

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

RIN 1018-AHO4

**Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Chorizanthe pungens* var. *pungens* (Monterey Spineflower)****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Chorizanthe pungens* var. *pungens* (Monterey spineflower). Approximately 10,400 hectares (25,800 acres) of land fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Santa Cruz and Monterey counties, California. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat.

Proposed critical habitat does not include lands covered by the one existing legally operative incidental take permit issued under section 10(a)(1)(B) of the Act that includes *Chorizanthe pungens* var. *pungens* as a covered species. Subsection 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that the benefits of excluding HCPs from the critical habitat designation for *Chorizanthe pungens* var. *pungens* will outweigh the benefits of including them. In areas where HCPs have not yet had permits issued, we have proposed critical habitat according to the factors outlined in this rule.

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

**DATES:** We will accept comments until April 16, 2001. Public hearing requests must be received by April 2, 2001.

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

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

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

You may hand-deliver comments to our Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Connie Rutherford or Diane Pratt, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (telephone 805/644-1766; facsimile 805/644-3958).

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

*Chorizanthe pungens* var. *pungens* is endemic to sandy soils in coastal areas in southern Santa Cruz and northern Monterey Counties, and in the Salinas Valley in interior Monterey County. In California, the spineflower genus (*Chorizanthe*) in the buckwheat family (Polygonaceae) comprises species of wiry annual herbs that inhabit dry sandy soils, both along the coast and inland. Because of the patchy and limited distribution of such soils, many species of *Chorizanthe* tend to be highly localized in their distribution.

The overall appearance of *Chorizanthe pungens* var. *pungens* is of a low-growing herb that is soft-hairy and grayish or reddish in color. The plant has a prostrate to slightly ascending habit, with large individuals reaching 50 centimeters (cm) (20 inches (in)) or more in diameter. This taxon is distinguished by white (rarely pinkish) scarious margins on the lobes of the involucre that subtend the white- to rose-colored flowers. The aggregate of flowers (heads) tend to be small (less than cm (0.4 in) in diameter) and either distinctly or indistinctly aggregate. *Chorizanthe pungens* var. *pungens* is

one of two varieties of the species *Chorizanthe pungens*. The other variety (*Chorizanthe pungens* var.

*hartwegiana*), known as Ben Lomond spineflower, is restricted to the Santa Cruz Mountains, generally between Scotts Valley and Ben Lomond. The range of *C. p.* var. *pungens* partially overlaps with *Chorizanthe robusta* var. *robusta* (robust spineflower), another closely related taxon in the *Pungentes* section of the genus, in southern Santa Cruz County. *Chorizanthe pungens* var. *hartwegiana* and *Chorizanthe robusta* var. *robusta* are both endangered species; for a detailed description of these related taxa see the Recovery Plan for Seven Coastal Plants and the Myrtle's Silverspot Butterfly (Service 1998), the Draft Recovery Plan for the Robust Spineflower (Service 2000), and references within these plans.

*Chorizanthe pungens* var. *pungens* is a short-lived annual species. It germinates during the winter months and flowers from April through June; although pollination ecology has not been studied for this taxon, *C. p.* var. *pungens* is likely visited by a wide array of pollinators; observations of pollinators on other species of *Chorizanthe* that occur in Santa Cruz County have included leaf cutter bees (megachilids), at least six species of butterflies, flies, and sphecids wasps (R. Morgan, biologist, Soquel, CA, pers. comm. 2000). Each flower produces one seed; depending on the vigor of an individual plant, dozens, if not hundred of seeds could be produced. The importance of pollinator activity in seed set has been demonstrated by the production of seed with low viability where pollinator access was limited (Harding Lawson Associates 2000). Seed is collectable through August. The plants turn a rusty hue as they dry through the summer months, eventually shattering during the fall. Seed dispersal is facilitated by the involucre spines, which attach the seed to passing animals. While animal vectors most likely facilitate dispersal between colonies and populations, the prevailing coastal winds undoubtedly play a part in scattering seed within colonies and populations.

The locations where *Chorizanthe pungens* var. *pungens* occurs, with the exception of one (Soledad), are subject to a mild maritime climate, where fog helps keep summer temperatures cool and winter temperatures relatively warm, and provides moisture in addition to the normal winter rains. *Chorizanthe pungens* var. *pungens* is found in a variety of seemingly disparate habitat types, including active coastal dunes, grassland, scrub,

chaparral, and woodland types on interior upland sites; and interior floodplain dunes. However, all of these habitat types include microhabitat characteristics that are favored by *C. p. var. pungens*. First, all sites are on sandy soils; whether the origin of the soils are from active dunes, interior fossil dunes, or floodplain alluvium is apparently unimportant. Second, these sites are relatively open and free of other vegetation. In grassland and oak woodland communities, abundant annual grasses may outcompete *C. p. var. pungens*, while management of grass species, either through grazing, mowing or fire, may allow the spineflower to persist. In scrub and chaparral communities, *C. p. var. pungens* does not occur under dense stands, but will occur between more widely spaced shrubs.

*Chorizanthe pungens* var. *pungens* is generally distributed along the rim of Monterey Bay in southern Santa Cruz and northern Monterey Counties, and inland along the coastal plain of the Salinas Valley. At coastal sites ranging from the Monterey Peninsula north to Manresa State Beach, *C. p. var. pungens* is found in active coastal dune systems, and on coastal bluffs upon which windblown sand has been deposited. At one historical site on the coast near San Simeon in San Luis Obispo County, the *C. p. var. pungens* has not been seen since it was first collected in 1842 (CNDDDB 2000, D. Keil, California Polytechnic University, San Luis Obispo, pers. comm. 2000).

On coastal dunes, the distribution of suitable habitat is subject to dynamic shifts caused by patterns of dune mobilization, stabilization, and successional trends in coastal dune scrub that increase in cover over time. Accordingly, individual colonies of *Chorizanthe pungens* var. *pungens*, found in gaps between stands of scrub, shift in distribution and size over time. Other native plants associated with *C. p. s. var. pungens* include *Ambrosia chamissonis* (beach bur), *Artemisia pycnocephala* (coastal sagewort), *Ericameria ericoides* (mock heather), *Castilleja latifolia* (Monterey Indian paintbrush), and *Lathyrus littoralis* (beach pea). At some northern Monterey County locations, *C. p. var. pungens* occurs in close proximity to the endangered *Gilia tenuiflora* ssp. *arenaria* (sand gilia), *Erysimum menziesii* ssp. *menziesii* (Menzies' wallflower), *Euphilotes enoptes smithi* (Smith's blue butterfly), and the threatened *Charadrius alexandrinus nivosus* (snowy plover).

Portions of the coastal dune and coastal scrub communities that support

*Chorizanthe pungens* var. *pungens* have been eliminated or altered by recreational use, industrial and urban development, and military activities. Dune communities have also been altered in composition by the introduction of non-native species, especially *Carpobrotus* species (sea-fig or iceplant) and *Ammophila arenaria* (European beachgrass), in an attempt to stabilize shifting sands. In the last decade, significant efforts have been made to restore native dune communities, including the elimination of these non-native species.

At more inland sites, *Chorizanthe pungens* var. *pungens* occurs on sandy, well-drained soils in a variety of plant communities, most frequently maritime chaparral, valley oak woodlands, and grasslands. The plant probably has been extirpated from a number of historical locations in the Salinas Valley, primarily due to conversion of the original grasslands and valley oak woodlands to agricultural crops (Reveal & Hardham 1989). Significant populations of *C. p. var. pungens* occur on lands that are referred to as former Fort Ord (U.S. Army Corps of Engineers (ACOE) 1992). Within grassland communities, *C. p. var. pungens* occurs along roadsides, in firebreaks, and in other disturbed sites, while in oak woodland, chaparral, and scrub communities, they occur in sandy openings between shrubs. In older stands with a high cover of shrubs, the plant are restricted to roadsides, firebreaks, and trails that bisect these communities. At former Fort Ord, the highest densities of *C. p. var. pungens* are located in the central portion of the firing range, where disturbance is the most frequent. This pattern of distribution and densities of the *C. p. var. pungens* on former Fort Ord indicate that the very activities that have disturbed *C. p. s. var. pungens* habitat have also created the open conditions that result in high densities of the plant. Prior to onset of human use of this area, *C. p. var. pungens* may have been restricted to openings created by wildfires within these communities (Service 1998).

The southwestern edge of *Chorizanthe pungens* var. *pungens* habitat on former Fort Ord was once continuous with habitat found in the community of Del Rey Oaks and at the Monterey Airport (Deb Hillyard, ecologist, California Department of Fish and Game, pers. comm. 2000). Other inland sites that support *C. p. var. pungens* are located in the area between Aptos and La Selva Beach in Santa Cruz County, and near Prunedale in northern Monterey County. At some of these

locations, *C. p. var. pungens* occurs in close proximity with the endangered *Piperia yadonii* (Yadon's piperia) and *Chorizanthe robusta* var. *robusta*.

Farther up the Salinas River, *Chorizanthe pungens* var. *pungens* was recently found on a dune located within the river floodplain near Soledad, Monterey County (CNDDDB 2000). Two historic sites for *C. p. var. pungens* occur near here. One, near Mission Soledad, was collected once in 1881; the other, near San Lucas along the Salinas River, was collected once in 1935. Due to conversion to agriculture and channelization activities along the Salinas River over the last century, *C. p. var. pungens* has most likely been extirpated from these locations. The dune near Soledad is the only one of its size and extent between there and the river mouth (Brad Olsen, East Bay Regional Parks District, pers. comm. 2000).

#### Previous Federal Action

Federal government actions for *Chorizanthe pungens* var. *pungens* began when we published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Chorizanthe pungens* var. *pungens* as a category 2 candidate (species for which data in our possession indicate listing may be appropriate, but for which additional biological information is needed to support a proposed rule). In the September 27, 1985, revised notice of review for plants (50 FR 39526) and in the February 21, 1990 (55 FR 6184) revised notice of review for plants, *Chorizanthe pungens* var. *pungens* was again included as a category 2 candidate.

On October 24, 1991 (56 FR 55107), we published a proposal to list *Chorizanthe pungens* var. *pungens*, along with three other varieties of *Chorizanthe*, (*Chorizanthe pungens* var. *hartwegiana*, *Chorizanthe robusta* var. *hartwegii*, *Chorizanthe robusta* var. *robusta*), and *Erysimum teretifolium* as endangered species. The final rule listing *C. p. var. pungens* as a threatened species was published on February 4, 1994 (59 FR 5499).

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or

other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time *Chorizanthe pungens* var. *pungens* was listed, we found that designation of critical habitat for *C. p.* var. *pungens* was prudent but not determinable at the time of listing, and that designation of critical habitat would occur once we have gathered the necessary data.

On June 30, 1999, our failure to designate critical habitat for *Chorizanthe pungens* var. *pungens* and three other species within the time period mandated by 16 U.S.C. 1533(b)(6)(C)(ii) was challenged in *Center for Biological Diversity v. Babbitt* (Case No. C99–3202SC). On August 30, 2000, the U.S. District Court for the Northern District of California (Court) directed us to publish a proposed critical habitat designation within 60 days of the Court's order and a final critical habitat designation no later than 120 days after the proposed designation is published. On October 16, 2000, the Court granted the government's request for a stay of this order. Subsequently, by a stipulated settlement agreement signed by the parties on November 20, 2000, we agreed to proposed critical habitat for the *C. p.* var. *pungens* by January 15, 2001.

### 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 or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. In our regulations at 50 CFR 402.02, we

define destruction or adverse modification as “. . . the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.” Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

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

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

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

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

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

Habitat is often dynamic, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do *not* signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases.

Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

#### Methods for Selection of Areas for Proposed Critical Habitat Designation

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the survival and recovery of *Chorizanthe pungens* var. *pungens*. This information included information from the California Natural Diversity Data Base (CNDDB 2000), soil survey maps (Soil Conservation Service 1978, 1979), recent biological surveys and reports, our recovery plan for this species, additional information provided by interested parties, and discussions with botanical experts. We also conducted site visits, either cursory or more extensive, and frequently accompanied by agency representatives, at a number of locations managed by local, state or Federal agencies, including Manresa, Sunset, Marina, and Asilomar State Beaches, Bureau of Land Management lands at former Fort Ord, Moss Landing Marine Laboratory, and Manzanita County Park.

Each of the critical habitat units includes areas that are unoccupied by *Chorizanthe pungens* var. *pungens*. Determining the specific areas that this taxon occupies is difficult for several reasons: (1) the distribution of *Chorizanthe pungens* var. *pungens* appears to be more closely tied to the presence of sandy soils than to specific plant communities; the 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 *Chorizanthe pungens* var. *pungens* or not; (2) the way the current distribution of *Chorizanthe pungens* var. *pungens* is mapped can be variable, depending on the scale at which patches of individuals are recorded (e.g. many small patches versus one large patch); and (3) depending on the climate and other annual variations in habitat conditions, the extent of the distributions may either shrink and temporarily disappear, or, if there is a residual seedbank present, enlarge and cover a more extensive area. Therefore, patches of unoccupied habitat are

interspersed with patches of occupied habitat; the inclusion of unoccupied habitat in our critical habitat units reflects the dynamic nature of the habitat and the life history characteristics of this taxon.

