

mistakes, including misspellings; adding species based on new evidence of occurrence in the United States or U.S. territories; removing species no longer known to occur within the United States; and changing names based on new taxonomy. The net increase of 140 species (152 added and 12 removed) would bring to 972 the total number of species protected by the MBTA (16 U.S.C. 703–711).

We regulate most aspects of the taking, possession, transportation, sale, purchase, barter, exportation, and importation of migratory birds. An accurate and up-to-date list of species protected by the MBTA is essential for regulatory purposes.

The comment period for the proposed rule ended October 23, 2006. We are reopening the comment period for an additional 15 days (see **DATES**) to allow interested persons additional time to prepare and submit comments. We will also consider all comments received between October 24, 2006 (the day after the close of the original comment period) and the date of this notice.

Dated: December 5, 2006.

**David M. Verhey,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018–AU83

### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Monterey Spineflower (*Chorizanthe pungens* var. *pungens*)

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

**ACTION:** Proposed rule.

**SUMMARY:** In response to a settlement agreement, we, the U.S. Fish and Wildlife Service (Service), propose to revise currently designated critical habitat for the Monterey spineflower (*Chorizanthe pungens* var. *pungens*) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 11,032 acres (ac) (4,466 hectares (ha)) fall within the boundaries of the proposed revision to the critical habitat designation. The proposed revision to critical habitat is located in Santa Cruz and Monterey Counties, California.

**DATES:** We will accept comments from all interested parties until February 12, 2007. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by January 29, 2007.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may mail or hand-deliver written comments and information to Diane Noda, Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (VFWO), 2493 Portola Road, Suite B, Ventura, California 93003.

2. You may send comments by electronic mail (e-mail) to [fw8mosp@fws.gov](mailto:fw8mosp@fws.gov). Please see the Public Comments Solicited section below for file format and other information about electronic filing.

3. You may fax your comments to 805/644–3958.

4. You may go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the VFWO 2493 Portola Road, Suite B, Ventura, California 93003 (telephone 805/644–1766).

**FOR FURTHER INFORMATION CONTACT:** Diane Noda, Field Supervisor, VFWO, 2493 Portola Road, Suite B, Ventura, California 93003, (telephone 805/644–1766, ext. 319; facsimile 805/644–3958). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339, 7 days a week and 24 hours a day.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Comments Solicited**

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of *Chorizanthe*

*pungens* var. *pungens* habitat, and what areas should be included in the designations that were occupied at the time of listing that contain the features that are essential for the conservation of the species and why, and what areas that were not occupied at the time of listing are essential to the conservation of the species 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 potential impacts resulting from the proposed designation and, in particular, any impacts on small entities;

(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) This proposed designation's revised criteria for determining essential features and critical habitat boundaries; and

(7) The existence of any conservation or management plans being implemented by California State Parks, Bureau of Land Management (BLM) on former Fort Ord, or other public or private land management agencies or owners that we should consider for exclusion from the designation pursuant to section 4(b)(2) of the Act. Please include information on any benefits (educational, regulatory, etc.) of including or excluding lands from this proposed revised designation.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to [fw8mosp@fws.gov](mailto:fw8mosp@fws.gov) in ASCII file format and avoid the use of special characters or any form of encryption. Please also include “Attn: *Chorizanthe pungens* var. *pungens*” in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our VFWO at phone number 805/644–1766, ext. 333. Please note that the Internet address, [fw8mosp@fws.gov](mailto:fw8mosp@fws.gov), will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their names and home

addresses, etc., but if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

### **Role of Critical Habitat in Actual Practice of Administering and Implementing the Act**

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under section 4(b)(2) of the Act, there are significant limitations on the regulatory effect of designation under section 7(a)(2) of the Act. In brief, (1) designation provides additional protection to habitat only where there is a Federal nexus; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would in fact take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat, but it does not require specific actions to restore or improve habitat.

Currently, only 476 species, or 36 percent of the 1,311 listed species in the U.S. under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,311 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, the Section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. The Service believes that it is these measures that may make the

difference between extinction and survival for many species.

In considering exclusions of areas proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir 2004) (hereinafter *Gifford Pinchot*). In that case, the Ninth Circuit invalidated the Service's regulation defining "destruction or adverse modification of critical habitat." In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This proposed critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas. The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to finalizing to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designation of critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a time frame that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, the Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

### **Procedural and Resource Difficulties in Designating Critical Habitat**

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the

Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with limited ability to provide for public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, and is very expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA; 42 U.S.C. 4371 et seq.). These costs, which are not required for many other conservation actions, directly reduce the funds available for direct and tangible conservation actions.

### **Background**

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this proposed revision to the critical habitat designation. Detailed background information covering the appearance, seed ecology, habitat requirements, and the historical and current distribution for *Chorizanthe pungens* var. *pungens* was published in the final designation of critical habitat for *Chorizanthe pungens* var. *pungens* on May 29, 2002 (67 FR 37498). Additional information on *C. p.* var. *pungens* is also available in the final listing rule published in the **Federal Register** on February 4, 1994 (59 FR 5499).

*Chorizanthe pungens* var. *pungens* (Monterey spineflower) is endemic to sandy soils in active dune systems, and bluffs featuring deposited windblown sands, in coastal areas in southern Santa Cruz and northern Monterey Counties (Reveal and Hardham 1989, pp. 124–125; Ertter 1990, p. 5). These areas feature open spaces between dominant vegetative elements that are dynamic and generally maintained through time via wind, fire, or other types of disturbance. Populations are also found in grassland, scrub, chaparral, and woodland habitats, featuring sandy soils and openings that are free of other vegetation. The furthest inland population is found in the Salinas Valley in interior Monterey County.

*Chorizanthe pungens* var. *pungens* is one of two varieties of the species *C. pungens*. The other variety, *C. p.* var. *hartwegiana* (Ben Lomond spineflower) is restricted to the Santa Cruz Mountains, generally between Scotts Valley and Ben Lomond. The ranges of these two varieties of *C. pungens* do not overlap. The range of *C. p.* var. *pungens* partially overlaps with another closely related taxon, *Chorizanthe robusta* var. *robusta* (robust spineflower), in southern Santa Cruz County.

*Chorizanthe pungens* var. *hartwegiana* and *C. r.* var. *robusta* are both listed as federally-endangered species (59 FR 5499). A detailed description of these related taxa is available in the Recovery Plan for Seven Coastal Plants and the Myrtle's Silverspot Butterfly (Service 1998), the Recovery Plan for Insect and Plant Taxa in the Santa Cruz Mountains in California (Service 1998), the Recovery Plan for the Robust Spineflower (Service 2004), and scientific literature cited within these plans. A recent study on the genetic relationships between various spineflower taxa in the central coast region of California noted genetic variability between populations of *Chorizanthe pungens* var. *pungens* located at four sites between Sunset State Beach and Marina State Beach (Brinegar 2006, pp. 6–10).

*Chorizanthe pungens* var. *pungens* is an annual species that produces one seed per flower, and depending on the vigor of an individual plant, dozens to over one hundred seeds can be produced (Abrams 1944, F35–1; Fox et al. 2006, pp. 162–163). Seed dispersal in *C. p.* var. *pungens* is likely facilitated by hooked spines on the structure surrounding the seed. In the *Chorizanthe* genus, these are believed to attach to passing animals and disperse seed between plant colonies and populations (Reveal 2001, unpaginated).

Wind also disperses seed within colonies and populations.

New information concerning the seed bank of *Chorizanthe pungens* var. *pungens* was published in 2006 (Fox et al. 2006, pp. 157–170). This 5-year study found that the density of *C. p.* var. *pungens* was directly related to the previous year's seed set and, based on these observations, suggests that *C. p.* var. *pungens* apparently germinates well under most winter conditions and does not develop an extensive persistent soil seed bank. Consequently, this new information suggests that protection of existing plants in any year is important to the long-term conservation of *C. p.* var. *pungens* because the species persistence relies primarily on the previous year's seed set as opposed to a large dormant seed bank that remains viable for decades. If this hypothesis is correct, loss of above-ground individuals prior to seed set could ultimately have more of an impact on populations than was previously thought. However, there exist anecdotal reports of *C. p.* var. *pungens* reappearing in several areas after habitat restoration efforts removed dense cover of iceplant. This tends to support the idea that, under some conditions, at least, a soil seed bank that persists for several years may be present and substantial enough to repopulate a site.

A pollination ecology study was conducted on the related *Chorizanthe robusta* var. *robusta* in Santa Cruz County that compared the pollination ecology of coastal and inland populations (Murphy 2003b, pp. 1–78). The study found that, although this species may self-pollinate, pollinator access to flowers increased seed set significantly, indicating that pollinators increase plant reproductive success. This same study noted a high diversity of pollinators and correlated that diversity, in part, to variation in microhabitat conditions, including exposure; proximity to the coast; and structure, composition, and density of the surrounding vegetation (Murphy 2003b, pp. 28–63). Results suggest that protecting pollinator habitat and diversity is likely to be important to the survival of this taxon. These results can be inferred to *C. p.* var. *pungens* as these two taxa occur in proximity to each other at several locations (Sunset and Manresa State Beaches), occupy similar habitats and plant communities, and are similar genetically (Brinegar 2006, p. 13) and phenotypically (the outward appearance of the plant).

The historical range of *Chorizanthe pungens* var. *pungens* was more extensive than what it is now known to occupy. Collections from the late 1800s

and the first half of the 1900s indicate that the species occurred along the coast as far south as the San Simeon area in San Luis Obispo County (Consortium of California Herbaria 2006). In Monterey County, numerous collections were made from the Salinas Valley. However, this area has been largely converted to agriculture and habitat no longer remains; the last collection was made in 1920 (Consortium of California Herbaria 2006). This taxon currently occupies the entire range identified in the final listing rule (59 FR 5499).

Current information concerning the presence of populations throughout its range is summarized here. Current information about populations on former Fort Ord, is from surveys conducted between 1992 and 2004, and provides more detail than the information available at the time of listing (e.g., BLM 2006). Former Fort Ord is a closed military installation which is in the process of being remediated and transferred for reuse. Reuse will include residential, recreational, and commercial development, as well as conservation of lands in habitat reserves. A response to our request for information (Service 2006) from the California Department of Parks and Recreation (CDPR) (CDPR 2006a) confirms that populations at Manresa and Sunset State Beaches are stable and that the Sunset State Beach population is expanding due to habitat restoration activities (primarily removal of nonnative European beachgrass (*Ammophila arenaria*)). Occurrence records for the eastern Prunedale unit were provided by the California Department of Transportation (Caltrans) from surveys conducted for the Highway 101 re-route study in 2001 (Caltrans 2001). A small population which was thought to be extirpated at the former U.S. Coast Guard's Light Station, Point Pinos property, very close to the northern boundary of the Asilomar unit, was rediscovered during recent surveys (Kephart 2004, p. 1). Also, recent surveys at the Monterey Peninsula Airport (Environmental Science Associates 2004, pp. 3.12–3.13) and leased properties surrounding the Monterey Peninsula Airport provide information about populations in the Del Rey Oaks area. Records that have been prepared, but not yet submitted, for entry into the CNDDDB database were reviewed for some areas, including the Armstrong Ranch, Prunedale, Elkhorn Slough, and Aromas. Service staff also conducted site visits at various locations between 2001 and the present.

### Previous Federal Actions

For more information on previous Federal actions concerning *Chorizanthe pungens* var. *pungens*, refer to the final listing rule published in the **Federal Register** on February 4, 1994 (59 FR 5499), and the designation of critical habitat for *C. p.* var. *pungens* published in the **Federal Register** on May 29, 2002 (67 FR 37498). In September 1998, we published a recovery plan for seven coastal plants and the Myrtle's silverspot butterfly which included *C. p.* var. *pungens*. On May 29, 2002, we designated critical habitat for approximately 18,829 acres (ac) (7,620 hectares (ha)) of land in Santa Cruz and Monterey Counties, California. In March 2005, the Homebuilders Association of Northern California, et al., filed suit against the Service (CV-013630LKK-JFM) challenging final critical habitat rules for several species, including *Chorizanthe pungens* var. *pungens*. In March 2006, a settlement was reached that requires the Service to re-evaluate five final critical habitat designations, including critical habitat designated for *C. p.* var. *pungens*. The settlement stipulated that any proposed revisions to the *C. p.* var. *pungens* designation would be submitted to the **Federal Register** for publication on or before December 7, 2006.

### Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) 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 (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) 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. Conservation, as defined under section 3 of the Act means to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem

cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Section 7 is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat under section 4(b)(2).) Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species require additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species at the time of listing. An area currently occupied by the species but was not known to be occupied at the time of listing will likely, but not always, be essential to the conservation of the species and, therefore, typically included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (P.L. 106-554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made

by the Service represent the best scientific data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat and make revisions thereto on the basis of the best scientific data available. Habitat is often dynamic, and species 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, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted 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 section 4(b)(2) of the Act, we used the best scientific data available in determining areas that contain the features that are essential to the conservation of *Chorizanthe pungens* var. *pungens*. This includes information from the final listing rule; data from research and survey observations published in peer-reviewed articles; reports and survey forms prepared for Federal, State, local agencies, and private corporations; site visits; regional Geographic Information System (GIS) layers, including soil and species coverages; and data submitted to the California Natural Diversity Database (CNDDDB). We have also reviewed available information that pertains to the ecology, life history, and habitat requirements of this species. This material included information and data in peer-reviewed articles; reports of monitoring and habitat characterizations; reports submitted during section 7 consultations; our recovery plan for the species; and information received from local species experts. We are not proposing to designate as critical habitat any areas not occupied at the time of listing and presently occupied by the species.

