

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

16. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) any exemption from coverage of the rule, or any part thereof, for such small entities.

17. The Commission seeks comment on the economic impact that the proposals described in the FNPRM might have on small entities. With the exception of the cost-sharing rules, the proposals on which the FNPRM seeks comment are based on the voluntary participation of both new 700 MHz licensees and incumbent television broadcasters. Cost-sharing rules, if adopted, would require those new 700 MHz licensees that benefit from a clearing agreement with a TV incumbent to share the costs of that agreement. Insofar as small entities could not afford to enter into clearing agreements without the costs being shared by other 700 MHz licensees, the cost-sharing rules would provide a positive economic benefit to small entities. To the extent that other licensees would enter into clearing agreements without the costs being shared by small entities, thereby giving the small entities a "free ride," cost-sharing rules would produce a significant economic impact on small entities. Finally, to the extent that small entities would prefer not to enter into clearing agreements but to wait until the incumbent TV licensee was required to clear the band by statute, and cost-sharing rules would require small entities to share the costs of clearing agreements, cost-sharing rules would also produce a significant economic impact on small entities. As a general matter, cost-sharing rules must apply to all licensees in order for them to operate as intended. Moreover, without a channelization plan for the lower 700 MHz band, it is not possible at this time to determine whether the Commission could exempt some or all small entities from any cost-sharing rules adopted, or otherwise minimize the impact on small entities. One significant alternative the

Commission is considering is not to adopt any cost-sharing rules.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

18. None.

Ordering Clauses

19. Notice is hereby given of the proposed regulations described in the FNPRM, and that comment is sought on these proposals.

20. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of the MO&O and FNPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act of 1980, Public Law 96-354, 94 Stat. 1164, 5 U.S.C. 601-612 (1980).

Federal Communications Commission.

Shirley Suggs,

Chief, Publications Group.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AG27

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Morro Shoulderband Snail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the Morro shoulderband snail (*Helminthoglypta walkeriana*) pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 1,039 hectares (2,566 acres) fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in San Luis Obispo County, California. If this proposed rule is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency.

Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area

as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation and our approaches for handling habitat conservation plans (HCPs). We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments from all interested parties until September 11, 2000. Public hearing requests must be received by August 28, 2000.

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

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California, 93003.

2. You may hand-deliver written comments to our Ventura Office, at the address given above.

3. You may send comments by electronic mail (e-mail) to FW1vees_MorrosnailCH@r1.fws.gov. For directions on how to submit electronic filing of comments, see **Public Comments Solicited** section.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Ventura Office.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Ventura Fish and Wildlife Office, at the above address (telephone 805/644-1766; facsimile 805/644-3958).

SUPPLEMENTARY INFORMATION:

Background

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

The shell of the Morro shoulderband snail is slightly translucent (clear) and has 5-6 whorls. Its dimensions are 18 to 29 millimeters (mm) (0.7 to 1.1 inches (in.)) in diameter and 14 to 25 mm (0.6 to 1.0 in.) in height. The Morro shoulderband snail can be distinguished from the Big Sur shoulderband snail (*Helminthoglypta umbilicata*), another

native snail in the same area, by its more globose (globe shaped) shell shape and presence of incised (deeply cut) spiral grooves (Roth 1985). The shell of the Big Sur shoulderband snail tends to be flatter and shinier. The brown garden snail (*Helix aspersa*) also occurs in Los Osos with the Morro shoulderband snail and has a marbled pattern on its shell, whereas the Morro shoulderband snail has one narrow dark brown spiral band on the shoulder. The Morro shoulderband's spire is low-domed, and half or more of the umbilicus (the cavity in the center of the base of a spiral shell that is surrounded by the whorls) is covered by the apertural (small opening) lip (Roth 1985).

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

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

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

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

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

The Morro shoulderband snail is threatened by destruction of its habitat due to increasing development and by degradation of its habitat due to invasion of nonnative plant species (e.g., veldt grass (*Ehrharta calycino*)), structural changes to its habitat due to maturing of dune vegetation, and recreational use (e.g., heavy off-highway activity). In addition to the known threats, possible threats to the snail include competition for resources with the nonnative brown garden snail (although no assessment has been made of possible dietary overlap between the species); the small and isolated nature of the remaining populations; the use of pesticides (including snail and slug baits); and the introduction of nonnative predatory snails.

