and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this rule by any one of several methods (*see* **ADDRESSES** section). Please submit Internet comments to *fw1sasu@r1.fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: Santa Ana Sucker Critical Habitat'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Carlsbad Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearings

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearings. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us. If you have any questions concerning the public hearings, please contact the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** above). This notice is being published in the **Federal Register** to provide the public and interested parties with a minimum of 15 days' notification about the public hearings.

Persons needing reasonable accommodations in order to attend and participate in the public hearings should contact Patti Carroll at (503) 231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding this proposal is available in alternative formats upon requests.

Background

On February 26, 2004, we concurrently published in the **Federal Register** a final rule and a proposed rule to designate critical habitat for the Santa Ana sucker (69 FR 8839; 69 FR 8911). In order to comply with the designation deadline established by the district court, we were unable to open a public comment period, hold a public hearing, or complete an economic analysis of the final rule. Please refer to the final rule (69 FR 8839) for a complete explanation of our reasons for dispensing with the notice and comment procedures generally required under the Administrative Procedure Act.

However, we fully recognize the value and importance of public input in developing a critical habitat designation for the Santa Ana sucker. Therefore, in order to allow members of the public an opportunity to comment on the critical habitat designation for the Santa Ana sucker, and to enable the Service to seek peer review of such designation, and to complete and circulate for public review an economic analysis of critical habitat designation, we published and solicited comment on a proposed rule (69 FR 8911) to designate critical habitat for the Santa Ana sucker on approximately 21,129 acres (ac) (8,550 hectares (ha)) of land in Los Angeles and San Bernardino counties. The original comment period on the proposed rule closed on April 26, 2004.

Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to several requests for a public hearing from citizens concerned with the designation of critical habitat in the Angeles National Forest, we will conduct public hearings on the date and at the address described in the **DATES** and **ADDRESSES** sections above.

Author

The primary authors of this notice are the staff of the Carlsbad Fish and Wildlife office (*see* **ADDRESSES** section).

Authority

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

Dated: August 12, 2004.

David P. Smith,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–18987 Filed 8–18–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT66

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Buena Vista Lake Shrew

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Buena Vista Lake shrew (*Sorex ornatus relictus*) (referred to here as the shrew) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 4,649 acres (ac) (1,881 hectares (ha)) occur within the boundaries of the proposed critical habitat designation. The proposed critical habitat is located in the Central Valley floor of Kern County, California.

DATES: We will accept comments from all interested parties until October 18, 2004. We will hold public hearings on Thursday, September 30, 2004 at the DoubleTree Hotel, 3100 Camino del Rio Court, Bakersfield, California. The public hearing will include two sessions: 1 p.m. until 3 p.m. and 6 p.m. until 8 p.m. Registration for the hearings will begin at 12:30 p.m. for the afternoon session and at 5:30 p.m. for the evening session.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information by mail or hand delivery to the Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825.

2. You may send comments by electronic mail (e-mail) to *BVLS_pCH@fws.gov.* Please see the Public Comments Solicited section below for file format and other information about electronic filing. In the event that our internet connection is not functional, please submit your

comments by the alternate methods mentioned above.

The comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California (telephone 916–414–6600).

FOR FURTHER INFORMATION CONTACT: Shannon Holbrook or Arnold Roessler, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605 Sacramento, California, (telephone 916–414–6600; facsimile 916–414–6712).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning this proposed rule are hereby solicited. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation.

(2) Specific information on the amount and distribution of shrew habitat, and what habitat is essential to the conservation of the species and why;

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

(4) Any foreseeable economic or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities; and

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

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to *BVLS_pCH@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: Buena Vista Lake shrew'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Sacramento Fish and Wildlife Office at phone number 916–414–6600. Please note that the Internet address *BVLS_pCH@fws.gov* will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Public Hearings

The Act provides for a public hearing on this proposal, if requested. Given the high likelihood of requests, we have scheduled a public hearing on Thursday, September 30, 2004 at the DoubleTree Hotel, 3100 Camino del Rio Court, Bakersfield. Anyone wishing to make oral comments for the record at the public hearing is encouraged to provide a written copy of their statement and present it to us at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration.

Persons needing reasonable accommodations in order to attend and participate in the public hearing should contact Patti Carroll at 503/231–2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than 1 week before the hearing date.

Designation of Critical Habitat Provides Little Additional Protection to the Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 445 species or 36 percent of the 1,244 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,244 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, and the Section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that a recent 9th Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United State Fish and Wildlife Service,* has invalidated the Service's regulation defining destruction or adverse modification of critical habitat. We are currently reviewing the decision to determine what effect it may have on the outcome of consultations pursuant to Section 7 of the Act.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate

critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result of this consequence, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially imposed deadlines. This situation in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs associated with the critical habitat designation process include legal costs, the costs of preparation and publication of the designation, the analysis of the economic effects and the costs of requesting and responding to public comments, and, in some cases, the costs of compliance with National Environmental Policy Act. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and these associated costs directly reduce the scarce funds available for direct and tangible conservation actions.

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed rule. For more information on the Buena Vista Lake shrew (*Sorex ornatus relictus*), refer to the final listing rule published in the **Federal Register** on March 6, 2002 (67 FR 10101).

The shrew formerly occurred in wetlands around Buena Vista Lake, and presumably throughout the Tulare Basin (Grinnell 1932, 1933; Hall 1981; Williams and Kilburn 1984; Williams 1986; Service 1998). The animals were likely distributed throughout the swampy margins of Kern, Buena Vista, Goose, and Tulare Lakes. By the time the first shrews were collected and described, these lakes had already been drained and mostly cultivated with only sparse remnants of the original flora and fauna remaining (Grinnell 1932; Mercer and Morgan 1991; Griggs 1992; Service 1998).

Nearly the entire valley floor in the Tulare Basin is cultivated, and most of the lakes and marshes have been drained and cultivated (Williams 1986; Werschkull *et al.* 1992; Williams and Kilburn 1992; Williams and Harpster 2001). The shrew is now known from five isolated locations along an approximately 70-mile (mi) (113-kilometer (km)) stretch on the west side of the Tulare Basin. The five locations are the former Kern Lake Preserve (Kern Preserve) on the old Kern Lake bed, the Kern Fan recharge area, Cole Levee Ecological Preserve (Cole Levee), the Kern National Wildlife Refuge (Kern NWR) and the Goose Lake slough bottoms.

Over the last 20 years, a number of surveys have taken place in other freshwater marshes and moist riparian areas on private and public lands throughout the range of the subspecies and were all unsuccessful in capturing any shrews. For other previous surveys for the shrew, please refer to the final listing rule published in the **Federal Register** on March 6, 2002 (67 FR 10101).

In 2003, a survey was conducted by the California State University, Stanislaus Endangered Species Recovery Program (ESRP) for the Goose Lake Bottoms Wetland project. The five shrews captured on the sloughs and canals and in the inundation zone of Goose Lake during the 2003 survey were located within approximately 6.5 ac (2.6 ha) along the sloughs that consisted of emergent vegetation that includes an abundance of saltgrass, *Allenrolfea* and *Suaeda* (ESRP 2004). The study concluded that the preferred habitat of the shrew is along the margins of wet areas where emergent vegetation provides cover and foraging opportunities.

Previous Federal Actions

A final rule listing the shrew as endangered was published in the **Federal Register** on March 6, 2002 (67 FR 10101). Please refer to the final rule listing the shrew for information on previous Federal actions prior to March 6, 2002. On January 12, 2004, the United States District Court for the Eastern District of California issued a Memorandum Opinion and Order (*Kern County Farm Bureau* et al. v. *Anne Badgley, Regional Director of the United States Fish and Wildlife Service, Region 1* et al., CV F 02–5376 AWIDLB). The order required the Service to publish a proposed critical habitat determination for the shrew no later than July 12, 2004, and a final determination no later than January 12, 2005. On July 8, 2004, the court extended the deadline for submitting the proposed rule to the **Federal Register** to August 13, 2004.

Critical Habitat

Section 3(5)(A) of the Act defines critical habitat as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands. Under section 7 of the Act, Federal agencies must consult with us on activities they undertake, fund, or permit that may affect critical habitat and lead to its destruction or adverse modification. However, the Act prohibits unauthorized take of listed species and requires consultation for activities that may affect them, including habitat alterations, regardless of whether critical habitat has been designated. We have found that the designation of critical habitat provides little additional protection to most listed species.

To be included in a critical habitat designation, habitat must be either a specific area within the geographic area occupied by the species on which are found those physical or biological features essential to the conservation of the species (primary constituent

elements, as defined at 50 CFR 424.12(b)) and which may require special management considerations or protections, or be specific areas outside of the geographic area occupied by the species which are determined to be essential to the conservation of the species. Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species.''

Regulations at 50 CFR 424.02(j) define special management considerations or protection to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species. When we designate critical habitat, we may not have the information necessary to identify all areas that are essential for the conservation of the species. Nevertheless, we are required to designate those areas we consider to be essential, using the best information available to us. Accordingly, we do not designate critical habitat in areas outside the geographic area occupied by the species unless the best available scientific and commercial data demonstrate that those areas are essential for the conservation needs of the species.

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties or other entities that develop HCPs, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Section 4 of the Act requires that we designate critical habitat on the basis of what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by section 7(a)(2) and section 9 of the Act, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. 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, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act and regulations at 50 CFR 424.12, we used the best scientific and commercial data available to determine areas that contain the physical and biological features that are essential for the conservation of the shrew. This included data and information contained in, but not limited to, the proposed and final rules listing the shrew (Service 2000, 2002), the Recovery Plan for Upland Species of the San Joaquin Valley, California (Service 1998), research and survey observations published in peer reviewed articles (Grinnell 1932, 1933; Hall 1981; Williams and Kilburn 1984; Williams 1986), habitat and wetland mapping and other data collected and reports submitted by biologists holding section 10(a)(1)(A) recovery permits, biological assessments provided to the Service through section 7 consultations, reports and documents that are on file in the Service's field office (Center for Conservation Biology 1990; Maldonado *et al.* 1998; ESRP 1999a; ESRP 2004), and personal discussions with experts inside and outside of the Service with extensive knowledge of the shrew and habitat in area. We then conducted site visits and visual habitat evaluation in areas known to have shrew, and in areas within the historical ranges that had potential to contain shrew habitat.

The proposed critical habitat units were delineated by creating rough areas for each unit by screen digitizing polygons (map units) using ArcView (Environmental Systems Research Institute, Inc.), a computer Geographic Information System (GIS) program. The polygons were created by overlaying current and historic species location points (CNDDB 2004), and mapped wetland habitats (California Department of Water Resources 1999) or other wetland location information, onto SPOT imagery (satellite aerial photography) (CNES/SPOT Image Corporation 1993–2000) and Digital Ortho-rectified Quarter Quadrangles (DOQQs) (USGS 1993–1998) for areas containing the shrew. We utilized GIS data derived from a variety of Federal, State, and local agencies, and from private organizations and individuals. To identify where essential habitat for the shrew occurs we evaluated the GIS habitat mapping and species occurrence information from the CNDDB (2004). We presumed occurrences identified in CNDDB to be extant unless there was affirmative documentation that an occurrence had been extirpated. We also relied on unpublished species occurrence data contained within our files including section 10(a)(1)(A) reports and biological assessments.

These polygons of identified habitat were further evaluated. Several factors were used to delineate the proposed critical habitat units from these land areas. We reviewed any information in the Recovery Plan for Upland Species of the San Joaquin Valley, California (Service 1998), or other peer reviewed literature or expert opinion for the shrew to determine if the designated areas would meet the species needs for conservation and that these areas contained the appropriate primary constituent elements for the species. Further refinement was done by using satellite imagery, watershed boundaries,

soil type coverages, vegetation/land cover data, and agricultural/urban land use data to eliminate areas that did not contain the appropriate vegetation or associated native plant species, as well as features such as cultivated agriculture fields, development, and other areas that are unlikely to contribute to the conservation of the shrew.

As stated earlier, the shrew occurs in habitats in and adjacent to riparian and wetland edge areas with a vegetation structure that provides cover, allowing for moist soils that support a diversity of terrestrial and aquatic insect prey. We have determined that all five of the known locations of shrew are essential to the conservation of the species (CNDDB 2003). These areas all contain wetland and/or riparian habitat and are located within the historical range of the shrew. The specific essential habitat is explained in greater detail below in the Unit Descriptions section.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and that may require special management considerations and protection. These 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, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific primary constituent elements required for the shrew are derived from the biological needs of the shrew as described in the Background section of this proposal and in the final listing rule.

Space for Individual and Population Growth and Normal Behavior

As described previously, shrew were recorded in association with perennial and intermittent wetland habitats along riparian corridors, marsh edges, and other palustrine (marsh type) habitats in the southern San Joaquin Valley of California. The shrew presumably occurred in the moist habitat surrounding wetland margins in the Kern, Buena Vista, Goose and Tulare lakes basins on the valley floor below 350 ft (107 m) elevation (Grinnell 1932, 1933; Hall 1981; Williams and Kilburn 1984; Williams 1986; Service 1998). With the draining and conversion of the majority of the shrew's natural habitat from wetland to agriculture and the channelization of riparian corridors for water conveyance structures, the vegetative communities associated with the shrew have become degraded and non-native species have replaced the plant species associated with the shrew (Grinnell 1932; Mercer and Morgan 1991; Griggs 1992; Service 1998). Current survey information has identified five areas where the shrew has been found (CNDDB 2004; Maldonado 1992; Williams and Harpster 2001; ESRP 2004). The five locations are the former Kern Lake Preserve (Kern Preserve) on the old Kern Lake bed, the Kern Fan recharge area, Cole Levee Ecological Preserve (Cole Levee), the Kern National Wildlife Refuge (Kern NWR) and the Goose Lake slough bottoms. The vegetative communities associated with these areas and with shrew occupancy are characterized by the presence of but is not limited to: Fremont cottonwood (*Populus fremontii*), willows, *Salix* spp.) *glasswort* (*Salicornia* sp.), wild-rye grass (*Elymus* sp.), and rush grass (*Juncus* sp.) and other emergent vegetation (Service 1998). Maldonado (1992) found shrews in areas of moist ground covered with leaf litter near other low-lying vegetation, branches, tree roots, and fallen logs, or in areas with cool, moist soil beneath dense mats of vegetation kept moist by its proximity to the water line. He described specific habitat features that would make them suitable for the shrew: (1) Dense vegetative cover; (2) a thick, three-dimensional understory layer of vegetation and felled logs, branches, and detritus/debris; (3) heavy understory of leaf litter with duff overlying soils; (4) proximity to suitable moisture; and (5) a year-round supply of invertebrate prey. Williams and Harpster (2001) concluded that the best habitat for the shrew was found in ''riparian and wetland communities with an abundance of leaf litter (humus) or dense herbaceous cover.'' They also determined that ''although moist soil in areas with an overstory of willows or cotton woods appears to be favored,'' they doubted that such overstory was essential. Based on changes in the native habitat composition and structure and information on habitat descriptions of where the shrew have been found, we include the moist vegetative communities surrounding permanent and semi-permanent wetlands in our description of shrew critical habitat because they are the habitat requirements needed by the shrew.

Food

The specific feeding and foraging habits of the shrew are not well known. In general, shrews primarily feed on insects and other animals, mostly invertebrates (Harris 1990, Williams 1991, Maldonado 1992). Food probably is not cached and stored, so the shrew must forage periodically day and night to maintain its high metabolic rate.

The vegetation communities described above provide a diversity of structural layers and plant species and likely contribute to the availability of prey for shrews. Therefore, conservation of the shrew should include consideration of the habitat needs of prey species, including structural and species diversity and seasonal availability. Shrew habitat must provide sufficient prey base and cover from which to hunt in an appropriate configuration and proximity to nesting sites. The shrew feeds indiscriminately on available larvae and adults of several species of aquatic and terrestrial insects. An abundance of invertebrates is associated with moist habitats, such as wetland edges, riparian habitat, edges of lakes, ponds, or drainages that possess a dense vegetative cover (Owen and Hoffmann 1983). Therefore, to be considered essential, critical habitat consists of a vegetative structure that contains suitable soil moisture capable of supporting a diversity of invertebrates so that there is a substantial food source to sustain occurrences of the shrew.

Water

Open water does not appear to be necessary for the survival of the shrew. The habitat where the shrew have been found contain areas with both open water and mesic environments (Maldonado 1992; Williams and Harpster 2001). The availability of water contributes to improved vegetation structure and diversity which improves cover availability. The presence of water also attracts potential prey species improving prey availability.

Reproduction and Rearing of Offspring

Little is known about the reproductive needs of the shrew. The breeding season begins in February or March and ends in May or June, but can be extended depending on habitat quality and available moisture (J. Maldonado, Pers Comm., 1998; Paul Collins, Santa Barbara Museum of Natural History, in litt. 2000). The edges of wetland or marshy habitat allow the shrew to provide hospitable environments and

have larger prey base to give birth and raise its young. The shrew's preference for dense vegetative understories also provides cover from predators. Dense vegetation also allows for the soil moisture necessary for a consistent supply of terrestrial and aquatic insect prey (Kirkland 1991; Ma and Talmage 2001, Freas 1990, Maldonado 1992, Maldonado *et al.*, 1998).

The areas proposed for designation as critical habitat for the shrew consist of habitat with the primary constituent elements that are essential for adult and juvenile shrews to maintain and sustain occurrences throughout their range. The PCE's below describe the habitat of units that are being designated as critical habitat. Special management, such as habitat rehabilitation efforts (*e.g.*, provision of an adequate and reliable water source and restoration of riparian habitat), may be necessary throughout the areas being proposed.

Primary Constituents for the Buena Vista Lake Shrew

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the shrew requires the following primary constituent elements:

(i) Riparian or wetland communities supporting a complex vegetative structure with a thick cover of leaf litter or dense mats of low-lying vegetation; and

(ii) Suitable moisture supplied by a shallow water table, irrigation, or proximity to permanent or semi-permanent water; and

(iii) A consistent and diverse supply of prey.

The requisite riparian and wetland habitat is essential for the shrew by providing space and cover necessary to sustain the entire life cycle needs of the shrew, as well as its invertebrate prey. The shrew is preyed upon by many large vertebrate carnivores as well as avian predators. Therefore, a dense vegetative structure provides the cover or shelter essential for evading predators as well as serving as habitat for breeding and reproduction, and allows for the protection and rearing of offspring and the growth of adult shrews.

Criteria Used To Identify Critical Habitat

For the eventual delisting of the shrew, it is necessary to conserve sufficient population numbers to ensure that it can be self-sustaining. The five units proposed to be designated are determined to be essential for the conservation of the species because they contain a variety of habitats. Protecting a variety of habitats and conditions that contain the PCE's will allow the shrew to be self-sustaining because it will increase the ability of the shrew to survive stochastic environmental (*e.g.*, fire), natural (*e.g.*, predators), demographic (*e.g.*, low recruitment), or genetic (*e.g.*, inbreeding) events, therefore lowering the probability of extinction. Suitable habitat within the historic range is extremely limited and remaining habitats are vulnerable to both anthropogenic and natural threats because so few extant occurrences of the shrew exist, and the number of individuals at each location is estimated to be low. Also, these areas provide habitats essential for the maintenance and growth of self-sustaining populations and metapopulations (a set of local populations where typically migration from one local population to other areas containing suitable habitat is possible) of shrews throughout its range. Therefore, these areas are essential to the conservation of the shrew.

We are proposing to designate critical habitat in five units that we have determined are essential to the conservation of the shrew. In our development of critical habitat for the shrew, we used the following methods. All of the units have the primary constituent element described above.

When determining critical habitat boundaries, we made every effort to exclude all developed areas, such as towns, housing developments, and other lands unlikely to contain the primary constituent elements essential for shrew conservation. Our mapping units exclude any developed lands, such as lands supporting outbuildings, paddocks, roads, paved areas, lawns, and other lands unlikely to contain the primary constituent elements.

In summary, we are proposing to designate five critical habitat units within the known geographical area occupied by the species. The primary constituent elements are present and the shrew is extant in all units. Additional areas outside of the geographic area currently known to be occupied by the shrew were evaluated to determine if they are essential to the conservation of the shrew and should be included in the proposed critical habitat. Based upon our evaluation of available information which included the Recovery Plan, survey data, and historical records, we do not find any areas outside of the known geographical area occupied by the shrew to be essential to the conservation of the species at this time.

Special Management Considerations or Protections

Special management considerations or protections may be needed to maintain the physical and biological features as well as the primary constituent elements that are essential for the conservation of the shrew within designated critical habitat. The term ''special management considerations or protection'' originates in section 3(5)(A) of the Act under the definition of critical habitat. We believe that the proposed critical habitat units may require the special management considerations or protections due to the threats identified below.

The majority of locations supporting the shrew are on private land, and are subject to a change in water supply that maintains the current habitat. Elevated concentrations of selenium also represent a serious environmental threat to the species (Service 2002). High levels of selenium have been measured in recharge and evaporation ponds adjacent to areas where the shrew occurs (California Department of Water Resources in litt. 1997). Potential dietary selenium concentrations, from sampled aquatic insects, are within ranges toxic to small mammals (Olson 1986, Skorupa *et al.* 1996), and could include, but may not be limited to, reduced reproductive output or premature death (Eisler 1985, Skorupa *et al.* 1996). The shrew also faces high risks of extinction from random catastrophic events (*e.g.* floods, drought, and inbreeding) (Service 1998). These threats and others mentioned above would render the habitat less suitable for the shrew, and special management may be needed to address them.

Proposed Critical Habitat Designation

We are proposing 5 units as critical habitat for the shrew. These 5 critical habitat units described below constitute our best assessment at this time of the areas essential for the conservation of the shrew. The 5 units proposed as critical habitat for the shrew are:

(1) Kern National Wildlife Refuge; (2) Goose Lake; (3) Kern Fan Recharge Area; (4) Coles Levee; and, (5) Kern Lake.

