



## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

**[Docket No. FWS–R2–ES–2013–0025; 4500030113]**

**RIN 1018–AZ43**

### **Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Acuña Cactus and the Fickeisen Plains Cactus**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; revisions and reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the October 3, 2012, proposed listing and designation of critical habitat for *Echinomastus erectocentrus* var. *acunensis* (acuña cactus) and

*Pediocactus peeblesianus* var. *fickeiseniae* (Fickeisen plains cactus) under the Endangered Species Act of 1973, as amended (Act). We are reopening the comment period to allow all interested parties an opportunity to comment on revisions to the proposed critical habitat designations, which are described in this document; the associated draft economic analysis (DEA) for the proposed critical habitat designations; and the amended required determinations. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

**DATES:** We will consider comments received or postmarked on or before [INSERT DATE 15 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION].

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.

**ADDRESSES:** *Document availability:* You may obtain copies of the October 3, 2012, proposed rule on the Internet at <http://www.regulations.gov> at Docket No. FWS-R2-ES-2012-0061 or by mail from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

*Written comments:* You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal:

<http://www.regulations.gov>. Search for Docket No. FWS–R2–ES–2013–0025, which is the docket number for this rulemaking.

(2) *By hard copy*: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2013–0025; 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 the **Public Comments** section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021; telephone (602) 242–0210; facsimile (602) 242–2513. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

**Public Comments**

We are reopening the comment period for our proposed critical habitat

designations for the acuña cactus and the Fickeisen plains cactus that published in the **Federal Register** on October 3, 2012 (77 FR 60509). We are specifically seeking comments on the revised proposed critical habitat designations described in this document; see **ADDRESSES** for information on how to submit your comments. We will consider information and recommendations from all interested parties. We also 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 is not prudent.

(2) Specific information on:

(a) The distribution of the acuña cactus or the Fickeisen plains cactus;

(b) The amount and distribution of acuña cactus or the Fickeisen plains cactus habitat;

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

(d) What areas occupied by the species at the time of listing that contain features essential for the conservation of the species we should include in the designation and

why.

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

(4) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

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

(6) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

(7) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(8) Information that may inform our consideration of exclusion, including benefits of exclusion and benefits of including the areas proposed as critical habitat for the Fickeisen plains cactus on the Navajo Nation based on the “Navajo Nation Fickeisen Plains Cactus Management Plan” and on the Babbitt Ranches based on their “Draft Babbitt Ranches Fickeisen Plains Cactus Management Plan.” Both plans were submitted during the March 28 through April 29, 2013, comment period (78 FR 18938) and are available on <http://www.regulations.gov> at Docket No. FWS–R2–ES–2013–0025.

If you submitted comments or information on the proposed rule (77 FR 60509) during the initial comment period from October 3 to December 3, 2012, or during the second comment period (78 FR 18938) from March 28 to April 29, 2013, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during this and the prior two comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or DEA 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.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the website. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS–R2–ES–2013–0025, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at <http://www.regulations.gov> at Docket Number FWS–R2–ES–2013–0025, or by mail from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

## **Background**

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the acuña cactus and the Fickeisen plains cactus in this document. For

more information on previous Federal actions concerning the acuña cactus and the Fickeisen plains cactus, refer to the proposed listing determination and designation of critical habitat published in the **Federal Register** on October 3, 2012 (77 FR 60509) or the draft economic analysis, which are available online at <http://www.regulations.gov> (at Docket Number FWS–R2–ES–2013–0025) or from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### *Previous Federal Actions*

On October 3, 2012, we published a proposed rule to list the acuña cactus and the Fickeisen plains cactus as endangered and to designate critical habitat for both plants (77 FR 60509). For the acuña cactus, we proposed to designate as critical habitat approximately 21,740 hectares (ha) (53,720 acres (ac)) in six units located in Maricopa, Pima, and Pinal Counties, Arizona. For the Fickeisen plains cactus, we proposed to designate as critical habitat approximately 19,901 ha (49,186 ac) in nine units located in Coconino and Mohave Counties, Arizona. That proposal had a 60-day comment period, ending December 3, 2012. On March 28, 2013, we reopened the comment period for 30 days to announce the availability of the DEA (78 FR 18938). We will submit for publication in the **Federal Register** final listing and critical habitat designations for the acuña cactus and the Fickeisen plains cactus on or before October 3, 2013.

#### **Critical Habitat**

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed critical habitat designation is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

### **Revised Proposed Critical Habitat**

Based on information we received during the comment periods, we are revising our proposed critical habitat for both cacti species (see the *Criteria Used to Identify Critical Habitat* section of the October 3, 2012, proposed rule (77 FR 60509)). The new information resulted in revisions to most of the acuña cactus critical habitat units. For the Fickeisen plains cactus, we are proposing to remove Unit 4, Snake Gulch, and add a new unit on U.S. Forest Service land. For the acuña cactus, we propose to designate approximately 7,657 ha (18,921 ac) as critical habitat in Maricopa, Pima, and Pinal

Counties, Arizona. For the Fickeisen plains cactus, we propose to designate approximately 19,066 ha (47,123 ac) as critical habitat in Coconino and Mohave Counties, Arizona. Therefore, acuña cactus proposed critical habitat is reduced by 14,184 ha (34,799 ac), and Fickeisen plains cactus proposed critical habitat is reduced by 835 ha (2,063 ac).

### **Criteria Used to Identify Critical Habitat**

In our October 3, 2012 (77 FR 60509), proposed rule, we identified additional areas, not occupied at the time of listing, as essential for the conservation of the acuña cactus. These areas were delineated using monitoring records from Organ Pipe Cactus National Monument (OPCNM) and GIS precipitation data. We noted that flowering and recruitment peaked in 1992, coinciding with a very wet winter with recorded precipitation of 29.7 cm (11.66 in). We intended to delineate areas that were projected to have 29.7 cm (11.66 in) or higher winter precipitation based on the past 30-year average. However, we mistakenly based our delineations on annual precipitation, not winter precipitation. We reevaluated our model, and there are no areas that meet the 29.7-cm (11.66-in) winter rainfall criterion. In summary, we acknowledge that long-term drought is a threat to acuña cactus; however, we do not have any additional information that allows us to delineate areas outside of those currently occupied that would be essential for the conservation of the species.