Previous Federal Action

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

In 1984, we undertook a status review of the snail, which ended in a report by Roth (1985). Based on that report, we included the Morro shoulderband snail as a category one species in the Animal Notices of Review of May 22, 1984 (40 FR 675); January 6, 1989 (54 FR 554);

and November 21, 1991 (56 FR 58820). A category one species is one on which we have sufficient information to support a listing.

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

At the time of listing, we concluded that designation of critical habitat for the Morro shoulderband snail was not prudent because such designation would not benefit the species. We were also concerned that critical habitat designation would likely result in an increased threat of vandalism or collection of the species. However, we have determined that instances of vandalism have not increased since the listing of the Morro shoulderband snail, and the threats to this species and its habitat from specific instances of collection and habitat destruction do not outweigh the broader educational, potential regulatory, and other possible benefits that designation of critical habitat would provide for this species. A designation of critical habitat can provide educational benefits by formally identifying those areas essential to the conservation of the species. These areas were already identified in the recovery plan as the focus of our recovery efforts for the Morro shoulderband snail.

On March 4, 1999, the Southwest Center for Biological Diversity, the Center for Biological Diversity, and Christians Caring for Creation filed a lawsuit in the Northern District of California against the U.S. Fish and Wildlife Service and Bruce Babbitt, Secretary of the Department of the Interior (Secretary), for failure to designate critical habitat for seven species: the Alameda whipsnake (*Masticophis lateralis euryxanthus*), the Zayante band-winged grasshopper (*Trimerotropis infantilis*), the Morro shoulderband snail (*Helminthoglypta walkeriana*), the arroyo southwestern toad (*Bufo microscaphus californicus*), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), the spectacled eider (*Somateria fischeri*), and the Steller's eider (*Polysticta stelleri*) (Southwest Center for Biological Diversity v. U.S. Fish and Wildlife, CIV 99-1003 MMC). On November 5, 1999, William Alsup, U.S. District Judge, dismissed the plaintiffs' lawsuit

pursuant to a settlement agreement entered into by the parties. Publication of this proposed rule is consistent with that settlement agreement.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered species or a threatened species to the point at which listing under the Act is no longer necessary.

Section 4(b)(2) of the Act requires that we base critical habitat proposals upon the best scientific and commercial data available, after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species (section 4(b)(2) of the Act).

Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for conservation of that species. Designation of critical habitat alerts the public as well as land-managing agencies to the importance of these areas.

Critical habitat also identifies areas that may require special management considerations or protection, and may provide protection to areas where significant threats to the species have been identified. Critical habitat receives some protection from destruction or adverse modification through required consultation under section 7 of the Act. See "Section 7 Consultation" below. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, establish numerical population goals, prescribe specific

management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery, conservation, and management plans, and through section 7 consultations and section 10 permits.

Methods

In determining areas that are essential to conserve the Morro shoulderband snail, we used the best scientific and commercial data available. This included data from research and survey observations published in peer-reviewed articles, recovery criteria outlined in the recovery plan, regional Geographic Information System (GIS) vegetation coverages, and data collected from reports submitted by biologists holding section 10(a)(1)(A) recovery permits.

Primary Constituent Elements

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

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

Criteria Used To Identify Critical Habitat

In an effort to map areas that have the features essential to the conservation of the species, we used data on known Morro shoulderband snail locations and conservation planning areas that were identified in the final recovery plan (Service 1998) as essential for the recovery of the species. All of the proposed critical habitat areas are occupied.

We did not map critical habitat in sufficient detail to exclude all developed areas such as towns, housing developments, and other lands unlikely to contain primary constituent elements essential for Morro shoulderband snail conservation. Areas of existing features and structures within the unit boundaries, such as buildings, roads, aqueducts, railroads, airports, and paved areas, will not contain one or more of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or the primary constituent elements in adjacent critical habitat.

