

beetle (*Cicindela oehlone*) (Impact Sciences 2001).

The Polo Ranch site contains six colonies. This site is located just east of Highway 17 and north of Navarra Road in northern Scotts Valley, and is approximately 1.6 km (1 mi) east of the Salvation Army and School District colonies. These six colonies are situated within 0.2 km (0.1 mi) of one another, and all of these colonies occur on a parcel owned by Greystone Homes (Kathleen Lyons, BRG, *in litt.* 1997; Impact Sciences 2000).

Polygonum hickmanii is a short-lived annual species, and the total number of individuals can vary from year to year. In 2002, the total number of individual stems found at the Glenwood site was approximately 340 (140 on the School District parcel and approximately 200 on the Salvation Army parcel) (K. Lyons, *in litt.* 2002; Biotic Resources Group 2002); the Salvation Army parcel supported as many as 2,000 plants in 1998 (K. Lyons, pers. comm., 1998). In 1998, the total number of individuals on the Polo Ranch site was approximately 1,259 (K. Lyons, *in litt.* 1997).

Previous Federal Action

We first became aware of *Polygonum hickmanii* in 1992 during the development of the proposed listing rule for *Chorizanthe robusta* var. *hartwegii* (66 FR 10469). At that time, however, a name for the taxon had not formally been published, and so we did not consider it for listing under the Act. Once the name, *P. hickmanii*, was published by Hinds and Morgan (1995), we reviewed information in our existing files, in the California Natural Diversity Data Base, and new information on proposed projects being submitted to us for our review, and we determined that sufficient information existed to believe that listing may be warranted. *Polygonum hickmanii* was included in the list of candidate species published in the **Federal Register** on October 25, 1999 (64 FR 57534).

On November 9, 2000, we published a rule to propose (65 FR 67335) *Polygonum hickmanii* as an endangered species. At the time of the proposed listing, we determined that critical habitat for *P. hickmanii* was prudent, but deferred proposing critical habitat designation until a proposal to designate critical habitat could be developed for both *P. hickmanii* and *Chorizanthe robusta* var. *hartwegii*, a plant species already listed as endangered, because the two taxa share the same ecology and geographic location. We proposed critical habitat for both of these taxa on February 15, 2001 (66 FR 10469); the final critical habitat designation for

Chorizanthe robusta var. *hartwegii* was published on May 29, 2002 (67 FR 37336). On May 22, 2002, the Center for Biological Diversity (CBD) filed a lawsuit alleging our failure to issue a final listing and critical habitat designation for *P. hickmanii* violated the time requirements specified in the Act. In settlement of this lawsuit, we agreed to complete the final listing and critical habitat designations by March 30, 2003.

Summary of Comments and Recommendations

In the November 9, 2000, proposed rule to list the species (65 FR 67335) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. A 60-day comment period closed on January 8, 2001. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A notice announcing the publication of the listing proposal was published in the Santa Cruz Sentinel on November 16, 2000. Another comment period opened on February 15, 2001, when the proposed critical habitat designation for *Chorizanthe robusta* var. *hartwegii* and *Polygonum hickmanii* was published. This 60-day comment period closed on April 16, 2001. A legal notice announcing the publication of the proposed critical habitat designation was published in the Santa Cruz Sentinel on February 24, 2001. Additionally, we published a notice on November 21, 2002, announcing the availability of the draft economic analysis on the proposed critical habitat designation. This notice subsequently opened the public comment period for 15 days, until December 6, 2002, on the proposed listing rule, the proposed critical habitat designation, and the draft economic analysis on the proposed critical habitat designation.

During the three comment periods, we received individually written comments from 17 parties. Twelve commenters expressed support for the listing proposal and the proposed critical habitat designation. One of the 17 commenters opposed the proposed critical habitat designation for *Polygonum hickmanii*. Four commenters were neutral, either on the proposed listing or the proposed critical habitat designation. Approximately 800 additional letters were submitted as part of a mailing campaign when critical habitat was proposed for the species. Of these, 23 were opposed, 1 was neutral,

and the remaining were in support of the critical habitat designation.

We reviewed all comments received for substantive issues and new information regarding the proposed listing of *Polygonum hickmanii*; most of the comments received were minor technical comments, and corrections and additions were made to the final rule accordingly. We also reviewed comments regarding the proposed critical habitat designation for *P. hickmanii*. Similar comments were grouped into two general issues relating specifically to biological issues, and procedural and legal issues. These are addressed in the summary that follows.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of four peer reviewers regarding pertinent scientific or commercial data and assumptions relating to population status and biological and ecological information for the proposed listing of *Polygonum hickmanii* when it was published on November 9, 2000. Three of the four reviewers responded. These reviewers expressed support for the listing of the species and described the information included in the rule as factually correct to the best of their knowledge. Their comments are summarized in the following responses to comments and incorporated into the final rule.

We also solicited independent opinions from three additional knowledgeable individuals with expertise in one or several fields, including familiarity with the species, familiarity with the geographic region in which the species occurs, and familiarity with the principles of conservation biology, to review the proposed critical habitat designation when it was published on February 15, 2001. As recommended by the Service Directorate, we requested peer review from Sustainable Ecosystems Institute, as well as two other peer reviewers. All three of the peer reviewers supported the proposal, and provided us with comments that are summarized in the following responses to comments and incorporated into the final rule.

Issue 1: Biology and Methodology

Comment 1: The proposed critical habitat designation is not properly supported by the best scientific information available. In particular, the Service makes "numerous and varied unsupported assertions regarding the biology and habitat requirements" of the species, and did not use the data available to them.