#### Primary Constituent Elements

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

Little is known about the specific physical and biological requirements of *Chorizanthe pungens* var. *pungens* beyond that described in the Background section of this proposed rule.

Several coastal dune restoration efforts have included measures to propagate and reintroduce *Chorizanthe pungens* var. *pungens*, notably at Moss Landing North Harbor, Pajaro Dunes, and the University of California's Moss Landing Marine Laboratory (MLML). Such efforts have contributed to our understanding that *C. p.* var. *pungens* readily grows where suitable sandy substrates occur and competition with other plant species is minimal (Harding Lawson Associates 2000; Joey Dorell-Canepa, biologist, pers. comm. 2000; Peter Slattery, dune ecologist, MLML, pers. comm. 2000). Where *C. p.* var. *pungens* occurs within native plant communities, along the coast as well as at more interior sites, it occupies microhabitat sites found between scrub and 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 of the density of other herbaceous species.

As has been observed at Fort Ord, human caused disturbance, such as scraping along roadsides and firebreaks can favor the abundance of *Chorizanthe pungens* var. *pungens* by reducing competition from other herbaceous

species. However, because such disturbance can also promote the spread and establishment of non-native species, the disturbance would need to be repeated frequently to maintain the establishment of *C. p.* var. *pungens*. Such intensive management may not be practical in all areas where *C. p.* var. *pungens* habitat includes a complement of non-native species. Moreover, while the presence of *C. p.* var. *pungens* could be maintained in areas with a high abundance of non-native species, the habitat quality of these areas may be less than areas where the presence of non-native species is minimal.

Based on our knowledge to date, the primary constituent elements of critical habitat for *Chorizanthe pungens* var. *pungens* are:

(1) sandy soils associated with active coastal dunes, coastal bluffs with a deposition of windblown sand, inland sites with sandy soils, and interior floodplain dunes;

(2) plant communities that support associated species, including coastal dune, coastal scrub, grassland, maritime chaparral, oak woodland, and interior floodplain dune communities, and have a structure such that there are openings between the dominant elements (e.g. scrub, shrub, oak trees, clumps of herbaceous vegetation);

(3) no or little cover by non-native species which compete for resources available for growth and reproduction of *Chorizanthe pungens* var. *pungens*;

(4) Pollinator activity between existing colonies of *Chorizanthe pungens* var. *pungens*;

(5) Physical processes, such as occasional soil disturbance, that support natural dune dynamics along coastal areas; and

(6) Seed dispersal mechanisms between existing colonies and other potentially suitable sites.

We selected critical habitat areas to provide for the conservation of *Chorizanthe pungens* var. *pungens* at five coastal sites and six inland sites where it is known to occur. Historic locations for which there are no recent records of occupancy (within the last 20 years) were not proposed for designation, including large areas of the Salinas Valley floodplain that have been converted to agriculture over the last 100 years, potentially suitable areas around San Simeon in San Luis Obispo County, and along the Salinas River near San Lucas in Monterey County.

The long-term probability of the survival and recovery of *Chorizanthe pungens* var. *pungens* is dependent upon the protection of existing population sites, and the maintenance of ecological functions within these

sites, including connectivity between sites within close geographic proximity to facilitate pollinator activity and seed dispersal mechanisms, and the ability to maintain disturbance factors (for example dune dynamics in the coastal sites, and fire disturbance at inland site) that maintain the openness of vegetative cover that the species depends on. Threats to the habitat of *Chorizanthe pungens* var. *pungens* include: industrial and recreational development, road development, human and equestrian recreational use, and dune stabilization as a result of the introduction of non-native species (59 FR 5499; February 4, 1994). The areas we are proposing to designate as critical habitat provide some or all of the habitat components essential for the conservation of *C. p.* var. *pungens*. Given the species' need for an open plant community structure and the risk of non-native species, we believe that these areas may require special management considerations or protection.

In our delineation of the critical habitat units, we believed it was important to designate core areas as well as areas that occur on the periphery of the *Chorizanthe pungens* var. *pungens*' range. When possible, areas that were in close geographic proximity were included in the same unit to emphasize the need to maintain connectivity between different populations. We also included habitat for *C. p.* var. *pungens* adjacent to and contiguous to areas of known occurrences to maintain landscape scale processes. Each mapping unit contains habitat that is occupied by *C. p.* var. *pungens*. Some units were mapped with a greater precision than others, based on the available information, the size of the unit, and the time allotted to complete this proposed rule. We anticipate that in the time between the proposed rule and the final rule, and based upon the additional information received during the public comment period, that the boundaries of certain mapping units will be refined.

The proposed critical habitat units were delineated by creating data layers in a geographic information system (GIS) format of the areas of known occurrences of *Chorizanthe pungens* var. *pungens*, using information from the California Natural Diversity Data Base (CNDDDB 2000), recent biological surveys and reports, our recovery plan for this species, and discussions with botanical experts. These data layers were created on a base of USGS 7.5' quadrangles obtained from the State of California's Stephen P. Teale Data Center. We defined the boundaries for

the proposed critical habitat units using roads and known landmarks and, if necessary, township, range, and section numbers from the public land survey.

We also considered the status of habitat conservation plan (HCP) efforts in proposing areas as critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. The only HCP that is operative and has an executed Implementation Agreement (IA) within critical habitat being proposed for *Chorizanthe pungens* var. *pungens* is the HCP for the North of Playa project site (Zander Associates 1995), within Sand City. Subsection 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species.

Habitat for *Chorizanthe pungens* var. *pungens* in the HCP plan area is already managed for the benefit of this and other covered species under the terms of the associated section 10(a)(1)(B) permit. The assurances provided through the HCP and permit are believed sufficient to provide for the conservation of *C. p.* var. *pungens*, and any additional benefit provided by designating these lands as critical habitat would be minimal at best. In contrast, the benefits of excluding lands covered by this HCP would be significant in preserving positive relationships with our conservation partners, particularly by reinforcing the regulatory assurances provided for in the implementation agreement for the HCP. Although these benefits may be relatively small in this case, we believe they outweigh the negligible benefits of designating this area as critical habitat. Furthermore, we have determined that excluding this area from critical habitat designation will not result in the extinction of the species. Consequently, these lands have not been included in this proposed critical habitat designation.

A large effort is currently underway to address the conservation needs for a number of threatened and endangered species, in addition to sensitive unlisted species, for the lands formerly known as Fort Ord. The Defense Base Realignment and Closure Commission selected the 11,340-ha (28,000-ac) Fort Ord for closure in 1991. As a requirement of a biological opinion issued by the Service

in 1993, the *Installation-wide Multispecies Habitat Management Plan for Former Fort Ord, California* (HMP), was prepared in 1994 and revised in 1997 by the Army to address listed, proposed, candidate, and sensitive species and their habitat. The HMP provides a comprehensive plan for minimizing and mitigating impacts to sensitive species and their habitats while allowing disposal and redevelopment of the base. Over 6,070 ha (15,000 ac) would be designated for habitat conservation. Bureau of Land Management (BLM) would receive approximately 5,670 ha (14,000 ac) of undeveloped land to be managed for habitat and sensitive species. California Department of Parks and Recreation (CDPR) would receive the coastal properties, a large portion of which would be restored and managed for sensitive species. Several other entities would also receive property which they would manage for conservation of habitat and sensitive species. The remaining areas of the base, including many areas that have already been developed as part of the base operations, would be available for land development. As of September 2000, a total of approximately 4,290 ha (10,600 ac) of former Fort Ord had been transferred. Approximately 3,190 ha (7,880 ac) identified as habitat reserve were transferred, of which about 2,910 ha (7,200 ac) were transferred to BLM, 260 ha (640 ac) were transferred to the University of California, Santa Cruz, and 16 ha (40 ac) were transferred to the City of Marina.

On former Fort Ord lands, the HMP would be the basis of each HCP submitted by a non-Federal land recipient applying for a section 10(a)(1)(B) incidental take permit. A draft programmatic HCP submitted by the Fort Ord Reuse Authority is under review by the Service. Recently, the Army's ability to fully implement the HMP has come into question. If the Army is not able to fully implement those measures in the HMP that protect and conserve listed and sensitive species, then the design of reserve and development lands may need to be reevaluated. Due to this uncertainty and because the cleanup and transfer of lands is not yet complete, we are not excluding from the proposed Fort Ord critical habitat unit those portions of former Fort Ord that support *Chorizanthe pungens* var. *pungens* and are designated for development in the HMP. However, if the HMP is fully implemented and the anticipated HCPs for former Fort Ord lands are completed and implemented, then we anticipate

that development according to the current HMP would not result in an adverse modification of critical habitat for *C. p. pungens*.

Throughout this designation, in selecting areas of proposed critical habitat we made an effort to avoid developed areas, such as housing developments, that are unlikely to contribute to the conservation of *Chorizanthe pungens* var. *pungens*. However, we did not map critical habitat in sufficient detail to exclude all developed areas, or other lands unlikely to contain the primary constituent elements essential for the conservation of *C. p. var. pungens*. Areas within the boundaries of the mapped units, such as buildings, roads, parking lots, railroads, airport runways and other paved areas, lawns, and other urban landscaped areas will not contain any 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 primary constituent elements in adjacent critical habitat.

#### Proposed Critical Habitat Designation

The proposed critical habitat areas described below constitute our best assessment at this time of the areas needed for the conservation and recovery of *Chorizanthe pungens* var. *pungens*. Critical habitat being proposed for *C. p. var. pungens* includes 11 units that currently sustain the species. Protection of this proposed critical habitat is essential for the conservation of the species because the geographic range that *C. p. var. pungens* occupies has been reduced to so few sites that the species is threatened with extinction (59 FR 5499). The areas being proposed as critical habitat are either along the coast between Manresa State Beach in Santa Cruz County, south to Asilomar State Beach in Monterey County, or are at inland sites ranging from the Aptos area in Santa Cruz County, south to the confluence of Arroyo Seco Creek and the Salinas River in Monterey County, California, and include the appropriate dune, maritime chaparral, or oak woodland habitat that supports *C. p. var. pungens*. We propose to designate approximately 10,400 ha (25,800 acres) of land as critical habitat for *C. p. var. pungens*. Approximately 54 percent of this area consists of federal lands, while State lands comprise approximately 8 percent, County lands comprise approximately 5 percent, and private lands comprise approximately 33 percent of the proposed critical habitat.

A brief description of each critical habitat unit is given below:

#### Coastal Units

##### Unit A: Manresa Unit

Unit A consists of coastal beaches and bluffs southwest of the community of La Selva Beach in southern Santa Cruz County. This entire unit is within Manresa State Beach.

##### Unit B: Sunset Unit

Unit B consists of coastal beaches, dunes and bluffs west of Watsonville in southern Santa Cruz County. This entire unit is within Sunset State Beach. The unit includes land from Sunset Beach Road south to Beach Road, just north of the mouth of the Pajaro River.

##### Unit C: Moss Landing Unit

Unit C consists of coastal beaches, dunes and bluffs to the north and south of the community of Moss Landing in northern Monterey County. It includes lands owned and managed by the state, including portions of Zmudowski State Beach, Moss Landing State Beach, Salinas River State Beach, and Moss Landing Marine Laboratory. Local agency lands (Moss Landing North Harbor District) comprise 1 percent of the unit, while State lands comprise 66 percent, and private lands comprise 33 percent of the unit.

##### Unit D: Marina Unit

Unit D 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. Federal lands include a portion of the Salinas River National Wildlife Refuge, lands known as former Fort Ord, and the U.S. Navy Postgraduate School, and comprise 42 percent of the unit. State lands include Marina State Beach and Monterey State Beach and comprise 12 percent of the unit. Private lands account for 46 percent of the unit. This unit excludes an area of 1.9 ha (4.6 ac) within Sand City known as North of Playa, because a habitat conservation plan for this restoration site included *Chorizanthe pungens* var. *pungens* as a covered species.

##### Unit E: Asilomar Unit

Unit E consists of coastal dunes and bluffs near the communities of Pacific Grove and Pebble Beach on the Monterey Peninsula in northern Monterey County. The unit is comprised of state lands at Asilomar State Beach (about 24 percent) and private lands, including those near Spanish Bay (about 76 percent).

#### Inland Units

##### Unit F: Freedom Boulevard Unit

Unit F 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 entire unit consists of privately owned lands.

