

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.418 is amended by alphabetically adding the following commodities to the table in paragraph (a)(2) and removing the text from paragraph (b) and reserving the paragraph designation and heading to read as follows:

§ 180.418 Cypermethrin and an isomer zeta-cypermethrin; tolerances for residues.

- (a) * * *
- (2) * * *

| Commodity | Parts per million |
|---------------------------------------|-------------------|
| * * * | * * |
| Borage, seed | 0.2 |
| * * * | * * |
| Castor oil plant, refined oil ... | 0.4 |
| Castor oil plant, seed | 0.2 |
| * * * | * * |
| Chinese tallowtree, refined oil | 0.4 |
| Chinese tallowtree, seed | 0.2 |
| * * * | * * |
| Citrus, dried pulp | 1.8 |
| Citrus, oil | 4.0 |
| * * * | * * |
| Crambe, seed | 0.2 |
| Cuphea, seed | 0.2 |
| Echium, seed | 0.2 |
| * * * | * * |
| Euphorbia, refined oil | 0.4 |
| Euphorbia, seed | 0.2 |
| Evening primrose, refined oil | 0.4 |
| Evening primrose, seed | 0.2 |
| Flax, seed | 0.2 |
| * * * | * * |
| Fruit, citrus, group 10 | 0.35 |
| * * * | * * |
| Gold of pleasure, seed | 0.2 |
| * * * | * * |
| Hare's-ear mustard, seed | 0.2 |
| * * * | * * |
| Joboba, refined oil | 0.4 |
| Joboba, seed | 0.2 |
| Lesquerella, seed | 0.2 |
| Lunaria, seed | 0.2 |
| Meadowfoam, seed | 0.2 |
| * * * | * * |
| Milkweed, seed | 0.2 |
| Mustard, seed | 0.2 |
| Niger seed, refined oil | 0.4 |
| Niger seed, seed | 0.2 |
| * * * | * * |
| Oil radish, seed | 0.2 |
| Okra | 0.2 |
| * * * | * * |
| Poppy, seed | 0.2 |
| * * * | * * |
| Rice, wild, grain | 1.5 |
| Rose hip, refined oil | 0.4 |
| Rose hip, seed | 0.2 |
| Safflower, seed | 0.2 |
| Sesame, seed | 0.2 |
| * * * | * * |
| Stokes aster, refined oil | 0.4 |
| Stokes aster, seed | 0.2 |

| Commodity | Parts per million |
|----------------------------------|-------------------|
| * * * | * * |
| Sweet rocket, seed | 0.2 |
| Tallowwood, refined oil | 0.4 |
| Tallowwood, seed | 0.2 |
| Tea oil plant, refined oil | 0.4 |
| Tea oil plant, seed | 0.2 |
| * * * | * * |
| Vernonia, refined oil | 0.4 |
| Vernonia, seed | 0.2 |
| * * * | * * |

(b) Section 18 emergency exemptions. [Reserved]

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[FR Doc. E7-25392 Filed 1-8-08; 8:45 am]

BILLING CODE 6560-50-S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R8-ES-2007-0026; 92210-1117-0000; ABC Code: B4]

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: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating revised critical habitat for the threatened Monterey spineflower (*Chorizanthe pungens* var. *pungens*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 11,055 acres (ac) (4,475 hectares (ha)) fall within the boundaries of this revised critical habitat designation. The revised critical habitat is located in Santa Cruz and Monterey counties, California.

DATES: This rule becomes effective on February 8, 2008.

ADDRESSES: Comments and materials we received, as well as supporting documentation we used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003 (telephone 805-644-1766). The final rule, economic analysis, and more detailed maps are also available on the Internet at <http://www.fws.gov/ventura>.

FOR FURTHER INFORMATION CONTACT: Connie Rutherford, Listing and

Recovery Coordinator for Plants, Ventura Fish and Wildlife Office (see **ADDRESSES**), (telephone 805-644-1766, ext. 306; facsimile 805-644-3958). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the designation of revised critical habitat in this rule. For more detailed background information on the appearance, seed ecology, habitat requirements, and the historical and current distribution of *Chorizanthe pungens* var. *pungens*, refer to the proposed revised critical habitat designation published in the **Federal Register** on December 14, 2006 (71 FR 75189), and the previous final designation of critical habitat for *C. p. var. pungens* published in the **Federal Register** 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* is an annual species in the buckwheat family (Polygonaceae). It is a low-growing herb that is soft-hairy and grayish or reddish in color, with white-to rose-colored flowers. It 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.

Previous Federal Actions

On May 29, 2002, we designated critical habitat for *Chorizanthe pungens* var. *pungens* on approximately 18,829 acres (ac) (7,620 hectares (ha)) of land in Santa Cruz and Monterey counties, California (67 FR 37498). 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, and a final determination by December 7, 2007. We published the proposed revisions to the critical habitat designation for *C. p. var. pungens* in the **Federal Register** on December 14, 2006 (71 FR 75189), and accepted public comments on the proposed revisions until February 12, 2007. This final rule completes the Service's obligation regarding this species under the March 2006 settlement agreement.

On October 16, 2007, we published a notice announcing the availability of the draft economic analysis and reopening the public comment period on the revised proposed rule (72 FR 58618). This comment period closed on October 31, 2007. For more information on previous Federal actions concerning *Chorizanthe pungens* var. *pungens*, refer to the three documents we previously published in the **Federal Register** and identified above in this "Previous Federal Actions" section.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed revised designation of critical habitat for *Chorizanthe pungens* var. *pungens* in the revised proposed rule published on December 14, 2006 (71 FR 75189) and again in a subsequent notice of availability of the draft economic analysis published in the **Federal Register** on October 16, 2007 (72 FR 58618). We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the revised proposed rule.

During the comment period that opened on December 14, 2006, and closed on February 12, 2007, we received five comment letters directly addressing the proposed revised critical habitat designation: Three from peer reviewers, and two from organizations or individuals. During the comment period that opened on October 16, 2007, and closed on October 31, 2007, we received two comment letters addressing the proposed revised critical habitat designation and the draft economic analysis. Of these latter comments, one was from a landowner, and one was from an individual. Of the seven total letters, two commenters expressed support for a designation of critical habitat for *Chorizanthe pungens* var. *pungens*, two opposed part or all of the designation of critical habitat for

this taxon, and three letters included comments or information but did not express support or opposition to the proposed revised critical habitat designation. Comments we received are addressed in the following summary and incorporated into this final rule as appropriate. We did not receive any requests for a public hearing.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from three knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from all three of the peer reviewers. The peer reviewers provided additional information, clarifications, and suggestions to improve the revised final critical habitat rule.

We reviewed all comments we received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for *Chorizanthe pungens* var. *pungens*, and we address them in the following summary.

Peer Reviewer Comments

(1) *Comment*: One peer reviewer noted that we had reduced the size of the units in the proposed revised designation as compared to the 2002 designation. The reviewer questioned why the northernmost area of Unit 2 has been divided into 2 subunits that are no longer continuous along the coastline. The commenter noted that the separation between the 2 northern subunits seemed artificial because appropriate habitat is continuous along that stretch of coastline.

Our Response: We used a multi-step process to identify and delineate critical habitat units. First we mapped all California Natural Diversity Database (CNDDDB) records and additional records from recent surveys that have been reported to the CNDDDB but have not yet been entered into their database in a Geographic Information System (GIS) format. We then selected sites from among this data set that contain the physical and biological 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 geographical 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 *Chorizanthe pungens* var. *pungens* is found, (d) maintains connectivity of occurrences; (e) maintains the disturbance factors that create the openings in vegetation cover on which this taxon depends; and (f) provides for the sufficient quantity and spatial arrangement of the primary constituent element (PCE) to provide for the conservation of the species.

Once we identified all areas that contain the physical and biological features essential to the conservation of the species, we focused first on those areas that were either already protected, managed, or unencumbered by conflicting use (e.g., undeveloped County or City parks) or otherwise best suited for future conservation (e.g., 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 prioritized our selection 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, or undeveloped County or City parks), and finally other agency and private lands.

Based on the comments received by the peer reviewer, we have reviewed the biological information available for the lands in and adjacent to the northern two subunits of Unit 2 (Moss Landing Unit). Approximately 224 ac (91 ha) of State lands containing the essential features for *Chorizanthe pungens* var. *pungens* occur along this stretch of coastline, within Zmudowski and Moss Landing State Beaches. Of the 26 ac (10.5 ha) of land that occurs between the two northernmost subunits of Unit 2, 6 ac (2.4 ha) are county-owned and 20 ac (8.1 ha) are privately owned. The habitat between the two northernmost subunits contains the features essential for the conservation of *C. p. var. pungens*, is occupied by the species, and together with the State lands on either side, provides one contiguous block of coastal habitat for the species. The 26 ac (10.5 ha) of habitat were included in our previous critical habitat designation of 2002 and protection of this coastal area is identified in the Recovery Plan for *C. p. var. pungens* as one of the criteria to recover and de-list the species. We conclude that the 26 acres (10.5 ha) of

land between the two northernmost subunits of Unit 2 are essential to the conservation of *C. p. var. pungens* and have included the lands in the final revised designation.

