

2. Within this area, the primary constituent elements for the Zayante band-winged grasshopper are those physical and biological elements that provide conditions that are essential for the primary biological needs of thermoregulation, foraging, sheltering, reproduction, and dispersal. The primary constituent elements are—(a) the presence of Zayante soils, (b) the occurrence of Zayante sand hills habitat and the associated plant species, and (c) certain microhabitat conditions, including areas that receive large amounts of sunlight, widely scattered tree and shrub cover, bare or sparsely vegetated ground, and loose sand. Zayante sand hills habitat is characterized by plant species associated with ponderosa pine sand parkland and/or silverleaf manzanita mixed chaparral. Plant species that may occur within the boundaries include, but are not limited to—ponderosa pine (*Pinus ponderosa*), silver-leafed manzanita (*Arctostaphylos silvicola*), California lilac (*Ceanothus* sp.), *Adenostoma* sp., yerba santa (*Eriodictyon* sp.), sandwort (*Minuartia* sp.), pussypaws (*Calyptridium umbellatum*), Ben Lomond spineflower (*Erysimum teretifolium*), monkeyflower (*Mimulus rattanii*), miniature lupine (*Lupinus bicolor*), gilia (*Gilia tenuiflora*), California aster (*Lessingia filaginifolia*), Ben Lomond buckwheat (*Eriogonum nudum* ssp. *decurrens*), and Ben Lomond spineflower (*Chorizanthe pungens* var. *hartwegiana*).

3. Critical habitat does not include existing developed sites consisting of buildings, roads, aqueducts, railroads, airports, paved areas, and similar features and structures.

Santa Cruz County, California. Boundaries are based upon the Public Land Survey System. Within the historical boundaries of the Land Grants of Zayante, San Augustin, La Carbonera, and Canada Del Rincon En El Rio San Lorenzo De Santa Cruz, boundaries are based upon section lines that are extensions to the Public Land Survey System developed by the California Department of Forestry and obtained by the Service from the State of California's Stephen P. Teale Data Center. Township and Range numbering is derived from the Mount Diablo Base and Meridian. The following lands located within Santa Cruz County are being proposed for critical habitat: T.9 S., R.1 W., SE¹/₄ sec. 31; T.9 S., R.2 W., SE¹/₄ sec. 33, E¹/₂ sec. 34, SW¹/₄ sec. 35, S¹/₂ sec. 3; T.10 S., R.1 W., W¹/₂ sec. 6; T.10 S., R.2 W., sec. 1, S¹/₂ NW¹/₄ sec. 2, sec. 3, W¹/₂ sec. 4, W¹/₂ sec. 9, sec. 10, sec. 11, sec. 13, sec. 14, N¹/₂ SE¹/₄ sec. 15, NE¹/₄ sec. 22, secs. 23–26, N¹/₂ sec. 35, sec. 36,

excluding all lands covered under the Revised Habitat Conservation Plan for the Quail Hollow Quarry and the Habitat Conservation Plan for the Hanson Aggregates' Felton Plant.

* * * * *

Dated: February 1, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–3129 Filed 2–6–01; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG27

Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for the Morro Shoulderband Snail (*Helminthoglypta walkeriana*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Morro shoulderband snail (*Helminthoglypta walkeriana*) pursuant to the Endangered Species Act of 1973, as amended (Act). The Morro shoulderband snail is listed as endangered under the Act. A total of approximately 1,039 hectares (2,566 acres) fall within the boundaries of designated critical habitat. Critical habitat for the Morro shoulderband snail is located in San Luis Obispo County, California.

Section 7 of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to destroy or adversely modify designated critical habitat. As required by section 4 of the Act, we considered economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat.

DATES: This final rule is effective March 9, 2001.

ADDRESSES: The complete administrative record for this rule is on file at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, California 93003. The complete file for this rule is available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Diane Noda, Ventura Fish and Wildlife

Office, at the above address (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

The Morro shoulderband snail was first described as *Helix walkeriana* by Hemphill (1911) based on collections made “near Morro, California.” He also described a subspecies, based on sculptural features of the shell, *Helix walkeriana*, *Helix* var. *morroensis*, that was collected “near San Luis Obispo City” (1985). The Morro shoulderband snail is also commonly known as the banded dune snail and belongs to the class Gastropoda and family Helminthoglyptidae.

The shell of the Morro shoulderband snail has 5–6 whorls. Its dimensions are 18 to 29 millimeters (mm) (0.7 to 1.1 inches (in.)) in diameter and 14 to 25 mm (0.6 to 1.0 in.) in height. The Morro shoulderband snail can be distinguished from the Big Sur shoulderband snail (*Helminthoglypta umbilicata*), another native snail in the same area, by its more globose (globe-shaped) shell shape and presence of incised (deeply cut) spiral grooves (Roth 1985). The Morro shoulderband snail has spiral striae (longitudinal ridges) as well as transverse striae giving it a “checkerboard” appearance. Further, there are raised papillae (bumps) at the intersections of some of the striae. The shell of the Big Sur shoulderband snail tends to be flatter and shinier, and rarely has spiral striae. It also has malleations (dents) and tends to be darker in color. The Morro shoulderband's spire is low-domed, and half or more of the umbilicus (the cavity in the center of the base of a spiral shell that is surrounded by the whorls) is covered by the apertural (small opening) lip (Roth 1985). The brown garden snail (*Helix aspersa*) also occurs in Los Osos with the Morro shoulderband snail and has a marbled pattern on its shell, whereas the Morro shoulderband snail has one narrow dark brown spiral band on the shoulder.

The Morro shoulderband snail is found only in western San Luis Obispo County. At the time of its addition to the List of Endangered and Threatened Wildlife on December 15, 1994 (59 FR 64613), the Morro shoulderband snail was known to be distributed near Morro Bay. Its currently known range includes areas south of Morro Bay, west of Los Osos Creek and north of Hazard Canyon. Historically, the species has also been reported near the city of San Luis Obispo (type locality for “*morroensis*”) and south of Cayucos (Roth 1985).