The approximate area encompassed within each proposed critical habitat unit is shown in Table 1.

TABLE 1.—CRITICAL HABITAT UNITS PROPOSED FOR THE BUENA VISTA LAKE SHREW

[Area estimates reflect all lands within proposed critical habitat unit boundaries, not just the areas supporting primary constituent elements.]

Unit	Federal		State		Local agencies		Private		Total	
	ac	ha	ac	ha	ac	ha	ac	ha	ac	ha
1. Kern National Wildlife Refuge ..	387	157	.....	.....	.....	.....	.....	.....	387	157
2. Goose Lake	.....	.....	.....	.....	.....	.....	1,277	517	1,277	517
3. Kern Fan Recharge Area	.....	.....	.....	.....	2,682	1,085	.....	.....	2,682	1,085
4. Coles Levee	.....	.....	.....	.....	.....	.....	214	87	214	87
5. Kern Lake	.....	.....	.....	.....	.....	.....	90	36	90	36
Grand Total	387	157	0	0	2,682	1,085	1,581	640	4,649	1,881

Although we are aware that less than ten percent of Federal lands occur within these boundaries, the majority of these areas proposed for critical habitat designation occur on privately owned land.

The areas essential for the shrew include areas throughout the species' range in California and includes areas representative of all habitat types where the species is found, so as to better ensure the long term survival of the species. Below are brief descriptions of all the proposed units and the reasons why they are essential for the conservation of the shrew.

Unit 1: Kern National Wildlife Refuge (Kern NWR) Unit

The Kern NWR Unit is in northwestern Kern County. The Kern NWR consists of two sub-units totaling approximately 387 ac (157 ha) (unit 1a, 274 ac (111 ha); unit 1b, 66 ac (27 ha); unit 1c, 47 ac (19 ha)). Shrew habitat in this unit receives its soil moisture regime from the California Aqueduct. There are known occurrences at two locations within the refuge. One of these areas has standing water from September 1 through approximately April 15. After that time, the trees in the area may receive irrigation water so the area may possibly remain damp through May. This area is dry for approximately 3 months during the summer. The second area of known occurrences has standing water from the second week of August through June into early July and is only dry for a short time during the summer. Two other areas where shrew occurrences are likely within the refuge are the Poso Creek Channel, which maintains moisture from August to June and a unit in the northeastern portion of the refuge that is wet for approximately 10 months of the year (Dave Hardt pers.comm.). The Kern NWR has not completed a Comprehensive Conservation Plan (CCP) for the refuge. A draft plan is scheduled to be available to the public and a final CCP completed prior to October, 2004. Once the draft CCP is available to the public, an internal section 7 review will take place and an evaluation of effects of the plan on the shrew will be determined.

Kern NWR has 1,102 acres of wetland communities on the approximately 10,618 acre refuge. Much of this wetland acreage is seasonally flooded. Dominant plants included bulrushes (*Scirpus* sp.), cattails (*Typha* sp.), rushes (*Juncus* sp.), spike rush (*Heleocharis palustris*), and arrowhead (*Sagittaria longiloba*). Riparian areas next to creeks and sloughs comprised approximately 125 acres, less than 1 percent of the refuge. Fremont cottonwoods (*Populus fremontii*), and various species of willows (*Salix* spp.) are the dominant woody plants in riparian areas. Other plant communities on the Refuge that support shrews are Valley iodine bush scrub, dominated by iodine bush (*Allenrolfea occidentalis*), suaeda (*Suaeda* sp.), alkali heath (*Frankenia salina*), and salt-cedar scrub dominated by *Tamarix* sp. (salt cedar). Both of these communities occupy sites with moist, alkaline soils. Iodine bush scrub often has poorly drained soils, the first few inches of which are often dry during the long, hot season. This unit is essential to the conservation of the species because it represents one of five remaining areas known to support an extant population of the shrew that also contains the PCE's.

Unit 2: Goose Lake Unit

The Goose Lake Unit, consisting of 1,277 ac (517 ha) and located about 10 miles south of Kern NWR, is the historic lake bed of Goose Lake. The Goose Lake area consists of approximately 4,000 acres of former marshes and wetlands and over 4,000 acres of upland communities. Goose Lake is managed by the Semitropic Water District as a ground-water recharge basin. There are currently no conservation agreements covering this land. The Goose Lake Unit is found south of Kern National Wildlife Refuge in northwestern Kern County. Shrew habitat in this unit has experienced widespread losses due to the diversion of water for agricultural purposes. This unit is essential to the conservation of the species because it represents one of five remaining areas known to support an extant population of the shrew that also contains the PCE's.

Water from the California Aqueduct is transferred to the Goose Lake area in years of abundant water, where it is allowed to recharge the aquifer that is used for irrigated agriculture. Small, degraded examples of freshwater marsh and riparian communities still exist in the area of Goose Lake and Jerry Slough, which is a portion of historical Goose Slough, an overflow channel of the Kern River. Suitable habitat for shrews is found in the Goose Lake area (Germano and Tabor 1993).

Gooselake Holding Co., a partnership comprised of members of the Tracy family and Buttonwillow Land and Cattle Company, in cooperation with Ducks Unlimited (DU), Inc. and Semitropic Water Storage District (Semitropic WSD), is proposing to create and restore habitat for waterfowl in the project area, and restoration activities are currently planned for the area and funded through grants under the North American Wetlands Conservation Act (NAWCA). This project will enhance existing sloughs and create new water delivery conveyance systems to provide a more efficient and permanent water supply to existing wetlands on the two properties. The wetlands within the project site generally lie within a trough on the southeastern shores of historic Goose Lake. A water conveyance system will provide wetland managers with a more dependable water supply to existing wetland basins and will help to convey excess agricultural field run-off water to the eastern portion of Goose Lake during flood events or periods of excess run-off water discharges. The current water regime for the Goose Lake area is driven by supplies from agricultural activity southeast of Goose Lake, where the

water is mostly from wells. Most of the water supplied to the wetlands located on the eastern portion of Goose Lake comes from tail water generated from this agriculture, but in some years, well water is occasionally added into the canal system and delivered to the wetlands.

In the Southwest part of the Lake, Semitropic WSD has a spillway which is occasionally used in times of flooding. In the northwestern portion of the lake, the district periodically floods wetlands for duck hunting. Currently, much floodwater is lost to the district. Through an agreement being prepared between Semitropic WSD and Gooselake Holding Company, floodwater will be captured and stored on his property from March through April (or May). Later these waters will be pumped into the Semitropic WSD system and delivered to their customers. In exchange for this storage, the district will partially subsidize the landowner's water cost for his wetlands. The result of this will be a significant increase in the duration and area of wetlands flooded each year.

Many of the ditches on the property east of Gooselake are in need of repair. The project will repair much of the water delivery system, allowing the landowner to improve water conveyance. Enhancements proposed at Goose Lake would substantially increase the quantity and quality of shrew habitat on the site. The principle periods that water will be conveyed through the perimeter sloughs will be during the agricultural irrigation season (approximately June through November) and during stochastic flooding events between November and July. It is possible, depending on flows in Jerry Slough caused by the above sources, that water might be conveyed through the perimeter sloughs during any time of the year. Wetland basins will be managed to provide optimal habitat conditions for migrating and wintering waterfowl. This involves flooding seasonal and semi-permanent wetland basins beginning in September and maintaining this wetland habitat through March.

Dominant vegetation along the slough channels includes frankenia (Frankenia), iodine bush, and seepweed (Suaeda). The northern portion of the unit consists of scattered mature Allenrolfea shrubs in an area that has relatively moist soils. The southern portion of the unit is characterized by a dense mat of saltgrass (Distichilis) and clumps of Allenrolfea and Suaeda. A portion of the unit currently exhibits inundation and saturation during the winter months. Dominant vegetation in these areas includes cattails, bulrushes, Juncus sp., and saltgrass.

Approximately 6.5 acres of potential shrew habitat located along the Goose Lake sloughs were surveyed in January 2004 (ESRP 2004). Five shrews were captured during the survey effort with the greatest distance between capture sites being 1.6 miles, indicating that shrews are widely distributed on the site.

Unit 3: Kern Fan Water Recharge Unit

The Kern Fan Water Recharge Area Unit consists of 2,687 ac (1,088 ha). The unit is within the Kern Fan Water Recharge Area (2,800 ac (1,133 ha)), which is owned by the City of Bakersfield. The unit is located adjacent to the Kern Water Bank, a 19,000 ac (7,689 ha) area owned by the Kern Water Bank Authority. Portions of the recharge area are flooded sporadically, forming fragmented wetland communities throughout the area.

Narrow strips of riparian communities exist on both sides of the Kern River. The plant communities of the Kern Fan Water Recharge Area include a mixture of Valley saltbush scrub, Great Valley mesquite shrub, and some remnant riparian areas. The Valley saltbush scrub is characterized by the presence of Valley saltbush (*Atriplex polycarpa*), alkali heath, goldenbush (*Isocoma acradenia*), and common spikeweed (*Hemizonia pungens*). The soils in this area are sandy to loamy with no surface alkalinity. This community seems to intergrade with the Great Valley mesquite scrub plant community. This is an open scrubland dominated by mesquite (*Prosopis juliflora*), Valley saltbush, and goldenbush. The soils also are sandy loams of alluvial origin. Remnant riparian areas are found throughout the water bank area, but are mainly located near the main channel of the Kern River and are dominated by Fremont cottonwood, willow species (*Salix* spp.), stinging nettle (*Urtica dioica*), creeping wild rye (*Leymus triticoides*), mulefat (*Baccharis salicifolia*), and narrow-leaved milkweed (*Asclepias fascicularis*).

Dominant species found in the trapping locations included Fremont cottonwood, stinging nettle, creeping wild rye, and salt grass. The areas under the cottonwoods are normally thick with leaf litter or with creeping wild rye, which tends to grow in thick mats. Some low-lying land has little vegetation and mostly bare soil, whereas some of the higher sites contained lush patches of creeping wild rye.

Willow species, stinging nettles, and a thick mat of creeping wild rye dominate the location of the captured shrews. This site had no standing water at the time of the capture within 100m of the location where the shrews were caught. Water diversion projects are the greatest threats to shrews within this unit. This unit is essential to the conservation of the species because it represents one of five remaining areas known to support an extant population of the shrew that also contains the PCE's. The unit is adjacent to, but not included within, the Kern Water Bank Habitat Conservation Plan/Natural Community Conservation Plan (Kern Water Bank HCP/NCCP) permit area (Kern Water Bank Authority 1997).

