would expect no more than 1 formal consultation, 10 information consultations, and 17 technical assistance efforts to occur annually over the next year in proposed critical habitat areas for the prostrate milkweed, with annual costs to the Service

and action agencies of less than $37,800. Thus, the annual administrative burden is unlikely to reach $100 million, which is the threshold for a significant regulatory action under E.O. 12866.

We are soliciting data and comments from the public on the DEA discussed above, as well as on all aspects of this proposed rule and our required determinations. During the development of a final designation, we will consider the information presented in the DEA and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 17.90. If we receive credible information regarding the existence of a meaningful economic or other relevant impact supporting a benefit of exclusion, we will conduct an exclusion analysis for the relevant area or areas. We may also exercise the discretion to evaluate any other particular areas for possible exclusion. Furthermore, when we conduct an exclusion analysis based on impacts identified by experts in, or sources with firsthand knowledge about, impacts that are outside the scope of the Service's expertise, we will give weight to those impacts consistent with the expert or firsthand information unless we have rebutting information. 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.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (e.g., a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), then national-security or homeland-security concerns are not a factor in the process of determining what areas

meet the definition of "critical habitat." However, the Service must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i), because section 4(b)(2) requires the Service to consider those impacts whenever it designates critical habitat. Accordingly, if DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, we must conduct an exclusion analysis if the Federal requester provides credible information, including a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence

of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

Under section 4(b)(2) of the Act, we also consider whether a national-security or homeland-security impact might exist on lands owned or managed by DoD or DHS, or on any other lands. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for prostrate milkweed are not owned or managed by DoD or DHS. Although two proposed units of critical habitat are located along the border, we do not anticipate that there will be an impact on national security or homeland security. We will work with CBP to ensure appropriate collaboration in our national security and conservation efforts. However, if through the public comment period we receive credible information regarding impacts on national security or homeland security from designating particular areas as critical habitat, then as part of developing the final designation of critical habitat, we will conduct a discretionary exclusion analysis to determine whether to exclude those areas under authority of section 4(b)(2) and our implementing regulations at 50 CFR 17.90.

Consideration of 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 discussed above. Other relevant impacts may include, but are not limited to, impacts to Tribes, States, local governments, public health and safety, community interests, the environment (such as increased risk of wildfire or pest and invasive species management), Federal lands, and conservation plans, agreements, or partnerships. To identify other relevant impacts that may affect the exclusion analysis, 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 (SHAs), or candidate conservation agreements with assurances

(CCAAs)—or whether there are non-permitted conservation agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, public-health, community-interest, environmental, or social impacts that might occur because of the designation.

We have not identified any areas to consider for exclusion from critical habitat based on other relevant impacts because areas included in the proposed critical habitat are not covered under any permitted conservation plans (i.e., SHAs), CCAAs, non-permitted conservation agreements and partnerships, Tribal conservation plans or partnerships, or have any State, local, public-health, community-interest, environmental, or social impacts.

However, during the development of a final designation, we will consider all information currently available or received during the public comment period. If we receive credible information regarding the existence of a meaningful impact supporting a benefit of excluding any areas, we will undertake an exclusion analysis and determine whether those areas should be excluded from the final critical habitat designation under the authority of section 4(b)(2) and our implementing regulations at 50 CFR 17.90. We may also exercise the discretion to undertake exclusion analyses for other areas as well, and we will describe all of our exclusion analyses as part of a final critical habitat determination.

Summary of Exclusions Considered Under 4(b)(2) of the Act

At this time, we are not considering any exclusions from the proposed designation based on economic impacts, national security impacts, or other relevant impacts—such as partnerships, management, or protection afforded by cooperative management efforts—under section 4(b)(2) of the Act. In this proposed rule, we are seeking credible

information from the public regarding the existence of a meaningful impact supporting a benefit of excluding any areas that would be used in an exclusion analysis that may result in the exclusion of areas from the final critical habitat designation. (Please see **FOR FURTHER INFORMATION CONTACT** for instructions on how to submit comments).

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) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

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 proposed rule in a manner consistent with these requirements.

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 whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies 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 the proposed critical habitat designation. The RFA does not require evaluation of 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 made final as proposed, 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 made final, 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 critical habitat designation would significantly affect energy supplies, distribution, or use. 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 finding:

(1) This proposed 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 it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates

Reform Act. The designation of critical habitat imposes no obligations on State or local governments. 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 prostrate milkweed 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 for the proposed designation of critical habitat for prostrate milkweed, and it concludes that, if adopted, this designation of critical habitat does 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. 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 proposed rule does 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 proposed 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 for 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 State and local governments in long-range planning because they 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) of the Act 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 would 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, this proposed rule identifies the physical or biological features essential to the conservation of the species. The proposed areas of designated critical habitat are presented on maps, and the proposed

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 information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are 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 regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the *Federal Register* on October 25, 1983 (48 FR 49244). 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)).

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. We have determined that no Tribal lands fall within the boundaries of the proposed critical habitat for the prostrate milkweed, so no Tribal lands would be affected by the proposed designation.

References Cited

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

Authors

The primary authors of this proposed rule are the staff members of the U.S. Fish and Wildlife Service's Species Assessment Team and the Texas Coastal 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 "*Asclepias prostrata*" to the List of Endangered and Threatened Plants in alphabetical order under FLOWERING PLANTS to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
FLOWERING PLANTS				
* * * * * * *				
Asclepias prostrata	Prostrate milkweed	Wherever found	E	[*Federal Register* citation when published as a final rule]; 50 CFR 17.96(a).[CH]
* * * * * * *				

3. Amend § 17.96(a) by adding an entry for "Family Apocynaceae: *Asclepias prostrata* (Prostrate Milkweed)" after the entry for "Family Apiaceae: *Lomatium cookii* (Cook's lomatium, Cook's desert parsley)" to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Apocynaceae: *Asclepias prostrata* (Prostrate Milkweed)

(1) Critical habitat units are depicted for Starr and Zapata Counties, Texas, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of *Asclepias prostrata* consist of the following components:

(i) Well-drained sandy soil overlying strata of sandstone or indurated caliche;

(ii) High soil gypsum concentration;

(iii) Open savannas and grasslands of the Tamaulipan shrubland ecological region;

(iv) Vegetation composition that includes abundant, diverse pollen and nectar plants and healthy populations of native bee and wasp species; and

(v) Less than 20 percent cover of *Pennisetum ciliare* (buffelgrass).

