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## Department of the Interior

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Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical  
Habitat for Mazama Pocket Gophers; Final Rule

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

[Docket No. FWS-R1-ES-2013-0021;  
4500030113]

RIN 1018-AZ37

### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Mazama Pocket Gophers

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for three subspecies of the Mazama pocket gopher (the Olympia pocket gopher, *Thomomys mazama pugetensis*; the Tenino pocket gopher, *T. m. tumuli*; and the Yelm pocket gopher, *T. m. yelmensis*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 1,607 acres (650 hectares) in Thurston County, Washington, fall within the boundaries of the critical habitat designation for the Olympia, Tenino, and Yelm pocket gophers. All critical habitat proposed for the Roy Prairie pocket gopher (*T. m. glacialis*) in Pierce County, Washington, is exempted under section 4(a)(3)(B)(i) of the Act; as a consequence, there is no final critical habitat for this subspecies. The effect of this regulation is, therefore, to designate critical habitat for the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher found in Thurston County, Washington, under the Act.

**DATES:** This rule is effective on May 9, 2014.

**ADDRESSES:** This final rule is available on the Internet at <http://www.regulations.gov> and <http://www.fws.gov/wafwo/mpg.html>. Comments and materials we received, as well as some supporting documentation we used in preparing this final rule, are available for public inspection at <http://www.regulations.gov> under Docket No. FWS-R1-ES-2013-0021. All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours at the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at: <http://www.regulations.gov> under Docket No.

FWS-R1-ES-2013-0021, at <http://www.fws.gov/wafwo/mpg.html>, and, by appointment, at the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Ken Berg, Manager, U.S. Fish and Wildlife Service, Washington Fish and Wildlife Office, 510 Desmond Drive, Suite 102, Lacey, WA 98503-1263; by telephone 360-753-9440; or by facsimile 360-753-9405. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Executive Summary

*Why we need to publish a rule.* This is a final rule to designate critical habitat for the following three subspecies of the Mazama pocket gopher endemic to the State of Washington: The Olympia pocket gopher (*Thomomys mazama pugetensis*); the Tenino pocket gopher (*T. m. tumuli*); and the Yelm pocket gopher (*T. m. yelmensis*). We also set forth our reasons for not designating critical habitat for a fourth subspecies: The Roy Prairie pocket gopher (*T. m. glacialis*). Under the Endangered Species Act of 1973, as amended (Act), any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule.

We published a proposed rule to list as threatened and designate critical habitat for the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers (collectively, we refer to these as the four Thurston/Pierce subspecies of the Mazama pocket gopher throughout this rule) on December 11, 2012 (77 FR 73770). The final rule listing the Olympia, Roy Prairie, Tenino, and Yelm pocket gophers as threatened species under the Act is published elsewhere in today's **Federal Register**. Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data available after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat.

The critical habitat areas we are designating in this rule constitute our current best assessment of the areas that meet the definition of critical habitat for the four Thurston/Pierce subspecies of the Mazama pocket gopher. This rule:

- Designates as critical habitat approximately 1,607 ac (650 ha) of land for the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher, including 676 ac (273 ha) for the Olympia pocket gopher, 399 ac (162 ha) for the Tenino pocket gopher, and 532 ac (215 ha) for the Yelm pocket gopher. All of the critical habitat areas for these three subspecies are in Thurston County, Washington.

- Exempts, under section 4(a)(3)(B)(i) of the Act, all 4,840 ac (1,958 ha) of critical habitat proposed for the Roy Prairie pocket gopher (*T. m. glacialis*) on Department of Defense lands in Pierce County, Washington; as a consequence, there is no final critical habitat for this subspecies.

*This rule consists of:* A final designation of critical habitat for the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher. These three subspecies of the Mazama pocket gopher are endemic to the State of Washington and found only in Thurston County, and have been assigned the status of threatened under the Act elsewhere in today's **Federal Register**. This rule designates critical habitat necessary for the conservation of three of the four Thurston/Pierce subspecies of the Mazama pocket gopher. Although critical habitat was proposed for the Roy Prairie subspecies of the Mazama pocket gopher, which occurs in Pierce and Thurston Counties, all of the area proposed for that subspecies was on Department of Defense lands and has been exempted from critical habitat in this final rule under section 4(a)(3) of the Act.

*We have prepared an economic analysis of the designation of critical habitat.* In order to consider economic impacts, we have prepared an analysis of the economic impacts of the critical habitat designations and related factors. We announced the availability of the draft economic analysis (DEA) in the **Federal Register** on April 3, 2013 (78 FR 20074), and requested public comments on our DEA. We have incorporated the comments and have completed the final economic analysis (FEA). Additional economic analysis conducted in response to public comments is captured in the final memorandum to the economic analysis (IEc 2014). Both documents are available at <http://www.regulations.gov> under Docket No. FWS-R1-ES-2013-0021.

*Peer review and public comment.* We sought comments from independent specialists to ensure that our designation is based on scientifically sound data and analyses. We obtained opinions from two knowledgeable individuals with scientific expertise to review our technical assumptions and analysis, and whether or not we had used the best available information. These peer reviewers generally concurred with our methods and conclusions, and provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated in this final revised designation. We also considered all comments and information received from the public during our three open comment periods, which were open a total of 135 days. We also held two public information workshops and a public hearing in April 2013.

#### Previous Federal Actions

The full candidate history and previous Federal actions for the four Thurston/Pierce subspecies are described in the proposed rule to list and designate critical habitat for four subspecies of the Mazama pocket gopher, published December 11, 2012 (77 FR 73770). We published a notice of availability of the DEA and announcement of public information meetings and a public hearing on April 3, 2013 (78 FR 20074), and a 6-month extension of the final determination for the proposed listing and determination of critical habitat for the four subspecies of the Mazama pocket gopher on September 3, 2013 (78 FR 54218). Details regarding the comment periods on the proposed rulemaking are provided below.

#### Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the four Thurston/Pierce subspecies of the Mazama pocket gopher during three comment periods. The first comment period, announced in association with the publication of the proposed rule on December 11, 2012 (77 FR 73770), was open for 60 days and closed on February 11, 2013. We then made available the DEA of the proposed critical habitat designation and reopened the comment period on the proposed rule for an additional 30 days, from April 3, 2013, to May 3, 2013 (78 FR 20074; April 3, 2013). We also contacted appropriate Federal, State, tribal, county, and local agencies; scientific organizations; and other interested parties and invited them to

comment on the proposed rule and the DEA. During this open comment period, we held three public information workshops (two in Lacey, Washington, and one in Salem, Oregon) and a public hearing (in Olympia, Washington) in April 2013, on the proposed rule to list the four Thurston/Pierce subspecies of the Mazama pocket gopher and the associated proposed critical habitat designations. On September 3, 2013, we announced a 6-month extension of the final determination on the proposed listing and designation of critical habitat for the four Thurston/Pierce subspecies of the Mazama pocket gopher (78 FR 54218) and reopened the comment period for an additional 45 days, ending October 18, 2013.

During the three public comment periods, we received approximately 220 comment letters and emails from individuals and organizations, as well as individual comments received as speaker testimony at the public hearing held on April 18, 2013. These comments addressed the proposed critical habitat or proposed listing (or both) for the four Thurston/Pierce subspecies of the Mazama pocket gopher. Comments relevant to the listing of the Mazama pocket gophers are addressed in a separate rulemaking, published elsewhere in today's issue of the **Federal Register**. We received comment letters from two peer reviewers, one State agency, and two Federal agencies. No Native American tribes are potentially affected by the proposed designation.

All substantive information provided during comment periods has either been incorporated directly into this final designation or is addressed below. Comments we received are grouped into general issues specifically relating to the proposed critical habitat designation for the four Thurston/Pierce subspecies of the Mazama pocket gopher, and are addressed in the following summary and incorporated into the final rule as appropriate.

#### Comments From Peer Reviewers

In accordance with our peer review policy published July 1, 1994 (59 FR 34270), we solicited expert opinion from six knowledgeable individuals with scientific expertise that included familiarity with the four Thurston/Pierce subspecies of the Mazama pocket gopher and their habitats, biological needs, and threats. Two peer reviewers responded, and both were supportive of the Service's evaluation of the best scientific and commercial data available in proposing to list the four Thurston/Pierce subspecies of the Mazama pocket gopher and designate critical habitat for

these subspecies. We received responses from one of the peer reviewers on the proposed critical habitat designation. Our requests for peer review were limited to a request for review of the merits of the scientific information in our documents; if peer reviewers volunteered their personal opinions on matters not directly relevant to the science of our designation, we do not respond to those comments here.

(1) *Comment:* One peer reviewer recommended that peripheral areas that support pocket gopher populations, or could provide that support, should be included in the designation of critical habitat. The reviewer stated that the existence of peripheral populations, along with larger, core populations, is a reflection of overall population health, as those peripheral populations provide the evolutionarily important stepping-stone opportunities for gene exchange between core areas. These peripheral populations are likely to be ephemeral, because of poor or limited resources and overall size of the patch, but they are also likely to be recolonized on a regular basis.

*Our Response:* Although we are aware of the potential importance of peripheral populations, because of the size of the area these individual populations occupy (i.e., below the 50-ac (20-ha) minimum patch size identified in our primary constituent elements (PCEs)), they did not meet our definition of critical habitat for the subspecies. In addition, because of the inherent uncertainty of the long-term persistence of individual peripheral populations and their contribution to core populations, we did not believe we had sufficient justification to propose these areas as critical habitat in this case, as we do not consider them to provide the physical or biological features essential to the conservation of the species. However, this does not mean that these undesignated areas are unimportant or will not contribute to the long-term conservation of the Mazama pocket gopher. During the recovery planning process, we anticipate the areas occupied by these peripheral populations to be evaluated for their potential contribution to the subspecies' conservation. Although these areas are not included in the critical habitat designation, individuals in these peripheral populations are still protected under the Act (16 U.S.C. 1531 et seq.), and these protections from "take" of the species under section 9 and section 7 of the Act extend to the avoidance of harming the habitat on which these peripheral populations depend. Information regarding the role of peripheral populations was added to

the final listing rule for the four Thurston/Pierce subspecies of the Mazama pocket gopher, which is published elsewhere in today's **Federal Register**

(2) *Comment:* One peer reviewer recommended that all soils that may be occupied or vegetative cover that may be used by any one of the subspecies be listed as "suitable" for the other subspecies.

*Our Response:* In our PCEs, vegetative cover was discussed as being the same for all subspecies. We have revised the soils discussion to more broadly include soil types (describing soil qualities) as well as including the soil series names which the various subspecies may occupy. However, not all soil series in which the four subspecies have been found occur within the presumed range of each of the four subspecies, and furthermore not all soil series occur within each of the units designated as critical habitat. Note that the PCEs only apply to areas identified as critical habitat; the regulatory effect of critical habitat does not apply anywhere outside of the designated units. Given the current level of uncertainty regarding the absolute ranges of the four Thurston/Pierce subspecies of the Mazama pocket gopher, it is prudent to acknowledge the collective list of soil types known to be used by Mazama pocket gophers could be suitable for any of the four Thurston/Pierce subspecies. We have revised our final listing rule (published elsewhere in today's **Federal Register**), as well as the *Physical or Biological Features* section of this rule, to acknowledge the potential broader use of soil types by each of the four Thurston/Pierce subspecies of the Mazama pocket gopher. We have retained our more specific identification of the soil types known to be used by each of the Mazama pocket gopher subspecies for the purposes of describing the PCEs for each subspecies and identification of those specific areas that provide the PCEs.

#### *Comments From State Agencies*

Section 4(i) of the Act states, "the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition." Comments we received from State agencies regarding the proposal to designate critical habitat for the four Thurston/Pierce subspecies are addressed below.

We received critical habitat comments from the Washington Department of Fish and Wildlife (WDFW) related to biological information, PCEs, critical habitat exclusions, and

recommendations for the management of habitat.

WDFW provided a number of recommended technical corrections or edits to the proposed critical habitat designation for the Mazama pocket gopher. We have evaluated and incorporated this information into this final rule where appropriate to clarify the final critical habitat designation. In instances where the Service may have disagreed with an interpretation of the technical information that was provided, we have responded in separate communication with the agency.

(3) *Comment:* WDFW and another commenter observed that four proposed critical habitat subunits (1-A, 1-B, 1-C, and 1-D) had more than one subspecies name associated with each subunit. The other commenter asserted that because critical habitat subunits 1-A, 1-B, 1-C and 1-D appear to be occupied by two subspecies of the Mazama pocket gopher, this implies that at least some populations of these subspecies are not isolated by geography and should probably not be defined as separate subspecies.

*Our Response:* The critical habitat proposed for each of the subspecies of the Mazama pocket gopher drew heavily on species occurrence records compiled in the WDFW Heritage Database. A graduate student presented work suggesting that the four Thurston/Pierce subspecies of the Mazama pocket gopher should be considered a single clade and collapsed under the subspecies name "*yelmensis*." However, that presentation did not result in revision or annulment of the subspecies' taxonomy. Regardless, some detection sites and voucher specimens were erroneously labeled with the name "*Thomomys mazama yelmensis*." This resulted in erroneous collection records of "*T. m. yelmensis*" within the range of other subspecies, which was codified in the 2005 Status Report for the Mazama pocket gopher (Stinson 2005) and the WDFW Heritage Database. Due to this error, the appropriate way to label these proposed critical habitat subunits was not entirely clear at the time the proposed rule was published, and we included the name *T. m. yelmensis* on the subunits where collection records for them existed. However, upon further review, we do not believe that more than one subspecies was ever naturally present in the same place, nor does our error mean that the subspecies' taxonomy has been changed; the artifact of two subspecies names in a single polygon reflects a mistake based on an erroneous assumption that the taxonomy had been changed. Our final

critical habitat designation no longer reflects this error. In fact, there is no overlap between the subspecies for this designation, and as reflected in this final rule, we have changed our final critical habitat units to reflect the fact that only a single subspecies occurs within each unit. WDFW has similarly revised their most recent draft recovery plan for the Mazama pocket gopher to reflect this correction (Stinson 2013).

(4) *Comment:* WDFW stated that determining occupancy of an area by Mazama pocket gopher should not be based on a single survey year. On a similar subject, we received a public comment disputing the occupancy of a portion of a subunit proposed as critical habitat.

*Our Response:* The Service agrees that occupancy of any site by Mazama pocket gophers is likely subject to fluctuations in population size and forage availability; therefore pocket gophers may not necessarily be detected at occupied sites every year. The Service takes a conservative approach to habitat evaluation when determining occupancy for the designation of critical habitat. Since occupancy is linked to the Mazama pocket gopher's ability to disperse into suitable habitat, we consider a site likely occupied at the time of listing if Mazama pocket gophers are detected in some years, but not others (an "intermittently" occupied site), or if a site has both suitable habitat and is near enough to a source population that it is likely occupied. If intermittently occupied sites were not considered "occupied" in those years when Mazama pocket gophers were not detected, there is a very real possibility that development or other irreversible land uses might permanently convert that suitable habitat to another form of landscape, within which Mazama pocket gophers will not be able to breed and across which gophers will not be able to disperse, effectively reducing available suitable habitat and limiting dispersal capacity at the same time.

In our proposed designation, occupancy of critical habitat was determined at the subunit level based on a positive detection during a survey conducted within the previous 5 years on at least a portion of the subunit. Occupancy determinations were not made at less biologically relevant scales below the subunit level (e.g., at the individual ownership/parcel scale), so it is possible that a portion of a unit or a subunit may not be currently occupied, but is part of a larger unit or subunit that is considered occupied. However, even if pocket gophers are not detected in some portion of a subunit in any given year, because the PCEs are present

(e.g., requisite soil and vegetation types, barriers to dispersal absent or permeable) and the area is adjacent or contiguous to an occupied portion of the subunit, we consider the whole subunit as likely occupied. This is the likely dynamic state of occupancy for the majority of areas included in critical habitat as units and subunits. It is known that some areas where Mazama pocket gophers are documented to occur in one year may not appear to be occupied the next, but the gophers then reappear in subsequent years, as they move about the landscape (for example, at the Rocky Prairie Natural Area Preserve (NAP)). For this reason, we determined that occupancy is most reasonably evaluated at the scale of the unit or subunit.

As described in our listing rule (published elsewhere in today's **Federal Register**), Mazama pocket gophers are not colonial, but are relatively solitary and highly territorial; therefore juveniles are likely to disperse from their natal sites into nearby suitable habitat. Such movements result in apparent changes of the occupancy status of a specific site over time, as juveniles disperse and colonize new sites, or conversely, as territorial individuals die and specific sites become unoccupied. In addition, since vegetation structure varies spatially and temporally, yielding a mosaic of suitable habitat patches at any given time, it is likely that any Mazama pocket gophers existing in the context of an expanse of habitat with contiguous suitable soil types (e.g., subunit level) shift their location in response to available resources; thus habitat that is occupied at some times may not be occupied at others. We also note that in some cases portions of a subunit may appear to be intermittently occupied, when in actuality it may just be that gophers are only intermittently detected on the site due to factors such as differences in level of survey effort, survey conditions, survey timing, and overall gopher abundance. Information regarding this aspect of occupancy has been added to the final listing rule for the four Thurston/Pierce subspecies of the Mazama pocket gopher, which is published elsewhere in today's **Federal Register**, and in the *Physical or Biological Features* and Critical Habitat sections of this rule. As noted above, we consider all such habitat to be likely occupied by the species, as we do not consider it biologically relevant to determine occupancy at a scale below that of the unit or subunit. However, in the context of critical habitat, even if such an intermittently occupied area

were considered to be "unoccupied" at the time of listing, for the reasons described above and in the Critical Habitat section of this document, to be conservative we have evaluated such areas as if they were unoccupied, and all such areas included in this final critical habitat rule have been determined to be essential for the conservation of the species.

(5) *Comment*: WDFW pointed out that the expert panel cited in the proposed critical habitat rule did not have the empirical data necessary to make an informed decision about minimum habitat patch size that would provide a high likelihood for long-term persistence of the Mazama pocket gopher, implying that the panel decision should not be used in estimating the area size necessary for persistence.

*Our Response*: The Service relies upon the best available scientific and commercial data to inform the decisions necessary for creating listing and critical habitat rules. In this case, we drew on the knowledge of a team of experts who were assembled to assist with the construction of a habitat modeling exercise. In the absence of studies demonstrating the minimum possible patch size for persistence of the Mazama pocket gopher, we used the 50-ac (20-ha) size as the smallest area necessary for recovery of Mazama pocket gopher populations, which was the agreed-upon estimate of the expert panel. We acknowledge the uncertainty with this estimate, but there are currently no studies regarding minimum patch size available for the Mazama pocket gopher, nor are there any obvious means by which a better answer can be obtained. Thus, the best scientific data available in this case is the opinion of an informed expert panel. We also note that areas ultimately identified as critical habitat should not necessarily be interpreted as the sole areas necessary for species recovery; areas outside of designated critical habitat can play an important role in the conservation of the species as well. See also response to Comment (1).

(6) *Comment*: WDFW stated that genetics and population dynamics of gophers suggest that the maintenance of networks of smaller habitat patches may be as important as preserving larger patches of isolated habitat.

*Our Response*: The Service agrees that both small and large habitat patches may be important to the recovery of the Mazama pocket gopher and does not feel that the decision to identify only larger habitat patches as critical habitat disregards the importance of networked smaller patches. Successfully maintaining smaller patches may be

much more difficult than maintaining or restoring large patches. See also our response to Comment (1).

#### *Comments From Federal Agencies*

Department of Transportation, Federal Aviation Administration

(7) *Comment*: The Federal Aviation Administration (FAA) and another commenter stated that if the Service had considered the full range of economic impacts associated with the designation of critical habitat at the Olympia Airport from restricted aviation development and lost revenue opportunity, a justified economic case could be made to exclude airport property from critical habitat designation. They believe that by considering only the incremental impact from additional consultation with the Service imposed by the designation of critical habitat, the economic analysis is incomplete. Furthermore, the FAA expressed concern that restrictions on land use that may be associated with critical habitat could interfere with the ability of airport operators to maintain specific design criteria and safety standards, or to schedule timely repair when safety standards are altered. The FAA requested exclusion of airport properties from critical habitat designation, based on potential economic impacts and safety considerations.

*Our Response*: The baseline utilized in the DEA is the existing state of regulation, prior to the designation of critical habitat, which provides protection to the species under the Act, as well as protection under other Federal, State, and local laws and guidelines. To characterize the "world without critical habitat," the DEA also endeavors to forecast these conditions into the future over the time frame of the analysis (20 years in this case), recognizing that such projections are subject to uncertainty. This baseline projection presumes that the species will be listed (as critical habitat would not be designated absent a listing) and therefore recognizes that the four Thurston/Pierce subspecies of the Mazama pocket gopher will be subject to a variety of Federal, State, and local protections throughout most of their ranges, due to their listed status under the Act and regardless of the designation of critical habitat. The DEA then considers the incremental effects of critical habitat, above and beyond this baseline. Based on the incremental impacts of the rule, we were unable to conclude that the Olympia Airport warranted exclusion as a result of economic impacts. Please refer to the *Exclusions Based on Economic Impacts*

discussion in the Exclusions section of this document for further details on this analysis specific to the Olympia Airport.

The Olympia Airport Unit contains the largest known area occupied by the Olympia pocket gopher in Washington State. As it is occupied by the subspecies, any activities with a Federal nexus at this site that may affect the Olympia pocket gopher, such as actions funded by the FAA, will be subject to consultation under section 7 of the Act. This requirement is in effect due to the presence of the listed species, regardless of the designation of critical habitat. The regulatory effect of a critical habitat designation is that Federal agencies must ensure that their actions avoid "adverse modification" of critical habitat. Where the habitat in question is already occupied by the listed species, if there is a Federal nexus, the action agency already consults with the Service to ensure its actions will not jeopardize the continued existence of the species. In this case, any actions associated with safety procedures with a Federal nexus will already be subject to consultation under the jeopardy standard. In our experience, it is unlikely that the additional consideration of adverse modification due to the designation of critical habitat would result in any significant project modifications beyond those already recommended or necessary to avoid jeopardy to the subspecies. Furthermore, if the action was found likely to destroy or adversely modify critical habitat, or to jeopardize the subspecies, the Service is required, to the extent feasible, to provide reasonable and prudent alternatives (RPAs) that would allow the action to proceed and comply with section 7(a)(2) of the Act. RPAs must be technologically and economically feasible, must allow for the intended purpose of the action to be met, must avoid jeopardy or adverse modification, and must be within the authority of the action agency to implement. In our experience, in the vast majority of cases the Service is able to work with the action agency to successfully avoid adverse modification. For these reasons, we do not anticipate that the designation of critical habitat at the Olympia Airport will interfere with the ability of the airport operator to comply with safety standards or impair aviation safety.

Natural Resources Conservation Service,  
U.S. Department of Agriculture

(8) *Comment:* The U.S. Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) stated they support exclusion of the Colvin Ranch

property under section 4(b)(2) of the Act as a result of ongoing management under a Grasslands Reserve Program agreement. NRCS believes the current level of grazing management on this property has resulted in healthy native prairie populations, and will continue to provide benefits to the native prairie populations, including the Mazama pocket gopher, which exceed benefits provided by a critical habitat designation. The landowner also commented that he believes Colvin Ranch's current management plan exceeds the benefits that may be realized from designation of critical habitat on their property.

*Our Response:* The Service concurs with this assessment and has excluded this property from the final critical habitat designation for Mazama pocket gopher (see Exclusions section of this document).

#### *Comments From the Public*

(9) *Comment:* One commenter asserted that the Service has not demonstrated that the Rocky Prairie Unit for the Tenino pocket gopher (formerly identified as subunit 1-D in the proposed rule) has the necessary PCEs to meet the criteria as critical habitat, and cited *Alaska Oil and Gas Association v. Salazar* (Nos. 3:11-cv-0025-RRB, 3:11-cv-0036-RRB, 3:11-cv-0106-RRB, Jan. 11, 2013) as support for their comment.

*Our Response:* In determining what areas meet the definition of critical habitat for the Mazama pocket gopher, we first identified those areas occupied by the subspecies at the time of listing and that provide the essential physical or biological features, which may require special management considerations or protection. The most important considerations in delineating the areas to include in the proposed critical habitat subunits were occupancy and the extent of the appropriate soil type. The majority of the private land designated as critical habitat for the Tenino pocket gopher in the Rocky Prairie Unit is identified in the USDA NRCS Geographic Information Systems (GIS) soils data layer as the Spanaway-Nisqually soil type. This soil type is a well-drained, prairie-associated soil known to be suitable for the Tenino pocket gopher, as evidenced by the persistence of a population intermittently detected at the Rocky Prairie NAP, which is contiguous with the critical habitat unit along the western perimeter. In the *Alaska Oil and Gas Association v. Salazar* case, the Court ruled that the Service's record did not adequately support the presence of all components of one of the PCEs in

areas designated as critical habitat. The proposal and designation of the Rocky Prairie Unit for the Tenino pocket gopher is based on an expanse of appropriate soil and vegetation. We recognize that the habitat is somewhat degraded and not optimally suitable across the majority of the unit; however this area does contain the PCEs for the Tenino pocket gopher, and the habitat could easily be enhanced and maintained in such a way that the Tenino pocket gopher populations could be recovered there. Restoration work conducted by Joint Base Lewis McChord (JBLM), the Center for Natural Lands Management (CNLM), and WDFW on south Puget Sound prairies has shown that native prairie vegetative communities can be reestablished on even heavily degraded prairies over a short period of years.

(10) *Comment:* One commenter stated that the Service should not designate any private property as habitat for the Mazama pocket gopher. Another commenter asserted that the designation of critical habitat on private lands in the Rocky Prairie Unit for the Tenino pocket gopher was not warranted.

*Our Response:* According to section 4(a)(3)(A) of the Act, the Secretary of the Interior shall, to the maximum extent prudent and determinable, concurrently with making a determination that a species is an endangered species or a threatened species, designate critical habitat for that species. As directed by the Act, we proposed as critical habitat those areas that we believe are occupied by the species at the time of listing and that contain the physical or biological features essential for the conservation of the species, which may require special management considerations or protection. To the extent that those areas may not, in fact, be occupied, we conclude that they are nonetheless essential for conservation of the species.

The Act does not provide for any distinction between landownerships in those areas that meet the definition of critical habitat. However, the Act does allow the Secretary to consider whether certain areas may be excluded from final critical habitat. An area may be excluded under section 4(b)(2) of the Act if the benefits of excluding it outweigh the benefits of including it in critical habitat, unless that exclusion would result in the extinction of the species. In this case, as directed by the statute, the Secretary has considered whether any areas should be excluded from the final designation based on economic impacts, national security impacts, or other relevant impacts. In the case of private landowners, the Secretary has excluded private lands

from the final designation of critical habitat in cases where she has determined that the benefits of excluding areas with conservation agreements or other partnerships outweighs the benefits of including those areas in critical habitat (see Exclusions section of this document).