We also considered the existing status of lands in designating areas as critical habitat. The Morro shoulderband snail is known to occur on State, county, and private lands. Section 10(a) of the Act authorizes us to issue permits for the taking of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. Non-Federal and private lands that are covered by an existing operative HCP and an executed implementation agreement (IA) for Morro shoulderband snail under Section 10(a)(1)(B) of the Act receive special management and protection under the terms of the HCP/IA and therefore are not proposed for inclusion in critical habitat since then do not meet the definition of critical habitat in section 3(5) of the Act.

Critical habitat designation is not intended to discourage the development of HCPs to protect essential habitat areas for the Morro shoulderband snail on non-Federal lands. To the contrary, we consider HCPs to be one of the most important methods through which non-Federal landowners can help conserve listed species while resolving potential land-use conflicts. We provide technical assistance and work closely with applicants throughout development of

HCPs to help identify special management considerations for listed species. We intend that HCPs provide a package of protection and management measures sufficient to address the conservation needs of the species.

Proposed Critical Habitat Designation

The approximate area encompassing proposed critical habitat by land ownership is shown in Table 1. Proposed critical habitat includes Morro shoulderband snail habitat throughout the species' existing range in the United States (*i.e.*, San Luis Obispo County,

California). Lands proposed are under private and State and local ownership. The species is not known to occur or to have historically occurred on Federal lands. Lands proposed as critical habitat have been divided into three Critical Habitat Units. Brief descriptions of each unit, and our reasons for proposing it as critical habitat, are presented below.

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

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

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

Unit 1: Morro Spit and West Pecho
 Unit 1 encompasses areas managed by Montana de Oro State Park (Dunes Natural Preserve) and the City of Morro Bay (north end of spit), including the length of the spit and the foredune areas extending south toward Hazard Canyon. The unit is occupied by the Morro shoulderband snail, and it provides dune scrub habitat for the species. The spit's windward side and its north end are nonvegetated; patches of vegetation occur along its leeward side on Morro Bay. The West Pecho portion of this unit lies to the east of the Morro Spit Conservation Planning Area and is bounded on the east by Pecho Road and the community of Los Osos. It extends north to the Bay and south to Hazard Canyon. Elevations range from sea level on the Bay to about 75 meters (m) (250 feet (ft)) along its southeastern edge. Vegetation associations include coastal dune scrub, with coastal sage scrub closer to Hazard Canyon. The California Department of Fish and Game owns an ecological reserve in this unit, which is managed cooperatively with adjoining State Park property. Privately owned lands occur to the northeast in the community of Los Osos, but no private lands are included in this unit and are not reflected in the approximate area of the critical habitat proposed. Approximately 676 hectares (ha) (1,670 acres (ac)) occur on State land, and 65 ha (160 ac) occur on local government land.

Unit 2: South Los Osos
 Unit 2 is bounded on the north and east by residential development in the community of Los Osos and agricultural fields. The area on the lower slopes of the Irish Hills, where the vegetation is composed of maritime chaparral, is currently occupied by the Morro shoulderband snail and is considered

essential. We are designating approximately 130 ha (320 ac) of this area as critical habitat. This area is privately owned.

Unit 3: Northeast Los Osos
 The Northeast Los Osos Critical Habitat Unit includes undeveloped areas between Los Osos Creek and Baywood Park and is divided by South Bay Boulevard. Its elevation range is from sea level to about 30 m (100 ft). Vegetation is dominated by variants of coastal sage and dune scrub, with scattered stands of manzanita (*Arctostaphylos* spp.) and coast live oak (*Quercus agrifolia*). The Morro shoulderband snail is known to occupy this unit. This unit includes the State- and county-owned Elfin Forest Preserve, portions of Morro Bay State Park, and privately owned lands. The Los Osos Center, Hord Residential, and MCI/Worldcom HCPs fall within the unit boundaries, but areas where take has been authorized are not being proposed for critical habitat. Approximately 49 ha (121 ac) of proposed critical habitat in this unit occur on State land, and 119 ha (295 ac) occur on private land.