Acuña cactus

*Unit 1 - Organ Pipe Cactus National Monument*

The Dripping Spring Subunit (1,591 ha (3,931 ac)) was originally proposed based on an acuña cactus herbarium specimen collected in 1952, which noted the collection location as south of Dripping Spring within 3 m (10 ft) of the U.S.-Mexico border; the exact location was not provided. Although OPCNM staff were unaware of this herbarium collection, they stated in their comments they had visited the general area of the collection while doing surveys for sensitive cultural and natural resources, as well as for buffelgrass, and no acuña cactus plants were noted. Although it is likely this was once a population supporting enough individuals to warrant collection for herbaria, it now seems likely this population no longer exists at this location; therefore we consider this unit to be unoccupied. We also reevaluated the habitat to consider whether or not this unoccupied area is essential for the conservation of the species. In the October 3, 2012, proposed rule, we outlined criteria for designation of critical habitat, and we determined that unoccupied areas with suitable acuña cactus habitat and that receive higher mean winter precipitation were necessary for the conservation of the species. As the Dripping Spring Subunit does not receive this amount (29.7 cm (11.66 in)) of winter rainfall, it does not meet the definition of critical habitat for the species, and we are no longer proposing it as critical habitat for the acuña cactus. We have removed this subunit from our proposed designation. The revised proposed Unit 1 contains 2,416 ha (5,971

ac).

*All Units Containing Unoccupied Acuña Cactus Habitat*

In our proposed critical habitat rule, we proposed to designate unoccupied critical habitat for acuña cactus in areas receiving higher winter rainfall, thus allowing space for growth and expansion of the species in the face of ongoing drought and climate change model predictions. However, we received public comments regarding the data we used to identify the unoccupied critical habitat areas. In reviewing the information, we acknowledge that we incorrectly used annual rainfall data rather than winter rainfall data in our evaluation (see **Criteria Used to Identify Critical Habitat** above). As a result, we reevaluated the data and determined that no areas in southern Arizona meet rainfall criteria established in the proposed rule. Therefore, we are removing all the unoccupied critical habitat proposed in our October 3, 2012, proposed rule. Consequently, we are removing the entire Cimarron Mountain Subunit (2,100 ha (5,190 ac)) from our proposed designation. All of these lands are on the Tohono O’odham Nation. Within proposed Unit 4, the entire Sand Tank Mountain Subunit (3,107 ha (7,677 ac)) of Federal lands is removed. The amount of land removed within the Javelina Mountain Subunit of the Sand Tank Mountains Unit is 362 ha (895 ac), leaving 549 ha (1,355 ac) on Bureau of Land Management (BLM) lands within the Sonoran Desert National Monument. The amount of land removed within proposed Unit 5, Mineral Mountain, is 304 ha (752 ac) of BLM land, leaving 787 ha (1,945 ac) on BLM, Bureau of Reclamation (BOR), and State lands.

Within proposed Unit 6, Box O Wash, we are removing 6,240 ha (15,419 ac) of land, leaving 1,981 ha (4,895 ac) split between two subunits, A and B; this land is distributed among Federal, State, and private landowners.

Table 1.—Acuña Cactus Proposed Critical Habitat and Revised Proposed Critical Habitat

Unit	Proposed critical habitat ha (ac)	Revised proposed critical habitat ha (ac)	Difference ha (ac)
Unit 1	4,007 (9,902)	2,416 (5,971)	1,591 (3,931)
Unit 2	666 (1,645)	666 (1,645)	0 (0)
Unit 3	3,737 (9,234)	1,258 (3,109)*	2,579 (6,373)
Unit 4	4,018 (9,928)	549 (1,355)	3,469 (8,572)
Unit 5	1,092 (2,697)	787 (1,945)	305 (752)
Unit 6	8,221 (20,314)	1,981 (4,895)	6,240 (15,419)
TOTALS	21,741 (53,720)	7,657 (18,921)	14,084 (34,799)

\* See **Exemptions for Acuña Cactus** section below.

### Revised Proposed Unit Descriptions for Acuña Cactus

Below we present unit descriptions for those units for which we are revising proposed critical habitat for acuña cactus.

Table 2.—Revised Area of Proposed Critical Habitat for the Acuña Cactus

Unit or Subunit	Federal		State		Tribal		Private		Total	Total
	Ha	Ac	Ha	Ac	Ha	Ac	Ha	Ac	Ha	Ac

Unit 1 - Organ Pipe Cactus National Monument	2,416	5,971	0	0	0	0	0	0	2,416	5,971
Unit 3 – Saucedo Mountains	1,102	2,724	0	0	156	385	0	0	1,258	3,109
Unit 4 – Sand Tank Mountains	549	1,355	0	0	0	0	0	0	549	1,355
Unit 5 – Mineral Mountain	570	1,408	217	537	0	0	0	0	787	1,945
Unit 6a –Box O Wash A Subunit	4	9	1,348	3,332	0	0	369	913	1,721	4,253
Unit 6b – Box O Wash B Subunit	0	0	158	391	0	0	102	251	260	642
Grand Total	4,640	11,466	1,723	4,260	156	385	471	1,164	6,991	17,276

Note: Area sizes may not sum due to rounding.

*Unit 1: Organ Pipe Cactus National Monument*

Proposed Unit 1 consists of 2,416 ha (5,971 ac) within OPCNM in southwestern Pima County, Arizona. The unit is on federally owned land administered by the National Park Service. Land within this unit is occupied at the time of listing with the largest known population of the acuña cactus, approximately 2,000 individuals. This unit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the acuña cactus.

Grazing and mining are not permitted within OPCNM; however, off-road, border-

related activities do occur in OPCNM. Special management considerations or protection may be required to address off-road, border-related human disturbances; invasive plant removal; and insect predation in acuña cactus habitat.

### *Unit 3: Saucedo Mountains*

Proposed Unit 3 is located in the Saucedo Mountains of northwestern Pima and southwestern Maricopa Counties, Arizona. This unit contains 1,102 ha (2,724 ac) of federally owned land and 156 ha (385 ac) of tribally owned land. The Federal land is administered by the BLM; the Tribal land is administered by the Tohono O’odham Nation. This unit is comprised of four separate populations, which are close enough in proximity as to be combined within the 900-m (2,953-ft) radius defined for pollinators. Lands within this unit are occupied at the time of listing; the combined number of plants occurring within this unit is 212. This unit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the acuña cactus.

The features essential to the conservation of the species within the unit are threatened by mining; grazing; and off-road, border-related activities. Special management considerations or protection may be required within the unit to minimize habitat fragmentation; to minimize disturbance to individual acuña cactus individuals, soil, and associated native vegetation; and to prevent or remove invasive, exotic plants

within acuña cactus habitat.

*Unit 4: Sand Tank Mountains*

Proposed Unit 4 consists of 549 ha (1,355 ac) within the Sonoran Desert National Monument of southwestern Maricopa County, Arizona. The unit is on federally owned land administered by the BLM. Land within this unit is occupied at the time of listing; the combined number of plants occurring within this unit is 200, occurring in three separate populations. This unit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the acuña cactus.

Grazing and mining are not permitted within the Sonoran Desert National Monument; however, off-road, border-related activities and trespass livestock grazing may occur in this unit. Special management considerations or protection may be required within this unit to address increased off-road, border-related human disturbances; to minimize disturbance to acuña cactus individuals, the soil, and associated native vegetation; and to prevent or remove invasive, exotic plants within acuña cactus habitat.

