

within the service area. CTSs provide service from a fixed point, and certain CTSs must be individually licensed as part of a 218–219 MHz Service system. See § 95.811.

(c) Each 218–219 MHz Service system service area is one of the cellular system service areas as defined by the Commission, unless modified pursuant to § 95.823.

3. Section 95.807 is amended by revising paragraphs (a) introductory text, (a)(1), and (a)(4) to read as follows:

§ 95.807 Requesting regulatory status.

(a) Authorizations for systems in the 218–219 MHz Service will be granted to provide services on a common carrier basis or a private (non-common carrier and/or private internal-use) basis.

(1) *Initial applications.* An applicant will specify on FCC Form 601 if it is requesting authorizations to provide services on a common carrier, non-common carrier or private internal-use basis, of a combination thereof.

(4) *Pre-existing licenses.* Licenses granted before April 9, 2001, are authorized to provide services on a private (non-common carrier) basis. Licensees may modify this initial status pursuant to paragraph (a)(3) of this section.

4. Section 95.811 is amended by revising paragraph (b) and adding paragraph (e) to read as follows:

§ 95.811 License requirements.

(b) Each CTS where the antenna does not exceed 6.1 meters (20 feet) above ground or an existing structure (other than an antenna structure) and is outside the vicinity of certain receiving locations (see § 1.924 of this chapter) is authorized under the 218–219 MHz System license. All other CTS must be individually licensed.

(e) Each CTS (regardless of whether it is individually licensed) and each RTU must be in compliance with the Commission’s environmental rules (see part 1, subpart I of this chapter) and the Commission’s rules pertaining to the construction, marking and lighting of antenna structures (see part 17 of this chapter).

5. Section 95.812 is amended by revising paragraph (a) to read as follows:

§ 95.812 License term.

(a) The term of each 218–219 MHz service system license is ten years from the date of original grant or renewal.

6. § 95.816 is amended by revising the last sentence in paragraph (b), paragraphs (c)(3) and (c)(5) to read as follows:

§ 95.816 Competitive bidding procedures.

(b) * * * The interest rate will equal the rate for five-year U.S. Treasury obligations at the grant date.

(3) For purposes of determining whether an entity meets either of the definitions set forth in paragraph (c)(1) or (c)(2) of this section, the gross revenues of the entity, its affiliates, and controlling interests shall be considered on a cumulative basis and aggregated.

(5) A consortium of small businesses (or a consortium of very small businesses) is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which individually satisfies the definition in paragraph (c)(1) of this section (or each of which individually satisfies the definition in paragraph (c)(2) of this section). Where an applicant or licensee is a consortium of small businesses (or very small businesses), the gross revenues of each small business (or very small business) shall not be aggregated.

7. Section 95.819 is revised to read as follows:

§ 95.819 License transferability.

(a) A 218–219 MHz Service system license, together with all of its component CTS licenses, may be transferred, assigned, sold, or given away only in accordance with the provisions and procedures set forth in § 1.948 of this chapter. For licenses acquired through competitive bidding procedures (including licenses obtained in cases of no mutual exclusivity), designated entities must comply with §§ 1.2110 and 1.2111 of this chapter (see § 1.948(a)(3) of this chapter).

(b) If the transfer, assignment, sale, or gift of a license is approved, the new licensee is held to the construction requirements set forth in § 95.833.

8. Section 95.861 is amended by revising paragraph (c) to read as follows:

§ 95.861 Interference.

(c) A 218–219 MHz Service licensee must provide a copy of the plan required by § 95.815 (a) of this part to every TV Channel 13 station whose Grade B predicted contour overlaps the licensed service area for the 218–219

MHz Service system. The 218–219 MHz Service licensee must send the plan to the TV Channel 13 licensee(s) within 10 days from the date the 218–219 MHz Service submits the plan to the Commission, and the 218–219 MHz Service licensee must send updates to this plan to the TV Channel 13 licensee(s) within 10 days from the date that such updates are filed with the Commission pursuant to § 95.815.

[FR Doc. 01–3051 Filed 2–6–01; 8:45 am]
BILLING CODE 6712–01–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG28

Endangered and Threatened Wildlife and Plants; Final Determination of Critical Habitat for the Zayante Band-Winged Grasshopper

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Zayante band-winged grasshopper (*Trimerotropis infantilis*) under the Endangered Species Act of 1973, as amended (Act). The designation includes an approximately 4,224 hectare (10,560 acre) area in Santa Cruz County, California, which includes all areas known to be occupied by the Zayante band-winged grasshopper. Critical habitat identifies specific areas that are essential to the conservation of a listed species, and that may require special management considerations or protection. The primary constituent elements for the Zayante band-winged grasshopper are those habitat components that are essential for the primary physical and biological needs of the species. These needs include food, water, sunlight, air, minerals and other nutritional or physiological needs; cover or shelter; sites for breeding and reproduction and dispersal; protection from disturbance; and habitat that is representative of the historic geographical, and ecological distribution of the Zayante band-winged grasshopper.

Section 7 of the Act prohibits destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. As required by section

4 of the Act, we considered economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat.

DATES: This rule becomes effective on March 9, 2001.

ADDRESSES: You may inspect the complete file for this rule at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93001, by appointment during normal business hours.

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

SUPPLEMENTARY INFORMATION:

Background

The Zayante band-winged grasshopper (*Trimerotropis infantilis*), Order Orthoptera and Family Acrididae, was first described from near Mount Hermon in the Santa Cruz Mountains, Santa Cruz County, California, in 1984 (Rentz and Weissman 1984). The body and forewings of the Zayante band-winged grasshopper are pale gray to light brown with dark cross-bands on the forewings. The basal area of the hindwings is pale yellow with a faint thin band. The hind tibiae (lower legs) are blue, and the eyes have bands around them. Males range in length from 13.7 to 17.2 millimeters (mm) (0.54 to 0.68 inches (in.)); females are larger, ranging in length from 19.7 to 21.6 mm (0.78 to 0.85 in.) (Otte 1984; Rentz and Weissman 1984). The Zayante band-winged grasshopper is most similar in appearance to *T. oculans* and *T. koebelei*; neither of these species is known from the Santa Cruz Mountains (Otte 1984, Rentz and Weissman 1984). *Trimerotropis thalassica* and *T. pallidipennis pallidipennis* have been observed in the vicinity of Zayante band-winged grasshopper, but are morphologically distinct from it and appear to prefer different microhabitats (Rentz and Weissman 1984; Arnold 1999a, b).