(2) *Comment:* Two peer reviewers commented on the response of *Chorizanthe pungens* var. *pungens* to human-caused disturbance. One peer reviewer commended the Service for distinguishing between human-caused disturbance that results in unvegetated openings (e.g., roadsides or trails) that may be colonized by *C. p. var. pungens* and openings caused by animals or other non-human factors in ecologically intact, dynamic, dune communities. This reviewer described observations made at Moss Landing Marine Laboratories where biologists distributed seeds of *C. p. var. pungens* in dune soils disturbed by construction. Although these attempts resulted in initially large numbers of flowering *C. p. var. pungens*, the numbers declined substantially over the following 6 years, even though there appeared to be sufficient bare ground for the persistence of *C. p. var. pungens*. The other peer reviewer indicated that from her 10 years of experience with *C. p. var. pungens* it is clear that human-caused disturbances, such as roads and trails, are soon invaded by nonnative, invasive plants, which compete with *C. p. var. pungens*. The peer reviewer suggested that invasive, nonnative plants must be controlled on roads and trails to prevent a decline in *C. p. var. pungens*, and that if roads and trails are not needed they should be restored to a condition where openings between shrubs are free of nonnative plant species.

Our Response: We appreciate the information provided by the peer reviewers and have provided clarifications in the section titled "Criteria Used to Identify Critical Habitat" in this final rule in response to their comments.

(3) *Comment:* One peer reviewer indicated that the area for Unit 8 (Fort Ord) is an overestimate of area actually occupied by *Chorizanthe pungens* var. *pungens*. The reviewer noted that the proposed unit contains high quality habitat for *C. p. var. pungens* in some areas, while other areas support a high cover of perennials or have been invaded by nonnative plant species.

Our Response: We recognize that the area of Unit 8 (Fort Ord Unit) exceeds the area currently documented to be occupied by *Chorizanthe pungens* var. *pungens* because, due to mapping limitations and scale, it does not exclude intervening, currently unoccupied habitat. Unit 8 contains

multiple populations of *C. p. var. pungens* within a mosaic of oak woodland, coastal sage scrub, and maritime chaparral where the soil and vegetation structure currently provide the open conditions suitable for its growth and reproduction (i.e., the primary constituent element). Over time, the locations of suitable habitat will change as some maritime chaparral stands age, resulting in a continuous vegetation canopy, while other openings are created through shrub death, prescribed fire, or animal use. The size and configuration of Unit 8 is designed to accommodate the ephemeral and successional nature of any given opening in its ability to support *C. p. var. pungens* and the value of habitat management at a landscape scale.

(4) *Comment:* One peer reviewer noted the fragmented configuration of the proposed revised critical habitat and indicated that this configuration will require specific management actions to reduce the detrimental effects of fragmentation so that critical habitat can provide for the conservation of the species.

Our Response: We recognize that, in many cases, development has already resulted in a discontinuous distribution of lands supporting the physical and biological features essential for the conservation of *Chorizanthe pungens* var. *pungens*. In cases where public lands supporting the essential features are contiguous, we have tried to designate those lands within the same critical habitat unit or subunit. For example, Unit 8 (Fort Ord) consists of public lands supporting the essential features over a relatively large area, unfragmented by development. This lack of intervening development improves the likelihood that future management will be able to promote multiple, large areas of the relatively open, maritime chaparral plant community that is suitable for *C. p. var. pungens*. We recognize that specific management actions will likely be needed in some of the designated units to overcome the disadvantages of habitat fragmentation.

(5) *Comment:* One peer reviewer commented that it was not clear why the Del Rey Oaks unit from the 2002 final designation was not included in the 2006 proposed revised critical habitat designation.

Our Response: As we indicated in the revised proposed rule, the previously designated Del Rey Oaks unit contains substantial areas that have continued to be developed since 2002, and, as a consequence, the areas within the unit that contain the PCE for *Chorizanthe pungens* var. *pungens* are very

fragmented. Therefore, the PCE is no longer in the spatial arrangement and quantity necessary to be considered essential to the conservation of the species. As we noted in our response to Comment 1, in determining which areas to include in critical habitat, we first identified all areas which contain the PCE for the species in sufficient quantity and spatial arrangement and are either already protected, managed, or unencumbered by conflicting use (e.g., Federal lands, undeveloped County or State parks, proposed preservation areas). These areas are the focus for our designation, as they generally consist of higher quality habitat that is most likely to persist into the future. The Del Rey Oaks unit designated in the 2002 final rule is in close proximity to the much larger Fort Ord unit (Unit 8). We determined that the Fort Ord unit, which encompasses a large amount of unfragmented public land that supports the essential physical and biological features, contains sufficient areas containing the PCE laid out in the appropriate quantity and spatial arrangement to provide for the conservation of *C. p. var. pungens* in this area.

(6) *Comment:* One peer reviewer commented that mowing can be an appropriate management tool where nonnative annual grasses have invaded, if mowing is done at the proper time and height to remove annual grass seedheads prior to their maturity, while leaving the low-growing *Chorizanthe pungens* var. *pungens* intact.

Our Response: We agree that where nonnative grasses are abundant, mowing could potentially be designed to avoid *Chorizanthe pungens* var. *pungens*, while removing maturing grasses prior to seed maturity. We have revised the text under the "Primary Constituent Elements" section, below, to reflect this.

Public Comments

(7) *Comment:* One commenter recommended that two additional areas occupied by *Chorizanthe pungens* var. *pungens* be included in the critical habitat designation. One of these is Armstrong Ranch, which the commenter indicated would provide a connection between Units 3 and 8 in the proposed revised designation. The other site is a population at the summit of North Rodeo Gulch Road, northwest of Soquel in Santa Cruz County, which the commenter indicated supports the northernmost population of *C. p. var. pungens*.

Our Response: In designing this critical habitat designation, we sought to include locations throughout the range of the species that encompass the variation in soil type, vegetation

communities, elevation, and coastal influences of sites where populations of *Chorizanthe pungens* var. *pungens* occur. We chose to include in this revised designation lands at former Fort Ord and the coast, but did not include Armstrong Ranch. We recognize that Armstrong Ranch provides connectivity between Units 3 (Marina) and 8 (Fort Ord); however, we do not believe that these lands should be designated because they do not support the highest quality habitat and the PCE in the appropriate quantity and spatial arrangement for the conservation of *C. pungens* var. *pungens*. Due to its agricultural past, Armstrong Ranch is dominated by nonnative annual grasses, with infrequent patches of coastal sage scrub. In designating Units 3 (Marina) and 8 (Fort Ord), we have included in the designation the more sparsely vegetated dune sands of the coast and the more developed (i.e., deeper), ancient sandy soils of the interior Fort Ord, which support native coastal sage scrub and maritime chaparral vegetation. Consequently, we have encompassed the soil types and native plant communities representing the high quality habitat and the PCE in the appropriate quantity and spatial arrangement for the conservation of *C. pungens* var. *pungens* in this region. These are the lands that we believe are essential to the conservation of *C. p.* var. *pungens*.

We did not include the *Chorizanthe* population near North Rodeo Gulch Road in this revised designation, because of uncertainty regarding its taxonomy. A preliminary genetic analysis in 2007 (Baron and Brinegar 2007, p. 5) determined that the molecular data from this population is consistent with that of *Chorizanthe pungens* var. *pungens* and the robust spineflower (*C. robusta* var. *robusta*), but that analysis could not assign this population to one or the other of the two taxa. Other techniques are now being used to investigate the relationship of this population to these taxa. Therefore, to represent the most northern distribution of *C. pungens* var. *pungens*, we designated the location near Freedom Boulevard. This location is the one for which we have the most complete information, it supports the PCE in the appropriate quantity and spatial arrangement, and encompasses a large population of *C. p.* var. *pungens*.

(8) *Comment:* One commenter suggested that the boundaries for Unit 5, the Freedom Boulevard Unit, be redrawn to encompass a location that supports the PCE and a population of *Chorizanthe pungens* var. *pungens* on an approximately 15 ac (6 ha), privately

owned parcel near the intersection of Valencia Road and Freedom Boulevard, and just outside the boundary of the proposed Freedom Boulevard Unit.

Our Response: We had information about other populations of *Chorizanthe pungens* var. *pungens* that exist in the Freedom Boulevard area. However, we did not include the lands that support those populations in our revised proposed rule published in 2006 because most of those lands are fragmented by rural “ranchette”-type development and were not likely to support populations of *Chorizanthe pungens* var. *pungens* into the future. We concluded that the area included in the final revised designation provides sufficient areas containing the PCE in the quantity and spatial arrangement for the conservation of the species in this portion of the species’ range. These 24 ac (10 ha) support the essential physical and biological features and one of the largest populations of *Chorizanthe pungens* var. *pungens* in the Freedom Boulevard area for which we have documentation.

(9) *Comment:* One commenter questioned whether the mapping was correct for the southern boundary of proposed Unit 3 (Marina). The commenter noted that the map appears to encompass an approximately 0.5 ac (0.2 ha) privately owned parcel, but that the description states that the unit contains only State lands.

Our Response: The commenter is correct in noting that our map for Unit 3 contained an error at the southern boundary. To delineate these unit boundaries, we used parcel data from the Department of the Army (Army) for Fort Ord. We did not realize it did not match the parcel boundaries from the Monterey County assessor’s office. We intend Unit 3 to extend south only to the boundary of State land, and we have made the correction in this revised designation. No private lands are included in this unit.

(10) *Comment:* One commenter suggested that the microclimate of the inland area in Unit 9 (Soledad) does not seem consistent with the coastal habitat described for *Chorizanthe pungens* var. *pungens*.

Our Response: As we indicated in the revised proposed rule, the habitat of *Chorizanthe pungens* var. *pungens* is sandy soils in active dune systems and bluffs, grassland, scrub, chaparral, and woodland communities containing open areas free of other vegetation. The taxon is not restricted to dunes on the immediate coast. Historically, in the late 1800s and early 1900s, several collections of *C. p.* var. *pungens* were made from the Salinas Valley, and we

know of one extant population in the Salinas Valley in interior Monterey County on the lands we are designating as Unit 9. Please see the discussion in the “Critical Habitat Designation” section of this final rule for more information on Unit 9 and its value to the conservation of the species.