##### Unit G: Bel Mar Unit

Unit G consists of maritime chaparral habitat near the terminus of Bel Mar Dive, between Larkin Valley Road and Highway 1 in southern Santa Cruz County. This entire unit consists of privately owned lands.

##### Unit H: Prunedale Unit

Unit H consists of grassland, maritime chaparral, and oak woodland in the area around Prunedale in northern Monterey County. On the west side of Highway 101, the unit includes Manzanita County Park located between Castroville Boulevard and the highway. On the east side of the highway, the unit includes the area between Pesante Canyon Road and Vierra Canyon Road. Approximately 8 percent of the unit consists of county park land, and 92 percent is privately owned.

##### Unit I: Fort Ord Unit

Unit I consists of grassland, maritime chaparral, coastal scrub, and oak woodland on the former DOD base at Fort Ord, east of the city of Seaside in northern Monterey County. Portions of Fort Ord have been transferred to the Bureau of Land Management (BLM); University of California, Santa Cruz; California State University at Monterey Bay; and local city and county jurisdictions. As of September 2000, approximately 4,290 ha (10,600 ac) of former Fort Ord had been transferred, of which about 3,190 ha (7,880 ac) have been designated as habitat reserve in the *Installation-wide Multispecies Habitat Management Plan for Former Fort Ord, California* (HMP). As a result of these recent transfers, approximately 7 percent of this critical habitat unit is state land and 5 percent is under local jurisdiction. We considered all other land within this unit to be under federal jurisdiction (about 88 percent).

##### Unit J: Del Rey Oaks Unit

Unit J consists of grassland, maritime chaparral, and oak woodland near the community of Del Rey Oaks, southeast of the city of Seaside in northern Monterey County. Approximately 34 percent of the unit is owned by Monterey County Airport, and 66 percent is privately owned. At one time, *Chorizanthe pungens* var. *pungens*

habitat in this area was most likely continuous with habitat in the southern portion of Fort Ord. However, development in the Del Rey Oaks area has destroyed most of the intervening habitat.

#### Unit K: Soledad Unit

Unit K consists of an interior dune in the floodplain of the Salinas River channel just south of the town of Soledad in central Monterey County. This entire unit is privately owned.

The approximate areas of proposed critical habitat by land ownership are shown in Table 1. Lands proposed are under private, County, State, and Federal jurisdiction, with Federal lands including lands managed by the DOD and BLM.

TABLE 1.—APPROXIMATE AREAS, GIVEN IN HECTARES (HA) AND ACRES (AC)<sup>1</sup> OF PROPOSED CRITICAL HABITAT FOR *Chorizanthe pungens* VAR. *pungens* BY LAND OWNERSHIP.

| Unit Name             | State lands       | Private lands       | County and other local jurisdictions | Federal lands        | Total                 |
|-----------------------|-------------------|---------------------|--------------------------------------|----------------------|-----------------------|
| A. Manresa .....      | 40 ha (100 ac)    |                     |                                      |                      | 40 ha (100 ac)        |
| B. Sunset .....       | 50 ha (130 ac)    |                     |                                      |                      | 50 ha (130 ac)        |
| C. Moss Landing ..... | 190 ha (465 ac)   | 95 ha (230 ac)      | 3 ha (8 ac)                          | 370 ha (915 ac)      | 283 ha (703 ac)       |
| D. Marina .....       | 105 ha (265 ac)   | 410 ha (1,010 ac)   |                                      |                      | 885 ha (2,190 ac)     |
| E. Asilomar .....     | 35 ha (85 ac)     | 110 ha (270 ac)     |                                      |                      | 145 ha (355 ac)       |
| F. Freedom Blvd. .... |                   | 90 ha (220 ac)      |                                      |                      | 90 ha (220 ac)        |
| G. Bel Mar .....      |                   | 40 ha (95 ac)       |                                      |                      | 40 ha (95 ac)         |
| H. Prunedale .....    |                   | 1,970 ha (4,875 ac) | 165 ha (405 ac)                      | 5,245 ha (12,960 ac) | 2,135 ha (5,280 ac)   |
| I. Fort Ord .....     | 440 ha (1,085 ac) |                     | 310 ha (765 ac)                      |                      | 5,995 ha (14,810 ac)  |
| J. Del Rey Oaks ..... |                   | 185 ha (460 ac)     | 95 ha (240 ac)                       |                      | 280 ha (700 ac)       |
| K. Soledad .....      |                   | 500 ha (1,235 ac)   |                                      |                      | 500 ha (1,235 ac)     |
| Total .....           | 860 ha (2,130 ac) | 3,400 ha (8,395 ac) | 573 ha (1,418 ac)                    | 5615 ha (13,875 ac)  | 10,443 ha (25,818 ac) |

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

### Effects of Critical Habitat Designation

Section 7(a) of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. Destruction or adverse modification of critical habitat is defined by our regulations as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical (50 CFR 402.02). 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 means that Federal agencies must 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 402. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us. If, at the

conclusion of consultation, we issue a biological opinion concluding that 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 destruction or adverse modification of critical habitat.

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 the biological opinion when 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)).

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 is authorized by law. Consequently, some Federal agencies may request 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 lands being proposed as critical habitat for the *Chorizanthe pungens* var. *pungens* or activities that may indirectly affect such lands and that are conducted by a Federal agency, funded by a Federal agency or that require a permit from a Federal agency will be subject to the section 7 consultation process. Federal actions not affecting critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation.

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

designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of *Chorizanthe pungens* var. *pungens* 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 directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that alter watershed characteristics in ways that would appreciably alter or reduce the quality or quantity of surface and subsurface flow of water needed to maintain the maritime chaparral and oak woodland communities at the inland sites. Such activities adverse to *Chorizanthe pungens* var. *pungens* could include, but are not limited to, maintaining an unnatural fire regime either through fire suppression or prescribed fires that are too frequent or poorly-timed; residential and commercial development, including road building and golf course installations; agricultural activities, including orchardry, viticulture, row crops, and livestock grazing; and vegetation manipulation such as chaining or harvesting firewood in the watershed upslope from *Chorizanthe pungens* var. *pungens*;

(2) Activities that appreciably degrade or destroy native maritime chaparral and oak woodland communities at interior sites, including but not limited to livestock grazing, clearing, discing, introducing or encouraging the spread of nonnative species, and heavy recreational use.

Designation of critical habitat could affect the following agencies and/or actions: development on private lands requiring permits from Federal agencies, such as 404 permits from the U.S. Army Corps of Engineers or permits from other Federal agencies such as Housing and Urban Development, military activities of the U.S. Department of Defense (Navy and Army) on their lands or lands under their jurisdiction, activities of the Bureau of Land Management on their lands or lands under their jurisdiction, activities of the Federal Aviation Authority on their lands or lands under their jurisdiction, the release or authorization of release of biological control agents by the U.S. Department of Agriculture, regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act, construction of

communication sites licensed by the Federal Communications Commission, and authorization of Federal grants or loans. Where federally listed wildlife species occur on private lands proposed for development, any habitat conservation plans submitted by the applicant to secure a permit to take according to section 10(a)(1)(B) of the Act would be subject to the section 7 consultation process. Several other species that are listed under the Act occur in the same general areas as *Chorizanthe pungens* var. *pungens*. *Chorizanthe robusta* var. *robusta* occurs in close proximity to *Chorizanthe pungens* var. *pungens* at Sunset State Beach and the dunes at former Fort Ord; sand gilia (*Gilia tenuiflora* ssp. *arenaria*) occurs at Sunset State Beach, Marina State Beach, dunes at former Fort Ord, Asilomar State Beach, and Spanish Bay; Menzies' wallflower (*Erysimum menziesii* ssp. *menziesii*) occurs at Asilomar State Beach; Smith's blue butterfly occurs at dunes from Salinas River National Wildlife Refuge south to the Naval Postgraduate School, and western snowy plover ranges from Zmudowski State Beach south along the coast to Monterey State Beach.

If you have questions regarding whether specific activities will likely 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, Portland Regional Office, 911 NE 11th Avenue, Portland, Oregon 97232-4181 (503/231-6131, FAX 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 concerned. 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 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, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

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

(2) Specific information on the amount and distribution of *Chorizanthe pungens* var. *pungens* habitat, and what habitat is essential to the conservation of the species and why;

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

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

(5) Economic and other values associated with designating critical habitat for *Polygonum* such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values", and reductions in administrative costs); and

(6) The methodology we might use, under section 4(b)(2) of the Act, in determining if the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods. You may mail comments to the Assistant Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003. You may also comment via the Internet to [montereysf@r1.fws.gov](mailto:montereysf@r1.fws.gov). Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: [1018-AHO4] and your name and return address in your Internet message." If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our

Ventura Fish and Wildlife Office at phone number 805-644-1766. Please note that the Internet address "montereysf@r1.fws.gov" will be closed out at the termination of the public comment period. Finally, you may hand-deliver comments to our Ventura office at 2493 Portola Road, Suite B, Ventura, California. 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. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this 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. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

#### Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of 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 listing and 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 determination may differ from this proposal.

#### Public Hearings

The Endangered Species Act provides for one or more public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (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 and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following—(1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the "Supplementary Information" section of the preamble helpful in understanding the notice? What else could we do to make this proposed rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to the office identified in the **ADDRESSES** section at the beginning of this document.

#### Required Determinations

##### *Regulatory Planning and Review*

In accordance with Executive Order (EO) 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). We are preparing a draft analysis of this proposed action, which will be available for public comment to determine the economic consequences of designating the specific areas as critical habitat. The availability of the

draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments.

(a) While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. Therefore we do not believe a cost benefit and economic analysis pursuant to EO 12866 is required.

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 this 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 in areas occupied by the species. Accordingly, the designation of currently occupied areas as critical habitat does not have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. The designation of areas as critical habitat where section 7 consultations would not have occurred but for the critical habitat designation may have impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the species listing. We will evaluate any impact through our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule). Non-Federal persons that do not have a Federal "sponsorship" in their actions are not restricted by the designation of critical habitat.

TABLE 2.—IMPACTS OF *Chorizanthe pungens* VAR. *pungens* LISTING AND CRITICAL HABITAT DESIGNATION

| Categories of Activities                                                    | Activities Potentially Affected by Species Listing Only                                                                                                                                                                                                                                                                                                                   | Additional Activities Potentially Affected by Critical Habitat Designation <sup>1</sup>                                                                                              |
|-----------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Federal Activities Potentially Affected <sup>2</sup> .                      | Activities conducted by the Army Corps of Engineers, the Department of Housing and Urban Development, and any other Federal Agencies.                                                                                                                                                                                                                                     | Activities by these Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation                              |
| Private or other non-Federal Activities Potentially Affected <sup>3</sup> . | Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy habitat for <i>Chorizanthe pungens</i> var. <i>pungens</i> by mechanical, chemical, or other means or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat). | Funding, authorization, or permitting actions by Federal Agencies in designated areas where section 7 consultations would not have occurred but for the critical habitat designation |

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

<sup>2</sup> Activities initiated by a Federal agency.

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

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of *Chorizanthe pungens* var. *pungens* since its listing in 1994. The prohibition against adverse modification of critical habitat would not be expected to impose any additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands.

We will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis. 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 proposed rule, if made final, 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.

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

In the economic analysis (required 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 where section 7 consultations would have occurred as a result of the species being listed under the Act. We will also evaluate whether designation includes any areas where section 7 consultations would occur only as a result of the critical habitat designation, and in such cases determine if it will significantly affect a substantial number of small entities. As indicated on Table 1 (see "Proposed Critical Habitat Designation" section), we have proposed to designate property owned by Federal, State, and County governments, and private property.

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

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Development on private lands requiring permits from other Federal agencies such as Housing and Urban Development;

(3) Military activities of the U.S. Department of Defense (Navy and Army) on their lands or lands under their jurisdiction;

(4) Activities of the Bureau of Land Management on their lands or lands under their jurisdiction;

(5) Activities of the Federal Aviation Authority on their lands or lands under their jurisdiction;

(6) The release or authorization of release of biological control agents by the U.S. Department of Agriculture;

(7) Regulation of activities affecting point source pollution discharges into waters of the United States by the

Environmental Protection Agency under section 402 of the Clean Water Act;

(8) Construction of communication sites licensed by the Federal Communications Commission; and,

(9) Authorization of Federal grants or loans.

Potentially, some 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 in 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, applicable restrictions of the Act 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 where section 7 consultations should occur regardless of the critical habitat designation. We will

evaluate through our economic analysis any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

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

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

(a) We believe 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. In our economic analysis we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

(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, this 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 current restrictions on private property concerning this plant species. We do not anticipate that property values will be affected by the critical habitat designations. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with State law and with the continued survival of the plant species.

*Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. As discussed above, the designation of critical habitat in areas currently occupied by *Chorizanthe pungens* var. *pungens* would have little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning rather than waiting for case-by-case section 7 consultation to occur.

*Civil Justice Reform*

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Endangered Species Act. 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 *Chorizanthe pungens* var. *pungens*.

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

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

*National Environmental Policy Act*

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action

significantly affecting the quality of the human environment.

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, “Government-to-Government Relations With Native American Tribal Governments” (59 FR 22951) and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. The proposed designation of critical habitat for *Chorizanthe pungens* var. *pungens* does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

**References Cited**

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

**Author**

The authors of this proposed rule are Constance Rutherford and Diane Pratt, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (805/644-1766).

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

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

**Proposed Regulation Promulgation**

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

**PART 17—[AMENDED]**

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

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

2. In § 17.12(h) revise the entry for *Chorizanthe pungens* var. *pungens* under “FLOWERING PLANTS” to read as follows:

**§ 17.12 Endangered and threatened plants.**

\* \* \* \* \*

(h) \* \* \*

| Species                                             |                   | Historic range                      | Family name                 | Status | When listed | Critical habitat | Special rules |
|-----------------------------------------------------|-------------------|-------------------------------------|-----------------------------|--------|-------------|------------------|---------------|
| Scientific name                                     | Common name       |                                     |                             |        |             |                  |               |
| FLOWERING PLANTS                                    |                   |                                     |                             |        |             |                  |               |
| *                                                   | *                 | *                                   | *                           | *      | *           |                  | *             |
| <i>Chorizanthe pungens</i><br>var. <i>pungens</i> . | Spineflower ..... | Monterey .....<br>U.S.A. (CA) ..... | Polygonaceae—<br>Buckwheat. | T      |             | 17.96(b)         | NA            |
| *                                                   | *                 | *                                   | *                           | *      | *           |                  | *             |

3. In § 17.96, as proposed to be amended at 65 FR 66865, November 7, 2000, amend paragraph (b) by adding an entry for *Chorizanthe pungens* var. *pungens* in alphabetical order under Family Polygonaceae to read as follows:

**§ 17.96 Critical habitat—plants.**

\* \* \* \* \*

(b) \* \* \*

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 elements of critical habitat for *Chorizanthe pungens* var. *pungens* are the habitat components that provide:

(i) Sandy soils associated with active coastal dunes, coastal bluffs with a deposition of windblown sand, inland sites with sandy soils, and interior floodplain dunes;

(ii) the plant communities that support associated species, including coastal dune, coastal scrub, grassland, maritime chaparral, oak woodland, and interior floodplain dune communities, and have a structure such that there are openings between the dominant elements (e.g scrub, shrub, oak trees, clumps of herbaceous vegetation);

(iii) the plant communities that contain no or little cover by nonnative species which would compete for resources available for growth and reproduction of *Chorizanthe pungens* var. *pungens*; and

(iv) Pollinator activity between existing colonies of *Chorizanthe pungens* var. *pungens*;

(v) Physical processes, such as occasional soil disturbance, that support natural dune dynamics along coastal areas; and

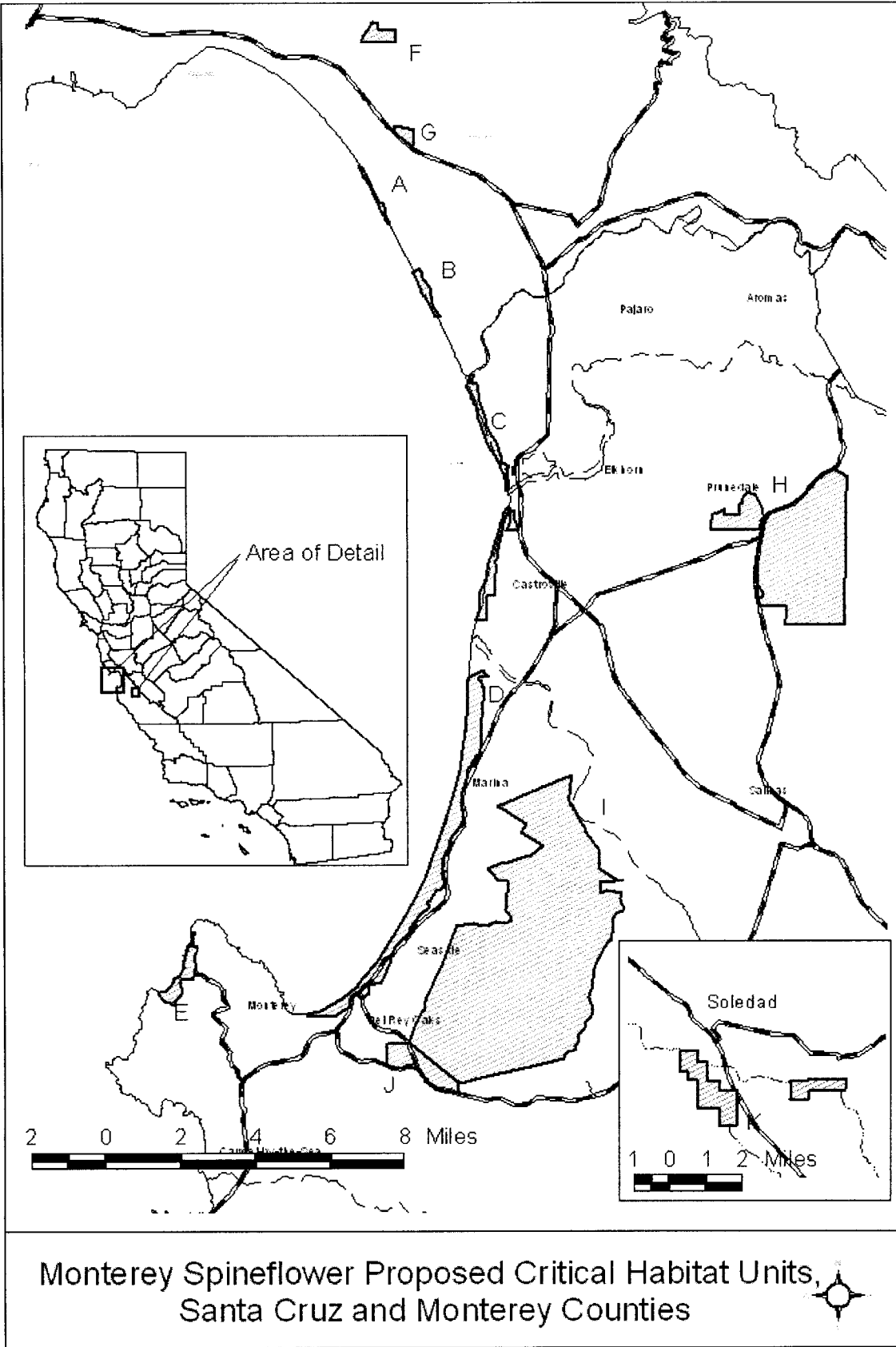
(vi) Seed dispersal mechanisms between existing colonies and other potentially suitable sites.

(3) Critical habitat does not include existing features and structures, such as buildings, roads, aqueducts, railroads, airports, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

*Critical Habitat Map Units*

Township/Range/Section boundaries are based upon Public Land Survey System. Within the historical boundaries of former Spanish Land Grants, boundaries are based upon section lines that are extensions to the Public Land Survey System developed by the California Department of Forestry and obtained by the Service from the State of California's Stephen P. Teale Data Center.

BILLING CODE 4310-55-P

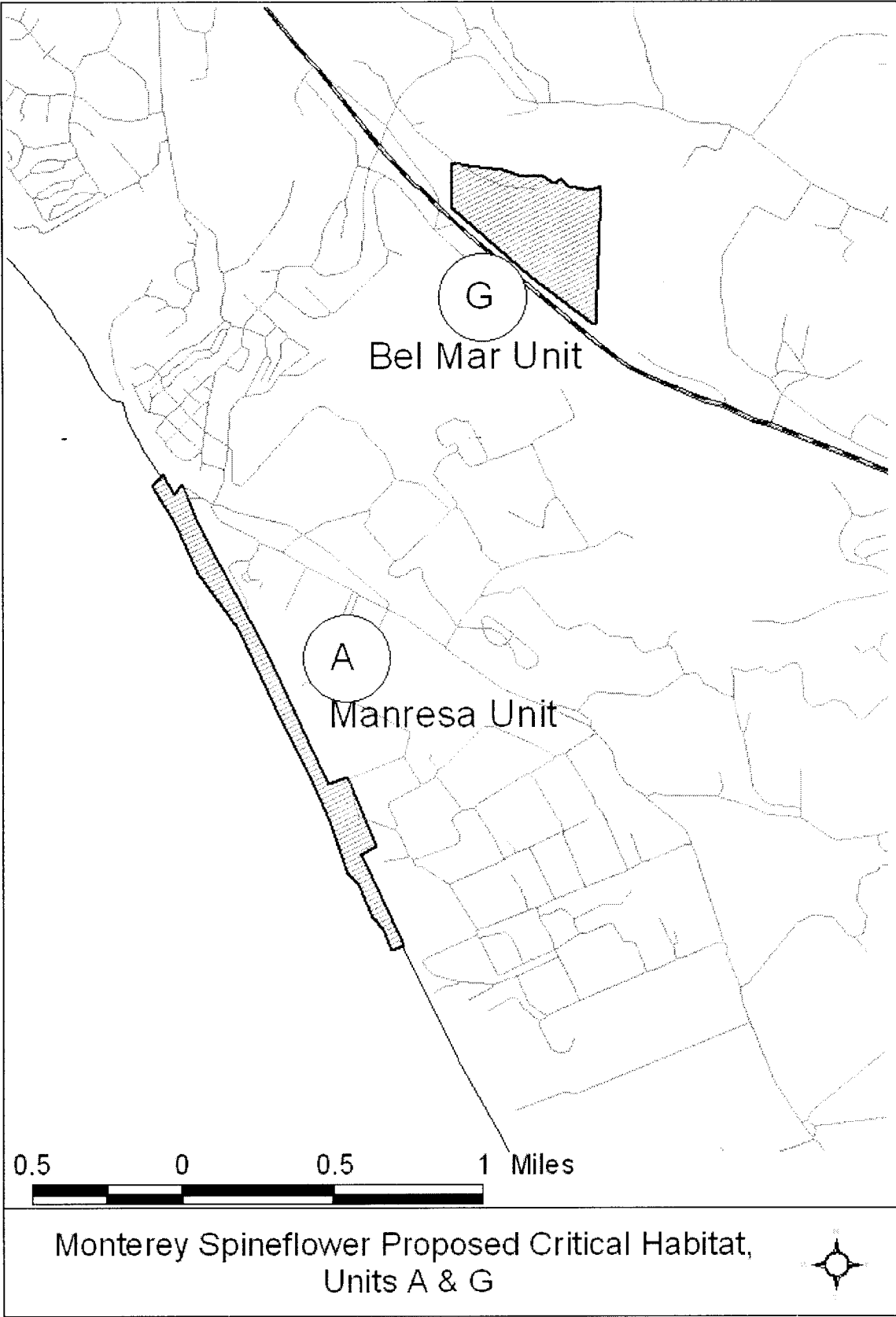


## Coastal Units:

*Unit A: Manresa Unit.* Santa Cruz County, California. From USGS 7.5' quadrangle map Watsonville West, California. Lands located within T.11 S., R.1 E., sec. 33 and T.12 S., R.1 E., sec. 4, W $\frac{1}{2}$  sec. 3 are being proposed for critical habitat. The outer perimeter of this unit is bounded by the following: Beginning at the northern boundary of Manresa State Beach, proceeding southeast and then northeast along the

eastern boundary of Manresa State Beach until reaching a point just northwest of the Access Road; proceeding 0.2 km (0.10 mi) southeast to the boundary of Manresa State Beach, then proceeding northeast following the boundary of Manresa State Beach until reaching a point 0.24 km (0.15 mi) northwest of Sea View Terrace; proceeding southeast to Sea View Terrace and continuing southeast along Sea View Terrace to the intersection