The flight season for adult Zayante band-winged grasshopper extends from late May through October with peak activity during July and August (White, *in litt.* 1993; Morgan, *in litt.* 1994; Arnold 1999a, b). Specimens have been observed as late as November 4 (Arnold 1999a). When flushed, individuals generally fly 1 to 2 meters (m) (3 to 7 feet (ft)), producing a buzzing sound while in flight (Rentz and Weissman 1984). Band-winged grasshoppers often alight on bare ground, and are conspicuous in flight because of the

color of the hind wings and the buzzing sound made by the wings (Borrer *et al.* 1976). No additional information on the life cycle of this species is available.

The Zayante band-winged grasshopper is known only from Santa Cruz County, California. The species was described in 1984 from specimens collected in 1977 on sparsely vegetated sandy soil above the Olympia Sand Quarry. Between 1989 and 1994, Zayante band-winged grasshoppers were found at 10 of 39 sites sampled during two independent surveys near the communities of Ben Lomond, Felton, Mount Hermon, Zayante, and Scotts Valley, California (Hovore 1996, USFWS 1998).

Little is known of the historical distribution of the species. A review of museum specimens yielded Zayante band-winged grasshoppers from "Santa Cruz Mountains, no date", "Alma, 1928", "Felton, 1959", and "Santa Cruz, 1941" (Rentz and Weissman 1984). No subsequent collections have been recorded that substantiate the existence of a population in the vicinity of Alma. Furthermore, the town of Alma is currently beneath a reservoir, and the cited specimens cannot be located in the listed depository for verification (D. Weissman, California Academy of Sciences, pers. comm. 1994, 2000). Therefore, because no specific descriptions of location or habitat accompanied these historic specimens, they were not considered in our assessment of the current range and status of the species.

The Zayante band-winged grasshopper occurs in association with the Zayante soil series (USDA Soil Conservation Service 1980). The Zayante soils in the vicinity of the communities of Ben Lomond, Felton, Mount Hermon, Zayante, and Scotts Valley are dominated by maritime coast range *Pinus ponderosa* (ponderosa pine) forest and northern maritime chaparral (Griffin 1964, Holland 1986). The distributions of these two plant communities overlap to form a complex and intergrading mosaic of communities variously referred to as ponderosa sand parkland, ponderosa pine sand hills, and *Arctostaphylos silvicola* (silver-leaved manzanita) mixed chaparral. These communities are collectively referred to as "Zayante sand hills habitat" and harbor a diversity of rare and endemic plant species (Thomas 1961, Griffin 1964, Morgan 1983). A unique habitat within the Zayante sand hills is sand parkland, characterized by sparsely vegetated, sandstone-dominated ridges, and saddles that support scattered ponderosa pines and a

wide array of annual and perennial herbs and grasses.

The role of landscape-level processes, including hydrology, seed dispersal, succession, fire, and other disturbances, in forming Zayante sand hills habitats is poorly understood. Historically, the Zayante sand hills included a continually changing pattern of habitat patches, each with specific disturbance histories, sizes, and species compositions. At any one time, patches of all possible stages of succession would be present (Lee 1994). Populations of the Zayante band-winged grasshopper evolved within this dynamic landscape and most likely are adapted to disturbance and change.

The habitat of the Zayante band-winged grasshopper was originally described as "sandy substrate sparsely covered with *Lotus* and grasses at the base of pines" (Rentz and Weissman 1984). All of the locations where grasshoppers were found during surveys completed between 1989 and 1994 were on Zayante soils. The habitat at these sites was consistently described as a sparsely vegetated sandy substrate or sand parkland (White, *in litt.* 1993; Morgan, *in litt.* 1994). In 1997, at the time of the listing of this species, all of its known locations occurred within 7 discrete areas of sand parkland habitat as characterized by Lee (1994). These areas of sand parkland totaled 78 ha (193 ac). Recent studies indicated that the Zayante band-winged grasshopper occurs primarily in early successional sand parkland with widely scattered tree and shrub cover, extensive areas of bare or sparsely vegetated ground, loose sand, and relatively flat relief (Hovore 1996; Arnold 1999a, b). However, Zayante band-winged grasshoppers have also recently been observed in areas with a well-developed ground cover and in areas with sparse chaparral mixed with patches of grasses and forbs (Hovore 1996; Arnold 1999a, b), indicating that Zayante band-winged grasshoppers are not restricted solely to sand parkland. As a result of this new information, the amount of area that provides potential habitat for the species has not been quantified at this time.

The primary threat to the Zayante band-winged grasshopper is loss of habitat. Historically, approximately 2,533 ha (6,265 ac) of Zayante sand hills habitat occurred in Santa Cruz County. Over 40 percent of the Zayante sand hills habitat, and 60 percent of the sand parkland within that habitat, is estimated to have been lost or altered due to human activities. These activities include—sand mining, urban development, recreational activities,

and agriculture (Marangio and Morgan 1987; Lee 1994; R. Morgan, pers. comm. 1992). Approximately 200 to 240 hectares (ha) (500 to 600 acres (ac)) of sand parkland existed historically (Marangio and Morgan 1987). By 1986, only 100 ha (250 ac) of sand parkland remained intact (Marangio and Morgan 1987). By 1992, sand parkland was reportedly reduced to only 40 ha (100 ac) (Morgan, pers. comm. 1992). A more recent assessment revised that estimate up to 78 ha (193 ac), largely because of identification and inclusion of additional, lower-quality sand parkland (Lee 1994).

The disruption of natural landscape-level processes may also be resulting in shifts in plant communities, which has reduced the extent and quality of habitat available for the Zayante band-winged grasshopper (USFWS 1998). For example, active suppression of fire has resulted in the encroachment of mixed evergreen forest into ponderosa pine forest (Marangio 1985). Increased shading from the mixed evergreen forest appears to restrict the use of areas by the Zayante band-winged grasshopper and results in lower population numbers (Sculley, USFWS, pers. observation 1999). Historically, fires would have burned in this area and resulted in areas with more exposure to sunlight. Seed dispersal mechanisms may be disrupted as a result of urbanization of the Zayante sandhills. Residential development may disrupt wind pollination events and isolate or extirpate metapopulations of insect pollinators. In addition, nonnative plant species, including *Cystisus striatus* (Portuguese broom) and *Carpobrotus chilensis* (sea fig), are out-competing native species and encroaching on sites occupied by the Zayante band-winged grasshopper (Rigney 1999). Pesticides and over-collection are also recognized as potential threats to the Zayante band-winged grasshopper (USFWS 1998).