The area known as Rocky Prairie was proposed as a single critical habitat subunit (1–D in the proposed rule) made up of properties belonging to three different landowners (although the portion of proposed Subunit 1–D owned by the State is excluded from the final designation, leaving two private landowners in what is now called the Rocky Prairie Unit for the Tenino pocket gopher). Rocky Prairie is the source location for the subspecies *Thomomys mazama tumuli* (the Tenino pocket gopher); the subspecies is known from no other location, making this entire unit critical to the recovery of the subspecies. The Rocky Prairie NAP portion of the proposed subunit, owned by WDNR and found along the western edge of the privately held land, is documented as being intermittently occupied, most recently verified through live trapping by WDFW in 2012, and visual confirmation of mounding activity by Service biologists in 2013. The appearance of intermittent occupancy may be due to an interaction between the small size of the property and the territorial nature of the Mazama pocket gopher, causing the site to undergo intermittent extinctions and recolonizations from a nearby source population, or possibly, but less likely, it could be due to a lack of detection on the part of the surveying biologists. While the Rocky Prairie NAP is the only site in the proposed Subunit 1–D with confirmed, if intermittent, occupancy, it is too small to be considered sufficient for the conservation of the species over time. We determined 50 ac (20 ha) to be the minimum patch size necessary for a population of Mazama pocket gophers to persist. The proposal of critical habitat in Rocky Prairie, which included private property, was predicated on the following: (1) Subunit 1–D, as proposed, was documented as occupied by *T. m. tumuli*; (2) all areas within the proposed subunit provide the PCEs for *T. m. tumuli*; (3) Rocky Prairie is the only location from which *T. m. tumuli* is known, and therefore the conservation of this subspecies within its historical range is entirely dependent on this area; (4) within the proposed Subunit 1–D, the State-owned NAP comprises only 35 ac (14 ha) of habitat, which alone does not meet the minimum patch size of 50 ac (20 ha) established for Mazama

pocket gophers, and does not comprise enough acreage to ensure recovery of the subspecies; (5) suitable habitat for *T. m. tumuli* is relatively continuous between the NAP and the adjacent private properties, and dispersal between these areas is possible; and (6) the perception of intermittent occupancy of the NAP indicates that there is a nearby source population adjacent to the NAP (although there have been some years when gophers were not detected at the NAP, they subsequently reappeared in later years. These individuals must have entered the NAP from a nearby source population, which, given the relatively limited dispersal distances of pocket gophers, most logically would have come from the large areas of suitable habitat on the private lands immediately adjacent to the NAP). Based on all of these considerations, we find it reasonable to conclude that all of the areas within the Rocky Prairie Unit are likely occupied by the Tenino pocket gopher, and as all of these areas provide the PCEs for the subspecies, they are all appropriately identified as critical habitat. However, even if some portions of the unit were considered to be unoccupied at the time of listing, because this is the only known location for *T. m. tumuli* and the area on the NAP is insufficient to provide for the conservation of this subspecies, we consider the entire unit, which provides the requisite physical or biological features for *T. m. tumuli*, to be essential to the conservation of the species.

According to documents submitted to the Service, the privately held portion of the Rocky Prairie Unit was surveyed on June 4, 2012. However, the Service does not believe that the survey effort was adequate to establish absence of the subspecies, as the survey was conducted across 590 acres over a period of approximately 9 hours and did not adhere to the established WDFW survey protocol. The survey was never submitted to WDFW for validation, and WDFW biologists indicate it was inconsistent with their established survey protocol for the Mazama pocket gopher based on the contractor's description of the survey methods and would not have been validated. Considering the factors above, the Service concludes that the identification of proposed Subunit 1–D (referred to in this final rule as the Rocky Prairie Unit for the Tenino pocket gopher), in its entirety, as critical habitat is appropriate because the unit, as designated, is likely occupied at the time of listing and provides the PCEs for *T. m. tumuli*. However, even if portions of the unit were not occupied at the time of listing,

for the reasons described above, we have determined that this unit, in its entirety, is essential to the recovery of the subspecies *T. m. tumuli*, the Tenino pocket gopher; therefore this area still meets the statutory definition of critical habitat and is appropriately designated.

(11) *Comment:* One commenter stated that designating critical habitat on lands that will require maintenance or restoration of the PCEs is not appropriate. Another commenter stated that the designation of critical habitat would require special management of the habitat under section 7 of the Act, based on the requirement for individuals or organizations who receive Federal funds to consult on any alterations to known occupied habitat, such as construction, grading, and activities as simple as mowing.

*Our Response:* By definition under section 3(5)(A)(i) of the Act, the essential physical or biological features associated with occupied critical habitat “may require special management considerations or protection.” The prairies of western Washington were anthropogenically maintained through the practice of burning by the first peoples for millennia. Mazama pocket gophers in and around the south Puget Sound evolved in areas kept free of woody vegetation through burning and, as such, have been dependent upon human processes to maintain their habitat. It is impractical to expect that any area designated as critical habitat would maintain itself in the state necessary to conserve Mazama pocket gophers; thus all areas designated as critical habitat will likely require some level of management to maintain appropriate habitat. Since pocket gophers are restricted to the soil types to which they are adapted, and there is a finite amount of acreage of those soils, the soil type and its continued accessibility to the Mazama pocket gopher for burrowing and foraging is of greater importance than vegetation for the conservation of the species, as vegetation can be relatively easily restored but soils cannot.

Critical habitat may require special management to maintain optimal condition for listed species, but the designation of critical habitat does not, by itself, impose a duty on the landowner to engage in those special management activities. Anywhere a Federal nexus exists, any Federal agency activity that may affect the species or its designated critical habitat is subject to consultation under section 7. In these cases, a Federal agency proposing an action that may affect the listed species or its designated critical habitat would be required to conduct an

evaluation to determine whether or not it may affect the species, and if critical habitat is designated, whether or not it may affect that habitat.

(12) *Comment:* Some commenters questioned whether it was necessary to designate critical habitat for the four Thurston/Pierce subspecies of the Mazama pocket gopher within Urban Growth Areas (UGAs) which they believe creates an unnecessary regulatory burden in those areas, if there are alternate areas available outside of those boundaries where the subspecies could be recovered.

*Our Response:* The Act requires that we designate critical habitat for listed species on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat. In our proposed rule, it is our practice to identify all areas that meet our definition of critical habitat for the species. In the case of the Mazama pocket gopher, we identified all areas occupied by the four Thurston/Pierce subspecies at the time of listing, and that provide the physical or biological features essential to their conservation, which may require special management considerations or protection. As described in the final rule listing the four Thurston/Pierce subspecies of the Mazama pocket gopher as threatened under the Act (published elsewhere in today's **Federal Register**), one of the primary threats to the four Thurston/Pierce subspecies is the consequence of past and ongoing degradation and permanent destruction of their habitat. For the four Thurston/Pierce subspecies of the Mazama pocket gopher, those specific geographic areas that meet our definition of critical habitat include areas occupied by Mazama pocket gophers within UGA boundaries, and which provide the essential physical or biological features for their conservation, such as specific soil types utilized by the pocket gophers. The Secretary may exclude some areas from the final critical habitat after considering the economic impact, impact on national security, or any other relevant impact of the designation. As our final economic analysis did not indicate any disproportionate economic impacts resulting from the designation, and no impacts to national security or other relevant impacts were identified that outweighed the benefits of including these areas in critical habitat, any areas that meet our definition of critical habitat for the Mazama pocket gopher within the UGA are included in this final critical habitat designation.

(13) *Comment:* One commenter suggested that Washington State reclamation requirements for a gravel mining site located within the proposed designation of critical habitat would result in improved suitable habitat conditions for Mazama pocket gophers at this site after being mined, compared to if mining were prohibited at this site.

*Our Response:* The Service has no data to support the commenter's conclusion, but careful consideration of Mazama pocket gopher habitat characteristics suggest that while the vegetative aspect of the habitat may be improved, the net result would be detrimental. Mazama pocket gophers evolved in structured soils associated with glacial outwash. These soils have deep underlying beds of gravel, which quickly drains away any water that may accumulate on the surface. Moving or removing the soil from the surface would change the soil structure, while extracting the gravel from below the soil would change the drainage characteristics of the soil at the surface. Since the underlying gravel formation is what provides the well-drained feature of these soils necessary for pocket gopher survival (i.e., largely prevents burrows and tunnels from being persistently inundated by water), any changes in soil characteristics caused by mining will likely result in an unrecoverable loss of a large amount of existing and restorable habitat. In this particular instance, the subspecies (the Tenino pocket gopher) represented at the mining site has the smallest known range of any of the four Thurston/Pierce subspecies, and the removal of significant acres of existing and restorable habitat from within its range could have a detrimental impact on recovery of the subspecies.

(14) *Comment:* One commenter noted that the proposed rule specifically identifies modification of soil profiles or composition and structure of vegetation, including actions such as grading and mowing, as actions that would adversely modify critical habitat. The commenter interprets this to mean that a landowner would essentially be prohibited from grading or mowing his or her property because such activities would put the property owner at risk of violating the "take" prohibitions in the Act. The commenter also states that a citizen suit could be brought under the Act asserting such a take has occurred or been wrongfully permitted by the Washington Department of Natural Resources or other regulatory body authorizing ongoing mining operations. For these reasons, the commenter disputes the conclusion that only Federal agencies are directly affected by

designation of critical habitat and that no small business entities or private property owners are directly affected.

*Our Response:* We believe the commenter is confusing the regulatory effects that may be associated with the listing of the species under the Act, and the automatic protections associated with listing itself, with the regulatory effects separately attributable to the designation of critical habitat. The prohibition against "take" of a listed species under section 9 of the Act applies to individuals of the listed species. Therefore, if the listed species is present, it is accurate that the landowner risks violation of section 9 of the Act if they should implement some action that results in take of that species (the Act defines "take" as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct"), but section 9 is not attributable to the designation of critical habitat. Although in most cases "take" refers to a direct effect on an individual of the species, "take" may also apply to actions that result in modification of the habitat of the species, in cases where such modification may be considered to constitute "harm" to the listed species. Once a species is listed under the Act, the provisions prohibiting take come into effect. These prohibitions are, however, completely independent of the designation of critical habitat. That is, the prohibition against take of the listed species applies regardless of whether critical habitat is designated.

It is possible that there could be some economic impact associated with actions required to avoid take of a listed species; however, section 4(b)(1)(A) of the Act is clear that listing decisions are to be made solely on the basis of the best scientific and commercial data available. The Act does not provide for the consideration of potential economic impacts in association with a listing determination; therefore such impacts are not factored into our economic analysis.

Section 4(b)(2) of the Act, on the other hand, requires the consideration of potential economic impacts associated with the designation of critical habitat. However, as we have explained elsewhere, the regulatory effect of critical habitat under the Act directly impacts only Federal agencies, as a result of the requirement that those agencies avoid "adverse modification" of critical habitat. Specifically, section 7(a)(2) of the Act states that, "Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by



such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary . . . to be critical . . .” This then, is the direct regulatory impact of a critical habitat designation, and serves as the foundation of our economic analysis. We define it as an “incremental impact” because it is an economic impact that is incurred above and beyond the baseline impacts that may stem from the listing of the species (for example, costs associated with avoiding take under section 9 of the Act, mentioned by the commenter), thus it “incrementally” adds to those baseline costs. However, in most cases, and especially where the habitat in question is already occupied by the listed species, if there is a Federal nexus, the action agency already consults with the Service to ensure its actions will not jeopardize the continued existence of the species; thus the additional costs of consultation to further ensure the action will not destroy or adversely modify critical habitat are usually relatively minimal. Because the Act provides for the consideration of economic impacts associated only with the designation of critical habitat, and because the direct regulatory effect of critical habitat is the requirement that Federal agencies avoid destruction or adverse modification of critical habitat, the direct economic impacts of a critical habitat designation in occupied areas are generally limited to the costs of consultations on actions with a Federal nexus, and are primarily borne by Federal action agencies. As described in our final economic analysis, in some cases private individuals may incur some costs as third-party applicants in an action with a Federal nexus. Beyond this, while small business entities may possibly experience some economic impacts as a result of a listing of a species as endangered or threatened under the Act, small businesses generally do not experience any economic impacts as a direct result of the designation of critical habitat.

We encourage any landowner concerned about potential take of listed species on their property to contact the Service (see **FOR FURTHER INFORMATION CONTACT**) to explore options for developing a safe harbor agreement or habitat conservation plan that can provide for the conservation of the species and offer management options to landowners, associated with a permit for protect the party from violations under section 9 of the Act.

(15) *Comment:* One commenter stated that the designation of critical habitat on agricultural lands would be a “death blow” for many members of the agricultural community. Another commenter had specific questions about the effects of critical habitat designation on property values and how potential loss of value might be mitigated or compensated to the owner.

*Our Response:* The Service proposed to designate 775 acres (ac) (314 hectares (ha)) of active agricultural land as critical habitat in the proposed rule, wholly owned by three individual landowners. One landowner had a long-standing conservation agreement that allowed us to exclude his entire property, totaling 378 ac (153 ha), due to demonstrable benefit to the Mazama pocket gopher and its habitat (see Exclusions section of this document). This benefit has been provided through the landowner’s conscientious stewardship, which outweighed the conservation benefit of designation of critical habitat on his property. This means that only two private landowners who are part of the agricultural community may be affected by the designation of critical habitat, rather than the “many” referenced in the comment above. The designation of critical habitat is intended to highlight the value of a particular area to the recovery of an endangered or threatened species, since critical habitat is only identified if it is considered essential to the recovery of a species. The Service carefully considered the areas necessary to recover each subspecies of the Mazama pocket gopher we deemed to be threatened before designating critical habitat. We encourage any member of the public whose land has been designated as critical habitat to contact the Service about potential partnerships and ways to continue using the land that are compatible with the conservation of the Mazama pocket gopher and its habitat. Also see our responses to Comments (11) and (14) for an explanation of the Federal nexus limitations of critical habitat. There are many kinds of conservation agreements available through the Service (contact the person listed under **FOR FURTHER INFORMATION CONTACT**) or our partner agencies that may provide greater regulatory certainty for a guarantee of conservation benefit to the species or habitat.

(16) *Comment:* One commenter stated that there is enough conserved habitat upon which to recover the four subspecies of the Mazama pocket gopher found in Thurston and Pierce Counties without the designation of critical habitat.

*Our Response:* The designation of critical habitat is not an optional exercise. According to section 4(a)(3)(A) of the Act, the Secretary of the Interior shall, to the maximum extent prudent and determinable, concurrently with making a determination that a species is an endangered species or a threatened species, designate critical habitat for that species. We have determined that critical habitat is both prudent and determinable for the four Thurston/Pierce subspecies of the Mazama pocket gopher. Therefore, as required by the Act, we proposed for critical habitat those areas occupied by the species at the time of listing and that contain the physical or biological features essential for the conservation of the species, which may require special management considerations or protection.

The Service acknowledges that there are conserved prairies that superficially appear to have potential Mazama pocket gopher habitat, but are currently unoccupied by Mazama pocket gophers. At this time, there are insufficient data to enable us to conclude with confidence that these areas provide suitable habitat. While recent efforts to improve survivorship during translocation of Mazama pocket gophers into unoccupied habitat have resulted in the multi-year persistence of an experimental population, it is impossible to speak to the long-term success of these efforts. Absent better data, the most reasonable conclusion is that the optimal places to conserve the species are where each subspecies currently exists, or has been known to exist, on the landscape; that is, where habitat is undeniably suitable. There may be opportunities to expand recovery efforts to include unoccupied conserved prairies in the future, but at this time, the Service has outlined the areas we believe are essential to the recovery of the subspecies by highlighting the critical habitat identified in this rule. We focused our identification of the proposed critical habitat on areas with documented occupancy by the four Thurston/Pierce subspecies of the Mazama pocket gopher and that provide the PCEs for those subspecies, as we consider these areas to be key to the recovery of the pocket gophers. However, as detailed further in our response to Comment (10), above, due to the life history strategy of the pocket gophers and the tendency for occupancy of some specific sites to appear to be intermittent in some cases, it is possible that portions of some of the areas we identified as occupied at the time of listing may be considered unoccupied. As discussed in

the Critical Habitat section of this document, we have further evaluated any such areas as if they were unoccupied at the time of listing, and determined that all areas in this final critical habitat rule are essential to the conservation of the species.

#### *Comments on Economic Analysis*

(17) *Comment:* One commenter said the Service must factor the economic impact of the critical habitat designation into account when assessing whether to exclude areas from critical habitat designations, and decide whether the benefits of including the area outweigh the benefits of excluding it. They further stated that this in turn requires an assessment of whether any additional regulatory benefits will come from critical habitat designation that can outweigh the burdens the designation imposes.

*Our Response:* Our economic analysis identifies those economic impacts that are attributable specifically to the designation of critical habitat, for the purposes of considering whether the benefits of excluding those areas (for example, to avoid disproportionate economic impacts) may outweigh the benefit of including them in critical habitat. It is the Service's position that, at a minimum, critical habitat almost always carries with it at least some educational value for landowners, in terms of clearly identifying those areas that we consider to provide physical or biological features essential for the conservation of the species. In addition, critical habitat carries with it the requirement under section 7(a)(2) of the Act that Federal agencies avoid actions that will destroy or adversely modify critical habitat; this is a benefit that is not conveyed by existing regulatory mechanisms absent a formal Federal rulemaking to designate critical habitat. In our analyses, as described in detail in the Exclusions section of this document, we weigh the benefits that come with critical habitat against the burdens or costs that may be associated with it.

In the case of the four Thurston/Pierce subspecies of the Mazama pocket gopher, since each area proposed as critical habitat is also currently occupied by one of the subspecies, many regulatory protections will already be in place as a result of their listed status under the Act, and these protections would exist regardless of whether critical habitat were designated. Therefore, as explained in our DEA, the incremental impact of the designation that is attributable to critical habitat is relatively limited, and is primarily represented by the administrative costs of Federal agencies

conducting section 7 consultations under the adverse modification standard, above and beyond the costs of consultations under the jeopardy standard (which must always occur in areas occupied by the listed species, or occupied areas that may be affected by the proposed action, regardless of critical habitat). Further, it is possible that in some areas, an action may occur in a unit or subunit of critical habitat designated in this final rule that, as a result of exclusion, will take place in an area where occupancy has not necessarily been definitively documented (for example, where all remaining critical habitat within a unit or subunit is on private lands, and access has not been granted to survey for the presence of the Mazama pocket gopher). In such cases, if an action with a Federal nexus that may affect critical habitat were to be proposed, it is possible that the incremental economic impact of critical habitat would be higher than estimated in the DEA. We have considered the potential economic impact that may be expected in such a case, to the extent permitted by the available data. This information is included in the addendum to our final economic analysis, available at <http://www.regulations.gov> under Docket No. FWS-R1-ES-2013-0021.

(18) *Comment:* One commenter stated that the Draft Economic Analysis failed to address the impact of the designation of critical habitat in an area that contains a gravel mining operation.

*Our Response:* The proposed critical habitat acreage in the area mentioned by the commenter is considered to be occupied by the Mazama pocket gopher. As noted in the DEA and related incremental effects memorandum, once a species is formally listed under the Act, its presence within critical habitat will require implementation of certain conservation efforts to avoid jeopardy concerns. In occupied critical habitat, section 7 consultation (which is conducted only for actions with a Federal nexus) would therefore consider not only the potential for jeopardy to the continued existence of the species, but also the potential for destruction or adverse modification of critical habitat. In practice, however, we note that because the ability of these species to exist is very closely tied to the quality of their habitats, significant alterations of their occupied habitat may result in jeopardy as well as adverse modification. Therefore, we anticipate that recommendations to avoid jeopardy as a result of section 7 consultation analyses will likely be similar to recommendations to avoid adverse modification in occupied areas of

habitat. Additional detail concerning potential gravel mining activities in proposed critical habitat, along with related consultation requirements, has been added to the final memorandum to our economic analysis (IEc 2014). Due to uncertainty regarding the timing of gravel extraction activities and uncertainty surrounding the potential for a Federal nexus, we do not quantify a specific number of consultations that may occur or any related administrative burden. However, were a Federal nexus to exist for gravel mining, because all units with potential gravel mining activities are considered occupied by one or more of the species, no incremental project modifications are expected to occur beyond what may be required to avoid jeopardy of the species, and any incremental impacts would be limited to the administrative burden of the portion of consultations considering adverse modification. Such an administrative burden would be unlikely to exceed \$5,000 (in undiscounted dollars) per consultation, and no more than one consultation per gravel mining action is expected to occur. Therefore, should consultation occur, incremental administrative impacts attributable to the designation of critical habitat would be small.

In addition, to be conservative, we considered the potential economic impacts of the designation on the gravel mining operation in question as if the area were not occupied by the Mazama pocket gopher. Details are available in the addendum to our final economic analysis, but here we briefly summarize our findings in this regard: The gravel mining operation in question occurs in what was proposed Subunit 1-D (439 ac (178 ha) total), and is now the Rocky Prairie Unit for the Tenino pocket gopher (399 ac (162 ha) total). Following the exclusion of 35 ac (14 ha) of State lands at Rocky Prairie NAP, the area within the proposed subunit that was surveyed on a regular basis and where occupancy by the pocket gopher was definitively documented is no longer included within the final critical habitat unit (see also our Response to Comment (10), above). Approximately 380 ac (154 ha) of the 399 ac (162 ha) of the critical habitat in the Rocky Prairie Unit is within the bounds of privately owned lands where gravel mining or other mineral extraction is planned; this area contains suitable habitat and is within the historical range of the only known location of the Tenino pocket gopher. Although we consider this site likely occupied by the Tenino pocket gopher, even if the parcel were not presently occupied by the listed species, we have

no evidence to suggest that there is a probable Federal nexus for any action at this site; therefore there would be no direct economic impact of critical habitat. Possible indirect effects of critical habitat, if any, are too speculative to quantify. Furthermore, if there were a Federal nexus and the action was found likely to destroy or adversely modify critical habitat, the Service is required, where possible, to provide reasonable and prudent alternatives (RPAs) that would allow the action to proceed; such alternatives must be technologically and economically feasible. In our experience, in the vast majority of cases the Service is able to work with the action agency to successfully avoid adverse modification.

(19) *Comment:* Several commenters stated that areas where subspecies of the Mazama pocket gopher were determined to be threatened would bear a greater economic burden than areas where subspecies of the Mazama pocket gopher were not determined to need Federal protection.

*Our Response:* The Act, as it was written, does not allow the economic effects of listing a species as an endangered species or threatened species to be considered when making a status determination. Potential economic impacts are allowable for consideration only in association with the designation of critical habitat. The mandate of the Act is to examine the evidence of threats to a species (or subspecies) in an unbiased way, based on the best scientific and commercial data available, and determine whether or not it is in danger of extinction (endangered) or likely to become so within the foreseeable future (threatened). We have determined that the Olympia, Roy Prairie, Tenino, and Yelm subspecies of the Mazama pocket gopher are threatened and warrant protection under the Act (see the final listing rule published elsewhere in today's **Federal Register**). Regardless of the Federal listing process, all eight subspecies of the Mazama pocket gopher in the State of Washington are listed as threatened by the State and, as such, will continue to require compliance with State regulations.

The Act only provides for the consideration of economic impacts in association with critical habitat, and not in association with the listing of a species; therefore our analysis of potential economic impacts is limited to the consideration of those impacts that are attributable solely to the designation of critical habitat. As previously stated, determinations regarding the status of the species are to be made "solely on

the basis of the best scientific and commercial data available" to the Secretary. Therefore, any actual or perceived "burdens" imposed by the listing of the species (for example, actions that may be necessary to avoid violating section 9 of the Act) are not considered in the weighing process for evaluating the relative benefits of including an area in critical habitat versus the benefits of excluding it from the final designation, as the regulatory consequences of listing the species will be incurred regardless of whether critical habitat is designated.

(20) *Comment:* One local Chamber of Commerce (Chamber) stated that limiting the economic analysis to the anticipated costs of section 7 consultation and compliance, as was done in the DEA, omits necessary analysis of the incremental impacts under section 9 of the Act of critical habitat designation on these private landowners. Further, the Chamber believes that the DEA should be expanded to include anticipated costs to Thurston County jurisdictions and property owners associated with changes to Thurston County land use plans and associated zoning that Washington State's Growth Management Act (GMA) will require, either in the short term, or in future planning update cycles, resulting from critical habitat designation of resource lands and properties located within cities and urban growth areas. The Chamber also notes that protections stemming from critical habitat designation may extend to "buffering" properties to support the population in the area immediately around the Olympia Airport, with associated extended impact of the proposal to an expanded group of properties. These costs are expected to be substantial.

*Our Response:* Again, we believe the commenter is confusing the regulatory effects that may be associated with the listing of the species under the Act, and the associated automatic protections of the listing, with the regulatory effects separately attributable to the designation of critical habitat (see response to Comment (14), above). In this case, we believe the commenter has erred by attributing potential costs under section 9 of the Act to critical habitat designation. Section 9 addresses acts that are prohibited with respect to any endangered or threatened species of fish or wildlife listed pursuant to section 4 of the Act; there is no prohibited act under section 9 that would occur as a consequence of critical habitat designation. As described in our response to Comment (14), the regulatory effect of critical habitat is the

requirement under section 7 of the Act that Federal agencies insure that any action they authorize, fund, or carry out is not likely to destroy or adversely modify critical habitat. As a result, the greatest economic impact of critical habitat is most frequently associated with the additional costs of section 7 consultation and compliance above and beyond the jeopardy standard (in occupied areas), under the standard of adverse modification.

We do not anticipate significant additional costs to be incurred on adjacent properties as a result of critical habitat designation at the Olympia Airport. We are not sure what the commenter is referring to by "buffering" of the critical habitat to support future expansion of the population at the Olympia Airport. The final designation of critical habitat is limited to those boundaries identified in this final rule; critical habitat does not extend beyond those boundaries, and the boundaries cannot change without engaging in rulemaking to revise the critical habitat.

(21) *Comment:* Several commenters expressed concern that the designation of Mazama pocket gopher critical habitat would result in economic impacts to municipalities and development in general, including delaying or precluding public works projects such as public school facilities, utilities, and other services like wastewater treatment. Another commenter asked what the expected reduction in property values and loss in local property tax revenue would be from the critical habitat designation, as well as asked what the economic impacts would be from any resulting reduction in the amount of productive land that could be used by ranchers and farmers.

*Our Response:* Chapter 3 of the DEA states that potential project modifications for all activities, including development projects, in critical habitat areas occupied by the four Thurston/Pierce subspecies of the Mazama pocket gopher are likely to occur due to the presence of the subspecies themselves, not because of the designation of critical habitat. As each of the critical habitat units and subunits designated for the Mazama pocket gopher are considered occupied by one of the subspecies, all impacts to public works activities are baseline impacts (i.e., impacts realized due to the listing of the subspecies, not to designation of critical habitat). Thus, the DEA does not forecast any increase in costs related to transportation projects or other public works projects as a result of critical habitat designation. Accordingly, the DEA also does not

forecast any diminution of property values or property tax revenues as a result of designation, nor does the DEA forecast a reduction in land available for productive use in farming or ranching applications. This conclusion follows from the fact that each unit and subunit designated is considered occupied by one of the subspecies. Thus, any of these potential impacts would be considered baseline effects (also see response to Comment (14), above).