Unit 4: Coles Levee Unit

The Coles Levee Unit is approximately 214 ac (87 ha) in Kern County, owned by Aera Energy. The area was established as a mitigation bank in 1992, in an agreement between Atlantic Richfield Company (ARCO) and California Department of Fish and Game. The area serves as a mitigation bank to compensate for take of habitats for listed upland species. The site is mostly highly degraded upland saltbush and mequite scrub, and interlaces with slough channels for the historical Kern River fan where it entered Buena Vista Lake from the northeast. Most slough channels are dry except in times of heavy flooding, every several years. The area contains approximately 2 mi (3.2 km) of much degraded riparian communities along the Kern River.

Located in the unit is a human-made pond that was formed less than 5 years ago. Water from the adjacent oil fields is constantly being pumped into the basin. Vegetation includes bulrushes, stinging nettle, mulefat, salt grass, quailbush (*Atriplex lentiformis*), and poison hemlock (*Conium maculatum*). There are a few willows and Fremont cottonwoods scattered throughout the area. This site runs parallel to the Kern River bed.

This unit is essential to the conservation of the species because it represents one of five remaining areas known to support an extant population of the shrew that also contains the PCE's. An HCP was issued for the Coles Levee Ecological Preserve Area. The HCP permit expired when ARCO sold the property to the current owner and the permit was not transferred.

Unit 5: Kern Lake Unit

The Kern Lake Unit is approximately 90 acres (36 ha) and is found in the southern portion of the San Joaquin Valley in southwestern Kern County, approximately 16 miles south of Bakersfield. This unit lies between Hwy 99 and Interstate 5, south of Herring

Road near the New Rim Ditch. The moisture regime for shrew habitat in this unit is maintained by agricultural runoff from the New Rim ditch. This unit is essential to the conservation of the species because it represents one of five remaining areas known to support an extant population of the shrew that also contains the PCE's. The Kern Lake area was formerly managed by the Nature Conservancy for the Boswell Corporation, and was once thought to contain the last remaining population of the shrew. This area does not have a conservation easement and is managed by the landowners. We are unaware of any plans to develop this site.

The Kern Lake Unit is situated at the edge of the historic Kern Lake. Since the advent of reclamation and development, the surrounding lands have seen intensive cattle and sheep ranching and, more recently, cotton and alfalfa farming. While Kern Lake is now only a dry lake bed, the unit's ''Gator Pond'' site and wet alkali meadows stand as unique reminders of their biological heritage.

A portion of the run-off from the surrounding hills travels through underground aquifers, surfacing as artesian springs at Gator Pond. The heavy clay soils support a distinctive assemblage of native species. An island of native vegetation situated among a sea of cotton fields, this Unit contains three ecologically significant natural communities: Freshwater marsh, alkali meadow, and iodine bush scrub. Gator Pond, in the sanctuary's eastern quarter, lies near the shoreline of the historic Kern Lake.

Shrews were discovered at the Kern Lake Unit in 1986 near a community of saltbushes and saltgrass. In 1988 and 1989, 25 shrews were captured in low-lying, riparian and/or wetland habitats with an overstory of cottonwoods and willows, abundant ground litter, and moist soil (Center for Conservation Biology 1990).

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.2, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: Alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' We are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or 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 us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. 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. Through this consultation, the action agency ensures that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Activities on Federal lands that may affect the shrew or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.,* Federal Highway Administration or Federal Emergency Management Agency funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat to the shrew. We note that such activities may also jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal

agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat to the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would often result in jeopardy to the species concerned when the area of the proposed action is occupied by the species concerned.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by any Federal agency;

(3) Road construction and maintenance, right-of-way designation, and regulation funded or permitted by the Federal Highway Administration;

(4) Voluntary conservation measures by private landowners funded by the Natural Resources Conservation Service;

(5) Regulation of airport improvement activities by the Federal Aviation Administration;

(6) Licensing of construction of communication sites by the Federal Communications Commission; and,

(7) Funding of activities by the U.S. Environmental Protection Agency, Department of Energy, Federal Emergency Management Agency, Federal Highway Administration, or any other Federal agency.

All lands proposed for designation as critical habitat are within the historical geographic area occupied by the species, and are likely to be used by the shrew whether for foraging, breeding, growth of juveniles, dispersal, migration, genetic exchange, or sheltering. We consider all lands included in this designation to be essential to the survival of the species. Federal agencies already consult with us on activities in areas currently occupied by the species or if the species may be affected by the action to ensure that their actions do not jeopardize the continued existence of the species. Therefore, we believe that the designation of critical habitat is not likely to result in a significant regulatory burden above that already in place due to the presence of the listed species. Few additional consultations are likely to be conducted due to the designation of critical habitat.

Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (i) essential to the conservation of the species and (ii) which may require special management considerations and protection. Therefore, areas within the geographic area occupied by the species that do not contain the features essential for the conservation of the species are not, by definition, critical habitat. Similarly, areas within the geographic area occupied by the species that do not require special management or protection also are not, by definition, critical habitat. To determine whether an area requires special management, we first determine if the essential features located there generally require special management to address applicable threats. If those features do not require special management, or if they do in general but not for the particular area in question because of the existence of an adequate management plan or for some other reason, then the area does not require special management.

We consider an existing, current plan to provide adequate management or protection if it meets three criteria: (1) The plan is complete and provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the conservation management strategies and actions will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, have an implementation schedule, and adequate funding for implementing the management plan); and (3) the plan provides assurances that the conservation strategies and measures will be effective (*i.e.*, it identifies biological goals, has provisions for monitoring and reporting progress, and is of a duration sufficient to substantially implement the plan and achieve the plan's goals and objectives).

Further, section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, 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. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

In our critical habitat designations, we use the provisions outlined in sections 3(5)(A) and 4(b)(2) of the Act to evaluate those specific areas that we are considering proposing to designate as critical habitat, as well as for those areas that are formally proposed for designation as critical habitat. Lands we have found that do not meet the definition of critical habitat under section 3(5)(A), or have been excluded pursuant to section 4(b)(2), include those covered by the following types of plans if they provide assurances that the conservation measures they outline will be implemented and effective: (1) Legally operative HCPs that cover the species, (2) draft HCPs that cover the species and have undergone public review and comment (*i.e.*, pending HCPs), (3) Tribal conservation plans that cover the species, (4) State conservation plans that cover the species, and (5) National Wildlife Refuge System Comprehensive Conservation Plans.

Pursuant to section 4(b)(2) of the Act, we must consider relevant impacts in addition to economic ones. We determined that the lands within the designation of critical habitat for the shrew are not owned or managed by the Department of Defense, there are currently no habitat conservation plans for the shrew, and the designation does not include any Tribal lands or trust resources.

The Coles Levee Ecological Preserve area was covered under a previous HCP; however, the permit has expired (see Coles Levee unit 4). In addition the permit did not cover the shrew. The area is currently owned by Aera Energy and serves as a mitigation bank to compensate for take of habitats for listed upland species. Coles Levee does have a recorded easement; however the easement does not provide any means for protection of the shrew. Should information become available regarding the protection of the lands within the unit, these lands may be excluded from

the designation if they meet our criteria identified above for exclusion.

The Kern Fan Water Recharge Area unit (see unit 5) is owned by the City of Bakersfield as a groundwater recharge zone. The unit is adjacent to but not included within the Kern Water Bank Habitat Conservation Plan/Natural Community Conservation Plan (Kern Water Bank HCP/NCCP) permit area (Kern Water Bank Authority 1997). The Kern Water Bank Authority has requested an expansion of the permit area for the currently approved HCP/NCCP but the expansion does not include the proposed critical habitat area. As a result, the Kern Fan Water Recharge Area unit would not be excluded in the final critical habitat designation unless the current land owners are able to provide assurances that conservation measures for the shrew will be implemented and effective.

An area on the Kern NWR is also included in this proposed designation (see units 2a and 2b). The Comprehensive Conservation Plan (CCP) for the Kern NWR has not been completed and has not gone through a section 7 consultation for activities which may affect the shrew. The draft CCP for the Kern and Pixley NWRs was released for public comment June, 2004 and a final CCP is scheduled for release by October, 2004. Should a final CCP be approved and the CCP be evaluated for effects to the shrew with a finding of no effect or not likely to adversely affect, the areas on the Kern NWR would be excluded in the final critical habitat designation, provided that there are adequate assurances that the conservation measures for the shrew in the CCP and the BO for the CCP will be implemented and effective.

Located about 10 miles south of Kern NWR is the historic lake bed of Goose Lake. The Goose Lake area consists of approximately 4,000 ac (1,618 ha) of former marshes and wetlands and over 4,000 ac (1,618 ha) of upland communities. The proposed Goose Lake unit consists of 2,605 ac (1,054 ha) within this area (see unit 2). Goose Lake is managed by the Semitropic Water District as a ground-water recharge basin. Currently there are no conservation agreements covering this land. However, the Gooselake Holding Co., in cooperation with DU Inc., Semitropic WSD, and the U.S. Fish and Wildlife Service through the Joint Venture Program is proposing the Goose Lake Wetland Project to create and restore habitat for waterfowl in the project area. The proposed project has not completed a section 7 consultation. Should the proposed project complete a section 7 consultation and be evaluated for effects to the shrew, the areas on the Goose Lake unit may be excluded in the final critical habitat designation provided assurances that the conservation measures for the species will be implemented and effective. The project includes restoration activities that are funded through grants under the NAWCA. This project will enhance existing sloughs and create new water delivery conveyance systems to provide a more efficient and permanent water supply to existing wetlands on the two properties.

We anticipate no impact to national security, Tribal lands, partnerships, or habitat conservation plans from this critical habitat designation. Based on the best available information, we believe that all of these units are essential for the conservation of this species. We have found no areas for which the benefits of exclusion outweigh the benefits of inclusion, and so have not proposed to exclude any areas from this proposed designation of critical habitat for the shrew. However, as noted previously, there are a number of pending conservation actions for proposed areas which, if they reach a sufficient state of completion, might warrant exclusion from the final designation.

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for the shrew is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://sacramento.fws.gov,* or by contacting the Sacramento Fish and Wildlife Office directly (see **ADDRESSES** section).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

We will hold a public hearing on Thursday, September 30, 2004 at the DoubleTree Hotel, 3100 Camino del Rio Court, Bakersfield, California. The public hearing will include two sessions: 1 p.m. until 3 p.m. and 6 p.m. until 8 p.m. Registration for the hearings will begin at 12:30 p.m. for the afternoon session and at 5:30 p.m. for the evening session. Further information on the public hearing can be obtained from our Web site at *http://sacramento.fws.gov,* or by contacting the Sacramento Fish and Wildlife Office directly (see **ADDRESSES** section).

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

This document has not been reviewed by the Office of Management and Budget (OMB), in accordance with Executive Order 12866. OMB makes the final determination of significance under Executive Order 12866. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. OMB may review this

document and the draft economic analysis, when the latter is available for public comment.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on section 7 consultations.

The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments.