Previous Federal Action

On July 16, 1992, Dr. David Weissman, of the California Academy of Sciences, petitioned us to list the Zayante band-winged grasshopper as an endangered species. During our status review of the Zayante band-winged grasshopper, we examined the available literature and data on the species' life history, ecology, locality records, and range. Sources of information on the status of and threats to the Zayante band-winged grasshopper include reports supplied by proponents of the listing, plans supplied by reviewing agencies for development projects, and published and unpublished data from

scientists with expertise on the species and its habitat needs.

On May 10, 1994, we published a proposed rule in the **Federal Register** (59 FR 24112) to list the Zayante band-winged grasshopper and two other insect species as endangered. The proposed rule constituted the final finding for the petitioned actions for the Zayante band-winged grasshopper in accordance with section 4(b)(3)(B)(ii) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). Publication of the proposed rule opened a 60-day public comment period through July 11, 1994, to allow submission of new and additional information on the species and written comments from the public. We held a public hearing on July 18, 1994, in Santa Cruz, California, that included presentations of oral testimony and written comments. We published a notice on September 1, 1994 (59 FR 45254), reopening the public comment period through October 31, 1994, to allow submission of additional comments and information concerning the proposed rule.

Using information received during the cited public comment periods, we published a final rule on January 24, 1997 (62 FR 3616), determining the Zayante band-winged grasshopper and Mount Hermon June beetle (*Polyphylla barbata*), both occurring within the Zayante sand hills habitat, to be endangered species. At the time of listing, we concluded that designation of critical habitat for the Zayante band-winged grasshopper was not prudent. On September 30, 1997, we made a draft recovery plan for the Zayante band-winged grasshopper, Mount Hermon June beetle, and three plants (*Chorizanthe pungens* var. *hartwegiana* (Ben Lomond spineflower), *Erysimum teretifolium* (Ben Lomond wallflower), and *Chorizanthe robusta* var. *hartwegii* (Scotts Valley spineflower)) available for public comment (62 FR 51126). We published the final recovery plan in September 1998.

At the time of listing, we concluded that designation of critical habitat for the Zayante band-winged grasshopper was not prudent because such designation would not benefit the species since all known populations of the species occur on non-Federal lands where Federal involvement in land-use activities would not generally occur. Since this time, we have determined that designating critical habitat can provide educational benefits by formally identifying those areas essential to the conservation of the species. These areas are also identified in the recovery plan

as the focus of our recovery efforts for the Zayante band-winged grasshopper.

On March 4, 1999, the Southwest Center for Biological Diversity, the Center for Biological Diversity, and Christians Caring for Creation filed a lawsuit in the Northern District Court of California against the U.S. Fish and Wildlife Service and Bruce Babbitt, Secretary of the Department of the Interior, for failure to designate critical habitat for seven species—the Alameda whipsnake (*Masticophis lateralis euryxanthus*), the Zayante band-winged grasshopper, the Morro shoulderband snail (*Helminthoglypta walkeriana*), the arroyo southwestern toad (*Bufo microscaphus californicus*), the San Bernardino kangaroo rat (*Dipodomys merriami parvus*), the spectacled eider (*Somateria fischeri*), and the Steller's eider (*Polysticta stelleri*) (*Southwest Center for Biological Diversity v. U.S. Fish and Wildlife*, CIV 99-1003 MMC). On November 5, 1999, William Alsup, U.S. District Judge, dismissed the plaintiffs' lawsuit according to a settlement agreement entered into by the parties. Consistent with the settlement agreement, we proposed critical habitat for the Zayante band-winged grasshopper (65 FR 41917) on July 7, 2000.

The comment period for this proposal closed on September 5, 2000. On December 6, 2000, we published a notice (65 FR 76207) announcing the reopening of the comment period on the draft proposal to designate critical habitat for the Zayante band-winged grasshopper and a notice of availability of the draft economic analysis on the proposed determination. The comment period was opened for an additional 15 days, closing on December 21, 2000.

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 consultation 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.

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), that 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 (Vol. 59, p. 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service 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, unpublished materials (*i.e.*, gray literature), and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard

and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

In determining areas that are essential to conserve the Zayante band-winged grasshopper, we included data from research and surveys published in peer-reviewed articles and unpublished reports, data submitted by biologists holding section 10(a)(1)(A) recovery permits, data from monitoring reports required for incidental take permits under section 10(a)(1)(B) of the Act, soil maps, and the recovery criteria outlined in the recovery plan (USFWS 1998). The area we are designating as critical habitat currently provides those habitat components essential for the primary biological needs of the Zayante band-winged grasshopper, as defined by the primary constituent elements, and maintains ecosystem functions on which the grasshopper depends.

Primary Constituent Elements

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

The primary constituent elements for the Zayante band-winged grasshopper are those physical and biological features that provide conditions that are essential for the primary biological

needs of thermoregulation, foraging, sheltering, reproduction, and dispersal. The primary constituent elements are—(a) the presence of Zayante soils, (b) the occurrence of Zayante sand hills habitat and the associated plant species, and (c) certain microhabitat conditions, including areas that receive large amounts of sunlight, widely scattered tree and shrub cover, bare or sparsely vegetated ground, and loose sand (Arnold 1999a,b). Zayante sand hills habitat is often characterized by plant species associated with ponderosa pine sand parkland and/or silverleaf manzanita mixed chaparral as described by Marangio (1985) and Lee (1994). Plant species that may occur within the boundaries include, but are not limited to—*Pinus ponderosa* (ponderosa pine), *Arctostaphylos silvicola* (silver-leafed manzanita), *Ceanothus* sp. (California lilac), *Adenostoma* sp., *Eriodictyon* sp. (yerba santa), *Minuartia* sp. (sandwort), *Calyptridium umbellatum* (pussypaws), *Mimulus rattanii* (monkeyflower), *Lupinus bicolor* (miniature lupine), *Gilia tenuiflora* (gilia), *Lessingia filaginifolia* (California aster), *Eriogonum nudum* ssp. *decurrens* (Ben Lomond buckwheat), *Erysimum teretifolium* (Ben Lomond wallflower), and *Chorizanthe pungens* var. *hartwegiana* (Ben Lomond spineflower) (Lee 1984, USFWS 1998, McGraw *in litt.* 1999). Of these plant species, *Erysimum teretifolium* (Ben Lomond wallflower) and *Chorizanthe pungens* var. *hartwegiana* (Ben Lomond spineflower) are also federally listed as endangered and are addressed within the same recovery plan as the Zayante band-winged grasshopper and the Mount Hermon June beetle.