At the time of the final listing in 1994, it was thought that approximately 70 percent of the range of *Chorizanthe pungens* var. *pungens* occurred on Fort Ord; *C. p.* var. *pungens* was reported from approximately two-thirds of the installation at varying densities (U.S. Army Corps of Engineers (ACOE) 1992, Figure F-3). Fort Ord was considered the most important inland occurrence of *C. p.* var. *pungens* because of the extent of habitat the species occupied at this location. Further refined mapping of occurrences in the Prunedale area, north of Fort Ord, and extensions of inland occurrences (that were reported at the time of the final listing) have been identified over the last few years. This more complete information on the relative distribution of the species within its known range has led us to conclude that preserving the population on Fort Ord, as well as several inland sites is important to the long-term conservation of the species.

## 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 consider those physical and biological features (PCEs) that are essential to the conservation of the species, and within areas occupied by the species at the time of listing, that may require special

management considerations or protection. These include, but are not limited to space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific primary constituent element required for *Chorizanthe pungens* var. *pungens* is derived from the biological needs of *C. p.* var. *pungens* as described in the Background section of this proposal and referenced in the previous designation for critical habitat published in the **Federal Register**.

### *Space for Individual and Population Growth, Including Sites for Seed Dispersal and Germination; and for the Seed Bank*

*Chorizanthe pungens* var. *pungens* readily grows where suitable sandy substrates occur and, like other *Chorizanthe* species, where competition with other plant species is minimal (Harding Lawson Associates 2000, p. 1; Reveal 2001, unpaginated). Where *C. p.* var. *pungens* occurs within native plant communities, along the coast as well as at more interior sites, it occupies microhabitat sites found between shrub stands where there is little cover from other herbaceous species. Where *C. p.* var. *pungens* occurs within grassland communities, the density of *C. p.* var. *pungens* may decrease with an increase in the density of other herbaceous species. Conserved areas should be of sufficient size to maintain the native plant communities that support *C. p.* var. *pungens* which include coastal dune, coastal scrub, grassland, maritime chaparral, oak woodland, and interior floodplain dune communities and have a structure with openings between the dominant elements (Service 1998, p. 20).

These openings within the vegetation community should be free of nonnative invasive plant species. Not only do invasive, non-native plants physically exclude *C. p.* var. *pungens* seedlings, but many of the hymenopteran (members of the insect order that includes bees, wasps, and ants) pollinators important to *Chorizanthe* pollination (e.g., sphecid wasps, bumblebees, and bees from the families, Halictidae and Anthophoridae), require bare ground for nesting (Murphy 2003a, p 4). Removal of invasive non-native species may help to maintain existing

rates of pollinator visitation. Although areas with little or no cover of non-native invasive species may be optimal for the conservation of *C. p.* var. *pungens*, seeds that subsequently germinate may still be present beneath the canopy of the non-native invasive plants.

Conservation of *Chorizanthe pungens* var. *pungens* depends not only on adequate space for growth, but also on maintaining the dynamic nature of *C. p.* var. *pungens* habitat, which ensures the availability of microsites appropriate for germination and growth. Coastal dune communities are subject to natural dynamic processes that create suitable openings in scrub and chaparral communities (Cooper 1967, pp. 63-72; Barbour and Johnson 1988, p. 242). Shifts in habitat composition caused by patterns of dune mobilization that create openings suitable for *C. p.* var. *pungens* are followed by stabilization and successional trends in coastal dune scrub that result in increased vegetation cover over time (Barbour and Johnson 1988, p. 242). Accordingly, over time there are shifts in the distribution and size of individual colonies of *C. p.* var. *pungens* found in the gaps between shrub vegetation.

Human-caused disturbances, such as scraping of roads and firebreaks, can reduce the competition from other herbaceous species and consequently provide favorable conditions for *Chorizanthe pungens* var. *pungens*. This has been observed at former Fort Ord where *C. p.* var. *pungens* occurs along the margins of dirt roads (ACOE 1992, p. 39; U.S. BLM 2003, pp. 15-22). However, such activities can also promote the spread and establishment of non-native species, can bury the seedbank of *C. p.* var. *pungens*, and do not result in the cycling of nutrients and soil microbial changes that are associated with large-scale natural disturbances, such as fires (Stylinski and Allen 1999, pp. 544-554; Keeley and Keeley 1989, pp. 67-70). This type of management may not sustain populations over the long term and would likely result in a general degradation of habitat for *C. p.* var. *pungens* if conducted over large areas.

Conservation of *Chorizanthe pungens* var. *pungens* depends on adequate space to promote pollinator activity and decrease the edge effects associated with urban development. Larger areas with a high volume-to-edge ratio are less likely to be affected by the range of human activities that would alter adjacent *C. p.* var. *pungens* habitat. Potential edge effects identified for other *Chorizanthe* species that may also affect *C. p.* var. *pungens* include the introduction of

non-native plants (e.g., landscaping plants), roadside mowing for fuel reduction, informal recreation, trash and landscape waste dumping, hydrologic changes from landscape watering or increased paved surfaces, and pesticide drift (Conservation Biology Institute 2000, pp. 6–17). Large occurrences of *C. p. var. pungens* are more likely to attract insect pollinators necessary for the production of viable seed and promote gene flow, to withstand periodic extreme environmental stresses (e.g., drought, disease), and may act as important “source” populations to allow recolonization of surrounding areas following periodic extreme environmental stresses (Schemske et al., pp. 584–588). Small patches of plants have been documented to suffer reproductive failure due to lack of effective pollination when critical thresholds of isolation were exceeded. In contrast, sufficiently large patches attracted pollinators regardless of their degree of isolation (Groom 1998, p. 487). However, small populations of plants may serve other functions that support the long-term persistence of the species. They may serve as corridors for gene flow between larger populations, and may harbor greater levels of genetic diversity than predicted for their size (Lesica and Allendorf 1991, pp. 172–175).

*Chorizanthe pungens* var. *pungens* appears to function as an opportunistic annual plant, most of its seeds germinating under variable winter conditions, rather than persisting to create an extensive, long-lasting soil seed bank (Fox et al. 2006, p. 168). This highlights the importance of protecting above-ground plants from germination through seed set each year (approximately December through the following September), as it appears the persistence of *C. p. var. pungens* relies on successful seed set from the previous year in addition to adequate climatic conditions. This has implications for the amount of successive disturbance that *C. p. var. pungens* can endure and still persist. Management activities that are used for non-native invasive species removal, such as mowing prior to seed development, are unlikely to be compatible with the long-term persistence of *C. p. var. pungens*.

#### *Areas That Provide the Basic Requirements for Growth (Such as Water, Light, and Minerals)*

*Chorizanthe pungens* var. *pungens* occurs on sandy soils with a variable origin, including active dunes, interior fossil dunes, and floodplain alluvium (Service 1998, pp 1–13, 20). The most prevalent soil series represented are

coastal beaches, dune sand, Baywood sand, Oceano loamy sand, Arnold loamy sand, Santa Ynez fine sandy loam, Arnold-Santa Ynez complex, Metz loamy sand, and Metz complex (Soil Conservation Service 1978, pp 13–73, 1980, pp. 9–81). Sites where *C. p. var. pungens* occurs are generally bare, sandy patches free of other vegetation (Zoger and Pavlik 1987, unpaginated). On the coast, it occurs in coastal dune scrub and chaparral communities (Service 1998, pp 19–20; CNDDDB 2006). *Chorizanthe pungens* var. *pungens* does not occur under dense stands of vegetation, but will occur between more widely-spaced shrubs or gaps in the shrub vegetation. At more inland sites, *C. p. var. pungens* occurs on sandy, well-drained soils in a variety of habitat types, most frequently maritime chaparral, valley oak woodlands, and grasslands (CNDDDB 2006). In grassland and oak woodland communities, abundant annual grasses may outcompete *C. p. var. pungens*, but in places where grass species are controlled through grazing, mowing, or fire activities that are appropriate in timing and intensity, *C. p. var. pungens* may persist (e.g. Zander Associates 2003, pp. B.22–B.24; Morgan 2006). Additional specific information about the native plant communities associated with *C. p. var. pungens* can be found in the listing rule notice (59 FR 5499) and the final critical habitat designation (67 FR 37498).

#### *Primary Constituent Elements for Chorizanthe pungens* var. *pungens*

Pursuant to our regulations, we are required to identify the known physical and biological features (PCEs) essential to the conservation of *Chorizanthe pungens* var. *pungens*. All areas proposed as critical habitat for *C. p. var. pungens* were occupied at the time of listing and are presently occupied, within the species’ historic geographic range, and contain the PCE to support at least one life history function.

Based on our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species, we have determined that the PCE for *Chorizanthe pungens* var. *pungens* is:

1. A vegetation structure arranged in a mosaic with openings between the dominant elements (e.g., scrub, shrub, oak trees, clumps of herbaceous vegetation) providing for sunlight on the following sandy soils: coastal beaches, dune land, Baywood sand, Ben Lomond sandy loam, Elder sandy loam, Oceano loamy sand, Arnold loamy sand, Santa Ynez fine sandy loam, Arnold-Santa

Ynez complex, Metz complex, and Metz loamy sand.

This proposed revision to the critical habitat designation is designed for those areas containing the PCE necessary to support the life history functions that were the basis for the proposal. Each of the areas proposed in this rule have been determined to contain the PCE to provide for the life history functions of *Chorizanthe pungens* var. *pungens*. Units are proposed for designation based on the PCE being present to support one or more of the species’ life history functions.

#### **Criteria Used To Identify Critical Habitat**

As required by section 4(b)(2) of the Act, we use the best scientific data available in determining areas that contain the features that are essential to the conservation of *Chorizanthe pungens* var. *pungens*. This includes information from the final listing rule; data from research and survey observations published in peer-reviewed articles; reports and survey forms prepared for Federal, State, and local agencies, and private corporations; site visits; regional Geographic Information System (GIS) layers, including soil and species coverages; and data submitted to the California Natural Diversity Database (CNDDDB). We have also reviewed available information that pertains to the ecology, life history, and habitat requirements of this species. This material included information and data in peer-reviewed articles, reports of monitoring and habitat characterizations, reports submitted during section 7 consultations, scientific information cited in our recovery plan, and information received from local species experts. We are not proposing to designate any areas outside of the areas occupied by the species at the time of listing.

The long-term conservation of *Chorizanthe pungens* var. *pungens* is dependent upon the protection of existing population sites and the maintenance of ecologic functions, such as connectivity between populations within close geographic proximity to facilitate pollinator activity and seed dispersal.

We are proposing to designate critical habitat on lands occupied by the species at the time of listing and that, according to the best available information, continue to be occupied to date. All proposed units contain the features essential to the conservation of *Chorizanthe pungens* var. *pungens*. We are not proposing any units that are unoccupied.

Determining the specific areas that this taxon occupies is challenging for several reasons: (1) The distribution of *Chorizanthe pungens* var. *pungens* appears to be more closely tied to the presence of sandy soils and openings in the surrounding vegetation than to specific plant communities because plant communities may undergo changes over time, which, due to the degree of cover that is provided by that vegetation type, may either favor the presence of *C. p.* var. *pungens* or not; (2) the way the current distribution of *C. p.* var. *pungens* is mapped varies depending on the scale at which patches of individuals were recorded (e.g., many small patches versus one large patch); and (3) depending on the climate and other annual variations in habitat conditions, the extent of the distributions may either shrink and temporarily disappear, or enlarge and cover a more extensive area.

We used a multi-step process to identify and delineate proposed critical habitat units. First we mapped all CNDDDB records of *Chorizanthe pungens* var. *pungens* known at the time of the final listing in a GIS format. These data consist of points and polygons depicting the results of field surveys. Additional records from recent surveys that have been reported to the CNDDDB but have not yet been entered into their database were also mapped in GIS format. These surveys provided more detailed distribution information for *C. p.* var. *pungens* within and around known occurrences, but did not extend the known range of the taxon. We then selected sites from among this data set that contain the necessary features essential to the conservation of *C. p.* var. *pungens*, that may require special management considerations or protection, and would result in a designation that: (a) Represents the geographic range of the species, and captures peripheral populations; (b) encompasses large occurrences in large areas of contiguous native habitat, as these have the highest likelihood of persisting through the environmental extremes that characterize California's climate and of retaining the genetic variability to withstand future introduced stressors (e.g., new diseases, pathogens, or climate change); (c) includes the range of plant communities and soil types in which *C. p.* var. *pungens* is found; (d) maintains connectivity of occurrences; and (e) maintains the disturbance factors that create the openings in vegetation cover on which this taxon depends.