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 do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. When multiple units of critical habitat are designated, each unit may serve as the basis of a jeopardy analysis if protection of different facets of the species' life cycle or its distribution are essential to the species as a whole for both its survival and

recovery. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. In 50 CFR 402.02, "jeopardize the continued existence" (of a species) is defined as engaging in an activity likely to result in an appreciable reduction in the likelihood of survival and recovery of a listed species. "Destruction or adverse modification" (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated. Thus, the definitions of "jeopardy" to the species and "adverse modification" of critical habitat are nearly identical.

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed

critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as a biological opinion if the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

Under section 7(a)(2), if a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. Through this consultation, we would advise the agencies whether the permitted actions would likely jeopardize the continued existence of the species or adversely modify critical habitat.

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

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

Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (USACE) under section 404 of the Clean Water

Act or a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (e.g., from the Federal Highway Administration (FHA), Environmental Protection Agency (EPA), or Federal Emergency Management Agency (FEMA)), will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted, do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the Morro shoulderband snail is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may destroy or adversely modify critical habitat include, but are not limited to:

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

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

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may "result in the destruction or adverse modification of" critical habitat with the requirements for actions that may "jeopardize the continued existence of" a listed species. Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, the ramifications of its designation are few or none. Designation of critical habitat in areas occupied by the Morro shoulderband snail is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. When critical habitat

is designated in unoccupied areas, the designation could result in an increase in regulatory requirements on Federal agencies; however, all of the proposed critical habitat for the Morro shoulderband snail is occupied.

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

(1) Activities conducted by the USACE (e.g., ordnance removal);

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

(3) Other activities funded or permitted by Federal agencies (e.g., EPA, FEMA).

Relationship to Habitat Conservation Plans

Several habitat conservation planning efforts have been completed within the range of the Morro shoulderband snail. The Los Osos Center HCP, Hord Residential HCP, and MCI/Worldcom HCP contributed funds toward the purchase and perpetual management of several acres to serve as conservation sites for the Morro shoulderband snail. Because the snail habitat preserved in these existing HCP planning areas will be managed for the benefit of the snail under the terms of the individual HCPs, no additional management considerations or protections are required for those lands. Therefore, we have determined that non-Federal lands within approved HCP planning areas for the Morro shoulderband snail do not meet the definition of critical habitat in the Act, and we are not proposing designation of such lands as critical habitat.

HCPs currently under development are intended to provide for protection and management of habitat areas essential for the conservation of the Morro shoulderband snail, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the snail. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks. We fully expect that HCPs undertaken by local jurisdictions (e.g., counties, cities) and other parties will identify, protect, and provide appropriate management for those

specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of these proposed HCPs and proposed permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and permits will not result in destruction or adverse modification of critical habitat.

We provide technical assistance and work closely with applicants throughout the development of HCPs to identify appropriate conservation management and lands essential for the long-term conservation of the Morro shoulderband snail. Several HCP efforts are now under way for listed species in areas within the range of the Morro shoulderband snail in areas we propose as critical habitat. These HCPs, coupled with appropriate adaptive management, should provide for the conservation of the species. However, since these HCP are not completed these areas have been included in this proposed critical habitat designation. We are soliciting comments on whether future approval of HCPs and issuance of section 10(a)(1)(B) permits for the Morro shoulderband snail should trigger revision of designated critical habitat to exclude lands within the HCP area and, if so, by what mechanism (see Public Comments Solicited section).

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, Eastside Federal Complex, 911 N.E. 11th Ave, Portland, OR 97232 (telephone 503/231-2063; facsimile 503/231-6243).

Economic Analysis

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

final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day comment period at that time.

Public Comments Solicited

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

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

(2) Specific information on the amount and distribution of Morro shoulderband snail habitat, and what habitat is essential to the conservation of the species and why;

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

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and,

(5) Economic and other values associated with designation of critical habitat for the Morro shoulderband snail, such as those derived from nonconsumptive uses (e.g., hiking, camping, bird-watching, "existence values," improved air quality, increased soil retention, and changes in administration *i.e.* maintenance of area).