The Morro shoulderband snail occurs in coastal dune and scrub communities

and maritime chaparral. Through most of its range, the dominant shrub associated with the snail's habitat is mock heather (*Ericameria ericoides*). Other prominent shrub and succulent species are buckwheat (*Eriogonum parvifolium*), eriastrum (*Eriastrum densifolium*), chamisso lupine (*Lupinus chamissonis*), dudleya (*Dudleya* sp.), and in more inland locations, California sagebrush (*Artemisia californica*), coyote brush (*Baccharis pilularis*), and black sage (*Salvia mellifera*) (Roth 1985).

Away from the immediate coast, immature scrub in earlier successional stages may offer more favorable shelter sites than mature stands of coastal dune scrub. The immature shrubs provide canopy shelter for the snail, whereas the lower limbs of larger older shrubs may be too far off the ground to offer good shelter. In addition, mature stands produce twiggy litter that is low in food value (Roth 1985).

No studies or documented observations exist on the feeding behaviors of the Morro shoulderband snail. Hill (1974) suggested that the snail probably feeds on the fungal mycelia (webs or mats of non-reproductive fungal strands) growing on decaying plant litter. The Morro shoulderband snail is not a garden pest and is essentially harmless to gardens (Chambers 1997).

Sarcophagid flies (family of flies that rely on a host to complete its life-cycle) have been observed to parasitize the Morro shoulderband snail. Empty puparia ("cases" left behind by adult flies emerging from pupae) were observed in empty snail shells by Hill (1974), Roth (1985), and Kim Touneh (Service, pers. comm. 1997). Hill (1974) and Roth (1985) suggested that mortality from infestations of larvae of this parasitic fly often occurs before the snails reach reproductive maturity. The flies may have a significant impact on the population of the snail (Roth 1985). Seasonal drought and/or heat may contribute to the snail's egg mortality (Roth 1985). Based on shell examination, Roth (1985) also suggested that rodents may prey on the snail.

The Morro shoulderband snail is threatened by destruction of its habitat due to increasing development and by degradation of its habitat due to invasion of nonnative plant species (e.g., veldt grass (*Ehrharta calycina*), structural changes to its habitat due to maturing of dune vegetation, and recreational use (e.g., heavy off-highway activity). In addition to the known threats, possible threats to the snail include competition for resources with the nonnative brown garden snail

(although no assessment has been made of possible dietary overlap between the species); the small and isolated nature of the remaining populations; the use of pesticides (including snail and slug baits); and the introduction of nonnative predatory snails, such as *Oxycheilus* sp.

Previous Federal Action

We entered into a contract with the Sierra Club Foundation, San Francisco, California, to investigate the status of California land snails. A final report dated August 25, 1975, contained data indicating that several of the snails studied could be considered candidates for listing as threatened or endangered species. On April 28, 1976, we proposed endangered or threatened status for 32 land snails in the **Federal Register** (41 FR 17742). This proposal included the Morro shoulderband snail (under the common name "banded dune snail") as endangered. However, we withdrew the proposed rulemaking on December 10, 1979 (44 FR 70796), because of the 1978 amendments to the Act, which required the withdrawal of proposals over 2 years old.

In 1984, we undertook a status review of the snail, which ended in a report by Roth (1985). Based on that report, we included the Morro shoulderband snail as a category one species in the Animal Notices of Review of May 22, 1984 (49 FR 21664); January 6, 1989 (54 FR 554); and November 21, 1991 (56 FR 58820). A category one species is one on which we have sufficient information to support a listing.

On December 23, 1991, we published a proposed rule in the **Federal Register** (56 FR 66400) to list five plants and the Morro shoulderband snail as endangered. We reopened the comment period on June 8, 1992 (57 FR 24221). On December 15, 1994, we published a final rule adding the Morro shoulderband snail and four plants to the List of Endangered and Threatened Wildlife as endangered species (59 FR 64613). We published a final recovery plan in September 1998.

At the time of listing, we concluded that designation of critical habitat for the Morro shoulderband snail was not prudent because such designation would not benefit the species. We were also concerned that critical habitat designation would likely result in an increased threat of vandalism or collection of the species. However, we have determined that instances of vandalism have not increased since the listing of the Morro shoulderband snail, and the threats to this species and its habitat from specific instances of collection and habitat destruction do not outweigh the broader educational,

potential regulatory, and other possible benefits that designation of critical habitat would provide for this species. A designation of critical habitat can provide educational benefits by formally identifying those areas essential to the conservation of the species. These areas were already identified in the recovery plan as the focus of our recovery efforts for the Morro shoulderband snail. Therefore, we conclude that the benefits of designating critical habitat on lands essential for the conservation of the Morro shoulderband snail will not increase incidences of vandalism above current levels for this species.

On March 4, 1999, the Southwest Center for Biological Diversity, the Center for Biological Diversity, and Christians Caring for Creation filed a lawsuit in the Northern District of California against the Service for failure to designate critical habitat for seven species including the Morro shoulderband snail. On November 5, 1999, the district court dismissed the plaintiffs' lawsuit pursuant to a settlement agreement entered into by the parties. Under the settlement agreement, we agreed to submit a proposed determination of critical habitat for the Morro shoulderband snail by July 1, 2000, and to submit a final designation to the **Federal Register** by February 1, 2001.

The proposed rule to designate critical habitat for the Morro shoulderband snail was published in the **Federal Register** on July 12, 2000 (65 FR 42962). A total of approximately 1,039 hectares (ha) (2,566 acres (ac)) was proposed as critical habitat for the Morro shoulderband snail in San Luis Obispo County, California. The comment period was open until September 11, 2000. On November 21, 2000, we published a notice (65 FR 69896) announcing the reopening of the comment period and a notice of availability of the draft economic analysis on the proposed determination. The comment period was open an additional 16 days, until December 6, 2000. Publication of this final rule is consistent with the settlement agreement.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by

a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are 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 "* * * the 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." Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

In order to be included in a critical habitat designation, habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential.

Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), which provide essential life cycle needs of the species.

Our regulations state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species.

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

Habitat is often dynamic, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these

reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12), we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the survival and recovery of the Morro shoulderband snail. This information included data from research and survey observations published in peer-reviewed articles, recovery criteria outlined in the recovery plan, regional Geographic Information System (GIS) vegetation coverages, and data collected from reports submitted by biologists holding section 10(a)(1)(A) recovery permits.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act, and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding and reproduction; and habitats that are protected from disturbance or are representative of the historic and ecological distributions of a species.

The primary constituent elements of critical habitat for the Morro

shoulderband snail are those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal. The areas we are proposing to designate as critical habitat provide these primary constituent elements, which are: sand or sandy soils needed for reproduction; a slope not greater than 10 percent to facilitate movement of individuals; and the presence of native coastal dune scrub vegetation. This vegetation is typically, but not exclusively, represented by mock heather, buckwheat, eriastrum, chamisso lupine, dudleya, and in more inland locations, California sagebrush, coyote brush, and black sage. Some of the habitat in the critical habitat units could be improved through habitat rehabilitation or improved management (e.g., removal of nonnative species).

Criteria Used To Identify Critical Habitat

In an effort to map areas that have the features essential to the conservation of the species, we used data on known Morro shoulderband snail locations and conservation planning areas that were identified in the final recovery plan (Service 1998) as essential for the recovery of the species. All of the critical habitat areas are occupied. Given the habitat-related threats to the species discussed above and in more detail in the final rule (59 FR 64613), we believe the areas we are designating as critical habitat may need special management considerations or protection.

In defining critical habitat boundaries, we made an effort to avoid developed areas such as towns and other similar lands, that are unlikely to contain primary constituent elements essential for Morro shoulderband snail conservation. Areas of existing features and structures within the unit boundaries, such as buildings, roads, aqueducts, railroads, airports, and paved areas, will not contain one or more of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or the primary constituent elements in adjacent critical habitat.

We also considered the existing status of lands in designating areas as critical habitat. The Morro shoulderband snail is known to occur on State, county, and private lands. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. Non-Federal public lands and private lands that are covered by an existing operative HCP and executed implementation agreement (IA) for the Morro shoulderband snail under section 10(a)(1)(B) of the Act are not designated as critical habitat because the benefits of exclusion outweigh the benefits of

inclusion as discussed in section 4(b)(2) of the Act.

Critical Habitat Designation

The approximate area encompassing designated critical habitat by land ownership is shown in Table 1. Designated critical habitat includes Morro shoulderband snail habitat throughout the species' existing range in the United States (i.e., San Luis Obispo County, California). Lands designated are under private, State, and local ownership. The species is not known to occur or to have historically occurred on Federal lands. Lands designated as critical habitat have been divided into three Critical Habitat Units. All of the designated areas need special management, and the final recovery plan for the snail provides guidance on management of these areas for the snail. To recover, the snail needs habitat that is intact and relatively unfragmented by urban development, and that is secure from threats of non-native snail predation, pesticides, recreational use, and invasion of non-native plants. Special management needs include controlling non-native pest plants to maintain intact native habitat, restoring and maintaining connectivity among isolated populations to preserve genetic diversity, controlling pesticides in snail areas, controlling non-native predatory snails, and restoring native plant communities.

Brief descriptions of each unit, our reasons for designating it as critical habitat, are presented below.

TABLE 1.—APPROXIMATE CRITICAL HABITAT IN HECTARES (HA) AND ACRES (AC) BY COUNTY AND LAND OWNERSHIP

[Area estimates reflect critical habitat unit boundaries. Not all the areas within those broad boundaries, such as cities, towns, or other developments, will be considered critical habitat since these areas do not contain habitat considered essential to the survival of the Morro shoulderband snail.]

County	Federal land	Local/State land	Private land	Total
San Luis Obispo	N/A	790 ha (1,951 ac)	249 ha (615 ac)	1,039 ha (2,566 ac)

Unit 1: Morro Spit and West Pecho

Unit 1 encompasses areas managed by Montaña de Oro State Park (Dunes Natural Preserve) and the City of Morro Bay (north end of spit), including the length of the spit and the foredune areas extending south toward Hazard Canyon. The unit provides dune scrub habitat for the populations of Morro shoulderband snail that live there. The spit's windward side and its north end are non-vegetated; patches of vegetation occur along its leeward side on Morro Bay. The West Pecho portion of this unit lies to the east of the Morro Spit

Conservation Planning Area and is bounded on the east by Pecho Road and the community of Los Osos. It extends north to the Bay and south to Hazard Canyon. Elevations range from sea level on the Bay to about 75 meters (m) (250 feet (ft)) along its southeastern edge. Vegetation associations include coastal dune scrub, with coastal sage scrub closer to Hazard Canyon.

The California Department of Fish and Game owns an ecological reserve in this unit, which is managed cooperatively with adjoining State Park property. Privately-owned lands occur

to the northeast in the community of Los Osos, but private lands are not included in this unit and are not reflected in the approximate area of the critical habitat designated. Approximately 676 ha (1,670 ac) occur on State land, and 65 ha (160 ac) occur on local government land.

The protection and recovery of this unit is essential to maintain the genetic diversity of the Morro shoulderband snail. It contains several significant, viable populations, and provided suitable habitat conditions are maintained through proper

management, this unit will provide for connectivity and dispersal between populations, thereby maintaining genetic diversity over the long-term.

Unit 2: South Los Osos

Unit 2 is bounded on the north and east by residential development in the community of Los Osos and agricultural fields. The area on the lower slopes of the Irish Hills, where the vegetation is composed of maritime chaparral, is considered essential to the conservation of the Morro shoulderband snail. We designated approximately 129 ha (320 ac) of this area as critical habitat. This area is currently privately owned. The California Department of Fish and Game is expected to acquire the 204 acre Morro Palisades property within this unit early in 2001.

This area contains a core population that can be expanded, and threats to the species reduced, with appropriate management. Special management considerations are necessary in this unit for the protection and recovery of this population, and these are not currently in place. If suitable habitat conditions are maintained through proper management, this unit will provide the ecological conditions for which this snail is found.

