

management is in place, qualifies an area as meeting this part of the definition of critical habitat. This interpretation ignores the question of whether the special management or protections are or are not required. Under this interpretation, any area on which an action needs to be taken to provide special management consideration or protection for a species constitutes critical habitat for that species. We believe that this interpretation of section 3(5)(A)(i) is incorrect because it essentially reads the special management clause out of the definition. Thus, under this interpretation, critical habitat would include all areas within the range of the species on which are found features essential to the conservation of the species, notwithstanding the additional requirement in the language of the Act. In contrast, our interpretation of the language, as described above, gives independent meaning to the special management clause because there will be some areas with features essential to the conservation of the species that will not require special management because they already have such management.

#### La Cantera Habitat Conservation Plan

Section 10(a) of the Act authorizes the Service to issue to non-Federal entities a permit for the incidental take of endangered or threatened species. This permit allows a non-Federal landowner to proceed with an activity that is legal in all other respects, but results in the incidental taking of a listed species (*i.e.*, take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). The Act specifies that an application for an incidental take permit must be accompanied by a conservation plan. A permit may not be issued unless the conservation plan submitted to the Service meets certain requirements, as provided in section 10(a)(2)(A) of the Act. For example, the conservation plan must specify what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps. After an opportunity for public comment on the conservation plan, the Service may issue the permit provided we determine that certain conditions, as specified in section 10(a)(2)(B), are met. For instance, the Service must find that the taking will be incidental, and the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

In our proposed rule for designating critical habitat for the karst invertebrates, we considered the lands covered by the La Cantera Habitat

Conservation Plan. (A notice of availability for the HCP was published on July 2, 2001, opening a 30-day period for public comment. The section 10 permit was issued on October 31, 2001.) The goals of the HCP are to minimize and mitigate for the potential negative effects of constructing and operating commercial, light industrial, recreational, and residential development near and adjacent to currently occupied habitat of the endangered karst invertebrates, and to contribute to conservation of the covered species and other listed and non-listed cave or karst fauna. To accomplish these goals, the plan requires the following special management and protection:

- Routine inspections will be conducted and will include, but may not be limited to: Signs of vandalism and unauthorized entry; damage to cave gates, fencing, and/or signs; damage to vegetation; presence of fire ants or other nonnative species; dumping; and any other conditions that could affect the listed species or the karst ecosystem. Native vegetation will be maintained or improved within the karst management area. A baseline survey will be conducted and repeated every 10 years thereafter.

- A fire ant control and treatment program will be implemented. Boiling water will be used within 50 m of the cave footprint. Boiling water and/or chemical bait will be used between 50 and 150 m. Baits may be "broadcast" more than 150 m from a cave footprint according to protocols outlined in the HCP. The control and monitoring of fire ants will occur at least twice a year over the entire karst management area. Documentation of mounds will also occur during routine inspections. An increase in treatment will occur if mounds exceed stated numbers in the HCP.

- Cave security fences will be installed around all caves according to specifications outlined in the HCP, and some caves will have cave gates installed. Signs will be placed along all fences to further minimize the potential for vandalism and unauthorized access to the management areas. These areas will have officially designated points of access or entry. Entry gates will remain locked at all times when unattended. Cave security fences and their signs and cave gates will be maintained and routinely inspected; barbed-wire fences will be inspected at least every 6 months. Necessary repairs to fencing, gates, and signs will be initiated within one week if any of these are found to have incurred damage.

- In addition, the plan requires the control of impacts from increasing population densities of white-tailed deer and other mammals on surface plant and animal communities. Cattle, other domestic and/or exotic livestock, and pets will not be allowed in the karst management areas unless approved by the Service. No fertilizers, herbicides, or pesticides will be used within the management areas unless approved by the Service. No new roads, new utilities, or other development, including stormwater or wastewater lines, treatment ponds, structures or other facilities, are allowed within the karst management area boundaries unless allowed for under the HCP or approved by the Service. Motorized vehicles will be prohibited from the management areas at all times, unless utilized to facilitate operation, monitoring, and maintenance. No public access, including hiking, biking, and horseback riding, will be allowed unless approved by the Service. Karst management and monitoring plans will be developed for each management area and will include monitoring of the baseline conditions (biological and physical conditions of the area prior to the other scheduled activities), surface and subsurface animal species, and surface vegetation, as well as measurement of cave and surface climates.

- An adaptive management strategy will be used in the implementation of the plan. On the basis of this strategy, if monitoring or other information indicates that the goals or requirements of the HCP are not being met, then adjustments will be made as outlined in the HCP.

As explained in the proposed rule (67 FR 55064), based on our evaluation of the adequacy of special management considerations and protection provided by the La Cantera HCP, and in light of the definition of critical habitat in section 3(5)(A) of the Act, we did not include the five karst management areas established by La Cantera as part of the proposed designation of critical habitat. These areas were established as a requirement of their section 10(a)(1)(B) permit, which is titled "Environmental Assessment and Habitat Conservation Plan for Issuance of an Endangered Species Act Section 10(a)(1)(B) Permit for the Incidental Take of Two Troglitic Ground Beetles (*Rhadine exilis* and *Rhadine infernalis*) and *Madia* Cave Meshweaver (*Cicurina madia*) During the Construction and Operation of Commercial Development on the Approximately 1,000-Acre La Cantera Property, San Antonio, Bexar County, Texas, dated October 11, 2001." These five karst management areas