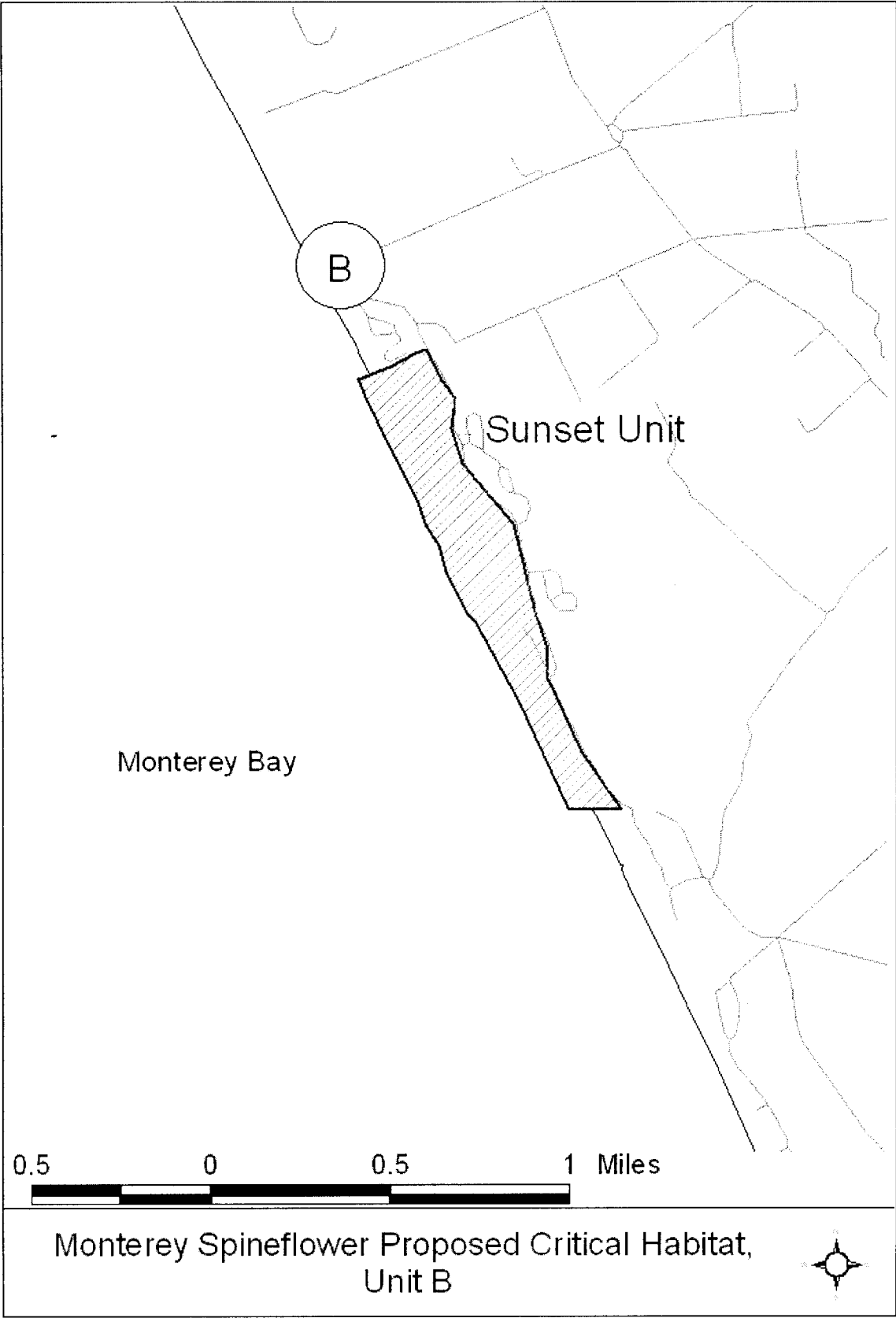
with Crest Drive; then proceeding west to the eastern boundary of Manresa State Beach; proceeding southeast to the southern boundary of Manresa State Beach; proceeding west to mean high tide following the southern boundary of Manresa State Beach; then proceeding northwest along mean high tide to the northern boundary of Manresa State Beach.



*Unit B: Sunset Unit.* Santa Cruz County, California. From USGS 7.5' quadrangle map Watsonville West, California. Lands located within T.12 S., R.1 E., sec. 14 and sec. 23 are being proposed for critical habitat. The outer perimeter of this unit is bounded by the

following: Beginning at the northern boundary of Sunset State Beach at Monte Vista Way; proceeding northwest along Monte Vista Way to Shell Road; proceeding southeast 2.33 km (1.45 mi) along Shell Road; turning west at the point at which Shell Road veers to the

east and then proceeding west to mean high water; proceeding northwest along mean high water 2.17 km (1.35 mi) to a point perpendicular to the boundary of Sunset State Beach; proceeding northeast to point of beginning.



*Unit C: Moss Landing Unit.* Santa Cruz County, California. From USGS 7.5' quadrangle map Moss Landing, California. This unit contains portions of Zmudowski State Beach, Moss Landing State Beach, Moss Landing North Harbor, Moss Landing Marine Laboratory, and Salinas River State Beach.

The boundaries of Zmudowski, Moss Landing, and Salinas River State Beaches reflect the boundaries indicated on the USGS map as of 1994. Lands located within T.12 S., R.1 E., sec. 36; T.13 S., R.1 E., sec. 1; T.13 S., R.2 E., sec. 6, sec. 7 are being proposed for critical habitat. The outer perimeter of this subunit is bounded by the following: Beginning at northern boundary of Zmudowski State Beach just south of the Pajaro River, proceeding east then southwest then east along the eastern boundary of Zmudowski State Beach; proceeding 2.7 km (1.7 mi) southeast along the eastern boundary to the southern boundary of Zmudowski State Beach; continuing southeast for 0.6 km (0.4 mi) to the northeastern boundary of Moss Landing State Beach; proceeding southeast along the eastern boundary of Moss Landing State Beach west of Bennett Slough to Jetty Road; proceeding south along Jetty Road 1.0 km (0.6 mi) and then southwest along Jetty Road near the mouth of Elkhorn Slough to mean high

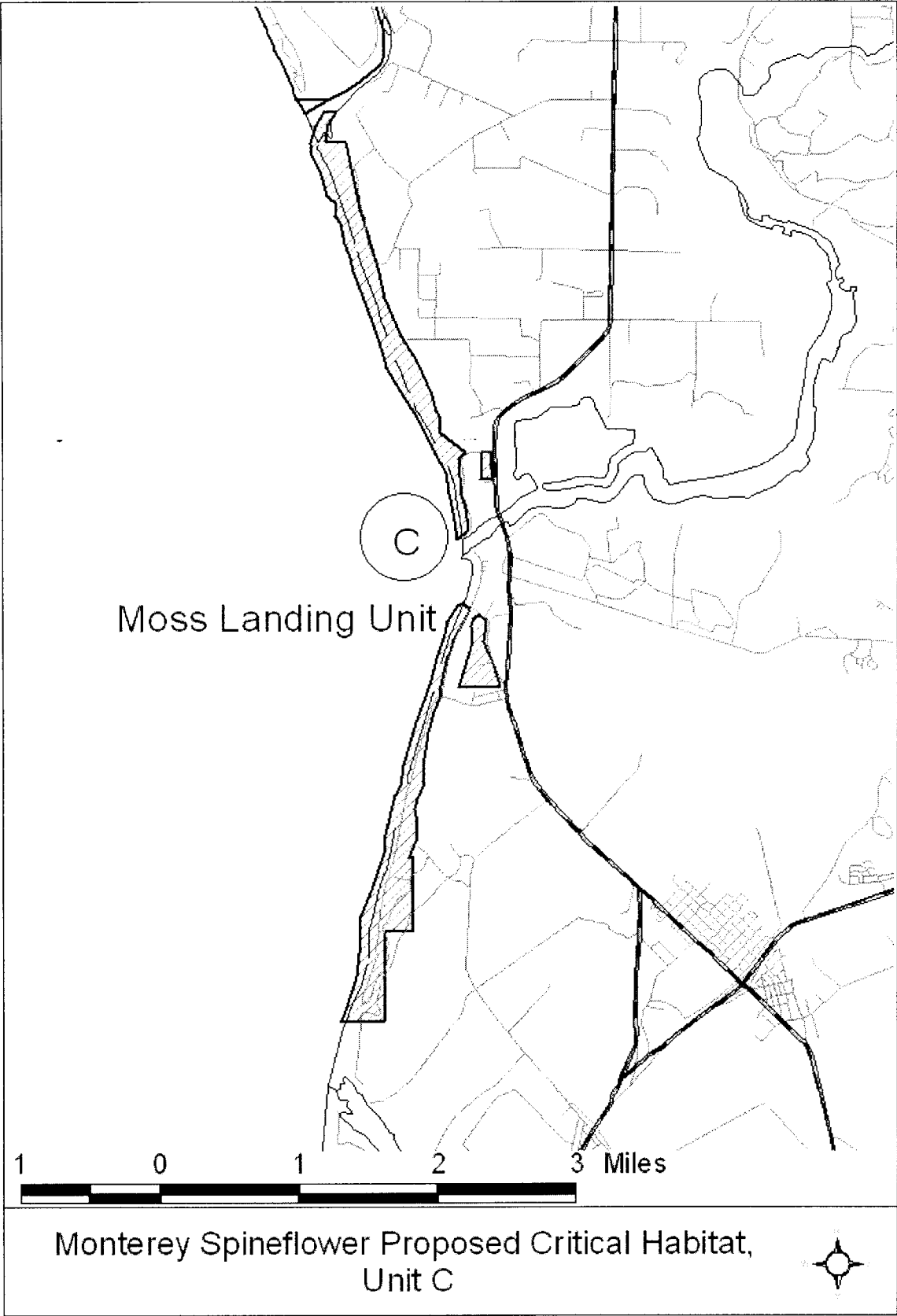
water; proceeding northwest along mean high water to the mouth of Pajaro River; proceeding northeast to the northern boundary of Zmudowski State Beach.

In addition, an area known as Moss Landing North Harbor, located within T.13 S., R.2 E., sec. 7, is being proposed for critical habitat. The outer perimeter of this subunit is bounded by the following: Beginning at the southwest corner of the Highway 1 and Jetty Road intersection; proceeding south 0.3 km (0.2 mi) to the Elkhorn Yacht club; proceeding west to the shoreline of North Harbor; proceeding north along the shoreline to Jetty Road; proceeding east along Jetty Road to its intersection with Highway 1.

South of Elkhorn Slough, lands located within T.13 S., R.1 E., sec. 25, N $\frac{1}{2}$  sec. 36; T.13 S., R.2 E., sec. 18, sec. 19, W $\frac{1}{2}$  of NW $\frac{1}{4}$  of SW $\frac{1}{4}$  sec. 30, W $\frac{1}{4}$  of NW $\frac{1}{4}$  sec. 30 are being proposed for critical habitat. The outer perimeter of this subunit is bounded by the following: Beginning at the corner of Sandholdt Road and a bridge over the Salinas River; proceeding south along Sandholdt Road to its terminus at Potrero Road; proceeding south along the eastern boundary of Salinas River State Beach to its terminus; continuing south about 0.5 km (0.3 mi) along the line of W $\frac{1}{4}$  of NW $\frac{1}{4}$  sec. 30 (T.13 S., R.2 E.); continuing south about 0.4 km (0.25 mi) along the line of W $\frac{1}{2}$  of NW $\frac{1}{4}$

of SW $\frac{1}{4}$  sec. 30 (T.13 S., R.2 E.); proceeding west about 0.23 km (0.14 mi) to the section line of T.13 S., R.1 E., sec. 25; proceeding south about 0.40 km (0.25 mi) along the section line of T.13 S., R.1 E., sec. 25; proceeding west 0.08 km (0.05 mi) to the western line of Township 13, Range 1; proceeding south about 0.8 km (0.5 mi) to the line of T.13 S., R.1 E., N $\frac{1}{2}$  sec. 36; proceeding west 0.56 km (0.35 mi) to the mean high tide; proceeding north about 5.23 km (3.25 mi) along mean high tide to the road extending from the bridge over the Salinas River; proceeding southeast about 0.16 km (0.10 mi) to the corner of Sandholdt Road and a bridge over the Salinas River.

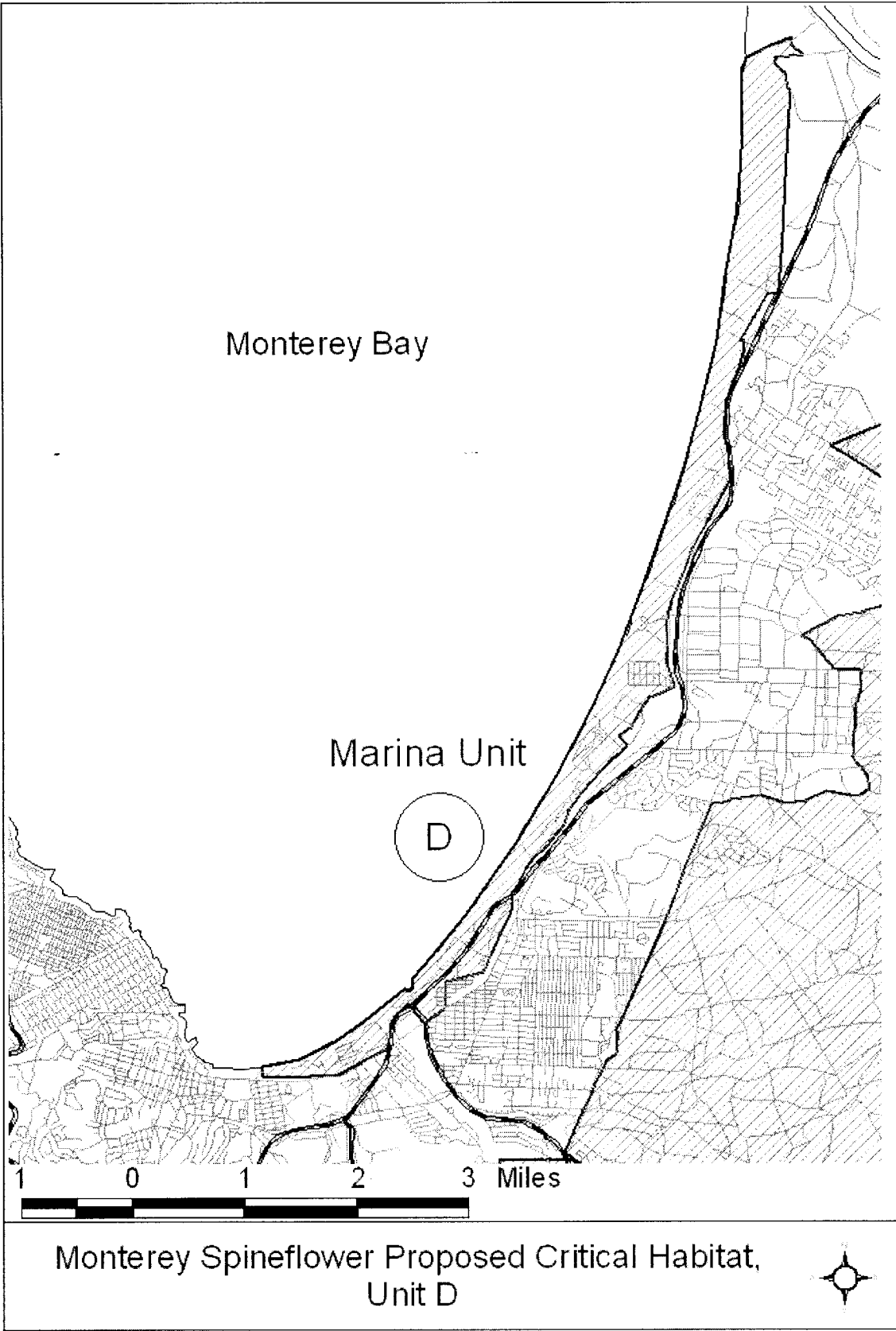
An additional area located within section 18, which encompasses portions of Moss Landing Marine Laboratory, is being proposed for critical habitat and is bounded by the following: beginning west of Moro Cojo Slough at the intersection of Moss Landing Road and the bridge over Salinas River; proceeding south 0.8 km (0.5 mi) along Moss Landing Road; proceeding west 0.5 km (0.3 mi) along the section line of T.13 S., R.2 E., sec. 18 (north of Potrero Road) to the Salinas River; proceeding north 0.8 km (0.5 mi) along the Salinas River to the bridge; proceeding southeast along the bridge to the its intersection with Moss Landing Road.



*Unit D: Marina Unit.* Monterey, California. From USGS 7.5' quadrangle maps Marina, Seaside, and Monterey, California. The boundaries of Salinas National Wildlife Refuge and Marina State Beach, and the township and range lines reflect the boundaries indicated on USGS map as of 1983. Lands located within the following sections are being proposed for critical habitat: T.14 S., R.1 E., S $\frac{1}{2}$  sec. 1, sec. 12, sec. 13, sec. 24, sec. 25, sec. 26, sec. 35, sec. 36; T.15 S., R.1 E., sec. 2, sec. 10, sec. 11, sec. 15, sec. 16, NW $\frac{1}{4}$ sec. 22, sec. 21, sec. 20, NW $\frac{1}{4}$  sec. 28, NE $\frac{1}{4}$  sec. 29. The outer perimeter of this unit is bounded by the following: Beginning at the southwestern corner of the boundary of the Salinas River National Wildlife Refuge; proceeding north along mean high water to an existing trail south of the saline pond; proceeding northeast about 0.8 km (0.5 mi) along the trail to the intersection of the trail with an existing access road; proceeding southeast about 0.3 km (0.2 mi) along the access road to its intersection with an access road just west of the terminus

of Neponset Road; proceeding west 0.40 km (0.25 mi) along the access road to another existing access road; proceeding southeast 0.56 km (0.35 mi) along this access road to the western line of Township 14, Range 1; proceeding south approximately 2 miles along the eastern line of Range 1 to its intersection with Highway 1; proceeding west 0.1 mile to Dunes Drive; proceeding southwest approximately 0.8 km (0.5 mi) along Dunes Drive to the northern boundary of Marina State Beach; following the northern and then eastern boundary of Marina State Beach for approximately 2.1 km (1.3 mi) to the northern boundary of former Fort Ord; proceeding south about 0.8 km (0.5 mi) along the Southern Pacific Railroad to its intersection with Beach Range Road; proceeding south about 5.6 km (3.5 mi) along Beach Range Road to its terminus; proceeding south to the Southern Pacific Railroad; proceeding south 0.5 km (0.3 mi) along Southern Pacific Railroad to its intersection with Highway 1; continuing south about 1.20 km (0.75 mi) along the Southern Pacific

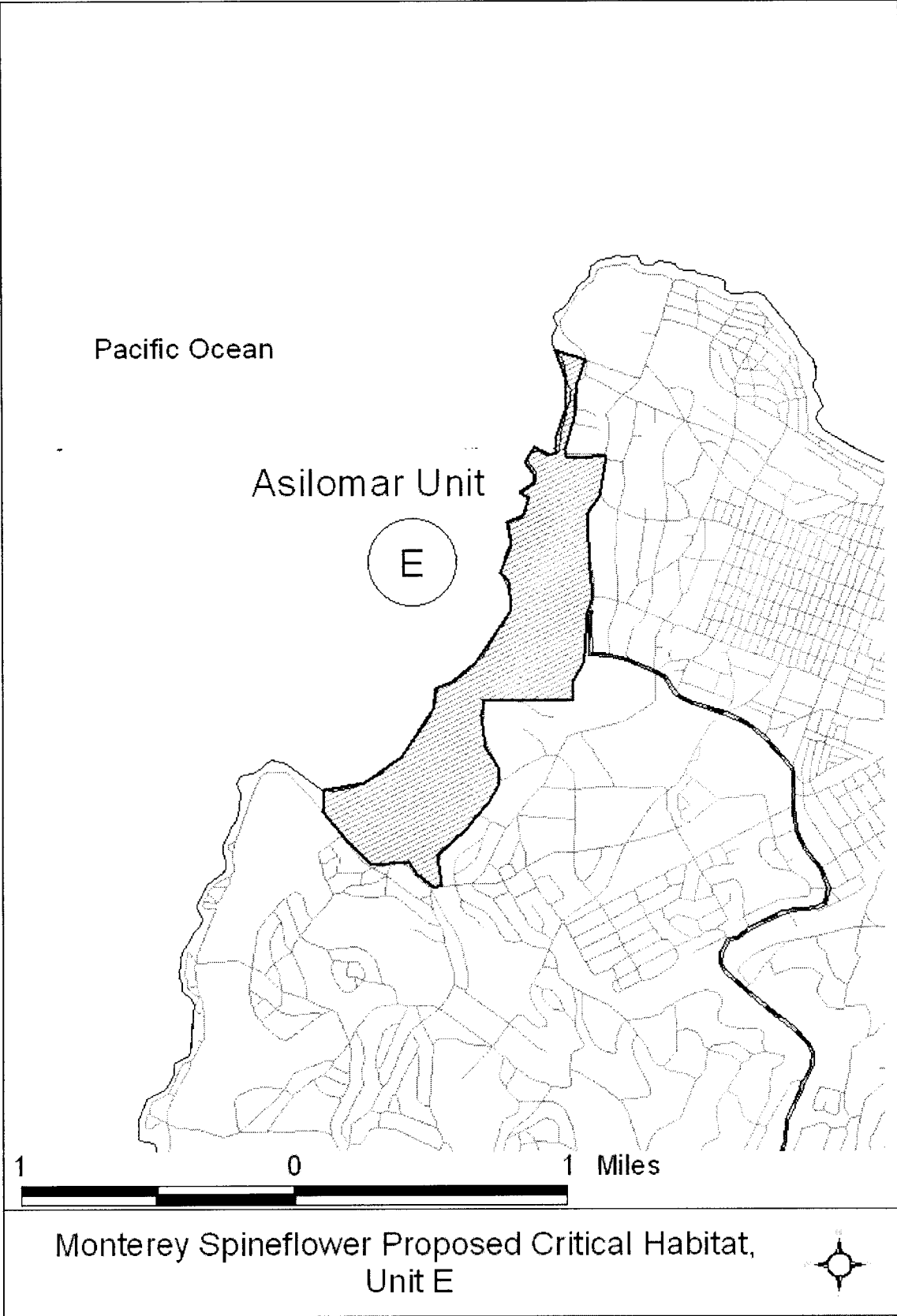
Railroad, just west of Del Monte Boulevard; proceeding southwest along California Boulevard to its terminus; proceeding south along Contra Costa Street to its intersection with Del Monte Boulevard; proceeding southwest along Del Monte Boulevard to its intersection with Canyon Del Rey Boulevard; proceeding northwest along Canyon Del Rey Boulevard to Highway 1; proceeding south about 0.72 km (0.45 mi) along Highway 1 to its intersection with Del Monte Avenue; proceeding southwest and then west about 1.9 km (1.2 mi) along Del Monte Avenue to the half section line of T.15 S., R.1 E., sec. 29; proceeding north to mean high tide; proceeding northeast and then north about 17.1 km (10.6 mi) along mean high tide to the southwestern corner of the boundary of the Salinas River National Wildlife Refuge. This habitat unit excludes all areas covered under the Habitat Conservation Plan for the North of Playa Redevelopment Project in Sand City.



*Unit E: Asilomar Unit.* Monterey County, California. From USGS 7.5' quadrangle map Monterey, California. Lands located within T.18 S., R.1 W., sec. 11, sec. 14, sec. 15, and sec. 22 are being proposed for critical habitat. The outer perimeter of this critical habitat unit is bounded by the following: Beginning at the corner of Sunset Drive and Lighthouse Avenue; proceeding south 0.56 km (0.35 mi) along Sunset

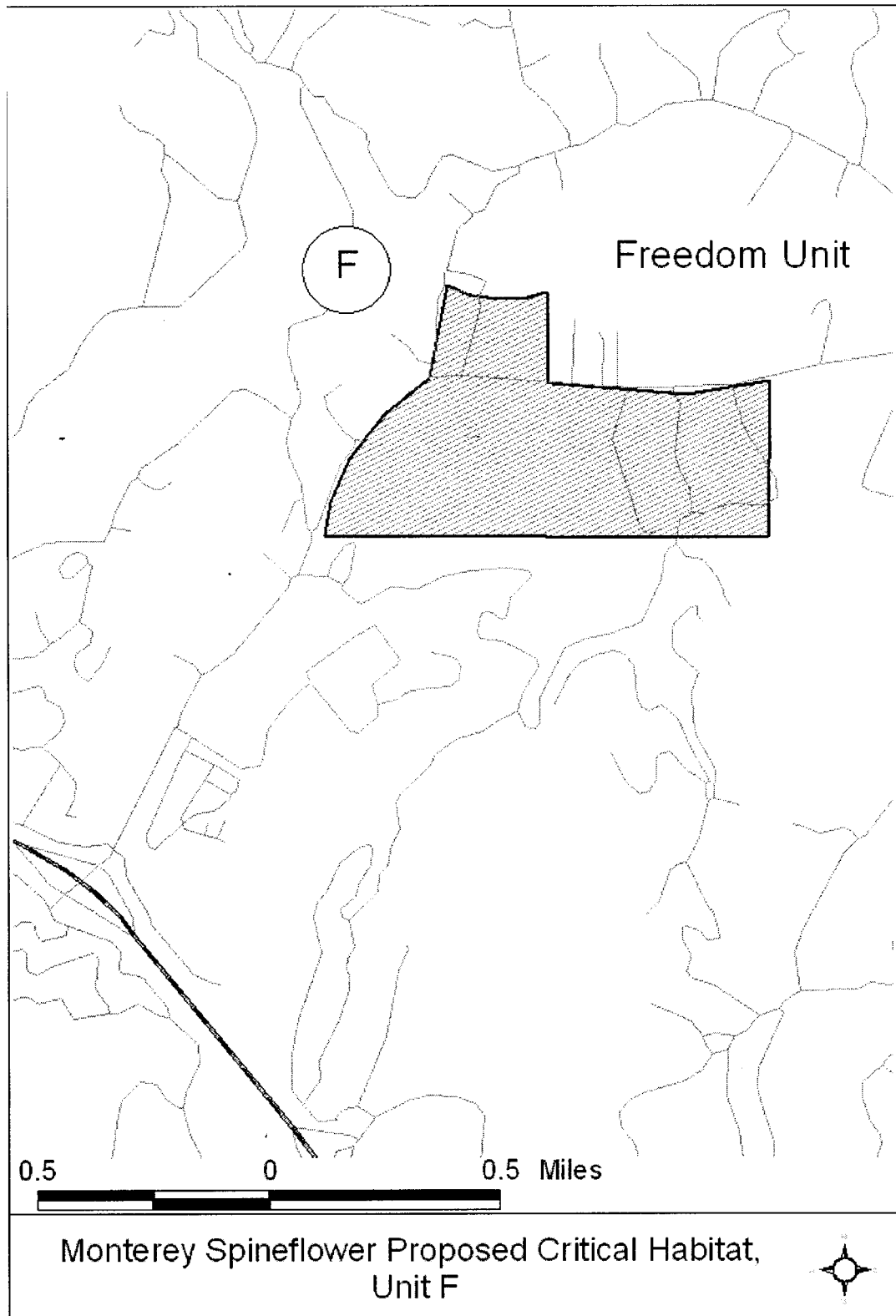
Drive to its intersection with Arena Avenue; proceeding east 0.24 km (0.15 mi) along Arena Avenue to its terminus; proceeding south about 1.2 km (0.75 mi) along Asilomar Boulevard to its terminus at Sunset Drive; proceeding south 0.24 km (0.15 mi) to the section line of T.18 S., R.1 W., sec. 14; proceeding west 0.56 km (0.35 mi) along the section line of T.18 S., R.1 W., sec. 14 to Seventeen Mile Drive; proceeding