Species and plant communities that are protected across their ranges are expected to have lower likelihoods of

extinction (Soule and Simberloff 1986; Scott et al 2001, p. 1297–1300); therefore, proposed critical habitat should include multiple locations across the entire range of the species to prevent range collapse. Protecting peripheral or isolated populations is highly desirable because they may contain genetic variation not found in core populations. The genetic variation results from the effects of population isolation and adaptation to locally distinct environments (Lesica and Allendorf 1995, pp. 754–757; Fraser 2000, pp. 49–51; Hamrick and Godt, pp. 291–295). We also sought to include the range of plant communities, soil types, and elevational gradients in which *Chorizanthe pungens* var. *pungens* is found to preserve the genetic variation that may result from adaptation to local environmental conditions, documented in other plant species (e.g. see Hamrick and Godt pp. 299–301; Millar and Libby 1991, pp. 150, 152–155). Finally, habitat fragmentation can result in loss of genetic variation (Young et al. 1996, pp. 413–417); therefore, we sought to maintain connectivity between patches or occurrences of plants.

In determining the extent of lands to propose as critical habitat, we identified all areas which contain those biological and physical features essential to the conservation of the species and are either already protected, managed, or otherwise unencumbered by conflicting use (e.g., undeveloped County or City parks, proposed preservation areas). Populations in these areas are most likely to persist into the future and to contribute to the species' survival and recovery. We added ownership categories to the proposed designation in the following manner: First we included undeveloped Federal and State lands, then local agency and private lands with recognized resource conservation emphasis (e.g., lands owned by a conservation-oriented non-profit organization, undeveloped County or City parks), and finally other agency and private lands.

#### Mapping

To map the proposed revised critical habitat units, we overlaid *Chorizanthe pungens* var. *pungens* records on soil series data and, where available, vegetation data (e.g., maritime chaparral mapped by Van Dyke and Holl (2003)) to determine appropriate polygons that would contain the necessary habitat features essential to the conservation of *C. p.* var. *pungens*. This taxon is closely tied to the presence of sandy soil types, and occurrences are generally scattered between vegetation gaps within appropriate soil types. Units were

delineated by first mapping the occurrences and soil types and considering other geographic features such as developed areas and road boundaries.

When determining the proposed revisions to critical habitat boundaries within this proposed rule, we made every effort to avoid including developed areas, such as buildings, paved areas, and other structures, as well as tilled fields, row crops, and golf courses that lack the PCE for *Chorizanthe pungens* var. *pungens*. The scale of the maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the non-inclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed revision to critical habitat have been excluded by text in the proposed revision and are not proposed for designation as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they affect the species and/or the primary constituent element in adjacent critical habitat.

Using the above criteria we identified nine units that contain the necessary features essential to the conservation of *Chorizanthe pungens* var. *pungens*. Four units are located in southern Santa Cruz and northern Monterey County along the immediate coast; four are located in Monterey County inland from the Monterey Bay (including two in the Aptos area, one in the Prunedale area, and one at former Fort Ord); and one unit is located in the Salinas River Valley near Soledad.

Units were designated based on the PCE being present to support *Chorizanthe pungens* var. *pungens* life processes.

We are proposing to revise the critical habitat designation on lands that meet the first prong of the definition of critical habitat given previously and, therefore, were determined to be occupied at the time of listing and contain the primary constituent element to support life history functions essential for the conservation of the species. The proposed revision to critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *C. p.* var. *pungens* throughout its range and provide those habitat components that have the necessary features that are essential for the conservation of the species. The habitat components provide for: (1) individual and population growth, including sites for germination, pollination, reproduction,

pollen and seed dispersal; (2) areas that allow gene flow and provide connectivity between occupied areas; and (3) areas that provide basic requirements for growth, such as appropriate soil type and openings within vegetation cover. All proposed revised critical habitat units were delineated based on the PCE being present to support *C. p. var. pungens* life processes.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed animal 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. We often exclude non-Federal public lands and private lands that are covered by an existing operative HCP and incidental take permit under section 10(a)(1)(B) of the Act from designated critical habitat because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act. We are currently unaware of any areas within this critical habitat proposal that fall into this category.

#### Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be occupied at the time of listing and which contain the PCE may require special management considerations or protections. We have also considered how revising the current designation highlights habitat that needs special management consideration or protection.

Many of the known occurrences of *Chorizanthe pungens* var. *pungens* are threatened by direct and indirect effects from habitat fragmentation and loss, and edge effects resulting from urban development. Examples of edge effects include increases in invasive non-native species and increased trampling and soil compaction from recreation (Conservation Biology Institute 2000, p 5). Additional threats to *C. p. var. pungens* include road development, invasive species control with herbicides, industrial and recreational development, equestrian and other recreational activities, and dune stabilization using non-native species (59 FR 5499). Threats that could result

in unfavorable disturbance intensity, frequency, or timing and can destroy individual plants or deplete any associated seed bank include road maintenance, invasive species control, and fire suppression. These threats may require special management to ensure the long-term conservation of *C. p. var. pungens*. Threats specific to individual units are described in the following below titled "Proposed Revisions to the Critical Habitat Designation."

#### Summary of Changes From Previously Designated Critical Habitat

The areas identified in this proposed rule constitute a proposed revision from the areas we designated as critical habitat for *Chorizanthe pungens* var. *pungens* on May 29, 2002 (67 FR 37498). The main differences include the following:

1. The 2002 critical habitat rule (67 FR 37498) consisted of 10 units comprising a total of 18,829 acres (7,620 ha). This proposed revision includes 9 units comprising a total of 11,032 acres (ac) (4,466 ha). Eight of the units in the proposed revision are generally located in the same geographic locations as those from the previous designation and bear the same unit names. The ninth unit in this current proposed revision (Manresa) was included in the previous proposed critical habitat designation in 2000, but dropped from the previous final designation in 2002 due to confusion concerning the identity of the spineflower populations that occur there. Since 2002, we confirmed the presence of *Chorizanthe pungens* var. *pungens* at Manresa State Beach. Additionally, two of the units included in the previous designation in 2002 were not included in this proposed revision. One of these units, Del Rey Oaks, has substantial areas of development within its boundaries, and as a consequence the areas within the unit that contain the PCEs are very fragmented. The second of these units, Bel Mar, is in close proximity to the Manresa unit included in this proposed revision, but not included in the 2002 critical habitat rule. The Monterey spineflower in the Manresa unit was recently discovered and contains a more robust population than the Bel Mar unit. For these reasons, the Del Rey Oaks and Bel Mar units are no longer considered essential to the conservation of the species.

2. We revised the PCEs. The 2002 critical habitat rule listed four separate

elements that we believed to be important to maintaining populations of *Chorizanthe pungens* var. *pungens* where they occur (soils, plant communities, low cover of non-native species, and physical processes that support natural dune dynamics). In our proposed revision of critical habitat, we have combined these four elements within one PCE in an effort to emphasize the overarching importance of the structure of the vegetation (mosaic with openings between the dominant elements).

3. Most of the units in this proposed revision are smaller in acreage than their counterpart units in the 2002 critical habitat rule. The decrease in size is due primarily to the removal of numerous parcels in private ownership where, due to the availability of updated aerial imagery, we removed areas of development included in the 2002 critical habitat rule and areas developed since the publication of the prior rule. In addition, the changes to Unit 7 are due to the removal of areas in the 2002 rule that are underlain by soil types not known to support Monterey spineflower, and removal of areas containing suitable soils isolated by development (and not known to support Monterey spineflower). The resulting units are more accurately mapped to include those areas that contain the PCEs.

#### Proposed Revisions to the Critical Habitat Designation

We are proposing nine critical habitat units for *Chorizanthe pungens* var. *pungens*. These units, which generally correspond to those units in the 2002 designation, if finalized, would entirely replace the current critical habitat designation for *Chorizanthe pungens* var. *pungens* in 50 CFR 17.95(a). The critical habitat units described below constitute our best assessment at this time of areas determined to be occupied at the time of listing that contain the primary constituent element, and that may require special management. The nine proposed critical habitat units are: Sunset Unit 1, Moss Landing Unit 2, Marina Unit 3, Asilomar Unit 4, Freedom Boulevard Unit 5, Manresa Unit 6, Prunedale Unit 7, Fort Ord Unit 8, and Soledad Unit 9.

The approximate area encompassed within each proposed critical habitat unit is shown in Table 1.



TABLE 1.—CRITICAL HABITAT UNITS PROPOSED FOR CHORIZANTHE PUNGENS VAR. PUNGENS

[Area estimates reflect all land within critical habitat unit boundaries]<sup>1</sup>

Unit name	State lands		Private lands		County and other local jurisdictions		Federal lands		Estimate of total acreages	
	Acres	Hectares	Acres	Hectares	Acres	Hectares	Acres	Hectares	Acres	Hectares
1. Sunset .....	85	35	0	0	0	0	0	0	85	35
2. Moss Landing .....	224	91	0	0	0	0	0	0	224	91
3. Marina <sup>2</sup> .....	884	358	0	0	0	0	0	0	884	358
4. Asilomar .....	40	16	0	0	4	2	4	1	48	19
5. Freedom Blvd. ....	0	0	24	10	0	0	0	0	24	10
6. Manresa .....	94	38	0	0	0	0	0	0	94	38
7. Prunedale .....	155	63	17	7	18	7	0	0	190	77
8. Fort Ord <sup>2</sup> .....	606	245	0	0	654	265	8,172	3,307	9,432	3,817
9. Soledad .....	0	0	51	21	0	0	0	0	51	21
Approximate Total .....	2,088	845	92	38	676	274	8,176	3,309	11,032	4,466

<sup>1</sup> Approximate acres have been converted to hectares (1 ha = 2.47 ac). Based on the level of imprecision of mapping of each unit, hectares and acres greater than 10 have been rounded to the nearest 5; hectares and acres less than or equal to 10 have been rounded to the nearest whole number. Totals are sums of units.

<sup>2</sup> Acreages assigned to various landowner categories for the Fort Ord and Marina units (on former Fort Ord) reflect future land recipient, as indicated by 2006 Army records.

We present descriptions of all units, and reasons why they meet the definition of critical habitat for *Chorizanthe pungens* var. *pungens*, below.

#### Unit 1: Sunset (85 ac (35 ha))

This unit consists of coastal beaches, dunes, and bluffs located west of Watsonville in southern Santa Cruz County. Unit 1 contains space for individual and population growth, including sites for seed dispersal and germination; provides the basic requirements for growth; and includes soils primarily in the coastal beach, dune land, and Baywood sand series (Soil Conservation Service 1978, pp. 13–25; 1980 (maps)) (PCE 1). This unit was occupied at the time of listing and is currently occupied (CNDDDB 2006, CDPR 2006a). This unit consists exclusively of State land (85 ac (35 ha)) and is entirely within the boundaries of Sunset State Beach. The unit includes land from Sunset Beach Road south to the gate on Shell Road, just north of the mouth of the Pajaro River, and west of Shell Road, which extends the length of the park. Unit 1 is important because it supports a large population of *Chorizanthe pungens* var. *pungens* that in some years numbers in the tens of thousands (CNDDDB 2006, CDPR 2006a). Threats that may require special management considerations or protection in this unit include invasive non-native plants, particularly European beachgrass which forms dense stands on coastal beaches and crowds out *C. p.* var. *pungens*, and recreational activities, including camping and foot traffic, which could result in the trampling of plants.

#### Unit 2: Moss Landing (224 ac (91 ha))

This unit consists of coastal beaches, dunes, and bluffs to the north and south of the community of Moss Landing in northern Monterey County. Unit 2 contains space for individual and population growth, including sites for seed dispersal and germination, and areas that provide for the basic requirements for growth, including soils in the coastal beach, and dune land series (Soil Conservation Service 1978, pp. 13–25) (PCE 1). The northern portion of this unit includes lands owned and managed by the State, including portions of Zmudowski State Beach and Moss Landing State Beach between the mouths of the Pajaro River and Elkhorn Slough. The southern portion of this unit includes State lands within Salinas River State Beach. This unit was occupied at the time of listing and was included in our previous critical habitat designation. Herbarium records indicate that this site was occupied as early as 1933 and has remained occupied through time (Consortium of California Herbaria 2006 cites collections by H.S. Bates, 1936; T. Craig, 1933; J. Thomas, 1950). *Chorizanthe pungens* var. *pungens* was also recently observed in this unit (CDPR 2006b, unpaginated). This unit contains one of only five populations found along the coast, and it may provide connectivity between the Sunset unit to the north, and the Marina unit to the south. Threats that may require special management considerations or protection in this unit consist of invasive non-native plants, particularly ice-plant which forms dense ground cover on coastal beaches

and crowds out *C. p.* var. *pungens*; and recreational activities including foot traffic, which could result in the trampling of plants.

#### Unit 3: Marina (884 ac (358 ha))

This unit consists of coastal beaches, dunes, and bluffs ranging from just south of the mouth of the Salinas River, south to the city of Monterey in northern Monterey County; these lands are entirely west of Highway 1. Unit 3 contains space for individual and population growth, including sites for seed dispersal and germination, and areas that provide for the basic requirements for growth, including soils in the coastal beach, dune land, and Oceano loamy sand soil series (Soil Conservation Service 1978, pp. 13–25, 54–55) (PCE 1). This unit was occupied at the time of listing and it is currently occupied (CNDDDB 2006, CDPR 2006, Service 2002 p. 54). Unit 3 is comprised of State lands, including Marina State Beach and Monterey State Beach. This unit is important because it supports a population of *C. p.* var. *pungens* that numbers in the thousands in some years (CNDDDB 2006, Service 1998 p. 67); it is the southernmost of the Monterey Bay area coastal populations; and it may provide connectivity between the populations along the coast and the more interior populations found at former Fort Ord. Threats that may require special management considerations or protection in this unit consist of invasive non-native plants, particularly ice-plant which forms dense ground cover on coastal beaches and crowds out *C. p.* var. *pungens*; recreational activities such as foot traffic which could result in the trampling of

plants; and edge effects of urban development.

*Unit 4: Asilomar (48 ac (19 ha))*

This unit consists of coastal dunes and bluffs near the communities of Pacific Grove and Pebble Beach on the Monterey Peninsula in northern Monterey County. The unit includes a portion of Asilomar State Beach and extends just beyond Lighthouse Avenue to the north and terminates at the boundary of the Asilomar Conference Grounds. The unit's eastern boundary extends from Highway 68 north along Asilomar Avenue and then turns west on Arena Avenue where the boundary connects to Sunset Drive. Unit 4 contains space for individual and population growth, including sites for seed dispersal and germination; and areas that provide for the basic requirements for growth, including soils in the coastal beach, dune land, and Baywood sand soil series (Soil Conservation Service 1978, pp. 13–25) (PCE 1). The unit is comprised of 4 ac (1 ha) of Federal lands, 40 ac (16 ha) of State lands at Asilomar State Beach, and 4 ac (2 ha) of local government ownership. This unit was occupied at the time of listing and is currently occupied. Herbarium records that include specimens from this area include the following (collector and year): Lemmon 1881, L.C. Wheeler, 1936, R. Hoover, 1941 and 1963, L.S. Rose 1963, (Consortium of California Herbaria 2006)). This unit currently supports a population of *Chorizanthe pungens* var. *pungens* that numbers in the hundreds (Moss 2000, unpaginated). This unit is important because it is the southernmost of only five populations of *C. p.* var. *pungens* along the coast and it is the only Peninsular population in the proposed designation. Preserving the genetic characteristics that have allowed individuals at this site to survive at the southern end of the species' range along the coast is important for the long-term survival and conservation of *C. p.* var. *pungens*. Threats that may require special management considerations or protection in this unit consist of invasive non-native plants, particularly ice-plant which forms dense ground cover on coastal beaches and crowds out *C. p.* var. *pungens*; recreational activities such as foot traffic which could result in the trampling of plants; and edge effects of urban development. An additional threat in this unit is the expansion of unregulated vehicle parking in the dunes caused by the high numbers of visitors this area receives each year.

*Unit 5: Freedom Boulevard (24 ac (10 ha))*

This unit consists of grassland, maritime chaparral, and oak woodland habitat near the western terminus of Freedom Boulevard and northeast of Highway 1 in Santa Cruz County. This unit consists entirely of private lands (24 ac (10 ha)). Unit 5 contains space for individual and population growth, including sites for seed dispersal and germination; areas that provide for the basic requirements for growth; and includes soils in the Baywood sand and Ben Lomond sandy loam series (Soil Conservation Service 1980, pp. 64–65; maps) (PCE 1). This unit was occupied at the time of listing and is currently occupied (CNDDDB 2006, EOs 32 and 34; Morgan 2006, unpaginated). This unit currently supports a population of *Chorizanthe pungens* var. *pungens* that numbers in the thousands in favorable years, but many fewer in unfavorable years (CNDDDB 2006, EOs 32, 34). This unit is important because it is the northernmost occurrence in the designation. Threats that may require special management considerations or protection in this unit include invasive non-native plants, particularly annual grasses which crowd out *C. p.* var. *pungens*, and edge effects from urban development.

*Unit 6: Manresa (94 ac (38 ha))*

This unit consists of coastal bluffs along the immediate coast, south of Seacliff State Beach and north of Sunset State Beach in Santa Cruz County. Unit 6 contains space for individual and population growth, including sites for seed dispersal and germination, and areas that provide for the basic requirements for growth, including soils in the coastal beach, Baywood sand, and Elder sandy loam series (Soil Conservation Service 1980, pp. 11–70, maps) (PCE 1). This unit is comprised entirely of lands owned and managed by the State at Manresa State Beach. This unit was occupied at the time of listing and is currently occupied. This unit is important because it is the most northerly population that is known from the immediate coast and provides connectivity to populations in the Sunset unit to the south. Threats that may require special management considerations or protection in this unit consist of invasive non-native plants, and recreational activities including foot traffic, which could result in the trampling of plants.

*Unit 7: Prunedale (190 ac (77 ha))*

This unit consists of grassland, maritime chaparral, and oak woodland

in the area around Prunedale in northern Monterey County. On the west side of Highway 101, the unit includes Manzanita County Park located between Castroville Boulevard and San Miguel Canyon Road. On the east side of Highway 101, the unit consists of four subunits. The four subunits support similar plant communities and need similar types of special management; therefore, we discuss them as a unit. Unit 7 contains space for individual and population growth, including sites for seed dispersal and germination, and areas that provide for the basic requirements for growth, including soils in the Arnold loamy sand, Santa Ynez fine sandy loam, and Arnold-Santa Ynez complex series (Soil Conservation Service 1978, pp. 9–11, 72–73) (PCE 1). This unit consists of 155 ac (63 ha) of State lands, 18 ac (7 ac) of local agency lands (Manzanita County Park), and 17 ac (7 ha) of Pacific Gas and Electric easement lands. This unit was occupied at the time of listing and was included in our rule in reference to the Prunedale area (59 FR 5499) and is currently occupied (Caltrans 2001, Consortium of California Herbaria 2006). This unit is important because it is one of only four units that are known to support populations associated with maritime chaparral and oak woodland habitats more representative of hotter, interior sites and is the easternmost of the proposed units in the interior hills. Threats that may require special management considerations or protections in this unit include invasive non-native plants which crowd out *C. p.* var. *pungens*, edge effects from urban development, and recreational activities such as off road vehicles which can crush plants and destroy seeds.

*Unit 8: Fort Ord (9,432 ac (3,817 ha))*

This unit consists of grassland, maritime chaparral, coastal scrub, and oak woodland on the former Department of Defense (DOD) base at Fort Ord, east of the city of Seaside in northern Monterey County. This unit is entirely within the area formerly known as Fort Ord, bounded by Highway 1 on the northwest, the Salinas River to the east, and Monterey-Salinas Road (Highway 68) to the south. Approximately 87 percent of this critical habitat unit is Federal land (8,172 ac (3,307 ha)) managed by the BLM and the Army, 6 percent is State land, and 7 percent is under local jurisdictions. Portions of Fort Ord have been transferred to the BLM; University of California, Santa Cruz; California State University at Monterey Bay; and local city and county jurisdictions. All of the lands included in this unit are designated as current or

future habitat reserves under the Army's habitat management plan (ACOE 1997, Attachment A map; Zander Associates 2002, Figures 4–6). Unit 8 contains space for individual and population growth, including sites for seed dispersal and germination, and areas that provide for the basic requirements for growth, and includes soils in the Arnold-Santa Ynez complex, Baywood sand, and Oceano loamy sand series (Soil Conservation Service 1978, pp. 9–73). Lands in this unit are intended to be managed at a landscape scale, using prescribed fire, as needed, to maintain a range of different aged maritime chaparral stands (ACOE 1997, p. 4.24–4.25) and by doing so preserve substantial populations of rare maritime chaparral species in the Monterey Bay area. This unit was occupied at the time of listing (59 FR 5499) and is currently occupied. This unit is important because it currently supports multiple large populations of *Chorizanthe pungens* var. *pungens* that number in the tens of thousands in some years (CNDDDB 2006, EO 2; Jones and Stokes 1992, Figure F–3; BLM 2006), and it is one of only five units which include maritime chaparral and oak woodland habitats more representative of hotter, interior sites. Threats that may require special management considerations or protection in this unit include invasive species that crowd out *C. p. var. pungens*, munitions clean-up methods on former ranges that remove and chip all standing vegetation, and recreational activities and road and trail maintenance, which could result in the trampling of plants.

#### Unit 9: Soledad (51 ac (21 ha))

This unit consists of an interior dune in the floodplain of the Salinas River channel just south of the town of Soledad in central Monterey County on privately owned lands. Unit 9 contains space for individual and population growth, including sites for seed dispersal and germination, and areas that provide for the basic requirements for growth, including soils in the dune land and Metz complex soil series (Soil Conservation Service 1978, pp. 24, 48–49) (PCE 1). This unit was occupied at the time of listing and is currently occupied. Approximately 5,000 plants were observed in this unit in 1994 (CNDDDB 2006 EO 28, Wesco 1994, pp. 5–8). This unit is important because it is the southernmost interior location that supports a population and the only unit where *Chorizanthe pungens* var. *pungens* grows in interior floodplain dune habitat. This population is geographically remote from all others in this designation. Protecting peripheral

or isolated populations of rare species is highly desirable because they may contain genetic variation not found in core populations (Lesica and Allendorf 1995, p. 755–757). Threats that may require special management considerations or protection in this unit include invasive non-native plants which crowd out *C. p. var. pungens*; overspray of herbicides and pesticides from agricultural operations; and vegetation clearing activities associated with road maintenance.

### Effects of Critical Habitat Designation

#### Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as “a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.” However, recent decisions by the 5th and 9th Circuit Court of Appeals have invalidated this definition (see *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)). Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species.

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 proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only. However, once

proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report; while the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act 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. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) a concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a

biological opinion for Federal actions that may affect, but are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or 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 jeopardy to the listed species or 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 a new species is listed or critical habitat is subsequently designated that may be affected 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 reinstatement of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect *Chorizanthe pungens* var. *pungens* or its designated critical habitat will require section 7 consultation under the Act. Activities on State, tribal, local or private lands requiring a Federal permit (such as a permit from the Corps under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local or private lands that are not

federally-funded, authorized, or permitted, do not require section 7 consultations.

*Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to Chorizanthe pungens* var. *pungens* and Its Critical Habitat

Jeopardy Standard

Prior to and following designation of critical habitat, the Service has applied an analytical framework for *Chorizanthe pungens* var. *pungens* jeopardy analyses that relies heavily on the importance of core area populations to the survival and recovery of the *C. p.* var. *pungens*. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of the *Chorizanthe pungens* var. *pungens* in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum will be used to complete section 7(a)(2) analyses for Federal actions affecting *Chorizanthe pungens* var. *pungens* critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species. Generally, the conservation role of *C. p.* var. *pungens* critical habitat units is to support viable core area populations.

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 may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for the *Chorizanthe pungens* var. *pungens* is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for the *C. p.* var. *pungens* include, but are not limited to:

(1) Actions that would degrade or destroy native maritime chaparral, dune, and oak woodland communities, including but not limited to, livestock grazing, clearing, discing, introducing or encouraging the spread of non-native plants, and heavy recreational use;

(2) Actions that would appreciably diminish habitat value or quality through indirect effects (e.g., edge effects, invasion of non-native plants or animals, or fragmentation).

All of the units in the proposed revision to critical habitat to contain features essential to the conservation of *Chorizanthe pungens* var. *pungens*. All units are within the geographic range of the species, and all were occupied by the species at the time of listing. All units are currently occupied by *C. p.* var. *pungens*. Federal agencies already consult with us on activities in areas currently occupied by the *C. p.* var. *pungens*, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the *C. p.* var. *pungens*.

*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, by November 17, 2001, an Integrated Natural Resource Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes an assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and 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 (Public Law 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 geographical 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.

Lands at former Fort Ord are not discussed in this section because Fort Ord is no longer an active military installation. All but a few hundred acres at former Fort Ord are to be eventually transferred to non-military entities. The few hundred acres that the Army may retain do not occur within this proposed critical habitat designation.

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

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Congressional record is clear that the Secretary is afforded broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Pursuant to section 4(b)(2) of the Act, we must consider relevant impacts in addition to economic ones. We anticipate no impact to national security, Tribal lands, or habitat conservation plans from this proposed revision to the current critical habitat designation. Based on the best available information, we believe that all of the proposed revised units contain the features essential to *Chorizanthe pungens* var. *pungens* or are otherwise essential for the conservation of this species. As such, we have considered

but are not proposing to exclude any lands from this designation based on the potential impacts to these or other factors.