(22) *Comment:* One commenter requested substantiated data demonstrating a positive benefit (e.g., to economic growth, to the ecosystem) from listing the four Thurston/Pierce subspecies of the Mazama pocket gopher, and asked whether there had been an evaluation of the economic impact of the pending action.

*Our Response:* As detailed in our response to Comment (19), above, in making a determination as to whether a species meets the Act's definition of an endangered species or threatened species, under section 4(b)(1)(A) of the Act, the Secretary is to make that determination based *solely* on the basis of the best scientific and commercial data available (emphasis added). Producing a positive benefit to the listing, cannot by law enter into the determination. The evaluation of economic impacts comes into play only in association with the designation of critical habitat under section 4(b)(2) of the Act, as described in detail in our response to Comment (14). Chapter 3 of the DEA does provide a qualitative discussion of potential benefits attributable to the conservation of the species. Specifically, the DEA focuses on potential benefits related to critical habitat designation. It concludes that, because material changes in land or water management are not envisioned as a result of critical habitat designation, no incremental economic benefits are forecast to result from designation of critical habitat. There may be ancillary benefits related to species conservation resulting from the listing of the species. For example, species conservation efforts may result in improved environmental quality, which in turn may have collateral human health or recreational use benefits. In addition, conservation efforts undertaken for the benefit of an endangered or threatened species may enhance shared habitat for other wildlife.

(23) *Comment:* One commenter requested that a portion of the proposed critical habitat designation on the Olympia Airport be removed from critical habitat due to future anticipated development at that specific location.

*Our Response:* All areas proposed as critical habitat at the Olympia Airport were identified as critical habitat because they are occupied by the Olympia pocket gopher and those areas provide the essential physical or biological features, which may require special management considerations or protection. Such areas may be removed from the final designation if we should determine that they do not, in fact, meet our criteria for critical habitat (for example, they do not provide the essential features), or if they are excluded by the Secretary. Section 4(b)(2) of the Act provides the Secretary with the discretion to exclude certain areas upon a determination that excluding such areas provides a greater benefit than including them in critical habitat. In this case, since the Airport anticipates potentially developing the area that is presently occupied by the listed species, we cannot conclude that there is a greater benefit to exclusion from critical habitat than from inclusion. However, we note that, as described in detail in earlier responses, since the area in question is presently occupied by the listed species, the Olympia Airport would be required to consult on any anticipated development activity with a Federal nexus under the jeopardy standard of section 7, regardless of whether the area is included in critical habitat.

#### Summary of Changes From Proposed Rule

In our proposed rule, published December 11, 2012 (77 FR 73770), we proposed 9,234 ac (3,737 ha) of critical habitat for the four Thurston/Pierce subspecies of the Mazama pocket gopher in one unit comprised of eight subunits in Thurston and Pierce Counties, Washington. The proposed critical habitat represented 6,345 ac (2,567 ha) on Federal lands, 820 ac (331 ha) on State lands, 1,258 ac (509 ha) on private lands, and 811 ac (329 ha) on lands owned by local municipalities or nonprofit conservation organizations.

We received a number of site-specific comments related to critical habitat for the four Thurston/Pierce subspecies of the Mazama pocket gopher; completed our analysis of areas considered for exemption under section 4(a)(3)(B)(i) of the Act and for exclusion under section 4(b)(2) of the Act; reviewed the application of our criteria for identifying critical habitat across the range of these four subspecies to refine our designation; and completed the final economic analysis of the designation as proposed. We fully considered all comments from peer reviewers and the public on the proposed critical habitat

rule and the associated economic analysis to develop this final designation of critical habitat for the four Thurston/Pierce subspecies of the Mazama pocket gopher. This final rule incorporates changes to our proposed critical habitat based on the comments that we received and have responded to in this document, and considers completed final management plans to conserve the subspecies under consideration.

As described in our Response to Comment (3), above (see Summary of Comments and Recommendations), in our proposed rule we inadvertently perpetuated an error reflecting the range of the Yelm pocket gopher. That error began when detection sites and voucher specimens were erroneously labeled with the name "*Thomomys mazama yelmensis*," apparently based on the mistaken understanding that the taxonomy of the subspecies had been revised and amended. This error was carried forward into the 2005 Status Report for the Mazama pocket gopher (Stinson 2005) and the WDFW Heritage Database, which we relied on, in part, to determine the distribution of the Mazama pocket gopher subspecies in our critical habitat proposal. Consequently, in some cases we identified the Yelm pocket gopher as sympatric (overlapping in range) with other subspecies of the Mazama pocket gopher, and as a result, four of the subunits were mistakenly identified as proposed critical habitat for more than one subspecies of the Mazama pocket gopher (proposed Subunit 1–A, 91st Division Prairie—Roy Prairie and Yelm pocket gophers; proposed Subunit 1–B, Marion Prairie—Roy Prairie and Yelm pocket gophers; proposed Subunit 1–C, Olympia Airport—Olympia and Yelm pocket gophers; proposed Subunit 1–D, Rocky Prairie—Tenino and Yelm pocket gophers). Upon further review, however, we do not believe that more than one subspecies was ever naturally present in the same place, and the artifact of two subspecies' names in a single polygon reflects an erroneous assumption that the taxonomy had been changed. This resulted in collection records inaccurately showing the Yelm pocket gopher as co-occurring with other subspecies within the four subunits identified above. Our final critical habitat no longer reflects this error; there is no overlap between the subspecies within the critical habitat units delineated in this designation.

As we have now determined that only one subspecies occurs in each of the critical habitat subunits that were initially proposed, it no longer makes sense to amalgamate the critical habitat

for all four subspecies of the Mazama pocket gopher into a single unit with multiple subunits. Each subspecies of the Mazama pocket gopher is listed separately as a threatened species based on its own status (see the final listing rule published elsewhere in today's **Federal Register**), and critical habitat is determined separately for each subspecies. Therefore, we believe it makes sense to designate critical habitat in separate units specific to each subspecies. As a result, in this final rule, we are designating critical habitat in three units for the Olympia, Tenino, and Yelm pocket gophers as follows:

- Critical habitat for the Olympia pocket gopher is designated in one unit, the Olympia Airport Unit (Subunit 1–C in the proposed rule).
- Critical habitat for the Tenino pocket gopher is designated in one unit, the Rocky Prairie Unit (Subunit 1–D in the proposed rule).
- Critical habitat for the Yelm pocket gopher is designated in one unit composed of two subunits: the Tenalquot Prairie Subunit (Subunit 1–E in the proposed rule) and the Rock Prairie Subunit (Subunit 1–H in the proposed rule).

As described elsewhere, although critical habitat was identified for the Roy Prairie pocket gopher in two of the proposed critical habitat subunits, those subunits are exempted from this final designation under section 4(a)(3) of the Act.

In addition to the changes described above, our final designation of critical habitat reflects the following changes from the proposed rule:

(1) As directed by section 4(a)(3)(B)(i) of the Act, we have exempted 6,345 ac (2,567 ha) of Department of Defense lands at JBLM based on the completion of an endangered species management plan (ESMP) under their 2006 Integrated Natural Resources Management Plan (INRMP) that we have determined, in writing, provides a conservation benefit to the Mazama pocket gopher. The areas proposed included lands occupied by the Roy Prairie pocket gopher in two subunits and the Yelm pocket gopher in a third subunit. The exemption of JBLM lands resulted in the elimination of two proposed subunits in their entirety (proposed subunits 1–A and 1–B, 91st Division Prairie and Marion Prairie, respectively) from the critical habitat designation. These two subunits were the only proposed subunits occupied by the Roy Prairie pocket gopher and represented all critical habitat proposed in Pierce County, Washington. Therefore, as a result of this exemption, there is no final critical habitat designated in Pierce County,

Washington, and no critical habitat is designated for the Roy Prairie pocket gopher. We also exempted JBLM lands in Thurston County where they were proposed, which resulted in the reduction of proposed critical habitat Subunit 1–E (in this final rule, Tenalquot Prairie Subunit for the Yelm pocket gopher). See the Exemptions section of this document for details.

(2) As indicated for consideration in our proposed rule, we have excluded 1,281 ac (518 ha) of State and private lands under section 4(b)(2) of the Act, based on existing land management plans and conservation partnerships that the Secretary deemed to provide greater conservation benefit to the four Thurston/Pierce subspecies of the Mazama pocket gopher than would inclusion in designated critical habitat (see the Exclusions section of this document). These exclusions resulted in the elimination of two subunits in their entirety (proposed subunits 1–F and 1–G, West Rocky Prairie and Scatter Creek, respectively). In addition, proposed subunits 1–D and 1–H (now Rocky Prairie Unit for the Tenino pocket gopher and Rock Prairie Subunit for the Yelm pocket gopher, respectively) have both been reduced in size.

(3) We note that the proposed West Rocky Prairie Subunit 1–F has been excluded under section 4(b)(2) based on a beneficial management plan for the Mazama pocket gopher and the ongoing partnership between the Service and our State counterparts at WDFW. The West Rocky Prairie subunit was originally proposed for the Olympia pocket gopher (*Thomomys mazama pugetensis*) because this area provides the PCEs and is presently occupied by the Olympia pocket gopher. However, the Olympia pocket gopher occurs at West Rocky Prairie only because the subspecies was experimentally translocated into the historical range of the Tenino pocket gopher (*T. m. tumuli*), which is restricted to this area and therefore recovery of the Tenino pocket gopher may require its use. While West Rocky Prairie has been excluded from critical habitat, we continue to consider it important to the conservation of the Tenino pocket gopher.

(4) All subunits proposed as critical habitat were occupied by the Mazama pocket gopher at the time of the proposed listing (December 2012). As described in our proposed rule, we identified critical habitat from determinations of occupancy based on recent surveys, within the previous 5 years, and the presence of one or more of the physical or biological features essential to the conservation of the species. For the Mazama pocket gopher,

occupancy was thus determined based on the documented presence of the subspecies in association with the soil types, area, and vegetative cover type required, in association with lack of barriers to dispersal. However, in this final designation, due to exclusions in portions of proposed subunits 1–D (Rocky Prairie) and 1–H (Rock Prairie), the specific areas where we had the most definitive documentation of occupancy are no longer included within the final unit and subunit in this designation. We wish to emphasize that we still consider the Rocky Prairie Unit for the Tenino pocket gopher (proposed Subunit 1–D), and Rock Prairie Subunit for the Yelm pocket gopher, to be likely occupied, because we have documented occupancy of the subspecies in the area directly adjacent to the remaining the unit and subunit designated, the physical or biological features essential to the subspecies are present and continuous with the area of documented occupancy, and any potential barriers to dispersal are permeable. Mazama pocket gophers are relatively solitary and highly territorial; therefore, juveniles must disperse to establish their own territories, meaning that individuals are expected to move across the landscape if suitable habitat is present. Considering all of these factors, it is reasonable to conclude that the subspecies is likely present in the Rocky Prairie Unit and Rock Prairie Subunit. However, we also considered the importance of the final Rocky Prairie Unit and Rock Prairie Subunit as if they were unoccupied, and have determined that they are essential to the conservation of the listed subspecies (see the Critical Habitat section of this document for details). Therefore, as designated, both the Rocky Prairie Unit for the Tenino pocket gopher and the Rock Prairie Subunit for the Yelm pocket gopher continue to meet our definition of critical habitat.

(5) Due to the exemption and exclusion of proposed critical habitat subunits in their entirety, and due to the clarification of the range of each subspecies, as described above, the critical habitat that remains has been renamed and renumbered to make it clear that each unit is designated for a single subspecies of the Mazama pocket gopher within that subspecies' respective range (see Table 1). We are designating three critical habitat units, one for each subspecies; two subunits comprise critical habitat for the Yelm pocket gopher, and the Olympia and Tenino pocket gophers each have one single unit of critical habitat.

TABLE 1—SUMMARY OF CHANGES FROM PROPOSED RULE IN CRITICAL HABITAT UNIT IDENTIFICATION AND SUBSPECIES OCCUPANCY OF UNITS

Proposed rule			Final rule			
Subunit	Name	Subspecies identified at time of proposed listing and designation	Critical habitat unit	Location name	Corrected subspecies present at time of final listing and designation	Status of critical habitat
1-A	91st Division Prairie ..	Roy Prairie, Yelm pocket gophers.	NA	NA	Roy Prairie pocket gopher.	Exempted.
1-B	Marion Prairie .....	Roy Prairie, Yelm pocket gophers.	NA	NA	Roy Prairie pocket gopher.	Exempted.
1-C	Olympia Airport .....	Olympia, Yelm pocket gophers.	Olympia Pocket Gopher Critical Habitat.	Olympia Airport Unit ..	Olympia pocket gopher.	Designated.
1-D	Rocky Prairie .....	Tenino, Yelm pocket gophers.	Tenino Pocket Gopher Critical Habitat.	Rocky Prairie Unit .....	Tenino pocket gopher	Designated (some areas excluded).
1-E	Tenalquot Prairie .....	Yelm pocket gopher ..	Yelm Pocket Gopher Critical Habitat.	Tenalquot Prairie Subunit.	Yelm pocket gopher ..	Designated (some areas exempted).
1-F	West Rocky Prairie ....	Olympia pocket gopher.	NA	NA	Olympia pocket gopher.	Excluded.
1-G	Scatter Creek .....	Yelm pocket gopher ..	NA	NA	Yelm pocket gopher ..	Excluded.
1-H	Rock Prairie .....	Yelm pocket gopher ..	Yelm Pocket Gopher Critical Habitat.	Rock Prairie Subunit	Yelm pocket gopher ..	Designated (some areas excluded).

(6) Based on information received from our Federal and State partners and from the public during our three open comment periods, we have made numerous technical corrections and clarifications throughout the rule. We specifically clarified the language referencing the primary constituent elements (PCEs) in relation to soils, and we specified the application of those PCEs to make it clear that PCEs only exist within the boundaries of the final critical habitat units (Olympia, Tenino) or subunits (Yelm), not within the interstitial, undesignated areas that were encompassed by the larger unit boundary in the proposed rule. We added this clarifying language due to feedback received on our proposed rule, where Unit 1–South Sound broadly encompassed a number of smaller subunits proposed for the Thurston/Pierce subspecies of the Mazama pocket gopher.

(7) We updated the Physical or Biological Features section and PCEs in the preamble of this document to specify the soil series and soil series complexes that define the critical habitat of each subspecies and to accurately reflect the PCEs as described in the Regulation Promulgation section of this rule, including a more thorough description of barriers.

(8) As noted under (1), above, the exemption of critical habitat on JBLM under section 4(a)(3)(B)(i) of the Act resulted in the elimination of all critical habitat that was proposed for the Roy Prairie pocket gopher (*Thomomys mazama glacialis*). We include information about the Roy Prairie pocket gopher in the preamble discussion and define the PCEs used to delineate critical habitat for the subspecies, since we believe this information provides valuable

information to the public, but do not include the Roy Prairie pocket gopher in the Regulation Promulgation section of this rule because no critical habitat is designated for this subspecies as a result of this exemption.

In this final rule, we are designating 1,607 ac (650 ha) in Thurston County, Washington, as critical habitat for the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher. The Olympia pocket gopher has a single unit of critical habitat (Olympia Airport), the Tenino pocket gopher has a single unit of critical habitat (Rocky Prairie), and two separate subunits (Tenalquot Prairie and Rock Prairie) comprise a single critical habitat unit for the Yelm pocket gopher. Following exclusions and exemptions, this final designation of critical habitat is composed of 796 ac (322 ha) of private land and 811 ac (329 ha) of land owned by municipal corporations or nonprofit conservation organizations.

**Critical Habitat**

*Background*

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resource management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement

reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. For example, an area currently occupied by the species but that was not occupied at the time of listing may be essential to the conservation of the species and may be included in the critical habitat designation. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data

available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time, and may use only small portions of designated critical habitat at any given time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to insure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best scientific data available at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

#### *Physical or Biological Features*

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

- (1) Space for individual and population growth and for normal behavior;
- (2) Food, water, air, light, minerals, or other nutritional or physiological requirements;
- (3) Cover or shelter;
- (4) Sites for breeding, reproduction, or rearing (or development) of offspring; and
- (5) Habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of a species.

We derive the specific physical or biological features essential for the four Thurston/Pierce subspecies of the *Mazama* pocket gopher from studies of their habitat, ecology, and life history as described in the Habitat and Life History section of the final listing rule, published elsewhere in today's **Federal Register**, and in the information below. We have determined that the four Thurston/Pierce subspecies of the *Mazama* pocket gopher require the following physical or biological features:

#### *Space for Individual and Population Growth and for Normal Behavior*

Pocket gophers have low vagility, meaning they have a limited dispersal range (Williams and Baker 1976, p. 303). *Thomomys mazama* pocket gophers are smaller in size than other sympatric (occurring within the same geographic area; overlapping in distribution) or parapatric (immediately adjacent to each other but not significantly overlapping in distribution) *Thomomys* species (Verts and Carraway 2000, p. 1). Both dispersal distances and home range size are therefore likely to be smaller than for other *Thomomys* species. Dispersal distances may vary based on surface or soil conditions and size of the animal. For other, larger, *Thomomys* species, dispersal distances average about 131 ft (40 m) (Barnes 1973, pp. 168–169; Williams and Baker 1976, p. 306; Daly and Patton 1990, pp. 1286, 1288). Initial results from dispersal research being conducted on JBLM indicate that juvenile *Mazama*



pocket gophers in Washington usually make movements from 13.1–32.8 ft (4–10 m) over a period of 1 to 56 days, though these may not be dispersal movements. One juvenile made a distinct dispersal movement of 525 ft (160m) in 1 day (Olson 2012b, p. 5). Suitable dispersal habitat is free of barriers to gopher movement, and may need to contain foraging habitat if an animal is required to make a long-distance dispersal move. Potential barriers include, but are not limited to, forest edges, roads (paved and unpaved), abrupt elevation changes, Scot's broom (*Cytisus scoparius*) thickets, (Olson 2012b, p. 3), highly cultivated lawns, inhospitable soil types (Olson 2008, p. 4) or substrates, development and buildings, slopes greater than 35 percent, and open water. Barriers may be permeable, meaning that they may impede movement from place to place without completely blocking it, or they may be impermeable, meaning they cannot be crossed. Permeable barriers, as well as lower-quality dispersal habitats, may present an intensified risk of mortality to animals that use them (e.g., open areas where predation risk is increased during passage or a paved area where vehicular mortality is high).

The home range of a Mazama pocket gopher is composed of suitable breeding and foraging habitat (described below, under "Food, water, air, light, minerals, or other nutritional or physiological requirements"). Home range size varies based on factors such as soil type, climate, and density and type of vegetative cover (Cox and Hunt 1992, p. 133; Case and Jasch 1994, p. B–21; Hafner *et al.* 1998, p. 279). Little research has been conducted regarding home range size for individual Mazama pocket gophers. Witmer *et al.* (1996, p. 96) reported an average home range size of about 1,076 square feet (ft<sup>2</sup>) (100 square meters (m<sup>2</sup>)) for Mazama pocket gophers in one location in Thurston County, Washington. Gopher density varies greatly due to local climate, soil suitability, and vegetation types (Case and Jasch 1994, p. B–21; Howard and Childs 1959, pp. 329–336), and densities are likely to be higher when habitat quality is better. Therefore, this one report on the Mazama pocket gopher (Witmer *et al.* 1996) is unlikely to represent the average density across all soil types, vegetation types, and other unique site characteristics across the ranges of the four Thurston/Pierce subspecies of the Mazama pocket gopher. Research on other species of *Thomomys* pocket gophers in other states showed a wide range of home

range sizes from approximately 80–14,370 ft<sup>2</sup> (7.4–335 m<sup>2</sup>). Some of these are estimates based on density of gophers trapped per acre, and some are based on measurements of individual gopher territory sizes.

Work done by Converse *et al.* (2010, pp. 14–15) estimated that a local population of Mazama pocket gophers could persist for at least 50 years if it occurred on a habitat patch that was equal to or greater than 50 ac (20 ha) in size. We acknowledge the uncertainty with this estimate, but there are currently no studies regarding minimum patch size available for the Mazama pocket gopher, nor are there any obvious means by which a better answer can be obtained. Thus, the best available scientific data in this case is the opinion of an informed expert panel. We also acknowledge that the existence of peripheral, perhaps smaller, habitat patches can provide important stepping-stone opportunities for gene exchange between core areas. These peripheral areas are likely to be intermittently occupied, because of poor or limited resources and overall size of the patch, but they are also likely to be recolonized on a regular basis, particularly if such areas are close (i.e., well within dispersal distance), of an occupied site.

Therefore, based on the information above, we identify patches of breeding and foraging habitat that are equal to or greater than 50 ac (20 ha) in size or within dispersal distance of each other, as well as corridors of suitable dispersal habitat, as physical or biological features essential to the conservation of the four Thurston/Pierce subspecies of the Mazama pocket gopher.

*Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements and Sites for Breeding, Reproduction, or Rearing (or Development) of Offspring*

The four Thurston/Pierce subspecies are associated with glacial outwash prairies in western Washington, an ecosystem of conservation concern (Hartway and Steinberg 1997, p. 1). Steinberg and Heller (1997, p. 46) found that Mazama pocket gophers are even more patchily distributed than are the prairie habitats they inhabit. That is, there are some seemingly high quality prairies within the species' range where pocket gophers have not been detected. Prairie habitats have a naturally patchy distribution, and within them, there is a patchy distribution of soil rockiness (Steinberg and Heller 1997, p. 45; WDFW 2009a), which may further restrict the total area that gophers can utilize since they avoid areas of excessive rockiness. Other habitat

characteristics gophers required for successful burrowing and foraging may also be patchily distributed (e.g., micro-site locations of impermeable soils and substrates, or seasonal water table depth that affects suitability of soils for burrowing) or ephemerally available (e.g., forage vegetation), causing gophers to avoid or not use some areas.

Of the glacial outwash prairie soils or prairie-like soils present in western Washington, the four Thurston/Pierce subspecies of the Mazama pocket gopher are most often found in deep, well-drained, friable soils capable of supporting the forbs, bulbs, and grasses that are the preferred forage for gophers (Stinson 2005, pp. 22–23).

In order to support typical Mazama pocket gopher forage plants, areas supporting Mazama pocket gophers tend to be largely free of shrubs and trees. Woody plants shade out the forbs, bulbs, and grasses that gophers prefer to eat, and high densities of woody plants make travel both below and above the ground difficult for gophers. The probability of Mazama pocket gopher occupancy is much higher in areas with less than 10 percent woody vegetation cover (Olson 2011, p. 16).

Although some soils used by Mazama pocket gophers are relatively sandy, gravelly, or silty, those most frequently associated with the four Thurston/Pierce subspecies are loamy and deep, have slopes generally less than 15 percent, based on a comparison of gopher occurrence data with soil series slope information. These soils also tend to have good drainage or permeability. These soil types additionally provide the essential physical and biological features of cover or shelter, as well as sites for breeding, reproduction, or rearing of offspring. Soil series or soil series complexes where individuals of the four Thurston/Pierce subspecies of the Mazama pocket gopher may be found include, but are not limited to Alderwood, Cagey, Everett, Everett-Spanaway complex, Everett-Spanaway-Spana complex, Godfrey, Indianola, Kapowsin, McKenna, Nisqually, Norma, Spana, Spana-Spanaway-Nisqually complex, Spanaway, Spanaway-Nisqually complex, and Yelm. These soil series and soil series complex names were derived from a GIS overlay of gopher locations with NRCS soil survey maps. These soil type names are very broad-scale soil series names, and don't include the more specific soil characteristics that come with a full soil map unit name, such as "Spanaway gravelly sandy loam, 0 to 3 percent slopes." We are purposely not using specific map unit names because we know that there are imperfections in soil



mapping. Mapped soil survey information may be imperfect for a variety of reasons. First, maps are based on the technology, standards, and tools that were available at the time soil surveys were conducted, sometimes up to 50 years ago. We recognize that soil survey boundaries may be adjusted in the future, and that soil series names may be added or removed on the NRCS's soil survey maps database. As a result, the overlap of gopher locations with soil series names may be different in the future. The soils information presented here is based on best scientific data available at the time of this rulemaking. We also recognize that some of these soil series are not typically either deep or well-drained. For a variety of reasons, a specific mapped soil type may or may not have all of the characteristics of that soil type as described by NRCS, and the actual soil that occurs on the ground may have characteristics that make it inhabitable by Mazama pocket gophers. These reasons may include map boundary or transcription errors, map projection errors or differences, map identification or typing errors, soil or hydrological manipulations that have occurred since mapping took place, small-scale inclusions in the mapped soil type that are different from the mapped soil, etc. Nevertheless, based on best available data, these are the areas where Mazama pocket gopher locations and mapped soils have been found to overlap when mapped in GIS. All of these soils could potentially be suitable for any of the four Thurston/Pierce subspecies of the Mazama pocket gopher. In addition, the four Thurston/Pierce subspecies of the Mazama pocket gopher may be able to forage or burrow in soil series not on the above list. For these reasons, our list of soils may be incomplete or appear to be overly inclusive. Despite this, we have only designated critical habitat for each subspecies within its known historical range.

Encroachment of woody vegetation into the habitat of the four Thurston/Pierce subspecies of the Mazama pocket gopher continues to further reduce the size of the remaining prairies and prairie-type areas, thus reducing the amount of habitat available for gophers to burrow, forage, and reproduce. Historically these areas would have been maintained by natural or human-caused fires. Fire suppression allows Douglas-fir and other woody plants to encroach on and overwhelm prairie habitat (Stinson 2005, p. 7). Mazama pocket gophers require areas where natural disturbance or management prevents the encroachment of woody

vegetation into their preferred prairie or meadow habitats.

Therefore, based on the information above, we identify soil series and soil series complexes that are known to support the Mazama pocket gopher in Washington (listed above), and vegetative habitat with less than 10 percent woody plant cover, that provides for breeding, foraging, and dispersal as physical or biological features essential to the conservation of the Mazama pocket gopher.