south along Seventeen Mile Drive about 1.2 km (0.75 mi); proceeding west about 1.0 km (0.6 mi) along Seventeen Mile Drive; proceeding north to mean high tide; proceeding north about 3.5 km (2.2 mi) along mean high tide to a point west of Lighthouse Avenue; proceeding east about 0.16 km (0.10 mi) to the corner of Sunset Drive and Lighthouse Avenue.



## Inland units:

*Unit F: Freedom Boulevard Unit.* Santa Cruz County, California. From USGS 7.5' quadrangle map Watsonville West, California. The following lands are being proposed for critical habitat: T.11 S., R.1 E., SW¼ sec. 10, excluding land north of Freedom Boulevard, and SE¼ sec. 9, bounded to the west by Freedom Boulevard and McDonald Road (formerly southwest leg of Day Valley Road) and to the north by Apple Lane.



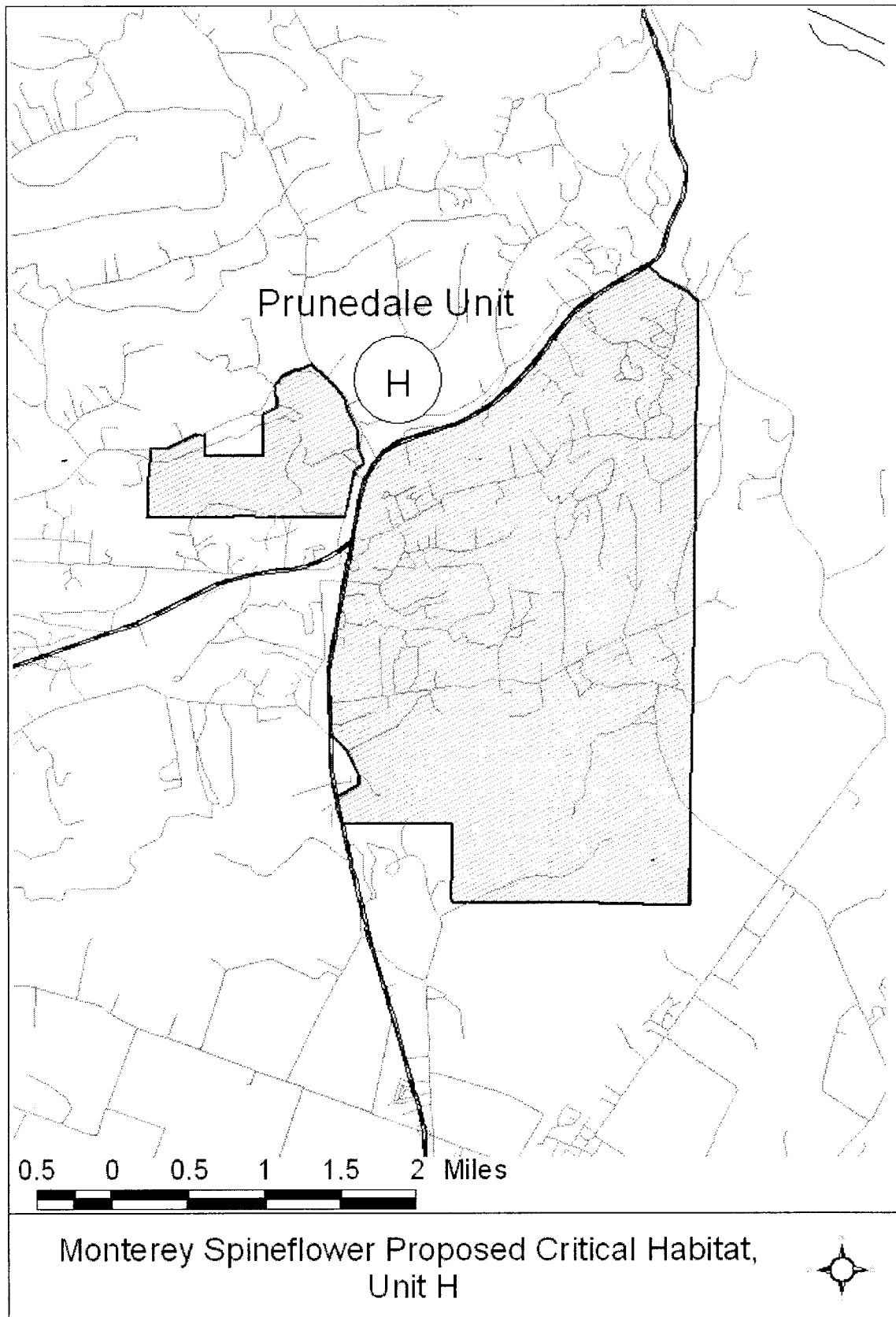
*Unit G: Bel Mar unit.* Santa Cruz County, California. From USGS 7.5' quadrangle map Watsonville West, California. The following lands are being proposed for critical habitat: T.11 S., R.1 E., E $\frac{1}{2}$  sec. 27, bounded to the north by East Bel Mar Drive and to the south by Highway 1.

*Unit H: Prunedale Unit.* Monterey County, California. From USGS 7.5' quadrangle map Prunedale, California. The boundary of Manzanita Regional Park reflect the boundary indicated on USGS map as of 1993.

West of Highway 101, the following areas of Manzanita Regional Park located within T.13 S., R.3 E., sec. 18, sec. 17, sec. 19 are being proposed for critical habitat: E $\frac{1}{2}$  of NE $\frac{1}{4}$  and S $\frac{1}{2}$  sec. 18, excluding all areas outside of the boundary of Manzanita Regional Park and the area north of Castroville Boulevard; W $\frac{1}{2}$  sec. 17, excluding the area east of San Miguel Canyon Road and the area north of Castroville Boulevard. N $\frac{1}{2}$  of N $\frac{1}{2}$  of sec. 19, excluding all areas outside of the boundary of Manzanita Regional Park. In addition, the following portions of

section 18 are excluded from this unit: the NE $\frac{1}{4}$  of NE $\frac{1}{4}$  of SW $\frac{1}{4}$  sec.18, and the N $\frac{1}{2}$  of NW $\frac{1}{4}$  of SE $\frac{1}{4}$  sec. 18.

East of Highway 101, lands located within T.13 S., R.3 E., W $\frac{1}{2}$  sec.10, sec. 9, W $\frac{1}{2}$  sec. 15, sec. 16, sec. 17, W $\frac{1}{2}$  sec. 22, sec. 21, sec. 20, W $\frac{1}{2}$  sec. 27, sec. 28, sec. 29, NW $\frac{1}{4}$  sec. 34, N $\frac{1}{2}$  sec. 33 are being proposed for critical habitat. This subunit excludes land west and north of Highway 101, land north of Crazy Horse Road (in sec. 10) and the area between Reese Circle and Highway 101 (in sec. 29).



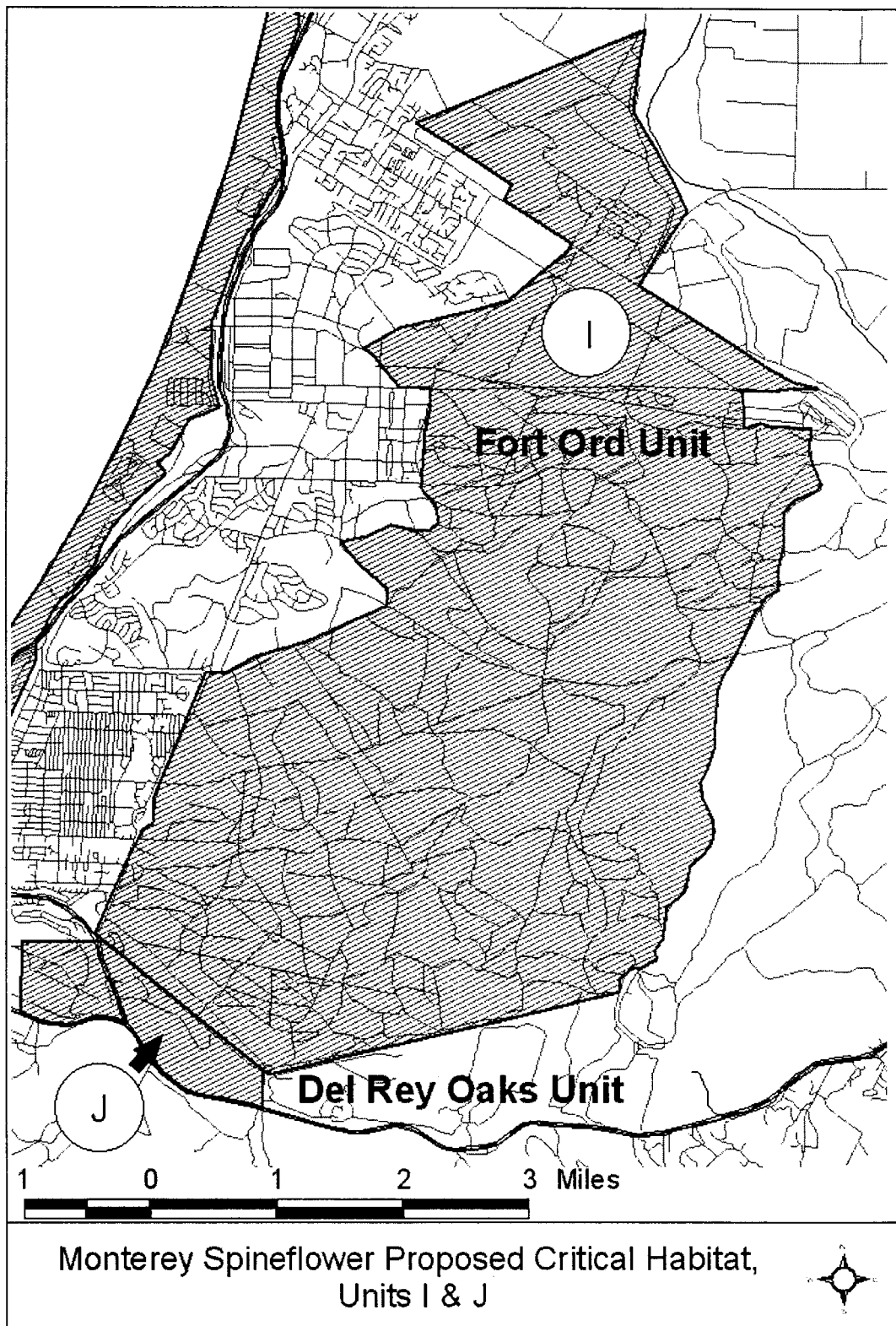
*Unit I: Fort Ord Unit:* Monterey County, California. From USGS 7.5' quadrangle maps Seaside, Marina, Salinas, and Spreckels, California. The boundaries of former Fort Ord reflect the boundaries indicated on USGS maps as of 1983 and 1984. The following sections located within former Fort Ord are being proposed for critical habitat: T.14 S., R.2 E., E $\frac{1}{2}$  sec. 30, sec. 29, SE $\frac{1}{4}$  of SE $\frac{1}{4}$  sec. 20, SW $\frac{1}{4}$  sec. 21, W $\frac{1}{2}$  sec. 28, sec. 32, sec. 33, E $\frac{1}{2}$  sec. 31; T.15 S., R.2 E., sec. 3 through sec. 10, sec. 15 through sec. 21, sec. 28 through sec. 32, NW $\frac{1}{4}$  sec. 33; T.15 S., R.1 E. sec. 12, sec. 13, E $\frac{1}{2}$  sec. 14, sec. 24 through sec. 35; T.16 S., R.1 E. sec. 1.

