

unless the best available scientific and commercial data demonstrate that unoccupied areas are essential for the conservation of the species.

Private lands previously designated were re-evaluated based on new survey information, and the results of a habitat modeling exercise. Refer to the Criteria Used to Identify Critical Habitat section for further discussion.

Application of Section 3(5)(A) and Exclusions Under Section 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection. As such, for an area to be designated as critical habitat for a species it must meet both provisions of the definition. In those cases where an area does not provide those physical and biological features essential to the conservation of the species, it has been our policy to not include these specific areas in designated critical habitat. Likewise, if we believe, based on an analysis, that an area determined to be biologically essential has an adequate management plan that covers the species, then special management and protection are already being provided, and those areas do not meet the second provision of the definition and are also not proposed as critical habitat.

We consider a current plan to provide adequate management or protection if it meets three criteria: (1) The plan is complete and provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the conservation management strategies and actions will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, and have an implementation schedule or adequate funding for implementing the management plan); and (3) the plan provides assurances the conservation strategies and measures will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives).

Further, section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data available after taking into consideration

the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. Consequently, we may exclude an area from critical habitat based on economic impacts, or other relevant impacts such as preservation of conservation partnerships or military readiness considerations, if we determine that the benefits of excluding an area from critical habitat outweigh the benefits of including the area in critical habitat, provided that exclusion will not result in the extinction of the species.

In summary, we use both the definition in section 3(5)(A) and the provisions of section 4(b)(2) of the Act to evaluate those specific areas that are proposed for designation as critical habitat as well as for those areas that are subsequently finalized (*i.e.*, designated as critical habitat). On that basis, it has been our policy to not include in proposed critical habitat, or exclude from designated critical habitat, those areas: (1) Not biologically essential to the conservation of a species, (2) covered by a legally operative individual (project-specific) or regional HCP that covers the subject species, (3) covered by a complete and approved INRMP for specific DoD installations, or (4) covered by an adequate management plan or agreement that protects the primary constituent elements of the habitat.

As discussed further below, for this proposal of critical habitat for the gnatcatcher, we have considered, but have not proposed as critical habitat the mission-essential training areas on Marine Corps Base, Camp Pendleton (Camp Pendleton); MCAS, Miramar; reserve lands in the San Diego Multiple Species Conservation Program and the Orange County Central-Coastal NCCP/HCP; Tribal lands of the Pala Band of Mission Indians; and lands covered by individual completed and approved HCPs that cover the gnatcatcher. Some lands managed by the DoD, including nontraining areas Camp Pendleton and Naval Weapons Station Seal Beach, Detachment Fallbrook (Fallbrook Naval Weapons Station), have been proposed as critical habitat for the gnatcatcher.

Relationship to HCPs

Individual HCPs

In general, we believe that individual HCPs in which the reserves have been established that protect the primary constituent elements of critical habitat of the subject species, establish areas that may be biologically essential to the covered species, but which do not require special management and protections because their value for conservation has been established and perpetuated by the existing protective measures and actions from the provisions of the HCP. Consequently, reserve areas defined in these individual HCPs do not meet the definition of critical habitat and are therefore not being proposed as critical habitat. Further, to the extent that these areas do meet the definition of critical habitat as defined in 3(5)(A)(i)(II), it is additionally appropriate to exclude these areas from critical habitat pursuant to the "other relevant impacts" provisions of section 4(b)(2).

Numerous individual HCPs that provide incidental take coverage for the coastal California gnatcatcher have been approved and implemented in Los Angeles, Orange, San Diego, and Riverside Counties. Completed individual HCPs include: Bennett Property, Meadowlark Estates, Fieldstone, and Poway Subarea Plan in San Diego County; Coyote Hills East and Shell Oil in Orange County; Ocean Trails in Los Angeles County; and Lake Mathews, North Peak, Railroad Canyon, and Rancho Bella Vista in Riverside County. Collectively, these HCPs have resulted in the protection of 3,935 ha (9,725 ac) of habitat for the coastal California gnatcatcher.

Regional HCPs

We have considered, but have not proposed as critical habitat preserve, reserve or other conservation lands and lands targeted for conservation within the boundaries of approved HCP based on the Secretary of the Interior's authority under section 4(b)(2) of the Act as we believe the benefits of excluding these lands outweigh the benefits of including them.

Development of an HCP is a prerequisite for the issuance of an incidental take permit pursuant to section 10(a)(1)(B) of the Act. HCPs vary in size and may provide for incidental take coverage and conservation management for one or many federally listed species. Additionally, more than one applicant may participate in the development and implementation of an HCP. In the case of the coastal California gnatcatcher, the HCPs are very complex,