*Habitats That Are Protected From Disturbance or Are Representative of the Historical, Geographical, and Ecological Distributions of a Species*

Predation, specifically feral and domestic cat and dog predation, is a threat to the four Thurston/Pierce subspecies of the Mazama pocket gopher. Urbanization exacerbates this threat with the addition of feral and domestic cats and dogs into the matrix of pocket gopher habitat. Many pets are not controlled by their owners in the semi-urban and rural environments that the four Thurston/Pierce subspecies of the Mazama pocket gopher currently inhabit, leading to uninhibited predation of native animals. Where local populations of native wild animals are small or declining, predation can drive populations farther toward extinction (Woodworth 1999, pp. 74–75). Due to their solitary and territorial nature, many sites occupied by one of the four Thurston/Pierce subspecies of the Mazama pocket gopher may contain a small number of individuals and occur in a matrix of residential and agricultural development, with feral and domestic pets in the vicinity. Some occupied areas may also occur in places where people recreate with their dogs, bringing these potential predators into environments that may otherwise be relatively free of them. As described in the final listing rule, published elsewhere in today's **Federal Register**, Mazama pocket gophers need areas free of the threat of predation by feral and domestic cats and dogs.

In Washington it is currently illegal to trap or poison Mazama pocket gophers (WAC 232–12–011, RCW 77.15.194), but not all property owners are aware of these laws, nor are most citizens capable of differentiating between mole and pocket gopher soil disturbance. In light of this, it is reasonable to believe that mole trapping and poisoning efforts have the potential to adversely impact pocket gopher populations within the range of the four Thurston/Pierce subspecies of the Mazama pocket gopher. Mazama pocket gophers require

areas free of human disturbance from trapping and poisoning.

Therefore, based on the information above, we identify areas where gophers are protected from predation by feral or domestic animals, as well as from human disturbance in the form of trapping and poisoning, as physical or biological features essential to the conservation of the Mazama pocket gopher.

*Primary Constituent Elements for the Four Thurston/Pierce Subspecies of the Mazama Pocket Gopher*

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of the four Thurston/Pierce subspecies of the Mazama pocket gopher in areas occupied at the time of listing, focusing on the features' primary constituent elements. Primary constituent elements are those specific elements of the physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the subspecies' life-history processes, we determine that the primary constituent elements specific to the four Thurston/Pierce subspecies of the Mazama pocket gopher are:

(1) Soils that support the burrowing habits of the Mazama pocket gopher, and where the four Thurston/Pierce subspecies of the Mazama pocket gopher may be found. These are usually friable, loamy, and deep soils, some with relatively greater content of sand, gravel, or silt, all generally on slopes less than 15 percent. Most are moderately to well-drained, but some are poorly drained. The range of each subspecies of the Mazama pocket gopher overlaps with a subset of potentially suitable soil series or soil series complexes. Here we describe the suitable soil series or soil series complexes that may occur within the range of each subspecies. As we state above, all of the soil series or soil series complexes listed in the Physical or Biological Features section could potentially be suitable for any of the four Thurston/Pierce subspecies of the Mazama pocket gopher:

a. Olympia pocket gopher (*Thomomys mazama pugetensis*) soils include the following soil series or soil series complex:

- i. Alderwood;
- ii. Cagey;
- iii. Everett;
- iv. Godfrey;

v. Indianola;  
vi. Kapowsin;  
vii. McKenna;  
viii. Nisqually;  
ix. Norma;  
x. Spana;  
xi. Spanaway;  
xii. Spanaway-Nisqually complex; and  
xiii. Yelm.

b. Roy Prairie pocket gopher (*Thomomys mazama glacialis*) soils include the following soil series or soil series complexes:

i. Alderwood;  
ii. Everett;  
iii. Everett-Spanaway complex;  
iv. Everett-Spanaway-Spana complex;  
v. Nisqually;  
vi. Spana-Spanaway-Nisqually complex; and  
vii. Spanaway.

c. Tenino pocket gopher (*Thomomys mazama tumuli*) soils include the following soil series or soil series complex:

i. Alderwood;  
ii. Cagey;  
iii. Everett;  
iv. Indianola;  
v. Kapowsin;  
vi. Nisqually;  
vii. Norma;  
viii. Spanaway;  
ix. Spanaway-Nisqually complex; and  
x. Yelm.

d. Yelm pocket gopher (*Thomomys mazama yelmensis*) soils include the following soil series or soil series complex:

i. Alderwood;  
ii. Cagey;  
iii. Everett;  
iv. Godfrey;  
v. Indianola;  
vi. Kapowsin;  
vii. McKenna;  
viii. Nisqually;  
ix. Norma;  
x. Spanaway;  
xi. Spanaway-Nisqually complex; and  
xii. Yelm.

(2) Areas equal to or larger than 50 ac (20 ha) in size that provide for breeding, foraging, and dispersal activities, found in the soil series or soil series complexes listed in (1), above, that have:

a. Less than 10 percent woody vegetation cover;

b. Vegetative cover suitable for foraging by gophers. Pocket gophers' diet includes a wide variety of plant material, including leafy vegetation, succulent roots, shoots, tubers, and grasses. Forbs and grasses that Mazama pocket gophers are known to eat include, but are not limited to: *Achillea millefolium* (common yarrow), *Agoseris*

spp. (agoseris), *Cirsium* spp. (thistle), *Bromus* spp. (brome), *Camassia* spp. (camas), *Collomia linearis* (tiny trumpet), *Epilobium* spp. (several willowherb spp.), *Eriophyllum lanatum* (woolly sunflower), *Gayophytum diffusum* (groundsmoke), *Hypochaeris radicata* (hairy cat's ear), *Lathyrus* spp. (peavine), *Lupinus* spp. (lupine), *Microsteris gracilis* (slender phlox), *Penstemon* spp. (penstemon), *Perideridia gairdneri* (Gairdner's yampah), *Phacelia heterophylla* (varileaf phacelia), *Polygonum douglasii* (knotweed), *Potentilla* spp. (cinquefoil), *Pteridium aquilinum* (bracken fern), *Taraxacum officinale* (common dandelion), *Trifolium* spp. (clover), and *Viola* spp. (violet); and

c. Few, if any, barriers to dispersal within the unit or subunit. Barriers to dispersal may include, but are not limited to, forest edges, roads (paved and unpaved), abrupt elevation changes, Scot's broom thickets, (Olson 2012b, p. 3), highly cultivated lawns, inhospitable soil types (Olson 2008, p. 4) or substrates, development and buildings, slopes greater than 35 percent, and open water.

With this designation of critical habitat, we intend to identify the physical or biological features essential to the conservation of the four Thurston/Pierce subspecies of the Mazama pocket gopher through the identification of the primary constituent elements sufficient to support the life-history processes of the subspecies. We have determined that the final unit designated as critical habitat for the Olympia pocket gopher and the Tenalquot Prairie subunit for the Yelm pocket gopher are currently occupied by the listed subspecies and contain one or more of the primary constituent elements essential to the conservation of the species. We have determined that the final critical habitat unit for the Tenino pocket gopher and the Rock Prairie Subunit for the Yelm pocket gopher are likely occupied by the subspecies and contain one or more of the primary constituent elements essential to the conservation of the species; however, due to exclusions from the proposed subunits, we do not at this time have definitive evidence of occupancy at that scale. Therefore, to be conservative, we have also evaluated the Rocky Prairie Unit and Rock Prairie Subunit identified here as critical habitat under the standard of section 3(5)(a)(ii) of the Act, and determined that they are essential to the conservation of the species, as described in Criteria Used to Identify Critical Habitat, below. We have further determined that the physical or

biological features essential to the conservation of the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher require special management considerations or protection, as described below.

#### *Special Management Considerations or Protections*

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection. Here we describe the type of special management considerations or protections that may be required to protect the physical or biological features identified as essential for Mazama pocket gophers.

All areas designated as critical habitat will require some level of management to address the current and future threats to the four Thurston/Pierce subspecies of the Mazama pocket gopher and to maintain or enhance the PCEs present. A detailed discussion of activities influencing the four Thurston/Pierce subspecies of the Mazama pocket gopher and their habitats can be found in the final listing rule, published elsewhere in the **Federal Register** today. Threats to the physical or biological features that are essential to the conservation of these subspecies and that may warrant special management considerations or protection include, but are not limited to: (1) Loss of habitat from conversion to other uses; (2) use of heavy equipment in suitable habitat that may compact soils in the control of nonnative, invasive species; (3) development; (4) construction and maintenance of roads and utility corridors; (5) predation by feral or domestic animals; and (6) habitat modifications brought on by succession of vegetation due to lack of disturbance, both small- and large-scale; and (7) control as a pest species. These threats also have the potential to affect the PCEs if they occur within or adjacent to designated units.

The physical or biological features essential to the conservation of the four Thurston/Pierce subspecies of the Mazama pocket gopher may require special management considerations or protection to control or prevent the establishment of invasive woody plants, which create shade and compete for light, food and nutrients otherwise utilized by the forb, bulb, and grass species that the gophers require for forage. Management may be implemented using hand tools or mechanical methods, prescribed fire,

and the judicious use of herbicides. Although several management techniques are being implemented on public lands, we may need to improve our outreach to educate private landowners on controlling their pets and appropriately managing grazing on their properties, as well as to developing incentives for landowners who agree to conserve habitat. Incentives would create protected areas, through agreements or acquisitions. These would include corridors between existing protected habitat areas that may require management, enhancement actions, and long-term maintenance.

#### *Criteria Used To Identify Critical Habitat*

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b) we review available information pertaining to the habitat requirements of the species and identify occupied areas at the time of listing that contain the features essential to the conservation of the species. If after identifying currently occupied areas, a determination is made that those areas are inadequate to ensure conservation of the species, in accordance with the Act and our implementing regulations at 50 CFR 424.12(e) we then consider whether designating additional areas—outside those currently occupied—is essential for the conservation of the species.

We plotted the known locations of the four Thurston/Pierce subspecies of the Mazama pocket gopher where they occur in the south Puget Sound lowlands using 2011 NAIP digital imagery in ArcGIS, version 10 (Environmental Systems Research Institute, Inc.), a computer geographic information system program. We additionally examined the USDA NRCS GIS soils data layer to determine the extent of suitable soil formation underlying occupied areas (accessed June 20, 2008 for Thurston County; received from JBLM May 30, 2013 for Pierce County).

To determine if the currently occupied areas contain the primary constituent elements, we assessed the life history components and the distribution of the subspecies through element occurrence records in State Natural Heritage Databases and natural history information on each of the subspecies as they relate to habitat.

#### *Occupied Areas*

For all of the Thurston/Pierce subspecies of the Mazama pocket gopher we proposed critical habitat only

in areas within the geographical area we consider likely occupied at the time of listing. All units and subunits that were proposed as critical habitat for the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher were currently occupied as determined by recent surveys, within 5 years prior to the publication of the proposed rule (JBLM 2012; Krippner 2011, pp. 25–29; WDFW 2012a), and all provide one or more of the physical or biological features that may require special management considerations or protection, as described in the unit and subunit descriptions that follow. As the result of exclusions under section 4(b)(2) of the Act, the areas that best met our criterion for documented occupancy in two of the proposed subunits (proposed Subunit 1–D and 1–H) are no longer included in this final designation; therefore the occupancy of the remaining critical habitat is more uncertain. Although we conclude the areas in question are likely occupied, as described below in the section *Potentially Unoccupied Areas*, to be conservative we have additionally evaluated these remaining areas as if they are not occupied at the time of listing, and determined that they are nonetheless essential to the conservation of the species. Finally, although critical habitat proposed for the Roy Prairie pocket gopher also met these fundamental criteria for occupancy, as explained below in the section *Application of Section 4(a)(3) of the Act*, critical habitat proposed for the Roy Prairie pocket gopher has been exempted from this final designation.

As described in the *Physical or Biological Features* section, above, although some areas utilized by the Mazama pocket gopher may be used intermittently and therefore may not be detected in every year, we consider such sites to be occupied by the species for the purposes of determining critical habitat. In such cases, if the PCEs are present (e.g., requisite soil and vegetation types, permeable or no barriers to dispersal) and the area is adjacent to a site of known occupancy, we conclude that such sites are likely to be occupied, as this is the probable dynamic state of occupancy for the majority of areas included in critical habitat units and subunits. Since vegetation structure may vary spatially and temporally, yielding a mosaic of suitable habitat patches at any given time, it is likely that any Mazama pocket gophers existing in the context of an expanse of suitable habitat (i.e., the subunit level) may shift their location in response to available resources, thus

habitat that is occupied at some times may not be occupied at others. As long as a source population is nearby, the essential physical or biological features are present, and there are no impermeable barriers to dispersal, there is no reason to believe that pocket gophers would not make use of such areas when conditions are favorable, and thus occupancy of such areas is likely. For these reasons, we consider all such habitat to be occupied by the species.

#### *Potentially Unoccupied Areas*

If an intermittently occupied site were not considered “occupied” in years when Mazama pocket gophers are not detected, development or other irreversible land uses might permanently convert that suitable and intermittently utilized habitat to another form of landscape, within which Mazama pocket gophers will not be able to breed and across which gophers will not be able to disperse, effectively reducing available suitable habitat and limiting dispersal capacity at the same time. However, for the purposes of critical habitat, to be conservative we assessed the importance of all such areas designated as critical habitat as if they were “unoccupied” at the time of listing. Because the historical range of each of the Mazama pocket gopher subspecies considered here is already greatly restricted in extent, thereby limiting the scope of the potential area for recovery, and because the destruction or degradation of suitable habitat is one of the primary threats to each of the subspecies, we consider any areas within the historical range of each of the subspecies that provide the essential physical or biological features identified within the critical habitat units and subunits identified here to be essential for the conservation of the four Thurston/Pierce subspecies of the Mazama pocket gopher.

In the specific case of the Rocky Prairie Unit for the Tenino pocket gopher, Rocky Prairie is the only location from which the subspecies is known, therefore the conservation of this subspecies within its historical range is entirely dependent on this area. The area of best documented occupancy is limited to the State-owned NAP, which comprises only 35 ac (14 ha) of habitat, and alone does not meet the minimum patch size of 50 ac (20 ha) to ensure recovery of the subspecies, therefore the area definitively known to be occupied by this subspecies is insufficient to provide for its conservation (the NAP was excluded from final critical habitat under section 4(b)(2) of the Act). Finally, the

remaining area on private lands within critical habitat provides the most extensive contiguous areas containing the PCEs for the Tenino pocket gopher and is directly adjacent to an area of known occupancy. If currently unoccupied, this area provides for potential dispersal and expansion of the population, which is essential to the conservation of the subspecies. Therefore, even if the Rocky Prairie Unit were considered unoccupied at the time of listing, because this is the only known location for the Tenino pocket gopher and the area on the NAP is insufficient to provide for the conservation of this subspecies, we consider the Rocky Prairie Unit, which provides the requisite physical or biological features for the Tenino pocket gopher to be essential to the conservation of the species.

We have also determined that the Rock Prairie Subunit of Yelm pocket gopher critical habitat is essential to the conservation of the subspecies. As proposed, this 621 ac (251 ha) subunit contained lands owned by two private residential and commercial landowners. As a result of exclusion under section 4(b)(2) of the Act, the area with the best documented occupancy by the Yelm pocket gopher is no longer included in critical habitat. However, the remaining area of critical habitat within the Rock Prairie Subunit provides the physical or biological features essential to the conservation of the Yelm pocket gopher, is directly adjacent to an area of known occupancy with no impermeable barrier between the two areas, is part of the same soil extent (Spanaway and Spanaway-Nisqually complex) occurring on the known-occupied lands adjacent, and contains similar vegetation to the area of known occupancy. The Service considers the Rock Prairie Subunit as likely to be occupied, but because there have been no recent surveys on the Subunit, this can't be confirmed at this time. However, even if currently unoccupied, this area provides for potential dispersal and expansion of the population, which is essential to the conservation of the subspecies. The historical range of each of the four Thurston/Pierce Mazama pocket gopher subspecies is already greatly restricted in extent, thereby limiting the scope of the potential area for recovery. Of the four Thurston/Pierce subspecies considered in this rulemaking, the Yelm pocket gopher is the most widespread. Because the destruction or degradation of suitable habitat is one of the primary threats to the Yelm pocket gopher, we consider any areas within the historical range

that provide the essential physical or biological features to be essential for the conservation of the subspecies. Successful conservation relies on redundancy in populations; therefore maintaining multiple populations of endangered or threatened species across their range is a desirable component of recovery. For this reason, we conclude that limiting critical habitat designation to the Tenalquot Prairie Subunit would not be adequate to ensure the conservation of the Yelm pocket gopher. Based on all of these considerations, even if the Rock Prairie Subunit were considered unoccupied at the time of listing, we consider the Rock Prairie Subunit that is directly adjacent to areas of known occupancy and that provides the requisite physical or biological features for the Yelm pocket gopher to be essential to the conservation of the subspecies.

We further conclude that, for each of the subspecies, if the critical habitat designations were strictly limited to parcels with documented occurrence within the subunits delineated in the proposed rule, they would be inadequate to ensure the subspecies' conservation. Because of the extremely limited geographic range of each of the Mazama pocket gopher subspecies and their restricted requirements for specific soil and vegetation types, as described above, we conclude that each of the areas identified here as critical habitat is essential for the conservation of the species.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement (such as roads and airport runways), and other structures because such lands lack physical or biological features for the Mazama pocket gopher. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The critical habitat designation is defined by the maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule

portion. We will make the coordinates or plot points or both on which each map is based available to the public on <http://www.regulations.gov> at Docket No. FWS-R1-ES-2013-0021, at <http://www.fws.gov/wafwo/mpg.html>, and, by appointment, at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Units and subunits are designated based on sufficient elements of physical or biological features being present to support life processes of the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher. This applies whether the units are considered occupied or unoccupied by the subspecies at the time of listing. Some units and subunits contained all of the identified elements of physical or biological features and supported multiple life processes. Some units or subunits contain only some elements of the physical or biological features necessary to support the particular use of that habitat by any of these subspecies of the Mazama pocket gopher.

#### **Final Critical Habitat Designation**

We are designating three units, totaling 1,607 ac (650 ha) as critical habitat for the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher (critical habitat for the Roy Prairie subspecies is exempted, as described below under Exemptions). Each unit is presently likely occupied by the subspecies for which it is designated, and contains one or more of the PCEs to support essential life-history processes for that subspecies. Some areas designated as final critical habitat may not be considered occupied at the time of listing. In these cases, we have evaluated each of these areas applying the standard under section 3(5)(A)(ii) of the Act, and have determined that all such areas included in this designation are essential to the conservation of the species. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Olympia, Tenino, and Yelm pocket gophers. The three units we designate as critical habitat are: (1) Olympia Pocket Gopher Critical Habitat—Olympia Airport Unit; (2) Tenino Pocket Gopher Critical Habitat—Rocky Prairie Unit; and (3) Yelm Pocket Gopher Critical Habitat—Tenalquot Prairie Subunit and Rock Prairie Subunit. The approximate area and landownership for each critical habitat unit and subunit is shown in Table 2.

TABLE 2—DESIGNATED CRITICAL HABITAT FOR THE OLYMPIA, TENINO, AND YELM SUBSPECIES OF THE MAZAMA POCKET GOPHER

[Area estimates reflect all land within critical habitat unit boundaries.]

Critical habitat unit	Location name	Subunit as identified in proposed rule	Federal	State	Private	Other *
			Ac (Ha)	Ac (Ha)	Ac (Ha)	Ac (Ha)
Olympia Pocket Gopher Critical Habitat.	Olympia Airport Unit .....	1-C .....	0	0	0	676 (274)
Tenino Pocket Gopher Critical Habitat.	Rocky Prairie Unit .....	1-D .....	0	0	399 (162)	0
Yelm Pocket Gopher Critical Habitat.	Tenalquot Prairie Subunit .....	1-E .....	0	0	154 (62)	135 (55)
	Rock Prairie Subunit .....	1-H .....	0	0	243 (98)	0
Totals .....	.....	.....	0	0	796 (322)	811 (329)

\* Other = Local municipalities and nonprofit conservation organization.

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all critical habitat units and subunits and reasons why they meet the definition of critical habitat for the Olympia, Tenino, or Yelm subspecies of the Mazama pocket gopher below.

All critical habitat units are occupied by the subspecies at the time of listing (see the final listing rule for the four subspecies of the Mazama pocket gopher, published elsewhere in today's **Federal Register**), and all contain the physical or biological features essential to the conservation of these subspecies, which may require special management considerations or protection. All units are subject to some or all of the following threats: Development on or adjacent to the unit; incompatible management practices; predation; and habitat degradation or destruction as the result of the inadequacy of existing regulatory mechanisms. The threats of loss of ecological disturbance processes, invasive species and succession, and control as a pest species are threats to the Tenino pocket gopher in the Rocky Prairie Unit and the Yelm pocket gopher in the Tenalquot Prairie and Rock Prairie Subunits. In all units, the physical or biological features essential to the conservation of each subspecies may require special management considerations or protection to restore, protect, and maintain the essential features found there. Special management considerations or protection may be required to address: Direct or indirect habitat loss due to conversion to other uses; invasion of woody plant species; use of equipment that may compact soils; development; construction and maintenance of roads and utility corridors; habitat modifications; predation by feral or domestic animals; or use of trapping or poisoning techniques by landowners or land managers of the units themselves

or adjacent landowners or land managers.

Olympia Pocket Gopher Critical Habitat—Olympia Airport Unit. This unit consists of 676 ac (274 ha) and is made up of land owned by the Port of Olympia, a municipal corporation. The Olympia Airport Unit is located south of the cities of Olympia and Tumwater, in Thurston County, Washington. This unit is occupied by the Olympia pocket gopher and contains the physical or biological features essential to the conservation of the subspecies due to the underlying soil series (Cagey, Everett, Indianola, and Nisqually), suitable forb and grass vegetation present onsite, and its large size. The physical or biological features in this subunit are threatened by: Loss of habitat through conversion to incompatible uses, such as development; predation; and the habitat degradation or destruction due to the inadequacy of existing regulatory mechanisms.

Tenino Pocket Gopher Critical Habitat—Rocky Prairie Unit. This unit consists of 399 ac (162 ha) and is owned by one commercial land owner and Burlington Northern Santa Fe Railroad. The Rocky Prairie Unit is located north of the city of Tenino, Thurston County, Washington; is likely occupied by the Tenino pocket gopher; and contains the physical or biological features essential to the conservation of the species due to the underlying soil series or soil series complex (Everett, Nisqually, Spanaway, and Spanaway-Nisqually complex), suitable forb and grass vegetation present onsite, and its large size. The physical or biological features in this subunit are threatened by: Loss of habitat through conversion to incompatible uses, such as pit mining; development on adjacent or surrounding areas; the loss of natural

disturbance processes and invasion by woody plants; predation; small or isolated populations as a result of habitat fragmentation; habitat degradation or destruction as the result of the inadequacy of existing regulatory mechanisms; and control as a pest species. We additionally evaluated this area as if it were presently unoccupied by the Tenino pocket gopher, and have determined that it is nonetheless essential to the conservation of the species (see *Potentially Unoccupied Areas* for details).

Yelm Pocket Gopher Critical Habitat—Tenalquot Prairie Subunit. This subunit consists of 289 ac (117 ha) and contains lands owned by one commercial landowner and The Nature Conservancy. This subunit is located northwest of the city of Rainier, Thurston County, Washington. As proposed, subunit 1-E (now the Tenalquot Prairie Subunit) included 1,505 ac (609 ha) of JBLM land, which has been exempted based on a completed ESMP. This 4(a)(3)(B)(i) exemption, based on this species-specific management plan, has been determined to provide a conservation benefit to the Yelm pocket gopher. The Tenalquot Prairie Subunit is occupied by the Yelm pocket gopher and contains the physical or biological features essential to the conservation of the species due to the underlying soil series (Spanaway), suitable forb and grass vegetation present onsite, and its large size. The physical or biological features in this subunit are threatened by: Loss of habitat through conversion to incompatible uses, such as development; the loss of natural disturbance processes and invasion by woody plants; inadequacy of existing regulatory mechanisms; and control as a pest species.

Yelm Pocket Gopher Critical Habitat—Rock Prairie Subunit. This subunit consists of 243 ac (98 ha) and contains lands owned by one private residential and commercial landowner. As proposed (subunit 1–H), this subunit included 378 ac (153 ha) of private ranch land, which has been excluded under section 4(b)(2) of the Act (see Exclusions for details). The Rock Prairie Subunit is likely occupied by the Yelm pocket gopher and contains the physical or biological features essential to the conservation of the species due to the underlying soil series or soil series complex (Spanaway and Spanaway-Nisqually complex), suitable forb and grass vegetation present onsite, and its size. The physical or biological features in this subunit are threatened by: Loss of habitat through conversion to incompatible uses, such as development; the loss of natural disturbance processes and invasion by woody plants; predation; inadequacy of existing regulatory mechanisms; and control as a pest species. We additionally evaluated this area as if it were presently unoccupied by the Yelm pocket gopher, and have determined that it is nonetheless essential to the conservation of the species (see *Potentially Unoccupied Areas* for details).

### Effects of Critical Habitat Designation

#### Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species listed or proposed to be listed under the Act or result in the destruction or adverse modification of proposed or finalized critical habitat.

Decisions by the 5th and 9th Circuit Courts of Appeals have invalidated our regulatory definition of “destruction or adverse modification” (50 CFR 402.02) (see *Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir. 2004) and *Sierra Club v. U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442 (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions

of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species.

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. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

- (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or
- (2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define “reasonable and prudent alternatives” (at 50 CFR 402.02) as alternative actions identified during consultation that:

- (1) Can be implemented in a manner consistent with the intended purpose of the action,
- (2) Can be implemented consistent with the scope of the Federal agency’s legal authority and jurisdiction,
- (3) Are economically and technologically feasible, and
- (4) Would, in the Director’s opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of

destroying or adversely modifying 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 we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency’s discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

#### Application of the “Adverse Modification” Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that alter the physical or biological features to an extent that appreciably reduces the conservation value of critical habitat for the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher. As discussed above, the role of critical habitat is to support life-history needs of the species and provide for the conservation of the species.

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

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher. These activities include, but are not limited to:

- (1) Actions that restore, alter, or degrade habitat features through development, agricultural activities, burning, mowing, herbicide use or other means in suitable habitat for the

Olympia, Tenino, or Yelm subspecies of the Mazama pocket gopher.

(2) Actions that would alter the physical or biological features of critical habitat including modification of soil profiles or the composition and structure of vegetation in suitable habitat for the Olympia, Tenino, or Yelm subspecies of the Mazama pocket gopher. Such activities could include, but are not limited to, construction, grading or other development, mowing, conversion of habitat, recreational use, off-road vehicles on Federal, State, or private lands). These activities may affect the physical or biological features of critical habitat for the Olympia, Tenino, or Yelm subspecies of the Mazama pocket gopher by crushing burrows, removing forage, or impacting habitat essential for completion of life history.

(3) Activities within or adjacent to critical habitat that affect or degrade the conservation value or function of the physical or biological features of critical habitat for the Olympia, Tenino, or Yelm subspecies of the Mazama pocket gopher.

#### Exemptions

##### *Application of Section 4(a)(3) of the Act*

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an Integrated Natural Resources Management Plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- (1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- (2) A statement of goals and priorities;
- (3) A detailed description of management actions to be implemented to provide for these ecological needs; and
- (4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–

136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: “The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.”

