

otherwise. If lands within HCP plan areas are designated as critical habitat, it would likely have a chilling effect on our ability to establish new partnerships to develop HCPs, particularly large, regional HCPs that involve numerous participants and address landscape-level conservation of species and habitats. By considering excluding these lands, we preserve our current partnerships and, we believe, set the stage for additional conservation actions in the future.

In addition to the conservation benefits HCPs provide to covered species within the plan areas, many of these HCPs, particularly large, regional HCPs, also address landscape-level conservation of native habitats. The Natural Communities Conservation Planning Act of 1991 (NCCP) provides a framework for conserving listed and other sensitive species at a regional or ecosystem scale. The pilot program of the NCCP focuses on conservation of native coastal sage scrub communities throughout a 6,000-square-mile area in southern California that includes parts of Los Angeles, Orange, San Diego, Riverside, and San Bernardino counties. The NCCP program complements the objectives of regional HCP planning efforts. In southern California, several regional conservation planning efforts that incorporate the dual objectives of NCCP/HCP have already been approved.

In southwestern San Diego County, the Multiple Species Conservation Program (MSCP) effort encompasses more than 236,000 ha (582,000 ac) and reflects the potential participation of more than 12 local jurisdictions. The MSCP provides for the establishment over the permit term of approximately 69,573 ha (171,000 ac) of preserve areas to provide conservation benefits for 85 federally listed and sensitive species. Under the broad umbrella of the MSCP, each participating jurisdiction prepares a Subarea Plan that complements the goals of the MSCP. Each Subarea Plan is consulted on under section 7 of the Act to ensure the Subarea Plans are consistent with the aims of the MSCP.

The MSCP provides for avoidance of impacts to vernal pool habitat for the San Diego fairy shrimp both within and outside of existing and targeted reserve areas. In addition, the incidental take permits issued to the City and County of San Diego under the MSCP limits take of San Diego fairy shrimp to areas outside of jurisdictional waters of the United States, as that term was understood at the time the permits were issued prior to the SWANCC decision. In other words, take of San Diego fairy shrimp under the approved subarea plans is limited to situations where the

species occurs outside of its natural vernal pool habitat. The subarea plans also contemplated individualized review of projects impacting vernal pool habitat of the San Diego fairy shrimp under Section 404 of the Clean Water Act and Section 7 of the ESA to insure compliance with the Environmental Protection Agency Clean Water Act, 404(b)(1) guidelines and the Federal policy of "no net loss of wetland function and values"; however, that review may not occur because of the intervening SWANCC decision. Even without that additional Section 7 review, however, the commitment by the City and County to avoid impacts to vernal pool habitat both within and outside reserve areas to the maximum extent practicable remains in place. The plans also commit the jurisdictions to affirmatively monitor and adaptively manage vernal pool habitats and species. Those measures combined with the restrictive incidental take authorized under the City and County incidental take permits, will ensure the conservation of the San Diego fairy shrimp and its vernal pool habitat within the approved MSCP subarea plan areas.

The Central-Coastal NCCP/HCP in Orange County was developed in cooperation with numerous State and local jurisdictions, agencies, and participating landowners including the cities of Anaheim, Costa Mesa, Irvine, Orange, and San Juan Capistrano; Southern California Edison, the Transportation Corridor Agencies, The Irvine Company, California Department of Parks and Recreation, Metropolitan Water District of Southern California, and the County of Orange. Approved in 1996, the Central-Coastal NCCP/HCP provides for the establishment of approximately 15,677 ha (38,738 ac) of reserve lands for 39 Federal or State listed and unlisted and sensitive species.

There are three known locations of vernal pools occupied by San Diego fairy shrimp within the Central-Coastal NCCP/HCP boundaries: Fairview Regional Park, Newport-Banning Ranch, and the North Ranch Policy Plan Area. The vernal pool complex at Fairview Regional park occurs within a city that is not a participating jurisdiction under the Central-Coastal NCCP/HCP. The Newport Banning Ranch is designated as an "existing use" habitat area in the Central-Coastal NCCP/HCP and is not covered for the take of any federally listed species, including the San Diego fairy shrimp. San Diego fairy shrimp known from the North Ranch Policy Plan area occur in a non-degraded, natural vernal pool. There is currently a

Nature Conservancy conservation easement over the portion of the North Ranch Policy Plan area containing vernal pool habitat and a management endowment for the easement, but a conservation management plan has not yet been completed for the area. Under the Central-Coastal NCCP/HCP, SDFS occurring within these three vernal pool areas are not covered by the plan.

Several regional NCCP/HCP efforts are currently under way in southern California that have not yet been completed but which, upon approval, should provide conservation benefits to the San Diego fairy shrimp.

The Multiple Habitat Conservation Program (MHCP) in northwestern San Diego County encompasses approximately 45,300 ha (175 mi.²) within the study area, including vernal pool habitat. Currently, seven cities are participating in the development of the MHCP.

The proposed Southern Subregion NCCP/HCP in Orange County encompasses approximately 51,800 ha (200 mi.²) in its planning area, including vernal pool habitat for the San Diego fairy shrimp. Jurisdictions and private landowners within the study area include the cities of Rancho Santa Margarita, Mission Viejo, San Juan Capistrano, San Clemente, and Rancho Mission Viejo.

In general, we find that the benefits of critical habitat designation on lands within approved HCPs that cover those species are small, while the benefits of excluding such lands from designation of critical habitat are substantial. After weighing the small benefits of including these lands against the much greater benefits derived from exclusion, including encouragement for the pursuit of additional conservation partnerships, we have considered, but have not proposed critical habitat on reserve, preserve, or other lands targeted for conservation within the boundaries of approved HCPs that include the San Diego fairy shrimp as a covered species.

In the event that future HCPs covering the San Diego fairy shrimp are developed within the boundaries of 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 the species. We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the San Diego fairy shrimp and appropriate management for those lands. The take minimization and mitigation measures provided under these HCPs are expected to protect the