(11) *Comment:* One commenter stated that the process of designating critical habitat for endangered species was invalid because the Endangered Species Act had expired.

Our Response: The Endangered Species Act has not expired. Section 15 of the Act, which authorizes appropriations to carry out functions and responsibilities under the Act, has text authorizing funding through fiscal year 1992, i.e., the funding authorization provided in Section 15 expired on October 1, 1992. Although Section 15 has not been amended to change the authorization language, Congress has appropriated funds for continued implementation of the administrative provisions of the Act in each subsequent fiscal year, and these annual Congressional decisions are a *de facto* extension of the authorization of appropriations. All of the requirements and prohibitions of the Act remain in force, even in the absence of a change in the text of Section 15 of the Act.

(12) *Comment:* One commenter stated that zero acres should be designated as critical habitat.

Our Response: The identification of areas that are essential for the conservation of the species is beneficial. The process of designating critical habitat, in which we clearly delineate features and areas of high conservation value for the species, helps focus and promote conservation efforts by other parties. Critical habitat designations may also provide greater regulatory benefits to the recovery of a species than would listing alone because the analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Under section 7(a) of the Act, Federal agencies must insure that their actions are not likely to (1) jeopardize the continued existence of a listed species, or (2) result in the destruction or adverse modification of that species’ critical habitat. The regulatory standard is different for each: the jeopardy analysis looks at the action’s impact on survival and recovery of the species, while the adverse-modification analysis looks at the action’s effects on the designated habitat’s contribution to the species’ conservation.

Comments Related to the Draft Economic Analysis

(13) *Comment:* One commenter stated that the future costs associated with conservation efforts for *Chorizanthe pungens* var. *pungens* forecasted in the draft economic analysis are estimates, which are almost always far below what the eventual costs are when they are counted.

Our Response: The purpose of the draft economic analysis is to estimate the economic impact of actions taken to protect *Chorizanthe pungens* var. *pungens* and its habitat. It attempts to quantify the economic effects associated with the proposed revised designation of critical habitat. It does so by taking into account the cost of conservation related measures that are likely to be associated with future economic activities that may adversely affect the habitat within the proposed revised boundaries. The analysis looks retrospectively at costs incurred since *C. p. var. pungens* was listed, and it attempts to predict future costs likely to occur after the proposed revised critical habitat designation is finalized. It does this by incorporating the best available information from the section 7 consultations, the Recovery Plan, and conversations with landowners and the Service.

(14) *Comment:* One commenter noted that the designation of proposed critical habitat unit 9 would damage farming operations in the immediate area. The commenter stated that unit 9 is surrounded by farming operations, presently partially farmed, and planned for additional farm development. The commenter requests that the economic analysis consider the negative impact of critical habitat designation on the farm.

Our Response: After many attempts to speak with this commenter, he could not be reached regarding future farming development and whether or not a federal nexus would occur on his land after critical habitat is designated. We lack sufficient information to quantify the impacts to the commenter of the critical habitat designation.

Summary of Changes From the Revised Proposed Rule and Previous Critical Habitat Designation

In preparing this final revised critical habitat designation for *Chorizanthe pungens* var. *pungens*, we reviewed and considered comments from the public and peer reviewers on the proposed revised designation of critical habitat published on December 14, 2006 (71 FR 75189), and public comments on the draft economic analysis published on October 16, 2007 (72 FR 58618). As a

result of all comments received on the revised proposed rule and the draft economic analysis, we made changes to our proposed revised designation, as follows:

(1) We corrected the error in Unit 3 by remapping its southern boundary to match the boundary of State lands. This resulted in a reduction of Unit 3 from 884 ac (358 ha) to 881 ac (357 ha). The acreage change is reflected in Table 1.

(2) We included 26 ac (10.5 ha) that had been included in our previous 2002 critical habitat designation between the 2 northernmost subunits of Unit 2 (Moss Landing).

(3) We incorporated technical information provided by the peer reviewers.

(4) We revised the PCE to incorporate the dynamic processes that create and maintain openings in the vegetation communities in which *Chorizanthe pungens* var. *pungens* grows.

This final designation is unchanged from the proposed revised designation with the following exceptions: (1) The correction of a mapping error has reduced Unit 3 by 3 ac (1 ha); and (2) the inclusion of 26 ac (10.5 ha) that had been included in our previous 2002 critical habitat designation between the 2 northern subunits of Unit 2 (Moss Landing), which has increased the size of that unit. The result of these changes has been the increase of final critical habitat designated to 11,055 ac (4,475 ha); this represents a total of 23 ac (9 ha) more than what we proposed in 2006. At the same time, this represents a decrease of 7,774 ac (3,145 ha) from what we previously designated as critical habitat in 2002.

The areas identified in this revised critical habitat designation constitute a 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 ac (7,620 ha). This revision includes 9 units comprising a total of 11,055 ac (4,475 ha). Eight of the units in the 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 revision (Unit 6—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 are not included in this 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 essential features are very fragmented. The second of these units, Bel Mar, is in close proximity to Unit 6 (Manresa) included in this revision, but not included in the 2002 critical habitat rule. The Monterey spineflower in Unit 6 (Manresa) 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 designated in 2002 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 nonnative species, and physical processes that support natural dune dynamics). In this 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 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 2002 rule. In addition, the changes to Unit 7 are due to the removal of areas designated 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 PCE laid out in the appropriate quantity and spatial arrangement for the conservation of the species.

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) 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

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) 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 the use of all methods and procedures that 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.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7 of the Act requires consultation on Federal actions that may affect 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 the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by the landowner. Where the landowner seeks or requests federal agency funding or authorization may affect a listed species or critical habitat, the consultation requirements of Section 7 would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed must contain the physical and biological 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 (areas on which are found the primary constituent elements laid out in the appropriate quantity and spatial arrangement for the conservation of the species, as defined at 50 CFR 424.12(b)).

Areas within the geographical area occupied by the species that contain the physical and biological features essential to the conservation of the species meet the definition of critical habitat only if those features may

require special management considerations or protection.

Under the Act, we can designate an area outside of the geographical area occupied by the species at the time of listing as critical habitat only when we determine that the best available scientific data demonstrate that the designation of that area is essential to the conservation needs of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106-554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our 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 we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may 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.

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 we may eventually determine, based on scientific data not now available to the Service, are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that support populations of *Chorizanthe pungens* var. *pungens*, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by the section

7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency 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 (HCPs), or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

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 designate as critical habitat within the geographical area occupied by the species at the time of listing, we consider the physical and biological features that are essential to the conservation of the species to be the primary constituent elements laid out in the appropriate quantity and spatial arrangement for conservation of the species. These include, but are not limited to:

- (1) Space for individual and population growth and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, or rearing (or development) of offspring; and
- (5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derived the specific primary constituent element required for *Chorizanthe pungens* var. *pungens* from its biological needs, as described below.

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 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 and spatial arrangement 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, nonnative plants physically exclude *Chorizanthe pungens* 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., sphecids wasps, bumblebees, and bees from the families Halictidae and Anthophoridae) require bare ground for nesting (Murphy 2003a, p. 4). Removal of invasive, nonnative species may help to maintain existing rates of pollinator visitation. Although areas with little or no cover of invasive, nonnative species may be optimal for the conservation of *C. p. var. pungens*, seeds that could subsequently germinate may still be present beneath the canopy of the nonnative, 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. In most years, one can find patches of plants separated by several feet (meters) or several hundred feet (meters) within a particular area. In following years, the distribution of plants may shift due to seed dispersal by animals or wind, emergence of seeds from a relatively short-lived soil seed

bank, and/or fire that has opened up the vegetation canopy, creating a site suitable for germination of seeds and growth of this taxon.

Human-caused disturbances, such as scraping of roads and firebreaks, can reduce the competition from other herbaceous species and consequently provide temporarily 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 (Army Corps of Engineers (Corps) 1992, p. 39; U.S. Bureau of Land Management (BLM) 2003, pp. 15–22). However, such activities also often promote the spread and establishment of nonnative species (Fusari and McStay 2007, p. 9); in addition, they can bury the seedbank of *C. p. var. pungens*, and they 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). In one case, *C. p. var. pungens* had been initially abundant in disturbed soils where its seeds had been scattered, but it subsequently declined in abundance even though seemingly suitable open habitat persisted (Slattery 2007, pp. 1–3). 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 minimize the edge effects associated with urban development. Larger areas with a high area-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 nonnative 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 gene flow and the production of viable seed, are better able 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 of plants 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, with 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 nonnative, invasive species removal, such as mowing, must be conducted in a manner that does not adversely affect seed development in the *C. p. var. pungens* population; otherwise, it is 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; Fusari 2007, p. 2). 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 previous final critical habitat designation (67 FR 37498).

Primary Constituent Element for *Chorizanthe pungens* var. *pungens*

Under the Act and its implementing regulations, we are required to identify the known physical and biological features within the geographical area occupied by *Chorizanthe pungens* var. *pungens* at the time of listing that are essential to the conservation of the species and that may require special management considerations or protections.

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 a vegetation structure arranged in a mosaic with openings between the dominant elements (e.g., scrub, shrub, oak trees, or clumps of herbaceous vegetation) that changes in spatial position as a result of physical processes such as windblown sands and fire and that allows sunlight to reach the surface of 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.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas within the geographical area determined to be occupied at the time of listing contain the physical and biological features that are essential to the conservation of the species and may require special

management considerations or protection.

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, nonnative species and increased trampling and soil compaction from recreation (Conservation Biology Institute 2000, p. 5). Additional threats include road development, invasive species control with herbicides, industrial and recreational development, equestrian and other recreational activities, and dune stabilization using nonnative 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 considerations or protection to ensure the long-term conservation of *C. p. var. pungens* and are described below in the individual discussions of the units.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific and commercial data available in determining areas that contain the physical and biological 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 GIS layers, including soil and species coverages; and data submitted to the 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 designating any areas outside of the geographical area occupied by the species at the time of listing because we believe the areas we have designated provide sufficient essential habitat for the conservation of the species; therefore, unoccupied areas are not needed in the designation.