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the critical habitat designation for the Roy Prairie and Yelm subspecies of the Mazama pocket gopher to determine if they meet the criteria for exemption from critical habitat under section 4(a)(3) of the Act. The following areas are Department of Defense lands with completed, Service-approved INRMPs within the critical habitat designation as proposed: (1) 91st Division Prairie (proposed subunit 1–A), (2) Marion Prairie (proposed subunit 1–B), and (3) Tenalquot Prairie (proposed subunit 1–E). All of these areas are part of JBLM, except for two portions of Tenalquot Prairie known as the Morgan property and Silver Springs Cattle Ranch.

##### *Approved INRMPs*

U.S. Army Joint Base Lewis-McChord (JBLM) (formerly known as Fort Lewis Army Base and McChord Air Force Base) is a military complex in western Washington that presently encompasses approximately 91,000 ac (36,825 ha). JBLM is composed of both native and degraded prairies; shrub-dominated vegetation; conifer, conifer-oak, oak-savannah, oak woodland and pine woodland/savannah forests; riverine, lacustrine, and palustrine wetlands; ponds and lakes; as well as other unique habitat, such as Mima mounds. Portions of JBLM are currently occupied by the Roy Prairie and Yelm subspecies of the Mazama pocket gopher. There are 6,345 ac (2,567 ha) of lands within the boundary of JBLM that were proposed as critical habitat for these two subspecies; these lands included the following subunits from the proposed rule (77 FR 73770; December 11, 2012): proposed subunit 1–A, 91st Division Prairie (occupied by the Roy Prairie pocket gopher); proposed subunit 1–B, Marion Prairie (occupied by the Roy Prairie pocket gopher); and a portion of

proposed subunit 1–E, Tenalquot Prairie (occupied by the Yelm pocket gopher). This large Federal landholding includes the largest contiguous block of prairie in the State of Washington. Actions on this property include military training, recreation, transportation, utilities (including dedicated corridors), and land use.

The mission of JBLM is to maintain trained and ready forces for Army and Air Force commanders worldwide, by providing them with training support and infrastructure. This includes a land base capable of supporting current and future training needs through good stewardship of the Installation’s natural and cultural resources, as directed by Federal statutes, DOD directives, directives and programs such as ACUB (Army Compatible Use Buffer Program), and Army, Air Force, and JBLM regulations.

Mazama pocket gophers exist on prairies on JBLM lands where vehicular traffic is currently restricted to established roads, but prior to their proposed listing, JBLM had not implemented any specific restrictions on military training to protect Mazama pocket gophers. Currently, efforts to maintain and increase Mazama pocket gopher populations on the installation focus on restoring or managing the overall condition of suitable habitat. Although only military actions are covered by the INRMP and its associated Endangered Species Management Plans (ESMPs), several additional actions occurring on JBLM could pose substantial threats to the Roy Prairie and Yelm subspecies of the Mazama pocket gopher (e.g., increased risk of accidental fires; habitat destruction and degradation through construction of training infrastructure; vehicle use, dismounted training, bivouac activities, digging; and predation related to recreational activities such as dog trials), and are restricted to a few prairie properties. Many of the avoidance measures for military training action subgroups are implemented through environmental review and permitting programs related to a specific action. Timing of actions and education of users are important avoidance measures for the other activities.

JBLM actively manages prairie habitat as part of its INRMP (US Army 2006). The purpose of the plan is to “provide guidance for effective and efficient management of the prairie landscape to meet military training and ecological conservation goals.” There are three overall goals including: (1) No net loss of open landscapes for military training; (2) no net reduction in the quantity or



quality of moderate- and high-quality grassland; and (3) viable populations of all prairie-dependent and prairie-associated species. These goals are conducted in concert with JBLM’s stewardship responsibility that includes five primary requirements for compliance with the Act:

- (1) Requirement to conserve listed species;
- (2) Requirement not to jeopardize listed species;
- (3) Requirement to consult and confer;
- (4) Requirement to conduct a biological assessment; and
- (5) Requirement to not take listed fish and wildlife species or to remove or destroy listed plant species (DOD 1995, p. 19–20).

Two regional programs managed under the INRMP and its associated ESMPs and funded by the DOD are currently underway on many of the lands where Mazama pocket gophers occur. The JBLM ACUB program is a proactive effort to prevent “encroachment” at military installations. Encroachment includes current or potential future restrictions on military training associated with currently listed and candidate species under the Act. The JBLM ACUB program focuses on management of non-Federal conservation lands in the vicinity of JBLM that contain, or can be restored to, native prairie. Some of the ACUB efforts include improving habitats on JBLM property for prairie-dependent species, including the Mazama pocket gopher. It is

implemented by means of a cooperative agreement between the Army and Center for Natural Lands Management (formerly The Nature Conservancy), and includes WDFW and WDNR as partners, as well as others. To date, a total of \$14.7 million has been allocated to this program (Anderson 2014, pers. comm.). This funds conservation actions such as invasive plant control on occupied sites and the restoration of unoccupied habitat.

The JBLM Legacy program is dedicated to “protecting, enhancing, and conserving natural and cultural resources on DOD lands through stewardship, leadership, and partnership.” The Legacy program supports conservation actions that have regional or DOD-wide significance, and that support military training or fulfill legal obligations (DOD 2011, p. 2). In recent years, substantial effort and funding have gone toward projects, both on and off JBLM, related to the Mazama pocket gopher.

JBLM has an INRMP in place that was approved in 2006, which JBLM is in the process of updating. In 2014, JBLM amended their existing INRMP to specifically include the Mazama pocket gopher by completing an ESMP that includes guidelines for protecting, maintaining, and enhancing habitat essential to protect the Roy Prairie and Yelm subspecies on JBLM, as well as participating in recovery efforts for all four Thurston/Pierce subspecies off-base through their ACUB program and other

funding programs. The ESMP provides specific prescriptions for protection of occupied Mazama pocket gopher habitat on JBLM, including expansion and enhancement of gopher habitat in “priority habitat” areas; required permitting before disturbance of occupied areas; monitoring of and reporting on population status; compliance, implementation, and effectiveness monitoring and reporting; avoidance and minimization measures for specific training activities and areas; and coordination between the Service and JBLM when consultation is required. The Service has found, in writing, that the ESMP under the JBLM INRMP provides a conservation benefit to the Mazama pocket gophers.

In accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the identified lands are subject to the JBLM INRMP and that conservation efforts identified in the ESMP under the INRMP will provide a conservation benefit to the Mazama pocket gopher subspecies that occur on DOD lands in Thurston and Pierce Counties. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3)(B)(i) of the Act. We are not including approximately 6,345 ac (2,567 ha) of habitat in this final critical habitat designation for the Roy Prairie and Yelm pocket gophers because of this exemption. The lands exempted under section 4(a)(3)(B)(i) are identified in Table 3.

TABLE 3—AREAS EXEMPTED FROM THE DESIGNATION OF CRITICAL HABITAT FOR THE ROY PRAIRIE POCKET GOPHER AND YELM POCKET GOPHER UNDER SECTION 4(a)(3)(B)(I) OF THE ACT BY CRITICAL HABITAT UNIT

Subunit as proposed	Area of subunit exempted	Subspecies present	Areas meeting the definition of critical habitat in acres (hectares)	Areas exempted under section 4(a)(3)(B)(i) of the act in acres (hectares)
1–A, 91st Division Prairie .....	entire .....	Roy Prairie pocket gopher ( <i>T. m. glacialis</i> ).	4,120 (1,667)	4,120 (1,667)
1–B, Marion Prairie .....	entire .....	Roy Prairie pocket gopher ( <i>T. m. glacialis</i> ).	720 (291)	720 (291)
1–E, Tenalquot Prairie .....	partial .....	Yelm pocket gopher ( <i>T. m. yelmensis</i> ).	1,793 (726)	1,505 (609)
Total .....	.....	.....	6,633 (2,684)	6,345 (2,567)

**Consideration of Impacts Under Section 4(b)(2) of the Act**

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat.

The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination,

the statute on its face, as well as the legislative history are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In



considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise his discretion to exclude the area only if such exclusion would not result in the extinction of the species.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more

conservation than a critical habitat designation would provide.

In the case of the Mazama pocket gopher, the benefits of critical habitat include promotion of public awareness of the presence of the Olympia, Tenino, and Yelm pocket gophers and the importance of habitat protection, and in cases where a Federal nexus exists, potentially greater habitat protection for the Olympia, Tenino, and Yelm pocket gophers due to the protection from adverse modification or destruction of critical habitat.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we evaluated whether certain lands in the proposed critical habitat were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. We are excluding the following areas from critical habitat designation for the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher: Rocky Prairie Natural Area Preserve (NAP); West Rocky Prairie Wildlife Area (WLA); Scatter Creek WLA and adjacent private inholding; and Colvin Ranch. Table 4 below provides approximate areas of lands that meet the definition of critical habitat but are being excluded under section 4(b)(2) of the Act from the final critical habitat rule.

TABLE 4—AREAS EXCLUDED FROM CRITICAL HABITAT DESIGNATION UNDER SECTION 4(b)(2) OF THE ACT

Subunit as proposed	Unit as named in final rule	Specific area	Areas meeting the definition of critical habitat, in acres (hectares)	Areas excluded from critical habitat, in acres (hectares)
1–D, Rocky Prairie .....	Tenino Pocket Gopher Critical Habitat—Rocky Prairie Unit.	Rocky Prairie NAP .....	43 (178)	38 (16)
1–F, West Rocky Prairie .....	NA (occupied by Olympia pocket gopher, but excluded in entirety).	West Rocky Prairie WLA .....	134 (54)	134 (54)
1–G, Scatter Creek .....	NA (occupied by Yelm pocket gopher, but excluded in entirety).	Scatter Creek WLA .....	730 (296)	730 (296)
1–H, Rock Prairie .....	Yelm Pocket Gopher Critical Habitat—Rock Prairie Subunit.	Colvin Ranch .....	621 (251)	378 (153)
Total Area Excluded .....	.....	.....	.....	1,280 (518)

**Consideration of Economic Impacts**

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis (DEA) of the proposed critical habitat designation and related factors (IEc 2013a). The draft analysis, dated March 22, 2013, was made available for public review from April 3, 2013, through May 3, 2013 (78 FR 20074; April 3, 2013). The DEA addressed

potential economic impacts of critical habitat designation for multiple prairie species of Western Washington and Oregon, including not only the Mazama pocket gopher, but also Taylor’s checkerspot butterfly and streaked horned lark (*Eremophila alpestris strigata*). Following the close of the comment period, a final analysis of the potential economic effects of the designation (FEA) was developed taking into consideration the public comments and any new information; this analysis

was dated September 30, 2013 (IEc 2013b). The final rule designating critical habitat for Taylor’s checkerspot butterfly and streaked horned lark published on October 3, 2013 (78 FR 61506). On September 3, 2013, we announced a 6-month extension of the final determination on the proposed listing and designation of critical habitat for the four Thurston/Pierce subspecies of the Mazama pocket gopher (78 FR 54218) and reopened the comment period for an additional 45 days, ending

October 18, 2013. Additional information relevant to the potential economic impacts of critical habitat designation for the Mazama pocket gopher is captured in the final memorandum to the economic analysis (IEc 2014), available at <http://www.regulations.gov> and at <http://www.fws.gov/wafwo/mpg.html>.

The intent of the final economic analysis (FEA) is to quantify the economic impacts of all potential conservation efforts for the four Thurston/Pierce subspecies of the Mazama pocket gopher; some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both “with critical habitat” and “without critical habitat.” The “without critical habitat” scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA considers those costs that may occur in the 20 years following the designation of critical habitat, which was determined to be the appropriate period for analysis because limited planning information was available for

most activities to forecast activity levels for projects beyond a 20-year timeframe.

Designation of critical habitat only affects activities authorized, funded, or carried out by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they authorize, fund, or carry out that may affect the Olympia, Tenino, or Yelm subspecies of the Mazama pocket gopher. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact due to the requirement to reinstate consultation for ongoing Federal activities (see *Application of the “Adverse Modification” Standard* section).

In our final economic analysis of the critical habitat designation, we evaluated the potential for economic impacts related to: Military activities; recreation and habitat management; airport operations and agricultural activities; transportation, electricity distribution, and forestry activities; and dredging, gravel mining, and other activities. The analysis is based on the estimated impacts associated with the rulemaking as described in Appendix A of the analysis (IEc 2013b, pp. A-1—A-11). The estimated incremental impacts are primarily attributable to the administrative costs of section 7 consultation. The present value of total incremental cost of critical habitat designation is \$793,574 over the next 20 years assuming a 7 percent discount rate, or \$70,007 on an annualized basis. Airport and agricultural activities are subject to incremental impacts estimated at \$550,000; recreation and habitat management at \$110,000; military activities at \$55,000; transportation at \$34,000; and electricity distribution and forestry activities at \$9,300 (present values over 20 years assuming a 7 percent discount rate). Of these total costs, it is estimated that approximately 51 percent will be borne by the Service, 31 percent by Federal action agencies, and 18 percent by third parties. It is important to note that these total costs represent all six prairie taxa addressed in the FEA (Taylor’s checkerspot butterfly, streaked horned lark, and four Thurston/Pierce subspecies of the Mazama pocket gopher), therefore the potential economic impacts specific to the Mazama pocket gopher are less than these totals.

In addition, in response to public comments, here we further consider the potential incremental impacts of the designation specifically on the Olympia Airport and gravel mining operations. These potential impacts are described in detail below.

*Airport operations (Olympia Airport).* As noted above, our economic analysis addressed the potential impacts of critical habitat designation for several different prairie taxa of western Washington and Oregon: the streaked horned lark, the Taylor’s checkerspot butterfly, and the four Thurston/Pierce subspecies of the Mazama pocket gopher. Most of the airports considered in our economic analysis were in critical habitat proposed for the streaked horned lark (a separate final critical habitat rule published for the streaked horned lark and the Taylor’s checkerspot butterfly on October 3, 2013; 78 FR 61506). Chapter 3 of the FEA (IEc 2013b), Airport Operations and Agriculture, discusses the potential for this critical habitat designation to affect airports and agricultural activities. Overall, 198 consultations are expected in relation to operations at 7 airports over the next 20 years; most of these are related to the streaked horned lark. The cost per airport, per consultation, to participate in forecast consultations is approximately \$875 to \$8,750 in any given year. The only airport specific to the designation of critical habitat for the Mazama pocket gopher is the Olympia Airport in Thurston County, Washington (the Olympia Airport Unit, which is the only unit of critical habitat designated for the Olympia pocket gopher in this final rule). Here we consider any economic impacts specific to the Olympia Airport in connection with critical habitat designation for the Olympia pocket gopher.

As noted in our FEA (IEc 2013b, p. 3–23), all airports considered in our analysis receive Federal funding through the Federal Aviation Administration (FAA). This creates a Federal nexus for any projects that utilize this funding. Any projects at the Olympia Airport that receive such funding may therefore require a section 7 consultation regarding potential effects to listed species and their critical habitat. Potential project modifications recommended by the Service for the Mazama pocket gopher may include minimizing paving and development within habitat, or mitigating impacts with land set-aside or off-site conservation. These modifications could potentially limit airport development opportunities or require the hiring of additional maintenance staff or biologists to ensure that maintenance

practices do not harm the subspecies or its critical habitat. However, because the Olympia Airport is presently occupied by the Mazama pocket gopher, all such project modifications described above would likely be recommended based on the presence of the species regardless of critical habitat designation. Any such costs associated with such modifications would therefore be attributable to the listed status of the Mazama pocket gopher, which is considered part of the baseline for our economic analysis, since these costs would be incurred just the same with or without critical habitat. The only costs directly attributable to critical habitat would therefore be the additional administrative costs of considering the standard of destruction or adverse modification of critical habitat, above and beyond the consideration of the jeopardy standard.

For the Olympia Airport, we estimated 8 formal consultations over the next 20 years associated with the realignment of Taxiway F, the construction of a helipad and final approach/takeoff area, building/parking construction, and runway and taxiway construction. In addition, one formal consultation a year is anticipated in association with routine maintenance activities (IEc 2013b, Exhibit 3–7, p. 3–26). As noted earlier, since the Olympia Airport is occupied by the listed species, these consultations will be required regardless of the presence of critical habitat. The incremental impact of critical habitat is therefore limited to the additional cost of considering effects to critical habitat in these consultations. For the Olympia Airport, this cost is estimated at a total of \$43,000 over the years 2013 through 2032, or an annualized value of \$3,800 (IEc 2013b, Exhibit 3–8, p. 3–28). As noted in our FEA (IEc 2013b, p. ES–11), the majority of these administrative costs are borne by the Service (51 percent) or Federal action agencies (31 percent).

**Gravel mining.** We additionally specifically considered the potential economic impacts of critical habitat on gravel mining activities within the proposed designation. Critical habitat was proposed for the Tenino pocket gopher on a portion of a 685-ac (277-ha) parcel of private lands that support sand and gravel extraction activities on approximately 50 ac (20 ha) of this landholding. Approximately 385 ac (156 ha) surrounding the current extraction area is identified as critical habitat for the Tenino Pocket Gopher (Rocky Prairie Unit, which is the only unit of critical habitat designated for the Tenino pocket gopher in this final rule). As described in this rule, the area in

question supports the only known population of the Tenino pocket gopher, and we consider these lands to be occupied by the subspecies. However, to be conservative, we have additionally considered what the incremental impacts of the designation would be if the property in question were not in fact occupied by the listed species.

First, we consider the potential incremental impacts of the designation under the scenario of occupancy by the listed species. The direct regulatory effect of critical habitat impacts only Federal agencies, and only applies when there is a Federal nexus. If a Federal nexus presence triggers consultation under section 7, the presence of a listed species will require implementation of certain conservation efforts to avoid jeopardy concerns. If the action in question may additionally affect designated critical habitat, consultation would consider not only the potential for jeopardy to the continued existence of the species, but also the potential for destruction or adverse modification of critical habitat. Because the ability of the Tenino pocket gopher to exist is very closely tied to the quality of its habitat, significant alterations of their occupied habitat may result in jeopardy as well as adverse modification. Therefore, we anticipate that section 7 consultation analyses will likely result in no difference between recommendations to avoid jeopardy or adverse modification in occupied areas of habitat.

In the case at hand, because we consider the area of mineral extraction to be occupied by the Tenino pocket gopher, potential project modifications would be recommended based on the presence of the species to avoid jeopardy concerns, and would be recommended regardless of critical habitat. Any costs associated with such modifications would therefore be attributable to the listed status of the Tenino pocket gopher, which is considered part of the baseline for our economic analysis, since these costs would be incurred just the same with or without critical habitat. The only costs directly attributable to critical habitat would therefore be the additional administrative costs of considering the standard of destruction or adverse modification of critical habitat, above and beyond the consideration of the jeopardy standard.

We did not have information to suggest a likely Federal nexus in regard to mineral or gravel extraction activities on private lands within the designation. Due to uncertainty regarding the timing of gravel extraction activities and uncertainty surrounding the potential

for a Federal nexus, our economic analysis did not quantify a specific number of consultations that may occur or any related administrative burden. As the likelihood of a Federal nexus is small, it is most likely that critical habitat designation will not result in any economic impact to the landowner. However, were there a Federal nexus for the action in question, and if the Tenino pocket gopher is present on the property, no incremental project modifications are expected to occur as a consequence of critical habitat. That is, there are unlikely to be any project modifications above and beyond those that would be required to avoid jeopardy to the continued existence of the species, due to the presence of the listed species on the property. Therefore, any incremental impacts directly attributable to the designation of critical habitat will be limited to the administrative burden of the portion of consultations considering adverse modification. Such an administrative burden would be unlikely to exceed \$5,000 (in undiscounted dollars) per consultation, and no more than one consultation per gravel mining action is expected to occur. Furthermore, most of these costs would likely be borne by the Service and the Federal action agency. Therefore, we anticipate that should consultation occur on gravel mining operations in critical habitat occupied by the Tenino pocket gopher, the incremental administrative impacts attributable to critical habitat will be small, and the business owner will not be likely to suffer a significant economic impact as the result of the designation.

We additionally considered the potential incremental impact of the designation on mineral extraction interests if the lands in question were considered to be unoccupied by the Tenino pocket gopher. If there should be an action with a Federal nexus that may affect the designated critical habitat, consultation under section 7 would be required. However, in this case, there would be no requirement to analyze the effects of the action under the jeopardy standard absent the listed species; therefore all costs associated with consultation and any project modifications would be attributable solely to critical habitat. Any such costs would only be incurred should there be a Federal nexus associated with the proposed action, if the action agency concludes that the action may affect the designated critical habitat. We have no evidence of any prior Federal nexus associated with the mineral extraction activities on these lands, nor do we have any evidence to suggest that such a

Federal nexus is likely to occur within the foreseeable future. Therefore, absent such a Federal nexus, the presence of unoccupied critical habitat will not trigger consultation, and there will not be any economic impacts to the landowners as a result of critical habitat designation.

Should there be an unforeseen Federal nexus for a proposed action, however, and if the Federal action agency determines that their proposed action may affect or is likely to adversely affect unoccupied critical habitat, that agency is required to enter into formal consultation with the Service. A formal consultation concludes with the Service's issuance of a biological opinion. In conducting formal consultation, the Service works with the action agency and the applicant to consider project modifications to avoid, minimize, or mitigate adverse effects to critical habitat. To the extent adverse effects are likely to destroy or adversely modify its critical habitat, the Service is required to develop, in coordination with the Federal action agency and any applicant, a reasonable and prudent alternative (RPA) that avoids those outcomes.

In our experience, in most cases we are able to successfully work with the action agency to develop project modifications that avoid jeopardy or adverse modification, and no RPAs are necessary. In those cases, the consultation is concluded with the Service's issuance of a non-jeopardy, non-adverse modification biological opinion. In those cases where the Federal agency is unwilling or unable to make such modifications, the final biological opinion includes RPAs. The implementing regulations for section 7 of the Act define RPAs as alternatives that are economically and technologically feasible, are capable of being implemented in a manner consistent with the intended purpose of the proposed Federal action, and are consistent with the scope of the Federal action agency's legal authority and jurisdiction. Although some project modifications may be required, the designation of critical habitat will not prevent the action agency from proceeding, and although critical habitat may limit mineral extraction activities to some extent, in our experience it is unlikely to entirely preclude such operations on the property in question.

As there is no consultation history available for potential project modifications associated with Mazama pocket gopher habitat in association with mineral extraction activities, it is not possible to quantify the costs that

may be incurred as the result of any project modifications that may be recommended. The property owner asserts that designation of critical habitat on this parcel will have an economic impact on the claimed value of \$750 million of aggregate deposit; such impacts, they assert, could come from limiting or preventing extraction activities on the site. However, based on the considerations discussed above and in more detail in the final memorandum to the economic analysis (IEc 2014), it appears unlikely that the designation will produce such an impact; most likely activities will continue with some potential project modifications. Further, for the reasons given here, we believe it is highly unlikely for the designation of critical habitat to prohibit mining on the parcel in question in its entirety. We must acknowledge, however, that such an outcome is not beyond the realm of possibility, particularly since the parcel in question provides the largest area of suitable habitat within the range of the only known population of the Tenino pocket gopher. Finally, we considered the potential for indirect effects of critical habitat. Due to considerable uncertainty, we were unable to quantify any such effects.

#### *Exclusions Based on Economic Impacts*

Our economic analysis did not identify any disproportionate costs that are likely to result from the designation. Consequently, the Secretary is not exerting her discretion to exclude any areas from this designation of critical habitat for the Roy Prairie, Olympia, Tenino, or Yelm pocket gopher based on economic impacts.

A copy of the FEA with supporting documents may be obtained by contacting the Washington Fish and Wildlife Office (see **ADDRESSES**) or by downloading from the Internet at <http://www.regulations.gov> or <http://www.fws.gov/wafwo/mpg.html>.

#### *Exclusions Based on National Security Impacts*

In preparing this final rule, we have exempted from the designation of critical habitat those Department of Defense lands with completed INRMPs determined to provide a benefit to the Mazama pocket gopher. We have also determined that the remaining lands within the designation of critical habitat for the four Thurston/Pierce subspecies of Mazama pocket gopher are not owned or managed by the Department of Defense, and, therefore, we anticipate no impact on national security. Consequently, the Secretary is not exercising her discretion to exclude any

areas from this final designation based on impacts on national security.

#### *Exclusions Based on Other Relevant Factors*

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts to national security. We consider a number of factors, including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships or relationships that would be encouraged by designation of, or exclusion from, critical habitat. We also consider any other relevant impacts that might occur because of the designation. Our weighing of the benefits of inclusion versus exclusion considers all relevant factors in making a final determination as to what will result in the greatest conservation benefit to the listed species. Depending on the specifics of each situation, there may be cases where the designation of critical habitat will not necessarily provide enhanced protection, and may actually lead to a net loss of conservation benefit. Here we provide our analysis of areas proposed for the designation of critical habitat that may provide a greater conservation benefit to the Mazama pocket gopher by exclusion from the designation.

#### *Benefits of Designating Critical Habitat*

The process of designating critical habitat as described in the Act requires that the Service identify those lands within the geographical area occupied by the species at the time of listing on which are found the physical or biological features essential to the conservation of the species that may require special management considerations or protection, and those areas outside the geographical area occupied by the species at the time of listing that are essential for the conservation of the species.

The identification of areas that contain the features essential to the conservation of the species, or are otherwise essential for the conservation of the species if outside the geographical area occupied by the species at the time of listing, is a benefit resulting from the designation. The critical habitat designation process includes peer review and public comment on the identified physical and biological features and areas, and provides a mechanism to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This may help focus and promote conservation

efforts by other parties by clearly delineating areas of high conservation value for the species, and can be valuable to land owners and managers in developing conservation and management plans by describing the essential physical and biological features and special management actions or protections that are needed for identified areas. Including lands in critical habitat also informs State agencies and local governments about areas that could be conserved under State laws or local ordinances.

The prohibition on destruction or adverse modification under Section 7(a)(2) of the Act constitutes the primary regulatory benefit of critical habitat designation. As discussed above, Federal agencies must consult with the Service on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses also represents the regulatory benefit of critical habitat. For some species, and in some locations, the outcome of these analyses will be similar because effects on habitat will often result in effects on the species. However, these two regulatory standards are different. The jeopardy analysis evaluates how a proposed action is likely to influence the likelihood of a species' survival and recovery. The adverse modification analysis evaluates how an action affects the capability of the critical habitat to serve its intended conservation role (USFWS, in litt. 2004). Although these standards are different, it has been the Service's experience that in many instances proposed actions that affect both a listed species and its critical habitat and that constitute jeopardy also constitute adverse modification. In some cases, however, application of these different standards results in different section 7(a)(2) determinations, especially in situations where the affected area is mostly or exclusively unoccupied critical habitat. Thus, critical habitat designations may provide greater benefits to the recovery of a species than would listing alone.