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

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

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation for an additional 60 days. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for the shrew is not a significant regulatory action under Executive Order 12866, and it is not expected to 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), the Service makes the following findings:

(a) This rule will 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, 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; AFDC 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 who receive Federal funding, assistance, permits or 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 on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments. A Small Government Agency Plan is not required. There are no state lands in the proposed designation. Although city and county lands comprise about 58 percent of the total proposed designation, this rule proposes to designate only 2,682 acres on local lands. Small governments will not be affected at all unless they proposed an action requiring Federal funds, permits or other authorization. Any such activity will require that the involved Federal agency ensure that the action is not likely to adversely modify or destroy designated critical habitat. However, as discussed above, Federal agencies are currently required to ensure that such activity is not likely to jeopardize the species, and no further regulatory impacts from this proposed designation of critical habitat are anticipated. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Federalism

In accordance with Executive Order 13132, the rule does not have significant federalism effects. A federalism

assessment is not required. In keeping with DOI policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the shrew imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and 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 Endangered Species Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the shrew.

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

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

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (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, 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. We have determined that there are no tribal lands essential for the conservation of the shrew. Therefore, proposed designation of critical habitat for the shrew has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author(s)

The primary author of this package is the Sacramento Fish and Wildlife Office staff.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping 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—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.11(a), revise the entry for ''Shrew, Buena Vista Lake'' under ''MAMMALS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Shrew, Buena Vista Lake.	*Sorex ornatus relictus.*	U.S.A. (CA)	Entire	E	725	17.95(a)	NA
*	*	*	*	*	*		*

* * * * *

3. In § 17.95, amend paragraph (a)(2) by adding an entry for ''Buena Vista Lake shrew'' in the same alphabetical order as this species appears in the table in § 17.11 to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) Mammals.

* * * * *

Buena Vista Lake Shrew (*Sorex ornatus relictus*)

(1) Critical habitat units are depicted for Kern County, California, on the maps below.

(2) The primary constituent elements of critical habitat for the Buena Vista Lake shrew are the habitat components that provide:

(i) Riparian or wetland communities supporting a complex vegetative structure with a thick cover of leaf litter or dense mats of low-lying vegetation; and

(ii) Suitable moisture supplied by a shallow water table, irrigation, or proximity to permanent or semi-permanent water; and

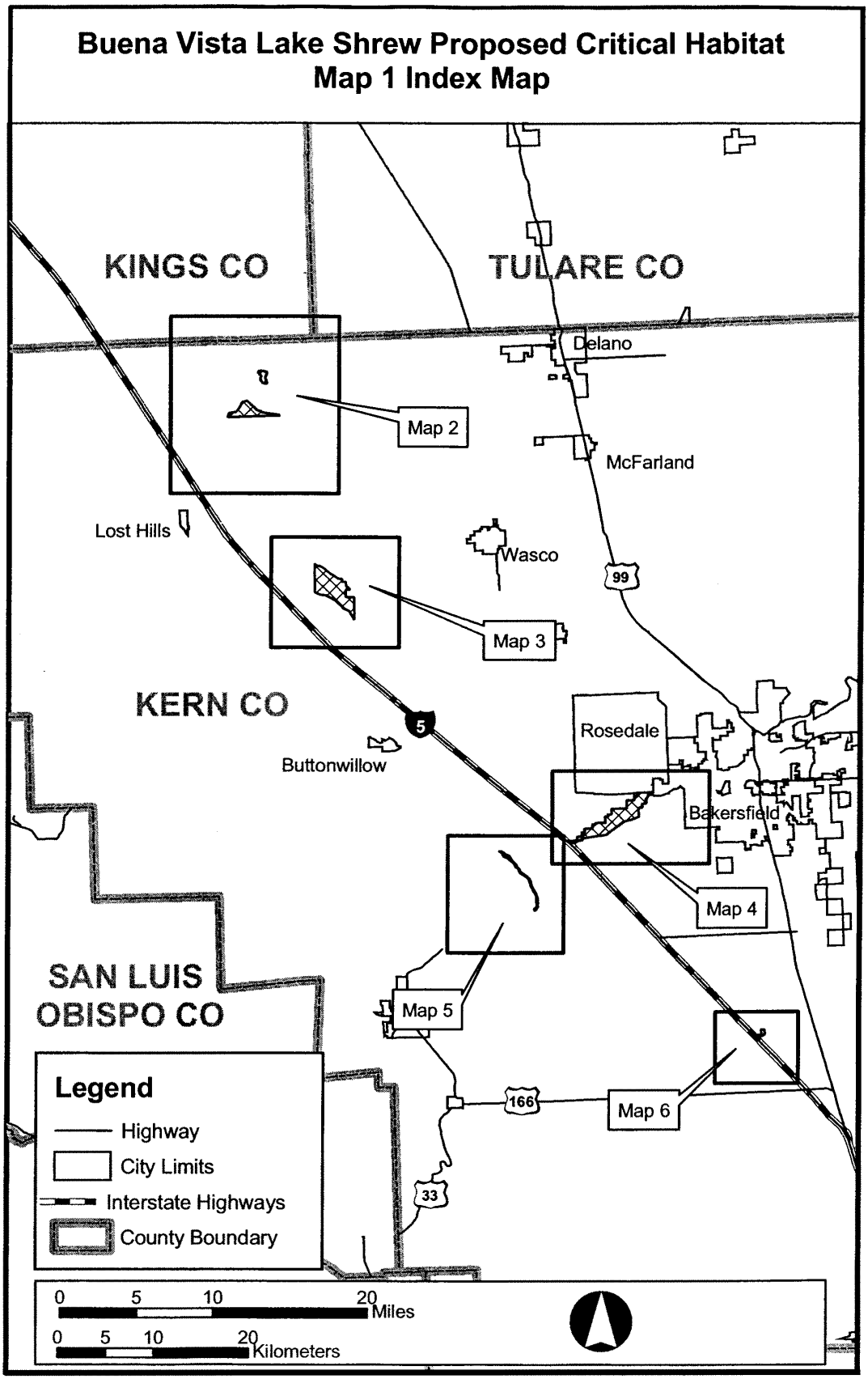
(iii) A consistent and diverse supply of prey.

(3) Critical habitat does not include existing features and structures, such as buildings, aqueducts, airports, roads, and other developed areas not containing one or more of the primary constituent elements.

(4) Data layers defining map units were created on a base of USGS 7.5′ quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) **Note:** Map 1 (index map) follows:

BILLING CODE 4310–55–U



BILLING CODE 4310–55–C

(6) Unit 1a: Kern National Wildlife Refuge, Kern County, California.

(i) From USGS 1:24,000 quadrangle maps Hacienda Ranch, California, and

Lost Hills NE, California, land bounded by the following UTM 11 NAD 27 coordinates (E, N): 261370, 3955645; 261384, 3955731; 261457, 3955912; 261502, 3955985; 261534, 3956044; 261643, 3955967; 261679, 3955949; 261775, 3955967; 261797, 3955981; 261784, 3956017; 261779, 3956062; 261802, 3956149; 261829, 3956249; 261815, 3956326; 261788, 3956417; 261784, 3956621; 261734, 3956675; 261711, 3956716; 261716, 3956762; 261756, 3956784; 261788, 3956825; 261793, 3956862; 261797, 3957157; 261806, 3957170; 261825, 3957175; 261943, 3957120; 261993, 3957107; 262179, 3957093; 262297, 3957089; 262315, 3957071; 262424, 3956857; 262469, 3956771; 262479, 3956739; 262479, 3956707; 262465, 3956685; 262460, 3956671; 262460, 3956644; 262465, 3956607; 262469, 3956566; 262479, 3956535; 262465, 3956494; 262451, 3956453; 262447, 3956417; 262447, 3956385; 262460, 3956367; 262488, 3956362; 262519, 3956385; 262551, 3956417; 262598, 3956482; 262561, 3956219; 262543, 3956086; 262536, 3956035; 262456, 3955981; 262429, 3955903; 262397, 3955881; 262347, 3955858; 262320, 3955844; 262265, 3955822; 262224, 3955799; 262197, 3955776; 262202, 3955763; 262220, 3955744; 262256, 3955717; 262288, 3955704; 262383, 3955694; 262438, 3955690; 262487, 3955684; 262486, 3955677; 262477, 3955610; 261938, 3955627; 261370, 3955645; returning to 261370, 3955645.

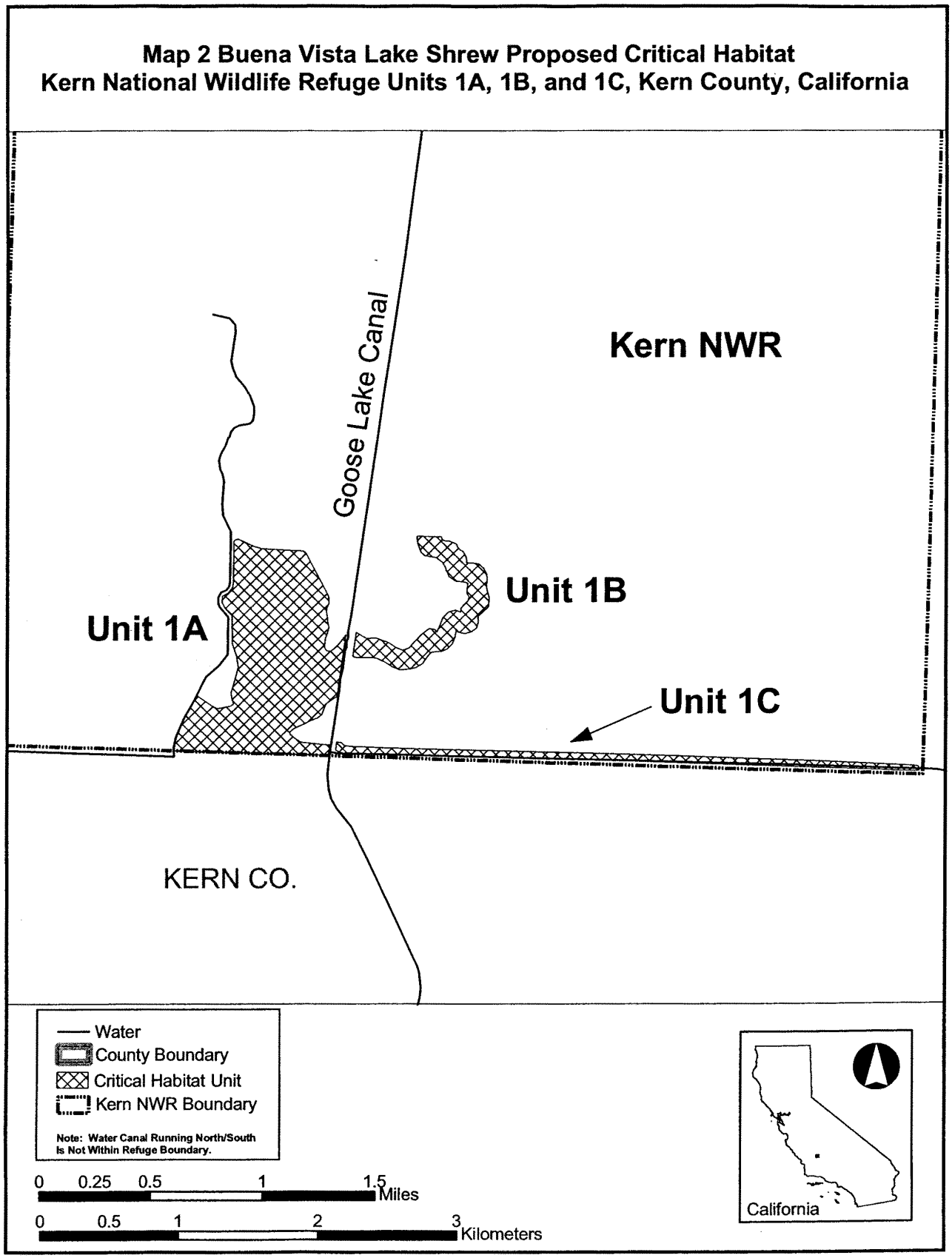
(7) Unit 1b: Kern National Wildlife Refuge, Kern County, California.