Areas where surveys for Zayante band-winged grasshopper have not been conducted, but are adjacent or contiguous with known occupied habitat, are also essential to the species. Not only is it likely that these areas contain grasshoppers, the areas are necessary because they—(1) provide and maintain the ecosystem functions, including, but not limited to, hydrologic processes, succession, seed dispersal, and natural disturbance regimes, necessary to support populations of the Zayante band-winged grasshopper; (2) provide a means of connecting occupied areas so that the deleterious effects of isolation are minimized; and (3) increase the area available to the species in case of localized, random catastrophic events, thus decreasing the potential for extirpation of populations.

Criteria Used To Identify Critical Habitat

In an effort to identify areas essential for the conservation of the species, we

evaluated information on Zayante soils, plant communities associated with these soils, and the distribution, life history, and habitat requirements of the Zayante band-winged grasshopper. Using a geographic information system (GIS), maps of the Zayante soil series were generated. We determined that published maps of the Zayante soil series were imprecise for our needs and did not always account for gradients between soil types. Therefore, a 60-m (200-ft) zone was mapped around the soils to account for possible inaccuracies in the current maps. We arrived at a 60-m zone based on recommendations by the Natural Resources Conservation Service (NRCS), the agency familiar with the techniques used to map soils and the distribution of Zayante soils (R. Casale, NRCS, USDA, pers comm. 2000).

Next, the known locations of the Zayante band-winged grasshopper were overlaid on the map of Zayante soil series. Areas included within the boundaries of critical habitat are those Zayante soils determined to be occupied by the grasshopper in past surveys and Zayante soils that are contiguous and adjacent to these occupied areas. These contiguous or adjacent areas were included because they are unsurveyed and are likely to contain grasshoppers, they create patches large enough in size to maintain ecosystem functions, and they connect habitat patches into a larger area so that populations do not become isolated and localized random or catastrophic events do not cause smaller populations to be extirpated. Over time, as succession occurs and vegetation encroaches on areas currently inhabited by the Zayante band-winged grasshopper, populations may disperse into these adjacent patches of habitat.

We considered sites identified in the recovery plan as important for the recovery of the Zayante band-winged grasshopper. While recovery units were not specifically described, the recovery plan recommends protecting the 7 discrete areas of sand parkland (Lee 1994), containing the 10 sites then known to be occupied by the species, as one criterion for down-listing to threatened status. These seven areas were included within the boundaries of the designated critical habitat. Additional areas were also included that have the constituent elements for the species, because new information about the range, distribution, and habitat requirements of the Zayante band-winged grasshopper indicates that the species occupies areas that are outside of these seven discrete areas and that are not considered sand parkland. Furthermore, sand hills habitat adjacent

and contiguous with these seven areas is essential to maintain landscape level processes, including succession and fire regimes as described in the Background section of this rule.

We determined that approximately 3,620 ha (8,700 ac) of Zayante soils are scattered throughout Santa Cruz County. The soils occur from west of the community of Bonny Doon east to Corralitos, and from the northern portion of Wilder Ranch State Park north to the communities of Boulder Creek, Lompico, and Zayante. Several patches are also located near and within the City of Scotts Valley. The largest cluster of these soils occurs between Highways 9 and 17, surrounding the communities of Scotts Valley, Zayante, Lompico, Ben Lomond, Felton, and Mount Hermon. Surveyors of the Zayante band-winged grasshopper have focused their efforts in this region, and, at present, all of the known locations of this species are from this region. Zayante soils located in the eastern portion of Santa Cruz County in the vicinity of Corralitos do not support vegetation characteristic of the Zayante sand hills habitat.

We excluded from the designated critical habitat areas that have not been surveyed for the Zayante band-winged grasshopper and that are not part of a continuous corridor of Zayante soils that include known localities of the grasshopper. Although these areas have been excluded, we recognize that they may still include habitat presently or historically occupied by the Zayante band-winged grasshopper. In addition, these unsurveyed areas may include habitat appropriate for introduction of Zayante band-winged grasshoppers in the future. If we determine that areas outside of the boundaries of the designated critical habitat are important for the conservation of this species, we may propose these additional areas as critical habitat in the future.

We defined the boundaries for the designated critical habitat using township, range, and section numbers from the public land survey. Our minimum mapping unit was 1/4-section equating to 65 ha (160 ac). We overlaid the public land survey on the Zayante soils to be designated as critical habitat as defined above. If a 1/4-section of the public land survey included any of these Zayante soils, it was included within the boundaries of critical habitat. We designate approximately 4,230 ha (10,560 ac) of land as critical habitat for the Zayante band-winged grasshopper. Of this area, 1,600 ha (3,950 ac) are lands with Zayante soils. The remaining 2,630 ha (6,610 ac) of critical habitat are areas that were included due to

insufficient mapping detail (as described below).

The Zayante soils occur in a mosaic of island-like and finger-like assemblages interspersed with non-Zayante soils. The nature of these assemblages combined with our minimum mapping unit of 65 ha resulted in having to include 2,630 ha of non-Zayante soils within the boundaries of critical habitat. We have displayed the Zayante soils and boundaries of the critical habitat on the map at the end of this rule. We did not

map critical habitat in sufficient detail to exclude all developed areas such as towns, housing developments, and other similar lands. Furthermore, we recognize that areas with non-Zayante soils do not contain the primary constituent elements. Federal actions limited to areas within the unit boundaries, that do not contain one or more of the primary constituent elements and do not support the processes necessary to maintain the required ecosystem functions would not trigger a section 7 consultation, unless

they affect the species and/or the primary constituent elements in adjacent critical habitat.

Critical Habitat Designation

The approximate area included in the critical habitat designation within Santa Cruz County by land ownership is shown in Table 1. Land designated as critical habitat is under private, local government, and State ownership, and is described within one unit. A brief description of this unit is presented below in Table 1.

TABLE 1.—APPROXIMATE AREA WITHIN SANTA CRUZ COUNTY ENCOMPASSING CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY LAND OWNERSHIP

County	Federal land	Local/state land	Private land	Total*
Santa Cruz	N/A	250 ha (610 ac)	3,980 ha (9,950 ac)	4,230 ha (10,560 ac)

* Area estimates reflect critical habitat unit boundaries, not the extent of the primary constituent elements within the unit.

Designated Critical Habitat Unit

The Critical Habitat Unit (Unit) that is designated encompasses approximately 4,230 ha (10,560 ac) between Highways 9 and 17. Most of the lands designated as critical occur from the southeastern portion of Henry Cowell Redwoods State Park west to the City of Scotts Valley and north to the communities of Ben Lomond, Lompico, and Zayante. A small area designated as critical habitat is located east of Zayante in the vicinity of Weston Road.