There are two limitations to the regulatory effect of critical habitat. First, a section 7(a)(2) consultation is required only where there is a Federal nexus (an action authorized, funded, or carried out by any Federal agency)—if there is no

Federal nexus, the critical habitat designation of non-Federal lands itself does not restrict any actions that destroy or adversely modify critical habitat. Aside from the requirement that Federal agencies ensure that their actions are not likely to result in destruction or adverse modification of critical habitat under section 7, the Act does not provide any additional regulatory protection to lands designated as critical habitat.

Second, designating critical habitat does not create a management plan for the areas, does not establish numerical population goals or prescribe specific management actions (inside or outside of critical habitat), and does not have a direct effect on areas not designated as critical habitat. Specific management recommendations for critical habitat are addressed in recovery plans, management plans, and in section 7 consultation. The designation only limits destruction or adverse modification of critical habitat, not all adverse effects. By its nature, the prohibition on adverse modification ensures that the conservation role and function of those areas designated as critical habitat are not appreciably reduced as a result of a Federal action.

Once an agency determines that consultation under section 7(a)(2) of the Act is necessary, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the species or critical habitat. However, if we determine through informal consultation that adverse impacts are likely to occur, then formal consultation is initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of critical habitat.

For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may recommend additional conservation measures to minimize adverse effects to primary constituent elements, but such measures would be discretionary on the part of the Federal agency.

The designation of critical habitat does not require that any management or recovery actions take place on the lands included in the designation. Even in cases where consultation has been initiated under section 7(a)(2) of the Act because of effects to critical habitat, the end result of consultation is to avoid adverse modification, but not necessarily to manage critical habitat or

institute recovery actions on critical habitat. On the other hand, voluntary conservation efforts by landowners can remove or reduce known threats to a species or its habitat by implementing recovery actions. We believe that in many instances the regulatory benefit of critical habitat is minimal when compared to the conservation benefit that can be achieved through implementing HCPs under section 10 of the Act, or other voluntary conservation efforts or management plans. The conservation achieved through implementing HCPs or other habitat management plans can be greater than what we achieve through multiple site-by-site, project-by-project, section 7(a)(2) consultations involving project effects to critical habitat. Management plans can commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7(a)(2) consultations commit Federal agencies to preventing adverse modification of critical habitat caused by the particular project; consultation does not require Federal agencies to provide for conservation or long-term benefits to areas not affected by the proposed project. Thus, implementation of any HCP or management plan that incorporates enhancement or recovery as the management standard may often provide as much or more benefit than a consultation for critical habitat designation. The potential benefits of a critical habitat designation are therefore reduced when an effective conservation plan is in place. The Secretary places great value on the maintenance and encouragement of conservation partnerships with non-Federal landowners that enable the development of such voluntary measures for the benefit of listed species and species of conservation concern, for the reasons detailed below.

#### Considerations Specific to Non-Federal Lands With Conservation Agreements

As noted above, the Secretary may exclude areas from critical habitat if she determines that the benefits of exclusion outweigh the benefits of including those areas as part of the critical habitat (unless exclusion of those areas will result in the extinction of the species). We believe that in some cases designation can negatively impact the working relationships and conservation partnerships we have formed with private landowners, and may serve as a disincentive for the formation of future partnerships or relationships that would have the potential to provide conservation benefits.

The Service recognizes that most federally listed species in the United States will not recover without the cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (Lubowski *et al.* 2006, p. 35), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002, p. 720). Groves *et al.* (2000, pp. 280–281) reported that about one-third of populations of federally listed species are found on Federal lands; private lands were found to provide for at least one population of more than two-thirds of federally listed species (Groves *et al.* 2000, p. 283).

Given the distribution of listed species with respect to landownership, the successful conservation of listed species in many parts of the United States will clearly depend upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998, p. 1407; Crouse *et al.* 2002, p. 720; James 2002, p. 271). Building partnerships and promoting the willing cooperation of landowners is essential to understanding the status of species on non-Federal lands and necessary to implement recovery actions, such as the reintroduction of listed species, habitat management, and habitat protection.

Many non-Federal landowners derive satisfaction from voluntarily participating in the recovery of endangered or threatened species. Conservation agreements with non-Federal landowners, Habitat Conservation Plans, Safe Harbor Agreements, other conservation agreements, easements, and State and local regulations enhance species conservation by extending species protections beyond those available through section 7 consultations. We encourage non-Federal landowners to enter into conservation agreements based on a view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through regulatory methods (61 FR 63854; December 2, 1996). The Service realizes this benefit through partnerships not only with private landowners, but with our State partners, Counties, and local municipalities as well.

We acknowledge that private landowners are often wary of the possible consequences of encouraging endangered species conservation on their property, and of regulatory action by the Federal government under the Act. Social science research has demonstrated that, for many private

landowners, government regulation under the Act is perceived as a loss of individual freedoms, regardless of whether that regulation may in fact result in any actual impact to the landowner (Brook *et al.* 2003, pp. 1644–1648; Conley *et al.* 2007, p. 141). Furthermore, in a recent study of private landowners who have experience with regulation under the Act, only 2 percent of respondents believed the Federal Government rewards private landowners for good management of their lands and resources (Conley *et al.* 2007, pp. 141, 144). According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999, p. 1263; Bean 2002, p. 412; Brook *et al.* 2003, pp. 1644–1648). The magnitude of this negative outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, or control of invasive species) are necessary for species conservation (Bean 2002, pp. 412–413).

Since Federal actions such as the designation of critical habitat on private lands may reduce the likelihood that landowners will support and carry out conservation actions for the benefit of listed species, based on the research described above, we believe that in some cases the judicious exclusion of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a greater level of species conservation than critical habitat designation alone. In addition, we believe that States, counties, and communities will be more likely to develop conservation agreements such as HCPs, SHAs, CCAAs, or other plans that benefit listed species if they are relieved of any potential additional regulatory burden that might be imposed as a result of critical habitat designation. A benefit of exclusion from critical habitat is thus the unhindered, continued ability to maintain existing and seek new partnerships with future participants in the development of beneficial conservation plans, including States, Counties, local jurisdictions, conservation organizations, and private landowners. Together these entities can implement conservation actions that we would be unable to accomplish otherwise.

We believe that acknowledging the positive contribution non-Federal landowners are currently making to the conservation of the Mazama pocket gopher, and maintaining good working relationships with these landowners by excluding these areas, may provide a

significant benefit to the conservation of the Mazama pocket gopher in areas where non-Federal lands will play an essential role in the recovery of the species. The exclusion of these areas may encourage these landowners to continue their positive management practices without fear of further government regulation. In addition, the exclusion of such lands may lay the foundation for building additional conservation partnerships and relationships with other non-Federal landowners, with conservation benefit not only for the Mazama pocket gopher, but other endangered or threatened species or species of conservation concern as well.

In contrast, we believe there may be relatively little benefit to be gained by the designation of non-Federal lands with adequate conservation agreements in place. A potential benefit of designation would be the regulatory protections afforded to critical habitat under section 7(a)(2) of the Act. However, as described earlier, on non-Federal lands the regulatory protections of critical habitat only apply when there is a Federal nexus (actions funded, permitted, or otherwise carried out by the Federal government). All of the lands in this critical habitat designation are occupied by the Mazama pocket gopher. Thus, even if these lands are excluded from the final critical habitat designation, if the Mazama pocket gopher is present and may be affected, actions with Federal involvement require consultation to review the effects of management activities that might adversely affect listed species under a jeopardy standard; this assessment includes effects to the species from habitat modification. Overall, given the low likelihood of a Federal nexus occurring on these lands, we believe the regulatory benefit of a critical habitat designation on these lands, if any, may be limited. As described above, the presence of a beneficial conservation plan on these lands further reduces this benefit. However, in all cases we carefully weigh and consider the potential benefits of exclusion versus inclusion for each specific area under consideration for exclusion under section 4(b)(2), as detailed below.

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation is to trigger regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7(a)(2) of the Act. Where there is little likelihood of

a Federal action, the benefits of this protection can be low. On the other hand, the benefits of excluding areas that are covered by voluntary conservation efforts can, in specific circumstances, be high. With the considerations described above in mind, here we describe our weighing of the benefits of exclusion versus inclusion of specific non-Federal lands with existing land and resource management plans, conservation plans, or agreements based on conservation partnerships from the final designation of critical habitat for the Mazama pocket gopher.

*Land and Resource Management Plans, Conservation Plans, or Agreements Based on Conservation Partnerships*

We consider a current land management or conservation plan (HCPs as well as other types) to provide adequate management or protection if it meets the following criteria:

- (1) The plan is complete and provides the same or better level of protection from adverse modification or destruction than that provided through a consultation under section 7 of the Act;
- (2) There is a reasonable expectation that the conservation management strategies and actions will be implemented for the foreseeable future, based on past practices, written guidance, or regulations; and
- (3) The plan provides conservation strategies and measures consistent with currently accepted principles of conservation biology.

We find that the Rocky Prairie Natural Area Preserve (NAP) (which is covered under the WDNR State Trust Lands HCP), the WDFW Scatter Creek Wildlife Area Management Plan (which also covers the adjacent private land), and the NRCS Colvin Ranch Grassland Reserve Program Management Plan all fulfill the above criteria. We are excluding these non-Federal lands covered by these plans because the plans adequately provide for the long-term conservation of the Mazama pocket gopher; such exclusion is likely to result in the continuation, strengthening, or encouragement of important conservation partnerships; and the Secretary has determined that the benefits of excluding such areas outweigh the benefits of including them in critical habitat, as detailed here.

*Washington Department of Natural Resources State Trust Lands HCP*

The WDNR State Trust Lands HCP covers approximately 1.7 million ac (730,000 ha) of State lands in Washington. The permit associated with this HCP, issued January 30, 1997, was

announced in the **Federal Register** on April 5, 1996 (61 FR 15297), has a term of 70 to 100 years, and covers activities primarily associated with commercial forest management, but also includes limited non-timber activities such as some recreational activities. The HCP covers all species, including the Mazama pocket gophers and other listed and unlisted species. We are excluding Washington State lands totaling approximately 38 ac (16 ha) that are covered and managed by the WDNR under its State Trust Lands HCP from critical habitat proposed as Subunit 1–D under section 4(b)(2) of the Act.

The HCP addresses multiple species through a combination of strategies. The HCP includes a series of NAPs and Natural Resource Conservation Areas (NRCAs), including the Rocky Prairie NAP. These preserves are managed consistent with the Natural Areas Preserve Act, and is a land designation used by the State of Washington to protect the best examples of rare and vanishing flora, fauna, plant and animal communities, geological, and natural historical value, consistent with the Washington Natural Areas Preserves Act of 1972 (RCW 79.70). These preserves are used for education, scientific research, and to maintain Washington's native biological diversity. This network of preserves includes nearly 31,000 ac (12,550 ha) throughout the State, which range in size from 8 ac (3.2 ha) to 3,500 ac (1,416 ha). Management plans are developed for each NAP, which guide the actions necessary to protect each area's natural features, including research, monitoring, restoration, and other active management. WDNR actively manages the Rocky Prairie NAP to maintain high-quality prairie habitat. This location contains many of the essential physical or biological features to support the Mazama pocket gopher, and is currently occupied by the Tenino pocket gopher within the only known range of this subspecies.

The NAP property at Rocky Prairie has a species-specific management plan that provides for the conservation of the Tenino pocket gopher, and this site has been managed for the conservation of prairie species, including Mazama pocket gophers specifically. This ongoing practice of habitat management and conservation has fostered a diverse variety of native food plants that complement the friable well-drained soil. The management planning for each of these areas has established a decades-long track record of activity focused on enhancing prairie composition and structure at the Rocky Prairie NAP (WDNR 1989b). The conservation measures applied at the NAP has more

recently been refocused through the development of a site-specific restoration plan that will benefit the Tenino pocket gopher. This restoration plan (Wilderman and Davenport 2011c) provides for the needs of the Tenino pocket gopher by protecting and managing the Rocky Prairie NAP and implementing species-specific conservation measures designed to avoid and minimize impacts to pocket gophers.

*Benefits of Inclusion—Rocky Prairie Natural Area Preserve under the WDNR State Trust Lands HCP*—We find there are minimal benefits to including the Rocky Prairie Natural Area Preserve in critical habitat. As discussed above, the primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. Absent critical habitat designation in occupied areas, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence. Rocky Prairie NAP is currently occupied and has been undergoing restoration through a federally-funded program (the Department of Defense's (DOD) Army Compatible Use Buffer program (ACUB)), thus any proposed ACUB actions for habitat restoration would trigger section 7 consultation for both the Tenino pocket gopher and its designated critical habitat. The benefits of inclusion in critical habitat at this site would be minimized since it is occupied by the Tenino pocket gopher. Because the primary threats to the Tenino pocket gopher include habitat loss and degradation, any potential formal consultations under section 7 of the Act will evaluate the effects of the action on the capability of the habitat to support the life history requirements for the species regardless of whether critical habitat is designated for these lands. The analytical requirements to support a jeopardy determination on excluded land are similar, but not identical, to the requirements in an analysis for an adverse modification determination on land included in critical habitat. The additional benefit of consultation under the adverse modification standard at this occupied site would therefore be reduced.

The inclusion of Rocky Prairie NAP as critical habitat could potentially provide some additional Federal regulatory benefits for the species consistent with the conservation standard based on the



Ninth Circuit Court's decision in *Gifford Pinchot Task Force v. United States Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir. 2004). As noted above, a potential benefit of inclusion would be the requirement of a Federal agency to ensure that their actions on this non-Federal land would not likely result in the destruction or adverse modification of critical habitat. Any Federal nexus on this land would likely result from actions to restore or maintain favorable habitat conditions, carried out under the HCP or granting of Federal funds for beneficial management of prairie-associated species, such as the Mazama pocket gophers. As the action being consulted on is itself intended to benefit prairie-associated species, including the Tenino pocket gopher, the incremental benefit to the Tenino pocket gopher would likely be minimal, as we would not expect additional conservation measures to be recommended as the result of section 7 consultation required by this habitat management funding.

The Service has coordinated with WDNR on conservation actions to be implemented for the Tenino pocket gopher at Rocky Prairie NAP. Management of NAPs in Thurston County, Washington, is guided in large part by the South Puget Sound Prairie Landscape Working Group. The Service is a charter member of this partnership group, which was established in 1994, to promote and improve the management and planning of conservation actions on south Puget Sound prairies and associated habitats. The Working Group includes WDNR, JBLM, NRCS, WDFW, CNLM, the Washington Department of Transportation (WSDOT), as well as other Federal, State, county, city, nongovernmental, and private group entities, each with knowledge and expertise in prairie ecosystem management. The Working Group coordinates regularly, meeting twice-yearly to share information and discuss priorities, and making significant improvements on the ground in prairies and oak woodlands. At one south Puget Sound location, volunteers implement restoration and recovery actions for prairie species every Tuesday throughout the year. This is a well-established group that is expected to continue its coordination efforts into the foreseeable future, regardless of the designation of critical habitat. Management of the Rocky Prairie NAP site receives oversight from the Mazama Pocket Gopher Working Group, a multi-agency working group that has been in existence since 2009. Participants in the working group include JBLM, NRCS,

USFS, WDNR, WDFW, WSDOT, University of Washington researchers, CNLM, and other Federal, State, county, city, nongovernmental, private entities and individuals, each with knowledge and expertise on the Mazama pocket gopher, its conservation, habitat, and restoration needs. Designation of the Rocky Prairie NAP as critical habitat would therefore likely yield no additional benefit to the outputs of the working groups, their members, or their ease of coordination. The active, long-term restoration efforts already in place at this site thus reduce the potential benefit of critical habitat.

Another potential benefit of including lands in a critical habitat designation is that it serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This can help focus and promote conservation efforts by identifying areas of high conservation value for the Tenino pocket gopher. The designation of critical habitat informs State agencies and local governments about areas that could be conserved under State laws or local ordinances. Any additional information about the needs of the Tenino pocket gopher or its habitat that reaches a wider audience can be of benefit to future conservation efforts. During the spring of 2013 alone, the Service hosted two prairie workshops, one public hearing, and two local Thurston County events attended by nearly 1,000 people to publicize and educate local community members of the species' declining distribution, and the threat to the native flora and fauna found on western Washington prairies. An important conservation measure that is gained through these outreach networks is the ability to educate the public about the historical role and current importance of prairies to our local community and economy. Included among the outreach measures is the distribution of educational material, and encouraging landowners to conduct prairie restoration activities on their properties. In early 2013 the Service also held two workshops specifically to answer questions about the proposed listing of the Mazama pocket gopher and proposed critical habitat designation; one designed for Federal, State, and County partners and one for private parties. Additional events are expected to occur in the future, and designation of the site as critical habitat is not expected to increase the number of such meetings or improve their outcomes; the additional educational value of critical habitat is therefore minimized.

The incremental benefit of inclusion is reduced because of the long-standing management planning and implementation efforts for the site, which presently benefit the conservation of the Tenino pocket gopher and its habitat, as discussed above. In addition, the NAP restoration plan provides greater protection to Tenino pocket gopher habitat than would the designation of critical habitat, since the planning effort is intended to actively improve the structure and composition of the habitat (critical habitat does not carry any requirement for habitat restoration or improvement, only the avoidance of destruction or adverse modification). Therefore, designation of critical habitat at Rocky Prairie NAP would not provide any additional management focus or benefits for the species or its habitat that is not already occurring at this location under Washington State management authority, through plans developed through our recovery program, or through the DOD ACUB funding authority, which has provided funding support for many of our local protected prairies, including Rocky Prairie NAP.

*Benefits of Exclusion—Rocky Prairie Natural Area Preserve under the WDNR State Trust Lands HCP*—The benefit of excluding Rocky Prairie NAP from critical habitat is relatively greater. The WDNR HCP has served as a model for several completed and ongoing HCP efforts, including the Washington State Forest Practices HCP. The Service accrues a significant benefit from encouraging the development of such HCPs and other voluntary conservation agreements in cooperation with non-Federal partners. Since issuance of the WDNR State Trust Lands HCP, a number of land transactions and land exchanges within the HCP area have occurred. These transactions have included creation of additional NRCAs and NAPs (land designations with a high degree of protection), and have also included large land exchanges and purchases that have changed the footprint of the HCP. These land-based adjustments have facilitated better management on many important parcels and across larger landscapes than would otherwise have been possible.

HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs ensure the long-term protection and management of a covered species and its habitat. In addition, funding for such management is ensured through the Implementation Agreement. 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 practices or protections. Thus, a section 7 consultation typically does not afford the lands it covers similar extensive benefits as an HCP. The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide the conservation efforts and assist in species conservation, and the creation of innovative solutions to conserve species while meeting the needs of the applicant. In this case, substantial information has been developed from the research, monitoring, and surveys conducted by WDNR. Therefore, exclusion is a benefit because it maintains and fosters the development of biological information and innovative solutions.

The Washington DNR has requested that the lands covered by this HCP be excluded from critical habitat. This HCP is located in key landscapes across the State, and the NAP at Rocky Prairie—which is covered by the HCP—contributes meaningfully to the recovery of the Tenino pocket gopher. We consider the acknowledgement of the State's positive contributions by relieving them of any additional regulatory burden associated with critical habitat, whether real or perceived, to be a significant benefit of exclusion. Excluding the area covered by the WDNR State Trust Lands HCP provides significant benefit in terms of sustaining and enhancing the partnership between the Service and the State of Washington, with positive consequences for conservation of the Tenino pocket gopher as well as other species that may benefit from such partnerships in the future. Because the majority of occurrences of endangered or threatened species are on non-Federal lands, partnerships with non-Federal landowners and land managers are vital to the conservation of listed species. Therefore, the Service is committed to maintaining and encouraging such partnerships through the recognition of positive conservation contributions.

By excluding these lands, we preserve our current private and local conservation partnerships and encourage additional conservation such partnerships in the future. Exclusion of these areas will additionally help us maintain an important and successful partnership with other Washington State conservation partners (via the South Puget Sound Prairie Landscape Working Group and the Mazama Pocket Gopher Working Group) who collectively organized themselves in 2009 to include the Mazama pocket

gopher in their management and restoration plans, as well as encouraging others to join in these and other conservation partnerships. We consider the positive effect of excluding proven conservation partners from critical habitat to be a significant benefit of exclusion.

*Benefits of Exclusion Outweigh Benefits of Inclusion—Rocky Prairie Natural Area Preserve under the WDNR State Trust Lands HCP*—The Secretary has determined that the benefits of excluding the WDNR-managed Rocky Prairie NAP from the designation of critical habitat for the Tenino pocket gopher outweigh the benefits of including these areas in critical habitat. The benefits of including the 38 ac (16 ha) of Washington State lands at the Rocky Prairie NAP and covered under the State Trust Lands HCP in critical habitat are relatively small. Any Federal nexus on this land would likely result from actions to enhance or maintain favorable habitat conditions, undertaken under the HCP or granting of Federal funds for beneficial management of prairie-associated species, such as the Tenino pocket gopher. If a Federal nexus were to occur, it would most likely be with the Service or DOD, and their actions will be geared toward the conservation benefits of restoring and enhancing habitat specifically for the Tenino pocket gopher, or other prairie-associated species. This type of management would benefit the Tenino pocket gopher if focused on the maintenance of open, short-statured vegetative conditions that the pocket gopher typically occupies. As the action being consulted on is itself intended to benefit prairie-associated species, including the Tenino pocket gopher, the incremental benefit to the Tenino pocket gopher would likely be minimal, as we would not expect additional conservation measures to be recommended as the result of section 7 consultation required by this habitat management funding.

The South Puget Sound Prairie Landscape Working Group partnership, which contributes to management planning on the NAP, and the Mazama Pocket Gopher Working Group, which also provides further species management guidance, would not be additionally benefitted due to inclusion of these areas in critical habitat. These working groups are well-established, cohesive, and productive groups that have yielded and will continue to yield positive conservation outcomes for the Mazama pocket gopher on south Puget Sound prairies including Rocky Prairie NAP, regardless of the designation of critical habitat. The conservation

strategies of the NAP restoration plan and the ongoing adaptive habitat restoration strategies are designed to protect and enhance habitat for the Mazama pocket gopher and other prairie-associated species. These strategies include species-specific management actions to support the Tenino pocket gopher, avoidance and minimization measures, and monitoring requirements to ensure proper implementation, which further minimizes the benefits of including these areas in a designation of critical habitat.

In contrast, the benefits derived from excluding areas covered the Washington State Trust Lands HCP and Rocky Prairie NAP management plan, thus enhancing our partnership with the State of Washington and other Washington State conservation partners, are substantial. The WDNR State Trust Lands HCP provides for significant conservation and management within geographical areas that contain the physical or biological features essential to the conservation of the Tenino pocket gopher, and helps achieve recovery of this species through the conservation measures of the HCP. Exclusion of these lands from critical habitat will help foster the partnership we have developed with WDNR, through the development and continuing implementation of the HCP and the area management plans. It will also help us maintain and foster important and successful partnerships with our Washington State conservation partners in the South Puget Sound Prairie Landscape Working Group and the species-specific Mazama Pocket Gopher Working Group, which share significant overlap and, by doing so, bridge ecosystem management strategies and species-specific conservation actions. Both WDNR and the working groups have encouraged others to join in conservation partnerships as well, and exclusion of these lands will encourage the future development of such beneficial conservation partnerships. The recognition of the positive contributions made through the Washington State Trust Lands HCP through exclusion from critical habitat will likely encourage the development of future HCPs for the benefit of additional listed species and their habitats, with far-reaching benefits for conservation. The positive conservation benefits that may be realized through the maintenance of these existing partnerships, as well as through the encouragement of future such partnerships, and the importance of developing such partnerships on non-

Federal lands for the benefit of listed species, are such that we consider the positive effect of excluding proven conservation partners from critical habitat to be a significant benefit of exclusion. For these reasons, we have determined that the benefits of exclusion outweigh the benefits of inclusion for Rocky Prairie NAP.

*Exclusion Will Not Result in the Extinction of the—Rocky Prairie Natural Area Preserve under the WDNR State Trust Lands HCP*—We have determined that exclusion of approximately 38 ac (16 ha) of the Rocky Prairie NAP, which is covered under the WDNR State Trust Lands HCP, will not result in the extinction of the Tenino pocket gopher. Actions covered by the HCP will not result in extinction of the Tenino pocket gopher because the NAP is set aside as a conservation site expressly for the purpose of preserving and restoring the native prairie ecosystem. The State Trust Lands HCP provides for the future needs of the Tenino pocket gopher by restoring, maintaining, and creating habitat within these areas, and supporting management of Mazama pocket gopher habitat and that of other rare species through HCP compliance. Additionally, the NAP operates under a specific management plan to guide long-term site management, and a more recently developed restoration plan to direct the habitat enhancement activity. For these reasons, we find that exclusion of the Rocky Prairie NAP covered by the WDNR State Trust Lands HCP will not result in extinction of the Tenino pocket gopher. Based on the above discussion, the Secretary is exercising her discretion under section 4(b)(2) of the Act to exclude from this final critical habitat designation a portion of the proposed critical habitat Subunit 1–D that is covered by the WDNR State Trust Lands HCP as identified above, totaling about 38 ac (16 ha).

Scatter Creek Wildlife Area and Adjacent Private Land, and the West Rocky Prairie Wildlife Area

We are excluding 767 ac (310 ha) of Washington State lands designated as Wildlife Areas, and 98 ac (40 ha) of private land inholding, from this critical habitat designation under section 4(b)(2) of the Act. These Wildlife Areas are known as the Scatter Creek Wildlife Area (633 ac (256 ha)) (proposed subunit 1–G, Scatter Creek, critical habitat for the Yelm pocket gopher) and West Rocky Prairie Wildlife Area (134 ac (54 ha)) (proposed subunit 1–F, West Rocky Prairie, critical habitat for the Olympia pocket gopher), both owned and managed by WDFW. The private

inholding is associated with the Scatter Creek Wildlife Area (proposed subunit 1–G, Scatter Creek) and is managed by WDFW identically to the Wildlife Area itself. Wildlife Areas provide a variety of habitat for endangered and threatened species, including the Mazama pocket gopher, and are managed for that purpose, among others. Each Wildlife Area operates under a Wildlife Area Management Plan specific to the unique management needs of that area. Species-specific management plans have been written for a subset of the Wildlife Areas, including Scatter Creek and West Rocky Prairie. Wildlife Areas are purchased to provide the highest benefit to fish, wildlife, and the public. In addition, WDFW is currently developing an HCP for lands in Wildlife Areas with the help of the Service, which will incorporate a landscape-level approach to managing at-risk species, including the Mazama pocket gopher.