#### Economic Analysis

An analysis of the economic impacts of this proposed critical habitat revision for *Chorizanthe pungens* var. *pungens* is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment. At that time, copies of the draft economic analysis will be available for downloading from the Internet at <http://www.fws.gov/ventura/> or by contacting the VFWO directly (see **ADDRESSES** section).

#### Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed revised rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed revised rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed revisions to the current critical habitat designation.

We will consider all comments and information received during the comment period on this proposed revised rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposed revision.

#### Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made in writing at least 15 days prior to the close of the public comment period. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

#### Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed revised rule easier to understand, including answers to

questions such as the following: (1) Are the requirements in the proposed revised rule clearly stated? (2) Does the proposed revised rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed revised rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed revised rule? (5) What else could we do to make this proposed revised rule easier to understand?

Send a copy of any comments on how we could make these proposed revisions to the critical habitat designation easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: [Exsec@ios.doi.gov](mailto:Exsec@ios.doi.gov).

#### Required Determinations

##### Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. We are preparing a draft economic analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. This economic analysis also will be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A-4, September 17, 2003). Pursuant to Circular A-4, once it has been determined that the Federal regulatory action is appropriate, then the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts under section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the subspecies. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are listed above in the section on Section 7 Consultation. The availability of the draft economic analysis will be announced in the **Federal Register** and in local newspapers so that it is available for public review and comments. The draft economic analysis can be obtained from the internet website at <http://www.fws.gov/ventura/> or by contacting the VFWO directly (see **ADDRESSES** section).

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), 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 Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, the Service lacks the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared under section 4(b)(2) of the Act and E.O. 12866. This draft economic analysis will provide the

required factual basis for the RFA finding. Upon completion of the draft economic analysis, the Service will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation for an additional 60 days. The Service will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. The Service has concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that the Service makes a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

*Executive Order 13211*

On May 18, 2001, the President issued an Executive Order (E.O. 13211; Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this proposed rule to designate critical habitat for the *Chorizanthe pungens* var. *pungens* is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

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

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments"

with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

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

(b) We do not believe that this rule will significantly or uniquely affect small governments because much (93 percent) of the proposed critical habitat is owned and managed by the Federal government and the State and only about 6 percent of the total proposed critical habitat designation is owned and managed by local jurisdictions. Of the lands under local jurisdiction, 97

percent are associated with land transfers through Fort Ord and are therefore already taking into consideration the management of *Chorizanthe pungens* var. *pungens* and other sensitive species. In addition, less than 1 percent of the total proposed designation is private lands. Therefore, a Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

#### Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the *Chorizanthe pungens* var. *pungens* in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the *Chorizanthe pungens* var. *pungens* does not pose significant takings implications. However, we will further evaluate this issue as we conduct our economic analysis and review and revise this assessment as warranted.

#### Federalism

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the Monterey spine flower in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the Monterey spine flower does not pose significant takings implications. However, we will further evaluate this issue as we conduct our economic analysis and review and revise this assessment as warranted.

#### 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 have proposed designating critical habitat in accordance with the provisions of the Act. This proposed revised rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Chorizanthe pungens* var. *pungens*.

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

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

#### National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

#### Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands occupied at the time of listing or currently occupied that contain the features essential for the conservation and no tribal lands that are unoccupied areas that are essential for the conservation of *Chorizanthe pungens* var. *pungens*. Therefore, in this proposed revised rule, critical habitat for the *C. p.* var. *pungens* has not been proposed for designation on tribal lands.

#### References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, VFWO (see **ADDRESSES** section).

#### Author(s)

The primary author of this package is the VFWO.

#### List of Subjects in 50 CFR Part 17

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

#### Proposed Regulation Promulgation

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

#### PART 17—[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 § 17.96(a), revise the entry for "Family Polygonaceae: *Chorizanthe pungens* var. *pungens* (Monterey spineflower)" to read as follows:

#### § 17.96 Critical habitat—plants.

(a) *Flowering plants.*

\* \* \* \* \*

Family Polygonaceae: *Chorizanthe pungens* var. *pungens* (Monterey spineflower)

(1) Critical habitat units are depicted for Santa Cruz and Monterey Counties, California, on the maps below.

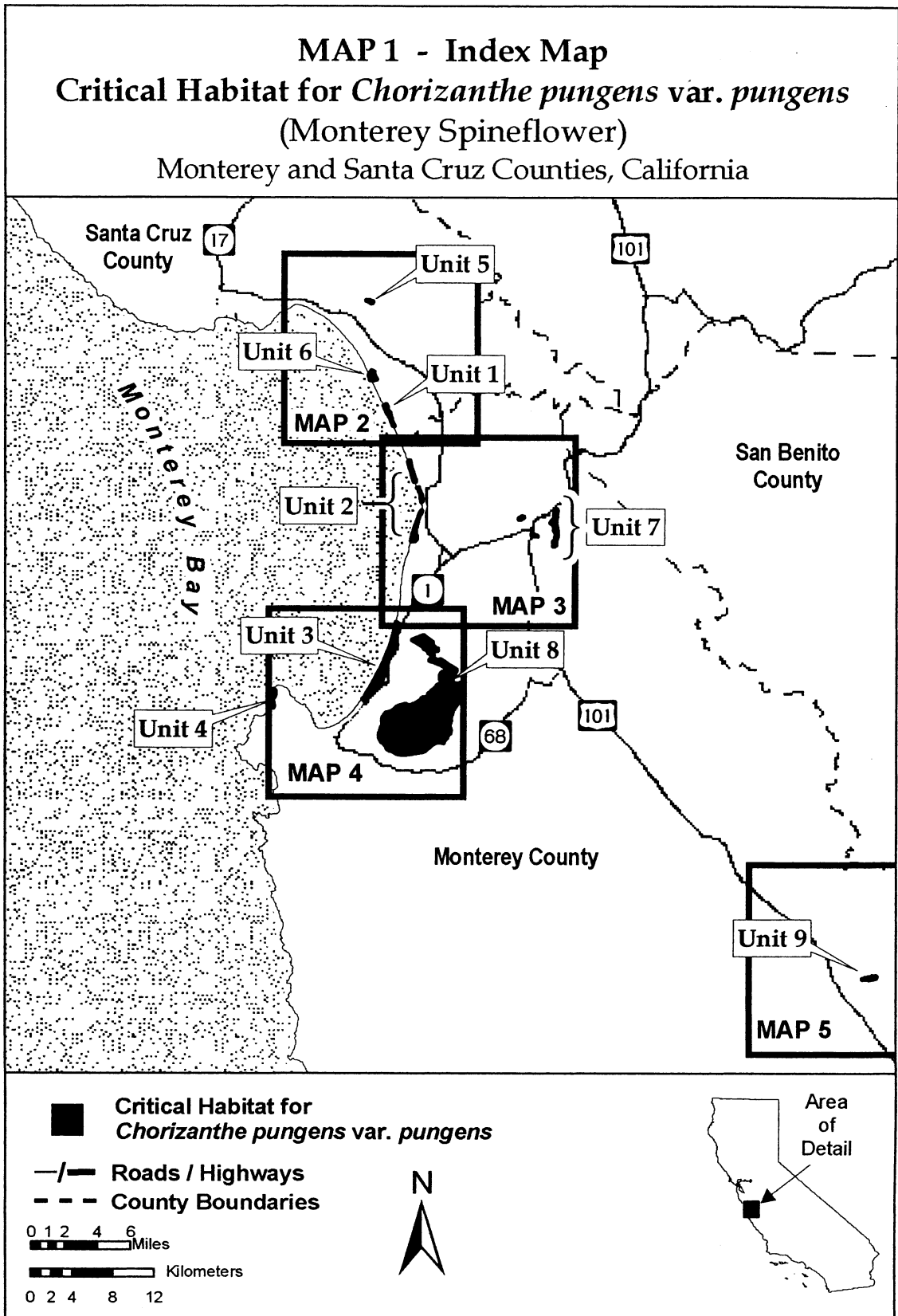
(2) The primary constituent element of critical habitat for *Chorizanthe pungens* var. *pungens* is vegetation structure arranged in a mosaic with openings between the dominant elements (e.g., scrub, shrub, oak trees, clumps of herbaceous vegetation) providing for sunlight on the following sandy soils: coastal beaches, dune land, Baywood sand, Ben Lomond sandy loam, Elder sandy loam, Oceano loamy sand, Arnold loamy sand, Santa Ynez fine sandy loam, Arnold—Santa Ynez complex, Metz complex, and Metz loamy sand.

(3) Critical habitat does not include manmade structures, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located, existing on the effective date of this rule and not containing the primary constituent element.

(4) *Critical habitat map units.* Data layers defining map units were created on base maps using aerial imagery from the National Agricultural Imagery Program (aerial imagery captured June 2005). Data were projected to Universal Transverse Mercator (UTM) zone 11, North American Datum (NAD) 1983.

(5) Note: Index map (Map 1) follows:

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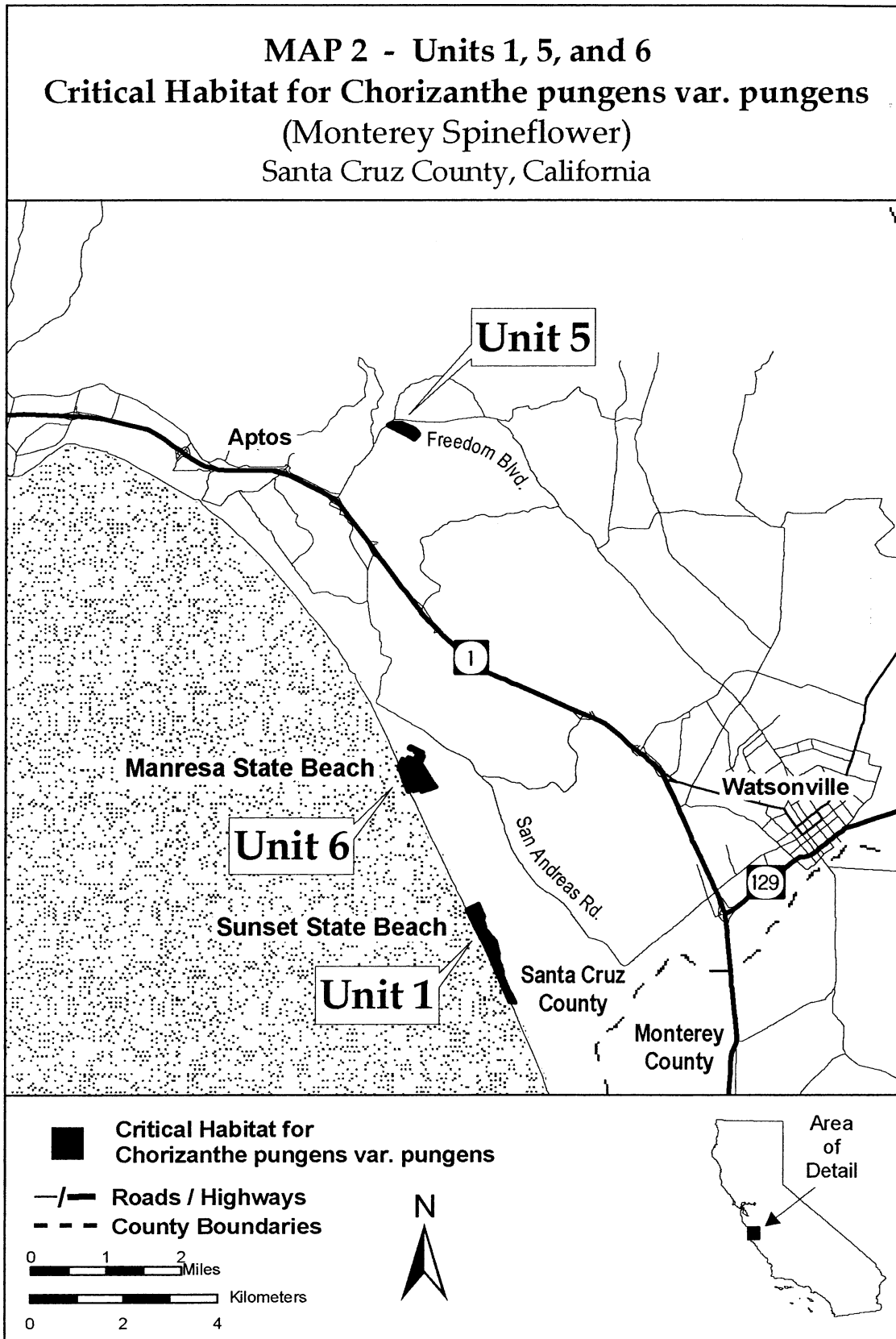
(6) Unit 1: Sunset Unit, Santa Cruz County, California.

(i) From USGS 1:24,000 scale quadrangle Watsonville West. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 603929, 4083699; 604051, 4083487; 604059, 4083449; 604045, 4083383; 604045, 4083351; 604091, 4083265; 604106,

4083164; 604122, 4083147; 604176, 4083117; 604222, 4083063; 604255, 4083022; 604279, 4083005; 604325, 4082960; 604349, 4082925; 604373, 4082842; 604412, 4082708; 604424, 4082671; 604426, 4082579; 604449, 4082515; 604460, 4082474; 604491, 4082428; 604504, 4082397; 604510, 4082350; 604527, 4082300; 604546,

4082248; 604535, 4082205; 604688, 4081900; 604847, 4081649; 604743, 4081648; 604613, 4081903; 604338, 4082450; 604205, 4082695; 604132, 4082828; 603987, 4083070; 603703, 4083577; returning to 603929, 4083699.

