

Field Supervisor  
U.S. Fish & Wildlife Service  
Ventura Fish & Wildlife Office  
2493 Portola Road, Suite B  
Ventura, CA 93003  
Fax: (805) 644-3958  
Ph: (805) 644-1766

Dear Field Supervisor:

The following letter includes the comments of The Xerces Society on the Proposed Designation of Critical Habitat for the Morro Shoulderband Snail (65 Fed. Reg. 42962) and the Draft Economic Analysis for the Proposed Designation of Critical Habitat for the Morro Shoulderband Snail (65 Fed. Reg. 69896). The Xerces Society strongly supports the designation of critical habitat for this species, and supports the proposal as written with one exception. We believe that the critical habitat should include those areas covered by existing HCPs.

The Xerces Society believes that all 2,566 acres currently proposed should be included in the final designation. The Morro Shoulderband Snail has a narrow range endemic, and as such it is particularly appropriate to designate its entire occupied habitat as critical habitat. This is particularly true since the species is threatened primarily by habitat destruction, and the survival of the species requires this habitat.

The Society also believes the exclusion of areas covered by Habitat Conservation Plans (HCPs) is not warranted. It is even more important to give special consideration to endangered species habitat covered by an HCP than land not covered by an HCP. An HCP is developed because a landowner wishes to “take”, one or more endangered species. The fact that this destruction may be partially mitigated through the HCP process does not change the fact that species are generally worse off after an HCP has been issued.

As to “reserve lands” that may be protected for the survival and recovery of species pursuant to an HCP, the rationale argued by the US Fish and Wildlife Service (FWS) is flawed. The argument that these lands are already protected is almost identical to the argument made for years by the FWS that designating critical habitat on federal lands provides no added benefits to species. This notion is contrary to the clear language of the Endangered Species Act, and has been soundly rejected by the courts. See, e.g., NRDC v. U.S. Department of Interior, 113 F. 3d 1121 (9<sup>th</sup> Cir. 1997); Hawaii Conservation Council v. Babbitt, 2 F.Supp.2d 1280 (D. Hawaii 1998). There could, theoretically, be a scenario whereby the protection given to a species’ habitat was so complete that critical habitat would provide no additional benefit with regards to Section 7 consultation. However, even under this scenario, the species would still receive the benefits of critical habitat associated with educating the public and land managers about the importance of its habitat, and the benefits associated with the help that critical habitat designation lends to recovery planning and management of the species.

In sum, The Xerces Society strongly supports the designation of critical habitat for this species and applauds the FWS for moving forward with this designation. But we do not believe the

HCPs provide the level of protection to the Morro shoulderband snail that is required to ensure survival of the species. Therefore, the areas covered by these HCPs should be included in the final rule designating critical habitat.

Again thank you for you work on this issue and for the opportunity to comment.

Sincerely,

Scott Hoffman Black  
Executive Director