In this proposed rule, we do not propose to designate critical habitat on non-Federal and private lands within the boundaries of an existing approved HCP with an executed IA for Morro shoulderband snail approved under section 10(a)(1)(B) of the Act because the existing HCP provides for long-term commitments to conserve the species and areas essential to the conservation of the snail. We believe that such areas do not meet the definition of critical habitat because they do not need special management considerations or protection. However, we are specifically soliciting comments on the appropriateness of this approach, and on the following or other alternative approaches for critical habitat designation in areas covered by existing approved HCPs:

(1) Designate critical habitat without regard to existing HCP boundaries and

allow the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorized will not destroy or adversely modify critical habitat; or

(2) Designate as critical habitat reserves, preserves, and other conservation lands identified by approved HCPs on the premise that they encompass areas that are essential to conservation of the species within the HCP area and will continue to require special management protection in the future. Under this approach, all other lands covered by existing approved HCPs where incidental take for the Morro shoulderband snail is authorized under a legally operative permit pursuant to section 10(a)(1)(B) of the Act would be excluded from critical habitat.

The amount of critical habitat we designate for the Morro shoulderband snail in a final rule may either increase or decrease, depending upon which approach we adopt for dealing with designation in areas of existing approved HCPs.

We are also seeking comments on critical habitat designation relative to future HCPs. Several conservation planning efforts are now under way within the range of the Morro shoulderband snail, and other listed and nonlisted species, in areas we are proposing as critical habitat. For areas where HCPs are currently under development, we are proposing to designate critical habitat for areas that we believe are essential to the conservation of the species and need special management or protection. We invite comments on the appropriateness of this approach.

In addition, we invite comments on the following or other approaches for addressing critical habitat within the boundaries of future approved HCPs upon issuance of section 10(a)(1)(B) permits for the Morro shoulderband snail:

(1) Retain critical habitat designation within the HCP boundaries and use the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorize will not destroy or adversely modify critical habitat;

(2) Revise the critical habitat designation upon approval of the HCP and issuance of the section 10(a)(1)(B) permit to retain only preserve areas, on the premise that they encompass areas essential for the conservation of the species within the HCP area and require special management and protection in the future. Assuming that we conclude, at the time an HCP is approved and the associated incidental take permit is

issued, that the plan protects those areas essential to the conservation of the Morro shoulderband snail, we would revise the critical habitat designation to exclude areas outside the reserves, preserves, or other conservation lands established under the plan. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries;

(3) As in (2) above, retain only preserve lands within the critical habitat designation, on the premise that they encompass areas essential for conservation of the species within the HCP area and require special management and protection in the future. However, under this approach, the exclusion of areas outside the preserve lands from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the boundaries of the preserve lands and the revision of designated critical habitat during the public review and comment process for HCP approval and permitting;

(4) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no further special management or protection is required. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries; or

(5) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no additional special management or protection is required. This exclusion from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the revision of designated critical habitat during the public notification process for HCP approval and permitting.

Please submit comments as an ASCII file format and avoid the use of special characters and encryption. Please also include "Attn: [RIN number]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Office at phone number 805/644-1766.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

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

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be made at least 15 days prior to the close of the public comment period. Such requests must be made in writing and be addressed to the Field Supervisor of our Ventura Fish and Wildlife Office (see **ADDRESSES** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make proposed rules easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

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

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency (see Table 2 below). Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" under the Act. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have a Federal "sponsorship" of their actions

are not restricted by the designation of critical habitat (however, they continue to be bound by the provisions of the Act concerning "take" of the species).

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

restrictions to those that currently exist because all of the proposed critical habitat occurs in occupied areas.

Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the

continued existence of the species, and, as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects in areas of occupied habitat.

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

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

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

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

² Activities initiated by a Federal agency.

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

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

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

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

- (1) Activities conducted by the USACE (e.g. ordnance removal);
- (2) Road construction and maintenance funded by the FHA; and
- (3) Other activities funded or permitted by Federal agencies (e.g., EPA, FEMA).

Many of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these

actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

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

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

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of \$100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas of critical habitat occupied by the species.