(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 [EFFECTIVE DATE OF RULE].

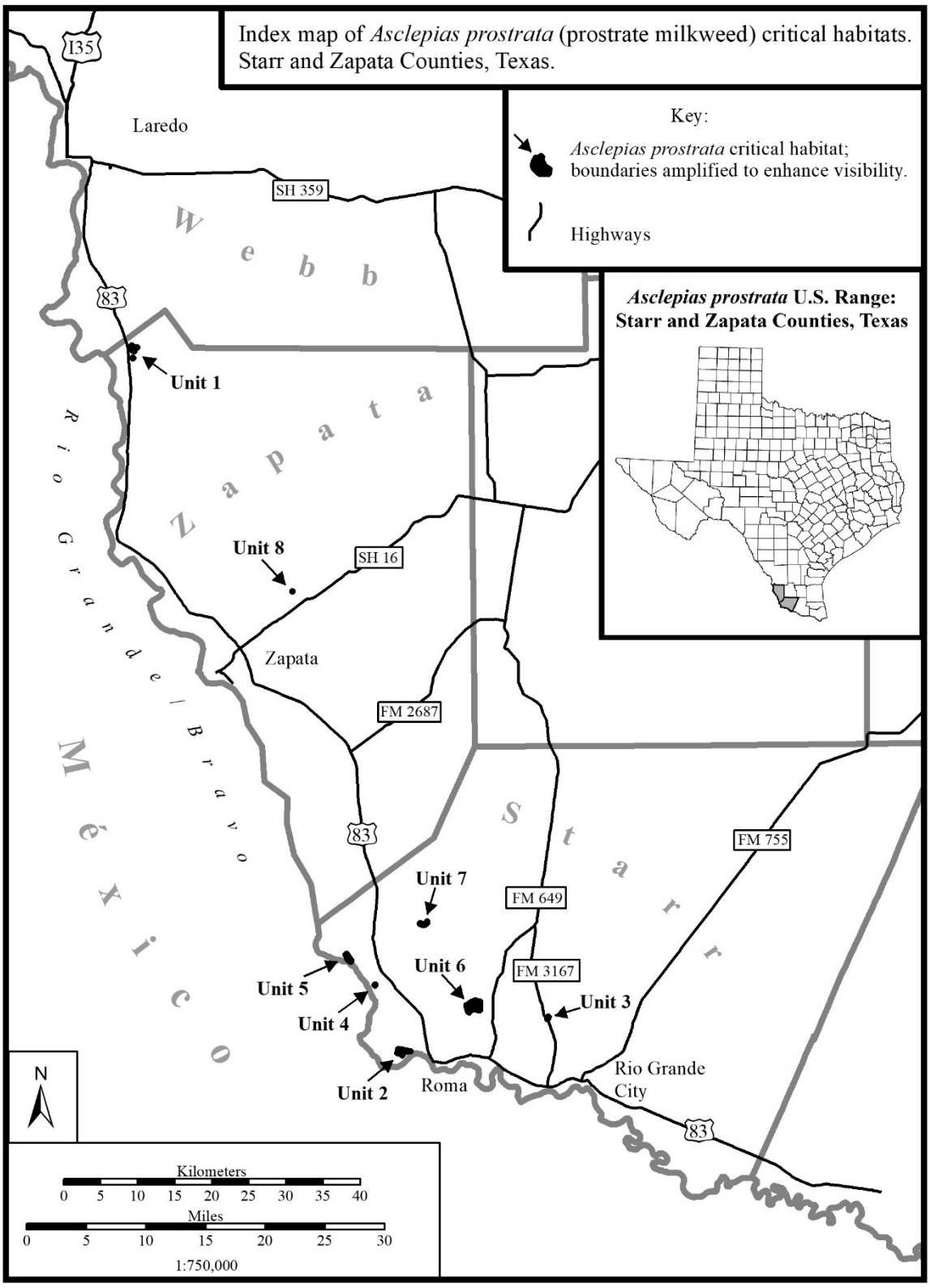
(4) Data layers defining map units were created using Texas Natural Diversity Database (2019–2020) survey data of the documented *Asclepias prostrata* locations in the United States to determine the geological formations and soil types they occupy.

(i) We used the Esri ArcMap software to overlay the geographic coordinates of populations on a digitized map of Texas surface geology and a digitized soil survey map. We then clipped those areas of potential to lands that have documented populations of *Asclepias prostrata*.