Public lands that occur in this Unit include approximately 130 ha (310 ac) in Henry Cowell Redwoods State Park, owned and managed by the California Department of Parks and Recreation, and all of Quail Hollow Park (120 ha (300 ac)), jointly owned and managed by the County of Santa Cruz and the California Department of Fish and Game. Areas covered in the Revised Habitat Conservation Plan for Quail Hollow Quarry (Graniterock 1998) and the Habitat Conservation Plan for Hanson Aggregates' Felton Plant (Hanson Aggregates 1999) have been excluded from designation as critical habitat. See section "Relationship to Habitat Conservation Plans" for further discussion of these plans.

This unit is essential to the recovery of the species because it supports all of the populations that are currently known and all of the known suitable habitat for the Zayante band-winged grasshopper throughout its range. Given the habitat based threats to this species summarized above, we believe the area designated requires special management considerations or protection.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, states, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act, requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not

likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

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

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by

law. Consequently, some Federal agencies may request reinitiation of consultation or conference 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. Conference reports assist the agency in eliminating conflicts that may be caused by the proposed action, and may include recommendations on actions to eliminate conflicts with or adverse modifications to proposed critical habitat. 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 an 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 substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

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

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the Zayante band-winged grasshopper is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may destroy or adversely modify critical habitat include, but are not limited to:

- (1) Excavating, compacting, grading, or discing of soil, and vegetation removal;
- (2) Grading, mining, or construction;
- (3) Recreational activities that crush and remove vegetation or compact soils, including off-trail hiking, horse riding, and off-road motorized and non-motorized vehicular use;
- (4) Activities that could lead to the introduction of exotic species into critical habitat; and
- (5) Activities that cause erosion of soils.

Adverse modification or destruction of critical habitat could occur if these activities occur within the boundaries of critical habitat or outside the boundaries in a manner that indirectly affects critical habitat.

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

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species. In those cases, it is highly unlikely that additional modification to the action would be required as a result of designating critical habitat. However, critical habitat may provide benefits toward recovery when designated in areas currently unoccupied by the species. Designation of critical habitat for the Zayante band-winged grasshopper is not likely to result in a regulatory burden above that already in place due to the presence of the listed species. We believe that designation of critical habitat would have little effect on Federal agencies because no critical habitat occurs on Federal lands. Furthermore, the final economic analysis for the designation of critical habitat concludes that few if any

federally funded or federally permitted actions are anticipated to take place in critical habitat.

This section serves in part as a general guide to clarify activities that may affect or destroy or adversely modify critical habitat. However, specific Federal actions will still need to be reviewed by the action agency. If the agency determines the activity may affect critical habitat, they will consult with us under section 7 of the Act. If it is determined that the activity is likely to adversely modify critical habitat, we will work with the agency to modify the activity to minimize negative impacts to critical habitat. We will work with the agencies and affected public early in the consultation process to avoid or minimize potential conflicts and, whenever possible, find a solution that protects listed species and their habitat while allowing the action to go forward in a manner consistent with its intended purpose.

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

Exclusions Under Section 4(b)(2)

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

(1) Benefits of Inclusion

The benefits of including HCP lands in critical habitat are normally small. The principal benefit of any designated critical habitat is that activities in such habitat that may affect it require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. Where HCPs are in place, our experience indicates that this benefit is small or non-existent. Currently approved and permitted HCPs are already designed to ensure the long-term survival of covered species within

the plan area. Where we have an approved HCP, lands that we ordinarily would define as critical habitat for the covered species will normally be protected in reserves and other conservation lands by the terms of the HCPs and their implementation agreements. These HCPs and implementation agreements include management measures and protections for conservation lands that are crafted to protect, restore, and enhance their value as habitat for covered species.

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

Further, HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs assure the long term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5-Point Policy for HCPs (64 FR 35242) and the

HCP No Surprises regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations which, in contrast to HCPs, often do not commit the project proponent to long term special management or protections. Thus, a consultation typically does not accord the lands it covers the extensive benefits an HCP provides.

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

(2) *Benefits of Exclusion*

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

The benefits of excluding HCPs include relieving landowners, communities and counties of any additional minor regulatory review that might be imposed by critical habitat. Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, may become regional conservation plans that are consistent with the recovery of covered species. Many of these plans benefit many species, both listed and unlisted. Imposing an additional regulatory review after HCP completion may jeopardize conservation efforts and partnerships in many areas and could be viewed as a disincentive to those developing HCPs. Excluding HCPs provides us with an opportunity to

streamline regulatory compliance and confirms regulatory assurances for HCP participants.

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

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

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

Relationship to Habitat Conservation Plans

Section 4(b)(2) of the Act allows us broad discretion 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 expect that critical habitat may be used as a tool to identify those areas essential for the conservation of the species, and we will encourage development of Habitat Conservation Plans (HCPs) for such areas on non-Federal lands.

Two HCPs have been completed within the range of the Zayante band-winged grasshopper. Both HCPs are for sand mining operations and both provide take authorization for the Zayante band-winged grasshopper. The Revised Habitat Conservation Plan for the Quail Hollow Quarry owned and operated by Granite Rock Company provides for the permanent protection

and management of three conservation areas known to be occupied by the Zayante band-winged grasshopper and that total 26.3 ha (65.8 ac) in area (Graniterock 1998). The Habitat Conservation Plan for the Felton Plant owned and operated by Hanson Aggregates provides for the permanent protection and management of two habitat set-asides known to be occupied by the Zayante band-winged grasshopper and that total 8.5 ha (21.3 ac) in area (Hanson Aggregates 1999). In addition, both HCPs provide minimization measures to reduce the potential impacts of the sand-mining operations on the Zayante band-winged grasshopper.

All habitat for the Zayante band-winged grasshopper that is essential to the conservation of the species and is within the HCP planning areas is permanently protected in conservation areas and habitat set-asides. Habitat that is preserved in the HCP planning areas is already managed for the benefit of the grasshopper and other covered species under the terms of the plans and associated section 10(a)(1)(B) permits. The assurances afforded the Zayante band-winged grasshopper through the special management and protections in the implementation agreements of approved HCPs are believed to be sufficient to provide for the conservation of the grasshopper. Any additional benefit provided the grasshopper by designating these lands as critical habitat would be minimal at best. Therefore, we have determined that no additional private lands within the HCP planning areas warrant designation as critical habitat.