(ii) Note: Map of Units 1, 5, and 6 (Map 2) follows:



(7) Unit 2: Moss Landing Unit, Monterey County, California.

(i) From USGS 1:24,000 scale quadrangle Moss Landing. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 607507, 4075612; 607621, 4075684; 607654, 4075633; 607631, 4075619; 607636, 4075576; 607597, 4075556; 607690, 4075440; 607823, 4075301; 607910, 4075107; 607947, 4074934; 607954, 4074719; 608021, 4074544; 608058, 4074335; 607999, 4074277; 607936, 4074603; 607872, 4074869; 607801, 4075108; 607725, 4075268; 607599, 4075459; returning to 607507, 4075612.

(ii) From USGS 1:24,000 scale quadrangle Moss Landing. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 607903, 4073162; 608016, 4073442; 608084, 4073399; 607962, 4073136; returning to 607903, 4073162.

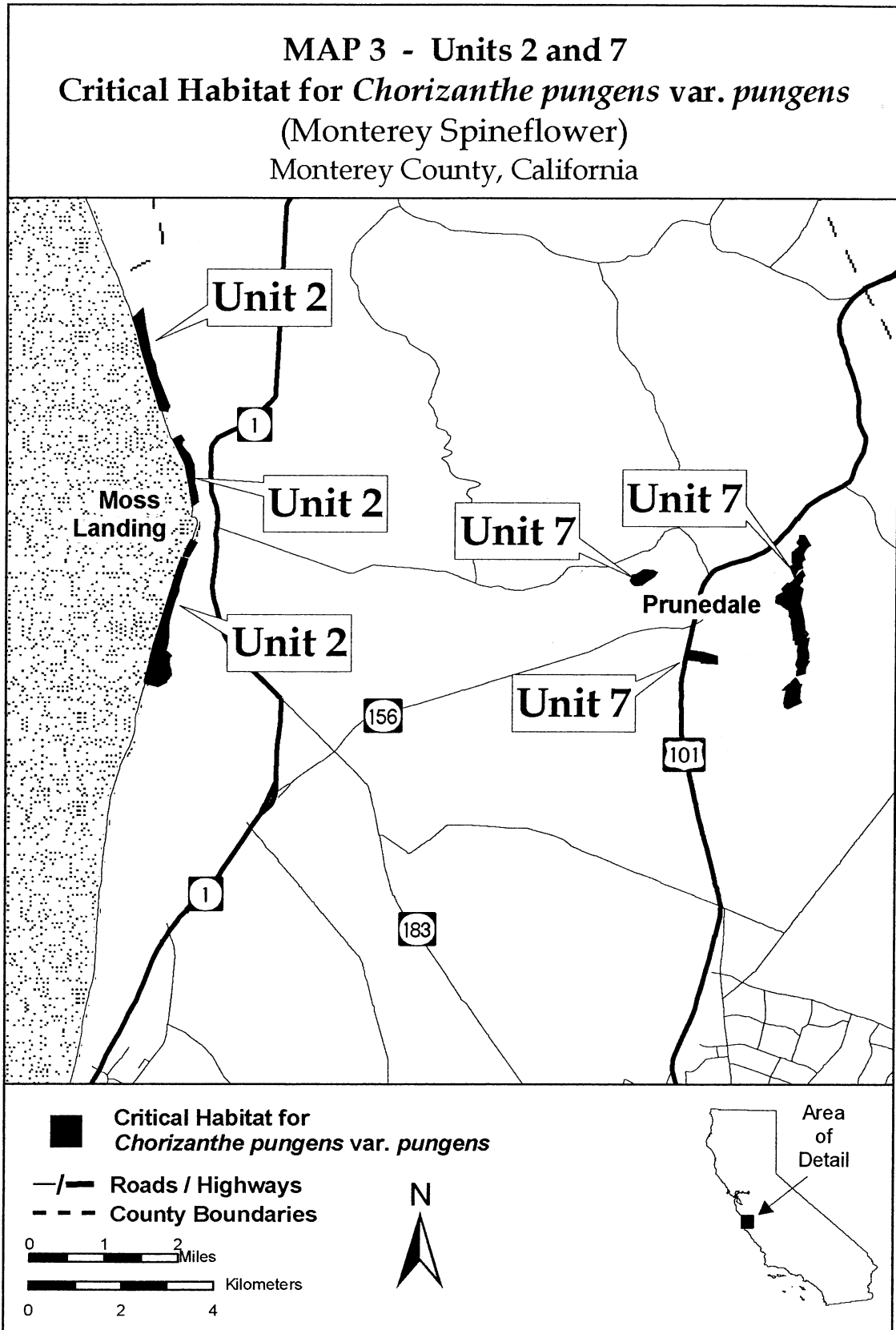
(iii) From USGS 1:24,000 scale quadrangle Moss Landing. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 607228, 4070373; 607310, 4070736; 607328, 4070904; 607348, 4071016; 607384, 4071156; 607514, 4071712; 607717, 4072508; 607772, 4072783; 607853, 4073038; 607914, 4073020; 607895, 4072915; 607865, 4072861; 607783, 4072474; 607787, 4072361; 607718, 4072182; 607621, 4071731; 607609, 4071579; 607619, 4071527; 607625, 4071342; 607616, 4071320; 607621, 4071220; 607596, 4071153; 607592, 4071096; 607570, 4071047; 607576, 4071014; 607648, 4070995; 607689, 4070941; 607666, 4070915; 607668, 4070868; 607631, 4070839; 607679, 4070781; 607677, 4070715; 607710, 4070665; 607739, 4070545; 607696, 4070507; 607689, 4070486; 607670, 4070465; 607654, 4070436; 607649,

4070398; 607502, 4070309; 607230, 4070348; returning to 607228, 4070373.

(iv) From USGS 1:24,000 scale quadrangle Moss Landing. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 606454, 4078187; 606601, 4078347; 606679, 4078021; 606792, 4077578; 606824, 4077463; 606863, 4077367; 606841, 4077344; 606846, 4077325; 606856, 4077319; 606883, 4077322; 606936, 4077244; 607001, 4076989; 607221, 4076534; 607207, 4076523; 607206, 4076512; 607216, 4076487; 607238, 4076472; 607272, 4076417; 607272, 4076386; 607298, 4076371; 607309, 4076358; 607302, 4076347; 607281, 4076295; 607281, 4076279; 607170, 4076277; 607008, 4076687; 606805, 4077227; 606661, 4077584; 606561, 4077910; returning to 606454, 4078187.

(v) Note: Map of Units 2 and 7 (Map 3) follows:

**BILLING CODE 4310-55-P**



(8) Unit 3: Marina Unit, Monterey County, California.

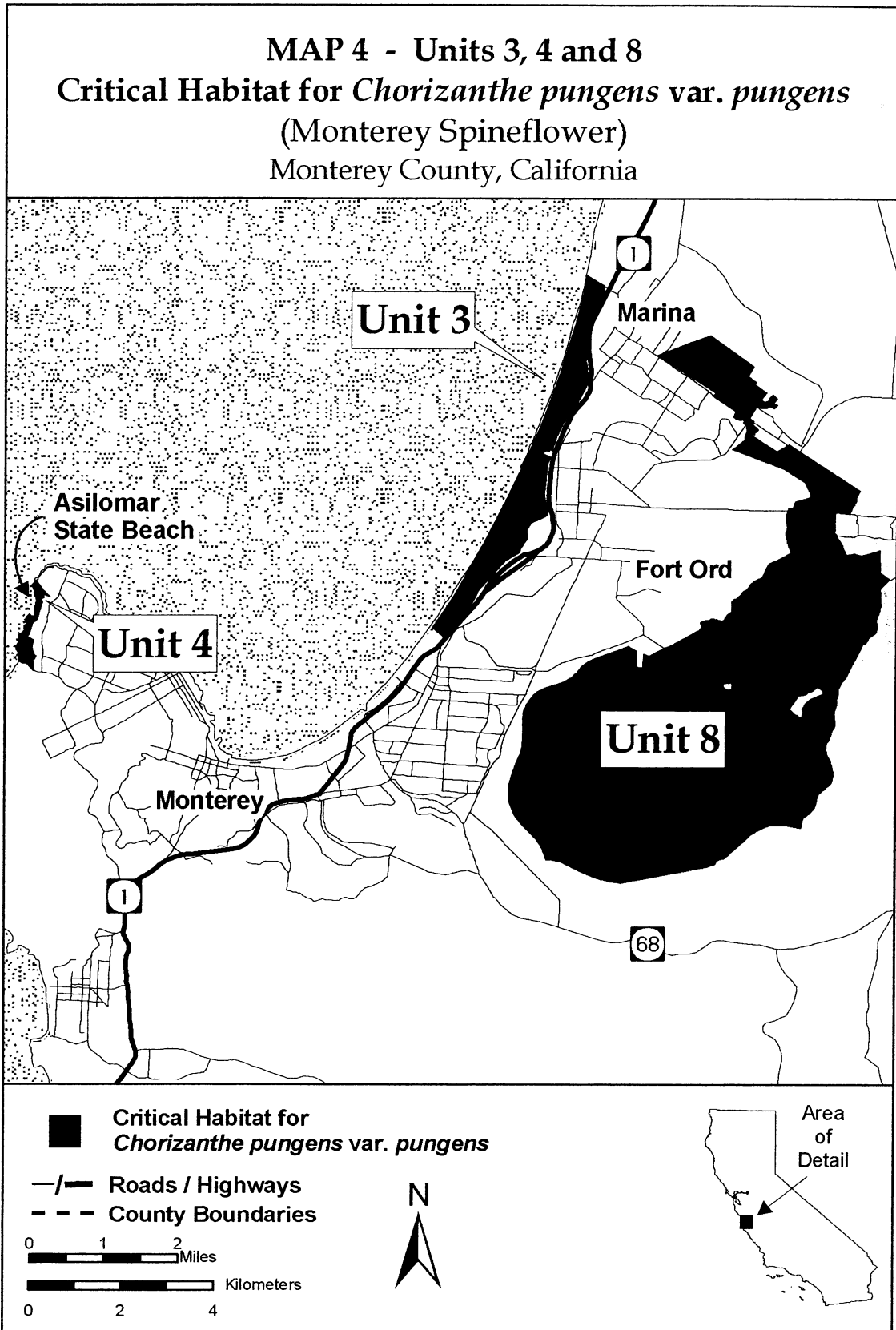
(i) From USGS 1:24,000 scale quadrangle Marina. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 603550, 4054338; 603691, 4054583; 603944, 4055018; 604173, 4055496; 604429, 4056021; 604819, 4056877; 605042, 4057450; 605354, 4058252; 605565, 4058848; 605837, 4059750; 605918, 4060031; 606155, 4061060; 606282, 4061745; 606320, 4062114; 606653, 4061944; 606642, 4061777; 606595, 4061605; 606497, 4061365; 606456, 4061248; 606413, 4061089; 606388, 4060903; 606384, 4060755; 606390, 4060633; 606431, 4060406; 606349, 4060385; 606398, 4060148; 606370, 4060069; 606443, 4060021; 606446, 4059958; 606490, 4059933; 606225, 4059382; 606099, 4059154; 605974, 4058942;

605942, 4058878; 605861, 4058673; 605779, 4058394; 605739, 4058410; 605709, 4058346; 605679, 4058361; 605597, 4058304; 605587, 4058210; 605728, 4058160; 605683, 4058028; 605674, 4057900; 605681, 4057671; 605667, 4057538; 605662, 4057406; 605671, 4057317; 605690, 4057220; 605712, 4057147; 605763, 4057024; 605756, 4056939; 605731, 4056910; 605457, 4056766; 605429, 4056741; 605335, 4056560; 605360, 4056447; 605356, 4056395; 605232, 4056155; 605212, 4056093; 604940, 4055894; 604498, 4055349; 604397, 4055203; 604345, 4055087; 604323, 4055018; 604254, 4054897; 604077, 4054661; 604008, 4054566; 603934, 4054465; 603914, 4054402; 603758, 4054196; 603755, 4054189; 603737, 4054200; 603550, 4054338; 604416, 4055878; 604427, 4055852; 604451, 4055848;

604497, 4055868; 604526, 4055905; 604560, 4055938; 604613, 4055965; 604651, 4056003; 604699, 4056069; 604731, 4056138; 604736, 4056182; 604732, 4056242; 604726, 4056273; 604709, 4056296; 604675, 4056304; 604634, 4056288; 604613, 4056256; 604609, 4056220; 604632, 4056186; 604631, 4056167; 604605, 4056141; 604599, 4056122; 604602, 4056098; 604599, 4056084; 604568, 4056084; 604524, 4056092; 604513, 4056083; 604512, 4056070; 604528, 4056015; 604522, 4056001; 604501, 4055983; 604475, 4055969; 604459, 4055945; 604456, 4055931; 604438, 4055912; 604416, 4055878.