(ii) 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 the Service's internet site at *https://www.fws.gov/southwest/es/TexasCoastal/*, at *https://www.regulations.gov* at Docket No. FWS–R2–ES–2021–0041, 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:

Figure 1 to Family Apocynaceae: *Asclepias prostrata* (Prostrate Milkweed) paragraph (5)

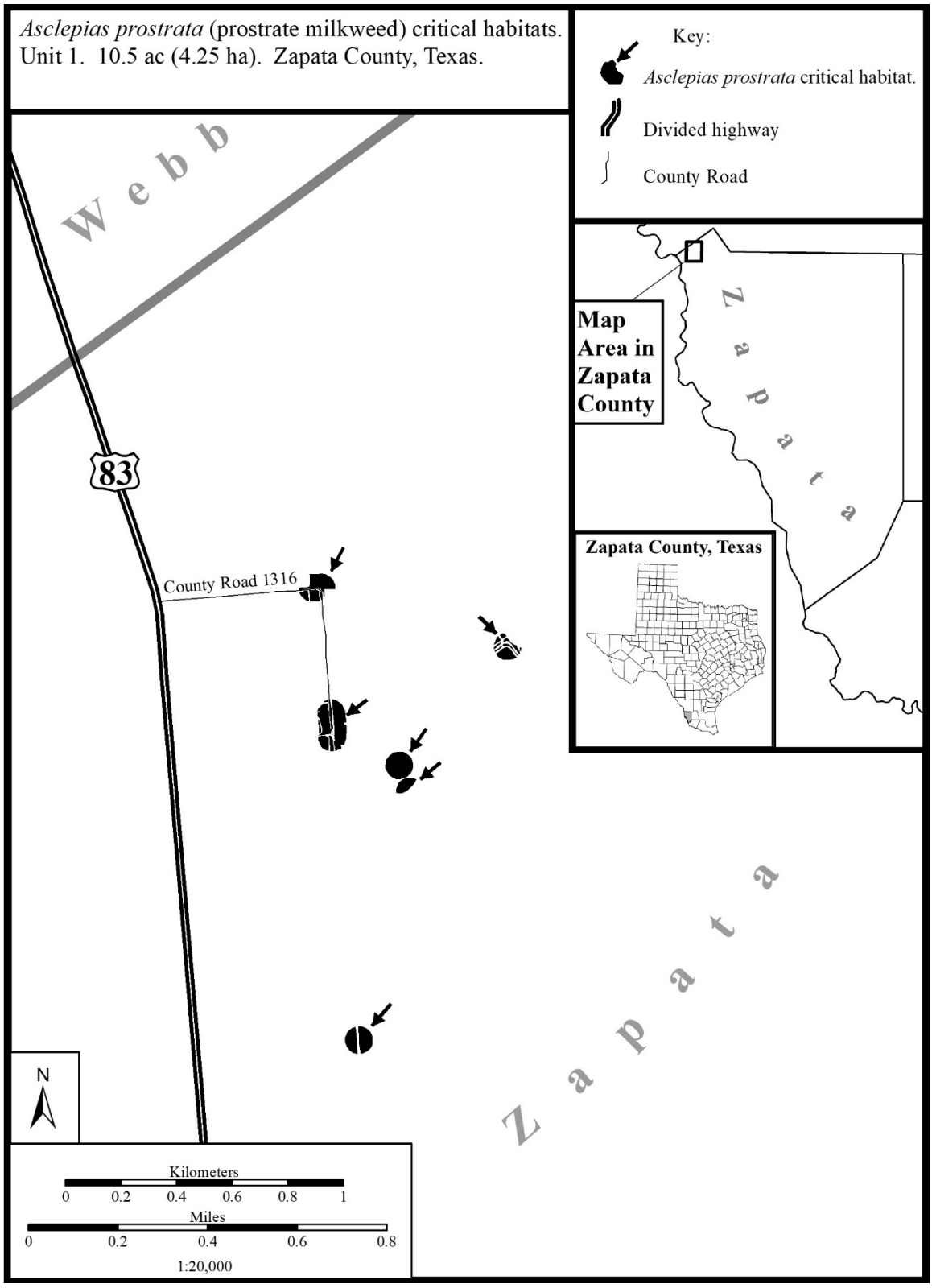


(6) Unit 1: Zapata County, Texas.

(i) Unit 1 consists of 6 areas totaling 10.51 ac (4.25 ha) east of highway 83 in northwest Zapata County. This unit is on private land and a county road right of way.

(ii) Map of Unit 1 follows:

Figure 2 to Family Apocynaceae: *Asclepias prostrata* (Prostrate Milkweed) paragraph (6)(ii)