WDFW developed a management plan for the Scatter Creek Wildlife Area and the adjacent private land in 2010 that specifically details the habitat needs of the Mazama pocket gopher and continues to refine habitat conservation measures through collaboration with local conservation partners from the Service, WDNR, the University of Washington, and CNLM (Hays 2010). WDFW also has a draft management plan to guide prairie management at the West Rocky Prairie Wildlife Area (WDFW 2011), which will be this area's guiding document until finalized. Prior to the management plan being developed, the site was managed for an array of species and recreational activities, including restoration actions designed to improve the prairie conditions for the Mazama pocket gopher, mardon skipper butterfly (*Polites mardon*), and Taylor's checkerspot butterfly (*Euphydryas editha taylori*). The Scatter Creek Wildlife Area, the adjacent private lands, and the West Rocky Prairie Wildlife Area are currently occupied by Mazama pocket gophers, the Yelm pocket gopher at Scatter Creek and Olympia pocket gopher at West Rocky Prairie. The West Rocky Prairie Wildlife Area was the recipient site for a translocation study conducted using the Olympia pocket gopher, despite being within the historical range of the Tenino pocket gopher.

*Benefits of Inclusion—Scatter Creek Wildlife Area and Adjacent Private Land; West Rocky Prairie Wildlife Area*—We find there are minimal benefits to including these areas in critical habitat. As discussed above, the primary effect of designating any

particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. Absent critical habitat designation in occupied areas, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence.

The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. The regulatory standard is different, as the jeopardy analysis investigates the action's impact on the survival and recovery of the species, while the adverse modification analysis focuses on the action's effects on the designated habitat's contribution to conservation. This may, in some instances, lead to different results and different regulatory requirements. Thus, critical habitat designations have the potential to provide greater benefit to the recovery of a species than would listing alone.

The inclusion of these covered lands as critical habitat could provide some additional Federal regulatory benefits for the species consistent with the conservation standard based on the Ninth Circuit Court's decision in *Gifford Pinchot Task Force v. United States Fish and Wildlife Service*, 378 F.3d 1059 (9th Cir. 2004). As noted above, a potential benefit of inclusion would be the requirement of a Federal agency to ensure that their actions on these non-Federal lands would not result in the destruction or adverse modification of critical habitat. The granting of Federal funds for beneficial management of prairie-associated species such as the Mazama pocket gopher would provide the only foreseeable Federal nexus for these non-Federal lands. WDFW has received funding specifically to improve habitat features at these sites such as vegetation composition, and structure to support native prairie associated species. These improvements to native prairie vegetative structure and composition also benefit the Mazama pocket gopher. This funding will support activities through 2017. Funding is also provided to WDFW from the DOD ACUB program, which is a high priority program for DOD. Leadership at DOD has confirmed that the program will continue into the future (Jeff Foster, pers. comm. 2013). Because the primary threats to the

Mazama pocket gophers include habitat loss and degradation, any potential formal consultations under section 7 of the Act will evaluate the effects of the action on the capability of the habitat to support the life history requirements for the listed pocket gophers regardless of whether critical habitat is designated for these lands. The analytical requirements to support a jeopardy determination on excluded land are similar, but not identical, to the requirements in an analysis for an adverse modification determination on land included in critical habitat. The additional consideration of adverse modification of critical habitat is therefore unlikely to result in a different outcome. In addition, for Scatter Creek, the adjoining private land, and West Rocky Prairie, the action most likely to be consulted on is itself intended to benefit prairie-associated species, therefore the outcome of consultation is unlikely to provide a significant additional benefit to the Mazama pocket gopher as a result of critical habitat designation. Thus, for the reasons described above, the potential regulatory benefits of critical habitat in this case are limited.

The Service has coordinated with WDFW on conservation actions to be implemented for the Mazama pocket gopher at the Scatter Creek Wildlife Area, the adjoining private land, and West Rocky Prairie Wildlife Area in south Thurston County, Washington. As with the NAPs in Thurston County, management of the prairie Wildlife Areas in Thurston County is guided in large part by the South Puget Sound Prairie Landscape Working Group, which was established in 1994, to promote and improve the management and planning of conservation actions on south Puget Sound prairies and associated habitats. This is a well-established group that is expected to continue its coordination efforts into the foreseeable future. We conclude that designation of these Wildlife Areas as critical habitat would yield no additional benefit to the outputs of the South Puget Sound Prairie Landscape Working Group, its members, or their ease of coordination, as the active, long-term efforts of this group are expected to continue regardless of the designation of critical habitat. Management of Scatter Creek Wildlife Area and adjacent private land receives oversight from the Mazama Pocket Gopher Working Group, a multi-agency working group that has been in existence since 2009. Participants in the working group include JBLM, NRCS, USFS, WDNR, WDFW, WSDOT, University of Washington researchers, CNLM, and

other Federal, State, county, city, nongovernmental, private entities and individuals, each with knowledge and expertise on the Mazama pocket gopher, its conservation, habitat, and restoration needs. The incremental benefit from designating critical habitat for the Mazama pocket gopher in these areas is further minimized because of the long-standing management planning efforts that have been implemented and planned for the two Wildlife Areas and the associated private land inholding, which is managed using the same management methods as the Wildlife Areas. These properties have implemented management for the conservation of prairie habitat and prairie-associated species. Each Wildlife Area focuses their management to promote the improvement of native prairie vegetative composition, which provides ample food resources for the Mazama pocket gopher as well as all of the essential physical or biological features to support the species.

Management planning for each of the Wildlife Areas has established a track record of activity focused on enhancing native prairie composition and structure. The conservation measures regularly implemented at the Wildlife Areas have recently been refocused through the development of site specific restoration plans for each location to benefit the Mazama pocket gopher and other prairie-associated species (Hays 2013). The restoration being implemented and the guidance from the management plan provides greater protection to Mazama pocket gopher habitat than would the designation of critical habitat, since the planning effort is intended to actively improve the composition and structure of the habitat (the designation of critical habitat does not require any active management). Therefore, the existing management at this site will provide greater benefit than the regulatory designation of critical habitat, which only requires the avoidance of destruction or adverse modification, and does not require the creation, improvement, or restoration of habitat.

Another potential benefit of including Wildlife Area lands and the adjacent private inholding in a critical habitat designation is that it serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This can help focus and promote conservation efforts by other parties by identifying areas of high conservation value for the Mazama pocket gopher. The designation of critical habitat informs State agencies and local governments about areas that could be

conserved under State laws or local ordinances. Any additional information about the needs of the Mazama pocket gopher or its habitat that reaches a wider audience can be of benefit to future conservation efforts. During the spring of 2013 alone, the Service hosted two prairie workshops, one public hearing, and two local Thurston County events attended by nearly 1,000 people to publicize and educate local community members of the species' declining distribution, and the threat to the native flora and fauna found on western Washington prairies. An important conservation measure that is gained through these outreach networks is the ability to educate the public about the historical role and current importance of prairies to our local community and economy. Included among the outreach measures is the distribution of educational material, and encouraging landowners to conduct prairie restoration activities on their properties. In early 2013 the Service also held two workshops specifically to answer questions about the proposed listing of the Mazama pocket gopher and proposed critical habitat designation; one designed for Federal, State, and County partners and one for private parties. Additional events are expected to occur in the future, and designation of the Wildlife Areas as critical habitat is not expected to increase the number of such meetings or improve their outcomes. Therefore, in this case the incremental benefit of critical habitat in terms of education value is negligible.

The incremental benefit of inclusion is minimized because of the long-standing management planning efforts for each Wildlife Area, and the associated private inholding, as discussed above. In addition, the restoration plans provide greater protection to Mazama pocket gopher habitat than does the designation of critical habitat, since the planning effort is intended to actively improve the native prairie vegetative component of the habitat. Therefore, designation of critical habitat on these areas would not provide any additional management focus that is not already occurring at these locations under Washington State management authority, through plans developed through the Service's recovery program, or through the DOD ACUB funding authority which has provided financial support for many of our local protected prairies, including these Wildlife Areas. For these reasons, we find that the benefit of including these particular areas in critical habitat is relatively small.

*Benefits of Exclusion—Scatter Creek Wildlife Area and Adjacent Private*

*Land; West Rocky Prairie Wildlife Area*—The benefits of excluding these two Wildlife Areas and the associated private inholding from designated critical habitat are relatively greater. We have worked to create and maintain a close partnership with WDFW through regular coordination and the development of the Wildlife Area management plans, not only for Scatter Creek and West Rocky Prairie Wildlife Areas, but other Wildlife Areas as well, and we are currently collaborating with WDFW to develop an HCP that would cover all of their Wildlife Areas. The management plans contain provisions that will improve the conservation status of the Mazama pocket gopher. Measures contained in the management plans are consistent with recommendations from the Service for the conservation of the Mazama pocket gopher, and will afford benefits to these subspecies and their habitat.

Excluding these Wildlife Areas and associated private inholding from critical habitat designation will provide significant benefits in terms of sustaining and enhancing the excellent partnership between the Service, WDFW, and the private landowner, as well as other partners who participate in prairie management decision-making, resulting in positive and ongoing consequences for conservation. The willingness of WDFW and the private landowner to undertake conservation efforts for the benefit of the Mazama pocket gopher and to work with the Service to develop new management plans for the species will continue to reinforce those conservation efforts and our partnership, which will support the recovery process for the Mazama pocket gopher. We consider this voluntary partnership in conservation vital to our understanding of the status of the Mazama pocket gopher on WDFW lands in Thurston County, and necessary for us to implement recovery actions such as habitat protection, restoration, and beneficial management actions for the species. Furthermore, exclusion from critical habitat could have the benefit of encouraging other landowners to engage in similar conservation partnerships and efforts with positive outcomes for the conservation of listed species.

In addition, our understanding of the historical range of each the Mazama pocket gopher subspecies has grown as a result of the collaboration with WDFW biologists, highlighting the potential effects of the translocation study that moved the Olympia pocket gopher into the historical range of the Tenino pocket gopher. Although the West Rocky Prairie Wildlife Area was proposed as critical habitat for the Olympia pocket

gopher because the subspecies presently occupies that area, the site is not within the historical range of that subspecies, nor is there currently any intent by the Service to utilize that site as part of the recovery effort for the Olympia pocket gopher. Therefore, we do not consider this area, even though technically occupied by the Olympia pocket gopher, to be essential to the conservation of the subspecies. Exclusion of the West Rocky Prairie Wildlife Area from critical habitat will allow us greater flexibility in exercising future recovery actions at this site. If the West Rocky Prairie Wildlife Area were included as a critical habitat subunit for the Olympia pocket gopher, in an area outside of its historical range but within that of the Tenino pocket gopher, our ability to recover the Tenino pocket gopher at the site would be constrained. Exclusion of the West Rocky Prairie Wildlife Area would allow a wider range of recovery options for the Tenino pocket gopher, a subspecies for which a single isolated population is currently known to exist, and which is therefore highly dependent upon successful recovery efforts at appropriate sites within its historical range.

As described above, the designation of critical habitat could have an unintended negative effect on our relationship with non-Federal landowners due to the perceived imposition of redundant government regulation. If lands within the area managed by WDFW for the benefit of the Mazama pocket gopher are designated as critical habitat, it could have a dampening effect on our continued ability to seek new partnerships with future participants including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement various conservation actions (such as SHAs, HCPs, and other conservation plans, particularly large, regional conservation plans that involve numerous participants or address landscape-level conservation of species and habitats) that we would be unable to accomplish otherwise.

Excluding these areas from critical habitat designation provides significant benefit in terms of sustaining and enhancing the partnership between the Service, the State of Washington, and the private landowner, with positive consequences for conservation for the Mazama pocket gopher as well as other species that may benefit from such partnerships in the future. Because the majority of occurrences of endangered or threatened species are on non-Federal lands, conservation partnerships with

non-Federal landowners and land managers are vital to the conservation of listed species. Therefore, the Service is committed to maintaining and encouraging such partnerships through the recognition of positive conservation contributions. Our WDFW conservation partners made a commitment by including the Mazama pocket gopher in their Wildlife Area implementation plan, and they have engaged with and encouraged others to join in conservation partnerships, such as the South Puget Sound Prairie Landscape Working Group and the Mazama Pocket Gopher Working Group. In addition, the private landowner serves as a model of voluntary conservation and may aid in fostering future voluntary conservation efforts by other private parties in other locations for the benefit of listed species; this is a significant benefit, since the majority of listed species occur on private lands. We consider the positive effect of excluding proven conservation partners from critical habitat to be a significant benefit of exclusion.

*Benefits of Exclusion Outweigh Benefits of Inclusion—Scatter Creek Wildlife Area and Adjacent Private Land; West Rocky Prairie Wildlife Area*—The Secretary has determined that the benefits of excluding these prairie Wildlife Areas (Scatter Creek and the adjacent private land, and West Rocky Prairie) from the designation of critical habitat for the Yelm and Olympia pocket gopher outweigh the benefits of including these areas in critical habitat. The regulatory and informational benefits of including these 767 ac (310 ha) of Washington State Wildlife Areas and associated 98 ac (40 ha) of private land inholding are minimal. As noted above, a potential benefit of inclusion would be the requirement that Federal agencies ensure that their actions on these non-Federal lands would not likely result in the destruction or adverse modification of critical habitat. However, this potential benefit is limited because if a Federal nexus were to occur, it would most likely be with the Service or DOD, and the proposed actions would be geared toward the conservation benefits of restoring and enhancing habitat specifically for the Mazama pocket gopher, or other prairie-associated species from which the Mazama pocket gopher would benefit. This type of proactive management, if focused on the maintenance of open, short-statured vegetative conditions that the Mazama pocket gopher typically occupies, will outweigh any benefit from the regulatory designation of critical habitat,

which only requires the avoidance of adverse modification and does not require the creation, improvement, or restoration of habitat. The incremental benefit to the Mazama pocket gopher from the small amount of resultant section 7 consultation required by this habitat management funding is likely minimal, especially considering that the action being consulted on is itself intended to benefit prairie-associated species, including the Mazama pocket gopher.

The South Puget Sound Prairie Landscape Working Group partnership and the Mazama Pocket Gopher Working Group, which assists with guiding management on the Wildlife Areas, would not be additionally benefitted due to inclusion of the Wildlife Areas in critical habitat, as this is a well-established, cohesive, and productive group that has yielded, and will continue to yield, positive conservation outcomes for the Mazama pocket gopher on south Sound prairies, including these Wildlife Areas, regardless of critical habitat. The conservation strategies of each Wildlife Area management plan are crafted to protect and enhance habitat for the Mazama pocket gopher. These plans include species-specific management actions to support the Mazama pocket gopher, avoidance and minimization measures, and monitoring requirements to ensure proper implementation, which further minimizes the benefits of including these areas in a designation of critical habitat.

In contrast, the benefits accrued from excluding areas within the Scatter Creek Wildlife Area, West Rocky Prairie Wildlife Area, and the associated private inholding, are substantial. Excluding the West Rocky Prairie Wildlife Area will improve recovery options for the Tenino pocket gopher by allowing greater flexibility in selecting which subspecies is ultimately best conserved at the West Rocky Prairie Wildlife Area, while inclusion of West Rocky Prairie Wildlife Area would imply that the Service intends to recover the Olympia pocket gopher at that site; an area within the historical range of the Tenino pocket gopher, the subspecies with the most highly restricted range of the four subspecies listed.

A significant benefit of excluding these lands is that it will help us maintain and foster an important and successful partnership with our Washington State conservation partners who have already chosen to include the Mazama pocket gopher in Wildlife Area management plans. They have encouraged others to join in

conservation partnerships as well such as the Mazama Pocket Gopher Working Group. Recognizing the important contributions of our conservation partners through exclusion from critical habitat helps to preserve these partnerships, and helps foster future partnerships for the benefit of listed species, the majority of which do not occur on Federal lands; we consider this to be a substantial benefit of exclusion. For these reasons, we have determined that the benefits of exclusion outweigh the benefits of inclusion in this case.

*Exclusion Will Not Result in the Extinction of the Species—Scatter Creek Wildlife Area and Adjacent Private Land; West Rocky Prairie Wildlife Area*—We have determined that exclusion of approximately 633 ac (256 ha) of the Scatter Creek Wildlife Area owned by WDFW and 98 ac (40 ha) of private land that is managed by WDFW in the same way as Scatter Creek Wildlife Area, and 134 ac (54 ha) of the West Rocky Prairie Wildlife Area, lands covered by management plans vetted by several conservation partners working in south Puget Sound, will not result in the extinction of the Yelm or Olympia pocket gophers, respectively. Actions covered by the Wildlife Area management plans will not result in extinction of the Yelm or Olympia pocket gophers because the plans provide for the needs of the species by protecting, restoring, and enhancing all the known occupied Mazama pocket gopher habitat under the jurisdiction of the State; committing to the enhancement and recruitment of additional habitat through management on each Wildlife Area to support meta-population structure within the Wildlife Areas; and implementing species-specific conservation measures designed to avoid and minimize impacts to Mazama pocket gophers. Further, for projects having a Federal nexus and potentially affecting the Mazama pocket gopher in occupied areas, the jeopardy standard of section 7 of the Act, coupled with protection provided by the voluntary Mazama pocket gopher conservation plans that are available to landowners if they so choose, would provide a level of assurance that this species will not go extinct as a result of excluding these lands from the critical habitat designation. Additionally, each of the Wildlife Areas has a specific management plan to guide long-term management to direct the habitat enhancement activities at each location. The species is also protected from take under section 9 of the Act on all properties where the species is found. Federal agencies would be required to

minimize the effects of incidental take, and would be encouraged to avoid incidental take through the section 7 consultation process. For these reasons, we find that exclusion of these lands covered by these specific Wildlife Area management plans will not result in extinction of the Yelm or Olympia pocket gophers. Based on the above discussion, the Secretary is exercising her discretion under section 4(b)(2) of the Act to exclude from this final critical habitat designation portions of the proposed critical habitat Subunits 1-F and 1-G that are owned or managed by WDFW, totaling about 865 ac (350 ha).

#### Colvin Ranch Grassland Reserve Program Management Plan

Private lands totaling 378 ac (153 ha) that are covered under an NRCS Grassland Reserve Program Management Plan are excluded from proposed Subunit 1-H in this critical habitat designation under section 4(b)(2) of the Act. The Service has coordinated directly with NRCS regarding conservation actions that are being implemented on the portion of Rock Prairie that lies south of Old Hwy 99 (hereafter known as Colvin Ranch). Colvin Ranch has been managed for approximately 10 years under a long-term Grassland Reserve Program Management Plan (GRP management plan), and 530 ac (215 ha) of the property is conserved in perpetuity by a conservation easement held by NRCS, of which a portion (378 ac (153 ha)) is excluded from critical habitat. Under the GRP management plan, the landowners manage their land using a livestock grazing guideline for western Washington prairies developed in partnership with NRCS. The GRP management plan uses intensive livestock grazing as the primary tool to minimize the invasion of prairies by Douglas fir and other woody native and nonnative shrub species. Additionally, pasture grasses that are often in competition for resources with the native prairie species are consumed by the livestock, which makes room for native prairie species and restores prairie composition, structure and function. All of these practices provide a positive conservation benefit for the Yelm pocket gopher and its habitat. Colvin Ranch is currently occupied by the Yelm pocket gopher.

*Benefits of Inclusion—Colvin Ranch Grassland Reserve Program Management Plan*—We find there are minimal benefits to including Colvin Ranch in critical habitat. As discussed above, the primary effect of designating any particular area as critical habitat is

the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. Absent critical habitat designation in occupied areas, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence. Colvin Ranch is currently occupied by the Yelm pocket gopher; therefore a Federal action with potential adverse effects would trigger both a jeopardy analysis and an analysis of adverse modification, should critical habitat be designated. The benefits derived from including critical habitat for this property would most likely be derived from the potential Federal nexus resulting from the granting of Federal funds intended to manage the lands to benefit prairie associated species, such as the Yelm pocket gopher. However, we anticipate that section 7 consultation related to habitat management funding is not likely to provide much added benefit to the species, since the action being consulted on is itself intended to benefit prairie-associated species, including the Yelm pocket gopher.

Another benefit of including lands in a critical habitat designation is that it serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This can help focus and promote conservation efforts by other parties by identifying areas of high conservation value for the Yelm pocket gopher. Designation of critical habitat informs State agencies and local governments about areas that could be conserved under State laws or local ordinances. Any additional information about the needs of the Yelm pocket gopher or its habitat that reaches a wider audience can be of benefit to future conservation efforts.

In this case, however, the potential educational benefit of critical habitat is reduced due to the extensive community outreach that is already taking place. During the spring of 2013 alone, the Service hosted four prairie focused workshops and one public hearing specifically related to the proposed listing and designation of critical habitat. We also participated in two local prairie education events in Thurston County attended by nearly 1,000 people to publicize and educate local community members of the declining distributions and threats to the native flora and fauna found on the west-side prairies. One of these events is an annual event that was again hosted

in 2013 at Colvin Ranch, as it is each year. An important conservation measure gained through these outreach networks is our ability to educate the public about the historical role and current importance of prairies to our local community and economy. Included among the outreach measures is the distribution of educational material and the benefit derived from encouraging landowners to conduct prairie restoration activities on their own properties. In early 2013 the Service also held two workshops specifically to answer questions about the proposed listing of the Mazama pocket gopher and proposed critical habitat designation; one designed for our Federal, State, and County partners and one for private parties. Additional events are expected to occur in the future, and designation of Colvin Ranch as critical habitat is not expected to increase the number of such meetings or improve their outcomes. As Colvin Ranch is already serving as a center of educational information regarding the conservation of prairie habitats and their associated species, including the Yelm pocket gopher, any potential additional benefit stemming from the designation of critical habitat on this property is negligible.

The incremental benefit from designating critical habitat for the Yelm pocket gopher is further minimized due to the long-standing management planning efforts implemented on Colvin Ranch. The property owner has implemented management for the conservation of prairie habitat that provides a diversity of native prairie vegetation for the Yelm pocket gopher, and the land itself contains all of the essential physical or biological features to support the Yelm pocket gopher. The implementation of the GRP management plan for Colvin Ranch has established a track record of activity focused on enhancing prairie plant composition and structure. The implementation of Colvin Ranch GRP management plan provides greater protection to Yelm pocket gopher habitat than the designation of critical habitat since the management is intended to improve the habitat structure and composition of the several native prairie-dominated paddocks on Colvin Ranch (critical habitat designation does not require active management, only avoidance of destruction or adverse modification). In many cases, this work is accomplished without Federal funding, which highlights the landowner's willingness to continue the partnership.

Colvin Ranch has been an active working ranch in southern Thurston County since 1865. Originally over

3,000 ac (1,214 ha) in size, it is now approximately 1,000 ac (405 ha). Grazing systems have been modified dramatically during this time period. Colvin Ranch required an improvement to the infrastructure in order to accomplish the goal of improving native prairie composition on the ranch through intensive grazing, a practice of grazing greater numbers of cows on specific pastures (paddocks) for shorter time periods. Miles of fencing were erected to partition the fields into intensively managed paddocks, and in each paddock a water source was made available. The intensive management regime requires that livestock be moved often according to vegetation height or soil condition changes specified in the GRP management plan. The Colvin Ranch has been partitioned into 35 paddocks, with nearly 300 ac (120 ha) managed for the production of native prairie plant composition. Colvin Ranch is presently being managed for the benefit of prairie species, including the Yelm pocket gopher and its habitat; we have no information to suggest that the designation of critical habitat on this property would generate any appreciable added benefit to the already positive management efforts being implemented.

*Benefits of Exclusion—Colvin Ranch Grassland Reserve Program Management Plan*—The benefits of excluding this private property from designated critical habitat are relatively greater. We have developed a close partnership with the landowner and NRCS through regular coordination and outreach activities, using Colvin Ranch as an example of land uses that are compatible with prairie conservation. The GRP management plan provisions that will improve the conservation status of the Yelm pocket gopher include novel grazing practices which have resulted in the dramatic increase and maintenance of native prairie vegetation. Measures contained in the GRP management plan are consistent with recommendations from the Service for the conservation of the Yelm pocket gopher, and will afford benefits to the species and its habitat. The Service accrues a significant benefit from encouraging the development of such voluntary conservation agreements in cooperation with non-Federal partners. Because the majority of occurrences of endangered or threatened species are on non-Federal lands, partnerships with non-Federal landowners and land managers are vital to the conservation of listed species. Therefore, the Service is committed to maintaining and encouraging such partnerships through

the recognition of positive conservation contributions.

Excluding this private property from critical habitat designation will provide a significant benefit in terms of sustaining and enhancing the excellent partnership between the Service, NRCS, and the private landowner, as well as other partners who participate in prairie management decision-making, with positive consequences for conservation. The willingness of the private landowner to undertake conservation efforts for the benefit of the Yelm pocket gopher, and work with NRCS and the Service to develop and employ conservation actions, will continue to reinforce those conservation efforts and our partnership, which contribute toward achieving recovery of the Yelm pocket gopher. We consider this voluntary partnership in conservation vital to the development of our understanding of the status of the Yelm pocket gopher on agricultural lands in western Washington, and necessary for us to implement recovery actions such as habitat protection, restoration, and beneficial management actions for this species. In addition, exclusion will provide the landowner with relief from any potential additional regulatory burden associated with the designation of critical habitat, whether real or perceived, which we consider to be a significant benefit of exclusion in acknowledging the positive contributions of our proven conservation partners.

The designation of critical habitat could have an unintended negative effect on our relationship with non-Federal landowners due to the perceived imposition of redundant regulation. Designation of critical habitat on private lands that are managed for the benefit of prairie species, including the Yelm pocket gopher, could have a dampening effect on our continued ability to seek new partnerships with future participants including States, counties, local jurisdictions, conservation organizations, and private landowners. Together, these parties can implement various cooperative conservation actions (such as SHAs, HCPs, and other conservation plans, particularly large, regional conservation plans that involve numerous participants and/or address landscape-level conservation of species and habitats) that we would be unable to accomplish otherwise. This private landowner made a commitment almost a decade ago to develop and implement this GRP management plan, which has restored much of Rock Prairie to habitat favorable to the Yelm pocket gopher, and they have engaged with and

encouraged other parties, both public and private, to join in conservation partnerships. We believe Colvin Ranch would be less likely to encourage others to participate in similar grazing intensive ranching practices that restore habitat for Mazama pocket gophers if critical habitat were to be designated on this property. This private landowner serves as a model of voluntary conservation and may aid in fostering future voluntary conservation efforts by other parties in other locations for the benefit of listed species. Most endangered or threatened species do not occur on Federal lands. As the recovery of these species will therefore depend on the willingness of non-Federal landowners to partner with us to engage in conservation efforts, we consider the positive effect of excluding proven conservation partners from critical habitat to be a significant benefit of exclusion.

*Benefits of Exclusion Outweigh Benefits of Inclusion—Colvin Ranch Grassland Reserve Program Management Plan*—The Secretary has determined that the benefits of excluding the NRCS GRP managed prairies at Colvin Ranch from the designation of critical habitat for the Yelm pocket gopher outweigh the benefits of including these areas in critical habitat. The regulatory and informational benefits of including Colvin Ranch in critical habitat are minimal. Furthermore, any potential limited benefits of inclusion on the section 7 process are relatively unlikely to be realized, because a Federal nexus on these lands would rarely occur. If one were to occur, it would most likely be with the Service or NRCS, and their actions will be geared toward the conservation benefits of restoring and enhancing habitat specifically for the Yelm pocket gopher and other prairie-associated species. This type of management is focused on the maintenance of open, short statured vegetative conditions that the Yelm pocket gopher requires to persist. Since any action likely to be the subject of consultation under the adverse modification standard on this area would be focused on providing positive habitat benefits for the Yelm pocket gopher, we find it unlikely that critical habitat would result in any significant additional benefit to the species. Furthermore, the benefits of including this area in critical habitat are reduced since significant management actions are already underway to restore the prairie habitat in this area for the benefit of rare prairie-associated species, including the Yelm pocket gopher. In

this instance, the GRP management plan for Colvin Ranch contains provisions for protecting and restoring prairie habitat on Rock Prairie on which the Yelm pocket gopher relies and those provisions exceed the conservation benefits that would be afforded through section 7 consultation.

In contrast, the benefits derived from excluding Colvin Ranch are substantial. Excluding these lands will help us maintain and foster an important and successful partnership with this private landowner partner and NRCS. They have consistently supported stewardship of prairie habitat beneficial to the conservation of the Yelm pocket gopher and have consistently encouraged others to join in conservation partnerships as well. The exclusion of Colvin Ranch will serve as a positive conservation model, and provides encouragement for other private landowners to partner with the Service for the purpose of conserving listed species. The positive conservation benefits that may be realized through the maintenance of this existing partnership, as well as through the encouragement of future such partnerships, and the importance of developing such partnerships on non-Federal lands for the benefit of listed species, are such that we consider the positive effect of excluding proven conservation partners from critical habitat to be a significant benefit of exclusion. For these reasons, we have determined that the benefits of exclusion outweigh the benefits of inclusion in this case.

*Exclusion Will Not Result in the Extinction of the Species—Colvin Ranch Grassland Reserve Program Management Plan*—We have determined that exclusion of approximately 378 ac (153 ha) for the portion of the Rock Prairie critical habitat subunit managed under the GRP management plan implemented at Colvin Ranch will not result in extinction of the Yelm pocket gopher. Actions covered by the GRP management plan will not result in the extinction of the Yelm pocket gopher because the management implemented on Colvin Ranch has continually improved Yelm pocket gopher habitat during the time it has been practiced and management of the prairie paddocks will continue and be modified over time as new information is gained through systematically monitoring the results of their intensive grazing system. Based on the above discussion, the Secretary is exercising her discretion under section 4(b)(2) of the Act to exclude from this final critical habitat the 378 ac (153 ha) that are covered



under an NRCS Grassland Reserve Program Management Plan at Colvin Ranch identified in proposed Subunit 1–H.

### Required Determinations

#### *Regulatory Planning and Review* (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

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

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions,

including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term “significant economic impact” is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the Agency is not likely to adversely modify critical habitat. Therefore, under these circumstances only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Federal Agencies are not small entities and to this end, there is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the final critical habitat designation will not have a significant economic impact on a substantial number of small entities.

During the development of this final rule we reviewed and evaluated all information submitted during the comment period that may pertain to our consideration of the probable

incremental economic impacts of this critical habitat designation. Based on this information, we affirm our certification that this final critical habitat designation will not have a significant economic impact on a substantial number of small entities, and a regulatory flexibility analysis is not required.

#### *Energy Supply, Distribution, or Use—* *Executive Order 13211*

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute “a significant adverse effect” when compared to not taking the regulatory action under consideration. The economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with Mazama pocket gopher conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

#### *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.*), we make the following findings:

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or tribal governments” with two exceptions. It excludes “a condition of Federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or

otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments. The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Therefore, this rule does not place an enforceable duty upon

State, local, or Tribal governments, or on the private sector.

Consequently, we do not believe that the critical habitat designation will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

#### *Takings—Executive Order 12630*

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher in a takings implications assessment. Based on the best available information, the takings implications assessment concludes that this designation of critical habitat for the Olympia, Tenino, and Yelm subspecies of the Mazama pocket gopher does not pose significant takings implications.

#### *Federalism—Executive Order 13132*

In accordance with E.O. 13132 (Federalism), this final rule does not have significant Federalism effects. A Federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in Washington State. We received comments from WDFW and WDNR and have addressed them in the Summary of Comments and Recommendations section of the rule. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical and biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning

(because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) will be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

#### *Civil Justice Reform—Executive Order 12988*

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the applicable standards set forth in sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, the rule identifies the elements of physical or biological features essential to the conservation of the Olympia, Roy Prairie, Tenino, and Yelm subspecies of the Mazama pocket gopher, although final critical habitat is not designated for the Roy Prairie pocket gopher as a consequence of the exemption of DOD lands. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

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

This rule does not contain any collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). This rule does not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

#### *National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental

Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

#### *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), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. We determined that there are no tribal lands occupied by any of the four Thurston/Pierce subspecies of the Mazama pocket gopher at the time of listing that contain the physical or biological features essential to conservation of the species, and no tribal lands unoccupied by the four Thurston/Pierce subspecies of the Mazama pocket gopher that are essential for the conservation of the species. Therefore, we are not designating critical habitat for any subspecies of the Mazama pocket gopher on tribal lands.

#### References Cited

A complete list of all references cited is available on the Internet at <http://www.regulations.gov> and upon request from the Washington Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Authors

The primary authors of this rulemaking are the staff members of the Washington Fish and Wildlife Office.

#### 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; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. In § 17.95, amend paragraph (a) by adding entries for the Olympia pocket gopher (*Thomomys mazama pugetensis*), Tenino pocket gopher (*Thomomys mazama tumuli*), and Yelm pocket gopher (*Thomomys mazama yelmensis*), in the same order that the species appear in the table at § 17.11(h), to read as follows:

#### § 17.95 Critical habitat—fish and wildlife.

(a) *Mammals*.

\* \* \* \* \*

Olympia pocket gopher (*Thomomys mazama pugetensis*)

(1) Critical habitat for the Olympia pocket gopher in Thurston County, Washington, is depicted on the map below.

(2) Within this area, the primary constituent elements of the physical or biological features essential to the conservation of the Olympia pocket gopher consist of two components:

(i) Friable, loamy, and deep soils, some with relatively greater content of sand, gravel, or silt, all generally on slopes less than 15 percent in the following soil series or soil series complex:

- (A) Alderwood;
- (B) Cagey;
- (C) Everett;
- (D) Godfrey;
- (E) Indianola;
- (F) Kapowsin;
- (G) McKenna;
- (H) Nisqually;
- (I) Norma;
- (J) Spana;
- (K) Spanaway;
- (L) Spanaway-Nisqually complex; and
- (M) Yelm.

(ii) Areas equal to or larger than 50 ac (20 ha) in size that provide for breeding, foraging, and dispersal activities, found in the soil series listed in paragraph (2)(i) of this entry that have:

(A) Less than 10 percent woody vegetation cover;

(B) Vegetative cover suitable for foraging by gophers. Pocket gophers' diets include a wide variety of plant material, including leafy vegetation, succulent roots, shoots, tubers, and grasses. Forbs and grasses that Mazama pocket gophers eat are known to include, but are not limited to: *Achillea millefolium* (common yarrow), *Agoseris* spp. (agoseris), *Cirsium* spp. (thistle), *Bromus* spp. (brome), *Camassia* spp. (camas), *Collomia linearis* (tiny trumpet), *Epilobium* spp. (several willowherb spp.), *Eriophyllum lanatum* (woolly sunflower), *Gayophytum diffusum* (groundsmoke), *Hypochaeris radicata* (hairy cat's ear), *Lathyrus* spp. (peavine), *Lupinus* spp. (lupine), *Microsteris gracilis* (slender phlox), *Penstemon* spp. (penstemon), *Perideridia gairdneri* (Gairdner's yampah), *Phacelia heterophylla* (varileaf phacelia), *Polygonum douglasii* (knotweed), *Potentilla* spp. (cinquefoil), *Pteridium aquilinum* (bracken fern), *Taraxacum officinale* (common dandelion), *Trifolium* spp. (clover), and *Viola* spp. (violet); and

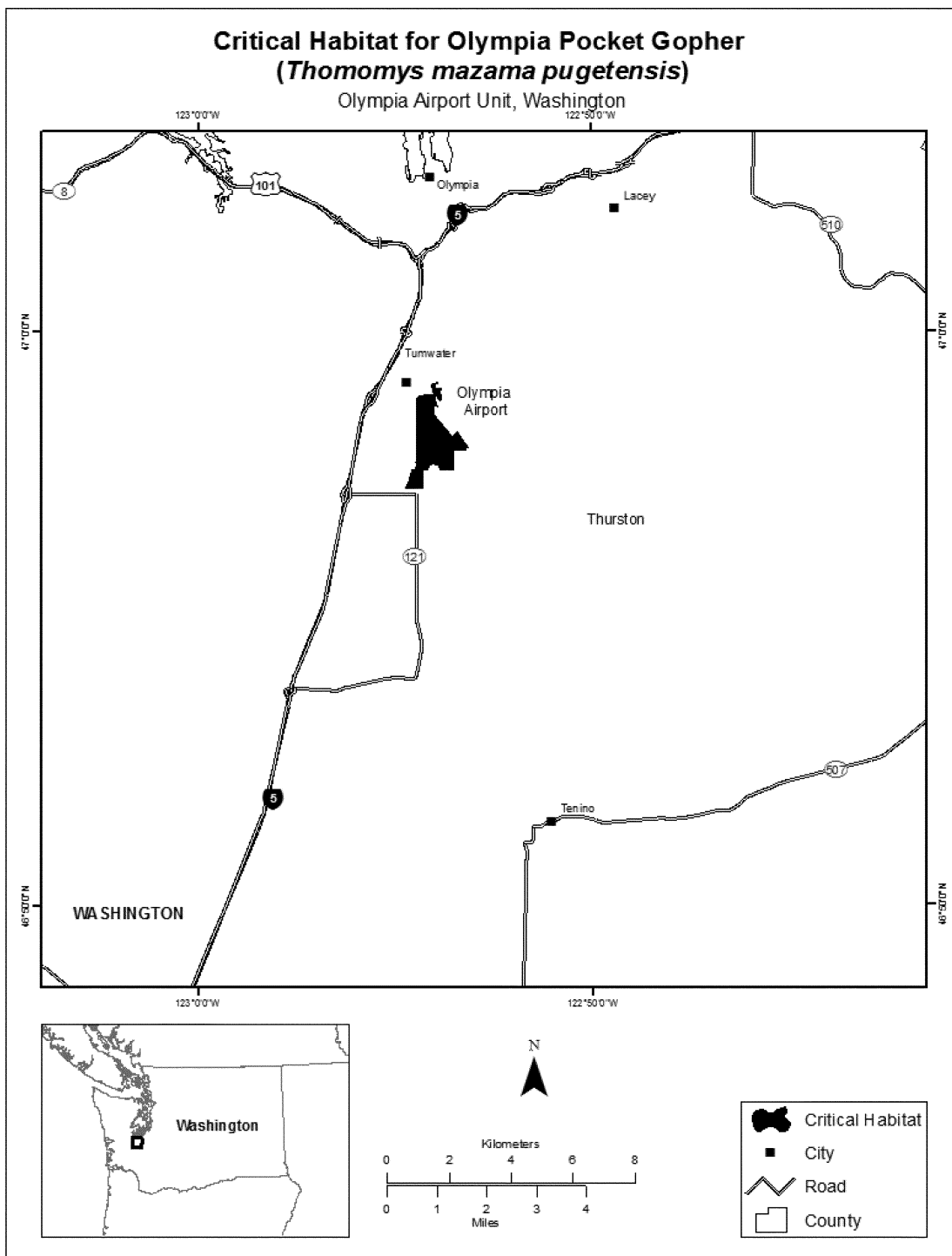
(C) Few, if any, barriers to dispersal. Barriers to dispersal may include, but are not limited to, forest edges, roads (paved and unpaved), abrupt elevation changes, Scot's broom thickets, highly cultivated lawns, inhospitable soil types or substrates, development and buildings, slopes greater than 35 percent, and open water.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, railroad tracks, and other paved areas) and the land on which they are located existing within the legal boundaries on May 9, 2014.

(4) *Critical habitat map unit*. Data layers defining map units were created on 2010 aerial photography from U.S. Department of Agriculture, National Agriculture Imagery Program base maps using ArcMap (Environmental Systems Research Institute, Inc.), a computer geographic information system (GIS) program. The map in this entry, as modified by any accompanying regulatory text, establishes the boundaries of the critical habitat designation. The coordinates or plot points or both on which the map is based are available to the public at the Service's Internet site at <http://www.fws.gov/wafwo/mpg.html>, at <http://www.regulations.gov> (Docket No. FWS-R1-ES-2013-0021), and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Olympia Airport Unit, Thurston County, Washington. Map follows:

BILLING CODE 4310-55-P



BILLING CODE 4310-55-C

Tenino Pocket Gopher (*Thomomys mazama tumuli*)

(1) Critical habitat for the Tenino pocket gopher in Thurston County, Washington, is depicted on the map below.

(2) Within this area, the primary constituent elements of the physical or biological features essential to the conservation of Tenino pocket gopher consist of two components:

(i) Friable, loamy, and deep soils, some with relatively greater content of

sand, gravel, or silt, all generally on slopes less than 15 percent in the following soil series or soil series complex:

- (A) Alderwood;
- (B) Cagey;
- (C) Everett;

(D) Indianola;  
 (E) Kapowsin;  
 (F) Nisqually;  
 (G) Norma;  
 (H) Spanaway;  
 (I) Spanaway-Nisqually complex; and  
 (J) Yelm.

(ii) Areas equal to or larger than 50 ac (20 ha) in size that provide for breeding, foraging, and dispersal activities, found in the soil series listed in paragraph (2)(i) of this entry that have:

(A) Less than 10 percent woody vegetation cover;

(B) Vegetative cover suitable for foraging by gophers. Pocket gophers' diets include a wide variety of plant material, including leafy vegetation, succulent roots, shoots, tubers, and grasses. Forbs and grasses that Mazama pocket gophers are known to eat include, but are not limited to: *Achillea millefolium* (common yarrow), *Agoseris* spp. (agoseris), *Cirsium* spp. (thistle), *Bromus* spp. (brome), *Camassia* spp. (camas), *Collomia linearis* (tiny trumpet), *Epilobium* spp. (several willowherb spp.), *Eriophyllum lanatum* (woolly sunflower), *Gayophytum*

*diffusum* (groundsmoke), *Hypochaeris radicata* (hairy cat's ear), *Lathyrus* spp. (peavine), *Lupinus* spp. (lupine), *Microsteris gracilis* (slender phlox), *Penstemon* spp. (penstemon), *Perideridia gairdneri* (Gairdner's yampah), *Phacelia heterophylla* (varileaf phacelia), *Polygonum douglasii* (knotweed), *Potentilla* spp. (cinquefoil), *Pteridium aquilinum* (bracken fern), *Taraxacum officinale* (common dandelion), *Trifolium* spp. (clover), and *Viola* spp. (violet); and

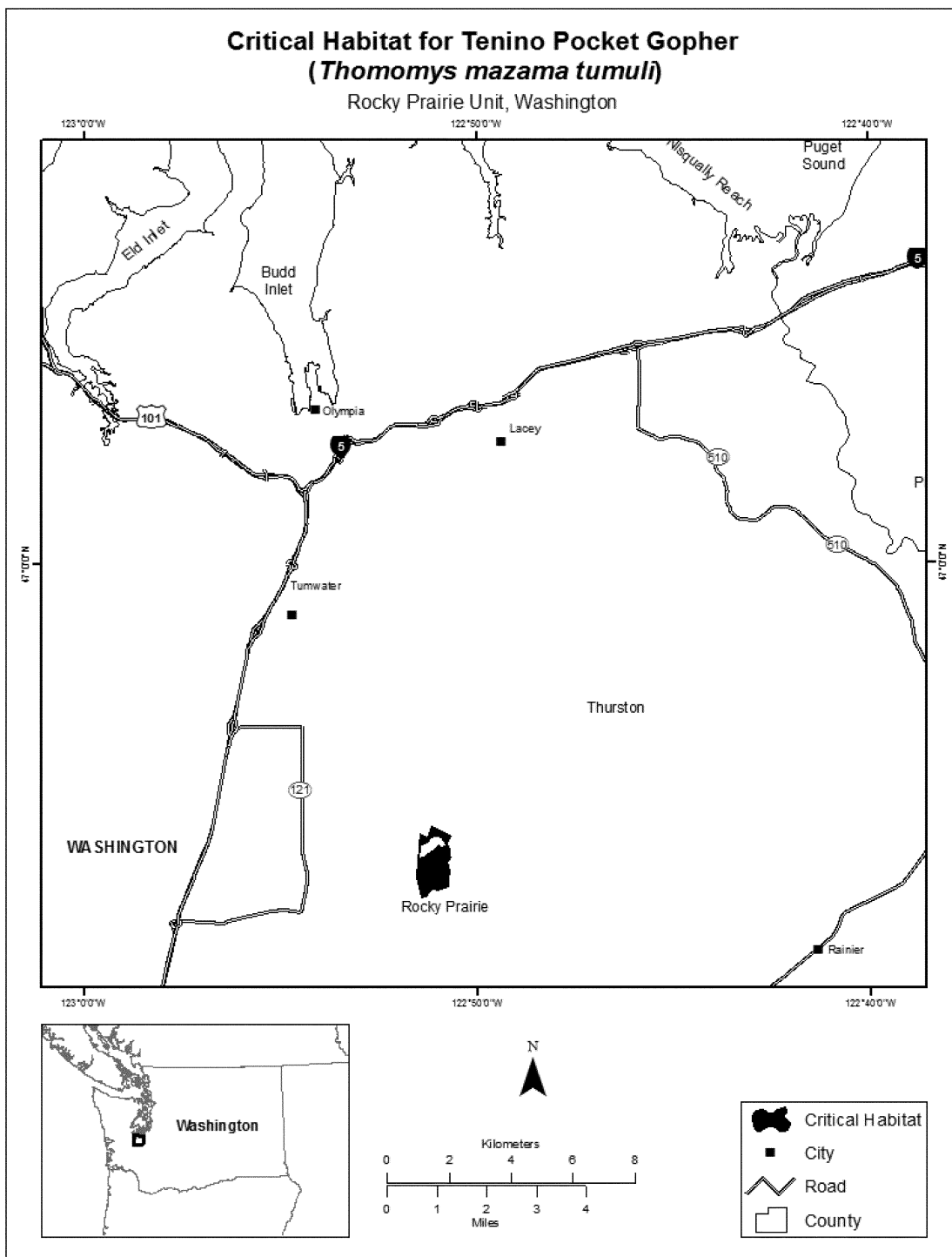
(C) Few, if any, barriers to dispersal. Barriers to dispersal may include, but are not limited to, forest edges, roads (paved and unpaved), abrupt elevation changes, Scot's broom thickets, highly cultivated lawns, inhospitable soil types or substrates, development and buildings, slopes greater than 35 percent, and open water.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on May 9, 2014.

(4) *Critical habitat map unit*. Data layers defining the map unit were created on 2010 aerial photography from U.S. Department of Agriculture, National Agriculture Imagery Program base maps using ArcMap (Environmental Systems Research Institute, Inc.), a computer geographic information system (GIS) program. The map in this entry establishes the boundaries of the critical habitat designation. The coordinates or plot points or both on which the map is based are available to the public at the Service's Internet site at <http://www.fws.gov/wafwo/>, at <http://www.regulations.gov> (Docket No. FWS-R1-ES-2013-0021), and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Rocky Prairie Unit, Thurston County, Washington. Map follows:

**BILLING CODE 4310-55-P**



**BILLING CODE 4310-55-C**

Yelm Pocket Gopher (*Thomomys mazama yelmensis*)

(1) Critical habitat for the Yelm pocket gopher in Thurston County, Washington, is depicted on the map below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Yelm pocket gopher consist of two components:

(i) Friable, loamy, and deep soils, some with relatively greater content of sand, gravel, or silt, all generally on slopes less than 15 percent in the following soil series or soils series complex:

- (A) Alderwood;
- (B) Cagey;
- (C) Everett;
- (D) Godfrey;
- (E) Indianola;
- (F) Kapowsin;

- (G) McKenna;
- (H) Nisqually;
- (I) Norma;
- (J) Spanaway;
- (K) Spanaway-Nisqually complex; and
- (L) Yelm.

(ii) Areas equal to or larger than 50 ac (20 ha) in size that provide for breeding, foraging, and dispersal activities, found in the soil series listed in paragraph (2)(i) of this entry that have:

(A) Less than 10 percent woody vegetation cover;

(B) Vegetative cover suitable for foraging by gophers. Pocket gophers' diets include a wide variety of plant material, including leafy vegetation, succulent roots, shoots, tubers, and grasses. Forbs and grasses that Mazama pocket gophers are known to eat include, but are not limited to: *Achillea millefolium* (common yarrow), *Agoseris* spp. (agoseris), *Cirsium* spp. (thistle), *Bromus* spp. (brome), *Camassia* spp. (camas), *Collomia linearis* (tiny trumpet), *Epilobium* spp. (several willowherb spp.), *Eriophyllum lanatum* (woolly sunflower), *Gayophytum diffusum* (groundsmoke), *Hypochaeris radicata* (hairy cat's ear), *Lathyrus* spp. (peavine), *Lupinus* spp. (lupine), *Microsteris gracilis* (slender phlox), *Penstemon* spp. (penstemon), *Perideridia gairdneri* (Gairdner's yampah), *Phacelia heterophylla* (varileaf

phacelia), *Polygonum douglasii* (knotweed), *Potentilla* spp. (cinquefoil), *Pteridium aquilinum* (bracken fern), *Taraxacum officinale* (common dandelion), *Trifolium* spp. (clover), and *Viola* spp. (violet); and

(C) Few, if any, barriers to dispersal. Barriers to dispersal may include, but are not limited to, forest edges, roads (paved and unpaved), abrupt elevation changes, Scot's broom thickets, highly cultivated lawns, inhospitable soil types or substrates, development and buildings, slopes greater than 35 percent, and open water.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on May 9, 2014.

(4) *Critical habitat map units.* Data layers defining the map units were created on 2010 aerial photography from U.S. Department of Agriculture,

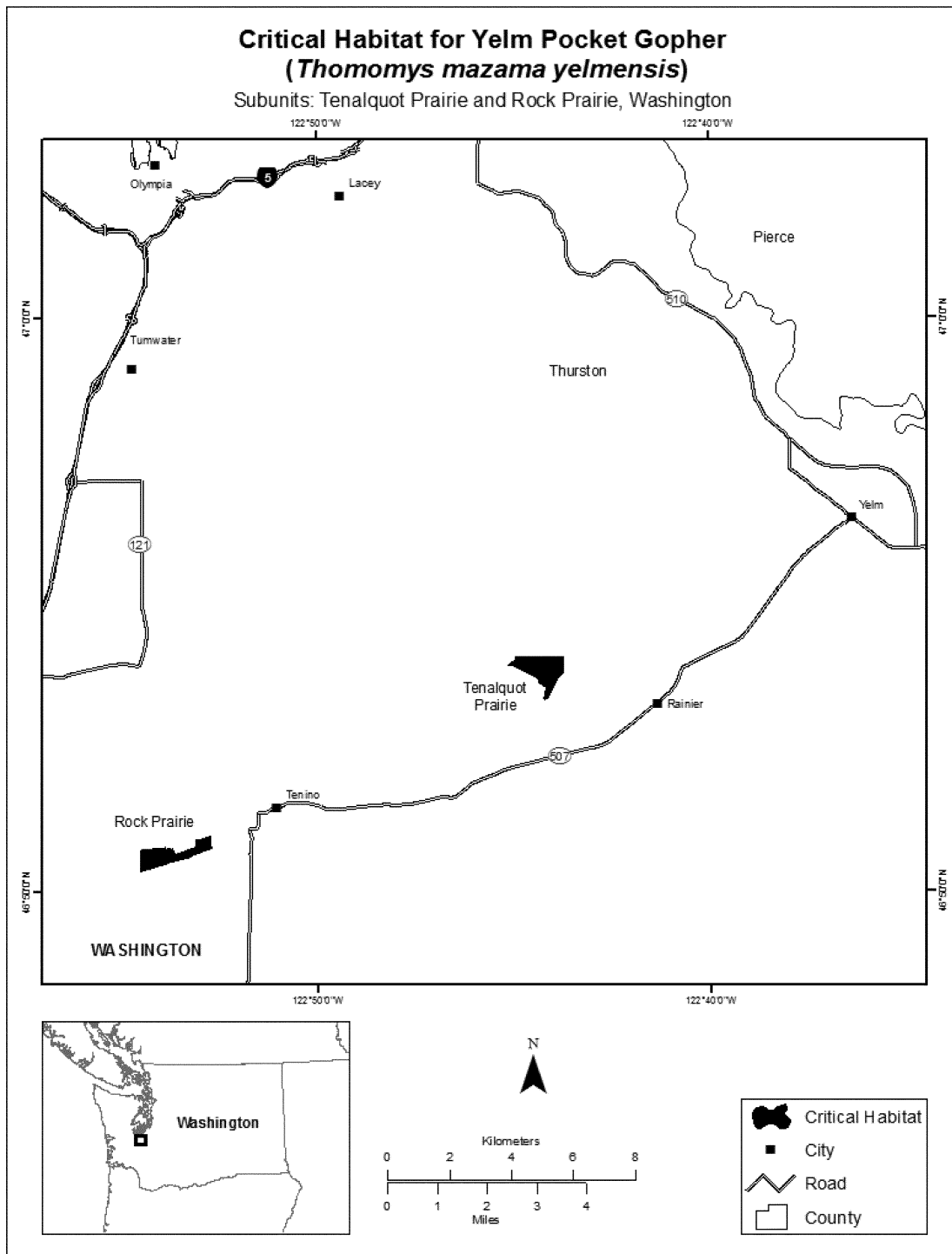
National Agriculture Imagery Program base maps using ArcMap (Environmental Systems Research Institute, Inc.), a computer geographic information system (GIS) program. The map in this entry establishes the boundaries of the critical habitat designation. The coordinates or plot points or both on which the map is based are available to the public at the Service's Internet site at <http://www.fws.gov/wafwo/>, at <http://www.regulations.gov> (Docket No. FWS-R1-ES-2013-0021), and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Tenalquot Prairie and Rock Prairie Subunits, Thurston County, Washington.

Map follows:

**BILLING CODE 4310-55-P**





\* \* \* \* \*

Dated: March 27, 2014.  
**Rachel Jacobson,**  
*Principal Deputy Assistant Secretary for Fish  
and Wildlife and Parks.*  
[FR Doc. 2014-07415 Filed 4-8-14; 8:45 am]  
**BILLING CODE 4310-55-C**