(ii) Note: Map of Units 3, 4, and 8 (Map 4) follows:

**BILLING CODE 4310-55-P**



(9) Unit 4: Asilomar Unit, Monterey County, California.

(i) From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 594619, 4053296;

594619, 4053330; 594626, 4053369; 594643, 4053405; 594653, 4053431; 594654, 4053454; 594660, 4053514; 594648, 4053561; 594648, 4053583;

594655, 4053600; 594727, 4053636; 594734, 4053644; 594740, 4053671; 594751, 4053688; 594765, 4053700;

594763, 4053748; 594755, 4053773; 594750, 4053787; 594766, 4053795; 594788, 4053798; 594800, 4053805;

594811, 4053823; 594817, 4053849; 594813, 4053884; 594795, 4053906; 594779, 4053929; 594776, 4053948;

594778, 4053962; 594784, 4053976; 594798, 4054002; 594808, 4054006; 594824, 4054004; 594853, 4053992;

594880, 4053986; 594908, 4053991; 594929, 4054006; 594949, 4054037; 594950, 4054065; 594944, 4054114;

594952, 4054174; 594968, 4054190; 594979, 4054237; 594977, 4054292; 594972, 4054311; 595001, 4054351;

594980, 4054393; 594962, 4054440; 594960, 4054479; 594946, 4054509; 594969, 4054511; 594985, 4054509;

595008, 4054518; 595011, 4054528; 595025, 4054538; 595059, 4054529;

595052, 4054467; 595026, 4054447; 595013, 4054407; 595028, 4054355; 595028, 4054328; 595021, 4054284;

594958, 4054012; 594959, 4054012; 594943, 4053970; 594883, 4053919;

594857, 4053880; 594796, 4053673; 594782, 4053639; 594769, 4053626;

594713, 4053598; 594719, 4053582; 594888, 4053489; 594869, 4053373;

594896, 4053299; 594890, 4053268; 594927, 4053223; 594919, 4053193; 594957, 4053160; 594950, 4053123;

594886, 4053082; 594885, 4053056; 594923, 4053026; 594924, 4052940; 594906, 4052966; 594871, 4053005;

594832, 4053036; 594804, 4053053; 594726, 4053053; 594680, 4053081; 594680, 4053142; 594667, 4053173;

594651, 4053254; returning to 594619, 4053296.

(ii) From USGS 1:24,000 scale quadrangle Monterey. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 594873, 4054693;

594913, 4054742; 595038, 4054606; 595057, 4054580; 595062, 4054561;

594921, 4054598; 594905, 4054625; returning to 594873, 4054693

(iii) Note: Map of Unit 4 is provided at paragraph (8)(ii) of this entry.

(10) Unit 5: Freedom Unit, Monterey County, California.

(i) From USGS 1:24,000 scale quadrangle Watsonville West. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 601321.000

4093848; 601363, 4093878; 601484, 4093904; 601600, 4093907; 601710, 4093877; 601828, 4093833; 601921, 4093791; 601965, 4093746; 601983, 4093719; 601989, 4093682; 601905, 4093585; 601870, 4093613; 601487, 4093784; 601333, 4093837; returning to 601321, 4093848.

(ii) Note: Map of Unit 5 is provided at paragraph (6)(ii) of this entry.

(11) Unit 6: Manresa Unit, Monterey County, California.

(i) From USGS 1:24,000 scale quadrangle Watsonville West. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 602044,

4086559; 602112, 4086716; 602197, 4086682; 602210, 4086694; 602221, 4086722; 602232, 4086754; 602285,

4086738; 602326, 4086722; 602374, 4086749; 602431, 4086877; 602376,

4086900; 602383, 4086914; 602296, 4086951; 602289, 4086937; 602236,

4086959; 602268, 4086998; 602524, 4086894; 602501, 4086838; 602557,

4086814; 602494, 4086665; 602763, 4086296; 602864, 4086162; 602562,

4086054; 602541, 4086096; 602394, 4086067; 602378, 4086099; 602302,

4086085; 602318, 4086053; 602275, 4086044; 602210, 4086186; 602139,

4086348; 602115, 4086409; returning to 602044, 4086559.

(ii) Note: Map of Unit 6 is provided at paragraph (6)(ii) of this entry.

(12) Unit 7: Prunedale Unit, Monterey County, California.

(i) From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 618887, 4071619;

618896, 4071742; 619145, 4071725; 619431, 4071664; 619441, 4071576;

619439, 4071574; 619169, 4071562; 619166, 4071601; returning to 618887, 4071619.

(ii) From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 621025, 4070792;

621080, 4071114; 621051, 4071111; 621085, 4071163; 621121, 4071173; 621136, 4071182; 621157, 4071219;

621160, 4071234; 621207, 4071274;

621166, 4073526; 621173, 4073436; 621083, 4073322; 621197, 4073259;

621151, 4072949; 621158, 4072940; 621187, 4072867; 621278, 4072572;

621300, 4072385; 621364, 4072301; 621342, 4072258; 621328, 4072169;

621331, 4072151; 621353, 4072139; 621389, 4072155; 621377, 4072009;

621414, 4071899; 621422, 4071791; 621411, 4071786; 621361, 4071747;

621364, 4071718; 621377, 4071704; 621421, 4071702; 621385, 4071615;

621370, 4071533; 621379, 4071479; 621265, 4071449; 621256, 4071455;

621283, 4071501; 621288, 4071541; 621282, 4071565; 621230, 4071628;

621278, 4071792; 621255, 4071940; 621265, 4072089; 621192, 4072091;

621191, 4072183; 621130, 4072185; 621130, 4072300; 621085, 4072462;

621060, 4072649; 621031, 4072686; 621017, 4072730; 621009, 4072808;

620987, 4072831; 620927, 4072859; 620775, 4072954; 620739, 4072948;

620709, 4072962; returning to 620707, 4073069.

(iv) From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 620983, 4073724;

621027, 4073754; 620988, 4073922; 620997, 4073968; 620986, 4074025;

621101, 4074125; 621133, 4074174; 621144, 4074209; 621084, 4074270;

621123, 4074335; 621127, 4074380; 621146, 4074396; 621174, 4074395;

621273, 4074228; 621256, 4074215; 621206, 4074150; 621149, 4074028;

621163, 4073968; 621180, 4073920;

621159, 4073901; 621160, 4073898;

621124, 4073845; 621154, 4073750;

621074, 4073707; 621036, 4073609;

returning to 620983, 4073724.

(v) Note: Map of Unit 7 is provided at paragraph (7)(v) of this entry.

(13) Unit 8: Fort Ord Unit, Monterey County, California.

(i) From USGS 1:24,000 scale quadrangle Marina. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 609697, 4059326;

609722, 4059410; 610034, 4059231;

610010, 4059188; 610075, 4059114;

610137, 4059066; 610125, 4059051;

610114, 4059037; 610103, 4059024;

610091, 4059012; 610078, 4058998;

610065, 4058986; 609965, 4058895;

609958, 4058903; 609998, 4059020;

609962, 4059186; 609940, 4059175;

609906, 4059214; 609932, 4059260;

609797, 4059338; 609773, 4059296;

609709, 4059308; returning to 609697, 4059326.

(ii) From USGS 1:24,000 scale quadrangle Marina. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 610192, 4059594;

610236, 4059663; 610258, 4059655;

610274, 4059651; 610309, 4059651;

610379, 4059665; 610390, 4059664;  
610433, 4059733; 610443, 4059751;  
610466, 4059785; 610502, 4059762;  
610434, 4059652; 610504, 4059609;  
610493, 4059592; 610463, 4059611;  
610444, 4059619; 610420, 4059623;  
610397, 4059620; 610355, 4059601;  
610331, 4059591; 610295, 4059584;  
610267, 4059581; 610240, 4059582;  
610211, 4059588; returning to 610192,  
4059594.

(iii) From USGS 1:24,000 scale quadrangle Marina. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 608008, 4060536; 609030, 4060994; 609030, 4060995; 609971, 4060407; 609846, 4060206; 610033, 4060089; 609999, 4060034; 610264, 4059868; 610164, 4059707; 610220, 4059673; 610168, 4059589; 610111, 4059623; 609932, 4059336; 609230, 4059739; 609322, 4059793; returning to 608008, 4060536.

(iv) From USGS 1:24,000 scale quadrangle Marina and Salinas. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 609751, 4058616; 610060, 4058898; 610647, 4058564; 610667, 4058598; 610879, 4058745; 612436, 4057852; 612399, 4057799; 612384, 4057756; 612381, 4057739; 612387, 4057693; 612378, 4057650; 612361, 4057603; 612352, 4057589; 612317, 4057541; 612304, 4057508; 612294, 4057462; 612274, 4057395; 611971, 4057411; 611159, 4057399; 611101, 4057397; 611145, 4057519; 611450, 4057629; 611480, 4057720; 611321, 4058012; 610816, 4058291; returning to 609751, 4058616.

(v) From USGS 1:24,000 scale quadrangle Marina, Salinas, Seaside, and Spreckles. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 605408, 4050946; 605410, 4051017; 605417, 4051087; 605436, 4051191; 605522, 4051488; 605602, 4051720; 605630, 4051830; 605627, 4052006; 605600, 4052419; 605601, 4052501; 605607, 4052559; 605617, 4052617; 605630, 4052674; 605647, 4052729; 605669, 4052784; 605755, 4052925; 605799, 4052980; 605821, 4053004; 605890, 4053067; 605951, 4053108; 606007, 4053137; 606408, 4053300; 606490, 4053347; 606545, 4053384; 606598, 4053428; 606636, 4053464; 606689, 4053526; 606767, 4053639; 606817, 4053698; 606874, 4053750; 606918, 4053782; 606950, 4053802; 607005, 4053831; 607729, 4054151; 607873, 4054074; 607886, 4053775; 607904, 4053747; 607933, 4053729; 607986, 4053722; 608063, 4053728; 608098, 4053744; 608110, 4053762; 608102, 4053961; 608113, 4054001; 608182, 4053964; 608546, 4054184; 608601, 4054203; 609141, 4054548; 609160, 4054556;

609231, 4054598; 609258, 4054621;  
609310, 4054704; 609315, 4054723;  
609316, 4054750; 609309, 4054768;  
609291, 4054789; 609315, 4054806;  
609366, 4054824; 609440, 4054835;  
609459, 4054850; 609477, 4054868;  
609493, 4054873; 609569, 4054861;  
609611, 4054845; 609698, 4054839;  
609757, 4054849; 609772, 4054857;  
609817, 4054936; 609820, 4054959;  
609841, 4054989; 609907, 4055031;  
609927, 4055053; 609944, 4055100;  
609947, 4055132; 609927, 4055254;  
609934, 4055294; 609967, 4055327;  
610020, 4055349; 610057, 4055378;  
610164, 4055520; 610209, 4055546;  
610237, 4055571; 610306, 4055681;  
610387, 4055754; 610520, 4055833;  
610554, 4055869; 610574, 4055904;  
610643, 4056127; 610658, 4056143;  
610901, 4056274; 611153, 4056431;  
611104, 4056509; 611091, 4056560;  
611069, 4056592; 611046, 4056645;  
611025, 4056671; 611033, 4056696;  
611031, 4056719; 611006, 4056762;  
611005, 4056778; 610992, 4056821;  
610993, 4056878; 611001, 4056895;  
611011, 4057000; 610986, 4057080;  
610970, 4057224; 611012, 4057361;  
611950, 4057379; 611958, 4057200;  
611948, 4057203; 611937, 4057200;  
611926, 4057191; 611923, 4057178;  
611938, 4057146; 611938, 4057138;  
611942, 4057138; 611962, 4057097;  
611970, 4056892; 611990, 4056882;  
612022, 4056833; 612154, 4056656;  
612173, 4056586; 612270, 4056432;  
612342, 4056434; 612478, 4056464;  
612526, 4056458; 612566, 4056441;  
612640, 4056444; 612759, 4056485;  
612970, 4056560; 613013, 4056113;  
613193, 4055994; 613060, 4055849;  
613038, 4055818; 613033, 4055786;  
613060, 4055413; 613060, 4055373;  
613052, 4055334; 612998, 4055174;  
612988, 4055121; 612992, 4055065;  
613011, 4054974; 613013, 4054937;  
613005, 4054877; 612986, 4054850;  
612887, 4054762; 612866, 4054738;  
612847, 4054706; 612833, 4054662;  
612818, 4054637; 612799, 4054618;  
612755, 4054589; 612743, 4054577;  
612721, 4054544; 612693, 4054453;  
612476, 4053952; 612446, 4053881;  
612426, 4053845; 612349, 4053748;  
612332, 4053721; 612319, 4053691;  
612303, 4053631; 612267, 4053559;  
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612274, 4053433; 612270, 4053404;  
612250, 4053323; 612251, 4053272;  
612255, 4053218; 612238, 4053128;  
612226, 4053030; 612228, 4052996;  
612255, 4052840; 612255, 4052818;  
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612193, 4052664; 612188, 4052579;  
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612092, 4052334; 612092, 4052274;