The long-term conservation of *Chorizanthe pungens* var. *pungens* is

dependent upon the protection of existing population sites and the quantity and spatial arrangement of the PCE and essential habitat that provides for the maintenance of ecologic functions, such as connectivity between populations within close geographic proximity to facilitate pollinator activity and seed dispersal.

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 species' distribution may either shrink and temporarily disappear, or enlarge and cover a more extensive area.

We used a multi-step process to identify and delineate 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 physical and biological 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 geographical 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; (e) maintains the disturbance factors that create the openings in vegetation cover on which this taxon depends; and (f) provides for the sufficient quantity and spatial arrangement of the PCE to provide for the conservation of the species.

Species and plant communities that are protected across their ranges are expected to have lower likelihoods of extinction (Scott *et al.* 2001, pp. 1297–1300); therefore, 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 1996, 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, as documented in other plant species (e.g., see Hamrick and Godt 1996, 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.

Once we identified all areas that contain the physical and biological features essential to the conservation of the species, we focused first on those areas that were 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 prioritized our selection 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, or undeveloped County or City parks), and finally other agency and private lands.

After applying the criteria described above, the lands we are designating as revised critical habitat fall under prong one of the definition of critical habitat in section 3(5)(A) of the Act (see "Critical Habitat" section). We did not identify any lands outside of the geographical area occupied by the species at the time of listing as essential to the conservation of the species.

Mapping

To map the 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 areas that would contain the physical and biological 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 in gaps between vegetation within appropriate soil types. Units were delineated by first mapping the occurrences and soil types and then considering other geographic features such as developed areas and road boundaries.

When determining critical habitat boundaries, we made every effort to

avoid including developed areas, such as lands covered by buildings, paved areas, and other structures, as well as tilled fields, row crops, and golf courses that lack the features essential for the conservation of *Chorizanthe pungens var. pungens*. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this revised critical habitat designation have been excluded by text and are not designated as revised critical habitat. Therefore, Federal actions involving these areas would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification, unless the specific action would affect the primary constituent elements in the adjacent critical habitat.

A brief discussion of each area designated as revised critical habitat is provided in the unit descriptions below. Additional detailed documentation concerning the essential nature of these areas is contained in our supporting record for this rulemaking.

Critical Habitat Designation

We are designating nine units as revised critical habitat for *Chorizanthe pungens var. pungens*. These units, which generally correspond to those units in the 2002 designation, entirely replace the 2002 critical habitat designation for *C. p. var. pungens* in 50 CFR 17.96(a). The critical habitat units we describe below constitute our current best assessment of areas that meet the definition of critical habitat for *C. p. var. pungens*. Table 1 shows the occupied units.

TABLE 1.—OCCUPANCY OF CHORIZANTHE PUNGENS VAR. PUNGENS BY REVISED CRITICAL HABITAT UNITS

| Unit | Occupied at time of listing? | Currently occupied? | Size of unit in acres (hectares) |
|-----------------------|------------------------------|---------------------|----------------------------------|
| 1. Sunset | Yes | Yes | 85 (35) |
| 2. Moss Landing | Yes | Yes | 250 (101) |
| 3. Marina | Yes | Yes | 881 (357) |
| 4. Asilomar | Yes | Yes | 48 (19) |
| 5. Freedom Blvd | Yes | Yes | 24 (10) |
| 6. Manresa | Yes | Yes | 94 (38) |
| 7. Prunedale | Yes | Yes | 190 (77) |
| 8. Fort Ord | Yes | Yes | 9,432 (3,817) |
| 9. Soledad | Yes | Yes | 51 (21) |

The nine units designated as revised critical habitat 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 critical habitat unit is shown in Table 2.

TABLE 2.—CRITICAL HABITAT UNITS FOR CHORIZANTHE PUNGENS VAR. PUNGENS
[Area estimates reflect all land within critical habitat unit boundaries]

| Unit name | State lands | | Private lands | | County and other local jurisdictions | | Federal lands | | Estimate of total area | |
|--------------------------------|-------------|----------|---------------|----------|--------------------------------------|----------|---------------|----------|------------------------|----------|
| | 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 | 20 | 8 | 6 | 2 | 0 | 0 | 250 | 101 |
| 3. Marina ¹ | 881 | 357 | 0 | 0 | 0 | 0 | 0 | 0 | 881 | 357 |
| 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 ¹ | 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 | 2,085 | 844 | 112 | 46 | 682 | 276 | 8,176 | 3,309 | 11,055 | 4,475 |

¹ Area estimates 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 (59 FR 5499) and is currently occupied (CNDDDB 2006, California Department of Parks and Recreation (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 Sunset State Beach. Unit 1 is essential 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). The features essential to the conservation of the species may require special management considerations or protection in this unit due threats from invasive, nonnative plants, particularly European beachgrass, which forms dense stands on coastal beaches and crowds out *C. p.* var. *pungens*, and from recreational activities, including

camping and foot traffic, which could trample plants.

Unit 2: Moss Landing (250 ac (101 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; provides the basic requirements for growth; and includes 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 (which includes portions of Zmudowski State Beach and Moss Landing State Beach between the mouths of the Pajaro River and Elkhorn Slough), 20 ac (8 ha) of private lands, and 6 ac (2 ha) of county lands. The southern portion of this unit includes State lands within Salinas River State Beach. This unit was occupied at the time of listing (59 FR 5499) and was included in the 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; and 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. The features essential to the conservation of the species may require special management considerations or protection in this unit due threats from invasive, nonnative

plants, particularly ice-plant, which forms dense ground cover on coastal beaches and crowds out *C. p.* var. *pungens*, and from recreational activities including foot traffic, which could trample plants.

Unit 3: Marina (881 ac (357 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; provides the basic requirements for growth; and includes 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 (59 FR 5499) 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 essential because it supports a population of *Chorizanthe pungens* 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. The features essential to the conservation of the species may require special management considerations or protection in this unit due to threats from invasive, nonnative 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. This 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. This 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; provides the basic requirements for growth; and includes soils in the coastal beach, dune land, and Baywood sand soil series (Soil Conservation Service 1978, pp. 13–25) (PCE 1). This 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 (59 FR 5499) and is currently occupied. Herbarium records that contain specimens from this area include the following (collector and year): Lemmon 1881, L.C. Wheeler 1936, R. Hoover 1941 and 1963, and 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 essential because it is the southernmost of only five populations of *C. p.* var. *pungens* along the coast. 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 essential to the long-term survival and conservation of *C. p.* var. *pungens*. Protecting peripheral or isolated populations is necessary 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 1996, pp. 291–295). The features essential to the conservation of the species may require special management considerations or protection in this unit due to threats from invasive, nonnative 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 trample plants; and edge effects of urban development. An additional threat in this unit is the expansion of unregulated vehicle parking in the dunes associated with 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; provides 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 (59 FR 5499) and is currently occupied (CNDDDB 2006, element occurrences (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 essential because it is the northernmost known occurrence. In the absence of genetic data, protecting populations at the boundaries of a taxon's range is necessary 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 1996, pp. 291–295). The features essential to the conservation of the species may require special management considerations or protection in this unit due to threats from invasive, nonnative plants, particularly annual grasses that crowd out *C. p.* var. *pungens*, and from edge effects of 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; provides the basic requirements for growth; and includes 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 (59 FR 5499) and is currently occupied. This unit is essential 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. The features essential to the conservation of the species may require special management considerations or protection in this unit due to threats from invasive, nonnative plants and from recreational activities such as foot traffic, which could trample 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 the Manzanita County Park subunit located between Castroville Boulevard and San Miguel Canyon Road. On the east side of Highway 101, the unit consists of four additional subunits. The five 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; provides the basic requirements for growth; and includes 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, was included in our listing rule in reference to the Prunedale area (59 FR 5499), and is currently occupied (Caltrans 2001; Consortium of California Herbaria 2006). This unit is essential because it is one of only four units that are known to support populations in maritime chaparral and oak woodland habitats more representative of hotter, interior sites and is the easternmost of the units in the interior hills. The features essential to the conservation of the species may require special management considerations or protections in this unit due to threats from invasive, nonnative plants, which crowd out *Chorizanthe pungens* 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 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) on the south. Approximately 87 percent of this critical habitat unit is Federal land (8,172 ac (3,307 ha)) managed by BLM and the Army, 6 percent is State land (606 ac (245 ha)), and 7 percent is under local jurisdictions (654 ac (265 ha)). Portions of Fort Ord have been transferred to BLM; University of California, 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 (Corps 1997, Attachment A map; Zander Associates 2002, Figures 4–6). About one-half of Unit 8 still must be cleaned of environmental contaminants by the Army before it can be transferred to BLM.

Unit 8 contains space for individual and population growth, including sites for seed dispersal and germination; provides 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 (Corps 1997, pp. 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 essential 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 that include maritime chaparral and oak woodland habitats more representative of hotter, interior sites. The features essential to the conservation of the species may require special management considerations or protection in this unit due to threats from 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 that could trample 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 city 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; provides the basic requirements for growth; and includes 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 (59 FR 5499) 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 essential 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 revised critical habitat 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, pp. 755–757). The features essential to the conservation of the species may require special management considerations or protection in this unit due to threats from invasive, nonnative 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(a)(2) 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. Decisions by the 5th and 9th Circuit Court of Appeals have invalidated our definition of “destruction or adverse modification” (50 CFR 402.02) (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)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions

of the Act, we determine destruction or adverse modification 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 PCEs to be functionally established) to serve its intended conservation role for the species.