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.):

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

(b) This rule will not produce a Federal mandate of \$100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, the rule does not have significant

takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the Morro shoulderband snail. Due to current public knowledge of the species protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions in areas of occupied critical habitat, we do not anticipate that property values will be affected by the critical habitat designation. Additionally, critical habitat designation does not preclude development of HCPs and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have the opportunity to utilize their property in ways consistent with the survival of the Morro shoulderband snail.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from and coordinated development of this critical habitat proposal with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the Morro shoulderband snail imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. By making this definition and identification, we would not alter where and what federally sponsored activities may occur. However, having this information may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and

meets the requirements of sections 3(a) and 3(b)(2) of the Order. We propose to designate critical habitat in accordance with the provisions of the Act, and plan public hearings, if requested, on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Morro shoulderband snail.

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

This rule does not contain any information collection requirements that require Office of Management and Budget (OMB) approval under the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to collection of information unless it displays a currently valid OMB control number. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, you must send your comments to OMB by the above referenced date.

National Environmental Policy Act

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

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we understand that Federally recognized Tribes must be related to on a Government-to-Government basis.

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

References Cited

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25–27, 52, 53 *in* Mac, M.J., P.A. Opler, C.E. Puckett Haecker, and P.D. Doran, eds. Status and trends of the Nation's biological resources. U.S. Department of the Interior, U.S. Geological Survey, Washington D.C.

Hemphill, H. 1911. Descriptions of some varieties of shells with short notes on the geographical range and means of distribution of land shells. Transactions of the San Diego Society of Natural History (1):99–108.

Hill, D.L. 1974. *Helminthoglypta walkeriana*: A rare and endangered land mollusc. Senior Project, California Polytechnic State University, San Luis Obispo. 21 pp.

Roth, B. 1985. Status survey of the banded dune snail, *Helminthoglypta walkeriana*. Unpublished report prepared for U.S. Fish and Wildlife Service, Sacramento, California. 27 pp. + figures.

U.S. Fish & Wildlife Service. 1998. Recovery plan for the Morro shoulderband snail and four plants from western San Luis Obispo County, California. U.S. Fish and Wildlife Service, Portland, Oregon. 75 pp.

Author

The primary authors of this document are Greg Sanders and Ron Popowski of our Ventura Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

