DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2012–0067]

[4500030114]

RIN 1018–AY63

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Franciscan Manzanita

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 *Arctostaphylos franciscana* (Franciscan manzanita) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 318 acres

(129 hectares) are being proposed for designation as critical habitat. The proposed critical habitat is located in San Francisco County and City, California.

DATES: We will accept comments received or postmarked on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter Docket No. FWS–R8–ES–2012–0067, which is the docket number for this rulemaking. Then, click on the Search button to locate this document. You may submit a comment by clicking on "Comment Now!"

(2) *By hard copy*: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2012–0067; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments **only** by the methods described above. We will post all comments on *http://www.regulations.gov*. This generally means that we will

post any personal information you provide us (see **Public Comments** below for more information).

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at http://www.fws.gov/sacramento, http://www.regulations.gov at Docket No. FWS–R8–ES–2012–0067, and the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for this critical habitat designation will also be available at the Fish and Wildlife Service website and Fish and Wildlife Office set out above, and may also be included in the preamble or at http://www.regulations.gov, or both.

FOR FURTHER INFORMATION CONTACT: Susan Moore, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825; telephone 916–414–6600; facsimile 916–414–6612. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. This is a proposed rule to designate critical habitat for *Arctostaphylos franciscana* (Franciscan manzanita). Elsewhere in today's **Federal Register**, we are publishing a final rule to list *Arctostaphylos franciscana* as

endangered. Under the Endangered Species Act, any species that is determined to be an endangered or threatened species will, to the maximum extent prudent and determinable, have habitat designated that is considered to be critical habitat. We have determined that designating critical habitat for *Arctostaphylos franciscana* is both prudent and determinable. Designations of and revisions to critical habitat can only be completed by issuing a rule. This proposed designation for Franciscan manzanita includes 11 units in San Francisco County and City, California, totaling 318 acres (129 hectares).

The basis for our action. Section 4(b)(2) of the Endangered Species Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

We are preparing a draft economic analysis for the proposed designation. In order to consider the economic impacts of the proposed designation, we are preparing a draft analysis of the economic impacts of the proposed critical habitat designation. We will announce the availability of the draft economic analysis as soon as it is completed.

We will seek peer review. We are seeking the expert opinions of appropriate and

independent specialists regarding this proposed rule to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during the proposed rule's public comment period on our proposed rule to designate critical habitat. We will consider all comments and information we receive during the comment period in our preparation of the final determination. Accordingly, the final decision may differ from this proposal.

Public Comments

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

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

(2) Specific information on:

(a) The amount and distribution of historic habitat and the range of

Arctostaphylos franciscana;

(b) What areas, that are occupied at the time of listing (that is, are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why;

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

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

(e) The specific information on *A. franciscana* pollinators and their habitat requirements.

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

(4) Information on the projected and reasonably likely impacts of climate change on *Arctostaphylos franciscana* and proposed critical habitat.

(5) Whether all the remaining areas containing the physical or biological features essential to the conservation of *Arctostaphylos franciscana* or other areas essential for the conservation of *A. franciscana* should be designated as critical habitat or if additional areas outside the historic range should also be considered for designation. We have identified several areas outside the area we are considering the species' historic range and

have proposed one such area, Unit 11 (Bayview Unit) (see **Proposed Critical Habitat Designation** section below). Additional areas we have not currently proposed but would like public comment on including serpentine or greenstone outcrops in San Francisco (McKinley Park, and Starr King Open Space near Potrero Hill; and Grand View Park, the Rocks, and Golden Gate Heights Park along 14th Avenue) and areas farther south of Mount Davidson into San Mateo County (Milagra Ridge, Sweeney Ridge) or north into Marin County (Angel Island and Golden Gate National Recreation Area along the Marin Peninsula). Because of the limited amount of habitat available within the City and County of San Francisco, these additional areas may provide additional sites for reintroduction, and we would like public input on whether these areas should be considered essential for the conservation of the species.

(6) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(7) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act. We have not proposed to exclude any areas from critical habitat, but the Secretary is considering exercising his discretion to exclude areas within the Presidio and City or County Park Lands from final critical habitat designation.

We will coordinate with the Presidio Trust, the City, and County and will examine conservation actions for the *A. franciscana*, including current management planning documents, in our consideration of these areas for exclusion from the final designation of critical habitat for *A. franciscana*, under section 4(b)(2) of the Act. We specifically solicit comments on the inclusion or exclusion of these areas.

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

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

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. You may request at the top of your document that we withhold personal information such as your street address, phone number, or e-mail address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S.

Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for *Arctostaphylos franciscana* in this proposed rule. For further information on the species' biology and habitat, population abundance and trends, distribution, demographic features, habitat use and conditions, threats, and conservation measures, please see the final listing rule for *A. franciscana*, published elsewhere in today's **Federal Register**; the September 8, 2011, proposed listing for the species (76 FR 55623); or the Recovery Plan for Coastal Plants of the Northern San Francisco Peninsula (Service 2003). These documents are available from the Environmental Conservation Online System (ECOS) (http://ecos.fws.gov/ecos/indexPublic.do), the Sacramento Fish and Wildlife Office web site (http://www.fws.gov/sacramento/), or from the Federal eRulemaking Portal (*http://www.regulations.gov*).

Prudency Determination

In our proposed listing rule for *Arctostaphylos franciscana* (76 FR 55623; September 8, 2011), we stated that we concluded that critical habitat was not determinable at the time of the proposal due to a lack of knowledge of what physical or biological features were essential to the conservation of the species, or what areas outside the site that is currently occupied may be essential for the conservation of the species.

Subsequently, we requested information from the public during the public comment period and solicited information from peer reviewers on whether the determination of critical habitat was prudent and determinable, what physical or biological features were essential to the conservation of the species, and what areas contained those features or were otherwise essential for the conservation of the species. Based on the information we received on the physical or biological features essential to *A. franciscana*, and information on areas otherwise essential for the species, we have determined that the designation of critical habitat is prudent and determinable, and we are proposing critical habitat at this time. For more information regarding our determination to designate critical habitat, please see our response to comments in the final listing determination for *A. franciscana* published elsewhere in today's **Federal Register**.

Species Information

Arctostaphylos franciscana is a low, spreading-to-ascending evergreen shrub in the heath family (Ericaceae) that may reach 0.2 to 1.5 meters (m) (0.6 to 3 feet (ft)) in height when mature (Chasse *et al.* 2009, p. 5; Eastwood 1905, p. 201). The leaves are smooth, flat, bright green, wider towards the tip, and 1.5–2 centimeters (cm) (0.6–0.8 inches (in)) long and 0.5–1 cm (0.2–0.4 in) wide. The flowering period is from January to April. In the wild, *A. franciscana* is an obligate-seeding species (it reproduces primarily from seed after a fire or other disturbance rather than resprouting from burls) (Vasey 2010, p. 1), although the exact germination requirements for *A. franciscana* have not yet been studied. The fruit and seeds of *Arctostaphylos* are eaten and dispersed

primarily by mammals, such as raccoons, coyotes, foxes, deer, and rodents (Service 1950, p. 8; Sampson and Jespersen 1963, p. 123; T. Parker pers. comm., 2011; Vasey 2011a, p. 1), and by various fruit-eating birds such as quail and turkey (NRCS 1999, p. 3; Zornes and Bishop 2009, p. 6).

Distribution and Habitat

Based on early species occurrence records, voucher specimens, and publications on San Francisco and Bay Area flora, prior to extensive development, *Arctostaphylos franciscana* historically occurred on or near open bedrock outcrops scattered throughout the San Francisco peninsula (Brandegee 1907; Clark 1928; Wieslander 1938; Schlocker 1974, p. 119; Service 1984, pp. 11–12; Service 2003, pp. 15–20, 62).

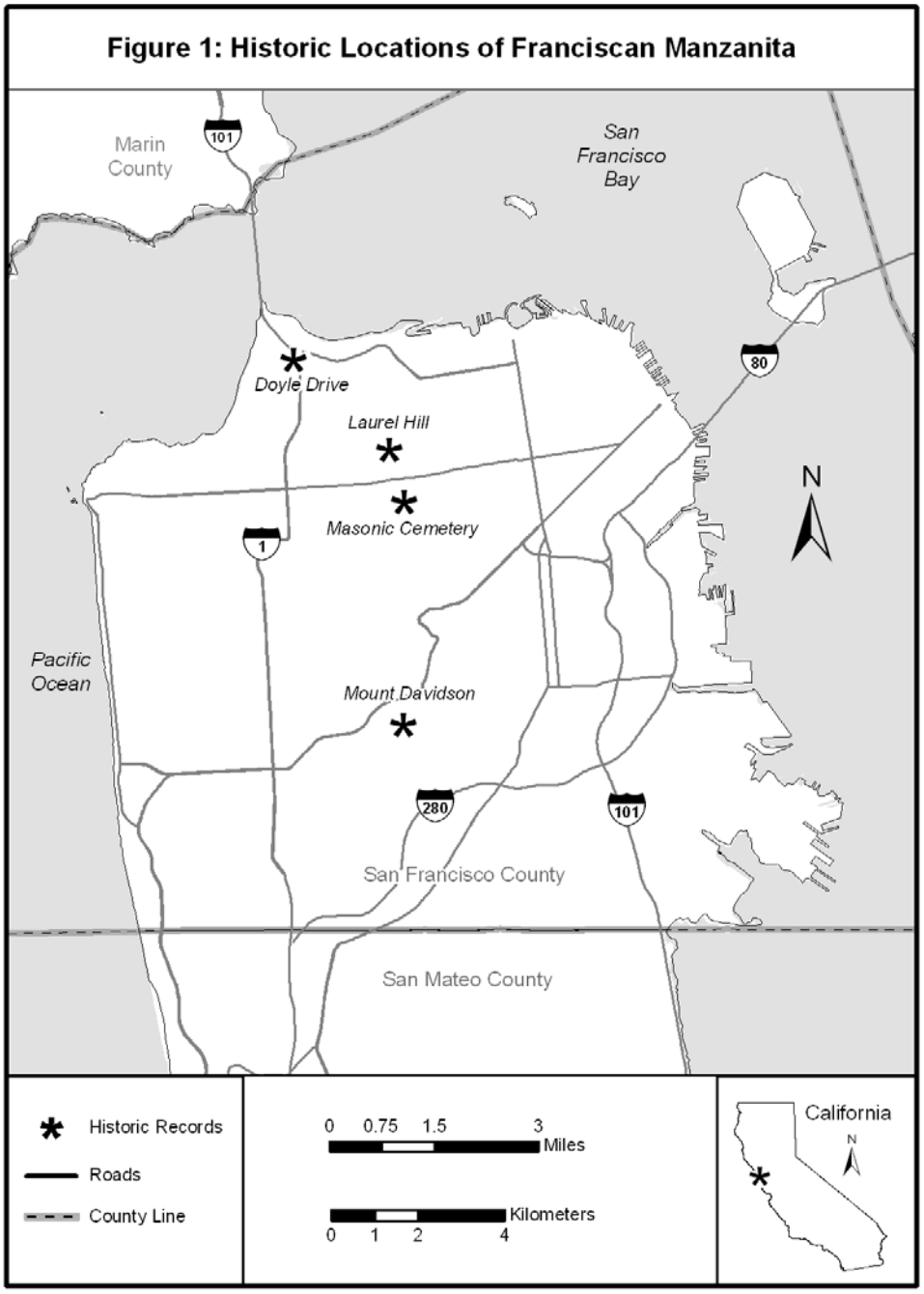
Portions of the San Francisco peninsula where *Arctostaphylos franciscana* occurs are known as maritime chaparral, a plant community dominated by shrub species such as *Arctostaphylos* (manzanita) (Vasey 2007b, in litt., p. 1). Maritime chaparral occurs in coastal locations and is characteristic of having small daily and seasonal temperature ranges, summer fog, and high relative humidity (Vasey 2007a, in litt., pp. 1–3). Nearly all historic herbarium collections of *A. franciscana* were from such maritime chaparral locations on or near rock outcrops, which suggests limited historic and prehistoric distribution and only local abundance (Service 2003, p. 62). Locations where *A. franciscana* was found included: (1) The former Laurel Hill Cemetery (Brandegee 1907; Eastwood 1934, p. 114); (2) the former Masonic Cemetery (near the "base of Lone

Mountain") (Greene 1894, p. 232); (3) Mount Davidson (Stewart 1918); and (4) the "rediscovery site" near Doyle Drive (Gluesenkamp *et al*. 2010, p. 6). In addition, there is a historical record of "*Arctostaphylos pumila*" (later considered to be *A. franciscana* by species experts) at the former Protestant Orphan Asylum (Laguna at Haight Street, long urbanized by the late 1800s) (Behr 1892, pp. 2–6). The Doyle Drive plant has been transplanted to a locality within the Presidio, and is still surviving (Chasse *et al*. 2009, pp. 17–21; Gluesenkamp *et al*. 2010, pp. 11–14). Chasse *et al*. (2009, pp. 6, 7) have noted that information on the plant community that historically included *A. franciscana* is largely missing from the literature. At the Laurel Hill Cemetery site, *A. franciscana* was associated with *Quercus agrifolia* (coast live oak), *Ceanothus thyrsiflorus* (coast blue blossom), and *Baccharis pilularis* (coyote brush), according to herbarium collections (Wieslander 1938). Several herbarium collections of *A. franciscana* often consist of inadvertent inclusions of *A. hookeri* ssp. *ravenii* (Note: *Arctostaphylos hookeri* ssp. *ravenii* has recently undergone a taxonomic revision to *A. montana* ssp. *ravenii*) (Raven's manzanita) material as the two plants often co-occurred in the same locations (Roof 1976, pp. 21–24, Service 1984, p. 6) (see Figure 1 below).