The outer perimeter of this unit is bounded by the following: Beginning at the northeastern corner of the former Fort Ord boundary in T.14 S., R.2 E. sec. 21; proceeding south 1.20 km (0.75 mi) along the eastern boundary of former Fort Ord to its intersection with the Salinas River; proceeding southeast 0.8 km (0.5 mi) along the eastern edge of the Salinas River; continuing southeast 0.40 km (0.25 mi) to West Blanco Road; proceeding southwest along West Blanco Road to Reservation Road;

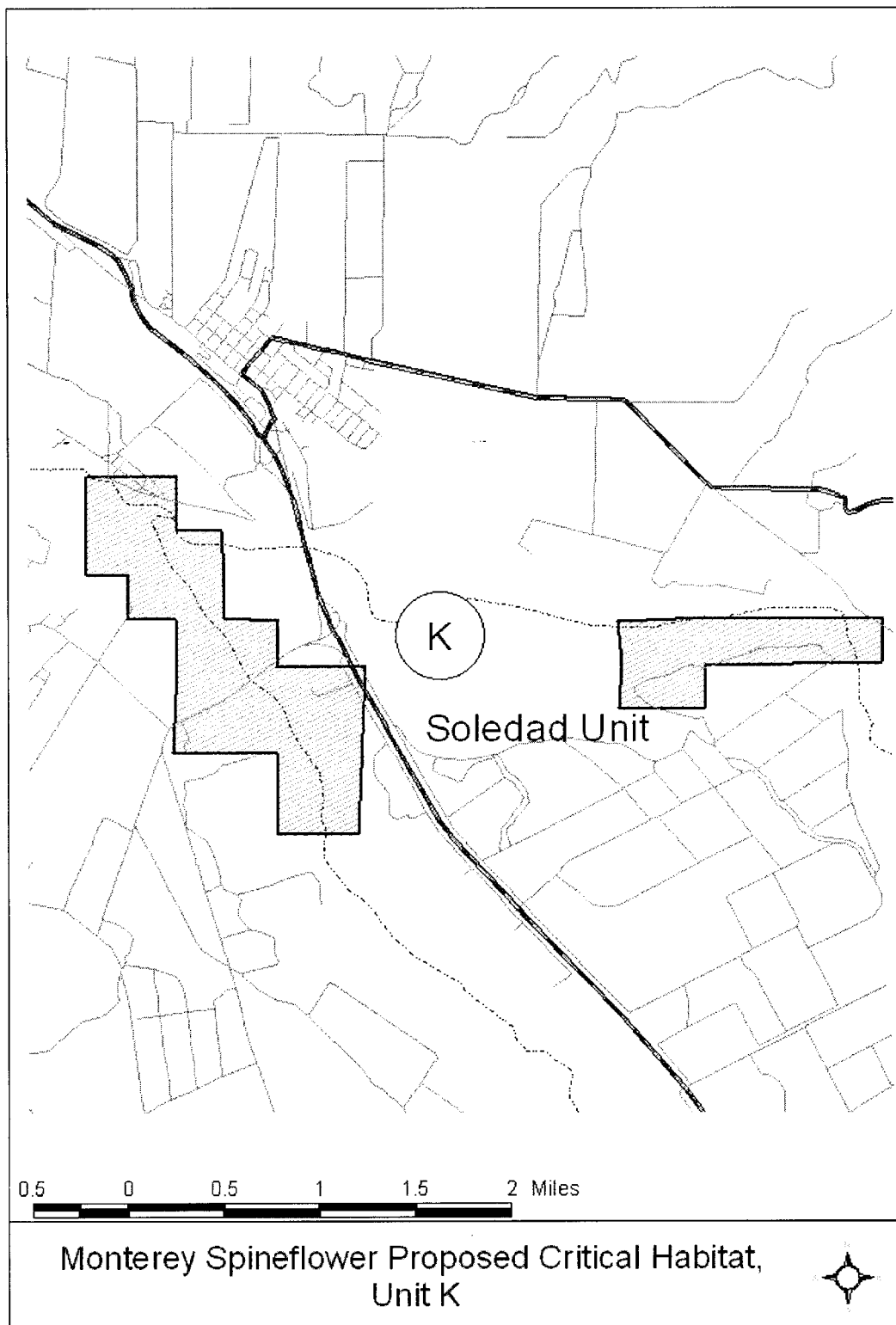
proceeding southeast along Reservation Road to Inter-Garrison Road; proceeding west along Inter-Garrison Road to Old Country Road; proceeding south along Old Country Road to Watkins Gate Road; proceeding east along Watkins Gate Road to Barloy Canyon Road; proceeding south 5.25 miles south to the southern boundary of former Fort Ord, just east of Laguna Seca; proceeding 4.3 km (2.7 mi) southwest then 2.7 km (1.7 mi) northwest along the southern boundary of former Fort Ord to General Jim Moore Boulevard (formerly North-South Road); proceeding northeast about 3.62 km (2.25 mi) along General Jim Moore Boulevard to Eucalyptus Road; proceeding northeast 2.4 km (1.5 mi) along Eucalyptus Road to Parker Flats Cut Off; proceeding north then northwest along Parker Flats Cut Off to Parker Flats Road; proceeding east then north along Parker Flats Road to Gigling Road; continuing north along 8th Avenue to Inter-Garrison Road; proceeding west along Inter-Garrison Road to the 8th Street Cut Off; proceeding northwest along 8th Street Cut Off to Imjin Road; proceeding northeast along Imjin Road to

Reservation Road; proceeding northwest along Reservation Road to the western boundary of former Fort Ord; proceeding northeast then northwest along the western boundary of former Fort Ord; then proceeding about 3 km (2 mi) along the northern boundary to the northeastern corner of the boundary of former Fort Ord. This unit excludes paved areas of Marina Airport, located north of Reservation Road, and the campus of California State University at Monterey Bay, located south of Reservation Road.

*Unit J: Del Rey Oaks Unit.* Monterey County, California. From USGS 7.5' quadrangle map Seaside, California. The boundaries of former Fort Ord reflect the boundaries indicated on USGS maps as of 1983 and 1984. The following lands are being proposed for critical habitat: T.15 S., R.1 E., E $\frac{1}{2}$  sec. 34, excluding lands south of Highway 68; T.15 S., R.1 E., sec. 35, excluding land south and west of highway 68; T.15 S., R.1 E., SW $\frac{1}{4}$  sec. 36, excluding lands north of the former boundary of Fort Ord; T.16 S., R.1 E., NW $\frac{1}{4}$  sec. 1 and NE $\frac{1}{4}$  sec. 2, excluding lands south of Highway 68.



*Unit K: Soledad Unit.* Monterey County, California. From USGS 7.5' quadrangle map Soledad, California. The following lands are being proposed for critical habitat: T.17 S., R.6 E., NE $\frac{1}{4}$  sec. 32, NE $\frac{1}{4}$  of SE $\frac{1}{4}$  sec. 32, SW $\frac{1}{4}$  of NW $\frac{1}{4}$  sec. 33, NW $\frac{1}{4}$  of SW $\frac{1}{4}$  sec. 33, S $\frac{1}{4}$  of SW $\frac{1}{4}$  sec. 33, S $\frac{1}{2}$  of SE $\frac{1}{4}$  sec. 35, S $\frac{1}{2}$  of S $\frac{1}{2}$  sec. 36; T.18 S., R.6 E., E $\frac{1}{2}$  and NW $\frac{1}{4}$  sec. 4, N $\frac{1}{2}$  of NE $\frac{1}{4}$  sec. 2.



\* \* \* \* \*

Dated: January 16, 2001

**Kenneth L. Smith,**

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01-1836 Filed 2-14-01; 8:45 am]

BILLING CODE 4310-55-C

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****RIN 1018-AH82****Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Polygonum hickmanii* (Scotts Valley Polygonum) and *Chorizanthe robusta* var. *hartwegii* (Scotts Valley Spineflower)****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Polygonum hickmanii* (Scotts Valley polygonum) and *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower). Approximately 125 hectares (310 acres) of land fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Santa Cruz County, California. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

**DATES:** We will accept comments until April 16, 2001. Public hearing requests must be received by April 2, 2001.

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

You may submit written comments and information to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493, Portola

Road, Suite B, Ventura, California, 93003.

You may also send comments by electronic mail (e-mail) to [svpolyg&sf@fws.gov](mailto:svpolyg&sf@fws.gov). See the Public Comments Solicited section below for file format and other information about electronic filing.

You may hand-deliver comments to our Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Connie Rutherford, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003 (telephone 805/644-1766; facsimile 805/644-3958).

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

*Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* are endemic to Purisima sandstone and Santa Cruz mudstone in Scotts Valley in the Santa Cruz Mountains. *Chorizanthe robusta* var. *hartwegii* was listed as endangered on February 4, 1994 (59 FR 5499). *Polygonum hickmanii* was proposed as endangered on November 9, 2000 (65 FR 67335).

*Polygonum hickmanii* is a small, erect, taprooted annual in the buckwheat family (Polygonaceae). It grows from 2 to 5 centimeters (cm) (1 to 2 inches (in.)) tall, and can be either single stemmed or profusely branching near the base in more mature plants. The linear-shaped leaves are 0.5 to 3.5 cm (0.2 to 1.4 in.) long and 1 to 1.5 cm (0.4 to 0.6 in.) wide and tipped with a sharp point. The single white flowers consist of two outer tepals and three inner tepals and are found in the axils of the bracteal leaves. The plant flowers from late May to August. Seed production ranges from a few dozen in a typical individual to as many as two hundred in a particularly robust individual (R. Morgan, pers. comm. 1998). Although pollination for this species has not been studied, Morgan observed a sphecid wasp (family Sphecidae) visitation to an individual of *P. hickmanii* (Morgan, pers. comm. 1998). Other potential pollinators have not been identified at this time, and the degree to which *P. hickmanii* depends on insect pollinators (rather than being self-pollinated) has not been determined. The nearest location of a closely related species, *P. parryi*, is at Mount Hamilton, about 48 kilometers

(km) (30 miles (mi)) inland. *Polygonum hickmanii* differs from *P. parryi* in its larger white flowers, longer leaves, larger anthers and achenes, and longer, straight stem sheath (Hinds and Morgan 1995).

*Chorizanthe robusta* var. *hartwegii* is a low-growing herb with rose-pink involuclral margins confined to the basal portion of the teeth and an erect habit. The aggregate flowers (heads) are medium in size (1 to 1.5 cm (0.4 to 0.6 in.) in diameter) and distinctly aggregate. The plant germinates during the winter months and flowers from April through June. Although pollination ecology has not been studied for this taxon, it is likely visited by a wide array of pollinators; observations of pollinators on other species of *Chorizanthe* that occur in Santa Cruz County have included leaf cutter bees (megachilids), at least 6 species of butterflies, flies, and sphecid wasps. Each flower produces one seed; depending on the vigor of individual plants, dozens, if not hundreds, of seeds could be produced. The importance of pollinator activity in seed set has been demonstrated in another species of *Chorizanthe* by the production of seed with low viability where pollinator access was limited (Harding Lawson Associates 2000). Seed dispersal is facilitated by the involuclral spines, which attach the seed to passing animals. *Chorizanthe robusta* var. *hartwegii* is one of two varieties of the species *C. robusta*. The other variety (*C. robusta* var. *robusta*), known as the robust spineflower, is known from the coast of southern Santa Cruz and northern Monterey counties and also is listed as endangered.

*Polygonum hickmanii* and *Chorizanthe robusta* var. *hartwegii* are known from two sites about one mile apart at the northern end of Scotts Valley in Santa Cruz County, California. The plants are found on gently sloping to nearly level fine-textured shallow soils over outcrops of Santa Cruz mudstone and Purisima sandstone (Hinds and Morgan 1995). Together they occur with other small annual herbs in patches within a more extensive annual grassland habitat. These small patches have been referred to as "wildflower fields" because they support a large number of native herbs, in contrast to the adjacent annual grasslands that support a greater number of non-native grasses and herbs. While the wildflower fields are underlain by shallow, well-draining soils, the surrounding annual grasslands are underlain by deeper soils with a greater water-holding capacity, and therefore more easily support the growth of non-native grasses and herbs.