Unit 3: Northeast Los Osos

The Northeast Los Osos Critical Habitat Unit includes undeveloped areas between Los Osos Creek and Baywood Park and is divided by South Bay Boulevard. Its elevation range is from sea level to about 30 m (100 ft). Vegetation is dominated by variants of coastal sage and dune scrub, with scattered stands of manzanita (*Arctostaphylos* spp.) and coast live oak (*Quercus agrifolia*). The Morro shoulderband snail is known to occupy this unit. This unit includes the State- and county-owned Elfin Forest Preserve, portions of Morro Bay State Park, and privately owned lands. The Los Osos Center, Hord Residential, and MCI/Worldcom HCPs fall within the unit boundaries, but areas where incidental take of the Morro shoulderband snail has been authorized are not being designated for critical habitat. Approximately 49 ha (121 ac) of designated critical habitat in this unit occur on State land, and 119 ha (295 ac) occur on private land. The Bureau of Land Management is expected to acquire 5 acres of privately owned land within this unit early in 2001.

This unit supports the most northern intact habitat for the snail. The protection and recovery of this unit is essential to maintain the genetic variability of the species and the full

range of ecological setting within which the snail is found. Special management considerations are necessary in this unit for the protection and recovery of this population, and these are not currently in place. The unit has favorable habitat conditions for the expansion and persistence of the core population, and with the reduction of threats through appropriate management, this area should support a larger Morro shoulderband snail population, hence contribute to the recovery of the species.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to jeopardize the continued existence of a threatened or endangered species, or result in the destruction or adverse modification of critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. When multiple units of critical habitat are designated, each unit may serve as the basis of a jeopardy analysis if protection of different facets of the species' life cycle or its distribution are essential to the species as a whole for both its survival and recovery. 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. In 50 CFR 402.01 "jeopardize the continued existence" (of a species) is defined as engaging in an appreciable reduction in the likelihood of survival and recovery of a listed species. "Destruction or adverse modification" (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of "jeopardy" to the species and "adverse modification" of critical habitat are nearly identical.

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) requires Federal agencies to confer with us on any action that is

likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not adversely modify critical habitat.

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

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

formal conference report as the biological opinion when critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

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

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

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and require that a section 7 consultation be conducted include, but are not limited to:

(1) Activities that result in excavation, mechanized land clearing, or uncontrolled burning of coastal dune scrub vegetation; and

(2) Activities that could lead to the introduction of exotic species into occupied Morro shoulderband snail habitat.

Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the Morro shoulderband snail is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued

existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

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

Designation of critical habitat in areas occupied by the Morro shoulderband snail is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. When critical habitat is designated in unoccupied areas, the designation could result in an increase in regulatory requirements on Federal agencies; however, all of the critical habitat designated for the Morro shoulderband snail is occupied.

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

(1) Activities conducted by the Corps (e.g., ordinance removal);

(2) Road construction and maintenance funded by the FHA; and

(3) Exotic or invasive plant removal by pulling, shoveling, burning, or herbicide application by Federal agencies (e.g., EPA, FEMA, and the Service).

Exclusions Under Section 4(b)(2)

Subsection 4(b)(2) of the Act allows us to exclude areas from critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. For the following reasons, we believe that in most instances the benefits of excluding lands with approved HCPs from critical habitat designations will outweigh the benefits of including them.

(1) Benefits of Inclusion

The benefits of including HCP lands in critical habitat are normally small. The principal benefit of any designated critical habitat is that activities in such habitat that may affect it require consultation under section 7 of the Act. Such consultation would ensure that

adequate protection is provided to avoid adverse modification of critical habitat. Where HCPs are in place, our experience indicates that this benefit is small or non-existent. Currently approved and permitted HCPs are already designed to ensure the long-term survival of covered species within the plan area. Where we have an approved HCP, lands that we ordinarily would define as critical habitat for the covered species will normally be protected in reserves and other conservation lands by the terms of the HCPs and their implementation agreements. These HCPs and implementation agreements include management measures and protections for conservation lands that are crafted to protect, restore, and enhance their value as habitat for covered species.

In addition, an HCP application must itself be consulted upon. While this consultation will not look specifically at the issue of adverse modification if critical habitat has not been designated, it will look at the very similar concept of jeopardy to the listed species in the plan area. Because HCPs address land use within the plan boundaries, habitat issues within the plan boundaries will have been thoroughly addressed in the HCP and through the consultation on the HCP. Our experience is also that, under most circumstances, consultations under the jeopardy standard will reach the same result as consultations under the adverse modification standard. Implementing regulations (50 CFR Part 402) define "jeopardize the continued existence of" and "destruction or adverse modification of" in virtually identical terms. "Jeopardize the continued existence of" means to engage in an action "that reasonably would be expected to reduce appreciably the likelihood of both the survival and recovery of a listed species." Destruction or adverse modification means an alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species, in the case of critical habitat by reducing the value of the habitat so designated. Thus, actions satisfying the standard for adverse modification are nearly always found to also jeopardize the species concerned, and the existence of a critical habitat designation does not materially affect the outcome of consultation. Additional measures to protect the habitat from adverse modification are not likely to be required.

Further, HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs assure the long term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5-Point Policy for HCPs (64 FR 35242) and the HCP No Surprises regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations which, in contrast to HCPs, often do not commit the project proponent to long term special management or protections. Thus, a consultation typically does not accord the lands it covers the extensive benefits an HCP provides.

The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species recovery, and the creation of innovative solutions to conserve species while allowing for development. The educational benefits of critical habitat, including informing the public of areas that are important for the long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many HCPs. For these reasons, then, we believe that designation of critical habitat has little benefit in areas covered by HCPs.