These observations, along with the geology and climate of historical sites, indicate that the species' community likely consisted of a mosaic of coastal scrub, barren serpentine maritime chaparral, and perennial grassland, with occasional woodland of coast live oak and toyon shrubs and small trees (Chasse 2009, pp. 6, 7). However, native habitats have been largely converted to urban areas of the City of San Francisco, and habitat that might support *A. franciscana* is now mostly lost to development (Chasse

2010, p. 2; Gluesenkamp *et al*. 2010, p. 7).

Figure 1. Historic Locations of Franciscan Manzanita.



Previous Federal Actions

On December 23, 2009, we received a petition dated December 14, 2009, from the Wild Equity Institute, the Center for Biological Diversity, and the California Native Plant Society, requesting that *Arctostaphylos franciscana* be listed as an endangered species on an emergency basis under the Act and that critical habitat be designated. Included in the petition was supporting information regarding the species' taxonomy and ecology, historical and current distribution, present status, and actual and potential causes of decline. On January 26, 2010, we acknowledged the receipt of the petition in a letter to Wild Equity Institute. On August 10, 2010, we published in the **Federal Register** a 90-day finding indicating that the petition presented substantial information and that we would conduct a status review on the species (75 FR 48294). On September 8, 2011, we published a combined 12-month finding and proposed listing for the species in the **Federal Register** (76 FR 55623). In the proposed listing for the species, we requested information on whether it was prudent to designate critical habitat for the species. After receiving comments from peer reviewers as well as the public, we have determined to the designation of critical habitat is both prudent and determinable. For additional information on previous Federal actions please refer to the September 8, 2011, combined 12-month finding and proposed listing for the species (76 FR 55623).

Critical Habitat

Background

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

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

(a) Essential to the conservation of the species and

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

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

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

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies insure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area.

Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical and biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are the specific elements of physical or biological features that provide for a species' life-history processes, and are essential to the conservation of the

species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34270)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan

for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. Climate change will be a particular challenge for biodiversity because the interaction of additional stressors associated with climate change and current stressors may push species beyond their ability to survive (Lovejoy 2005, pp. 325–326). The synergistic implications of climate change and habitat fragmentation are the most threatening facet of climate change for biodiversity (Hannah *et al.* 2005, p.4). Current climate change predictions for terrestrial areas in the Northern Hemisphere indicate warmer air temperatures, more intense precipitation events, and increased summer continental drying (Field *et al.* 1999, pp. 1–3; Hayhoe *et al*. 2004, p. 12422; Cayan *et al.* 2005, p. 6; Intergovernmental Panel on Climate Change (IPCC) 2007, p. 1181). Climate change may lead to increased frequency and duration of severe storms and droughts (McLaughlin *et al*. 2002, p. 6074; Cook *et al*. 2004, p. 1015; Golladay *et al*. 2004, p. 504).

We anticipate these changes could affect a number of native plants and their habitats, including *Arctostaphylos franciscana* occurrences and habitat. For example, if the amount and timing of precipitation changes or the average temperature increases in

northern California, the following changes may affect the long-term viability of *A. franciscana* in its current habitat configuration:

(1) Drier conditions or changes in summer fog may result in additional stress on the transplanted plant.

(2) Drier conditions may also result in lower seed set, lower germination rate, and smaller population sizes.

(3) A shift in the timing of annual rainfall may favor nonnative species that impact the quality of habitat for this species.

(4) Warmer temperatures may affect the timing of pollinator life-cycles causing pollinators to become out-of-sync with timing of flowering *A. franciscana*.

(5) Drier conditions may result in increased fire frequency, making the ecosystems in which *A. franciscana* currently grows more vulnerable to the initial threat of burning, and to subsequent threats associated with erosion and nonnative or native plant invasion.

However, currently we are unable to specifically identify the ways that climate change may impact *Arctostaphylos franciscana*; therefore, we are unable to determine if any additional areas may be appropriate to include in this proposed critical habitat designation.

We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat

outside the designated area is unimportant or may not be needed for recovery of a species. Areas that are important to the conservation of *Arctostaphylos franciscana*, both inside and outside a critical habitat designation, would continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the prohibitions of section 9 of the Act if actions occurring in these areas may affect the species.

Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Physical or Biological Features

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or

biological features that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features required for *Arctostaphylos franciscana* from studies of this species' habitat, ecology, and life history as described below. Additional information can be found in the August 10, 2010, 90-day finding published in the **Federal Register** (75 FR 48294); the September 8, 2011, combined 12-month finding and proposed listing for the species published in the **Federal Register** (76 FR 55623); the 2003 Recovery Plan for Coastal Plants of the Northern San Francisco Peninsula (Service 2003); and the Raven's Manzanita Recovery Plan (Service 1984). We have determined that the physical or biological features discussed below are essential to *A. franciscana*.

Space for Individual and Population Growth and for Normal Behavior

Historically, the 46-mi^2 (119-km^2) tip of the San Francisco peninsula contained a

diversity of habitat types including dunes, coastal scrub, maritime chaparral, grasslands, salt and fresh water marsh, oak woodlands, rocky outcrops, and serpentine habitats (Holland 1986, pp. 1–156; National Park Service 1999, pp. 18–26; Sawyer and Keeler-Wolf 1997, p. 211). The vegetation of the area is influenced by coastal wind, moisture, and temperature (Service 1984, pp. 11–16; Chasse *et al*. 2009, p. 4). The maritime chaparral and open grassland plant communities, of which *Arctostaphylos franciscana* is a part, may have been present historically to a greater extent (even before habitat loss through development), but the cumulative effects of periodic burning by native Americans, grazing during the mid-1800s to early 1900s, gathering of firewood during the U.S. military period, and fire suppression actions during the 1900s to the present may have converted many of the areas to nonnative grassland or depauperate coastal scrub (Sweeney 1956, pp. 143–250; Schlocker 1974, pp. 6–7; Christensen and Muller 1975, pp. 29–55; Keeley and Keeley 1987, pp. 240–249; Greenlee and Langenheim 1990, pp. 239–253; Tyler 1996, pp. 2182–2195; Keeley 2005, pp. 285–286; Chasse 2010, p. 2).

The current geographic distribution of *Arctostaphylos franciscana* has been greatly reduced by habitat loss in San Francisco. In 2009, the single remaining wild plant was discovered along the freeway access to the Golden Gate Bridge during construction activities and was transplanted to a natural area within the Presidio of San Francisco (Chasse *et al*. 2009, pp. 3–4, 10–11; Gluesenkamp *et al*. 2010, pp. 10–15). Historic populations of *A. franciscana*, as identified from herbarium records, occurred locally, often with the endangered *A. montana* ssp. *ravenii*. A single individual of *A. montana* ssp. *ravenii* exists in the wild today within the Presidio (44 FR 61910; October 26, 1979).

Both manzanitas occurred on or near scattered exposures of bedrock outcrops (Behr 1892, pp. 2–6; Greene 1894, p. 232; Stewart 1918; Service 1984, pp. 11–12; McCarten 1993, pp. 4–5).

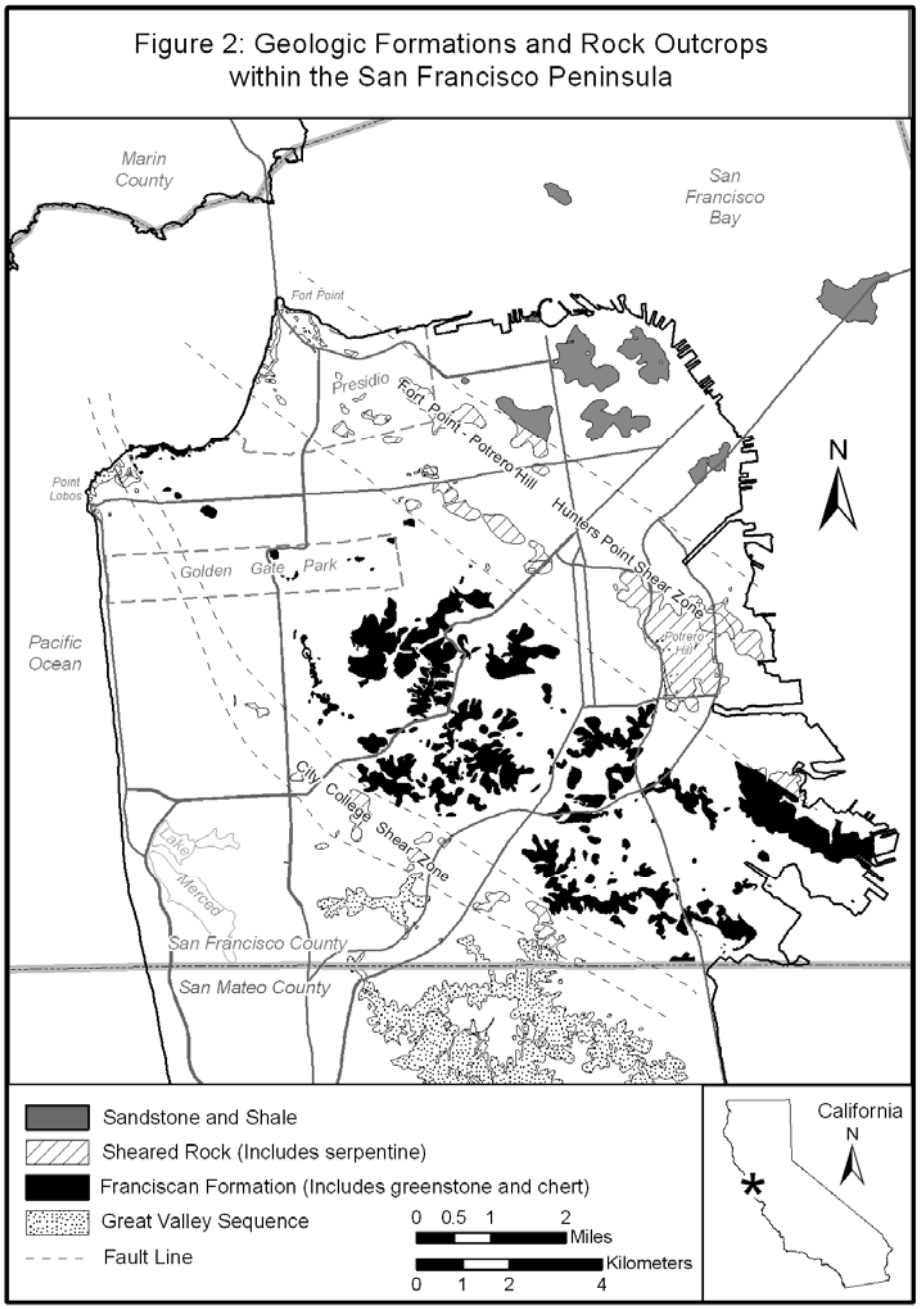
Most bedrock outcrops of the interior parts of San Francisco are characterized by areas often at ridges with steep topography, thin dry soils, and bare rock, conditions that maintain permanently sparse vegetative cover, at least locally (Service 2003, p. 16). Many persist as undevelopable knobs on the crests of hills up to 281 m (922 ft) above sea level, or as high, unstable, coastal bluffs subject to frequent landslides. They are composed mostly of serpentine and greenstone or other mafic and ultramafic rocks (Schlocker 1974, pp. 8–16, Plate 3). These serpentine and rocky areas are often harsh and contain unproductive soils with poor nutrient levels and reduced water-holding capacity (Holland 1986, p. 8; Sawyer and Keeler-Wolf 1997, p. 211; Chasse *et al*. 2009, pp. 12–13). McCarten (1993, pp. 4–5) identified some of the rock outcrops within the area as being sparsely vegetated with open barrens that may have historically contained *Arctostaphylos* species such as *A. montana* ssp. *ravenii* and "*A. hookeri* ssp. *franciscana* [*A. franciscana*]." He referred to the serpentine areas on the Presidio as "Decumbent Manzanita Serpentine Scrub" and stated that the plant community is one of the rarer plant communities in the area. Historically, these areas included plant associations classified as coastal grassland (prairie) and variations of coastal scrub. Historic voucher specimens and observations cited *A. franciscana* occurring with *Quercus agrifolia* (coast live oak), *Ceanothus thyrsiflorus* (coast blue blossom), *Baccharis pilularis* (coyote brush), *Heteromeles arbutifolia* (toyon), *Ericameria* sp. (mock heather), *Eriogonum* sp.

(buckwheat), and *Achillea* sp. (yarrow) (Eastwood 1905, pp. 201–202). The bedrock outcrop vegetation in San Francisco is variable today, including elements of remnant native vegetation as well as naturalized nonnative vegetation (National Park Service 1999, pp. 1, 17–18).

Some knowledge of the habitat requirements of *Arctostaphylos franciscana* can be inferred from historic locations and information on voucher specimens. The historic sites were mostly underlain by serpentine or greenstone substrates (Roof 1976, pp. 20–24). Sites which were occupied by *A. franciscana* historically were characterized as bare stony or rocky habitats often along ridges and associated with bedrock outcrops and other areas with thin soils on the San Francisco peninsula (Eastwood 1905, pp. 201–202; Brandegee 1907). Rowntree (1939, p. 121) observed *A. franciscana* "forming flat masses over serpentine outcroppings and humus-filled gravel and flopping down over the sides of gray and chrome rocks." In a study to determine potential restoration sites for *A. montana* ssp. *ravenii*, the general site conditions identified included open exposures with mild slopes of shallow rocky soils with some coastal fog (McCarten 1986, pp. 4–5). These rocky outcrops within the San Francisco peninsula occur in the geologic strata known as the Franciscan formation. The Franciscan formation, which has contributed to the characteristic appearance and distribution of flora on portions of the peninsula, is a result of fault zones occurring in the area. These faults have uplifted and folded various geologic strata and formed the characteristic "islands" of rock outcrops and soils associated with *A. franciscana*. The thrust-fault shear zone runs across San Francisco from Potrero Hill in the southeast to the Presidio in the northwest (Schlocker 1974, pp. 1–

2). Figure 2, below, identifies bedrock outcrops occurring in the San Francisco peninsula.

Figure 2. Geologic Formations and Rock Outcrops within the San Francisco Peninsula



Franciscan formation rocks include sandstones, shale, chert, greenstone (mostly basalts), serpentinite, gabbro-diabase, and mixed sheared rocks along fault zones. The

outcrops range from erosion-resistant basalt and chert, to serpentine rocks that are hard and dense to soft, friable, and plastic (Schlocker 1974, pp. 56–65). The soils surrounding the rock outcrops are often thin. Serpentine rocks and soils derived from them are particularly low in calcium and high in magnesium and heavy metals, and greatly influence local vegetation. The majority of sites where *A. franciscana* was historically found occurred on serpentine outcrops, except at Mount Davidson, which is comprised of greenstone and mixed Franciscan rocks. The characteristics of serpentine soils or rock outcrops often result in exclusion or growth suppression of many plant species, creating open or barren areas that are not as subject to plant competition for light, moisture, and nutrients, which often causes selection for a narrow range of endemic plant species such as *A. franciscana* (Raven and Axelrod 1978, pp. 24–26; Kruckeberg 1984, pp. 11–17, Service 1984, pp. 11–12; McCarten 1993, pp. 4–5; Service 1998, pp. 1-1, 1-2, 1-10–1-12; Service 2003, pp. 15–16). Therefore, based on the above information, we identify sites with open rocky bedrock associated with serpentine or greenstone outcrops to be an essential physical or biological feature for this species.

Cover or Shelter

As stated above, *Arctostaphylos franciscana* historically occurred in open or semi-open areas associated with rock outcroppings in coastal scrub or serpentine maritime chaparral. Although *A. franciscana* is considered to be endemic to serpentine soils (Kruckeberg 1984, pp. 11–17; Safford *et al*. 2005, p. 226), its historic occurrence at Mount Davidson on greenstone and at other locations on mixed Franciscan rocks, and its

ability to grow at nursery locations (with management), calls into question such a strict edaphic affinity. McCarten (1993, p. 8) stated that the species most likely evolved in these open to semi-open, thin-soiled, nutrient-poor locations due to a response to lack of competition from nearby plants in better soil locations rather than a specific plant-serpentine soil relationship. Being more open, these sites are exposed to direct sun with little shading from nearby vegetation and are often dry. The nutrient-poor soils of these outcroppings also limit the number of other species able to tolerate these locations. Disturbance of these areas through introduction of additional nutrients (soil disturbance, nitrogen deposition, erosion) may lead to increased tolerance of these sites by native and nonnative species, and lead to competition and shading, thereby preventing natural growth and reproduction of *A. franciscana* (Weiss 1999, pp. 1479–1485). Therefore, based on the information above, we identify areas with mostly full to full sun, that are open, barren, or sparse with minimal overstory or understory of vegetation to be an essential physical or biological feature for this species.

Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring

Summer Fog

Summer fog is a climatic condition that characterizes many areas within the San Francisco Bay area, including the Presidio (Schlocker 1974, p. 6; Null 1995, p. 2). Summer fog increases humidity, moderates drought pressure, and provides for milder summer and winter temperature ranges than occur in interior coastal areas. Summer fog is a major influence on the survival and diversity of manzanitas and other vegetation

within this zone (Patton 1956, pp. 113–200; McCarten 1986, p. 4; McCarten 1993, p. 2; Service 2003, p. 66; Chasse *et al*. 2009, p. 9; Johnstone and Dawson 2010, p. 5). The cooler temperatures and additional moisture availability during the summer may lessen the harsh site conditions of the thin-soiled, nutrient-poor, rock outcrops (Raven and Axlerod 1978, pp. 1, 25–26; Kruckeberg 1984, pp. 11–17). As a result, we have identified areas influenced by coastal summer fog to be an essential physical or biological feature for *Arctostaphylos franciscana*.

Fungal Mycorrhizae Relationship

Arctostaphylos species form strong symbiotic relationships with over 100 different fungal mycorrhizae species (McCarten 1986, p. 4; Bruns *et al.* 2005, p. 33; Chase *et al*. 2009, p. 12). These fungi are located in the soil and form an ectomycorrhizal sheath around the host plant's roots (Salisbury and Ross 1985, pp. 116–118). The presence of these fungal mycorrhizae is essential for the plant because they assist in water and nutrient absorption (Bruns *et al.* 2002, pp. 352–353). The fungi form a network of connections within the soil to other plants (of the same or other species) and may play a major role in ecosystem sustainability, thereby leading to increased plant germination and vigor (Horton *et al*. 1999, p. 94; Simard and Durall 2004, pp. 1140–1141). As a result, we identify areas with a healthy fungal mycorrhizae component to be an essential physical or biological feature for *A. franciscana*.

Pollinators

We are currently unaware of any studies that have specifically documented which insect or animal species pollinate *Arctostaphylos franciscana*; however, the species is most likely visited by numerous bees, butterflies, and even hummingbirds. In a study on *A. patula* in northern California, 3 solitary bees (Halictidae and Andrenidae), 2 long-tongued bees (Anthophoridae), 1 honey bee (Apidae), and 4 bumble bees (Apidae) were observed pollinating that species (Valenti *et al*. 1997, p. 4), which is in addition to the 27 other hymenopteran species previously documented by species experts (Krombein *et al*. 1979). These pollinators are important as they are able to travel long distances and cross fragmented landscapes to pollinate *A. franciscana*. Conserving habitat where these pollinators nest and forage will sustain an active pollinator community and facilitate mixing of genes within and among plant populations, without which inbreeding and reduced fitness may occur (Widen and Widen 1990, p. 191).

Native bees typically are more efficient pollinators than introduced European honeybees (*Apis mellifera*) (Javorek *et al.* 2002, p. 345). Therefore, plant populations visited by a higher proportion of native pollinator species are likely to maintain higher reproductive output and persist for more generations than populations served by fewer native pollinators or with pollination limitations of any kind (Javorek *et al.* 2002, p. 350).

Pollinators also require space for individual and population growth, so adequate habitat should be available for pollinators in addition to the habitat necessary for *A. franciscana* plants.

In this proposed critical habitat rule, we acknowledge that healthy pollinator populations provide conservation value to *A. franciscana*. However, we do not currently include areas for pollinators and their habitats within this designation, because: (1) Meaningful data on specific pollinators and their habitat needs are lacking; and (2) we were not able to quantify the amount of habitat needed for pollinators, given the lack of information on the specific pollinators of *A. franciscana*. We are seeking input from the public and peer reviewers on the specific information on pollinators for input into our final critical habitat designation.

Habitats Representative of the Historical, Geographical, and Ecological Distribution of the Species

The type locality for *Arctostaphylos franciscana* is the former Laurel Hill Cemetery (Eastwood 1905, pp. 201–202), an area south of the Presidio between California Street and Geary Boulevard. Voucher specimens for *A. franciscana* also exist from exposed slopes of Mount Davidson (Roof 1976, pp. 21–24), and reliable observations are recorded from the former Masonic Cemetery (bounded by Turk Street, Masonic Avenue, Park Avenue, and Fulton Street near Lone Mountain) (Roof 1976, pp. 21–24). Behr (1892, pp. 2–6) observed a possible fourth historic occurrence near the former Protestant Orphan Asylum near Laguna and Haight Streets. All these sites have been lost due to development, except for the Mount Davidson location, which has mostly been altered and converted to nonnative habitat. The “rediscovery site” at Doyle Drive

near the Golden Gate Bridge has also been lost due to freeway construction (Gluesenkamp *et al*. 2010, pp. 9–10; Park Presidio 2012, pp. 1–2). The lone "wild" *A. franciscana* shrub has been transplanted to a site within the Presidio (Gluesenkamp *et al*. 2010, pp. 10–15). Development and habitat alteration from human activities and nonnative plant species have greatly altered the majority of remaining habitat for the species, although some appropriate habitat for the species still remains within the San Francisco peninsula. As a result, we have identified the species' general range to include only the area within the San Francisco peninsula from the Presidio of San Francisco south to Mount Davison (see Figure 1, above). Although additional sites outside the peninsula, but within the Bay Area, contain appropriate habitat characteristics, these areas are outside the known historic range of the species, and we are not considering these areas for critical habitat at this time.

Primary Constituent Elements for *Arctostaphylos franciscana*

Under the Act and its implementing regulations, we are required to identify the physical and biological features essential to the conservation of *Arctostaphylos franciscana* in areas occupied at the time of listing (i.e., areas that are currently occupied), focusing on the features' primary constituent elements. We consider primary constituent elements (PCEs) to be the elements of physical and biological features that provide for a species' life-history processes and that are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to self-sustaining *Arctostaphylos franciscana* populations are:

(1) Areas on or near bedrock outcrops often associated with ridges of serpentine or greenstone, mixed Franciscan rocks, or soils derived from these parent materials.

(2) Areas having soils originating from parent materials identified above in PCE 1 that are thin, have limited nutrient content or availability, or have large concentrations of heavy metals.

(3) Areas within a vegetation community consisting of a mosaic of coastal scrub, serpentine maritime chaparral, or serpentine grassland characterized as having a vegetation structure that is open, barren, or sparse with minimal overstory or understory of trees, shrubs, or plants that contain and exhibit a healthy fungal mycorrhizae component.

(4) Areas that are influenced by summer fog, which limits daily and seasonal temperature ranges, provides moisture to limit drought stress, and increases humidity.

With this proposed designation of critical habitat, we intend to identify the physical and biological features essential to the conservation of the species, through the

identification of the appropriate quantity and spatial arrangement of the features' primary constituent elements sufficient to support the life-history processes of the species.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing (in the case of *Arctostaphylos franciscana*, areas that are currently occupied) contain features which are essential to the conservation of the species and which may require special management considerations or protection. Special management considerations or protection may be necessary to eliminate or reduce the magnitude of threats that affect these species. Threats identified in the final listing rule for the species include: (1) Loss, degradation, or alteration of habitat due to development or other human activities; (2) competition from nonnative plants; (3) small population size and curtailment of the species' range, which restrict the species' current and future ability to naturally reproduce and expand its range; and (4) soil compaction, potential overutilization, disease introduction, or vandalism from visitor use at the transplantation site.

Loss and degradation of habitat from development are cited in the final listing rule as a primary cause for the decline of *Arctostaphylos franciscana.* The single "wild" plant is located in the Presidio of San Francisco on one of the limited open rocky sites remaining. These areas are frequently near or bounded by urbanized areas, roadways, trails, or other developed sites, and continue to have impacts from increasing human

populations and development pressure. Urban development removes the plant community's components and associated rocky substrate and mycorrhizal relationship within the soil, which eliminates or fragments the remaining habitat of *A. franciscana*. Conservation and management of *A. franciscana* habitat is needed to address the threat of development. Adjacent development may introduce nonnative, invasive plant species that alter the vegetation composition or the open physical structure, to such an extent that the area would not support or would greatly affect *A. franciscana* or the surrounding plant community that it inhabits. Additionally, nitrogen or other nutrient deposition from human activities may assist excessive plant growth from other species that would compete with *A. franciscana* for space and resources that would otherwise be available to the species. Management activities including (but not limited to) removal and control of nonnative, or excessive native, plants are needed to reduce this threat. Unauthorized recreational activities or visitor use may impact the vegetation composition, increase soil compaction, or introduce soil-borne disease to *A. franciscana* habitat to such an extent that the area will no longer support the species.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. We review available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulations at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing, if listing occurs before the designation of critical habitat—are necessary to ensure the conservation of the

species. We are proposing to designate critical habitat in areas within the geographical area currently occupied by the species (see final listing determination published elsewhere in today's **Federal Register**). We also are proposing to designate specific areas outside the geographical area occupied by the species at the time of listing (in this case, the geographic area currently occupied by the species), which were historically occupied but are presently unoccupied, because such areas are essential for the conservation of the species.

This section provides details of the criteria and process we used to delineate the proposed critical habitat for *Arctostaphylos franciscana*. The areas being proposed for critical habitat within this rule are based largely on habitat characteristics identified from the "rediscovery site" near Doyle Drive, the currently occupied transplantation site, and historically occupied areas identified in voucher specimens and historical records. We also used the Recovery Plan for Coastal Plants of the Northern San Francisco Peninsula (Service 2003, pp. 1–322); the Conservation Plan for *Arctostaphylos franciscana* (the Franciscan Manzanita) (Chasse *et al*. 2009, pp. 1–44); the Raven's Manzanita Recovery Plan (Service 1984, pp. 1–73), which provide habitat characteristics of the historically co-occurring species; and information received from peer reviewers and the public on our proposed listing for *A. franciscana* (76 FR 55623; September 8, 2011). Due to the rapid development of the San Francisco peninsula and limited historical information on plant location and distribution, it is difficult to determine the exact range of the species. Given the amount of remaining habitat available with the appropriate characteristics, we looked at all areas within San Francisco that met our criteria as potential habitat. Based on this

information, we are proposing to designate critical habitat in areas within the geographical area currently occupied by *A. franciscana* (which is the same as the geographical area occupied by the species at the time of listing) and unoccupied areas that are essential for the conservation of the species (see the Distribution and Habitat section above for more information on the range of the species).

Although a recovery plan for *Arctostaphylos franciscana* has not been developed, the species is discussed along with the endangered *A. montana* ssp. *ravenii* in the Recovery Plan for Coastal Plants of the Northern San Francisco Peninsula (Service 2003). The recovery plan calls for a three part strategy in conserving *A. montana* ssp. *ravenii*, as well as additional recommendations for establishment in areas outside the Presidio at historic and other rock outcrop sites in conjunction with *A. franciscana* (Service 2003, pp. 75–77). The strategy includes: (1) Protecting the existing plant and surrounding habitat; (2) increasing the number of independent populations throughout suitable habitat within the Presidio; and (3) restoring the natural ecological interactions of the species with its habitat, including allowing gene flow with *A. franciscana*. As mentioned above, the recovery plan also identifies establishing additional areas within rock outcrops throughout suitable habitat along with populations of *A. franciscana*. We believe that a recovery strategy for *A. franciscana* would have many aspects similar to the recovery plan for *A. montana* ssp. *ravenii* based on the two species being limited to one "wild" individual, their co-occurrence in similar habitat within the Presidio and elsewhere at historical locations, and the seeming dependence of *A. montana* ssp. *ravenii* on *A. franciscana* to produce viable seed and maintain gene flow with *A. franciscana* in

the absence of more than the single individual or clones of *A. montana* ssp. *ravenii*. In order to accomplish portions of this strategy, we have identified areas we believe are essential to the conservation of *A. franciscana* through the following criteria:

(1) Determine, in accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, the physical or biological habitat features essential to the conservation of the species and which may require special management considerations or protection, as explained in the previous section.

(2) Identify multiple independent sites for *A. franciscana*. These sites should be throughout the historic range of the species (generally on the San Francisco peninsula north of Mount Davidson) within or near rock outcrops of various origins but especially on ridges or slopes within serpentine or greenstone formations along the Franciscan fault zone between Potrero Hills and the Golden Gate (see Figure 2, above).

(3) In accordance with section 2(b) of the Act, select areas which would conserve the ecosystem upon which the species depends. This includes areas that contain the natural ecological interactions of the species with its habitat or areas with additional management that may be enhanced. The conservation of *A. franciscana* is dependent on several factors including, but not limited to, selection of areas of sufficient size and configuration to sustain natural ecosystem components, functions, and processes (such as full sun exposure, summer fog, natural fire and hydrologic regimes, intact mycorrhizal or edaphic interactions); protection of existing substrate continuity and structure; connectivity among groups of plants of this species within geographic proximity to facilitate gene flow among the sites through pollinator activity and seed dispersal; and sufficient adjacent suitable habitat for vegetative reproduction and population expansion.

(4) In selecting areas to propose as critical habitat, consider factors such as size, connectivity to other habitats, and rangewide recovery considerations. We rely upon principles of conservation biology, including: (a) Resistance and resiliency, to ensure sufficient habitat is protected throughout the range of the species to support population viability (e.g., demographic parameters); (b) redundancy, to ensure multiple viable populations are conserved throughout the species' range; and (c) representation, to ensure the representative genetic and life history of *A. franciscana* are conserved.

Methods

In order to identify the physical or biological features on the ground based on our criteria outlined above, we used the following methods to delineate the proposed critical habitat:

(1) We compiled and reviewed all available information on *Arctostaphylos franciscana* habitat and distribution from historic voucher specimens, literature, and reports; (2) we also compiled and reviewed all available information on *A. montana* ssp. *ravenii* habitat and distribution from similar sources, as these two species have similar habitat requirements and often occurred together historically; (3) we reviewed available information on rock outcrops, bedrock, and areas identified as serpentine, greenstone, or of Franciscan formation within the San Francisco peninsula and surrounding areas south of Mount Davidson and north into Marin County to determine the extent of these features on the landscape; (4) we compiled species occurrence information including historic record locations, the current occupied site within the Presidio, and information on the

"rediscovery site" near Doyle Drive; (5) we then compiled all this information into a GIS database using ESRI ArcMap 10.0; and (6) we screen digitized and mapped the specific areas on which are found those physical or biological features essential to the conservation of the species or other areas determined to be essential for the conservation of the species.

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

We are proposing for designation of critical habitat lands that we have determined are currently occupied (which, in this case, is the same as occupied at the time of listing) and contain sufficient elements of physical and biological features to support life-history processes essential to the conservation of the species, and lands outside of the geographic

area currently occupied that we have determined are essential for the conservation of *Arctostaphylos franciscana*.

The units of critical habitat are proposed for designation based on sufficient elements of physical or biological features being present to support *Arctostaphylos franciscana*'s life-history processes. Some units contain all of the identified elements of physical or biological features and support multiple life-history processes. Some units contain only some elements of the physical or biological features necessary to support the use of that habitat by *A. franciscana*.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on http://www.regulations.gov at Docket No. FWS–R8–ES–2012–0067, on our Internet site at http://www.fws.gov/sacramento, and at the Fish and Wildlife office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Proposed Critical Habitat Designation

We are proposing 11 units as critical habitat for *Arctostaphylos franciscana*. The critical habitat areas we describe below constitute our current best assessment of areas

that meet the definition of critical habitat for *A. franciscana*. The areas we propose as critical habitat are identified below. Table 1 shows the occupancy status of each unit.

Table 1. Occupancy of *Arctostaphylos franciscana* by proposed critical habitat units.

Unit	Occupied at Time of Listing?	Currently Occupied?
1. Fort Point	No	No
2. Fort Point Rock	No	No
3. World War II Memorial	No	No
4. Immigrant Point	No	No
5. Inspiration Point	Yes	Yes
6. Corona Heights	No	No
7. Twin Peaks	No	No
8. Mount Davidson	No	No
9. Diamond Heights	No	No
10. Bernal Heights	No	No
11. Bayview Park	No	No

The approximate area of each proposed critical habitat unit is shown in Table 2.

Table 2. Proposed critical habitat units for *Arctostaphylos franciscana*.
[Area estimates reflect all land within critical habitat unit boundaries.]

Critical Habitat Unit	Land Ownership by Type	Acres (Hectares)
1. Fort Point	Federal	12 (5)
	State	0
	Local	0
	Private	0
2. Fort Point Rock	Federal	36 (15)
	State	0
	Local	0
	Private	0
3A. World War II Memorial	Federal	1 (0.6)
	State	0
	Local	0

	Private	0
3B. World War II Memorial	Federal	2 (0.7)
	State	0
	Local	0
	Private	0
4A. Immigrant Point	Federal	0.7 (0.3)
	State	0
	Local	0
	Private	0
4B. Immigrant Point	Federal	6 (3)
	State	0
	Local	0
	Private	0
5A. Inspiration Point	Federal	21 (9)
	State	0
	Local	0
	Private	0
5B. Inspiration Point	Federal	3 (1)
	State	0
	Local	0
	Private	0
6. Corona Heights	Federal	0
	State	0
	Local	10 (4)
	Private	0
7. Twin Peaks	Federal	0
	State	0
	Local	62 (25)
	Private	9 (4)
8. Mount Davidson	Federal	0
	State	0
	Local	11 (4)
	Private	1 (0.5)
9. Diamond Heights	Federal	0
	State	0
	Local	34 (14)
	Private	0.3 (0.1)
10. Bernal Heights	Federal	0
	State	0
	Local	24 (10)
	Private	0.3 (0.1)
11. Bayview Park	Federal	0
	State	0
	Local	56 (23)
	Private	29 (12)

Total	Federal	83 (34)
	State	0
	Local	196 (79)
	Private	40 (16)
	Total	318 (129)

Note: Area sizes may not sum due to rounding.