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 the 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, we document compliance with the requirements of section 7(a)(2) through our 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, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define “Reasonable and prudent alternatives” 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,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying 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 reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has

retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect *Chorizanthe pungens* var. *pungens* or its designated critical habitat 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 U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10(a)(1)(B) of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are 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 "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the essential features to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the essential physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for *Chorizanthe pungens* var. *pungens*. 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, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation

for *Chorizanthe pungens* 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 nonnative plants, and heavy recreational use; and

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

Exemptions and Exclusions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resource management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- 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 (Pub. L. 108-136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other 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 critical habitat designation. There are no Department of Defense lands with a completed INRMP within this final revised critical habitat designation. Therefore, there are no lands exempted from this revised designation under section 4(a)(3) of the Act.

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

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat 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 legislative history is clear that the Secretary is afforded broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis, we make this determination, then we can exclude the area only if such exclusion would not result in the extinction of the species.

Under section 4(b)(2) of the Act, we must consider the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. We consider a number of factors in a section 4(b)(2) analysis. For example, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. We also consider whether the landowners have developed any conservation plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at

any Tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider the economic impacts, environmental impacts, and any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that while lands proposed for revised designation of critical habitat for *Chorizanthe pungens* var. *pungens* are currently administered by the Department of Defense, all of the lands will be transferred to other landowners. The proposed revised designation did not include any military lands covered by an existing INRMP, any lands covered by a completed HCP for *C. p.* var. *pungens*, or any Tribal lands or trust resources. Therefore, we do not anticipate any impact to national security, Tribal lands, or habitat conservation plans from this critical habitat designation. Based on the best available information, we believe that all of the units contain the physical and biological features essential to *Chorizanthe pungens* var. *pungens*. In addition, as discussed below under the "Economic Analysis" section, our economic analysis indicates an overall low economic cost resulting from the revised designation. We have not identified any area for which the benefits of exclusion outweigh the benefits of inclusion; therefore, we have considered excluding, but have not excluded any areas from this revised designation of critical habitat for *C. p.* var. *pungens* based on economic impacts or other relevant factors.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. The Secretary may exclude areas from critical habitat for economic reasons if the Secretary determines that the benefits of such exclusion exceed the benefits of designating the area as critical habitat. However, this exclusion cannot occur if it will result in the extinction of the species concerned.

Following the publication of the proposed revised critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the revised designation. The draft economic analysis was made available for public review on October 16, 2007 (72 FR 58618). We accepted comments on the draft economic analysis until October 31, 2007.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for *Chorizanthe pungens* var. *pungens*. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

The draft economic analysis estimates pre-designation costs associated with the conservation of the species since the time of listing in 1994 to be approximately \$5.2 million (undiscounted). Discounted costs are estimated to be approximately \$6.2 million at a 3 percent discount rate or approximately \$7.9 million at a 7 percent discount rate. The draft economic analysis estimates post-designation costs associated with conservation efforts for *Chorizanthe pungens* var. *pungens* to be approximately \$17 million (undiscounted) over a 20-year period as a result of the proposed designation of revised critical habitat, including those costs coextensive with listing and recovery. Discounted future costs are estimated to be approximately \$13 million (\$0.85 million annualized) at a 3 percent discount rate or approximately \$9.6 million (\$0.85 million annualized) at a 7 percent discount rate.

The majority of the estimated costs are associated with management activities designed to preserve and enhance habitat for *Chorizanthe*

pungens var. *pungens* on lands managed by the California Department of Parks and Recreation, Department of the Army, University of California, and the Bureau of Land Management. The economic analysis considers the potential economic effects of actions relating to the conservation of *Chorizanthe pungens* var. *pungens*, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for *Chorizanthe pungens* var. *pungens* in areas containing the features essential to the conservation of the species. The analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use).

The analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the revised designation might unduly burden a particular group or economic sector. Finally, this analysis looks retrospectively at costs that have been incurred since the date *Chorizanthe pungens* var. *pungens* was listed as threatened (February 4, 1994; 59 FR 5499), and considers those costs that may occur in the 20 years following a designation of revised critical habitat. We evaluated the potential economic impact of this revised designation as identified in the analysis. Based on this evaluation, we believe that there are no disproportionate economic impacts that warrant exclusion under section 4(b)(2) of the Act at this time.

The Service also completed a final economic analysis of the proposed revised designation that updates the draft economic analysis by removing impacts that were not considered probable or likely to occur and by adding an estimate of the costs associated solely with the revised designation of critical habitat for *Chorizanthe pungens* var. *pungens* (incremental impacts). The final economic analysis estimates that the potential economic effects of actions relating to the conservation of *C. p.* var.

pungens, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to the designation of revised critical habitat will be \$17 million (undiscounted) over the next 20 years. The present value of these impacts, applying a 3 percent discount rate, is \$13 million (\$0.85 million annualized); or \$9.6 million (\$0.85 million annualized), using a discount rate of 7 percent. These cost estimates are the same as those estimated in the draft economic analysis. The final economic analysis also estimates that there are no anticipated costs attributable solely to the designation of revised critical habitat for *C. p. var. pungens* (incremental costs). All impacts quantified in the economic analysis are forecast to occur regardless of the revised critical habitat designation for *C. p. var. pungens*.

A copy of the final economic analysis with supporting documents may be obtained by contacting U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office (see ADDRESSES or download from the Internet at <http://www.fws.gov/ventura>).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866 (E.O. 12866), we evaluate four parameters in determining whether a rule is significant. The four parameters that would result in a designation of significant under E.O. 12866 are:

(a) The rule would have an annual economic effect of \$100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) The rule would create inconsistencies with other Federal agencies' actions.

(c) The rule would materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) The rule would raise novel legal or policy issues.

If the Office of Management and Budget (OMB) requests to review a rule designating critical habitat for a species, we designate the rule as significant because it may raise novel legal and policy issues. We then use the DEA of the proposed designation of critical habitat to evaluate the potential effects related to the other provisions of E.O. 12866 and make a determination as to whether the regulation may be significant for any of these other provisions.

In accordance with E.O. 12866, this document is not a significant rule since

OMB did not request to review this rule. On the basis of our economic analysis of the revised critical habitat for this species, we have determined that the revised final designation of critical habitat for this species will not have an annual effect on the economy of \$100 million or more or to affect the economy in a material way. We used this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific area as critical habitat. We also used it to help determine whether to exclude any area from critical habitat, as provided for under section 4(b)(2) of the Act. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule.

The designation of revised critical habitat for *Chorizanthe pungens* var. *pungens* will not create inconsistencies with other agencies' actions because no other Federal agencies designate critical habitat. Based on previous critical habitat designations and the economic analysis, we do not believe this rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients; however, we will continue to review this action for such impacts.

Further, E.O. 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (OMB Circular A-4, September 17, 2003). Under Circular A-4, once an agency determines that the Federal regulatory action is appropriate, the agency must consider alternative regulatory approaches. Because the determination of critical habitat is a statutory requirement under the Act, we must 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 species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or a combination of both, constitutes our regulatory alternative analysis for designations. Based on this evaluation, we believe that there are no disproportionate

economic impacts that warrant exclusion under section 4(b)(2) of the Act at this time.

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

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 et seq. as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must 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 (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. SBREFA amended 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.

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

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We apply the "substantial number" test individually to each industry to determine if certification is appropriate.

However, the SBREFA does not explicitly define “substantial number” or “significant economic impact.” Consequently, to assess whether a “substantial number” of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7(a)(2) of the Act on activities they fund, permit, or implement that may affect *Chorizanthe pungens* var. *pungens*. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

To determine if the revised designation of critical habitat for *Chorizanthe pungens* var. *pungens* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., residential and commercial development). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement.

In our draft economic analysis of the proposed revised critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of *Chorizanthe pungens* var. *pungens* and proposed designation of revised critical habitat. We determined from our draft analysis that the small business entities that could potentially be affected include one city government (City of Pacific Grove), and one private farm. However, costs were not associated with the City of Pacific Grove or the private farm because they are not currently

required to undertake actions to conserve the species and there is a low likelihood that their actions will involve a federal nexus in the future. A third entity, the Fort Ord Reuse Authority (FORA), was created by the State legislature in 1994, to oversee the civilian reuse and redevelopment of former Fort Ord. It sunsets in 2014, after which lands that it may have been managing on former Fort Ord may be jointly managed by multiple local governments. The Habitat Conservation Plan (HCP) currently being developed that will define the future distribution and management of former Fort Ord lands has not been completed. Therefore, for the purpose of the draft and final economic analysis, FORA was not classified as a small entity. Based on our economic analysis, we certify that the rule will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination (see **ADDRESSES** for information on obtaining a copy of the final economic analysis).

Energy Supply, Distribution, or Use

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. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. One critical habitat unit (Prunedale, Unit 7) contains 17 ac (7 ha) of land held in a conservation easement owned by Pacific Gas and Electric Company. Pacific Gas and Electric Company maintains power lines that cross this unit; however, because the company does not plan to develop this land any further, the designation of revised critical habitat is not expected to have an adverse effect on energy

production. This final rule to designate revised critical habitat for *Chorizanthe pungens* var. *pungens* 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 et seq.), we make 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) As discussed in the draft economic analysis of the proposed designation of revised critical habitat for *Chorizanthe pungens* var. *pungens* and the "Regulatory Flexibility Act" section above, there is expected to be no impact on small governments or small entities. There is no record of consultations between the Service and any of these governments since *C. p. var. pungens* was listed as threatened on February 4, 1994 (59 FR 5499). It is likely that small governments involved with developments and infrastructure projects would be interested parties or involved with projects involving consultations under section 7 of the Act for *C. p. var. pungens* within their jurisdictional areas. As identified in the draft economic analysis, any costs associated with this activity are likely to represent a small portion of a local government's budget. Costs were not associated with the City of Pacific Grove because it is not currently required to undertake actions to conserve the species and there is a low likelihood that their actions will involve a federal nexus in the future. Consequently, we do not believe that the designation of revised critical habitat for *C. p. var. pungens* will significantly or uniquely affect these small governmental entities because it will not produce a Federal mandate of \$100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of revised critical habitat imposes no obligations on State or local governments. As such, a Small Government Agency Plan is not required.