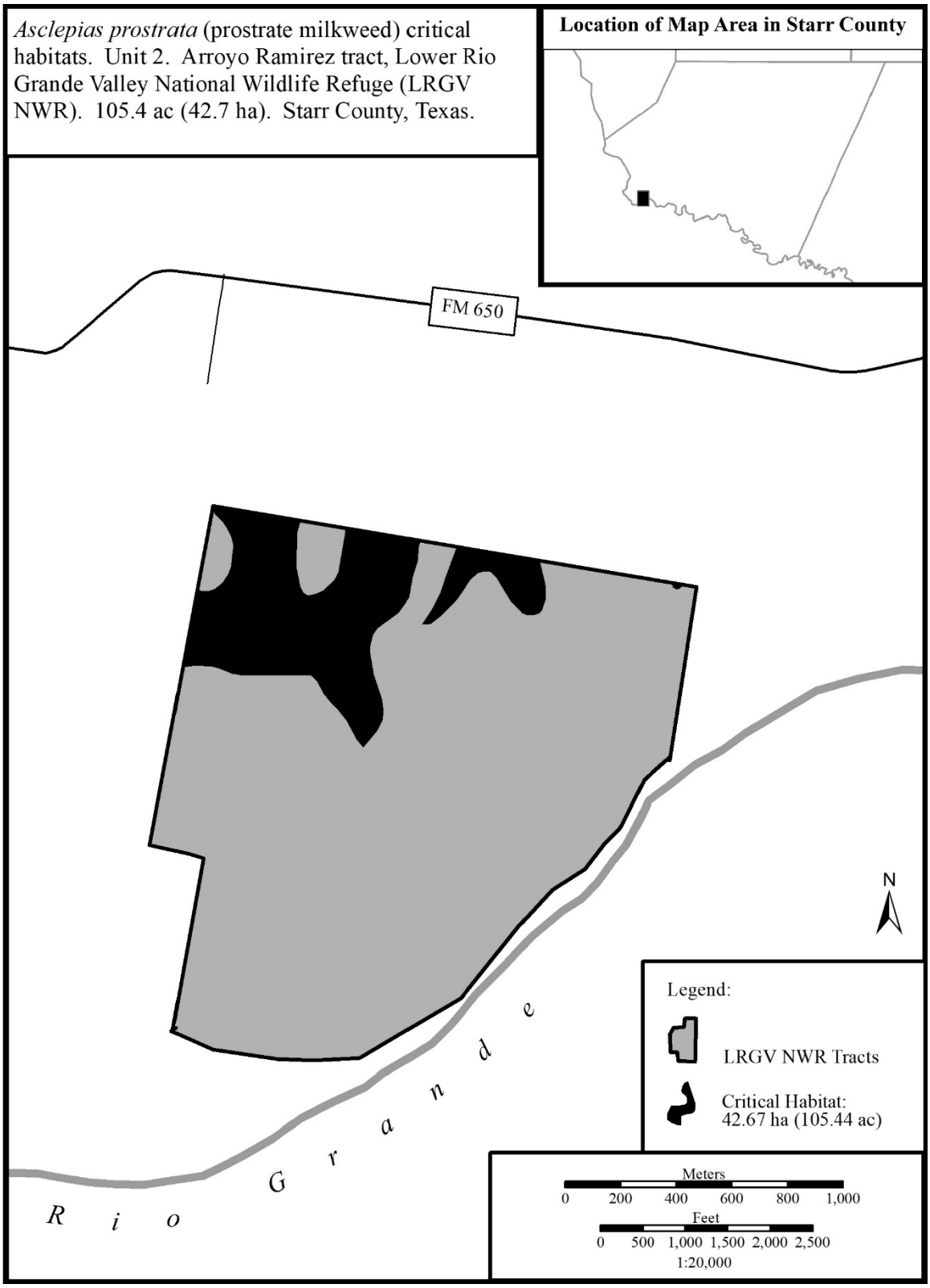

Asclepias prostrata (prostrate milkweed) critical habitats.
Unit 1. 10.5 ac (4.25 ha). Zapata County, Texas.
Key:
Asclepias prostrata critical habitat.
Divided highway
County Road
Webb
Zapata
Map Area in Zapata County
Zapata County, Texas
83
County Road 1316
Zapata
N
Kilometers
0 0.2 0.4 0.6 0.8 1
Miles
0 0.2 0.4 0.6 0.8
1:20,000

(7) Unit 2: Starr County, Texas.

(i) Unit 2 consists of 105.43 ac (42.67 ha) in the Arroyo Ramirez tract of Lower Rio Grande Valley National Wildlife Refuge. This unit is in southwestern Starr County adjacent to the Rio Grande on the U.S.–Mexico border. The entire unit is on land owned and managed by the Service.

(ii) Map of Unit 2 follows:

Figure 3 to Family Apocynaceae: *Asclepias prostrata* (Prostrate Milkweed) paragraph (7)(ii)