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

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

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

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

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

3. Amend § 17.95 by adding new paragraph (f) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

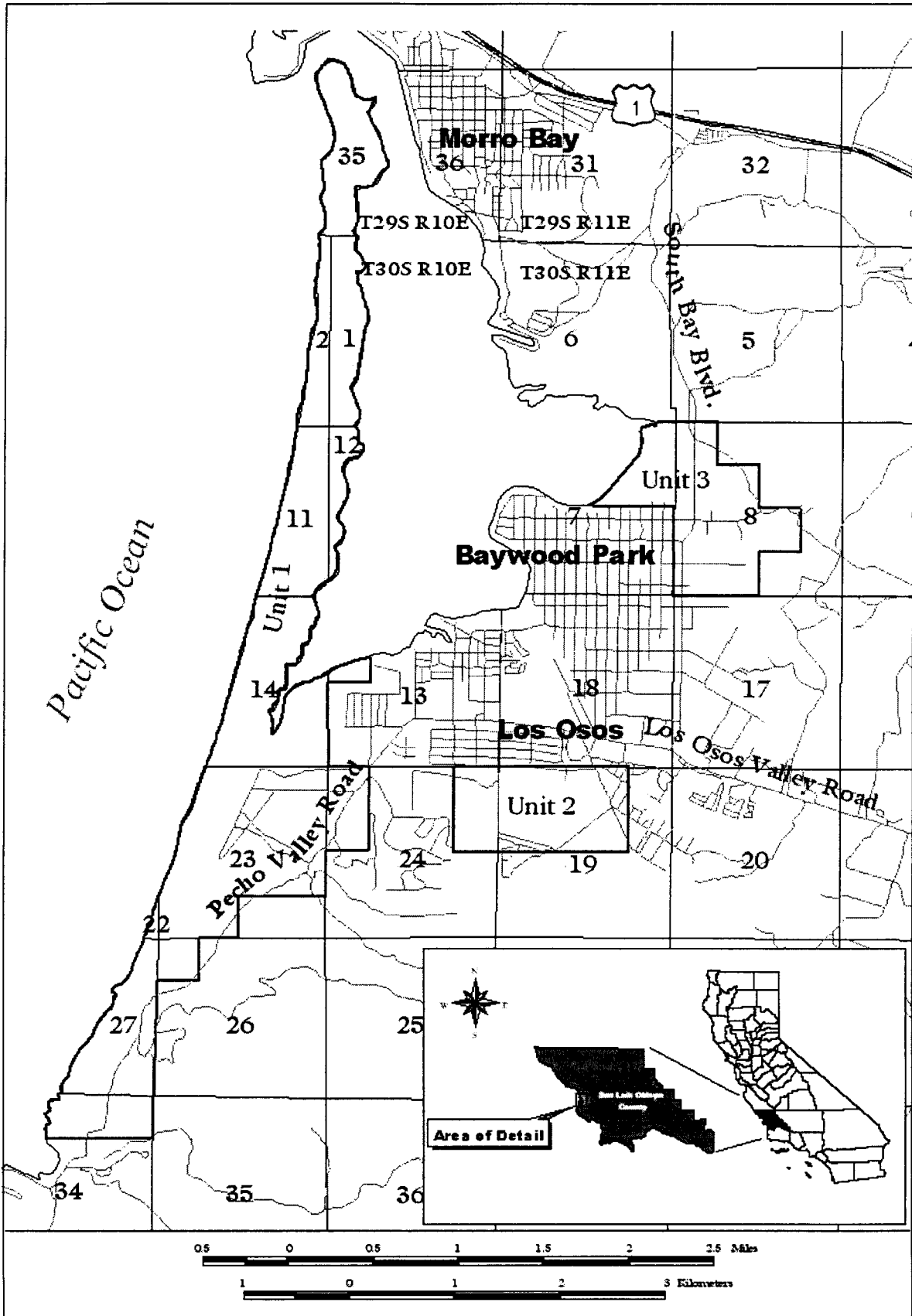
* * * * *

(f) *Clams and snails.*

Morro Shoulderband Snail (*Helminthoglypta walkeriana*)

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

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BILLING CODE 3410-55-C

Map Units 1 to 3: All located in San Luis Obispo County, California. Coastline

boundaries are based upon the U.S. Geological Survey Morro Bay South 7.5

minute topographic quadrangle. Other boundaries are based upon the Public Land Survey System. Within the historical boundaries of the Canada De Los Osos Y Pecho Y Islay Mexican Land Grant, boundaries are based upon section lines that are extensions to the Public Land Survey System developed by the California Department of Forestry and obtained by us from the State of California's Stephen P. Teale Data Center. Township and Range numbering is derived from the Mount Diablo Base and Meridian.

Map Unit 1: T. 29 S., R. 10 E., all of section 35 above mean sea level (MSL); T. 30 S., R. 10 E. All portions of sections 1, 2, 11, 12, 14, 22, and 27 above MSL, SW $\frac{1}{4}$ NW $\frac{1}{4}$ section 13 above MSL, W $\frac{1}{2}$ NW $\frac{1}{4}$ section 24, all of section 23 above MSL except S $\frac{1}{2}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ section 26, N $\frac{1}{2}$ N $\frac{1}{2}$ section 34.

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

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

2. Within these areas, the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal. The primary constituent elements for the Morro shoulderband snail are the following: sand or sandy soils; a slope not greater than 10 percent; and the presence of, or the capacity to develop, coastal dune scrub vegetation.

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

Dated: June 29, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00-17257 Filed 7-11-00; 8:45 am]

BILLING CODE 3410-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AG07

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of *Scutellaria montana* (large-flowered skullcap) from Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to reclassify *Scutellaria montana* (large-flowered skullcap) from its present endangered status to threatened status under the authority of the Endangered Species Act

of 1973, as amended (Act), because the endangered designation no longer correctly reflects the current status of this plant. This proposed reclassification is based on the substantial improvement in the status of this species. Since listing, 22 additional sites have been discovered, and the total known number of individuals has increased from about 6,700 to more than 48,000. This proposal, if made final, would implement the Federal protection and recovery provisions for threatened plants as provided by the Act, to large-flowered skullcap. We are seeking data and comments from the public.