(2) Benefits of Exclusion

The benefits of excluding HCPs from being designated as critical habitat may be more significant. During two public comment periods on our critical habitat policy, we received several comments about the additional regulatory and economic burden of designating critical habitat. These include the need for additional consultation with the Service and the need for additional surveys and information gathering to complete these consultations. HCP applicants have also stated that they are concerned that third parties may challenge HCPs on the basis that they result in adverse modification or destruction of critical habitat, should critical habitat be designated within the HCP boundaries.

The benefits of excluding HCPs include relieving landowners, communities and counties of any additional minor regulatory review that might be imposed by critical habitat. Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery of covered species.

Many plans benefit many species, both listed and unlisted. Imposing an additional regulatory review after HCP completion may jeopardize conservation efforts and partnerships in many areas and could be viewed as a disincentive to those developing HCPs. Excluding HCPs provides us with an opportunity to streamline regulatory compliance and confirms regulatory assurances for HCP participants.

A related benefit of excluding HCPs is that it would encourage the continued development of partnerships with HCP participants, including states, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish alone. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships and, we believe, set the stage for more effective conservation actions in the future.

In general, then, we believe the benefits of critical habitat designation to be small in areas covered by approved HCPs. We also believe that the benefits of excluding HCPs from designation are significant. Weighing the small benefits of inclusion against the benefits of exclusion, including the benefits of relieving property owners of an additional layer of approvals and regulation, together with the encouragement of conservation partnerships, would generally result in HCPs being excluded from critical habitat designation under Section 4(b)(2) of the Act.

Not all HCPs are alike with regard to species coverage and design. Within this general analytical framework, we need to evaluate completed and legally operative HCPs in the range of the Morro shoulderband snail on a case-by-case basis to determine whether the benefits of excluding these particular areas outweigh the benefits of including them.

Relationship to Habitat Conservation Plans

Section 4(b)(2) of the Act allows us to exclude areas from critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We expect that critical habitat may be used as a tool to identify those areas essential for the conservation of the species, and we will encourage development of HCPs for such areas on non-Federal lands. Habitat conservation plans currently under development are intended to provide for protection and management of habitat areas essential

for the conservation of the Morro shoulderband snail, while directing development and habitat modification to nonessential areas of lower habitat value.

HCPs currently under development are intended to provide for protection and management of habitat areas essential for the conservation of the Morro shoulderband snail, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the snail. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We fully expect that HCPs undertaken by local jurisdictions (e.g., counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of these proposed HCPs and proposed permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and permits will not result in destruction or adverse modification of critical habitat.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the Morro shoulderband snail, and appropriate management of those lands. The take minimization and mitigation measures provided under these HCPs are expected to protect the essential habitat lands designated as critical habitat in this rule. If an HCP that addresses the Morro shoulderband snail as a covered species is ultimately approved, we will reassess the critical habitat boundaries in light of the HCP. We will seek to undertake this review when the HCP is approved, but funding constraints may influence the timing of such a review. Several HCP efforts are now under way for listed species in areas within the range of the Morro shoulderband snail in areas we are designating as critical habitat. However, since these HCPs have not been completed, these areas are being designated as critical habitat.

Several HCPs have been completed within the range of the Morro shoulderband snail. The Los Osos Center HCP, Hord Residential HCP, and

MCI/Worldcom HCP contributed funds toward the purchase and perpetual management of several acres to serve as conservation sites for the Morro shoulderband snail. The snail habitat preserved in these existing HCP planning areas will be managed for the benefit of the snail, regardless of a critical habitat designation. The benefits of excluding lands covered by these HCPs would be significant in preserving positive relationships with our conservation partners, lessening potential additional regulatory review and potential economic burdens, reinforcing the regulatory assurances provided for in the implementation agreements for the approved HCPs, and providing for more established and cooperative partnerships for future conservation efforts.

In summary, the benefits of including these HCPs in critical habitat for the Morro shoulderband snail include increased educational benefits and minor additional management protections and measures. The benefits of excluding HCPs from being designated as critical habitat for the Morro shoulderband snail include the additional conservation measures for the Morro shoulderband snail and other listed species, preservation of partnerships that may lead to future conservation, and the avoidance of the minor regulatory and economic burdens associated with the designation of critical habitat. The benefits of excluding these areas from critical habitat designation outweigh the benefits of including these areas. Furthermore, we have determined that these exclusions will not result in the extinction of the species. We have already completed section 7 consultation on the impacts of these HCPs on the species. We have determined that they will not jeopardize the continued existence of the species, which means that they will not appreciably reduce likelihood of the survival and recovery of the species. Consequently, these lands have not been designated as critical habitat for the Morro shoulderband snail.

Summary of Comments and Recommendations

In the July 12, 2000, proposed rule (65 FR 42962), we requested that all interested parties submit comments on the specifics of the proposal, including information, policy, treatment of HCPs, and proposed critical habitat boundaries. On November 21, 2000, we published a notice of availability and request for comments on the draft economic analysis (65 FR 69896). Comments received from July 12, 2000,

through December 6, 2000, were entered into the administrative record.

We contacted all appropriate State and Federal agencies, county governments, scientific organizations, and other interested parties and invited them to comment. In addition, we published a newspaper notice in the San Luis Obispo Telegram Tribune on July 17, 2000, inviting public comment review and comment. We did not hold any public hearings on the proposed rule.

We requested three individuals familiar with the Morro shoulderband snail to peer review the proposed critical habitat designation. Two of the peer reviewers submitted comments on the proposed critical habitat designation, providing updated biological information, critical review, and editorial comments. We addressed their comments in the responses below, or incorporated them into other parts of this final rule.

We received a total of 12 written comments during the two comment periods. Of those written comments, five supported critical habitat designation, one opposed critical habitat designation, and six provided additional information but did not support or oppose critical habitat designation. One organization initially sent a letter requesting a public hearing, but later withdrew after we provided them the clarification they needed over the phone. In total, written comments were received from one State agency, one local government, and nine private organizations or individuals.

We reviewed all comments received for substantive issues and new data regarding critical habitat and the Morro shoulderband snail. We grouped comments of a similar nature relating specifically to the proposed critical habitat determination and draft economic analysis on the proposed determination. These are addressed in the following summary.