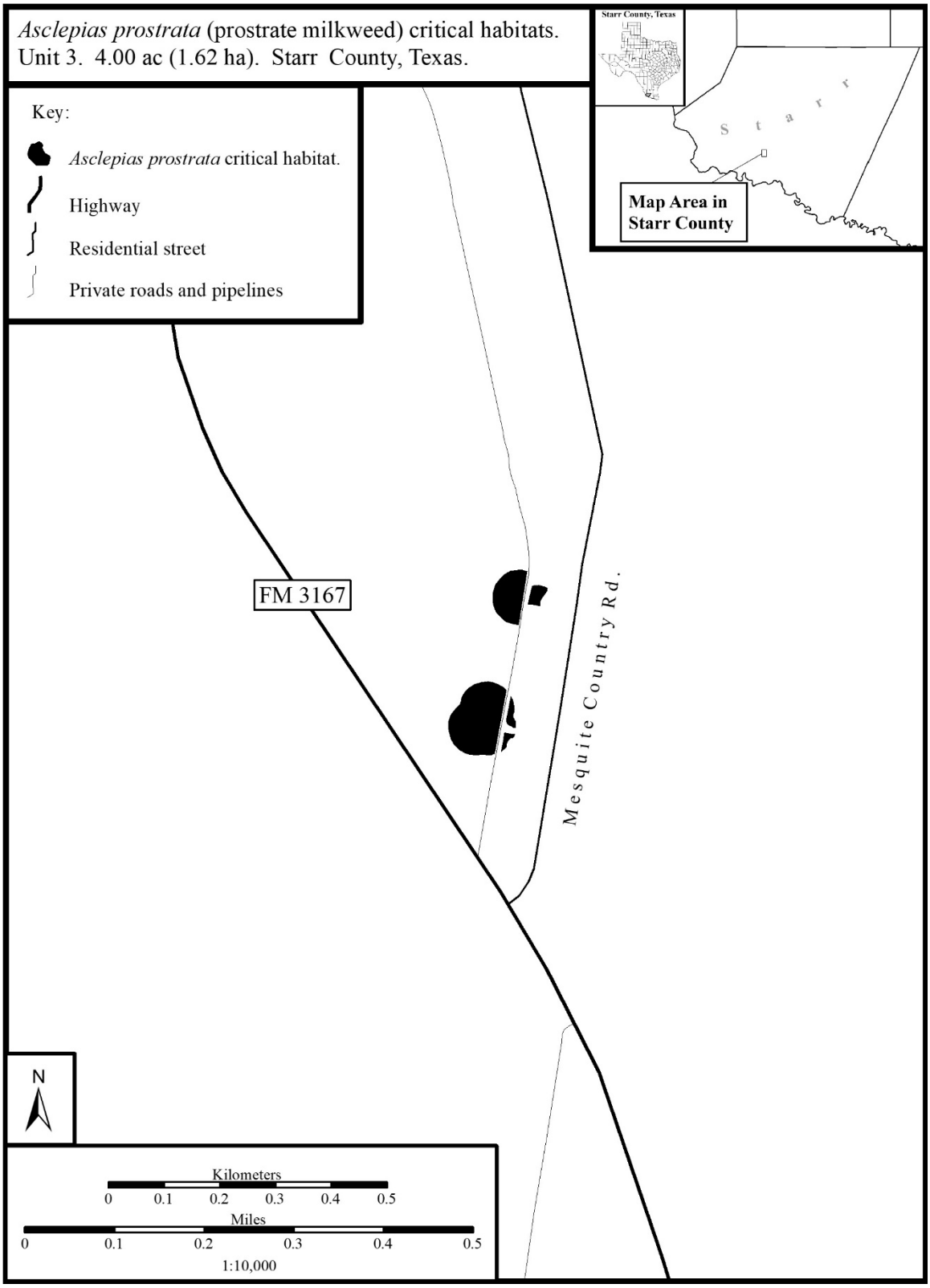

Asclepias prostrata (prostrate milkweed) critical habitats. Unit 2. Arroyo Ramirez tract, Lower Rio Grande Valley National Wildlife Refuge (LRGV NWR). 105.4 ac (42.7 ha). Starr County, Texas.
Location of Map Area in Starr County
FM 650
N
Legend:
LRGV NWR Tracts
Critical Habitat:
42.67 ha (105.44 ac)
Meters
0 200 400 600 800 1,000
Feet
0 500 1,000 1,500 2,000 2,500
1:20,000
Rio Grande

(8) Unit 3: Starr County, Texas.

(i) Unit 3 consists of 4.0 ac (1.62 ha) along both sides of a road right of way on private land in southern Starr County.

(ii) Map of Unit 3 follows:

Figure 4 to Family Apocynaceae: *Asclepias prostrata* (Prostrate Milkweed) paragraph (8)(ii)

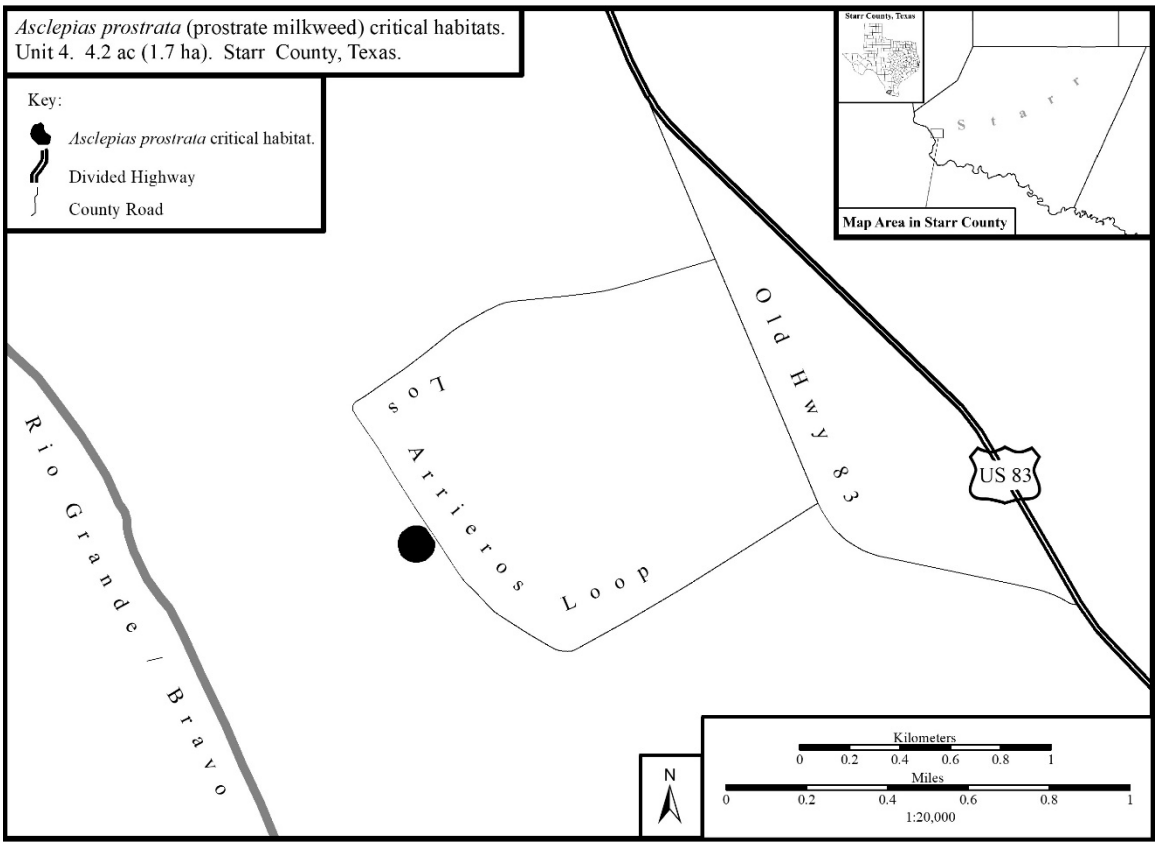


(9) Unit 4: Starr County, Texas.

(i) Unit 4 consists of 4.2 ac (1.7 ha) along the unpaved right of way of Los Arrieros Loop, a county road in southwestern Starr County.

(ii) Map of Unit 4 follows:

Figure 5 to Family Apocynaceae: *Asclepias prostrata* (Prostrate Milkweed) paragraph (9)(ii)

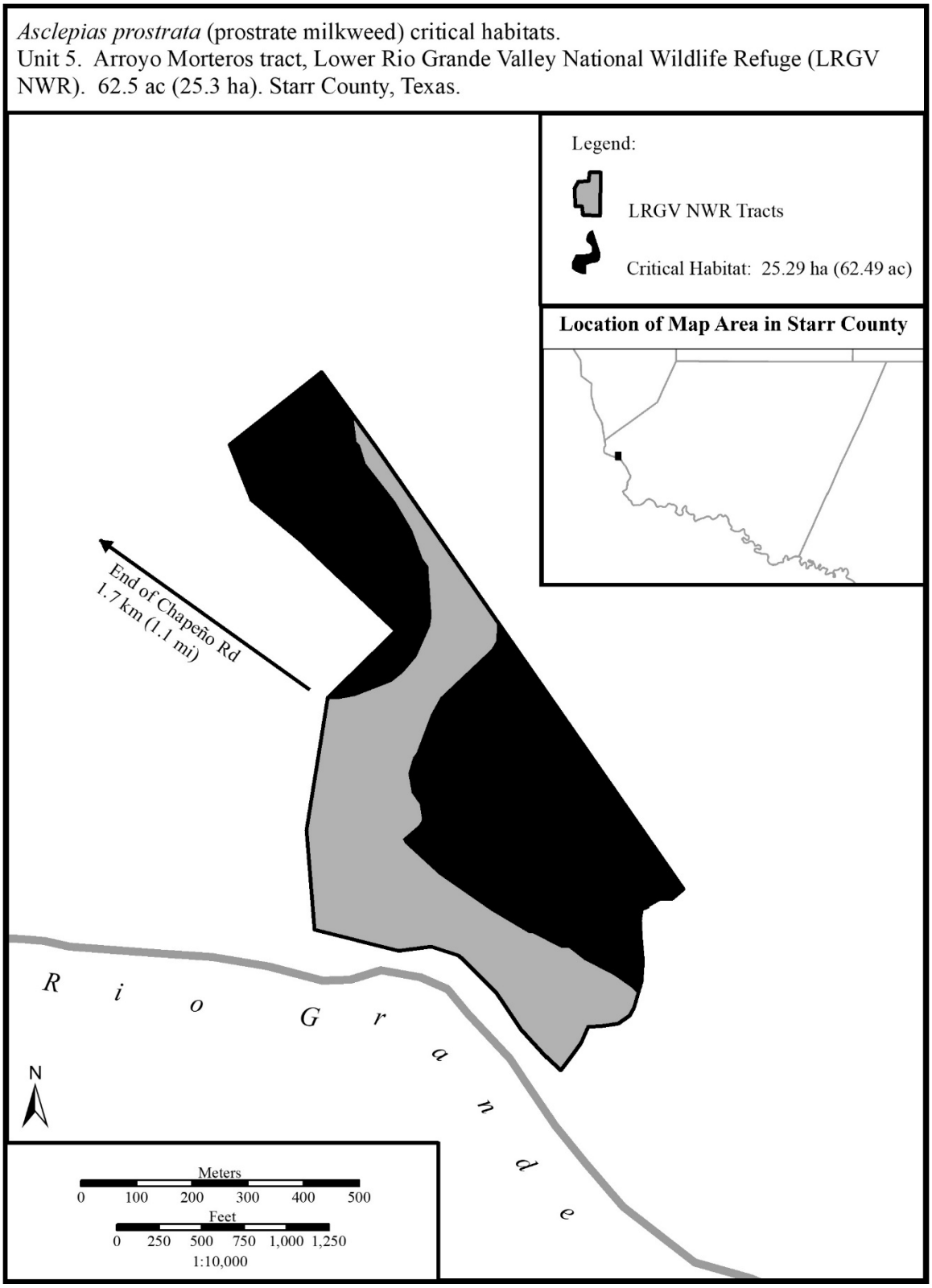

Asclepias prostrata (prostrate milkweed) critical habitats.
Unit 4. 4.2 ac (1.7 ha). Starr County, Texas.
Key:
Asclepias prostrata critical habitat.
Divided Highway
County Road
Starr County, Texas
Starr
Map Area in Starr County
Los Arrieros Loop
Old Hwy 83
US 83
Rio Grande / Bravo
N
Kilometers
0 0.2 0.4 0.6 0.8 1
Miles
0 0.2 0.4 0.6 0.8 1
1:20,000

(10) Unit 5: Starr County, Texas.

(i) Unit 5 consists of 62.49 ac (25.29 ha) in the Arroyo Morteros tract of the Lower Rio Grande Valley National Wildlife Refuge. This unit is in western Starr County adjacent to the Rio Grande on the U.S.–Mexico border. The entire unit is on land owned and managed by the Service.

(ii) Map of Unit 5 follows:

Figure 6 to Family Apocynaceae: *Asclepias prostrata* (Prostrate Milkweed) paragraph (10)(ii)