In contrast, the benefits of excluding lands covered by these HCPs would be significant in preserving positive relationships with our conservation partners, lessening potential additional regulatory review and potential economic burdens, reinforcing the regulatory assurances provided for in the implementation agreements for the approved HCPs, and providing for more established and cooperative partnerships for future conservation efforts.

In summary, the benefits of including HCPs in critical habitat for the Zayante band-winged grasshopper include minor, if any, additional protection for the Zayante band-winged grasshopper. The benefits of excluding HCPs from being designated as critical habitat for the Zayante band-winged grasshopper include the preservation of partnerships that may lead to future conservation, and the avoidance of the minor regulatory and economic burdens associated with the designation of

critical habitat. We find that the benefits of excluding these areas from critical habitat designation outweigh the benefits of including these areas. Furthermore, we have determined that these exclusions will not result in the extinction of the species. We have already completed section 7 consultation on the impacts of these HCPs on the species. We have determined that they will not jeopardize the continued existence of the species, which means that they will not appreciably reduce likelihood of the survival and recovery of the species.

In the event that future HCPs covering the Zayante band-winged grasshopper are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the species by either directing development and habitat modification to nonessential areas or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the Zayante band-winged grasshopper. The process also enables us to conduct detailed evaluations of the importance of such lands to the long term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the Zayante band-winged grasshopper and appropriate management for those lands. The minimization and mitigation measures provided under these HCPs are expected to protect the essential habitat lands designated as critical habitat in this rule. If, an HCP that addresses the Zayante band-winged grasshopper as a covered species is ultimately approved, the Service will reassess the critical habitat boundaries in light of the HCP. The Service will seek to undertake this review when the HCP is approved, but funding constraints may influence the timing of such a review.

Summary of Comments and Recommendations

In the proposed rule dated July 7, 2000 (65 FR 41917), we requested interested parties to submit factual reports or information that might

contribute to development of a final rule. We contacted appropriate Federal and State agencies, county and city governments, scientific organizations, and other interested parties. We published a legal notice of the proposed rule in the Santa Cruz Sentinel on July 16, 2000, that invited general public comment. The 60-day comment period closed on September 5, 2000. On December 6, 2000, we published a notice (65 FR 76207) announcing the reopening of the comment period and the availability of the draft economic analysis on the proposed designation of critical habitat. Again, we contacted all interested parties and posted the draft economic analysis on our internet site. The comment period was opened for an additional 15 days, closing on December 21, 2000.

We requested that three entomologists (biologists who study insects) familiar with the species to peer review the proposed critical habitat designation. However, only two of the peer reviewers responded by the close of the comment periods. Both reviewers provided information about the biology of the species and commented on the areas proposed as critical habitat. Their comments are addressed in this section, and relevant information provided by the reviewers have been incorporated into the section titled "Background."

We received a total of 14 written comments during the public comment periods. Of those written comments, 3 supported critical habitat designation, 8 opposed the designation, and 1 was neutral. Two commenters wrote to request additional information, but provided no opinion or information regarding the proposed designation. Eleven of the written comments were received from private individuals; one was from an individual representing a local government. All comments received were reviewed for substantive issues and new data regarding the proposed critical habitat, the biology of the species, and the range and threats to the Zayante band-winged grasshopper. We address all comments received during the comment periods under the headings of specific issues. The summarized comments and our responses are as follows:

Issue 1: One commenter questioned how we could determine the number of insects living in the areas proposed for critical habitat without trespassing on private property.

Our Response: In determining areas that are essential to conserve the Zayante band-winged grasshopper, we included data from research and surveys published in peer-reviewed articles and unpublished reports, data submitted by

biologists holding section 10(a)(1)(A) recovery permits, data from monitoring reports required for incidental take permits under section 10(a)(1)(B) of the Act, soil maps, and the recovery criteria outlined in the recovery plan (USFWS 1998). To the best of our knowledge, the site-specific data used from these sources were collected with the permission of landowners.

Issue 2: One commenter identified topics with regards to the food plant requirements and dispersal capabilities of the Zayante band-winged grasshopper that need to be researched. The commenter recommended that the designation of critical habitat for the Zayante band-winged grasshopper proceed without this additional information, but noted that the adequacy and success of the designation could not be forecasted without this additional research being conducted.

Our Response: We recognize that important research questions need to be answered with regards to the life history of the Zayante band-winged grasshopper. We hope to secure funds to conduct such research in the future. However, section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12 require that we base critical habitat determinations on the best scientific and commercial data available. We used all existing information on the biology, life history, habitat requirements, dispersal capabilities, and distribution of the Zayante band-winged grasshopper and other closely related species that were available at this time to designate critical habitat for this species.

Issue 3: One commenter noted that GIS technology is useful to compile distributional data; to determine boundaries of critical habitat; to update the designation of critical habitat in the future; and to use as an analytical tool to identify suitable habitat, buffers zones, and areas of connectivity.

Our Response: We recognize that GIS is a useful tool for conserving species, including the Zayante band-winged grasshopper, for the reasons identified by the commenter. We used GIS to identify areas that we are designating as critical habitat. We expect to rely on GIS in the future to assist us with conservation planning for the Zayante band-winged grasshopper.

Issue 4: One commenter asserted that an environmental impact statement on the proposed designation of critical habitat is required under the National Environmental Policy Act.

Our Response: 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. We published a notice in the **Federal Register** outlining our reasons for this determination on October 25, 1983 (48 FR 49244). This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Issue 5: Several commenters expressed concern that proposed designation of critical habitat will limit development and impose economic hardship on private landowners and businesses.

Our Response: We are sensitive to the concerns of individuals concerning their property rights. The designation of critical habitat has no effect on non-Federal actions occurring on private land, even if the private land is within the boundaries of the designated critical habitat. However, the listing of the Zayante band-winged grasshopper as endangered does provide the species the protection afforded by the Act on both public and private lands. Critical habitat may affect activities by private landowners only if the activity involves Federal funding, a Federal permit, or other Federal actions. If such a Federal nexus exists, we will work with the landowner and appropriate Federal agency to attempt to develop a project that can be completed without jeopardizing the continued existence of the Zayante band-winged grasshopper or adversely modifying its critical habitat.

Issue 6: One commenter expressed concern that the City of Scotts Valley is located within the critical habitat area for the grasshopper and may face significant additional costs associated with section 7 consultations necessitated by the habitat designation. More specifically, the commenter stated that local governments, including the City of Scotts Valley, would be placed at a disadvantage in competing for Federal grant monies to fund redevelopment projects and road improvements to be used inside the critical habitat area because of the additional administrative burden this designation would place on the Federal agency involved.