(1) *Comment:* One commenter expressed concerns about the present and future impact of the Morro Bay Power Plant (Power Plant) on the habitat of the Morro shoulderband snail. The commenter advised us to take into consideration any possible adverse effects from the Power Plant's air emissions to the Morro shoulderband snail and its habitat.

Our Response: We will explore any valid scientific information regarding the effect of air emissions from the Power Plant to the Morro shoulderband snail. This issue will also be addressed during our review of the draft and final Environmental Impact Report/

Statements for the proposed expansion of the Power Plant.

(2) *Comment:* Two commenters, on behalf of some major landowners, requested more information and clarification regarding the designation of three proposed units including the purpose of unit numbers. They also wanted to know what information we used to determine which areas to designate as critical habitat for the Morro shoulderband snail.

Our Response: We determined what areas to include as critical habitat by using such factors as physiological, behavioral, ecological, and evolutionary requirements that are essential to the conservation of the Morro shoulderband snail. More specifically, we used the primary constituent elements which include the following physical and biological features: sand or sandy soil needed for reproduction; a slope not greater than 10 percent to facilitate movement of individuals; and native coastal dune scrub vegetation. The areas we proposed to designate as critical habitat provide some or all of the primary constituent elements and were selected because they contain the best of the remaining habitat for the snail in an otherwise fragmented landscape. Restoration and maintenance of snail habitat in these areas will contribute to recovery by reducing fragmentation and isolation of populations, and providing a mosaic of suitable habitat for recovering populations. The unit numbers represent the area for reference purposes and were based on areas identified as essential in the final Recovery Plan for the Morro Shoulderband Snail and Four Plants from Western San Luis Obispo County, September 26, 1998.

(3) *Comment:* One commenter requested we include all the critical habitat units as one unit of coastal dune ecosystem regardless of HCP boundaries or property ownerships so that when management of the critical habitat is planned, it can be managed as contiguous habitat as much as possible (except for "islands of habitat" within the urban part of Los Osos). Management plans should be united for the utmost protection resulting in the goal of recovery.

Our Response: We agree that a landscape approach to managing the larger coastal dune ecosystem would be ideal. However, this critical habitat designation can only encompass habitat essential for the conservation of the Morro shoulderband snail. It would not be appropriate to include in the designation other areas within the coastal zone ecosystem that do not provide the primary constituent element

essential to the conservation of the snail. We used the primary constituent elements discussed in the preceding response to define the areas we are designating as critical habitat, so that all the areas would provide some or all of these primary constituent elements.

(4) *Comment:* One commenter was concerned how our proposed critical habitat designation would affect the proposed Los Osos wastewater treatment facility and project. The wastewater project is the result of an order from the Regional Water Quality Control Board under the Clean Water Act, and the lead agency for the wastewater project is in a very difficult position of trying to implement the wastewater system within an area with limited properties available for siting the wastewater facilities in the community of Los Osos.

Our Response: At present time, the lead agency is proposing to develop a 4.5 ha (11 ac) wastewater treatment facility located at Tri-W inside the community of Los Osos. This area is not within any of the designated critical habitat units. We have conducted formal section 7 consultations with the lead agency and EPA on the proposed facility as a result of the listing of the snail. Because the area where the facility is to be built is outside designated critical habitat, future section 7 consultations associated with the project will not be affected by the designation of critical habitat.

(5) *Comment:* Three commenters who supported the proposed critical habitat designation disagreed with the concept of excluding areas covered by HCPs.

Our Response: Three HCPs have been completed within the Los Osos area for the Morro shoulderband snail. All of these lands are located inside Unit 3, but were excluded from the critical habitat designation because we determined that, for lands covered by an existing operative HCP and executed implementation agreement (IA) for the Morro shoulderband snail under section 10(a)(1)(B) of the Act, the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act. Therefore such lands are not designated as critical habitat. All three areas will be managed for the benefit of the species under the terms of the individual HCPs; in addition, a majority of those three areas are currently managed by California State Parks since they are a signatory party in the final IA. We believe California State Parks will implement the conservation efforts according to the guidelines set forth in the HCPs.

(6) *Comment:* Two commenters encouraged the Service to map the

critical habitat boundaries in more detail.

Our Response: We believe we have mapped critical habitat in sufficient detail to include those areas that were determined to be essential to the conservation of the Morro shoulderband snail. We recognize that not every parcel of land within designated critical habitat will contain all of the habitat components essential to Morro shoulderband snail conservation. We are required to describe critical habitat (50 CFR 424.12(c)) with specific limits using reference points and lines as found on standard topographic maps of the area. The approach to developing this critical habitat designation was based on the best available scientific information, and on the development of a scientifically supportable model for predicting Morro shoulderband snail habitat.

Due to the time constraints imposed by the court, and the absence of fine-scale, detailed GIS coverages during the preparation of the proposed and final determination, we included some areas within the boundaries of the critical habitat designation that are not essential to the conservation of the Morro shoulderband snail, such as towns, housing developments, or other developed lands unlikely to provide habitat for the Morro shoulderband snail. However, because these developed areas do not contain the primary constituent elements for the species, we believe that activities occurring on them will not affect the snail or its designated critical habitat and thus, will not trigger a section 7 consultation.

(7) *Comment:* One commenter supplied new biological information based on his participation in biological survey work on the Morro shoulderband snail throughout the community of Los Osos. The commenter advised us that Morro shoulderband snails use coyote brush as they are commonly found under the coyote brush in an area north of unit 3. In addition, the commenter provided a U.S. Geological Survey 7.5 minute quadrangle map showing areas where Morro shoulderband snails have been found.

Our Response: We incorporated the commenter's new biological information in the final rule. One of the areas shaded was not within any of the proposed critical habitat units. The area is described as Cero Cabrillo and is located within Morro Bay State Park, northeast from proposed unit 3. Service staff visited the site on October 26, 2000, and Morro shoulderband snail shells were found in the area. However, we were not able to include the new location in the

final rule because of time constraints in meeting the court ordered deadline for this final rule. We will consider amending the critical habitat designation to include the new location when funding is available.