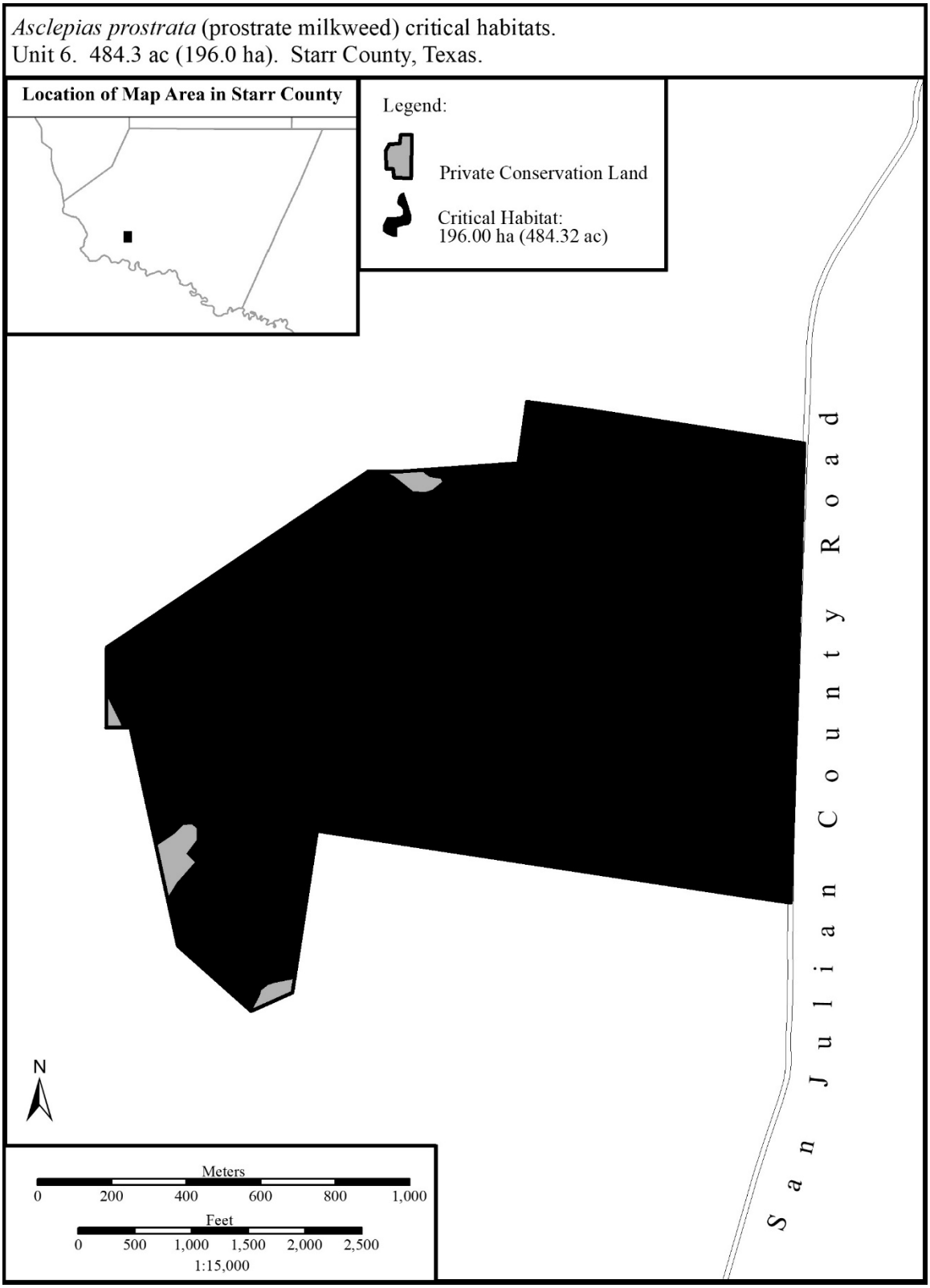


(11) Unit 6: Starr County, Texas.

(i) Unit 6 consists of 484.32 ac (196.0 ha) entirely on privately owned land and the adjacent right of way of San Julian Road. This unit is in western Starr County.

(ii) Map of Unit 6 follows:

Figure 7 to Family Apocynaceae: *Asclepias prostrata* (Prostrate Milkweed) paragraph (11)(ii)

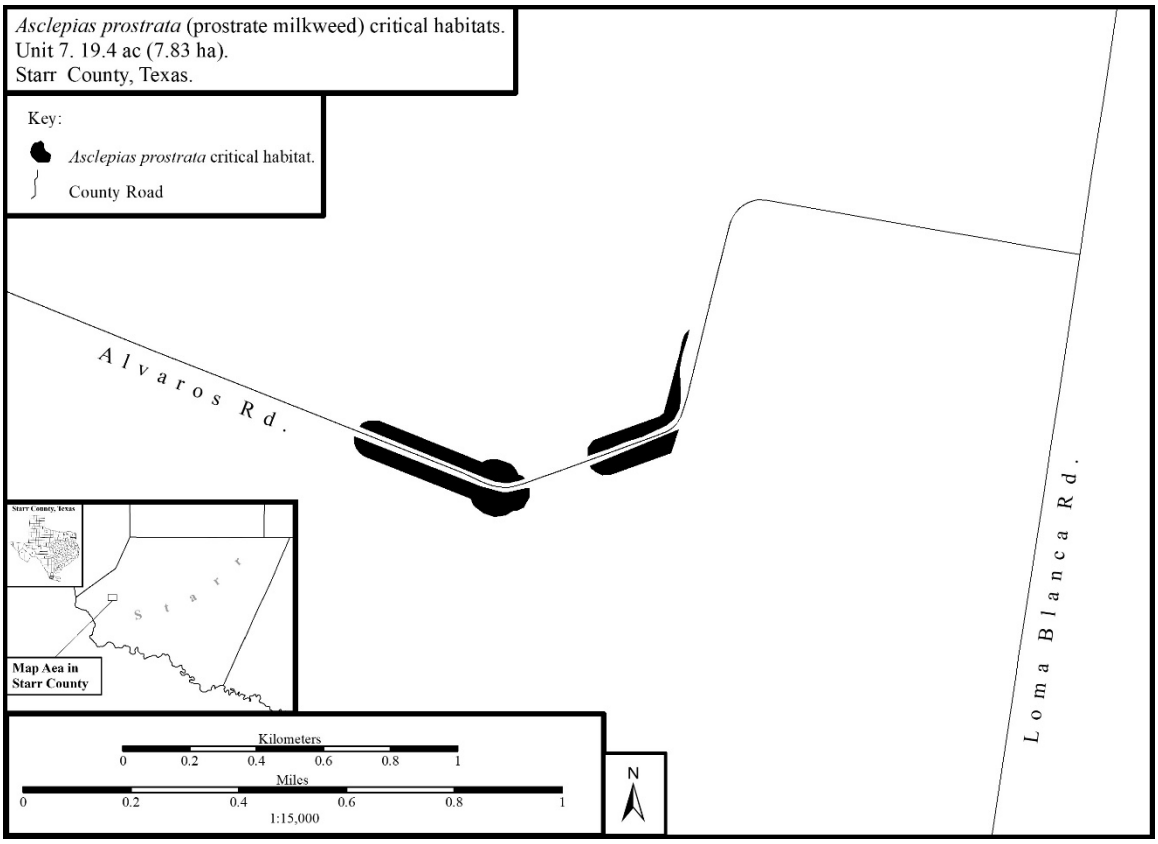


(12) Unit 7: Starr County, Texas.