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 revised

critical habitat for *Chorizanthe pungens* var. *pungens* in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this designation of revised critical habitat for *C. p. var. pungens* does not pose significant takings implications for lands within or affected by the designation.

Federalism

In accordance with E.O. 13132 (Federalism), the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior and Department of Commerce policy, we requested information from, and coordinated development of, this final revised critical habitat designation with appropriate State resource agencies in California. However, we did not receive any comments from these State agencies. The designation of revised critical habitat in areas currently occupied by *Chorizanthe pungens* var. *pungens* may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have a slight incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical and biological features essential to the conservation of the species are more clearly defined, and the primary constituent element of the habitat necessary to the conservation of the species is specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating revised critical habitat in accordance with the provisions of the Act. This revised final rule uses standard property descriptions and identifies the primary constituent element 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 of 1995 (44 U.S.C. 3501 et seq.). 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 (NEPA)

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 et seq.) in connection with designating critical habitat under the Act. 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 by the Circuit Court of the United States for the Ninth Circuit Court (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 516 U.S. 1042 (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), E.O. 13175, and the Department of the 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. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that there are no Tribal lands occupied at the time of listing or currently occupied that contain the physical and biological features essential to the conservation,

and no Tribal lands that are unoccupied areas essential for the conservation of *Chorizanthe pungens* var. *pungens*. Therefore, revised critical habitat for *C. p.* var. *pungens* has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Ventura Fish and Wildlife Office (see ADDRESSES).

Author(s)

The primary author of this rulemaking is the staff of the Ventura Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

■ 2. In § 17.96(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 a vegetation structure arranged in a mosaic with openings between the dominant elements (e.g., scrub, shrub, oak trees, or clumps of herbaceous vegetation) that

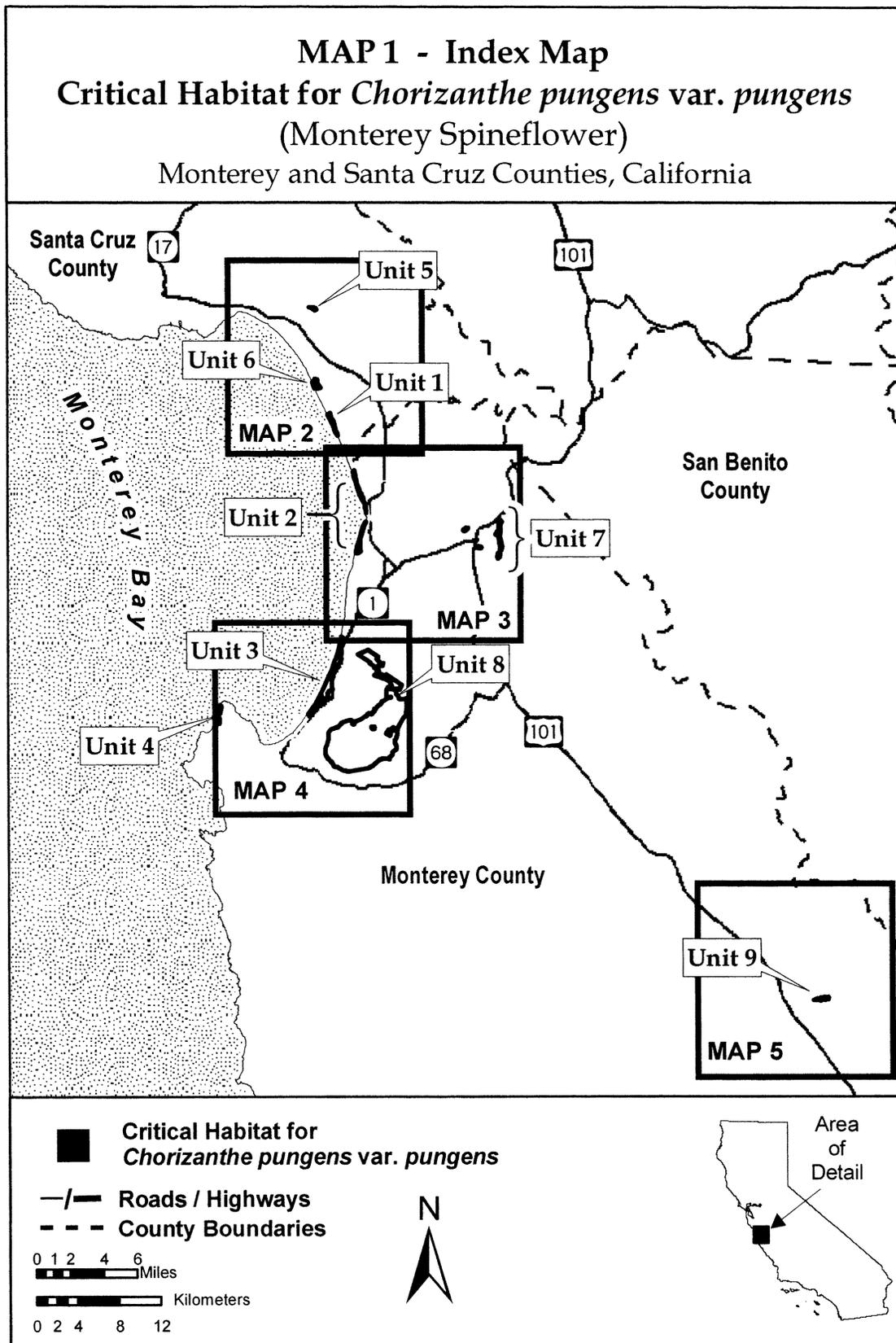
changes in spatial position as a result of physical processes such as windblown sands and fire and that allows sunlight to reach the surface of the following sandy soils: coastal beaches, dune land, Baywood sand, Ben Lomond sandy loam, Elder sandy loam, Oceano loamy sand, Arnold loamy sand, Santa Ynez 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 within the legal boundaries on the effective date of this rule.

(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.

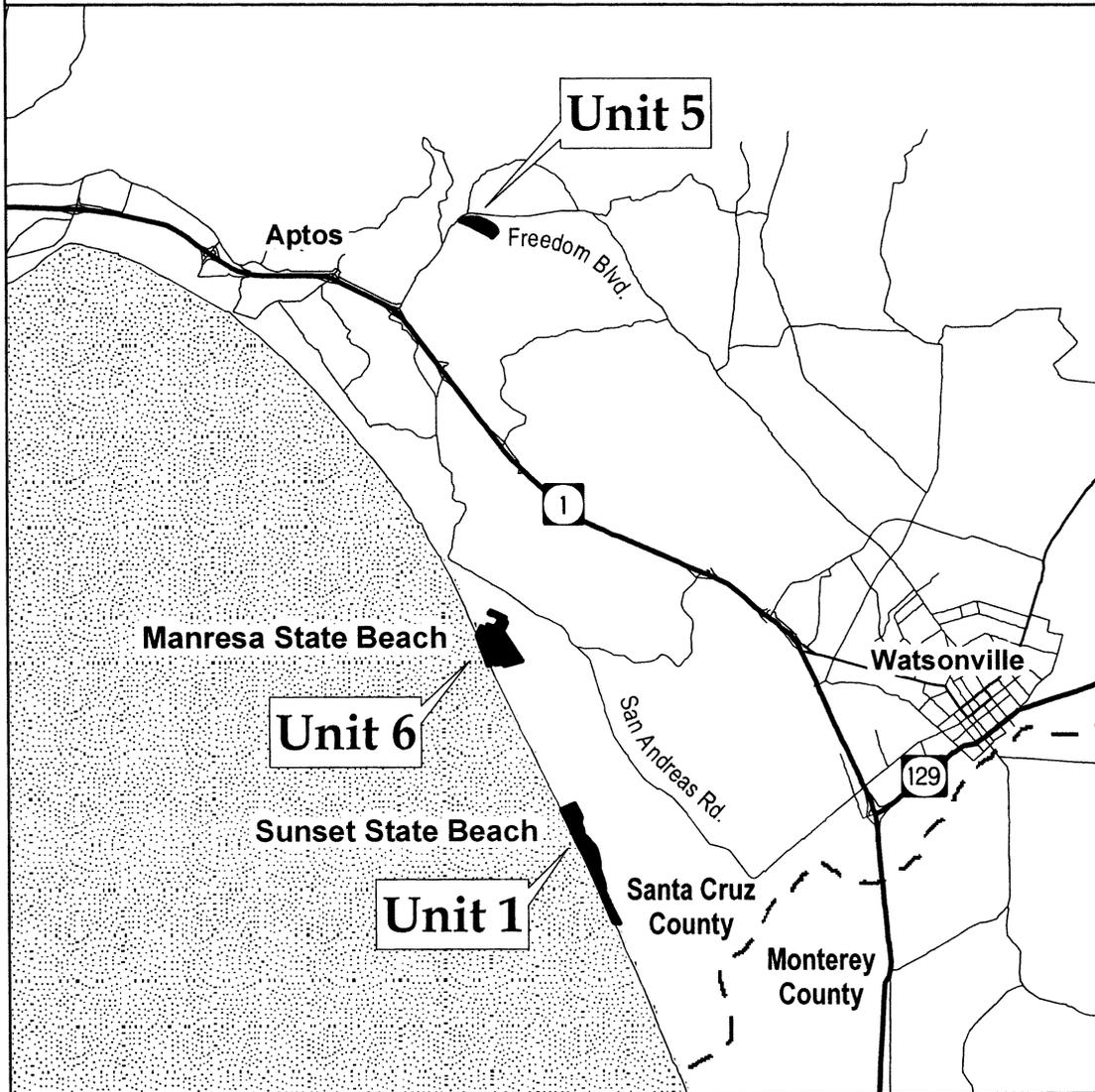
(i) From USGS 1:24,000 scale quadrangle Watsonville West. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 603929, 4083699; 604051, 4083487; 604059, 4083449; 604045, 4083383; 604045, 4083351; 604091, 4083265; 604106,

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:

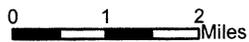
MAP 2 - Units 1, 5, and 6
Critical Habitat for Chorizanthe pungens var. pungens
(Monterey Spineflower)
Santa Cruz County, California

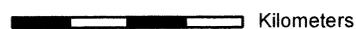


 Critical Habitat for Chorizanthe pungens var. pungens

 Roads / Highways

 County Boundaries

 Miles

 Kilometers





(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): 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; 607281, 4076268; 607363, 4076215; 607402, 4076180; 607386, 4076154; 607385, 4076136; 607405, 4076130; 607447, 4076140; 607463, 4076129; 607474, 4076104; 607446, 4076087; 607459, 4076071; 607468, 4076053; 607462, 4076033; 607463, 4076012; 607478, 4075951; 607520, 4075917; 607562, 4075871; 607571, 4075831; 607568, 4075796; 607574, 4075776; 607613, 4075747; 607633, 4075682; 607659, 4075646; 607659,

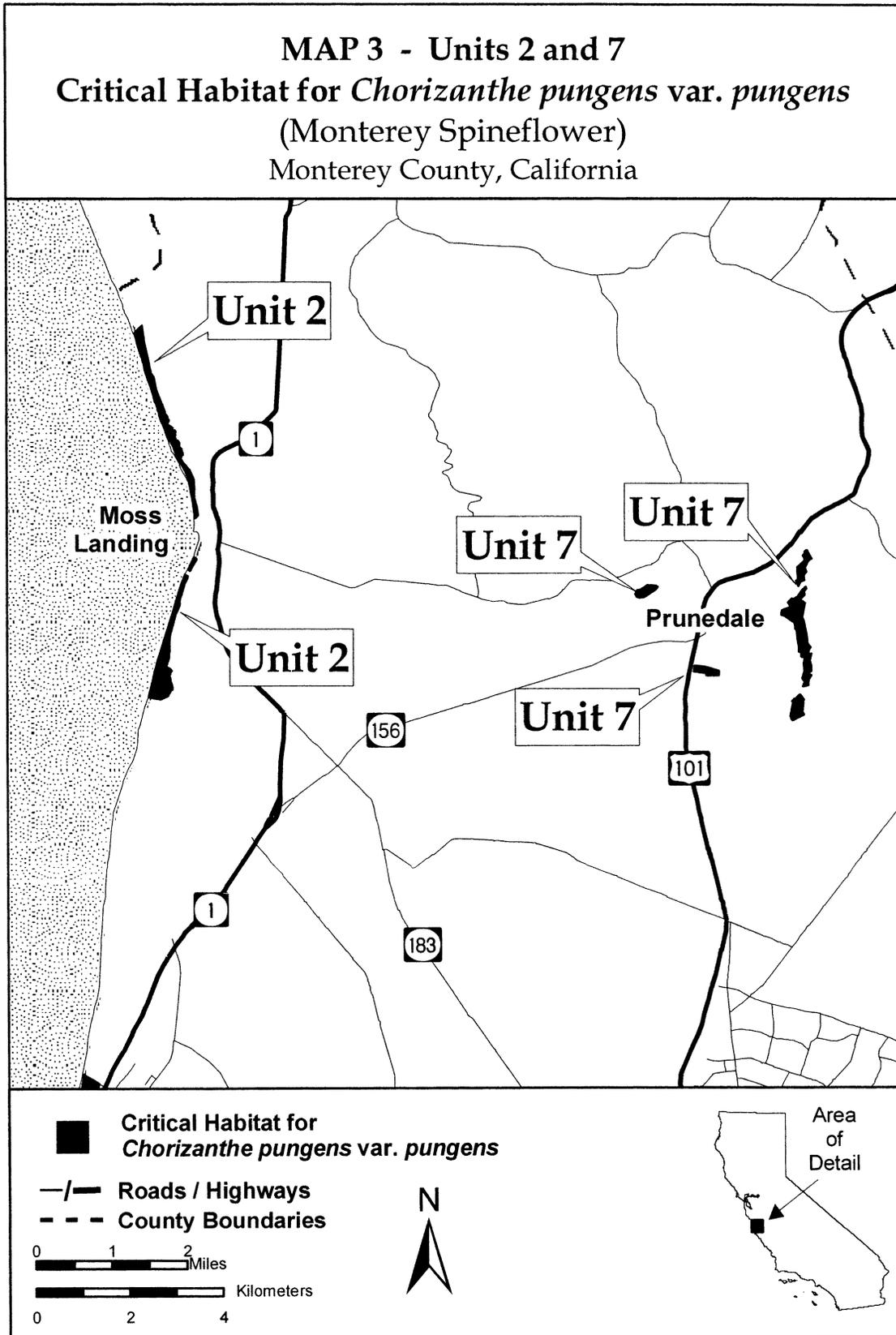
4075637; 607654, 4075633; 607631, 4075619; 607636, 4075576; 607597, 4075556; 607690, 4075440; 607823, 4075301; 607910, 4075107; 607947, 4074934; 607954, 4074719; 608021, 4074544; 608058, 4074335; 607999, 4074277; 607936, 4074603; 607872, 4074869; 607801, 4075108; 607725, 4075268; 607599, 4075459; 607507, 4075612; 607438, 4075772; 607271, 4076054; 607170, 4076277; 607008, 4076687; 606805, 4077227; 606661, 4077584; 606561, 4077910; 606454, 4078187; 606601, 4078347; 606679, 4078021; 606792, 4077578; 606824, 4077463; 606863, 4077367; 606841, 4077344; returning to 606846, 4077325.

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



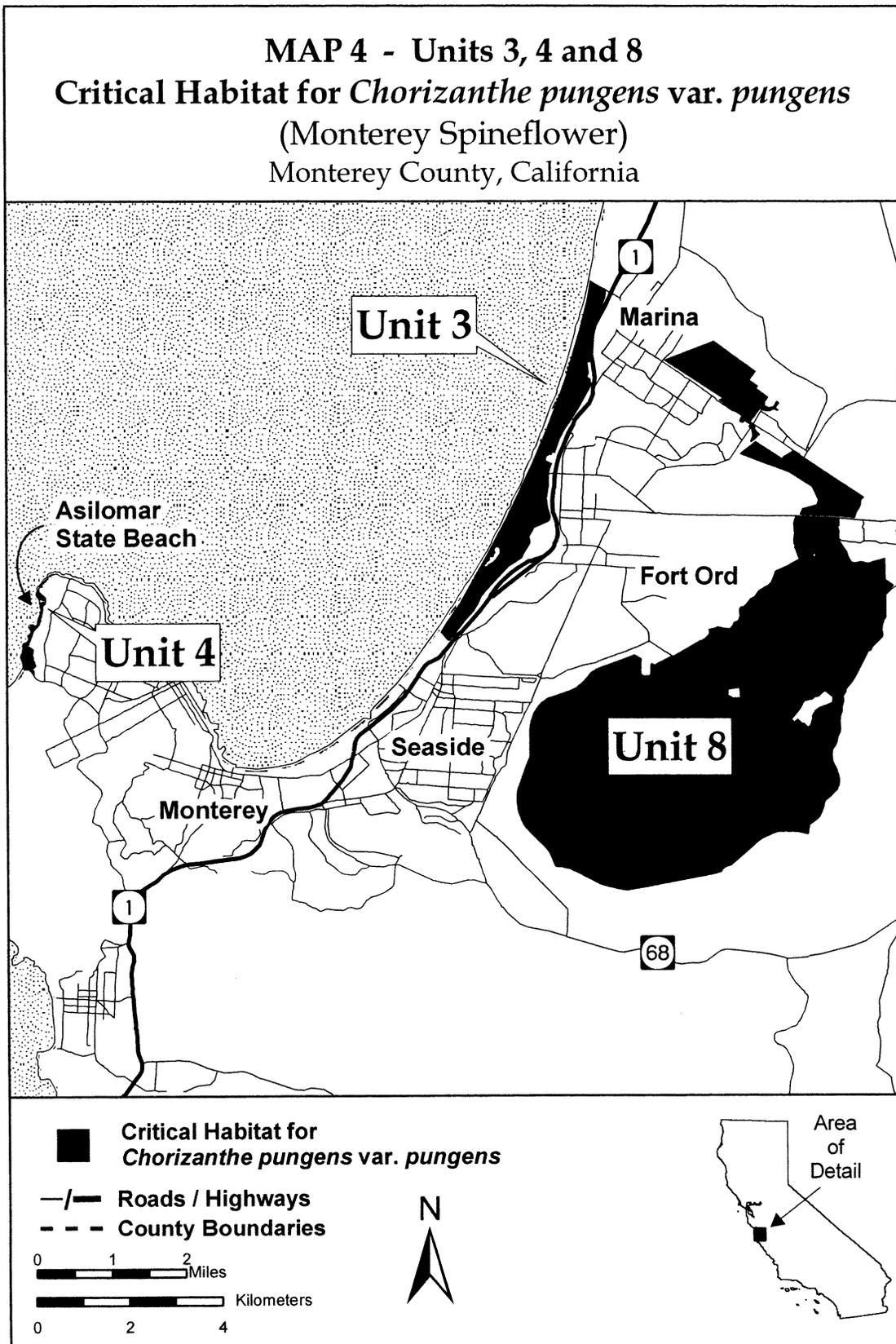
(8) Unit 3: Marina Unit, Monterey County, California.

