

HCPs exist that include *Delphinium bakeri* or *D. luteum* as covered species.

In the event that future HCPs covering *Delphinium bakeri* or *D. luteum* are developed within the boundaries of the designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of these species. This will be accomplished by either directing development and habitat modification to nonessential areas, or appropriately modifying activities within essential habitat areas so that such activities will not adversely modify the primary constituent elements. The HCP development process would provide an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by *D. bakeri* or *D. luteum*. The process would also enable us to conduct detailed evaluations of the importance of such lands to the long-term survival and conservation of the species in the context of constructing a biologically configured system of interlinked habitat blocks configured to promote the conservation of the species through application of the principles of conservation biology.

We will provide technical assistance and work closely with applicants throughout the development of any future HCPs to identify lands essential for the long-term conservation of *Delphinium bakeri* or *D. luteum*, and appropriate management for those lands. Furthermore, we will complete intra-Service consultation on our issuance of section 10(a)(1)(B) permits for these HCPs to ensure permit issuance will not destroy or adversely modify critical habitat.

#### Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned. Following the publication of the proposed critical habitat designation, we conducted a draft economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for review on November 1, 2002 (67 FR 66599). We accepted

public comment on the draft analysis until December 2, 2002.

Our economic analysis evaluated the potential future effects associated with the section 7 consultation requirements of *Delphinium bakeri* and *D. luteum* as endangered species under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. To quantify the proportion of total potential economic impacts attributable to the critical habitat designation, the analysis evaluated a "without section 7" scenario and compared it to a "with section 7" scenario. The "without section 7" baseline represented the level of protection currently afforded to the species under the Act if section 7 protective measures were absent, and includes protections afforded by other Federal, State, and local laws such as the California Environmental Quality Act. The "with section 7" scenario identifies land-use activities likely to involve a Federal nexus that may affect the species or its designated critical habitat, and that therefore have the potential to be subject to future consultations under section 7 of the Act.

Upon identifying section 7 impacts, the analysis proceeds to consider the subset of impacts that can be attributed exclusively to the critical habitat designation. The upper-bound estimate includes both jeopardy and critical habitat impacts. The subset of section 7 impacts likely to be affected solely by the designation of critical habitat represents the lower-bound estimate of the analysis. The categories of potential costs and benefits considered in the analysis included: (1) Conducting section 7 consultations associated with the listing or with the critical habitat; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat; and (4) potential offsetting benefits associated with critical habitat including educational benefits. Our economic analysis recognizes that there may be costs from delays associated with reinitiating completed consultations after the critical habitat designation is made final.

The analysis estimated that this critical habitat designation will result in the need for one formal and two informal section 7 consultations. The formal consultation will be required for a State highway culvert repair project, while the informal consultations will result from an estimated two flood and erosion control projects on private land that will involve a Federal nexus. The

total administrative cost of these consultations is estimated at \$18,000, of which \$7,000 is attributable to this critical habitat designation as opposed to other section 7 requirements pertaining to the listing of the species. No project modifications are expected to occur as a result of these consultations.

Total costs resulting from technical assistance, formal and informal consultations, development of biological assessments, and project modifications due to listing and critical habitat designation are presented in the economic analysis, according to land use activities and individual critical habitat units. Costs to third parties result from technical assistance, consultations, and development of a biological assessment. Costs to Federal action agencies include those incurred from consultations. Costs to the Service result from technical assistance and consultations.

We received a few comments on the draft economic analysis of the proposed determination. We considered these comments, and our response to them is included as part of the preamble of this rule (see Summary of Comments and Recommendations), as well as in the final Addendum to the Economic Analysis. As a result of the comments received, a correction was made in relation to a statement in the draft economic analysis that private landowners should incur no additional costs as a result of section 7 requirements. In fact, certain private landowners participating in flood control and revegetation projects that have a Federal nexus are expected to pay for costs associated with an informal consultation with the Service. The final Addendum to the Economic Analysis discusses the resulting correction, and the effects were included in the description (above) of costs associated with expected informal consultations. The final Addendum to the Economic Analysis also provides explanations to more clearly explain and justify the methodology used, based on comments received concerning the methodology. There were no other revisions or additions to the draft economic analysis.

A copy of the final economic analysis and supporting documents are included in our administrative record and may be obtained by contacting the Sacramento Fish and Wildlife Office (see ADDRESSES section). Copies of the final economic analysis also are available on the Internet at <http://pacific.fws.gov/news/>.

#### Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices