

against any benefits to the species of designating critical habitat 113 F. 3d 1121, 1125 (9th Cir. 1997).

The courts also have ruled that, in the absence of a finding that the designation of critical habitat would increase threats to a species, the existence of another type of protection, even if it offers potentially greater protection to the species, does not justify a not prudent finding (*Conservation Council for Hawaii v. Babbitt* 2 F. Supp. 2d 1280).

If critical habitat is designated for *Arabis perstellata*, Federal agencies will be required to consult with us on actions they carry out, fund, or authorize, to ensure that their actions will not destroy or adversely modify critical habitat. It may also provide information to Federal agencies and the general public of the importance of *Arabis perstellata* habitat and the need for special management considerations or protection. A critical habitat designation may assist Federal agencies in planning future actions because it establishes, in advance, those habitats that will be reviewed in section 7 consultations.

Though the identification of known plant locations in this proposed rule may increase unauthorized collection, we currently have no knowledge that unauthorized collection is or has been an issue with *Arabis perstellata*. We found no records of unauthorized collection during our literature review or in discussions with researchers. We also have found no evidence that identification of *Arabis perstellata* critical habitat would increase the degree of threat to the species. Accordingly, we withdraw our previous determination that the designation of critical habitat is not prudent. We find that designation of critical habitat is prudent for *Arabis perstellata* because there is not likely to be increased threats to the species that may result from the critical habitat designation.

B. Methods

As required by section 4(b)(2) of the Act and its implementing regulations (50 CFR 424.12), this proposal is based on the best scientific information available concerning the species' current and historical range, habitat, biology, and threats. In preparing this rule, we reviewed and summarized the current information available on *Arabis perstellata*, including the physical and biological features that are essential for the conservation of the species (see "Primary Constituent Elements" section), and identified the areas containing these features. The information used includes known locations, our own site-specific species

and habitat information, statewide Geographic Information System (GIS) coverages (e.g., soils, geologic formations, and elevation contours), the Natural Resources Conservation Service's soil surveys, the final listing rule for *Arabis perstellata*, recent biological surveys and reports, peer-reviewed literature, our final recovery plan, and discussions and recommendations from *Arabis perstellata* experts.

C. Primary Constituent Elements

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific data available, and to focus on those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for germination or seed dispersal; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species.

Much of what is known about the specific physical and biological requirements of *Arabis perstellata* is described in the "Background" section of this proposed rule. The proposed critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *Arabis perstellata* throughout its range, and to provide those habitat components essential for the conservation of the species. These habitat components provide for the following—(1) individual and population growth, including sites for germination, pollination, reproduction, pollen and seed dispersal, and seed dormancy; (2) areas that provide basic requirements for growth, such as water, light, and minerals; and (3) areas that support populations of pollinators and seed dispersal organisms; and (4) habitats that are representative of the historic geographical and ecological distribution of the species.

We believe the conservation of *Arabis perstellata* is dependent upon a number of factors, including the conservation and management of sites where existing populations grow and the maintenance of normal ecological functions within these sites. The areas we are proposing

as critical habitat provide some or all of the habitat components essential for the conservation of this species.

Based on the best available information, the primary constituent elements essential for the conservation of *Arabis perstellata* are:

(a) The slopes of calcareous mesophytic and sub-xeric forest that are relatively undisturbed, with few openings in the canopy and several large, mature trees (such as sugar maple (*Acer saccharum*), chinquapin oak (*Quercus muhlenbergii*), hackberry (*Celtis occidentalis*), or Ohio buckeye (*Aesculus glabra*)) ;

(b) An area with few introduced weedy plant species such as *Alliaria petiolata* that is able to support self-sustaining populations of 50 or more individuals;

(c) A mesic habitat with open forest floors containing rock outcrops on moderate to steep slopes with little herbaceous cover and leaf litter accumulation with natural disturbance to allow for *Arabis perstellata* germination and seedling germination;

(d) Ordovician limestone, in particular the Grier, Tanglewood, and Macedonia Bed Members of the Lexington Limestone in Kentucky, and the Lebanon, Carters, Leipers, Catheys, and Bigby-Cannon Limestones in Tennessee; and

(e) Limestone soils such as the Fairmont Rock outcrop complexes in Kentucky and the Mimosa Rock outcrop complexes in Tennessee.

D. Criteria Used To Identify Critical Habitat

We considered several factors in the selection and proposal of specific areas for critical habitat for *Arabis perstellata*. We assessed the final recovery plan objectives and criteria, which emphasize the protection of populations throughout a significant portion of the species' range in Kentucky and Tennessee. According to the recovery plan, *Arabis perstellata* will be considered for delisting when 20 geographically distinct, self-sustaining populations, consisting of 50 or more plants each, are protected in Kentucky and Tennessee, and it has been demonstrated that the populations are stable or increasing after five years of monitoring following reclassification to threatened status. Because of the proximity of occurrences of *Arabis perstellata*, protected populations must be distributed throughout the range in order to decrease the probability of a catastrophic event impacting all the protected populations.

Our approach to delineating specific critical habitat units, based on the