*Unit 5: Mineral Mountain*

Proposed Unit 5 consists of 787 ha (1,945 ac) on Mineral Mountain of north-central Pinal County, Arizona. This unit contains 570 ha (1,408 ac) of federally owned

land and 217 ha (537 ac) of State-owned land. The Federal land is administered by the BLM (569 ha (1,406 ac)) and the Bureau of Reclamation (1 ha (2 ac)).

This unit contains five separate known populations totaling at least 30 individuals on lands administered by the BLM and the State of Arizona. This unit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the acuña cactus.

Livestock grazing and off-road vehicle activity occur on this unit, and mining occurs nearby. Special management considerations or protection may be required within the unit to minimize habitat fragmentation; to minimize disturbance to acuña cactus individuals, soil, and associated native vegetation; and to prevent or remove invasive, exotic plants within acuña cactus habitat.

#### *Unit 6: Box O Wash*

Proposed Unit 6 is located near Box O Wash of north-central Pinal County, Arizona. This unit consists of two subunits totaling 1,981 ha (4,895 ac). This unit contains 4 ha (9 ac) of federally owned land, 1,506 ha (3,722 ac) of State-owned land, and 471 ha (1,164 ac) of privately owned land. The Federal land is administered by the BLM.

*Subunit 6a: Box O Wash A*—Subunit 6a consists of 3.7 ha (9.1 ac) of BLM land, 369 ha (913 ac) of private land, and 1,348 ha (3,332 ac) of State land east of Florence, Arizona. This subunit is comprised of two separate populations of the acuña cactus on private and State-owned lands, which are close enough in proximity to be combined within the 900-m (2,953-ft) radius defined for pollinators. Lands within this subunit are occupied at the time of listing; the combined number of plants occurring within this subunit is 11. This subunit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the acuña cactus.

*Subunit 6b: Box O Wash B*—Subunit 6b consists of 158 ha (391 ac) of State-owned land and 102 ha (251 ac) of private land east of Florence, Arizona. This subunit is comprised of one population of the acuña cactus on State-owned land; the 900-m (2,953-ft) radius defined for pollinators overlaps into private land. This area was surveyed in 2008, and 32 living acuña cacti were found. A 2011 survey resulted in no living plants located; however this was not a thorough survey. Therefore, we consider lands within this subunit occupied at the time of listing. This subunit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the acuña cactus.

Livestock grazing and off-road vehicle activity occur in both subunits of proposed Unit 6, and mining occurs nearby. Special management considerations or protection may be required within both subunits of this unit to minimize habitat fragmentation; to

minimize disturbance to acuña cactus individuals, soil, and associated native vegetation; and to prevent or remove invasive, exotic plants within acuña cactus habitat.

## **Exemptions for Acuña Cactus**

### *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.”

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the critical habitat designation for acuña cactus to determine if they meet the criteria for exemption from critical habitat under section 4(a)(3) of the Act. The following areas are Department of Defense lands with completed, Service-approved INRMPs within the revised proposed critical habitat designation.

Approved INRMPs

Barry M. Goldwater Gunnery Range (BMGR) – Arizona

The BMGR has an approved INRMP. The U.S. Air Force is committed to working closely with the Service to continually refine the existing INRMP as part of the Sikes Act's INRMP review process. Based on our review of the INRMP for this military installation, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the portion of the acuña cactus habitat within this installation, identified as meeting the definition of critical habitat, is subject to the INRMP, and that conservation efforts identified in this INRMP will provide a benefit to the acuña cactus. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3)(B)(i) of the Act. We are not including 379 ha (935 ac) of habitat on BMGR within the Coffeepot Mountain Subunit in this revised critical habitat designation because of this exemption. This leaves 1,258 ha (3,109 ac) in the Coffeepot Mountain Subunit on Bureau of Land Management and Tohono O'odham Nation lands as proposed critical habitat for the acuña cactus.

The BMGR completed a revision to the INRMP in relation to ongoing and planned conservation efforts for the acuña cactus and provided this revision to us during a public comment period. The benefits for acuña cactus from this revised INRMP include: Avoid disturbance of vegetation and pollinators within 900 meters of known acuña cactus plants; develop and implement procedures to control trespass livestock; monitor illegal immigration, contraband trafficking, and border-related enforcement; and continue to monitor and control invasive plant species to maintain quality habitat and prevent

unnatural fire. Further, BMGR's environmental staff reviews projects and enforces existing regulations and orders that, through their implementation, avoid and minimize impacts to natural resources, including acuña cacti and their habitat. In addition, BMGR's INRMP provides protection to acuña cactus habitat by prohibiting both mining and agriculture on their lands. BMGR's INRMP specifies periodic monitoring of the distribution and abundance of acuña cacti populations on the range.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts identified in the 2007 INRMP for BMGR and the revised acuña cactus portion of this INRMP developed in 2012 provide a benefit to the acuña cactus and its habitat. Therefore, lands subject to the INRMP for BMGR, which includes the lands leased from the Department of Defense by other parties, are exempt from critical habitat designation under section 4(a)(3) of the Act, and we are not including approximately 379 ha (935 ac) of habitat in this revised proposed critical habitat designation.

#### Fickeisen plains cactus

We are revising two areas of proposed Fickeisen plains cactus critical habitat: (1) We are removing Unit 4, Snake Gulch Unit, from proposed critical habitat; and (2) we are proposing an additional area as critical habitat on the Kaibab National Forest. We also announce additional areas being considered for exclusion from the final designation

of Fickeisen plains cactus critical habitat (see **Public Comments** section above).

On October 3, 2012, we proposed approximately 945 ha (2,335 ac) as critical habitat within the Snake Gulch Unit on Federal land (77 FR 60509, p. 60560). The Snake Gulch Unit is located near the western boundary of the Kaibab National Forest on the North Kaibab Ranger District. It includes one of two known occurrences of the Fickeisen plains cactus on the Kaibab National Forest. Plants were observed in the 1980s in the area near Willow Point in the vicinity of Snake Gulch (Heritage Data Management System 2012). After this date, no other site visits had occurred to verify the location and status of the plant. During the public comment periods, the Kaibab National Forest conducted surveys near Willow Point and within the proposed designated critical habitat, but no plants were found (Hannemann 2013, p. 1; Hannemann 2013, pers. comm.). Further, the Kaibab National Forest had previously conducted surveys in the Snake Gulch area in 2002 and 2003, for a section 7 consultation, and those efforts failed to locate plants (USFS 2004, p. 601). Further investigation of the source of the 1980s information revealed that the observed occurrence of the Fickeisen plains cactus in the Snake Gulch vicinity was in error. Based on this finding and with three negative survey results, we consider the area at Snake Gulch to be unoccupied by the Fickeisen plains cactus. We are removing the 945-ha (2,335-ac) Snake Gulch Unit from our proposed critical habitat designation. We also reevaluated the habitat to consider whether unoccupied areas are essential for the conservation of the species. In the October 3, 2012, proposed rule, we determined that within the range of the Fickeisen plains cactus

there are adequate amounts of area occupied by the plant to provide for and ensure the conservation of the species. We have determined that, even without the habitat previously considered occupied at the Snake Gulch Unit, there are adequate amounts of area occupied by the plant proposed as critical habitat to provide for and ensure the conservation of the species without the designation of any unoccupied areas as critical habitat. Therefore, we are not proposing any unoccupied areas as critical habitat for the Fickeisen plains cactus.