(i) From USGS 1:24,000 quadrangle map Lost Hills NW, California, and Lost Hills NE, California; land bounded by the following UTM 11 NAD 27 coordinates (E, N): 263287, 3957189; 263287, 3957174; 263304, 3957163; 263343, 3957160; 263390, 3957139; 263399, 3957115; 263411, 3957100; 263438, 3957086; 263459, 3957050; 263464, 3957023; 263464, 3957003; 263506, 3957003; 263553, 3956997; 263589, 3956964; 263607, 3956929; 263613, 3956887; 263607, 3956834; 263613, 3956801; 263627, 3956748; 263621, 3956686; 263571, 3956638; 263547, 3956617; 263550, 3956573; 263539, 3956532; 263500, 3956505; 263453, 3956490; 263402, 3956502; 263390, 3956511; 263382, 3956463; 263364, 3956416; 263328, 3956381; 263287, 3956363; 263236, 3956360; 263207, 3956354; 263180, 3956321; 263147, 3956271; 263097, 3956241; 263053, 3956232; 262988, 3956226; 262931, 3956250; 262878, 3956283; 262822, 3956309; 262786, 3956318; 262745, 3956315; 262688, 3956318; 262662, 3956321; 262650, 3956327; 262674, 3956499; 262715, 3956472; 262748, 3956455; 262783, 3956458; 262816, 3956458; 262854, 3956443; 262899, 3956428; 262961, 3956389; 263005, 3956372; 263053, 3956386; 263091, 3956431; 263142, 3956484; 263195, 3956526; 263239, 3956520; 263254, 3956502; 263272, 3956540; 263296, 3956603; 263334, 3956647; 263384, 3956662; 263423, 3956647; 263423, 3956674; 263450, 3956703; 263473, 3956727; 263482, 3956757; 263467, 3956780; 263467, 3956810; 263470, 3956831; 263473, 3956854; 263461, 3956860; 263426, 3956866; 263384, 3956869; 263340, 3956902; 263319, 3956949; 263310, 3956976; 263293, 3957006; 263275, 3957020; 263248, 3957041; 263207, 3957047; 263162, 3957056; 263136, 3957080; 263115, 3957136; 263109, 3957171; 263109, 3957195; 263287, 3957189; returning to 263287, 3957189.

(8) Unit 1c: Kern National Wildlife Refuge, Kern County, California.

(i) From USGS 1:24,000 quadrangle map Lost Hills NW, California, and Lost Hills NE, California; land bounded by the following UTM 11 NAD 27 coordinates (E, N): 262564, 3955705; 262575, 3955694; 262592, 3955680; 262623, 3955677; 262864, 3955666; 263540, 3955646; 264029, 3955635; 264946, 3955607; 266049, 3955565; 266680, 3955534; 266700, 3955531; 266714, 3955523; 266714, 3955495; 266588, 3955497; 266243, 3955511; 264214, 3955584; 262687, 3955626; 262572, 3955629; 262528, 3955647; 262530, 3955660; 262533, 3955685; 262536, 3955706; 262564, 3955705; returning to): 262564, 3955705.

(ii) **Note:** Map 2 (Unit 1a, 1b, and 1c) follows:

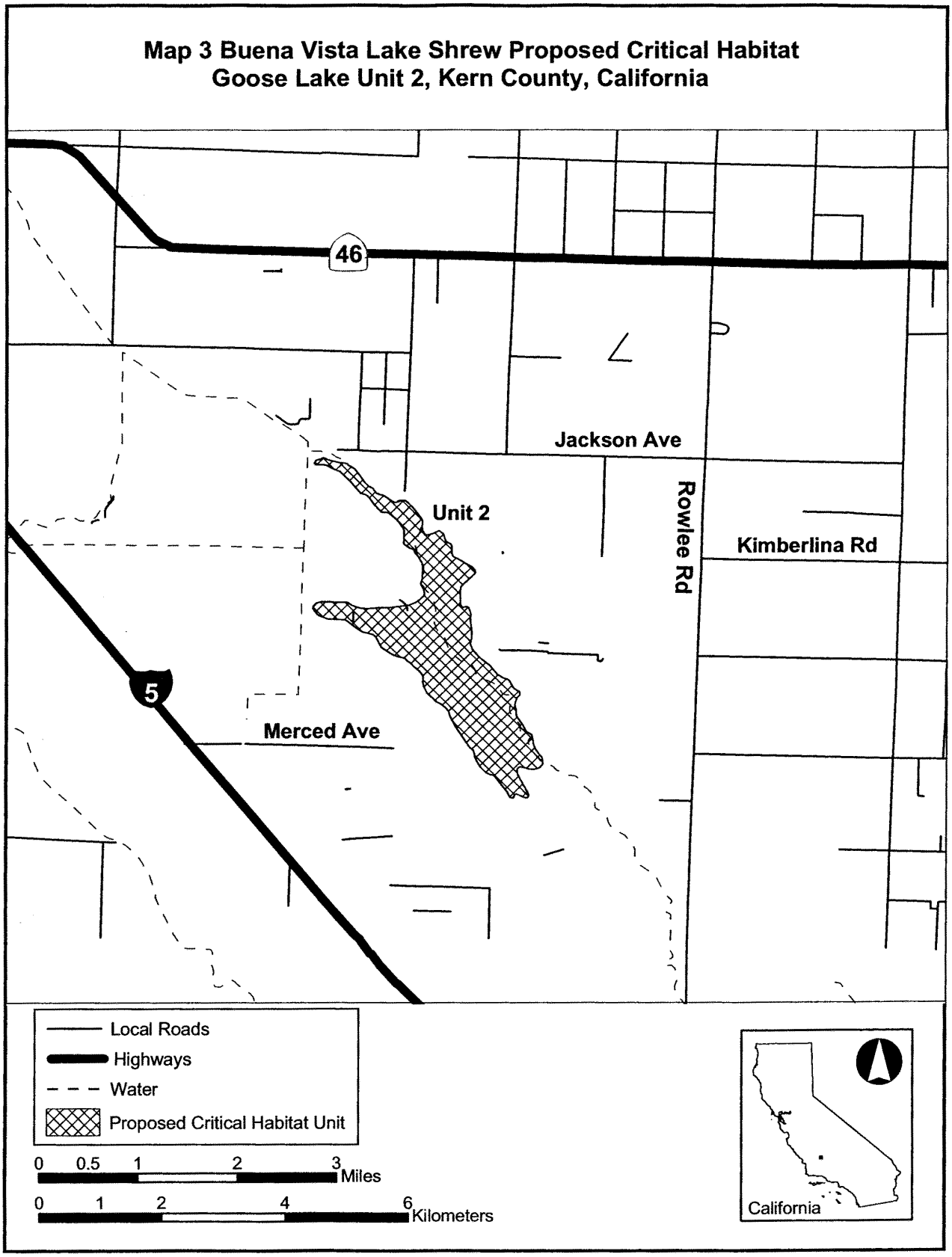


(9) Unit 2: Goose Lake, Kern County, California.

(i) From USGS 1:24,000 quadrangle map Semitropic, California, land bounded by the following UTM 11 NAD 27 coordinates (E, N): 269741, 3939122;