We present brief descriptions of the proposed critical habitat units for *Arctostaphylos franciscana* and the reasons why they meet the definition of critical habitat, below. Acreage or hectare totals may not sum due to rounding.

Unit 1: Fort Point

Unit 1 consists of 12 acres (ac) (5 hectares (ha)) and is located within the Presidio east of the Golden Gate Bridge and north of Doyle Drive (Dr.) along Long Avenue (Ave.) and Marine Dr. This unit is currently unoccupied. The unit is within an area that experiences summer fog, and contains serpentine and Franciscan Complex bedrock outcrops, soils derived from these formations, and native maritime chaparral habitat. The unit represents one of the northern-most areas identified for the species. We have determined that the area is essential for the conservation of the species, because it provides one of multiple independent sites for *A. franciscana* and contains some of the last remaining appropriate habitat within the area.

Unit 2: Fort Point Rock

Unit 2 consists of 36 ac (15 ha) and is located within the Presidio west of the Golden Gate Bridge and west of Lincoln Boulevard (Blvd.). The unit extends from the Toll Plaza south to Kobbe Ave. This unit is currently unoccupied. The unit is within an

area that experiences summer fog, and contains serpentine and Franciscan Complex bedrock outcrops, soils derived from these formations, and native maritime chaparral habitat along the coastal bluffs. The unit represents one of the northern-most areas identified for the species. We have determined that the area is essential for the conservation of the species, because it provides one of multiple independent sites for *A. franciscana* and contains some of the last remaining appropriate habitat within the area.

Unit 3: World War II Memorial

Unit 3 consists of a total of 3 ac (1 ha). The unit is located within the Presidio at the intersection of Lincoln Blvd. and Kobbe Ave. The unit is comprised of two subunits. Subunit 3A (1 ac (0.6 ha)) is located west of Lincoln Blvd., and subunit 3B (2 ac (0.7 ha)) is located east of Lincoln Blvd. This unit is currently unoccupied. The unit is along the coastal bluffs within an area that experiences summer fog, and contains serpentine and Franciscan Complex bedrock outcrops, soils derived from these formations, and native maritime chaparral habitat. We have determined that the area is essential for the conservation of the species, because it provides for one of multiple independent sites for *A. franciscana* and contains some of the last remaining appropriate habitat within the area.

Unit 4: Immigrant Point

Unit 4 consists of a total of approximately 7 ac (3 ha). The unit is located within the Presidio along Washington Blvd. east of Lincoln Blvd. and north of Compton Road. The unit is comprised of two subunits. Subunit 4A (0.7 ac (0.3 ha)) is located west of

Washington Boulevard, and subunit 4B (6 ac (3 ha)) is located east of Washington Blvd. This unit is currently unoccupied. The unit is located along the coastal bluffs within an area that experiences summer fog, and contains serpentine and Franciscan Complex bedrock outcrops, soils derived from these formations, and native maritime chaparral habitat. We have determined that the area is essential for the conservation of the species, because it provides for one of multiple independent sites for *A. franciscana* and contains some of the last remaining appropriate habitat within the area.

Unit 5: Inspiration Point

Unit 5 consists of a total of approximately 24 ac (10 ha). The unit is within the Presidio and is located north of Pacific Ave. and east of Arguello Blvd. The unit is comprised of two subunits, which are adjacent to each other. Subunit 5A (21 ac (9 ha)) and subunit 5B (3 ac (1 ha)) are located east of Arguello Blvd, but the two areas are separated by an access road. This unit is currently occupied. The unit contains the physical or biological features essential to the conservation of the species. The unit is within an area that experiences summer fog (PCE 4), and is located on sloping terrain containing serpentine and Franciscan Complex bedrock outcrops (PCE 1), soils derived from these formations (PCE 2), and native maritime chaparral habitat (PCE 3). We have determined that the area is essential to the conservation of the species, because it contains the last remaining wild *A. franciscana* individual and contains some of the last remaining appropriate habitat within the area.

The physical and biological features essential to the conservation of the species in

this unit may require special management considerations or protection to address threats from habitat loss, degradation, or alteration due to development or other human activities; competition from nonnative plants; small population size and curtailment of the species' range; and various other human induced factors such as soil compaction, potential overutilization, disease, or vandalism from visitor use. Please see the *Special Management Considerations or Protection* section of this proposed rule for a discussion of the threats to *A. franciscana* habitat and potential management considerations.

Unit 6: Corona Heights

Unit 6 consists of 10 ac (4 ha) and is located northwest of Castro and 17th Streets adjacent to Roosevelt and Museum Way. This unit is currently unoccupied. The unit is within an area that experiences summer fog, and is located on sloping terrain that contains Franciscan Complex (greenstone) bedrock outcrops of chert or volcanic materials, soils derived from these formations, and open grassland habitat. The unit represents one of several areas identified for the species within the Mount Davidson area. The units in this area would assist in establishing populations of *A. franciscana* outside the Presidio. As a result, we have determined that the area is essential for the conservation of the species, because it provides for one of multiple independent sites for *A. franciscana* and contains some of the last remaining appropriate habitat within the area.

Unit 7: Twin Peaks

Unit 7 consists of approximately 71 ac (29 ha) along the hilltop of Twin Peaks

along Twin Peaks Blvd. west of Market Street. This unit is currently unoccupied. The unit is within an area that experiences summer fog; is located on sloping terrain; and contains Franciscan Complex (greenstone) bedrock outcrops of chert or volcanic materials, soils derived from these formations, and open grassland habitat. The unit represents one of several areas identified for the species within the Mount Davidson area. The units in this area would assist in establishing populations of *A. franciscana* outside the Presidio. As a result, we have determined that the area is essential for the conservation of the species, because it provides for one of multiple independent sites for *A. franciscana* and contains some of the last remaining appropriate habitat within the area.

Unit 8: Mount Davidson

Unit 8 consists of approximately 12 ac (5 ha) and is located on the eastern slope of Mount Davidson near Myra Way and Molimo Drive. This unit is currently unoccupied. The unit is within an area that experiences summer fog, and is located on sloping terrain containing Franciscan Complex (greenstone) bedrock outcrops of chert and sedimentary materials, soils derived from these formations, and open grassland habitat. Mount Davidson is the only known site still remaining that was previously occupied by the species (see Figure 1, above). The reestablishment of populations of *A. franciscana* at this and surrounding units would assist in establishing multiple populations of *A. franciscana* outside the Presidio. As a result, we have determined that the area is essential for the conservation of the species, because it provides for one of multiple independent sites for *A. franciscana* and contains the last remaining historic for

the species.

Unit 9: Diamond Heights

Unit 9 consists of approximately 34 ac (14 ha) and is located near Diamond Heights Blvd. south of Turquoise Way. This unit is currently unoccupied. The unit is within an area that experiences summer fog; is located on sloping terrain; and contains Franciscan Complex (greenstone) bedrock outcrops of chert, volcanic, and sedimentary materials, soils derived from these formations, and open grassland habitat. The unit represents one of several areas identified for the species within the Mount Davidson area. Mount Davidson is the only known site still remaining that was previously occupied by the species. The units in this area would assist in establishing populations of *A. franciscana* outside the Presidio. As a result, we have determined that the area is essential for the conservation of the species, because it provides for one of multiple independent sites for *A. franciscana* and contains some of the last remaining appropriate habitat within the area.

Unit 10: Bernal Heights

Unit 10 consists of approximately 24 ac (10 ha), is located north of Cortland Avenue and west of U.S. Highway 101, and is surrounded by Bernal Heights Blvd. This unit is currently unoccupied. The unit is within an area that experiences summer fog; is located on sloping terrain; and contains Franciscan Complex (greenstone) and Franciscan bedrock outcrops of chert, volcanic, and sedimentary materials, soils derived from these formations, and open grassland habitat. This unit would assist in establishing an

additional population of *A. franciscana* outside the Presidio and Mount Davidson areas. As a result, we have determined that the area is essential for the conservation of the species, because it provides for one of multiple independent sites for *A. franciscana* and contains some of the last remaining appropriate habitat for the species within the area.

Unit 11: Bayview Park

Unit 11 consists of approximately 85 ac (35 ha) and is located at Bayview Park west of Candlestick Park and east of U.S. Highway 101. This unit is currently unoccupied. This unit is considered outside the range of the species but still within the same Franciscan fault zone as historic populations and as proposed critical habitat for the species. The unit is within an area that experiences summer fog; is located on sloping terrain; and contains Franciscan Complex (greenstone) bedrock outcrops of chert, volcanic, and sedimentary materials, soils derived from these formations, and open grassland habitat. The unit represents one site identified for the species outside the Presidio and Mount Davidson area. Due to the rapid development of the San Francisco peninsula and limited historical information on plant location and distribution, it is difficult to determine the exact range of the species. Given the amount of remaining habitat available with the appropriate characteristics, we looked at all areas within San Francisco that met our criteria as potential habitat. Including this unit would assist in establishing an additional population of *A. franciscana* outside the Presidio and Mount Davidson areas. As a result, we have determined that the area is essential for the conservation of the species, because it provides for one of multiple independent sites for *A. franciscana* and contains some of the last remaining appropriate habitat for the species

within the area. We are seeking public input on whether it would be appropriate to designate this area as critical habitat. Please see the **Public Comments** section above for additional information.

Effects of Critical Habitat Designation

Section 7 Consultation

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

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of "destruction or adverse modification" (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir. 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al*., 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of

the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

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

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

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

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

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

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

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

(3) Are economically and technologically feasible, and

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

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

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's

discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for *Arctostaphylos franciscana*. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species. Generally, the conservation role of the *A. franciscana* proposed critical habitat units is to support multiple viable populations in appropriate habitat areas within the historic range of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for *Arctostaphylos franciscana*. These activities include, but are not limited to:

(1) Actions that result in ground disturbance. Such activities could include (but are not limited to) residential or commercial development, dumping, OHV activity, pipeline construction, new road construction or widening, and existing road maintenance. These activities potentially impact the habitat and PCEs of *A. franciscana* by damaging, disturbing, and altering soil composition through direct impacts, increased erosion, and increased nutrient content. Additionally, changes in soil composition may lead to changes in the vegetation composition, thereby changing the overall habitat type.

(2) Actions that result in alteration of the hydrological regimes typically associated with *A. franciscana* habitat. Such activities could include residential or commercial development, which may increase summer watering. These activities could alter natural plant populations adapted to summer drought, disrupt mycorrhizal interactions, increase disease, and promote establishment of nonnative vegetation.

(3) Actions that increase nutrient deposition to the point at which nutrient-loving plants not adapted to serpentine or rocky outcrops become established and compete with *A. franciscana* and adjacent vegetation communities. Such activities could include (but are not limited to) use of chemical fertilizers within the areas, increased nitrogen

deposition from atmospheric sources (vehicles, industry), and unauthorized dumping.

Exemptions

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

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resources management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographic areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

There are no Department of Defense lands within the proposed critical habitat designation; as a result no lands are exempted under section 4(a)(3) of the Act.

Exclusions

Application of Section 4(b)(2) of the Act

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

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

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

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we are preparing an analysis of the economic impacts of the proposed critical habitat designation and related factors.

During the development of the final listing rule and this proposed critical habitat determination, we have identified certain sectors and activities that may potentially be

affected by a designation of critical habitat for *Arctostaphylos franciscana*. These sectors include commercial development and urbanization, along with the accompanying infrastructure associated with such projects such as road, storm water drainage, bridge, and culvert construction and maintenance. We also identified recreational use as a potential sector that may experience economic impacts from the designation. We recognize that not all of these sectors may qualify as small business entities. However, while recognizing that these sectors and activities may be affected by this designation, we are collecting information and initiating our analysis to determine which of these sectors may potentially be impacted and to what extent the economic impacts are related to *A. franciscana* being listed as an endangered species under the Act. As such, we are requesting any specific economic information related to small business entities that may be affected by this designation and how the designation may impact small businesses.

We will announce the availability of that draft economic analysis as soon as it is completed. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://www.regulations.gov*, or by contacting the Sacramento Fish and Wildlife Office directly (see **FOR FURTHER INFORMATION CONTACT** section). During the development of a final designation, we will consider economic impacts, public comments, and other new information, and areas may be excluded from the final critical habitat designation under section 4(b)(2) of the Act and our implementing regulations at 50 CFR 424.19.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense where a national security impact might exist. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for *Arctostaphylos franciscana* are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary does not intend to exercise his discretion to exclude any areas from the final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether the landowners have developed any habitat conservation plans (HCPs) or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

We are not considering any exclusions at this time from the proposed designation under section 4(b)(2) of the Act based on partnerships, management, or protection afforded by cooperative management efforts. Some areas within the proposed

designation are included in management plans or agreements in which the Service is not a signatory, such as with the National Park Service, the Presidio Trust, or local government entities such as the City or County of San Francisco. In this proposed rule, we are seeking input from the public as to whether or not the Secretary should exercise his discretion to exclude such areas under management plans or agreements that benefit *Arctostaphylos franciscana* or its habitat from the final critical habitat designation (see the **Public Comments** section of this proposed rule for instructions on how to submit comments). Should we receive information during public comment that leads us to believe that such exclusions based on partnerships, management, or protection afforded by cooperative management efforts would outweigh the benefits of designating these areas from critical habitat, then these areas may be excluded from the final designation.

Peer Review

In accordance with our joint policy on peer review 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 peer review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We have invited these peer reviewers to comment during this public comment period (see **DATES**) on proposed designation of critical habitat.

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

Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register**. Such requests must be sent to the address shown in the **FOR FURTHER INFORMATION CONTACT** section. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

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

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

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

economic impact on a substantial number of small entities.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, we defer the RFA finding until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and Executive Order 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will announce availability of the draft economic analysis of the proposed designation in the **Federal Register** and reopen the public comment period for the proposed designation. We will include with this announcement, 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.

Potential land use sectors and small businesses potentially affected by the designation may include entities associated with commercial development and urbanization, along with the accompanying infrastructure associated with such projects such as road, storm water drainage, bridge, and culvert construction and maintenance. We also identified recreational use as a potential sector that may experience economic impacts from the designation. However, while recognizing that these sectors and activities may be affected by this designation, we are collecting information and initiating our analysis to determine which of these sectors may potentially be impacted and to what

extent the economic impacts are related to *Arctostaphylos franciscana* being listed as an endangered species under the Act.

We have 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 we make a sufficiently informed determination based on adequate, current economic information and provide the necessary opportunity for public comment.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect that the proposed critical habitat designation for *Arctostaphylos franciscana* would significantly affect energy supplies, distribution, or use, as the areas identified as proposed critical habitat are surrounded by highly urbanized areas with their energy supplies, distribution, or infrastructure already in place. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

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

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

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector,

except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. In addition, adjacent upland properties are owned by private entities or State partners. Therefore, a Small Government Agency Plan is not required. However,

we will further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Takings—Executive Order 12630

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), this rule is not anticipated to have significant takings implications. As discussed above, the designation of critical habitat affects only Federal actions. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. Due to current public knowledge of the protections for the species and the prohibition against take of the species both within and outside of the proposed areas, we do not anticipate that property values would be affected by the critical habitat designation. However, we have not yet completed the economic analysis for this proposed rule. Once the economic analysis is available, we will review and revise this preliminary assessment as warranted, and prepare a Takings Implication Assessment.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not

required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by *Arctostaphylos franciscana* 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 because the areas that contain the physical and biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

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

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the elements of physical and biological features essential to the conservation of *Arctostaphylos franciscana* within the proposed designated areas to assist the public in understanding the habitat needs of the species.

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

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

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

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National

Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Clarity of the Rule

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

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

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

Government-to-Government Relationship with Tribes

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

We have determined that there are no tribal lands that are currently occupied (which, in this case, also means occupied at the time of listing) by the *Arctostaphylos franciscana* that contain the features essential to the conservation of the species, and no tribal lands that are unoccupied by *Arctostaphylos franciscana* that are essential for the conservation of the species. Therefore, we are not proposing to designate any critical habitat for the *Arctostaphylos franciscana* on tribal lands.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Sacramento Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

2. Amend § 17.12(h) by revising the entry for "*Arctostaphylos franciscana*" under FLOWERING PLANTS in the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
* * * * * * *							
Arctostaphylos franciscana	Franciscan manzanita	U.S.A. (CA)	Ericaceae	E	809	17.96(a)	NA

* * * * * * *

3. Amend § 17.96(a) by adding an entry for "*Arctostaphylos franciscana* (Franciscan manzanita)" in alphabetical order under family Ericaceae, to read as follows:

§ 17.96 Critical habitat—plants.

* * * * *

(a) *Flowering plants*.

* * * * *

Family Ericaceae: *Arctostaphylos franciscana* (Franciscan manzanita)

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

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of *Arctostaphylos franciscana* consist of the following four components:

(i) Areas on or near bedrock outcrops often associated with ridges of serpentine or greenstone, mixed Franciscan rocks, or soils derived from these parent materials.

(ii) Areas having soils originating from parent materials identified above in paragraph (2)(i) of this entry that are thin, have limited nutrient content or availability, or

have large concentrations of heavy metals.

(iii) Areas within a vegetation community consisting of a mosaic of coastal scrub, serpentine maritime chaparral, or serpentine grassland as characterized as having a vegetation structure that is open, barren, or sparse with minimal overstory or understory of trees, shrubs, or plants that contain and exhibit a healthy fungal mycorrhizae component.

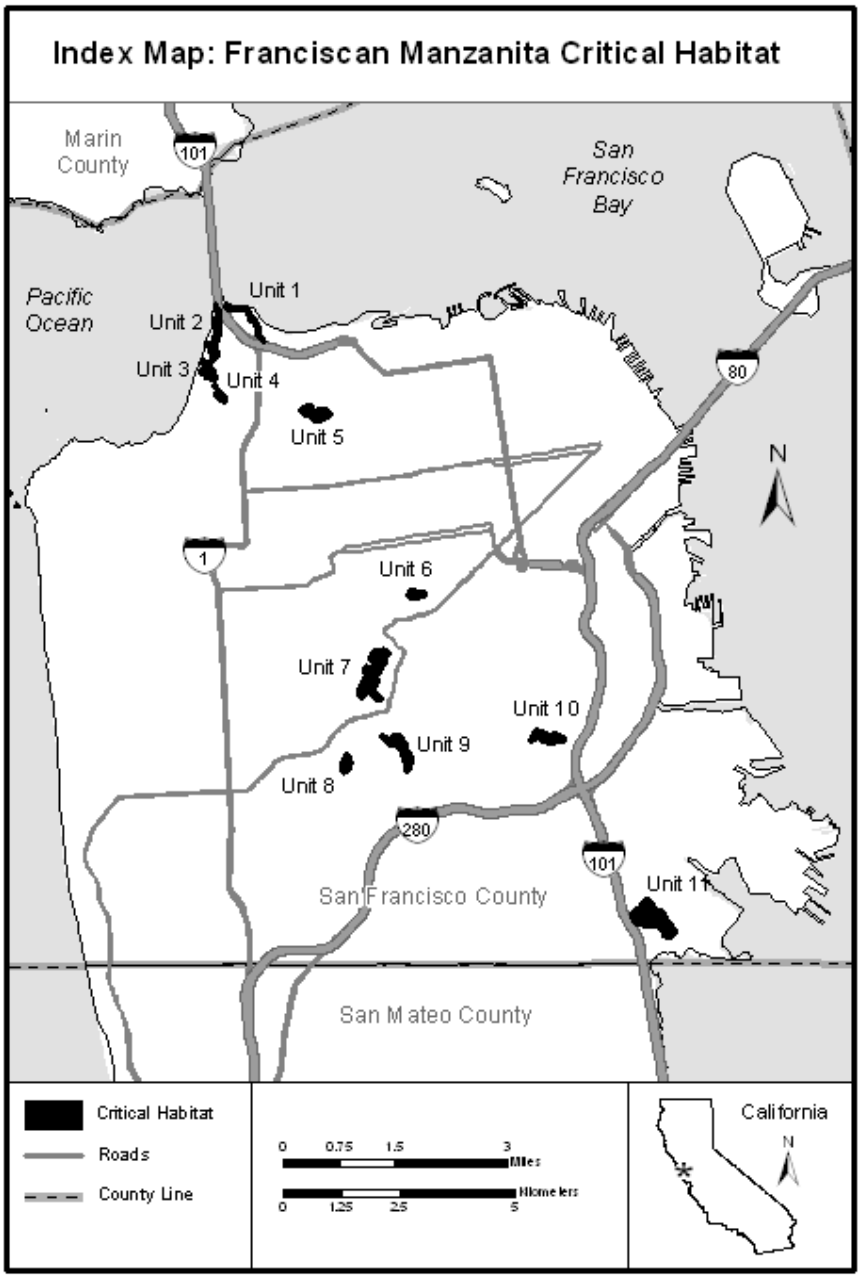
(iv) Areas that are influenced by summer fog, which limits daily and seasonal temperature ranges, provides moisture to limit drought stress, and increases humidity.

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

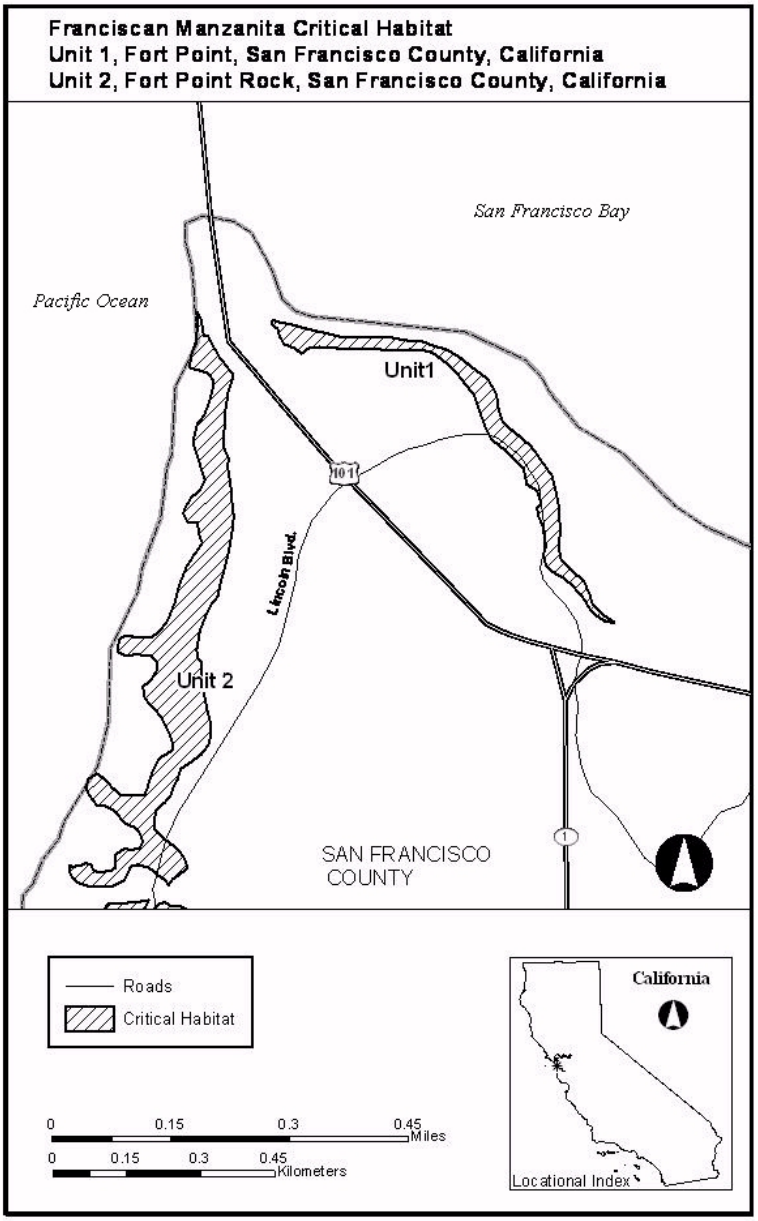
(4) *Critical habitat map units*. Data layers defining map units were created on a base of the Natural Resource Conservation Service National Agriculture Imagery Program (NAIP 2011), and critical habitat was then mapped using North American Datum (NAD) 83, Universal Transverse Mercator Zone 10N coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the field office internet site (http://www.fws.gov/sacramento), http://www.regulations.gov at Docket No. FWS–R8–