(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:



(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 Boulevard 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; 621233, 4071259; 621258, 4071205; 621283, 4071171; 621295, 4071168; 621290, 4071132; 621295, 4071048; 621284, 4070900; 621321, 4070847; 621314, 4070833; 621093, 4070705; 621046, 4070723; returning to 621025, 4070792.

(iii) From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 620707, 4073069; 620896, 4073161; 620837, 4073252; 620899, 4073326; 620937, 4073319; 621026, 4073386; 621107, 4073506; 621199, 4073608; 621206, 4073579;

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) From USGS 1:24,000 scale quadrangle Prunedale. Land bounded by the following UTM zone 10 NAD83 coordinates (E, N): 617547, 4073216; 617576, 4073293; 617656, 4073321; 617785, 4073418; 617979, 4073424; 618019, 4073404; 617985, 4073355; 617733, 4073162; 617632, 4073136; 617572, 4073162; returning to 617547, 4073216.

(vi) Note: Map of Unit 7 is provided at paragraph (7)(iv) 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, 4059733;
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;
612265, 4053541; 612273, 4053470;

612274, 4053433; 612270, 4053404;
612250, 4053323; 612251, 4053272;
612255, 4053218; 612238, 4053128;
612226, 4053030; 612228, 4052996;
612255, 4052840; 612255, 4052818;
612248, 4052779; 612235, 4052738;
612193, 4052664; 612188, 4052579;
612167, 4052495; 612147, 4052453;
612110, 4052400; 612097, 4052366;
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;
611934, 4050984; 611908, 4050937;
611867, 4050885; 611722, 4050757;
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.

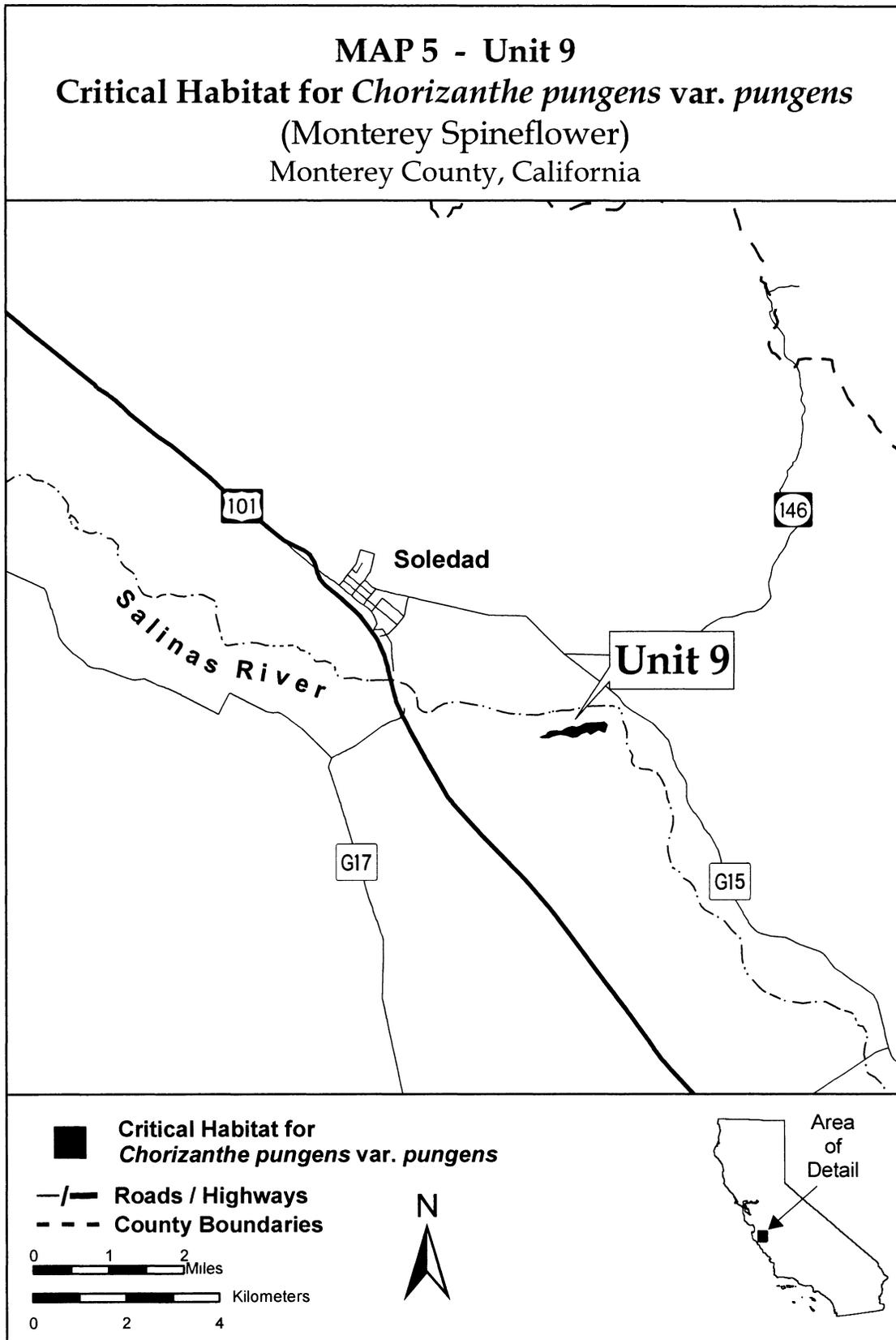
(i) From USGS 1:24,000 scale quadrangle Soledad. Land bounded by the following UTM zone 10 NAD83

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



* * * * *

Dated: December 14, 2007.

Lyle Laverly,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 08-6 Filed 1-8-08; 8:45 am]

BILLING CODE 4310-55-C

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 070213032-7032-01]

RIN 0648-XE80

Fisheries of the Exclusive Economic Zone Off Alaska; Inseason Adjustment to the 2008 Gulf of Alaska Pacific Cod Total Allowable Catch Amount

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment; request for comments.

SUMMARY: NMFS is adjusting the 2008 total allowable catch (TAC) amounts for the Gulf of Alaska (GOA) Pacific cod fishery. This action is necessary because NMFS has determined this TAC is incorrectly specified. This action will ensure the GOA Pacific cod TAC does not exceed the appropriate amount based on the best available scientific information for Pacific cod in the GOA. This action is consistent with the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska Management Area (FMP).

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 4, 2008, until the effective date of the 2008 and 2009 final harvest specifications for GOA groundfish, unless otherwise modified

or superseded through publication of a notification in the **Federal Register**.

Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 22, 2008.

ADDRESSES: You may submit comments, identified by RIN 0648-XE80, by any one of the following methods:

- Mail to: P.O. Box 21668, Juneau, AK 99802
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska
- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>
- FAX to 907-586-7557, Attn: Ellen Sebastian

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the FMP prepared by the North Pacific Fishery Management Council (Council) under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 Pacific cod TAC in the GOA was set at 54,194 metric tons (mt) by the

2007 and 2008 harvest specification for groundfish in the GOA (72 FR 9676, March 5, 2007).

In December 2007, the Council recommended a 2008 Pacific cod TAC of 50,269 mt for the GOA. This amount is less than the 54,194 mt established by the 2007 and 2008 harvest specification for groundfish in the GOA (72 FR 9676, March 5, 2007). The TAC recommended by the Council is based on the Stock Assessment and Fishery Evaluation report (SAFE), dated November 2007, which NMFS has determined is the best available scientific information for this fishery.

Steller sea lions occur in the same location as the Pacific cod fishery and are listed as endangered under the Endangered Species Act (ESA). Pacific cod is a principal prey species for Steller sea lions in the GOA. The seasonal apportionment of Pacific cod harvest is necessary to ensure the groundfish fisheries are not likely to cause jeopardy of extinction or adverse modification of critical habitat for Steller sea lions. The regulations at § 679.20(a)(6)(ii) and § 679.20(a)(12)(i) specifies how the Pacific cod TAC shall be apportioned.

In accordance with § 679.25(a)(2)(i)(B), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that, based on the November 2007 SAFE report for this fishery, the current GOA Pacific cod TAC is incorrectly specified. Consequently, the Regional Administrator is adjusting the 2008 Pacific cod TAC to 50,269 mt in the GOA.

Pursuant to § 679.20(a)(6)(ii) and § 679.20(a)(12)(i), Table 8 of the 2007 and 2008 final harvest specifications for groundfish in the GOA (72 FR 9676, March 5, 2007) is revised for the 2008 Pacific cod TACs in the Western, Central, and Eastern GOA consistent with this adjustment.

TABLE 8—FINAL 2008 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS
(values are rounded to the nearest metric ton)

| Season | Regulatory area | TAC | Component allocation | |
|----------------------------------|-----------------|--------|----------------------|----------------|
| | | | Inshore (90%) | Offshore (10%) |
| A season (60%) B season (40%) | Western | 19,449 | 17,504 | 1,945 |
| | | 11,669 | 10,502 | 1,167 |
| | | 7,780 | 7,002 | 778 |
| A season (60%) B season (40%) | Central | 28,426 | 25,583 | 2,843 |
| | | 17,056 | 15,350 | 1,706 |
| | | 11,370 | 10,233 | 1,137 |
| | Eastern | 2,394 | 2,155 | 239 |