269841, 3939090; 269931, 3939074; 270005, 3939064; 270065, 3939048; 270081, 3939030; 270117, 3939010; 270185, 3938968; 270273, 3938860; 270351, 3938749; 270403, 3938691; 270443, 3938671; 270484, 3938649; 270502, 3938621; 270544, 3938573; 270598, 3938547; 270660, 3938527; 270782, 3938449; 270824, 3938423; 270848, 3938423; 270878, 3938431; 270930, 3938449; 271005, 3938452; 271020, 3938439; 271064, 3938409; 271120, 3938353; 271186, 3938269; 271260, 3938173; 271286, 3938125; 271286, 3938079; 271278, 3938035; 271288, 3937959; 271318, 3937905; 271334, 3937887; 271392, 3937893; 271444, 3937905; 271556, 3937957; 271578, 3937939; 271623, 3937907; 271635, 3937885; 271639, 3937855; 271653, 3937819; 271667, 3937785; 271685, 3937767; 271727, 3937751; 271749, 3937735; 271761, 3937702; 271761, 3937658; 271763, 3937582; 271765, 3937570; 271777, 3937548; 271793, 3937526; 271843, 3937504; 271905, 3937470; 272025, 3937400; 272087, 3937372; 272123, 3937328; 272141, 3937312; 272143, 3937294; 272139, 3937274; 272125, 3937250; 272091, 3937212; 271995, 3937122; 271931, 3937068; 271911, 3937040; 271901, 3937004; 271901, 3936914; 271901, 3936848; 271903, 3936802; 271907, 3936750; 271915, 3936716; 271935, 3936700; 271969, 3936702; 272009, 3936706; 272037, 3936694; 272047, 3936674; 272061, 3936638; 272075, 3936580; 272067, 3936533; 272065, 3936457; 272083, 3936371; 272089, 3936307; 272085, 3936191; 272067, 3936127; 272067, 3936087; 272101, 3936007; 272181, 3935911; 272241, 3935853; 272379, 3935749; 272429, 3935687; 272504, 3935603; 272525, 3935587; 272573, 3935555; 272625, 3935533; 272669, 3935517; 272703, 3935479; 272729, 3935427; 272763, 3935380; 272810, 3935344; 272858, 3935316; 272864, 3935290; 272860, 3935258; 272822, 3935212; 272790, 3935148; 272788, 3935086; 272808, 3935024; 272802, 3934974; 272814, 3934916; 272882, 3934818; 272920, 3934764; 272964, 3934686; 272998, 3934652; 273032, 3934632; 273064, 3934608; 273084, 3934508; 273090, 3934444; 273126, 3934370; 273172, 3934302; 273216, 3934257; 273234, 3934231; 273242, 3934185; 273244, 3934139; 273228, 3934101; 273208, 3934081; 273158, 3934055; 273122, 3934045; 273076, 3934041; 273018, 3934049; 272956, 3934067; 272940, 3934071; 272890, 3934081; 272870, 3934079; 272850, 3934077; 272832, 3934055; 272824, 3934035; 272828, 3933995; 272832, 3933957; 272850, 3933923; 272876, 3933881; 272912, 3933819; 272922, 3933791; 272946, 3933753; 273012, 3933641; 273014, 3933611; 273004, 3933579; 272980, 3933575; 272946, 3933579; 272916, 3933593; 272898, 3933597; 272854, 3933621; 272818, 3933637; 272800, 3933637; 272788, 3933625; 272780, 3933601; 272763, 3933575; 272743, 3933571; 272705, 3933585; 272665, 3933669; 272445, 3933945; 272411, 3933951; 272379, 3933963; 272317, 3933995; 272227, 3934081; 272177, 3934169; 272139, 3934245; 272135, 3934294; 272115, 3934362; 272063, 3934402; 272011, 3934470; 271817, 3934758; 271739, 3934912; 271711, 3935000; 271663, 3935054; 271596, 3935112; 271514, 3935154; 271470, 3935200; 271364, 3935298; 271310, 3935413; 271296, 3935477; 271304, 3935523; 271304, 3935571; 271254, 3935639; 271156, 3935723; 271082, 3935797; 271040, 3935817; 271006, 3935859; 270976, 3935873; 270910, 3935887; 270824, 3935911; 270712, 3935979; 270624, 3936038; 270598, 3936089; 270550, 3936181; 270528, 3936215; 270488, 3936249; 270419, 3936275; 270327, 3936295; 270265, 3936325; 270199, 3936375; 270135, 3936421; 270089, 3936463; 270033, 3936493; 269891, 3936500; 269745, 3936506; 269603, 3936566; 269575, 3936586; 269523, 3936650; 269503, 3936684; 269513, 3936714; 269557, 3936768; 269633, 3936788; 269761, 3936784; 269835, 3936788; 270035, 3936782; 270071, 3936778; 270153, 3936728; 270285, 3936688; 270417, 3936680; 270550, 3936690; 270716, 3936690; 271054, 3936732; 271166, 3936772; 271242, 3936820; 271312, 3936896; 271324, 3936926; 271314, 3936962; 271300, 3937002; 271266, 3937064; 271260, 3937094; 271278, 3937156; 271290, 3937256; 271286, 3937368; 271278, 3937422; 271222, 3937530; 271164, 3937596; 271150, 3937632; 271136, 3937652; 271084, 3937668; 271038, 3937699; 270979, 3937746; 270981, 3937783; 270987, 3937969; 270960, 3938011; 270868, 3938143; 270728, 3938249; 270692, 3938259; 270628, 3938259; 270606, 3938273; 270500, 3938387; 270435, 3938483; 270401, 3938521; 270373, 3938543; 270315, 3938561; 270287, 3938569; 270113, 3938769; 269941, 3938928; 269843, 3938962; 269715, 3939032; 269585, 3939032; 269563, 3939032; 269543, 3939040; 269533, 3939054; 269533, 3939074; 269543, 3939096; 269567, 3939110; 269591, 3939120; 269621, 3939122; 269659, 3939144; 269685, 3939146; 269709, 3939138; 269741, 3939122; returning to 269741, 3939122.

(ii) **Note:** Map 3 (Unit 2) follows:

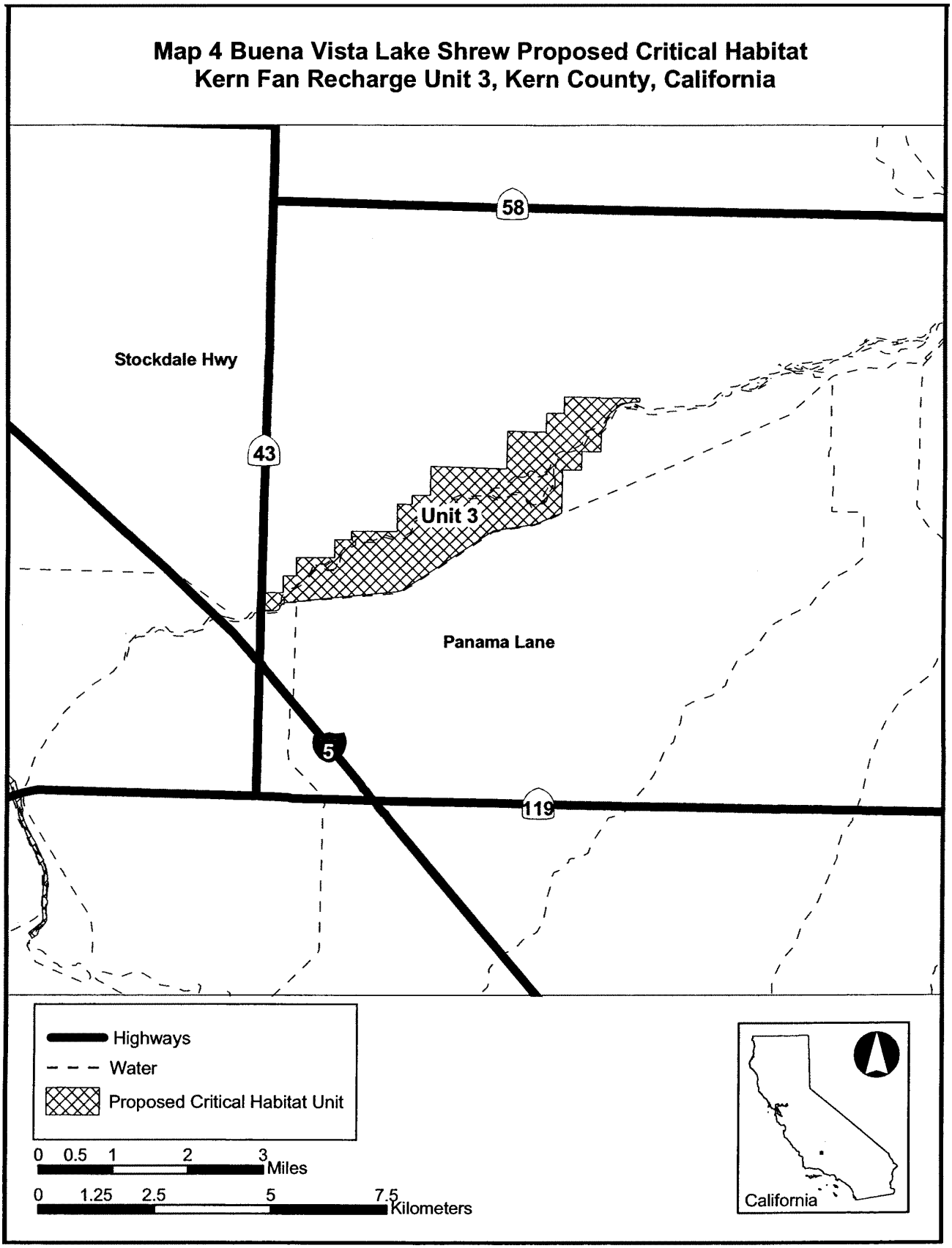


(10) Unit 3: Kern Fan Water Recharge Area, Kern County, California.

(i) From USGS 1:24,000 quadrangle maps Tupman, California, and Stevens, California, land bounded by the following UTM 11 NAD 27 coordinates

(E, N): 295516, 3908835; 295279, 3908837; 295290, 3909235; 295839, 3909235; 295839, 3909605; 296123, 3909598; 296123, 3910008; 296939, 3909995; 296945, 3910388; 297306, 3910388; 297306, 3910580; 298301, 3910571; 298305, 3911170; 298614, 3911161; 298617, 3911357; 299013, 3911357; 299021, 3911981; 300650, 3911934; 300666, 3912745; 301491, 3912726; 301496, 3913131; 301878, 3913131; 301885, 3913492; 302639, 3913467; 302689, 3913456; 302875, 3913452; 302953, 3913467; 303501, 3913456; 303499, 3913377; 303346, 3913377; 303182, 3913345; 303096, 3913310; 302950, 3913206; 302850, 3913113; 302800, 3913024; 302782, 3912942; 302764, 3912860; 302686, 3912771; 302671, 3912700; 302664, 3912300; 302261, 3912303; 302250, 3911900; 301850, 3911907; 301827, 3910972; 301270, 3910731; 301149, 3910709; 300352, 3910586; 298760, 3909525; 298405, 3909289; 298306, 3909259; 296918, 3909128; 295881, 3909023; 295832, 3908998; 295780, 3908939; 295750, 3908877; 295710, 3908847; 295653, 3908837; returning to 295516, 3908835.

(ii) **Note:** Map 4 (Unit 3) follows:

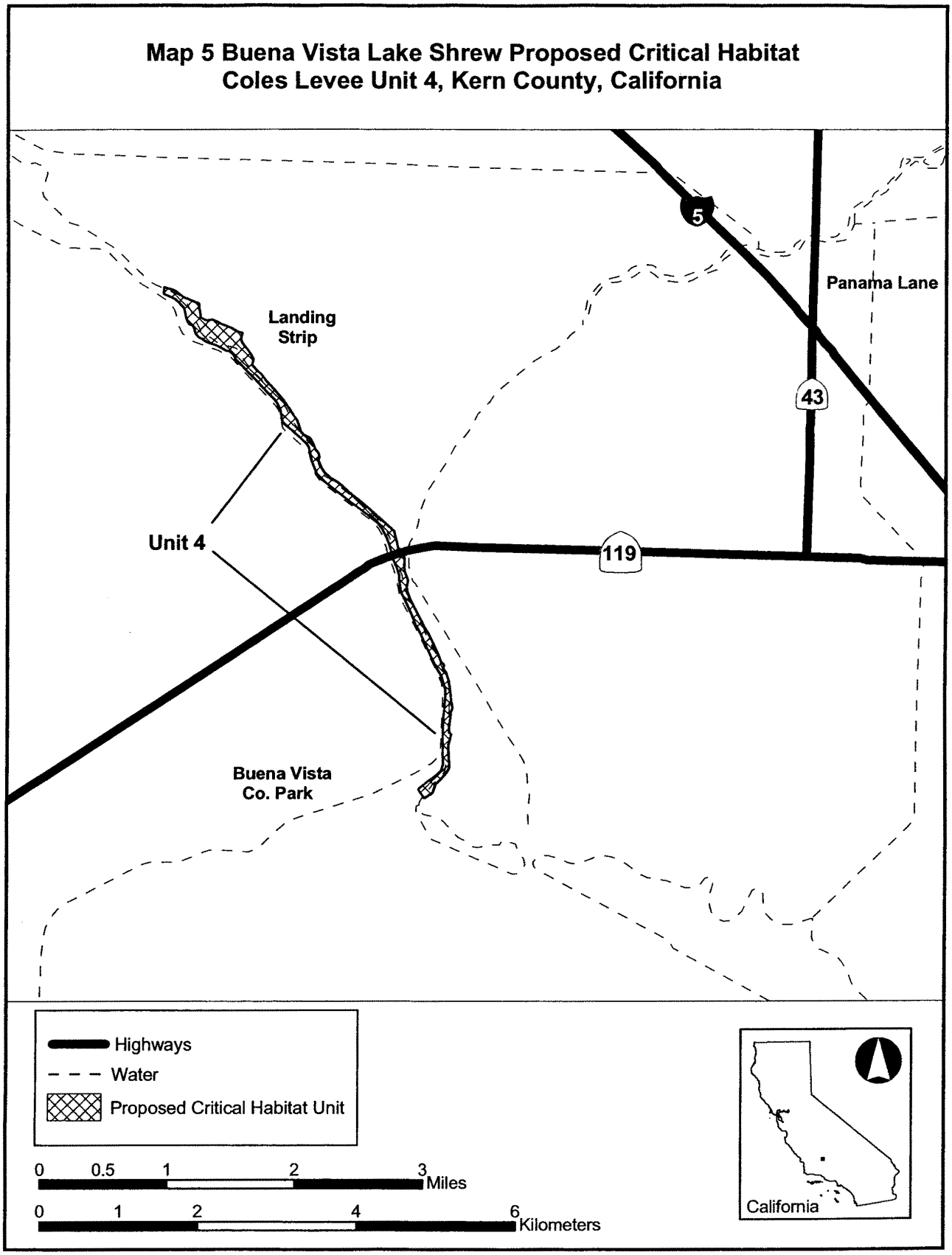


(11) Unit 4: Coles Levee Unit, Kern County, California.

