

responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that we believe would avoid resulting in the destruction or adverse modification of critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies to reinstitute consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action, or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect subsequently designated critical habitat, or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect *Delphinium bakeri* or *D. luteum* or their critical habitat will require consultation under section 7 of the Act. Activities on private, State, county, or lands under local jurisdictions that involve a Federal action such as funding (e.g., Federal Highway or Federal Emergency Management Act funding), or a permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act), will continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal and private lands that are not federally funded, authorized, or permitted, do not require section 7 consultation. Not all of the area within the boundaries of the mapped units provide primary constituent elements capable of supporting *Delphinium bakeri* or *D. luteum*. For instance, buildings, lawns, roads, parking lots, and other paved areas will not contain one or more of the

primary constituent elements. Federal actions limited to these areas, therefore, would not be subject to section 7 consultation unless the action would affect the species or primary constituent elements in adjacent designated critical habitat.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 of the Act ensures that actions funded, authorized, or carried out by Federal agencies are not likely to jeopardize the continued existence of a listed species, or result in the destruction or adverse modification of the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to "destroy or adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the recovery of the listed species.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may destroy or adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of *Delphinium bakeri* or *D. luteum* would be appreciably reduced. Within the units designated as critical habitat, this pertains only to those areas containing the primary constituent elements. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat for *Delphinium luteum* or *D. bakeri* include, but are not limited to:

(1) Ground disturbances which destroy or degrade primary constituent elements of the plant (e.g., clearing, tilling, grading, construction, road building, and mining);

(2) Activities which directly or indirectly affect *Delphinium bakeri* or *D. luteum* plants or underlying seed bank (e.g., herbicide application and heavy off-road vehicle use that could degrade the habitat on which the species depends, incompatible introductions of nonnative herbivores, and incompatible grazing during times

when *D. bakeri* or *D. luteum* is producing flowers or seeds);

(3) Activities which significantly degrade or destroy likely pollinator populations for *Delphinium bakeri* (e.g., pesticide applications that degrade or destroy large hymenoptera, especially *Bombus* spp. (bumblebees)) in proximity to the designated critical habitat for *D. bakeri*; and

(4) Activities that would appreciably change the rate of erosion of soils for *Delphinium luteum* such as slope stabilization; residential and commercial development, including road building and golf course installation; and vegetation manipulation, such as clearing and grubbing upslope from *D. luteum*.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232-4181 (telephone 503/231-6131; facsimile 503/231-6243).

Exclusions Under Section 4(b)(2)

Subsection 4(b)(2) of the Act allows us to exclude areas from the critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in extinction of the species. Following a review of available information from our files, public comments on the proposal, and the economic analysis of the proposed designation, we have determined that none of the lands proposed as critical habitat warranted exclusion from the final designation based on economic impacts or other relevant impacts pursuant to section 4(b)(2).

Relationship to Habitat Conservation Plans (HCPs) and Other Planning Efforts

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. Although take of listed plants is not generally prohibited by the Act, listed plant species may also be covered in an HCP for wildlife species. Currently, no