Our Response: As stated in the economic analysis, we do not believe that designation of critical habitat for the Zayante band-winged grasshopper will lead to additional economic hardship on residents and businesses within the proposed critical habitat. Previously developed areas within the designated critical habitat are exempted from section 7 consultation requirements. As stated previously in this rule, areas of existing features and

structures within the unit boundaries, such as buildings, roads, aqueducts, railroads, airports, and paved areas do not contain one or more of the primary constituent elements and so do not support the functions necessary to maintain the required ecosystem functions. Federal actions limited to these areas, therefore, are exempted from a section 7 consultations, unless they affect the species and/or the primary constituent elements in adjacent critical habitat. Furthermore, most Federal agencies are very experienced with the requirements of the Act. If Federal agencies are funding activities in the designated critical habitat area, they would already be involved in communication with the Service regarding the significant number of other listed species in the area and the potential effects of their activities on these species. The existence of critical habitat for the Zayante band-winged grasshopper in the same area would probably not increase significantly either the cost or complexity of any needed interaction with the Service.

Issue 7: One commenter stated that the Service should refine the boundaries of critical habitat by identifying areas of known habitat for the Zayante band-winged grasshopper. Without refining these areas, the commenter was concerned that the proposed designation is too broad and may negatively impact property values and private property rights within urban areas.

Our Response: Due to time constraints resulting from short deadlines that were court-mandated, we were unable to map critical habitat in sufficient detail in the proposed and final rules to exclude all developed areas such as towns, housing developments, and other lands unlikely to contain habitat for the grasshopper. As previously stated, areas of existing features and structures within the unit boundaries, such as buildings, roads, aqueducts, railroads, airports, and paved areas do not contain one or more of the primary constituent elements and so do not support the functions necessary to maintain the required ecosystem functions. Federal actions limited to these areas, therefore, are exempted from a section 7 consultations, unless they affect the species and/or the primary constituent elements in adjacent critical habitat. We will provide technical assistance to Federal agencies to determine if the actions they permit, fund or carry out may affect the Zayante band-winged grasshopper or the primary constituent elements within areas designated as critical habitat.

Summary of Changes from Proposed Designation

This final rule to designate critical habitat for the Zayante band-winged grasshopper does not differ substantially from the previously published proposed rule.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We completed a draft economic analysis and made it available to the public for comment (65 FR 76207). We also completed a final economic analysis that incorporated

public comment and information gathered since the draft analysis. The analysis found that few incremental costs due to the critical habitat designation are expected to occur above and beyond those associated with the listing of the Zayante band-winged grasshopper. We have determined that these economic impacts are minimal and do not warrant excluding any areas from the designation. The final economic analysis is available to the public at the Ventura Fish and Wildlife Office (see ADDRESSES section).

Required Determinations

1. Regulatory Planning and Review

This document has been reviewed by the Office of Management and Budget (OMB), in accordance with Executive

Order 12866. OMB makes the final determination under Executive Order 12866.

(a) This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The Zayante band-winged grasshopper was listed as an endangered species in 1997.

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).

TABLE 2.—IMPACTS OF ZAYANTE BAND-WINGED GRASSHOPPER LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only ¹	Additional activities potentially affected by critical habitat designation ¹
Federal Activities Potentially Affected ² .	None (there is no Federal land within the range of the species)	None.
Private or other non-Federal Activities Potentially Affected ³ .	Activities that require a Federal action (permit, authorization, or funding) and may remove or destroy Zayante band-winged grasshopper habitat by mechanical, chemical, or other means (e.g., grading, overgrazing, construction, road building, herbicide application, recreational use) or appreciably decrease habitat value or quality through indirect effects (e.g., edge effects, invasion of exotic plants or animals, fragmentation of habitat).	None.

¹ These columns represent activities potentially affected by the critical habitat designation in addition to those activities potentially affected by listing the species.

² Activities initiated by a Federal agency.

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

Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the species and its needs, we conclude that any Federal action or authorized action that could potentially cause adverse modification of designated critical habitat would currently be considered as “jeopardy” under the Act. Accordingly, the designation of areas within the geographic range occupied by the Zayante band-winged grasshopper 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 outside the geographic range occupied by the species may have incremental impacts on what activities may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. However, our analysis did not identify any significant incremental effects. Non-Federal persons that do not have a Federal “sponsorship” of their actions

are not restricted by the designation of critical habitat, although they continue to be bound by the provisions of the Act concerning “take” of the species.

(b) This rule will not create inconsistencies with other agencies’ actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Zayante band-winged grasshopper since the listing in 1997. The prohibition against adverse modification of critical habitat is not expected to have a significant economic impact. Because of the potential for impacts on other Federal agency activities, we will continue to review this action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above we do not anticipate that the adverse modification

prohibition (resulting from critical habitat designation) will have any significant incremental effects.

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

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

In the economic analysis, we determined that designation of critical habitat will not have a significant effect on a substantial number of small entities. As discussed under Regulatory Planning and Review above and in this final determination, this designation of critical habitat for the Zayante band-winged grasshopper is not expected to have a significant economic impact. As indicated on Table 1 (see Critical Habitat Designation section), we have designated property owned by State and local governments, and private property.

Within these areas, the types of Federal actions, Federally funded or

authorized activities that we have identified as potential concerns are:

- (1) Excavating, compacting, grading, or discing of soil, and vegetation removal;
- (2) grading, mining, or construction;
- (3) recreational activities that crush and remove vegetation or compact soils, including off-trail hiking, horse riding, and off-road motorized and non-motorized vehicular use;
- (4) activities that could lead to the introduction of exotic species into critical habitat; and
- (5) activities that cause erosion of soils.

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

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

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

In the economic analysis, we determined whether designation of critical habitat would 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 in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. Refer to the final economic analysis for a discussion of the effects of this determination.

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

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.):

- (a) 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.

(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.

5. *Takings*

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. This designation will not "take" private property and will not alter the value of private property. Additionally, critical habitat designation does not preclude development of HCPs and issuance of incidental take permits. Owners of areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the Zayante band-winged grasshopper.

6. *Federalism*

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. This designation of critical habitat imposes no additional restrictions to those currently in place, and therefore has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

7. *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 meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have made every effort

to ensure that this final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burden, and is clearly written such that litigation risk is minimized.

8. *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.

9. *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 Endangered Species Act as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This final determination does not constitute a major Federal action significantly affecting the quality of the human environment.

10. *Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2 and Executive Order 13175, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands that are essential for the conservation of the Zayante band-winged grasshopper because they do not support populations or suitable habitat. Therefore, we are not designating critical habitat for the Zayante band-winged grasshopper on Tribal lands.