DATES: Comments from all interested parties must be received by September 11, 2000. Public hearing requests must be received by August 28, 2000.

ADDRESSES: Comments, materials, and requests for a public hearing concerning this proposal should be sent to the State Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. J. Allen Ratzlaff at the above address, by phone at 828/258-3939, Ext. 229, or by E-mail at Allen_Ratzlaff@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

Scutellaria montana is a perennial herb with solitary, erect, four-angled, hairy stems usually from 30 to 50 centimeters (cm) (11 to 19 inches (in)) tall. The leaves are lanceolate (shaped like a lance-head, several times longer than wide, broadest above the base and narrowed to the apex) to ovate (egg-shaped, with the broader end at the base), on 1 to 2 cm (0.4 to 0.8 in) petioles (the stalk of a leaf that attaches it to the stem), with blades (the expanded portion of a leaf) 5 to 8 cm (2 to 3 in) long and 3 to 5 cm (1 to 2 in) wide. The leaf margins (the edge of the leaf) are crenate (rounded, tooth-like edges) to serrate (having sharp teeth pointing forward) and hairy on both surfaces. The inflorescence (the flowering part of a plant) is a terminal (at the end of the stalk), leafy-bracted (a "modified" leaf) raceme (simple flower), with or without paired lateral racemes at the base. The calyx (the outer part of the flower) is two-lobed with a "cap" just above the base of the upper lobe (characteristic of the genus *Scutellaria*). The corolla (petals) is relatively large, 2.6 to 3.5 cm (1 to 1.4 in) long, blue and white, and lacking a fleshy ridge (annulus) within the corolla tube near

the top of the calyx. Flowering occurs from mid-May to early June, and fruits mature in June and early July.

Bridges (1984) stated, "The genus *Scutellaria* can be easily recognized by its distinctive calyx, with a protrusion, or 'cap' on the upper lobe." *Scutellaria montana* could be confused with other species of *Scutellaria*. Bridges (1984) also listed some important characters of *Scutellaria montana*: (1) A terminal inflorescence; (2) a large corolla at least 2.5 cm (1 in) long; (3) tapering or truncate (ending abruptly) leaf bases, never cordate (heart shaped); (4) a midstem with at least some stipitate (short stem) glandular hairs; (5) no sessile (without a footstalk of any kind) glands on the upper leaf surface, (6) a fairly densely pubescent (hairy) lower leaf surface, often with glandular hairs; and (7) a corolla tube lacking an annulus within.

Dr. A. W. Chapman described *Scutellaria montana* in 1878. Since then, the taxonomy of *Scutellaria montana* has undergone a period of debate. Penland (1924) reduced the taxon to a variety of *Scutellaria serrata*. Leonard (1927) later reinstated the species, but he made no distinction between *Scutellaria pseudoserrata* and *Scutellaria montana* (Collins unpublished). Epling (1942) restored the taxon to full species status and clarified the questions regarding the taxonomic differences between *Scutellaria pseudoserrata* and *Scutellaria montana*.

In the field, *Scutellaria montana* is most likely to be confused with *Scutellaria pseudoserrata*. The two species have a similar range and habitat and are sometimes found growing together. *Scutellaria montana* is the only species of *Scutellaria* that lacks an annulus within the corolla tube. Further, *Scutellaria pseudoserrata* has transparent sessile glands on the upper leaf surface and hairs only on the veins and leaf margins. In contrast, *Scutellaria montana* has a fine, even-mixed glandular and nonglandular "velvety" pubescence on the upper and lower leaf surface. Two other skullcaps that can occur in the same region are *Scutellaria elliptica* and *Scutellaria ovata*, both of which have smaller flowers and branching inflorescences. *Scutellaria elliptica* tends to have leaf margins with rounded teeth and noticeably longer hairs on the leaf, and *Scutellaria ovata* has strongly cordate leaf bases and flowers later in the season.

The pollination biology of this species has not been described. Collins (unpublished) and Cruzan (Shea and Hogan 1998) observed bees (*Apiodea*) visiting plants, and Kemp and Knauss (1990) observed butterflies, wasps, and