(i) Unit 7 consists of 19.35 ac (7.83 ha) along both sides of a right of way and adjacent private land in western Starr County.

(ii) Map of Unit 7 follows:

Figure 8 to Family Apocynaceae: *Asclepias prostrata* (Prostrate Milkweed) paragraph (12)(ii)

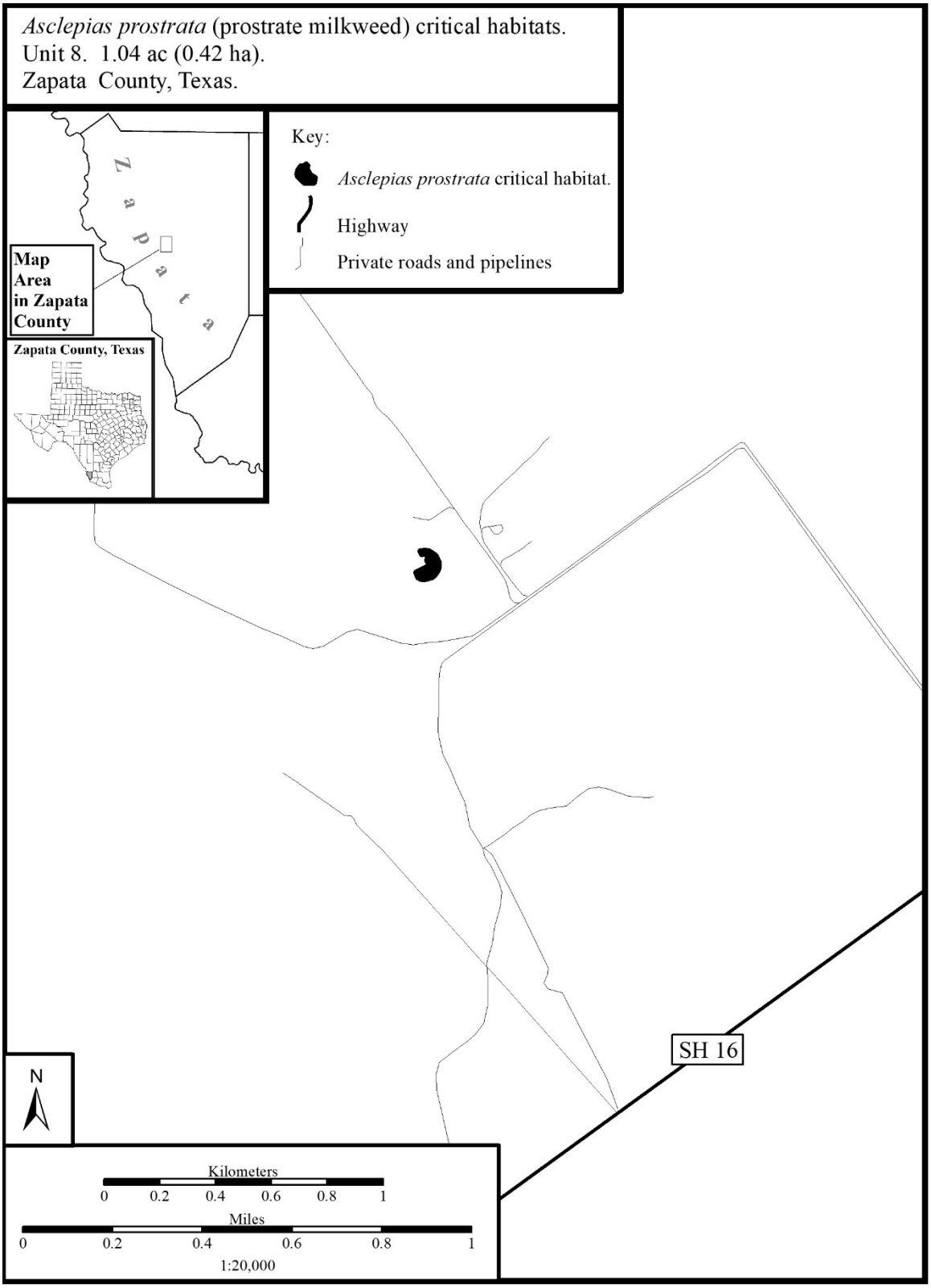

Asclepias prostrata (prostrate milkweed) critical habitats.
Unit 7. 19.4 ac (7.83 ha).
Starr County, Texas.
Key:
Asclepias prostrata critical habitat.
County Road
A l v a r o s R d .
L o m a B l a n c a R d .
Starr County, Texas
S t a r r
Map Aea in
Starr County
Kilometers
0 0.2 0.4 0.6 0.8 1
Miles
0 0.2 0.4 0.6 0.8 1
1:15,000
N

(13) Unit 8: Zapata County, Texas.

(i) Unit 8 consists of 1.04 ac (0.42 ha) on private land in central Zapata County.

(ii) Map of Unit 8 follows:

Figure 9 to Family Apocynaceae: *Asclepias prostrata* (Prostrate Milkweed) paragraph (13)(ii)



* * * * *

Martha Williams,
Principal Deputy Director,
Exercising the Delegated Authority of the Director,
U.S. Fish and Wildlife Service.

[FR Doc. 2022-02544 Filed: 2/14/2022 8:45 am; Publication Date: 2/15/2022]