References Cited

A complete list of all references cited in this final rule is available upon request from the Ventura Fish and Wildlife Office (see ADDRESSES section).

Author

The primary author of this notice is Colleen Sculley, Ventura Fish and Wildlife Office (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. In § 17.11(h), revise the entry for “grasshopper, Zayante band-winged” under “INSECTS” to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
INSECTS							
*	*	*	*	*	*		*
Grasshopper, <i>Zayante Band-winged.</i>	<i>Trimerotropis infantilis.</i>	U.S.A. (CA),	NA	E	605	17.95(i)	NA
*	*	*	*	*	*		*

3. Amend § 17.95(i) by adding critical habitat for the Zayante band-winged grasshopper (*Trimerotropis infantilis*), in the same alphabetical order as the species occurs in § 17.11(h).

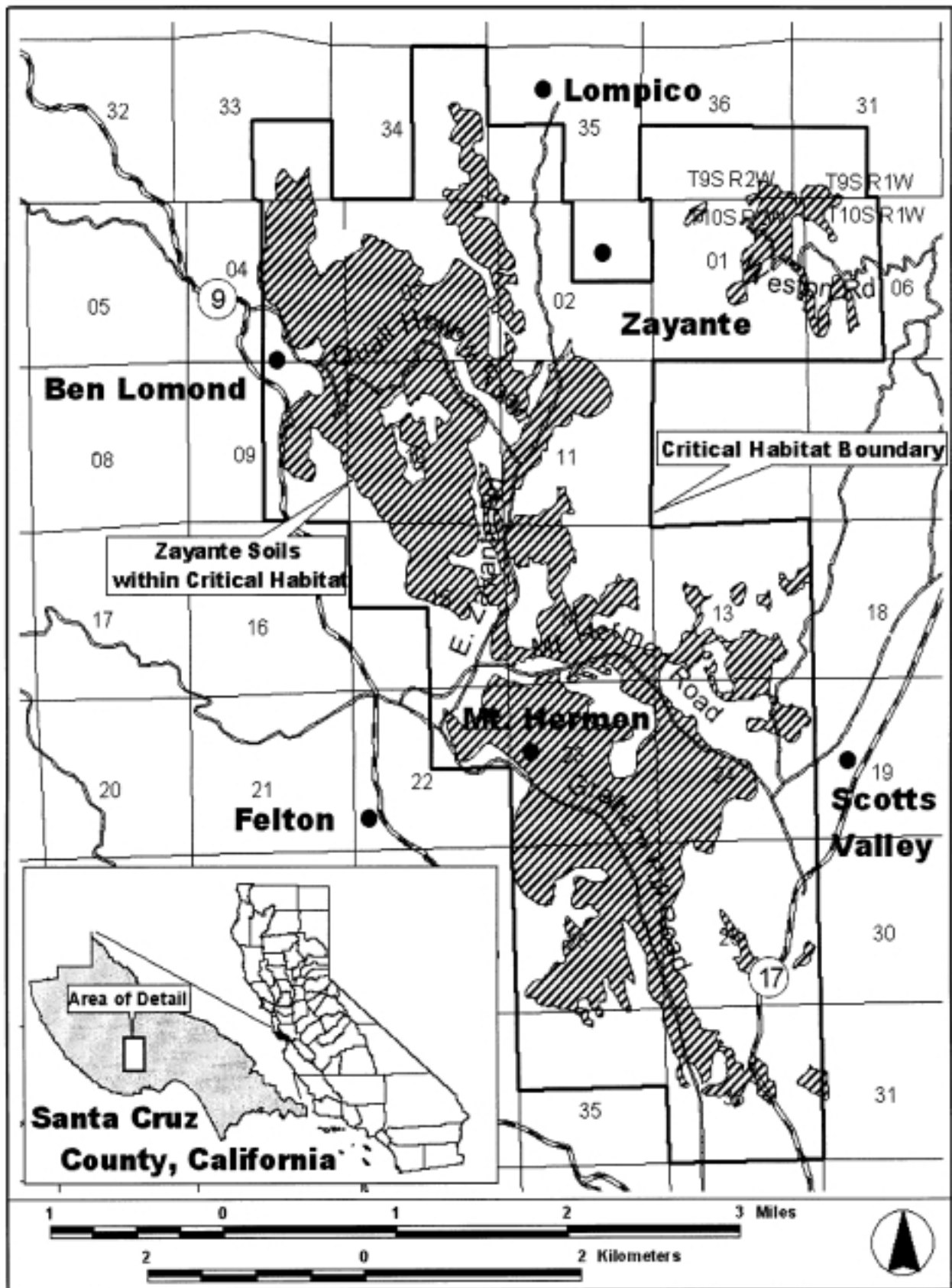
§ 17.95 Critical habitat—fish and wildlife.

* * * * *
(i) * * *
* * * * *

ZAYANTE BAND-WINGED GRASSHOPPER (*Trimerotropis infantilis*)

1. The unit of critical habitat is depicted for Santa Cruz County, California, on the map below.

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

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

Santa Cruz County, California. Boundaries are based upon the Public Land Survey System. Within the historical boundaries of the Land Grants of Zayante, San Augustin, La Carbonera, and Canada Del Rincon En El Rio San Lorenzo De Santa Cruz, boundaries are based upon section lines that are extensions to the Public Land Survey System developed by the California Department of Forestry and obtained by the Service from the State of California's Stephen P. Teale Data Center. Township and Range numbering is derived from the Mount Diablo Base and Meridian. The following lands located within Santa Cruz County are being proposed for critical habitat: T.9 S., R.1 W., SE¹/₄ sec. 31; T.9 S., R.2 W., SE¹/₄ sec. 33, E¹/₂ sec. 34, SW¹/₄ sec. 35, S¹/₂ sec. 3; T.10 S., R1 W., W¹/₂ sec. 6; T.10 S., R.2 W., sec. 1, S¹/₂ NW¹/₄ sec. 2, sec. 3, W¹/₂ sec. 4, W¹/₂ sec. 9, sec. 10, sec. 11, sec. 13, sec. 14, N¹/₂ SE¹/₄ sec. 15, NE¹/₄ sec. 22, secs. 23–26, N¹/₂ sec. 35, sec. 36,

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

* * * * *

Dated: February 1, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG27

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

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

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

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

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

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

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

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

SUPPLEMENTARY INFORMATION:

Background

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

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

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

The Morro shoulderband snail occurs in coastal dune and scrub communities