(i) From USGS 1:24,000 quadrangle maps Tupman, and Buena Vista Lakebed, California, land bounded by the following UTM 11 NAD 27

coordinates (E, N): 287308, 3908077; 287165, 3908138; 287172, 3908222; 287285, 3908192; 287341, 3908153; 287414, 3908098; 287610, 3908020; 287614, 3907949; 287624, 3907898; 287631, 3907847; 287668, 3907818; 287716, 3907803; 287779, 3907811; 287843, 3907787; 287915, 3907750; 288008, 3907711; 288058, 3907689; 288114, 3907658; 288160, 3907643; 288138, 3907573; 288150, 3907533; 288182, 3907490; 288229, 3907431; 288272, 3907372; 288298, 3907314; 288284, 3907242; 288348, 3907166; 288396, 3907126; 288453, 3907045; 288530, 3906966; 288583, 3906909; 288667, 3906812; 288705, 3906757; 288744, 3906700; 288796, 3906619; 288848, 3906542; 288901, 3906392; 288938, 3906357; 288998, 3906330; 289020, 3906301; 289045, 3906261; 289081, 3906173; 289115, 3906128; 289131, 3906076; 289119, 3906028; 289135, 3906004; 289165, 3905928; 289197, 3905879; 289271, 3905813; 289358, 3905761; 289389, 3905735; 289480, 3905654; 289597, 3905561; 289758, 3905425; 289910, 3905291; 290046, 3905162; 290070, 3905143; 290115, 3904972; 290125, 3904923; 290185, 3904904; 290200, 3904868; 290206, 3904784; 290205, 3904694; 290207, 3904637; 290218, 3904594; 290234, 3904560; 290251, 3904514; 290244, 3904477; 290234, 3904437; 290242, 3904380; 290275, 3904275; 290324, 3904182; 290376, 3904078; 290418, 3903999; 290467, 3903903; 290499, 3903856; 290545, 3903769; 290575, 3903699; 290601, 3903641; 290624, 3903595; 290673, 3903473; 290708, 3903444; 290705, 3903422; 290695, 3903396; 290733, 3903335; 290771, 3903227; 290793, 3903070; 290795, 3903016; 290802, 3902968; 290815, 3902899; 290812, 3902870; 290794, 3902836; 290778, 3902637; 290775, 3902582; 290802, 3902553; 290785, 3902492; 290764, 3902406; 290768, 3902275; 290782, 3902151; 290776, 3902124; 290744, 3902068; 290668, 3901981; 290608, 3901920; 290572, 3901811; 290459, 3901742; 290454, 3901756; 290386, 3901852; 290407, 3901876; 290507, 3901957; 290601, 3902026; 290671, 3902088; 290699, 3902164; 290699, 3902230; 290693, 3902301; 290694, 3902410; 290690, 3902504; 290694, 3902638; 290701, 3902789; 290711, 3902878; 290722, 3903028; 290722, 3903129; 290696, 3903214; 290677, 3903290; 290619, 3903389; 290577, 3903475; 290495, 3903653; 290439, 3903768; 290401, 3903848; 290347, 3903947; 290298, 3904071; 290224, 3904237; 290169, 3904357; 290152, 3904432; 290141, 3904507; 290139, 3904575; 290113, 3904653; 290087, 3904717; 290060, 3904773; 290050, 3904836; 290030, 3904894; 290008, 3904975; 289979, 3905056; 289927, 3905163; 289868, 3905242; 289805, 3905291; 289745, 3905342; 289684, 3905386; 289617, 3905441; 289518, 3905517; 289397, 3905610; 289269, 3905708; 289176, 3905781; 289124, 3905822; 289088, 3905884; 289068, 3905932; 289055, 3905970; 289036, 3906012; 289029, 3906057; 289016, 3906107; 289006, 3906162; 288994, 3906200; 288973, 3906236; 288940, 3906273; 288835, 3906369; 288791, 3906415; 288729, 3906457; 288672, 3906513; 288656, 3906561; 288651, 3906608; 288641, 3906669; 288619, 3906723; 288598, 3906761; 288545, 3906827; 288415, 3906958; 288351, 3907026; 288255, 3907123; 288204, 3907179; 288155, 3907233; 288109, 3907278; 288080, 3907311; 288060, 3907340; 288028, 3907386; 287992, 3907412; 287960, 3907420; 287893, 3907455; 287829, 3907486; 287774, 3907509; 287709, 3907532; 287645, 3907569; 287613, 3907589; 287570, 3907640; 287558, 3907682; 287537, 3907740; 287491, 3907756; 287471, 3907781; 287449, 3907839; 287435, 3907900; 287419, 3907959; 287365, 3908021; returning to 287308, 3908077.

(ii) **Note:** Map 5 (Unit 4) follows:

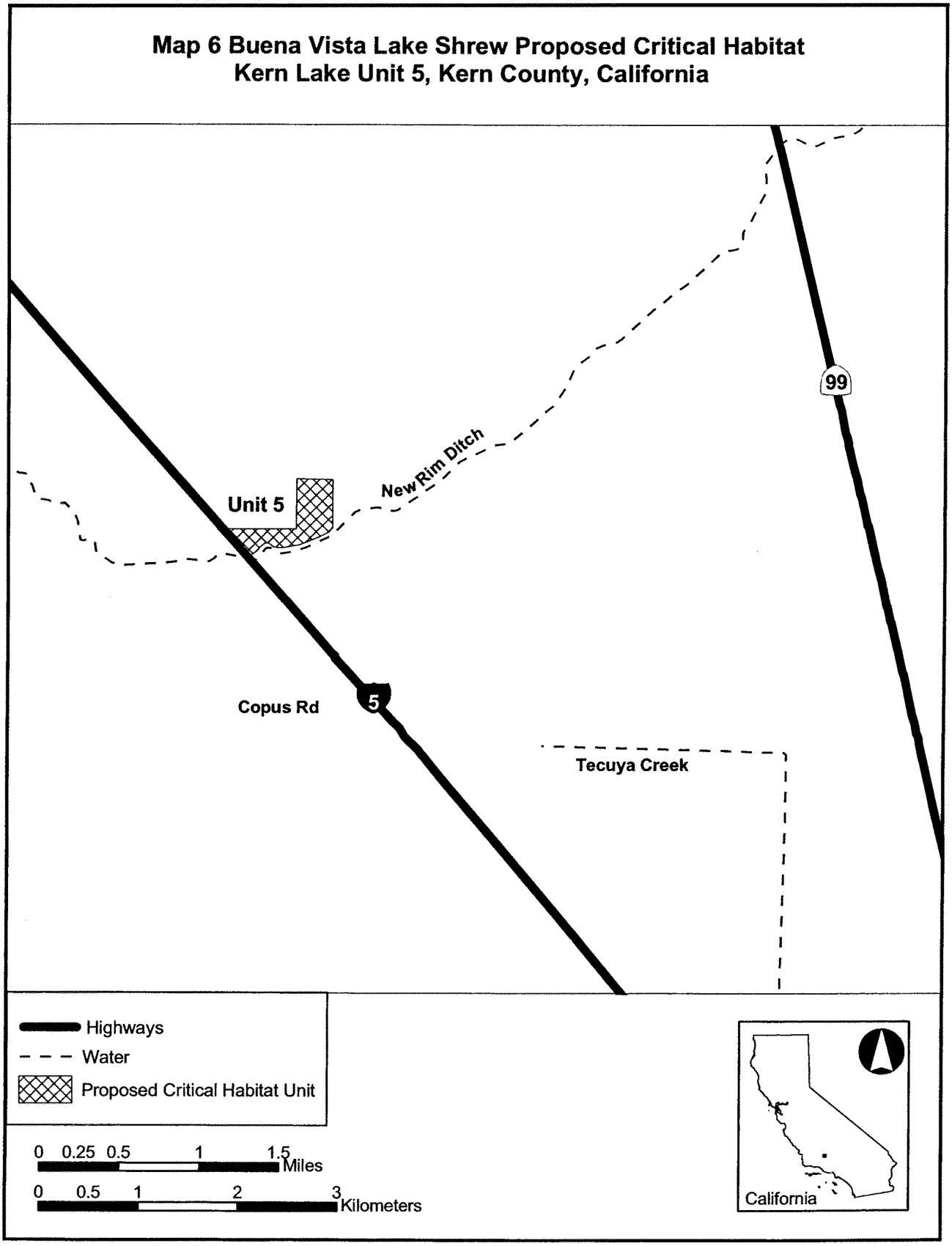


(12) Unit 5: Kern Lake, Kern County, California.

(i) From USGS 1:24,000 quadrangle map Coal Oil Canyon, California, land bounded by the following UTM 11 NAD 27 coordinates (E, N): 312996, 3887027;

312953, 3887034; 312911, 3887047; 312886, 3887054; 312657, 3887298; 313456, 3887299; 313458, 3887806; 313823, 3887799; 313823, 3887314; 313786, 3887267; 313696, 3887224; 313618, 3887189; 313491, 3887139; 313363, 3887112; 313298, 3887107; 313231, 3887112; 313193, 3887142; 313168, 3887157; 313136, 3887152; 313091, 3887112; 313056, 3887072; returning to 312996, 3887027.

(ii) **Note:** Map 6 (Unit 5) follows:


Map 6 Buena Vista Lake Shrew Proposed Critical Habitat
Kern Lake Unit 5, Kern County, California
99
New Rim Ditch
Unit 5
Copus Rd
5
Tecuya Creek
Highways
Water
Proposed Critical Habitat Unit
0 0.25 0.5 1 1.5 Miles
0 0.5 1 2 3 Kilometers
California

* * * * *

Dated: August 13, 2004.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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BILLING CODE 4310–55–C