Summary of Changes From the Proposed Rule

Based on a review of public comments received on the proposed determination of critical habitat and economic analysis for the Morro shoulderband snail, we reevaluated our proposed designation of critical habitat for this species. We found there was no need to make any substantial changes to the proposed designation for the final rule.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

Economic effects caused by listing the Morro shoulderband snail as an endangered species, and by other statutes, are the baseline upon which the effects of critical habitat designation are evaluated. The economic analysis must then examine the incremental economic effects of the critical habitat including both the cost and benefits. Economic effects are measured as changes in national income, regional jobs, and household income. An analysis of the economic effects of Morro shoulderband snail critical habitat designation was prepared (Industrial Economics, Incorporated 2000) and made available for public review (November 21, 2000–December 6, 2000; 65 FR 69896). The final analysis, which reviewed and incorporated public comments, concluded that no significant economic impacts are expected from critical habitat designation above and beyond those already imposed by listing the Morro shoulderband snail. The most likely economic effects of critical habitat designation are on activities funded, authorized, or carried out by a Federal agency. The analysis examined the effects of the proposed designation on: (1) Reinitiation of section 7 consultations, (2) length of time in

which section 7 consultations are completed, and (3) new consultation resulting from the determination. Because areas proposed for critical habitat are within the geographic range occupied by the Morro shoulderband snail, activities that may affect critical habitat may also affect the species, and would thus be subject to consultation whether or not critical habitat is designated.

We believe that any project that would adversely modify or destroy critical habitat would also jeopardize the continued existence of the species, and that reasonable and prudent alternatives to avoid jeopardizing the species would also avoid adverse modification of critical habitat. Thus, no regulatory burden or significant additional costs would accrue because of critical habitat above and beyond that resulting from listing. Our economic analysis recognizes that there may be costs from delays associated with reinitiating completed consultations after the critical habitat designation is made final. There may also be economic effects due to the critical habitat designation, as real estate values may be lowered due to perceived increase in the regulatory burden. We believe this impact will be short-term, however.

A copy of the final economic analysis and description of the exclusion process with supporting documents are included in our administrative record, and may be obtained by contacting our office (see ADDRESSES section).

Public Hearings

No public hearing was requested or held for the proposed rule.

Required Determinations

Regulatory Planning and Review

This document has been reviewed by the Office of Management and Budget (OMB), in accordance with Executive Order 12866. OMB makes the final determination under Executive Order 12866.

(a) This rule will not have an annual economic effect of \$100 million or more, or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit analysis is not required. The Morro shoulderband snail was listed as an endangered species in 1994. In fiscal years 1994 through 1999, we conducted nine formal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the snail.

The areas designated as critical habitat are currently occupied by the Morro shoulderband snail. Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal entities unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the designated critical habitat would currently be considered as "jeopardy" under the Act in areas occupied by the species. Accordingly,

the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal "sponsorship" of their actions are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning "take" of the species).

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Morro shoulderband snail since the listing in 1994. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist because all of the designated critical habitat occurs in occupied areas.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects in areas of occupied habitat.

(d) This rule will not raise novel legal or policy issues. The final rule follows the requirements for determining critical habitat contained in the Act.

TABLE 2.—IMPACTS OF MORRO SHOULDERBAND SNAIL LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation ¹
Federal activities potentially affected ²	Activities conducted by U.S. Army Corps of Engineers (e.g. ordinance removal).	None.
Private or other non-Federal activities potentially affected ³ .	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy Morro shoulderband snail habitat by mechanical, chemical, or other means (e.g., grading, overgrazing, construction, road building, herbicide application, recreational use, etc.) or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat).	None.

¹ This column represents activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.

² Activities initiated by a Federal agency.

³ Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

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

In the economic analysis (required under section 4 of the Act), we determined that designation of critical habitat will not have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above and in this final determination, this designation of critical habitat for the Morro shoulderband snail is not expected to result in any restrictions in addition to those currently in existence for areas of occupied critical habitat. As indicated on Table 1 (see Critical Habitat Designation section), we designated property owned by State and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

- (1) Activities conducted by the Corps (e.g. ordinance removal);
- (2) Road construction and maintenance funded by the FHA; and
- (3) Other activities (e.g. exotic or invasive plant removal by pulling, shoveling, burning, or herbicide application) funded or permitted by Federal agencies (e.g., EPA, FEMA, and the Service).

Many of these activities sponsored by Federal agencies within the designated critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal connection (such as funding or authorization), the current restrictions concerning take of the species remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we determined the designation of critical habitat will not cause (a) any effect on the economy of \$100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a

discussion of the effects of this determination.

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

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 August 25, 2000 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas.

(b) This rule 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.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. Due to current public knowledge of the species protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. While real estate market values may temporarily decline following designation, due to the perception that critical habitat designation may impose additional regulatory burdens on land use, we expect any such impacts to be short term. Additionally, critical habitat designation does not preclude development of HCPs and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the Morro shoulderband snail.

Federalism

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

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

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designated critical habitat in accordance with the provisions of the Endangered Species Act. The determination uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Morro shoulderband snail.

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

This rule does not contain any information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This final determination does not constitute a major Federal action significantly affecting the quality of human environment.

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) and 512 DM 2 and Executive Order 13175, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis.

We have determined that no Tribal lands are essential for the conservation of the Morro shoulderband snail because no Tribal lands support populations of snails or suitable habitat. Therefore, we are not designating critical habitat for the Morro shoulderband snail on Tribal lands.