ES–2012–0067, and at the Service's Sacramento Fish and Wildlife Office. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map follows:

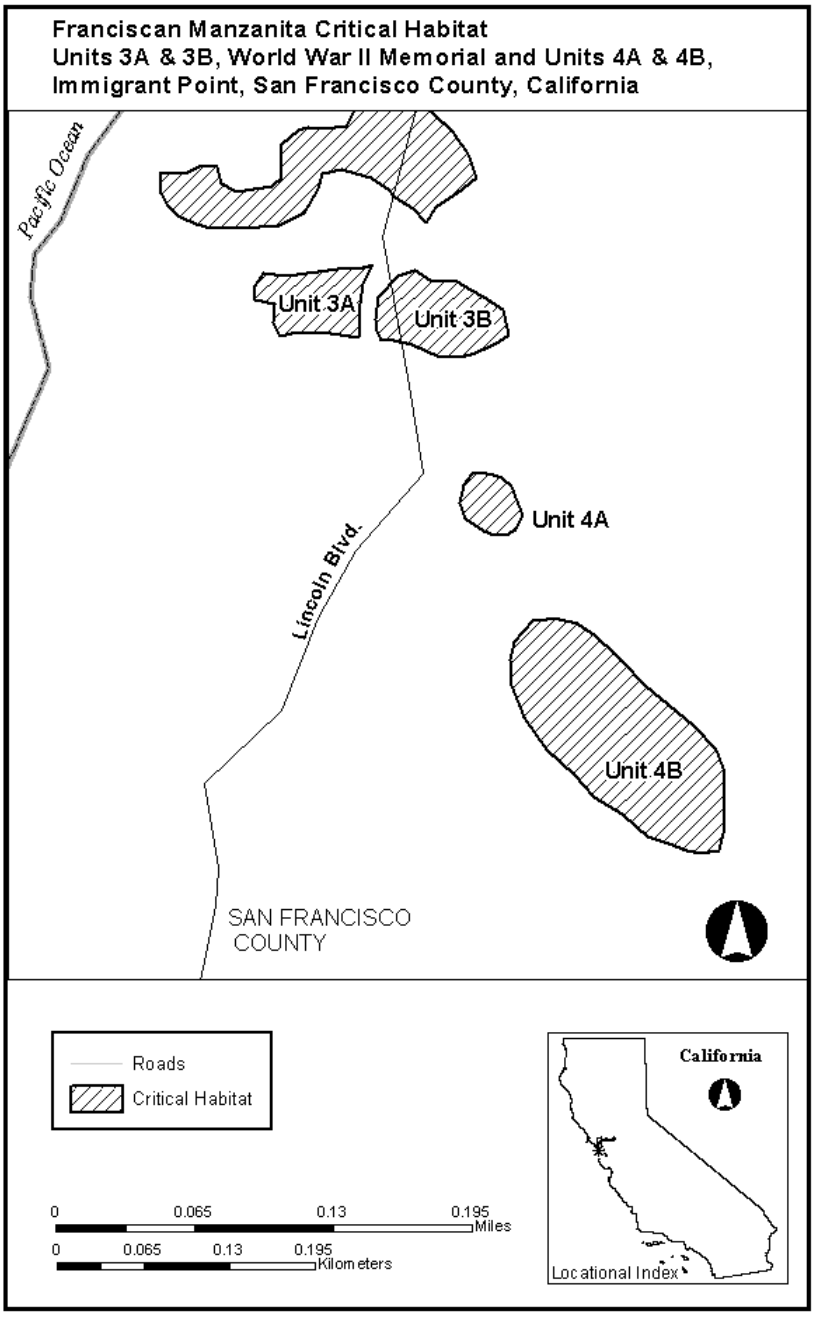


(6) Unit 1: Fort Point, San Francisco County, California. Map of Unit 1 and Unit 2 follows:



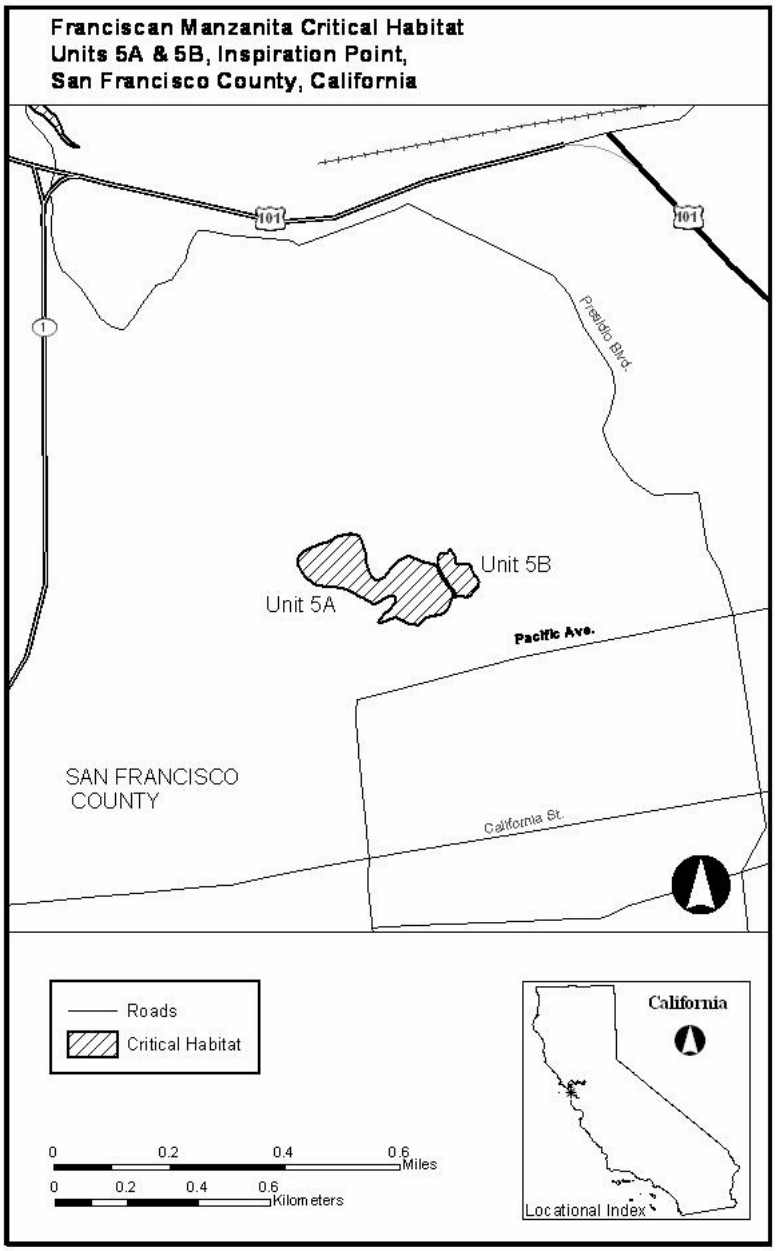
(7) Unit 2: Fort Point Rock, San Francisco County, California. Map of Unit 2 is provided at paragraph (6) of this entry.

(8) Unit 3: World War II Memorial, San Francisco, California. Map of Unit 3 and Unit 4 follows:

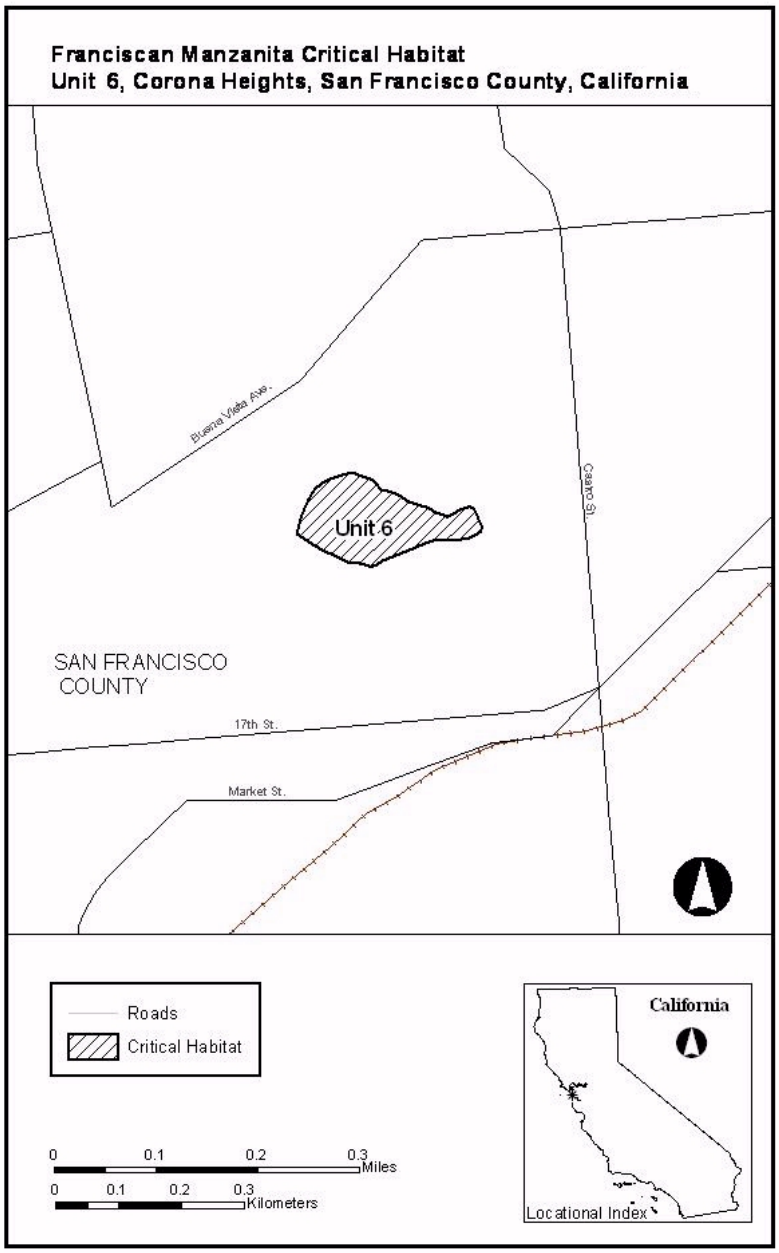

Franciscan Manzanita Critical Habitat
Units 3A & 3B, World War II Memorial and Units 4A & 4B,
Immigrant Point, San Francisco County, California
Pacific Ocean
Unit 3A
Unit 3B
Unit 4A
Lincoln Blvd.
Unit 4B
SAN FRANCISCO
COUNTY
Roads
Critical Habitat
0
0.065
0.13
0.195
Miles
0
0.065
0.13
0.195
Kilometers
California
Locational Index

(9) Unit 4: Immigrant Point, San Francisco County, California. Map of Unit 4 is provided at paragraph (8) of this entry.

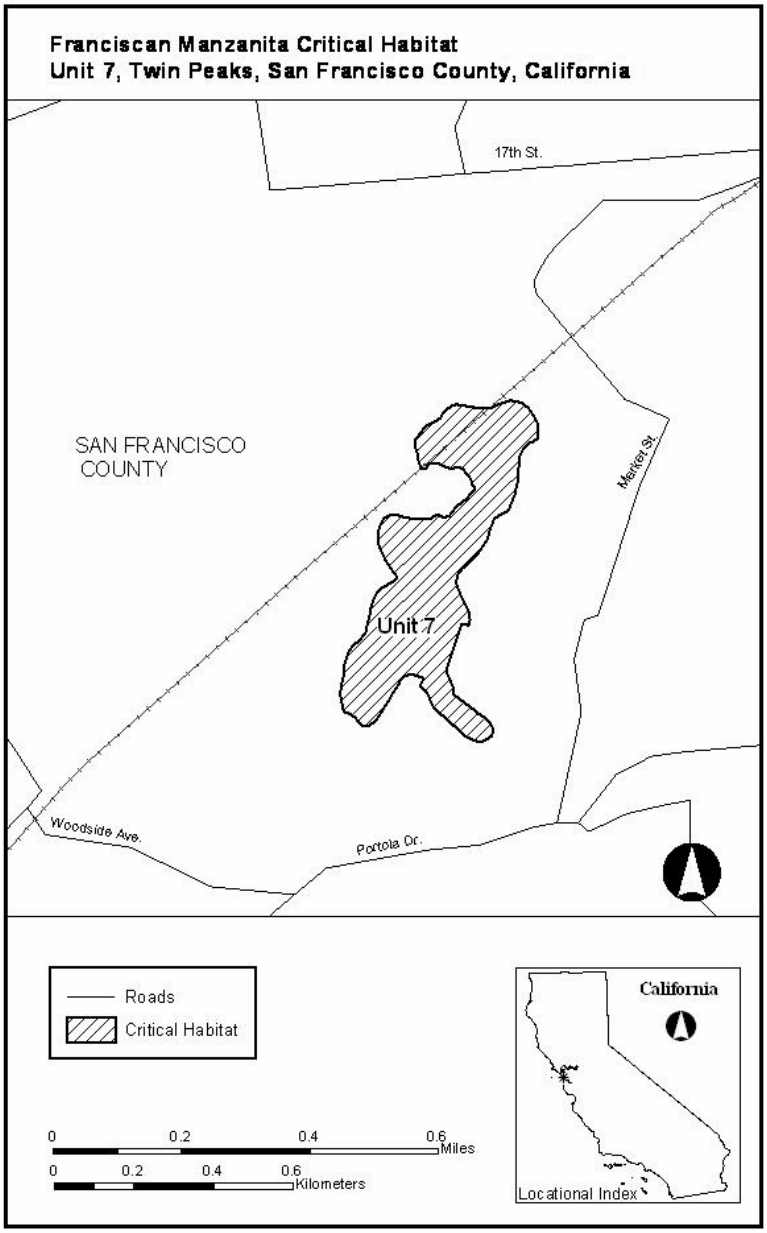
(10) Unit 5: Inspiration Point, San Francisco, California. Map of Unit 5 follows:



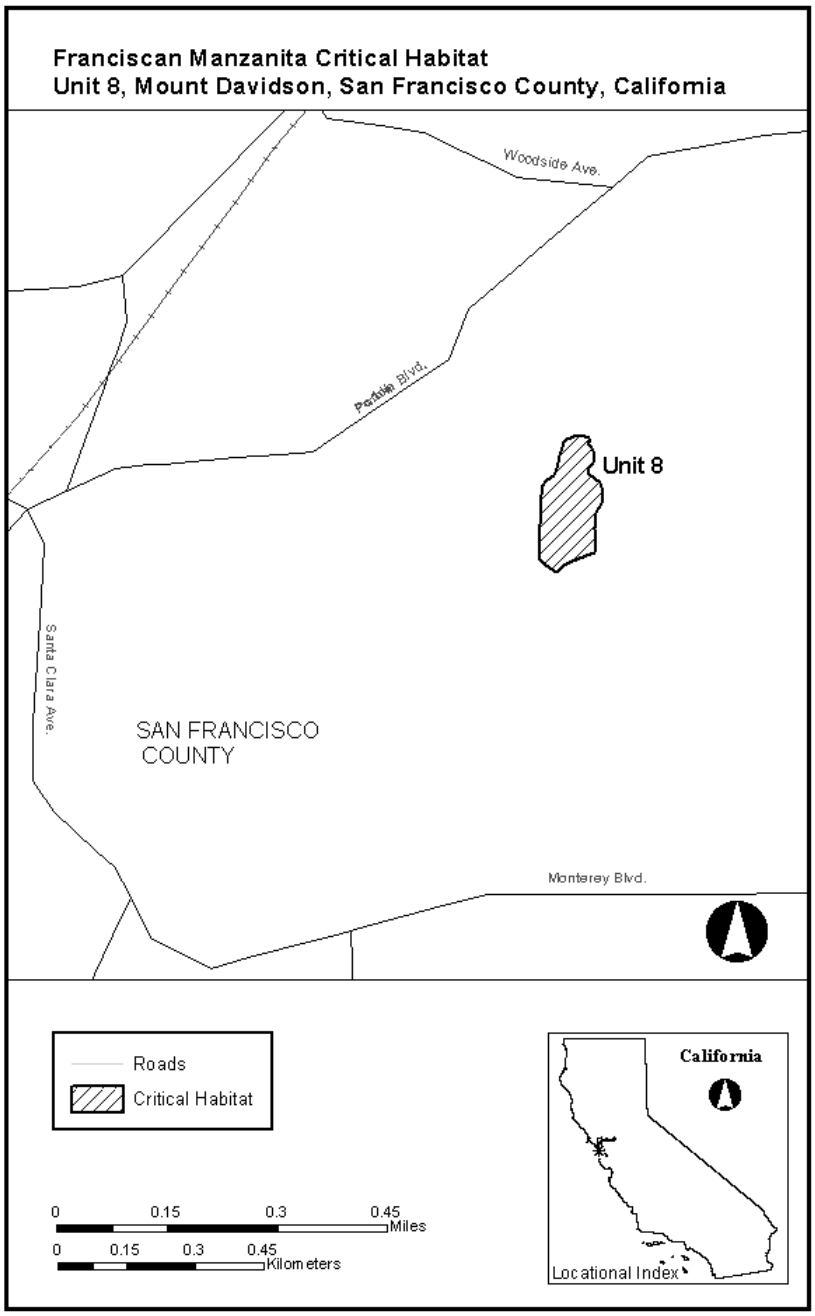
(11) Unit 6: Corona Heights, San Francisco County, California. Map of Unit 6 follows:


Franciscan Manzanita Critical Habitat
Unit 6, Corona Heights, San Francisco County, California
Buena Vista Ave.
Castro St.
Unit 6
SAN FRANCISCO
COUNTY
17th St.
Market St.
Roads
Critical Habitat
0 0.1 0.2 0.3 Miles
0 0.1 0.2 0.3 Kilometers
California
Locational Index

(12) Unit 7: Twin Peaks, San Francisco, California. Map of Unit 7 follows:


Franciscan Manzanita Critical Habitat
Unit 7, Twin Peaks, San Francisco County, California
17th St.
SAN FRANCISCO
COUNTY
Market St.
Unit 7
Woodside Ave.
Portola Dr.
Roads
Critical Habitat
0
0.2
0.4
0.6
Miles
0
0.2
0.4
0.6
Kilometers
California
Locational Index

(13) Unit 8: Mount Davidson, San Francisco County, California. Map of Unit 8 follows:


Franciscan Manzanita Critical Habitat
Unit 8, Mount Davidson, San Francisco County, California
Woodside Ave.
Portola Blvd.
Unit 8
Santa Clara Ave.
SAN FRANCISCO
COUNTY
Monterey Blvd.
Roads
Critical Habitat
0
0.15
0.3
0.45
Miles
0
0.15
0.3
0.45
Kilometers
California
Locational Index

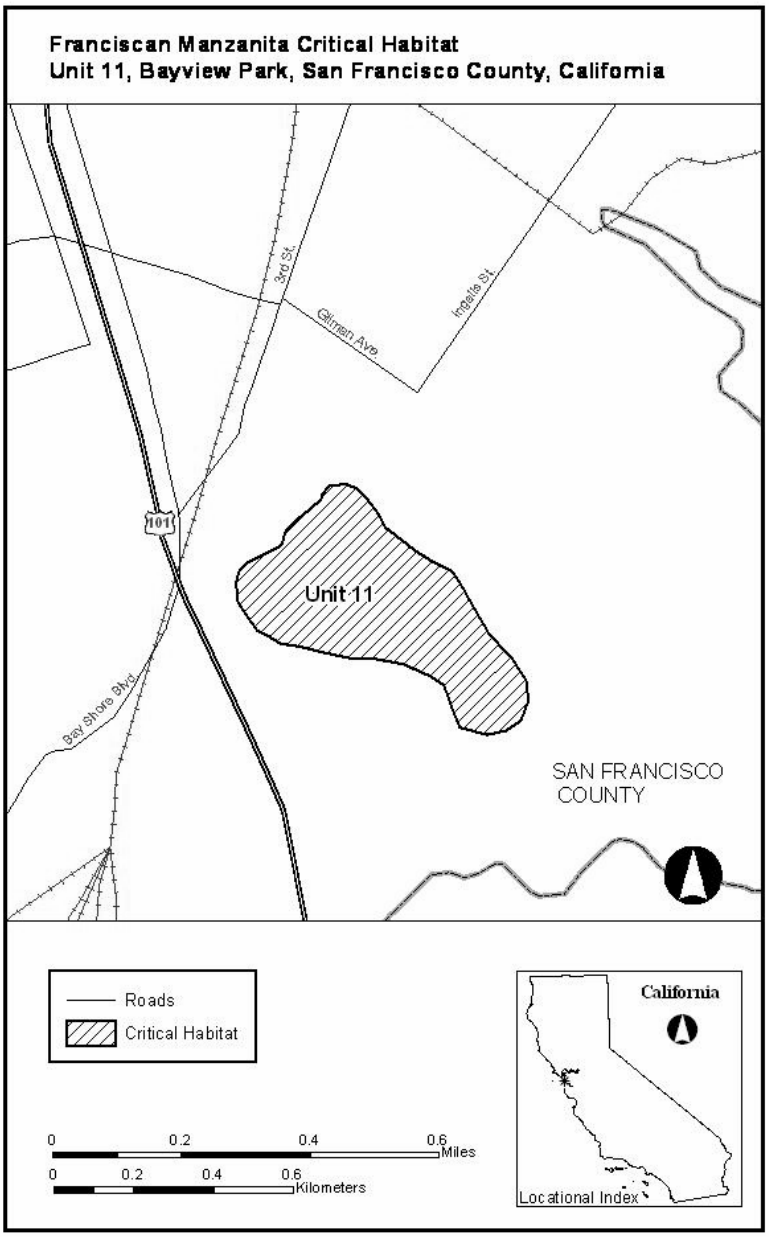
(14) Unit 9: Diamond Heights, San Francisco, California. Map of Unit 9 follows:

Franciscan Manzanita Critical Habitat
Unit 9, Diamond Heights, San Francisco County, California
Portola Dr.
Diamond Heights Blvd.
Unit 9
SAN FRANCISCO
COUNTY
Bosworth St.
Roads
Critical Habitat
0
0.15
0.3
0.45
Miles
0
0.15
0.3
0.45
Kilometers
California
Locational Index

(15) Unit 10: Bernal Heights, San Francisco County, California. Map of Unit 10 follows:

Franciscan Manzanita Critical Habitat
Unit 10, Bernal Heights, San Francisco County, California
Cesar Chavez St.
Mission St.
Unit 10
101
Cortland Ave.
SAN FRANCISCO
COUNTY
Roads
Critical Habitat
0
0.15
0.3
0.45
Miles
0
0.15
0.3
0.45
Kilometers
California
Locational Index

(16) Unit 11: Bayview Park, San Francisco County, California. Map of Unit 11 follows:


Franciscan Manzanita Critical Habitat
Unit 11, Bayview Park, San Francisco County, California
3rd St.
Gilman Ave.
Ingalls St.
101
Unit 11
Bay Shore Blvd.
SAN FRANCISCO
COUNTY
Roads
Critical Habitat
0
0.2
0.4
0.6
Miles
0
0.2
0.4
0.6
Kilometers
California
Locational Index

* * * * *

Dated: August 27, 2012

Signed: Rachel Jacobson

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

Billing Code 4310-55-P

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