

species because it contains two of the very few remaining sites at which the species has been recently observed. Due to the limited number of populations of *D. luteum*, and the high degree of threat of extinction from catastrophic events, we believe that habitat supporting all recently documented occurrences is essential for the conservation of this species.

*Unit L2: Estero Americano, Marin County, California.*

Unit L2 is located just south of Estero Americano on the Marin County coast. This 133 ha (328 ac) unit contains one occurrence of *Delphinium luteum*, with about 134 individual plants at last count (CNDDDB 2001). It is located on Yorkville series soils that support coastal prairie and coastal scrub habitat and is within the fog belt that moderates the climate. This unit contains features that are essential for the survival of *D. luteum*. The unit also is important because it contains the single largest population of the plant, with more than half of all the individuals in the entire species. Because so few *D. luteum* plants remain, we believe that providing habitat to support all of them is essential to the continued survival and conservation of the species. In addition, this unit is essential to the conservation of the species because it contains one of very few remaining sites at which the species has been recently observed. Due to the limited number of populations of *D. luteum*, and the high degree of threat of extinction from catastrophic events, we believe that habitat supporting all recently documented occurrences is essential for the conservation of this species.

*Unit L3: Estero de San Antonio, Marin County, California.*

Unit L3 is located near the mouth of the Estero de San Antonio in Marin County and includes steep sloped canyon walls composed of Yorkville series soils on both sides of the water channel, with coastal prairie and coastal scrub habitat and temperatures moderated by fog. This 142 ha (351 ac) unit contains one population of *Delphinium luteum* discovered in 1993 that is not yet recorded in the CNDDDB. This unit is important because it is positioned roughly halfway between Unit L4 to the south, and Units L1 and L2 to the north, and may help to prevent the genetic isolation of Unit L4. It also contains the largest continuous area of Yorkville soils of all the units. Yorkville soils are important because, in Units L2 and L3, these soils support roughly two thirds of all individual *D. luteum* plants. Because a large proportion of the

remaining *D. luteum* individuals occur on Yorkville soils, we believe these soils are an indicator of situations in which the plants are likely to survive and reproduce. Therefore, we believe areas which contain these soils are essential to the conservation of the species.

*Unit L4: Tomales, Marin County, California.*

Unit L4 is located approximately 1.6 km (1 mi) south of the town of Tomales in Marin County. This 193 ha (476 ac) unit consists of coastal prairie and coastal scrub within the fog belt. It is known to have contained three populations of *Delphinium luteum*, although two of the populations have not been documented since the early 1980s, and one of these has been listed by the CNDDDB as "possibly extirpated" (CNDDDB 2001). The "possibly extirpated" population may have consisted of hybrids of *D. luteum* and *D. nudicaule* (red larkspur). The third population occurs on a road embankment rather than in the vicinity of canyon walls. This population was documented as recently as 2000, and was genetically tested and confirmed to be a non-hybrid, but only one plant was seen at that time (J. Koontz, in *litt.*, 2002). This unit contains primary constituent elements that are essential to the conservation of the species. The unit also is important to the conservation of the species because it contains one of very few remaining sites at which the species has been recently observed. Due to the limited number of populations of *D. luteum*, and the high degree of threat of extinction from catastrophic events, we believe that habitat supporting all recently documented occurrences is essential for the conservation of this species. In addition, this unit is important because it represents the southernmost extent of the range of *D. luteum*. The population growing in the road embankment may also provide important information on the characteristics of managed soil disturbances which can support *D. luteum*. Such information would be of great help in conserving the species.

*Effects of Critical Habitat Designation*

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, permit, or carry out are not likely to result in the destruction or adverse modification of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species.

Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands; require a Federal permit, license, or other authorization; or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species, or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist Federal agencies in eliminating conflicts that may be caused by their proposed action. The conservation recommendations in a conference report are advisory.

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

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or result in the destruction or adverse modification of its critical habitat. If a Federal action may affect a listed species or its critical habitat, the