We also received new information on the available habitat at South Canyon that is located on the eastern boundary of the Kaibab National Forest near the Colorado River. This site is different from Subunit 5d (South Canyon) (in Unit 5, House Rock Valley) that is on BLM lands. This area was known to be occupied by the plant based on its discovery in 2004 (Phillips 2013, pers. comm.); however, the location and number of plants had not been recorded. The Kaibab National Forest surveyed the area in late March 2013, and documented 62 individuals (Hannemann 2013, pers. comm.). We are proposing to designate this area (South Canyon Unit) as critical habitat along the rim of South Canyon. This area would constitute an addition of 110 ha (272 ac) to proposed critical habitat for the Fickeisen plains cactus.

### **Revised Proposed Unit Descriptions for Fickeisen Plains Cactus**

#### *Unit 4: South Canyon*

Proposed Unit 4 is located on the eastern boundary of the North Kaibab Ranger District of the Kaibab National Forest in Coconino County. It is bounded by the Colorado River near Marble Canyon at House Rock Valley. It includes land originally designated as the Grand Canyon National Game Preserve that is now referred to as the Buffalo Ranch Management Area. It contains 110 ha (272 ac) of federally owned land that is administered by the Kaibab National Forest.

This unit contains at least 62 individuals scattered among six areas along the rim of South Canyon Point. It contains all of the primary constituent elements of the physical or biological features essential to the conservation of the Fickeisen plains cactus.

The primary land uses within proposed Unit 4 include big game hunting and recreational activities throughout the year. The area is very remote and may receive limited number of hikers, hunters, or campers. Under a memorandum of understanding, the Kaibab National Forest and the Arizona Game and Fish Department commit to managing the natural resources of this area, mainly big game species, to ensure that sensitive resources are not impacted and desired conditions are achieved (USFS 2012, p. 92). Livestock grazing by cattle and mining activities are not authorized within the Buffalo Ranch Management Area. Special management considerations or protection may be required within the unit to minimize habitat disturbance to the soil and associated native vegetation, and prevent invasion of nonnative plants within Fickeisen plains cactus

habitat.

### **Draft Economic Analysis**

On March 28, 2013, we released the draft economic analysis of the proposed designations for the acuña cactus and the Fickeisen plains cactus and published a summary of the analysis in the **Federal Register** (78 FR 18938). For the acuña cactus, in this document, we are removing specific areas from the proposed designation of critical habitat for the acuña cactus. In the March 28, 2013, draft economic analysis, we estimated the total present value incremental impacts to be approximately \$60,000 over 20 years following the designation of the acuña cactus critical habitat, assuming a 7 percent discount rate (\$65,000 assuming a 3 percent discount rate). Since we are revising the proposed designation by removing areas and now exempting the Barry M. Goldwater Range from critical habitat, the total incremental impacts will be less than \$60,000 over 20 years.

For the Fickeisen plains cactus, we are removing the Snake Gulch Unit and proposing the South Canyon Unit. In the March 28, 2013, draft economic analysis, we estimated the total present value incremental impacts to be approximately \$39,000 over 20 years following the designation of the Fickeisen plains cactus critical habitat, assuming a 7 percent discount rate (\$43,000 assuming a 3 percent discount rate). The draft economic analysis estimated the potential incremental costs of the Snake Gulch Unit to be approximately \$7,000 over the next 20 years as a result of the consideration of

adverse modification in section 7 consultations. With the addition of the South Canyon Unit, we estimate similar probable incremental administrative costs resulting from consideration of adverse modification in section 7 consultations. Therefore, we estimate the total present value incremental impacts to be approximately \$39,000 over 20 years following the designation of the Fickeisen plains cactus critical habitat.

As stated earlier, we are soliciting data and comments from the public on the draft economic analysis, as well as all aspects of the revisions to the proposed rule described in this document and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

### **Required Determinations—Amended**

In our March 28, 2013 (78 FR 18938), publication, we affirmed our compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the draft economic analysis. Because we have made changes to the proposed rules for both species, in this document, we reaffirm the information in our proposed rule concerning Executive Orders (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O.

12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). We also affirm the statement in our March 28, 2013, publication (78 FR 18938) concerning the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951). Because we have made changes to the proposed critical habitat designations for both species, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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

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

economic impact on a substantial number of small entities. Based on our draft economic analysis of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm’s business operations.

To determine if the proposed designation of critical habitat for the acuña cactus

and the Fickeisen plains cactus would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as uranium mining, livestock grazing, and transportation construction and maintenance projects. In order to determine whether it is appropriate for our agency to certify that the proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the acuña cactus or the Fickeisen plains cactus are present, Federal agencies will be required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize the proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the consultation process.

In the draft economic analysis, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the acuña cactus and the Fickeisen plains cactus. As a result of changes to the proposed critical habitat designation, more than 63 percent of land in the proposed designation for acuña cactus and less than 34 percent of

the land in the proposed designation for Fickeisen plains cactus is federally owned. Anticipated incremental impacts in proposed critical habitat are primarily related to consultations on livestock grazing and other Federal land management activities. The remaining forecast impacts are anticipated to be conducted for transportation construction and maintenance projects, Partners for Fish and Wildlife programs, and activities on the Tohono O'odham or Navajo Nations' lands. The Arizona Department of Transportation (ADOT) and Tribes are not considered small entities. Therefore, of the remaining activities affected by the proposed critical habitat designations for the cacti, only one is expected to incur costs to small entities: uranium mining. One consultation is projected for the EZ uranium mine. This one consultation will result in impacts to Energy Fuels Inc. (operators of the EZ Mine) of approximately \$900 on a present value basis, or approximately \$80 on an annualized basis, which constitutes an impact of less than one-tenth of a percent of annual revenues. Of the activities affected by the proposed designation for the acuña cactus and the Fickeisen plains cactus, none is expected to incur incremental costs to third-party small entities. The forecast consultations either do not include third parties (programmatic consultations, intra-Service consultations, and consultations with another Federal agency) or the third parties are not considered small entities (consultations with the ADOT and the Tribes). Please refer to the Appendix A of the draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

The Service's current understanding of recent case law is that Federal agencies

are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated by the designation of critical habitat. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of the RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess cost and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts, if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the E.O. regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable.

In summary, we have considered whether the revised proposed designation would

result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. We conclude that future consultations are not likely to involve a third party or the third parties are not considered small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designations would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

### **Authors**

The primary authors of this notice are the staff members of the Arizona Ecological Services Field Office, Southwest Region, U.S. Fish and Wildlife Service.

### **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 further amend part 17, subchapter B of chapter I, title

50 of the Code of Federal Regulations, as proposed to be amended on October 3, 2012, at 77 FR 60509, as set forth below:

**PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS**

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

**Authority:** 16 U.S.C. 1361-1407; 1531-1544; and 4201-4245, unless otherwise noted.

2. Amend § 17.96(a) as follows:

a. In the entry proposed for “*Echinomastus erectocentrus* var. *acunensis* (acuña cactus)” at 77 FR 60509, by revising paragraphs (a)(5), (a)(6), (a)(7), (a)(9), and (a)(10); and

b. In the entry proposed for “*Pediocactus peeblesianus* var. *fickeiseniae* (Fickeisen plains cactus),” at 77 FR 60509, by revising paragraphs (a)(5), (a)(9), (a)(10), and (a)(11).

The revisions read as follows:

**§ 17.96 Critical habitat—plants.**

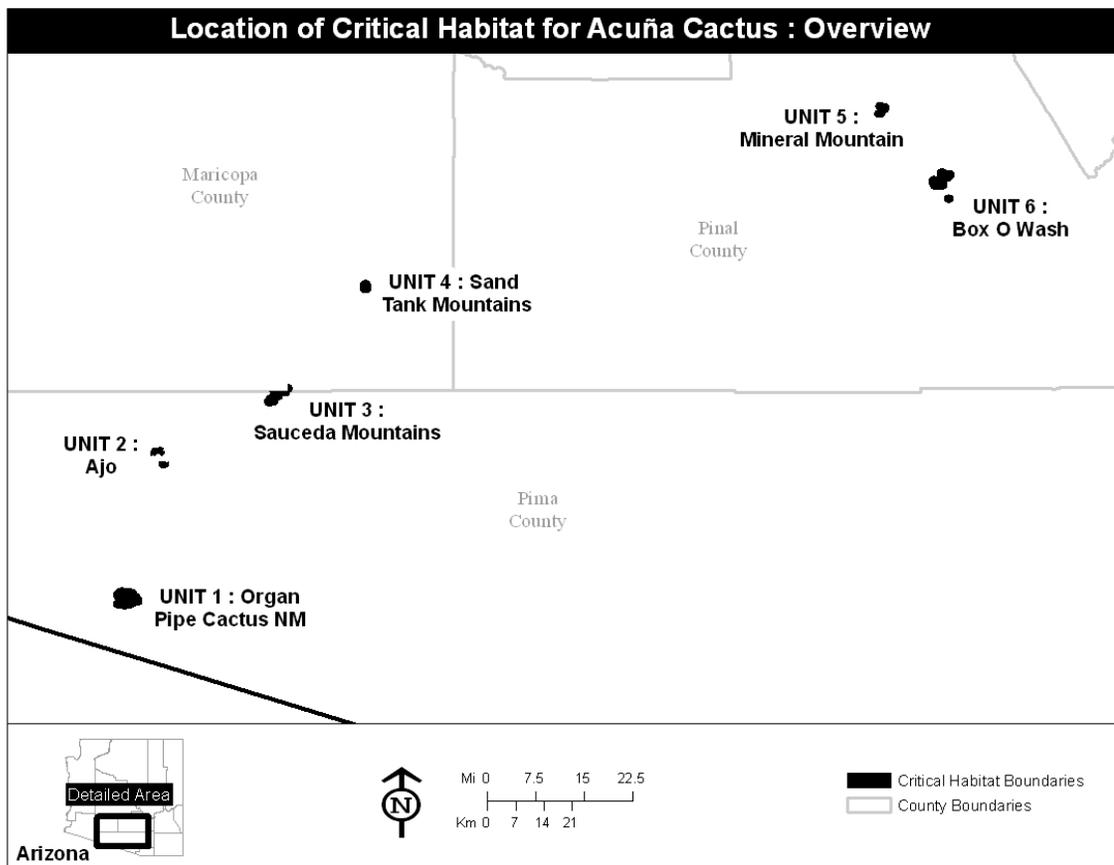
(a) *Flowering plants.*

\* \* \* \* \*

Family Cactaceae: *Echinomastus erectocentrus* var. *acunensis* (acuña cactus)

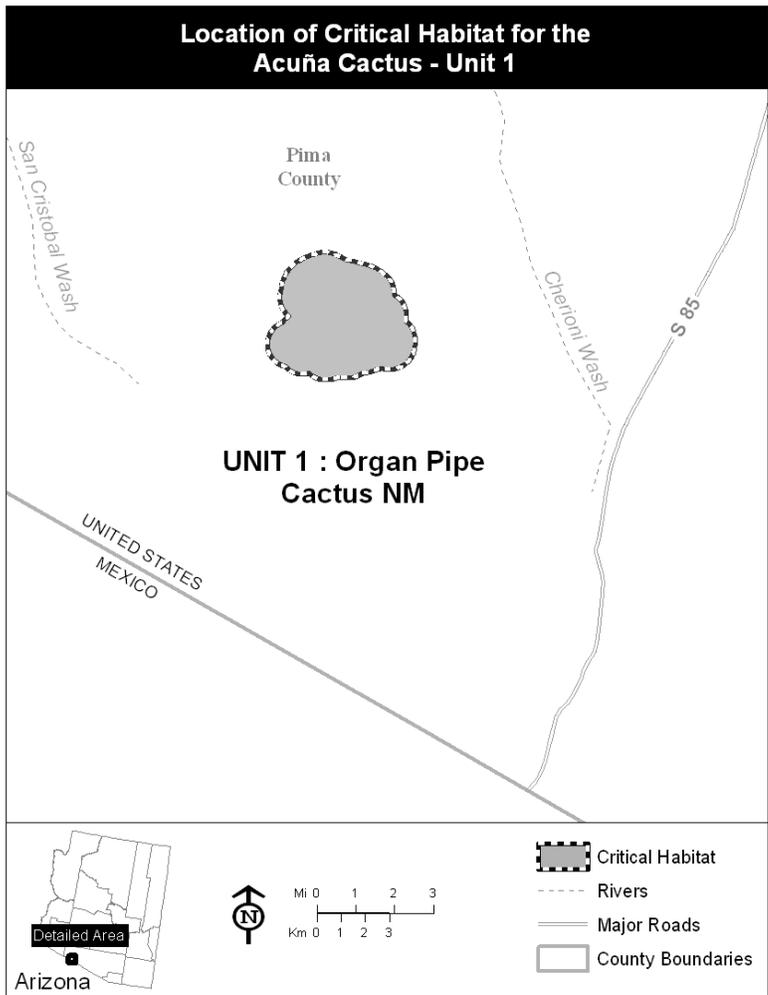
\* \* \* \* \*

(5) Index map follows:

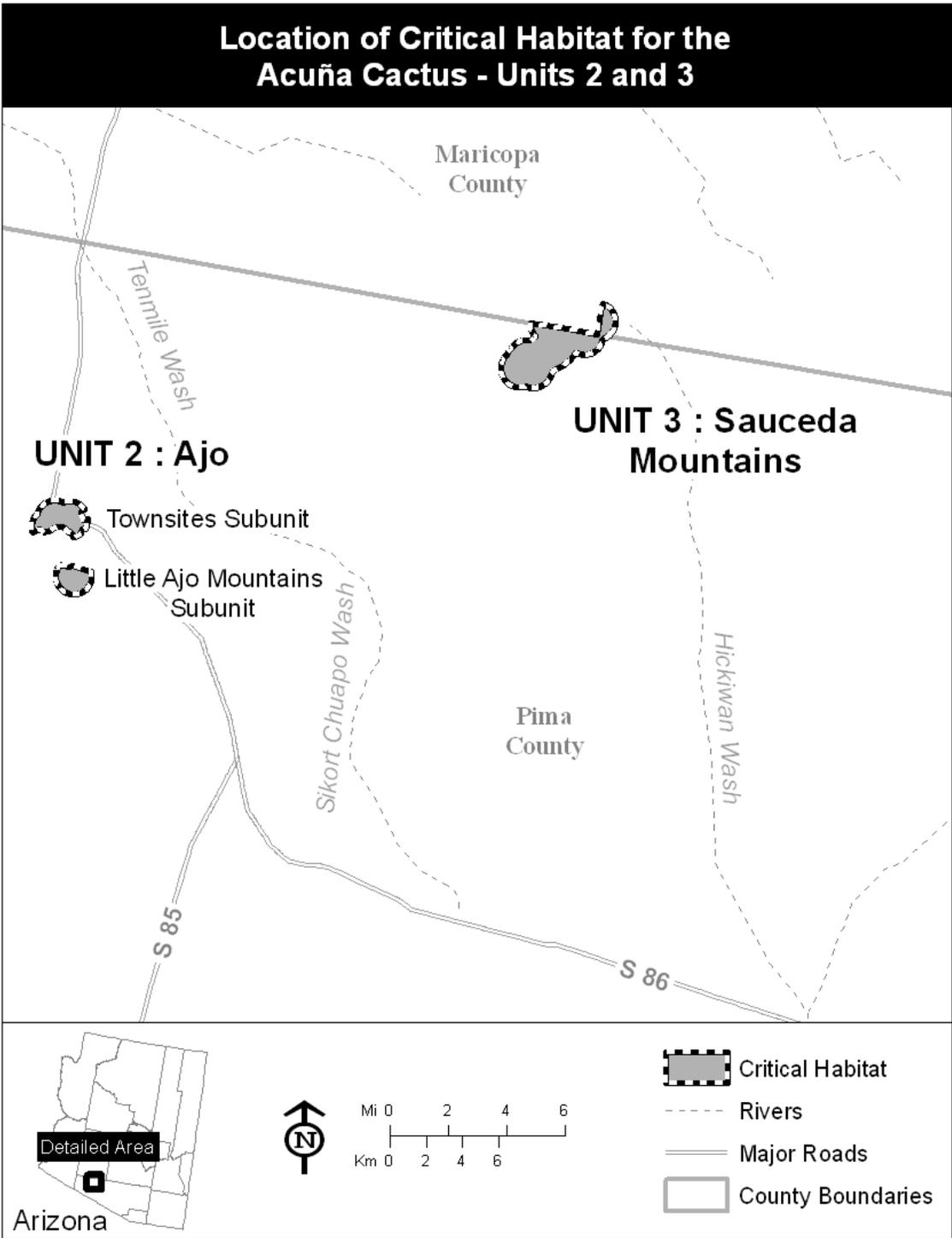


(6) Unit 1: Organ Pipe Cactus National Monument, Pima County, AZ. Map of

Unit 1 follows:



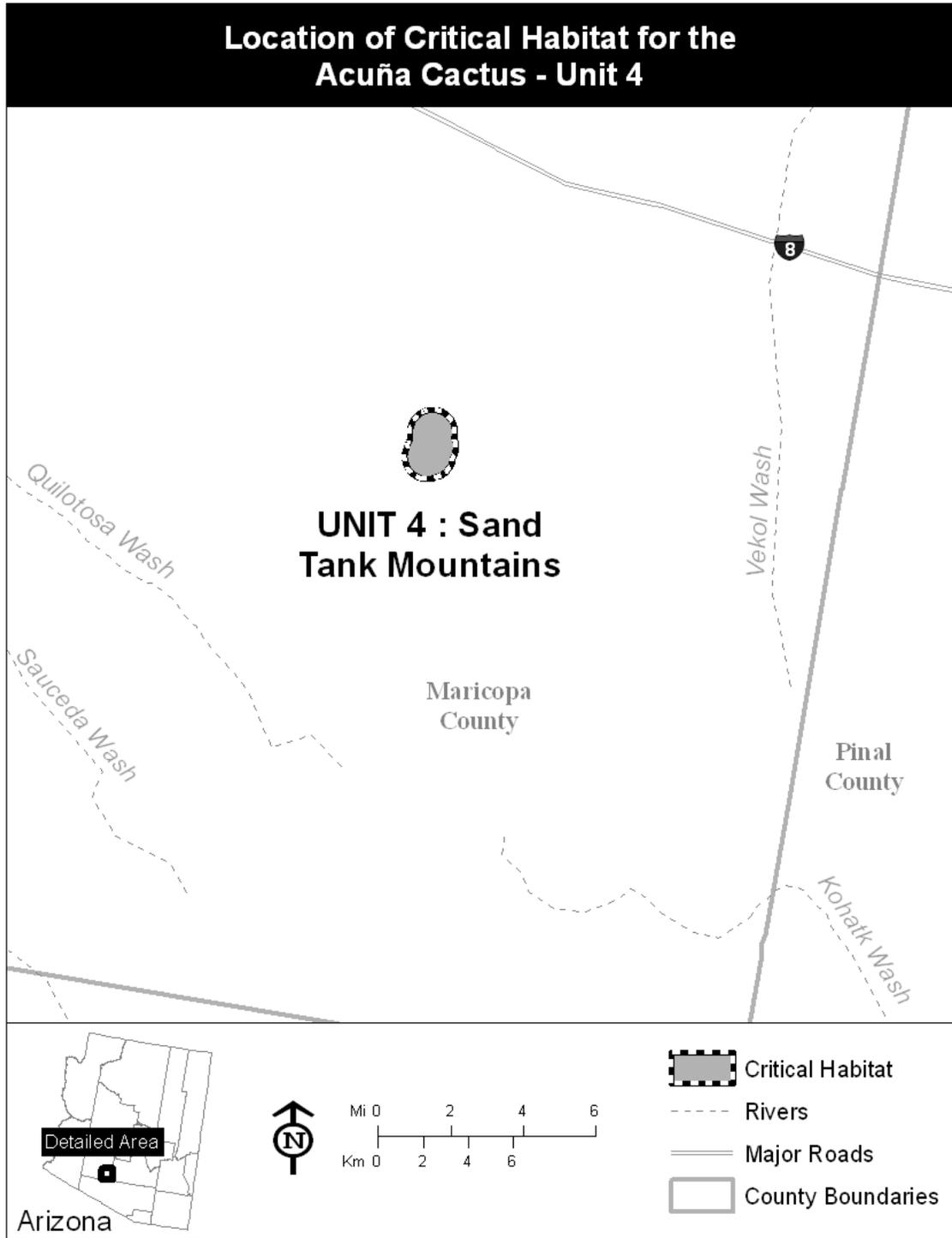
(7) Unit 2: Ajo, Pima County, AZ. Map of Units 2 and 3 follows:



\* \* \* \* \*

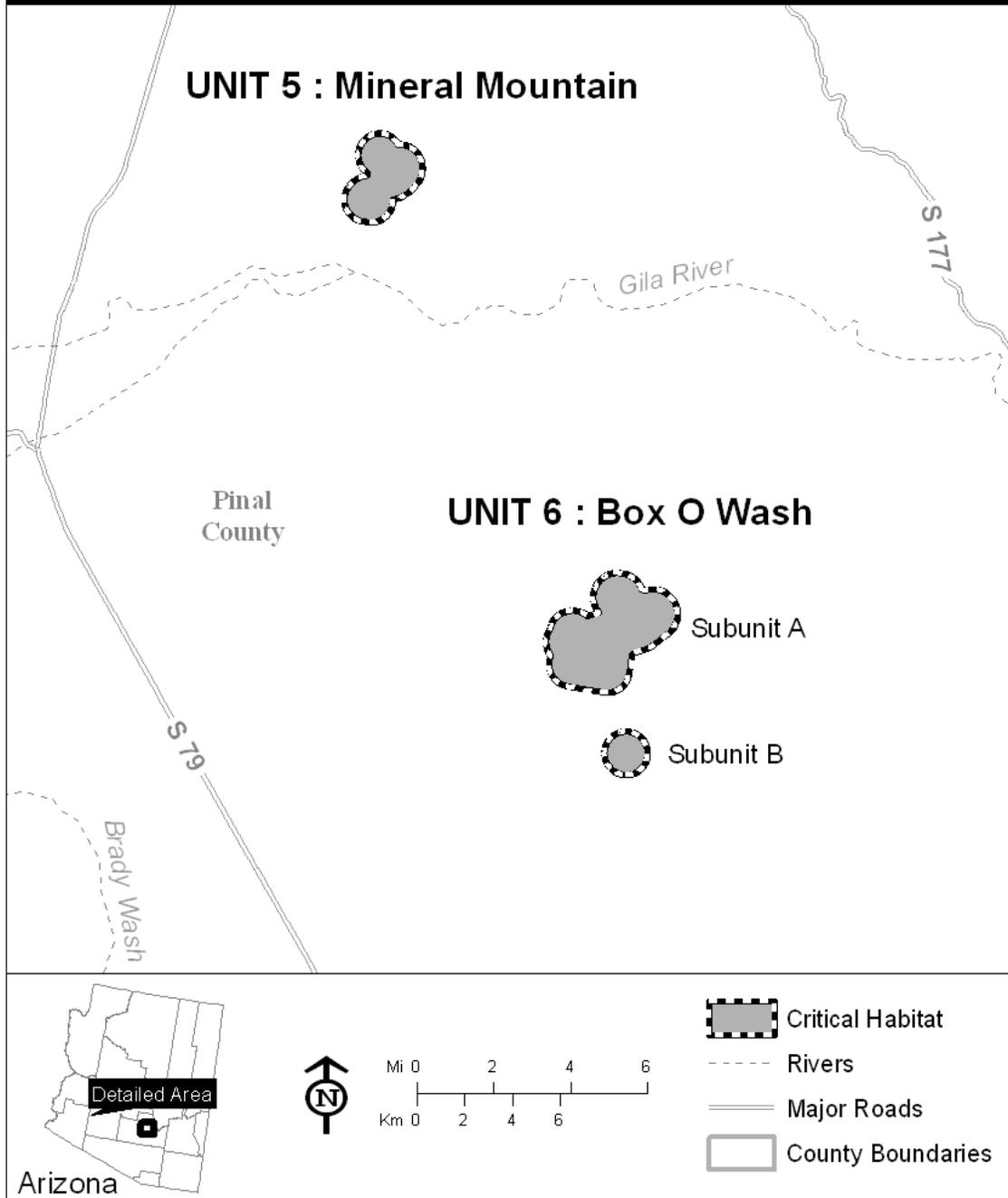
(9) Unit 4: Sand Tank Mountains, Maricopa County, AZ. Map of Unit 4

follows:



(10) Unit 5: Mineral Mountain, Pinal County, AZ. Map of Units 5 and 6 follows:

# Location of Critical Habitat for the Acuña Cactus - Units 5 and 6



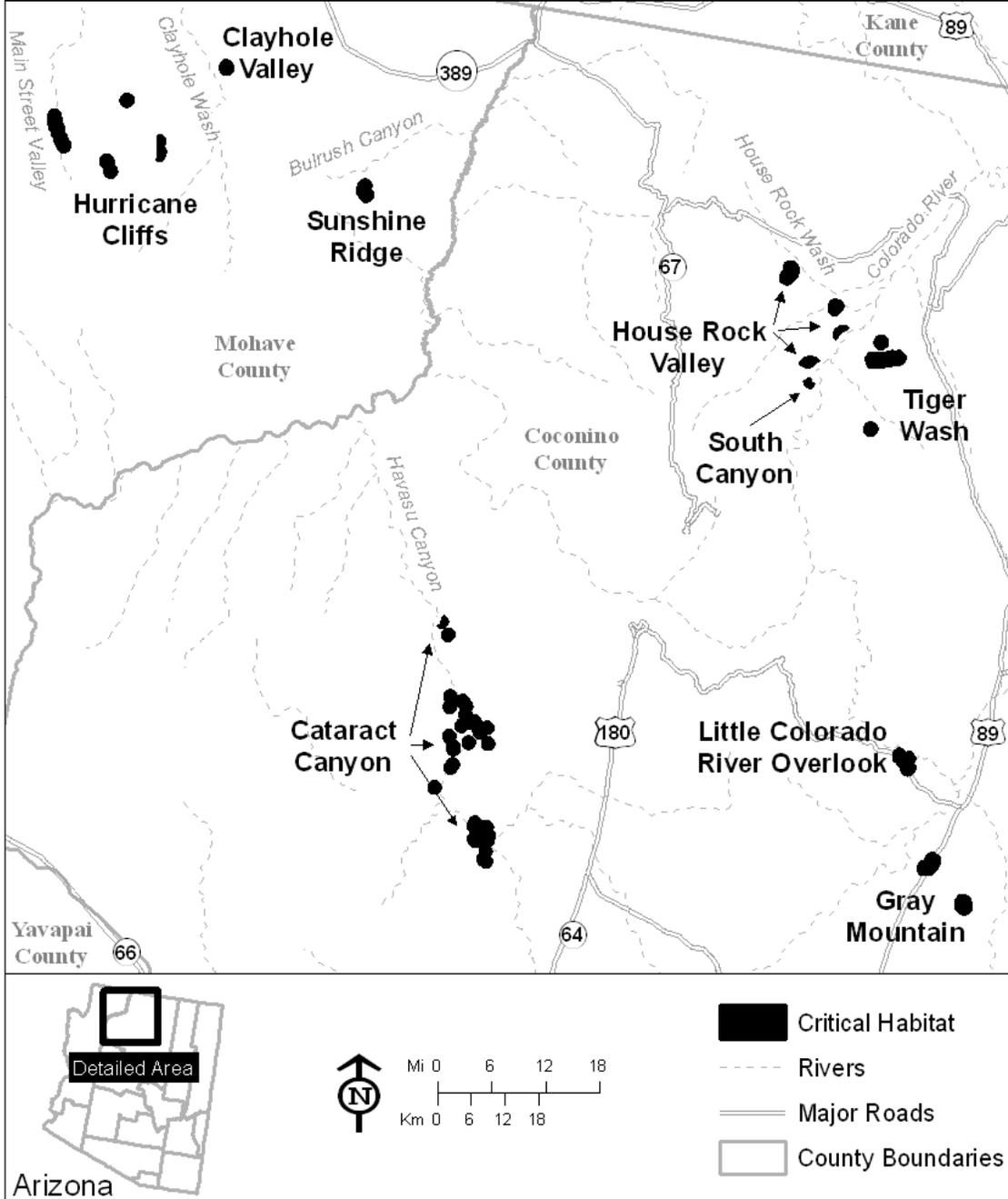
\* \* \* \* \*

Family Cactaceae: *Pediocactus peeblesianus* var. *fickeiseniae* (Fickeisen plains cactus)

\* \* \* \* \*

(5) *Note:* Index map follows:

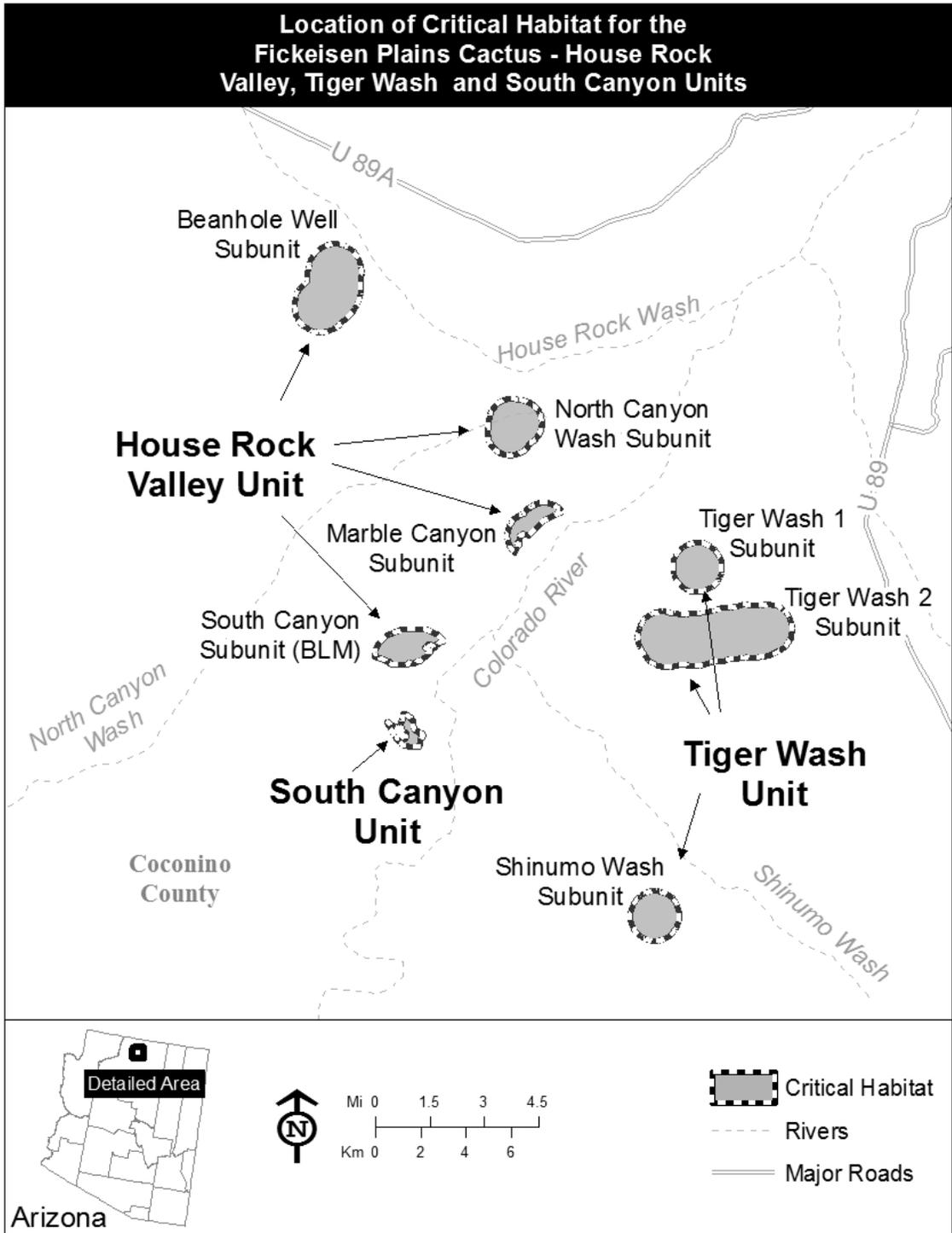
## Location of Critical Habitat for the Fickeisen Plains Cactus - Overview



\* \* \* \* \*

(9) Unit 4: South Canyon Unit, Coconino County, AZ. Map of Units 4, 5, and 6

follows:



(10) Unit 5: House Rock Valley Unit, Coconino County AZ. Map of Unit 5 is 43

provided at paragraph (a)(9) of this entry.

(11) Unit 6: Tiger Wash Unit, Coconino County AZ. Map of Unit 6 is provided at paragraph (a)(9) of this entry.

\* \* \* \* \*

Date: June 26, 2013

Rachel Jacobson

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

~~**[Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the acuña cactus and the Fickeisen plains cactus]**~~

Billing Code 4310-55-P

[FR Doc. 2013-16240 Filed 07/05/2013 at 8:45 am; Publication Date: 07/08/2013]