

these areas do not meet the definition of critical habitat as stated in section 3(5)(A)(i) of the Act.

#### *Exclusions Under Section 4(b)(2)*

As described above, based on our evaluation of the adequacy of special management and protection that is provided in current management plans involving the karst invertebrates, and in accordance with section 3(5)(A)(i) of the Act, we have not included the areas covered by the La Cantera HCP, or Units 1a, 1b, 1c, 1d, 10 and 11 as proposed, in this final designation of critical habitat. To the extent that special management considerations and protection may be required for these areas, and they therefore qualify as critical habitat according to section 3(5)(A)(i), they are properly excluded from designation under section 4(b)(2) of the Act, based on the following analysis.

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific 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. We believe exclusion under section 4(b)(2) of the Act applies to the areas encompassed in the special management and protection plans for the La Cantera HCP, GCSNA, and Camp Bullis.

#### **La Cantera HCP**

The principal benefit of any designated critical habitat is that Federal activities that may affect the habitat require consultation under section 7(a)(2) of the Act. Consultation is designed to ensure that adequate protection is provided to avoid adverse modification or destruction of critical habitat resulting from an action authorized, funded, or carried out by a Federal agency. Where HCPs are in place and lands are covered by a section 10(a)(1)(B) permit, our experience has shown that any benefit of designation of such lands as critical habitat is small to none when the areas concerned are occupied by the species, because the occupied areas already are subject to section 7 consultation based on the "jeopardy standard." Permitted HCPs are designed to ensure the long-term survival of listed species within the area covered by the permit. Under an HCP,

an area that might be designated as critical habitat already will be protected in reserves and other conservation lands by the terms of the HCP and its implementation agreements. The HCP and implementation agreements include management measures and protections for conservation lands that are crafted to protect, restore, and enhance their value as habitat for covered species.

In addition, a section 10(a)(1)(B) permit issued by us as a result of an HCP application must itself undergo consultation. While this consultation may not look specifically at the issue of the likelihood of adverse modification or destruction of critical habitat, it will look at the very similar concept of jeopardy to the listed species in the plan area. Since HCPs address land use within the plan boundaries, habitat issues within the plan boundaries will have been thoroughly addressed in the HCP and the consultation on the HCP.

The development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species recovery and the creation of innovative solutions to conserve species while allowing for development. The educational benefits of critical habitat, including informing the public of areas that are important for the long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many HCPs. For these reasons we believe that designation of critical habitat has little or no benefit in areas covered by HCPs.

The benefits of excluding HCPs from designation as critical habitat are significant. Benefits of excluding HCPs include relieving landowners, communities, and counties of any additional minor regulatory review that might be imposed by critical habitat. Many HCPs take considerable time—sometimes years—to develop and, upon completion, become the basis for regional conservation plans that are consistent with the conservation of covered species. Many of these plans benefit many species, both listed and unlisted. Imposing an additional regulatory review after HCP completion may jeopardize conservation efforts and partnerships in many areas and could be viewed as a disincentive to those developing HCPs. Excluding HCPs provides us with an opportunity to streamline regulatory compliance and confirms regulatory assurances for HCP participants.

Another benefit of excluding HCPs is that exclusion encourages the continued development of partnerships with HCP participants, including States, local governments, conservation organizations, and private landowners, that together can implement conservation actions that we would be unable to accomplish alone. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships, and, we believe, set the stage for more effective conservation actions in the future.

Specifically, for the lands covered by the La Cantera HCP, in a letter dated April 18, 2002, Mr. Alan Glen, representing the La Cantera Development Company, noted the following. "The significant mitigation measures and conservation benefits provided by the La Cantera HCP would likely not have been realized through a section 7 consultation. As a result, it is highly unlikely that the inclusion of the areas covered by the HCP in a designation of critical habitat would provide any benefit for the listed species. In contrast, the benefits of excluding the La Cantera HCP from the designation are expected to be significant for many of the same reasons identified in the Quino analysis set forth above. La Cantera and the Service worked together for years to produce the first HCP covering any of the listed Bexar County invertebrate species, and as the Service has acknowledged, the result is a model that can be followed throughout the region. The imposition of even a minor regulatory burden that will not yield substantial benefits for the species may hinder the orderly and effective implementation of the La Cantera HCP and, perhaps more importantly, discourage similar efforts to conserve the listed species by other parties in the future."

We have weighed the small benefit, if any, of including the lands in the HCP against the benefits of exclusion, which include the benefit of relieving both the property owners and the Service of the extra time and funds associated with the additional layer of approvals and regulation, including reinitiation of the intra-Service section 7 consultation, together with the encouragement of conservation partnerships. We have determined that the benefit of excluding the land covered by the La Cantera HCP from designation as critical habitat outweighs the benefits of including the areas, so we have excluded them from designation on the basis of section 4(b)(2) of the Act.