

found to have been chewed off some of the plants. We recognize that properly controlled grazing can often benefit some native species by cropping back competing plants and by providing an incentive to avoid urban or agricultural development, but we also believe that overgrazing remains a threat for this species. The establishment of critical habitat is unlikely to restrict or affect grazing levels unless the activity has the involvement of a Federal agency, such as a permit or funding.

(3) *Comment:* Another commenter referred to unmanaged sheep grazing as one of the main threats to *Delphinium luteum*. The commenter argued that the remaining population locations may be limited to the steeper and brushier north-facing slopes specifically because those are the places which sheep find most difficult to reach. This commenter recommended that critical habitat for *D. luteum* include “the larger coastal prairie community with all the traversing canyons and watersheds,” possibly the entire Marin Gap between Bodega Bay and the Bolinas Ridge, to encourage the future establishment of conservation easements that could eventually ease grazing pressures and allow *D. luteum* populations to expand back outward.

Our Response: We agree that sheep grazing may be a key factor in restricting the species to north-facing slopes in some areas. We want to ensure it is understood, however, that although all but one recently documented population of *D. luteum* occurs on basically north-facing slopes, the species is not restricted to north-facing slopes. Slopes with other aspects can support the species, they support continuity within the units, and provide a range of microhabitat sites for potential expansion that is necessary for the conservation of the species. Therefore, we have redefined the primary constituent elements of the species to more clearly indicate that slope and aspect are separate requirements. Because areas within the defined units are considered critical habitat if they possess at least one of the primary constituent elements of the species, the treatment of slope and aspect as separate constituent elements will more clearly indicate our intent that critical habitat should include areas within each unit that are either steeply sloping or north aspected. However, we believe the possible historical impacts of sheep grazing on the range of *Delphinium luteum* are too speculative to support the expansion of the units beyond their current boundaries in the manner suggested by the commenter.

(4) *Comment:* One commenter thought the *Delphinium luteum* units followed specific soil types too closely and should include more steeply sloped (30 percent or greater) areas with other sandstone or shale-based soil types. He specifically recommended the Tocaloma-Saurin hillsides within Unit L4 and within the Walker Creek watershed east of Unit L4. He also recommended including sloped areas of Tomales series soils between Units L2 and L3.

Our Response: The reference to Kneeland and Yorkville series soils in the list of primary constituent elements for the species was meant as an example and not a limitation, so the areas in Unit L4 with Tocaloma-Saurin soils and slopes of 30 percent or greater do contain the primary constituent element regarding soils, and we consider such areas to be included in our designation of critical habitat in Unit L4.

In response to the recommendation regarding the areas between two of the proposed units, we considered expanding the critical habitat boundaries to include the Tocaloma-Saurin hillsides along Walker Creek and the Tomales series soils between units L2 and L3. Given our limited current knowledge of the species and its conservation requirements, however, and because we have no records of *D. luteum* growing in the suggested locations, we have little certainty that these areas would meet the definition of critical habitat (as defined in section 3(5)(A) of the Act) as areas on which are found physical and biological features that are essential to the conservation of the species. Within the geographical area occupied by the species, we designate only areas currently known to be essential, and consequently we do not believe it is appropriate to include the suggested areas in our designation of critical habitat for *D. luteum*.

As further described in the section of this preamble entitled “Critical Habitat” (below), we recognize that our designation of critical habitat may not include all of the habitat areas that might eventually be determined to be necessary for the conservation of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. 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. Also, as provided for by section 4(a)(3) of the Act, we can revise our designation of critical habitat in the future if it is appropriate to do so.

Issue 2: Site Specific Comments

(5) *Comment:* Two commenters questioned the validity of the *Delphinium luteum* occurrence in Unit L3.

Our Response: This occurrence was documented in Amme (1993), and reconfirmed by both discoverers (D. Amme, *in litt.* 2002; D. Amme, pers comm. 2002; C. Patterson, pers comm. 2003). It was also cited in a plant survey conducted in 1997 (LSA 1997), although that survey did not attempt to directly reconfirm the occurrence's existence. Mr. Amme is a biologist for CalTrans, while Mr. Patterson is a consulting botanist with over 20 years' experience. Although Mr. Amme has indicated some concern that the occurrence may have hybridized to some extent with another species, a small amount of genetic introgression would be unlikely to invalidate the protections of the Act (Service 1996 (61 FR 4710)). Mr. Amme has mentioned to us the possibility that the occurrence could be a yellow-flowered hybrid of two other larkspur species: *Delphinium nudicaule* (red larkspur) and *D. decorum* (coast larkspur) (D. Amme, *in litt.*, 2003). While this possibility cannot be conclusively ruled out, we believe that given the extremely few *D. luteum* occurrences remaining, in the absence of evidence to indicate the occurrence is not *D. luteum*, we must proceed on the assumption that it is. If future evidence demonstrates conclusively that this occurrence is not *D. luteum*, the critical habitat designation can be revised at that time.

(6) *Comment:* Two commenters provided information regarding separate areas in Unit L3 that indicates the areas do not contain *Delphinium luteum* plants or appropriate habitat.

Our Response: Although developed areas such as buildings, roads, or lawns may inadvertently be included within critical habitat boundaries, such areas generally do not have any of the primary constituent elements of the species, and so do not qualify as critical habitat. Where possible we prefer to exclude such areas directly, so we have redrawn Unit L3 to avoid the areas in question. See the “Summary of Changes from Proposed Rule” section below.

(7) *Comment:* A commenter argued that Units L2 and L3 have been actively grazed or farmed for over 100 years and either they do not contain *Delphinium*