612096, 4052244; 612113, 4052172;  
612125, 4052134; 612203, 4051986;  
612236, 4051914; 612248, 4051881;  
612275, 4051794; 612283, 4051759;  
612291, 4051699; 612281, 4051639;  
612261, 4051561; 612247, 4051534;  
612118, 4051387; 612023, 4051304;  
612002, 4051275; 611994, 4051260;  
611987, 4051235; 611979, 4051157;  
611957, 4051054; 611948, 4051022;  
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611702, 4050737; 611694, 4050705;  
611676, 4050543; 611484, 4050568;  
611399, 4050574; 611259, 4050574;  
611146, 4050565; 611042, 4050551;  
610945, 4050516; 610871, 4050482;  
610784, 4050434; 610732, 4050403;  
610678, 4050363; 610617, 4050313;  
610545, 4050241; 610074, 4049765;  
610039, 4049758; 609981, 4049733;  
609937, 4049701; 609889, 4049652;  
609877, 4049618; 609814, 4049590;  
609730, 4049564; 607897, 4049093;  
607832, 4049096; 607676, 4049111;  
607570, 4049128; 607487, 4049145;  
607378, 4049173; 607306, 4049194;  
607130, 4049259; 606738, 4049427;  
606676, 4049452; 606613, 4049473;  
606531, 4049492; 606449, 4049505;  
606382, 4049509; 606308, 4049509;  
606215, 4049712; 606173, 4049789;  
606127, 4049854; 606067, 4049919;  
606019, 4049966; 605756, 4050195;  
605696, 4050251; 605658, 4050292;  
605623, 4050334; 605590, 4050379;  
605560, 4050424; 605532, 4050472;  
605496, 4050546; 605465, 4050623;  
605448, 4050675; 605428, 4050755;  
605417, 4050824; 605412, 4050864;  
returning to 605408, 4050946.  
Excluding: 609791, 4053559; 609792,  
4053420; 609833, 4053395; 609908,  
4053357; 610068, 4053380; 610032,  
4053598; returning to 609791, 4053559.  
Excluding: 611172, 4052992; 611242,  
4052923; 611314, 4052987; 611402,  
4052913; 611442, 4052907; 611524,  
4052850; 611543, 4052844; 611587,  
4052866; 611607, 4052919; 611628,  
4053042; 611618, 4053074; 611670,  
4053189; 611761, 4053277; 612029,  
4053402; 612049, 4053521; 611863,  
4053644; 611727, 4053518; 611656,  
4053497; 611611, 4053451; 611535,  
4053431; 611438, 4053400; 611394,  
4053341; 611346, 4053238; 611278,  
4053122; 611230, 4053068; returning to  
611172, 4052992. Excluding: 611476,  
4056579; 611418, 4056559; 611437,  
4056500; 611496, 4056520; returning to  
611476, 4056579.

(vi) Note: Map of Unit 8 is provided at paragraph (8)(ii) of this entry.

(14) Unit 9: Soledad Unit, Monterey County, California.

(i) From USGS 1:24,000 scale quadrangle Soledad. Land bounded by the following UTM zone 10 NAD83



coordinates (E, N): 653941, 4029661;  
654080, 4029718; 654098, 4029754;  
654158, 4029789; 654279, 4029808;  
654372, 4029801; 654425, 4029812;  
654458, 4029845; 654505, 4029873;  
654619, 4029910; 654705, 4029898;  
654777, 4029915; 654821, 4029942;

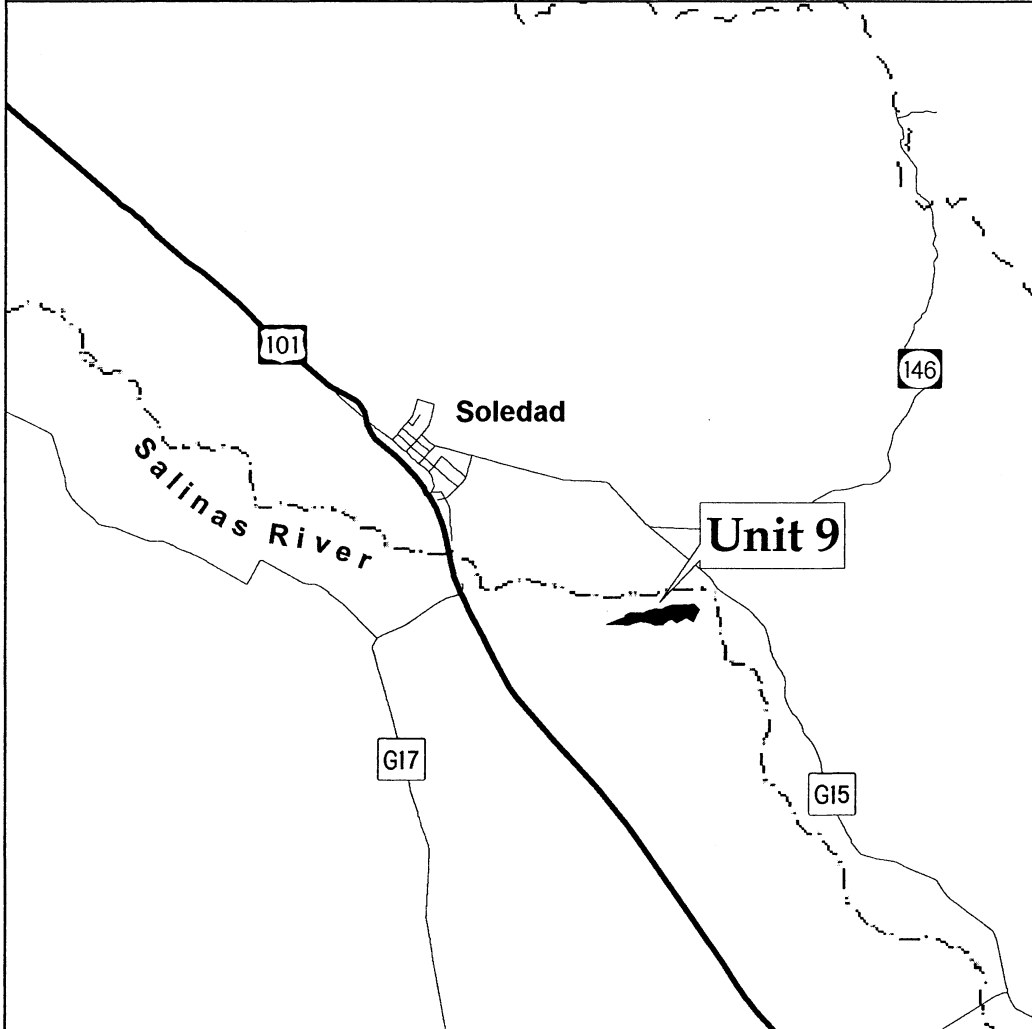
654865, 4029970; 654930, 4029989;  
655223, 4030005; 655305, 4030020;  
655374, 4029973; 655318, 4029807;  
655195, 4029858; 655025, 4029760;  
654944, 4029812; 654829, 4029774;  
654735, 4029691; 654629, 4029678;  
654495, 4029721; 654381, 4029731;

654318, 4029721; 654199, 4029687;  
654123, 4029655; 653987, 4029654;  
returning to 653941, 4029661.

(ii) Note: Map of Unit 9 (Map 5)  
follows:

**BILLING CODE 4310-55-P**

**MAP 5 - Unit 9**  
**Critical Habitat for *Chorizanthe pungens* var. *pungens***  
**(Monterey Spineflower)**  
**Monterey County, California**



**■ Critical Habitat for *Chorizanthe pungens* var. *pungens***

**—/— Roads / Highways**

**- - - County Boundaries**

0 1 2 Miles

0 2 4 Kilometers

N

Area of Detail

\* \* \* \* \*

Dated: December 6, 2006.

**David M. Verhey,**

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06-9656 Filed 12-13-06; 8:45 am]

BILLING CODE 4310-55-C

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Remove the Uinta Basin Hookless Cactus From the List of Endangered and Threatened Plants; 90-Day Finding on a Petition To List the Pariette Cactus as Threatened or Endangered****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of two 90-day petition findings and initiation of 5-year review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce two 90-day findings made under the Endangered Species Act of 1973, as amended (Act). One finding concerns a petition to remove Uinta Basin hookless cactus (*Sclerocactus glaucus*) from the List of Endangered and Threatened Plants, and the other a petition to list Pariette cactus (*Sclerocactus brevispinus*) as a threatened or endangered plant. Until recently, these species were considered one taxonomic entity, so the petitions are being considered concurrently in this notice.

We find the petition to remove *Sclerocactus glaucus* from the List of Endangered and Threatened Plants does not present substantial information indicating that the petitioned action may be warranted, and we are not initiating a further status review in response to this petition. However, in order to determine the appropriate status of *S. glaucus* given recent taxonomic revisions to this species, we are initiating a 5-year review under section 4(c)(2)(A) of the Act. Through this action, we encourage all interested parties to provide us information regarding the status of, and any potential threats to, this species as it was originally listed (i.e., information pertaining to *S. glaucus*, *S. brevispinus*, and *S. wetlandicus*).

We find the petition to list *Sclerocactus brevispinus* presents substantial information indicating that the petitioned action may be warranted, and we are initiating a further status

review in response to this petition. Through this action, we encourage all interested parties to provide us information regarding the status of, and any potential threats to, this species.

**DATES:** The findings announced in this document were made on December 14, 2006. Comments and information must be submitted on or before February 12, 2007.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials by any one of the following methods:

(1) You may mail or hand-deliver written comments and information to Field Supervisor, Utah Ecological Services Office, U.S. Fish and Wildlife Service, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119.

(2) You may submit your comments by electronic mail (e-mail) to [fw6\\_sclerocactus@fws.gov](mailto:fw6_sclerocactus@fws.gov). For directions on how to submit comments by e-mail, see the "Public Comments Solicited" section of this notice. In the event that our Internet connection is not functional, please submit your comments by mail, hand-delivery, or fax.

(3) You may fax your comments to (801) 975-3331.

**FOR FURTHER INFORMATION CONTACT:** Larry England, U.S. Fish and Wildlife Service, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119 (telephone 801-975-3330; fax 801-975-3331; e-mail [larry\\_england@fws.gov](mailto:larry_england@fws.gov)). Additional information is available at <http://mountain-prairie.fws.gov/species/plants/threecacti/index.htm>.

**SUPPLEMENTARY INFORMATION:****Background**

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files at the time we make the determination. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of this finding promptly in the **Federal Register**.

Our standard for substantial information with regard to a 90-day petition finding is "that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may

be warranted" (50 CFR 424.14(b)). If we find that substantial information was presented, we are required to promptly commence a status review of the species.

In making these findings, we relied on information provided by the petitioners and evaluated that information in accordance with 50 CFR 424.14(b). Our 90-day finding process under section 4(b)(3)(A) of the Act and section 424.14(b) of the regulations is limited to a determination of whether the information in the petition meets the "substantial information" threshold.

On October 11, 1979, we listed *Sclerocactus glaucus* as a threatened species (44 FR 58868) based on threats from overcollection for horticultural purposes, energy development (including oil, gas, and potential oil-shale development), grazing, off-road vehicle (ORV) use, and water development (44 FR 58869). A recovery plan for the species was finalized on September 27, 1990. Revisions in the taxonomy of *S. glaucus* began in 1989 (Hochstatter 1989, 1993; Heil and Porter 1994; Porter *et al.* 2000; Welsh *et al.* 2003), and by 2004, the Flora of North America recognized the plant *S. glaucus* that we listed in 1979 as three distinct species: *S. glaucus*, *S. wetlandicus*, and *S. brevispinus*.

In our February 28, 1996, Candidate Notice of Review (CNOR) (61 FR 7596), we included *Sclerocactus brevispinus* as a candidate species. Retraction of *S. brevispinus* as a candidate species occurred in our September 19, 1997, CNOR (62 FR 49401) with the following justification: "Because *S. brevispinus* was a part of *S. glaucus* when the latter species was listed as threatened, those plants now referred to as *S. brevispinus* are still considered to be listed as threatened. Therefore, including *S. brevispinus* as a candidate in the 1996 notice of review was inappropriate and unnecessary. To address the recent change in taxonomy, a proposed rule to add *S. brevispinus* to the List of Endangered and Threatened Plants will be published in the **Federal Register** at a later time."

On February 3, 1997, we received a petition from the National Wilderness Institute to remove *Sclerocactus glaucus* from the List of Endangered and Threatened Plants on the basis of "original data error," but higher priority actions have precluded addressing this petition to date. On April 18, 2005, the Center for Native Ecosystems and the Utah Native Plant Society petitioned us to designate *S. brevispinus* as threatened or endangered and to designate critical habitat. On October 10, 2005, the same parties filed a complaint in the U.S.