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Author

The primary author of this document is Ron Popowski of our Ventura Fish and Wildlife Office (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. In § 17.11(h), revise the entry for “Snail, Morro shoulderband (=Banded dune)” under “SNAILS” to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
 (h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* SNAILS	*	*	*	*	*		*
* Snail, Morro shoulderband (=Banded dune).	* <i>Helminthoglypta walkeriana</i> .	* U.S.A. (CA)	* NA	* E	* 567	* 17.95(f)	* NA
*	*	*	*	*	*		*

3. Add § 17.95(f) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

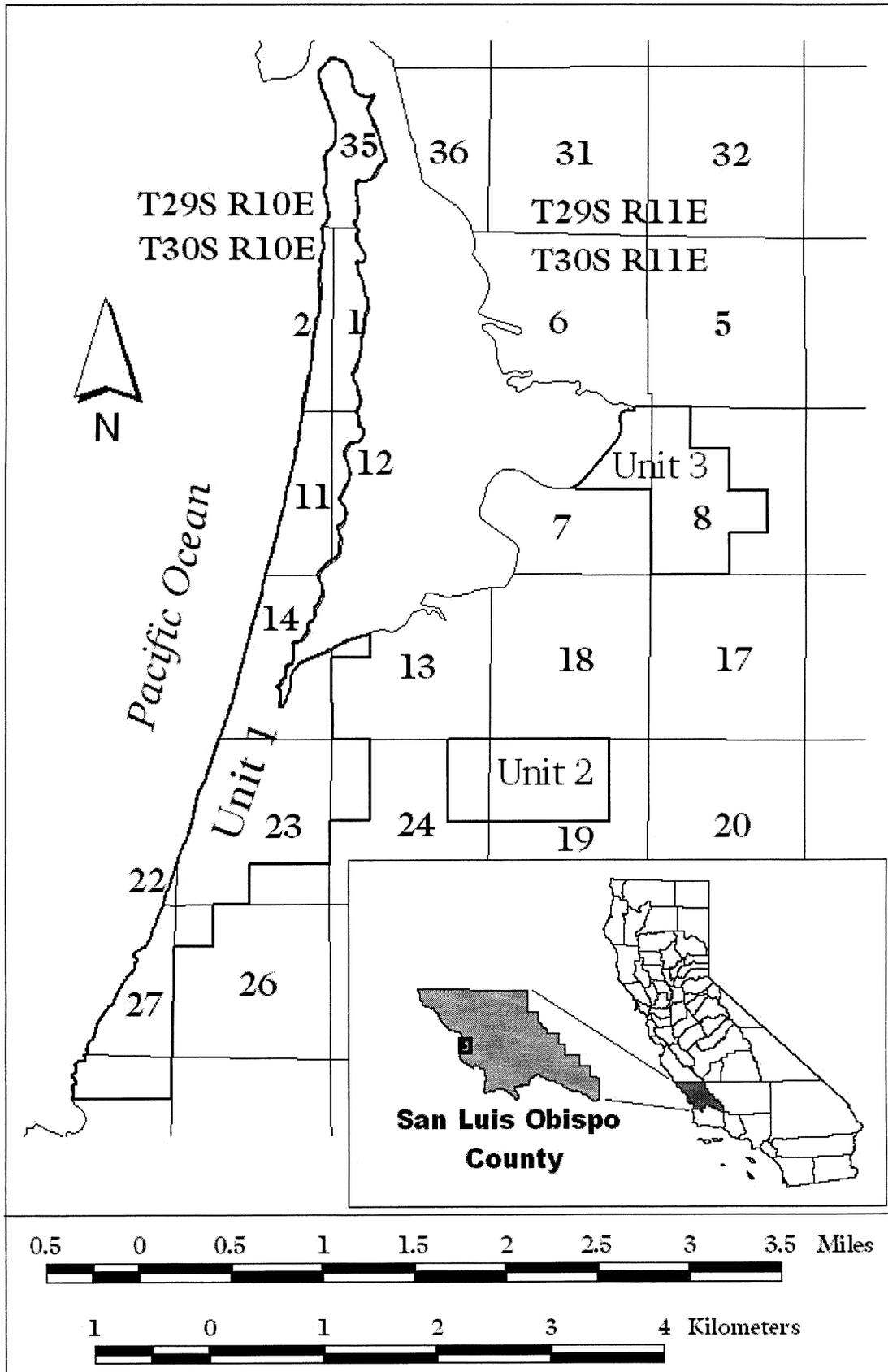
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(f) *Clams and Snails.*

Morro Shoulderband Snail (*Helminthoglypta walkeriana*)

1. Critical habitat units are depicted for San Luis Obispo County, California, on the map below.

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Map Units 1 to 3: All located in San Luis Obispo County, California. Coastline boundaries are based upon the U.S. Geological Survey Morro Bay South 7.5 minute topographic quadrangle. Other boundaries are based upon the Public Land Survey System. Within the historical boundaries of the Canada De Los Osos Y Pecho Y Islay Mexican Land Grant, boundaries are based upon section lines that are extensions to the Public Land Survey System developed by the California Department of Forestry and obtained by us from the State of California's Stephen P. Teale Data Center. Township and Range numbering is derived from the Mount Diablo Base and Meridian.

Map Unit 1: T. 29 S., R. 10 E., all of section 35 above mean sea level (MSL);

T. 30 S., R. 10 E. All portions of sections 1, 2, 11, 12, 14, 22, and 27 above MSL, SW $\frac{1}{4}$ NW $\frac{1}{4}$ section 13 above MSL, W $\frac{1}{2}$ NW $\frac{1}{4}$ section 24, all of section 23 above MSL except S $\frac{1}{2}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ section 26, N $\frac{1}{2}$ N $\frac{1}{2}$ section 34.

Map Unit 2: T. 30 S., R. 10 E., E $\frac{1}{2}$ NE $\frac{1}{4}$ section 24; T. 30 S., R. 11 E., E $\frac{3}{4}$ N $\frac{1}{2}$ section 19.

Map Unit 3: T. 30 S., R. 11 E., All of NE $\frac{1}{4}$ section 7 above MSL; in section 8, NW $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$.

2. Within these areas, the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal. The

primary constituent elements for the Morro shoulderband snail are the following: sand or sandy soils; a slope not greater than 10 percent; and the presence of, or the capacity to develop, coastal dune scrub vegetation.

3. Critical habitat does not include existing developed sites consisting of buildings, roads, aqueducts, railroads, airports, paved areas, and similar features and structures.

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Dated: February 1, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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