

appropriate management for those lands. The take minimization and mitigation measures provided under these HCPs will be designed to protect the essential lands that are proposed as critical habitat in this rule. If an HCP that covers the coastal California gnatcatcher is ultimately approved, the Service can reassess the critical habitat boundaries in light of the HCP. The Service intends to undertake this review when the HCP is approved. However, funding constraints may influence the timing of such a review.

#### **Tribal Lands and Exclusions Under 4(b)(2) of the Act**

We have considered, but have not proposed as critical habitat Tribal lands of the Pala Band of Mission Indians. Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act" (June 5, 1997), provides that critical habitat shall not be designated in an area that may impact Tribal trust resources unless it is determined essential to conserve a listed species.

Tribal lands we considered, but have not proposed as critical habitat for the coastal California gnatcatcher have been determined to be essential to the conservation of the species. No management plans are currently in place on these Tribal lands to address the conservation needs of the coastal California gnatcatcher. However, projects on Tribal lands with a Federal nexus (e.g., funded, authorized, or carried out by Federal agencies such as the Bureau of Indian Affairs) will trigger a consultation under section 7 of the Act if the action may affect the coastal California gnatcatcher. Through section 7 consultation, we would ensure that actions undertaken, authorized, or permitted by a Federal agency will not jeopardize the continued existence of the species.

##### **(1) Benefits of Inclusion**

The primary benefit of any critical habitat with regard to activities that require consultation pursuant to section 7 of the Act is to ensure that the activity will not destroy or adversely modify designated critical habitat. The educational benefits of critical habitat include informing Tribes of areas that are important to the conservation of listed species.

##### **(2) Benefits of Exclusion**

The benefits of excluding Tribal lands from critical habitat designation include relieving Tribes of any additional regulatory burden that may result solely from such designation. Designation of

critical habitat may undermine future conservation efforts and partnerships and discourage Tribes from developing species and habitat management plans. Designation of critical habitat could also be viewed as a disincentive to Tribes contemplating developing HCPs in the future. By excluding these lands, we preserve our current partnerships and set the stage for additional conservation actions in the future.

After weighing the benefits of critical habitat designation on these lands against the benefits of excluding them, we find the benefits of excluding the Pala Band of Mission Indians' lands from the designation of critical habitat outweigh the benefits of including those areas as critical habitat. We also find that the exclusion of these lands will not lead to the extinction of the gnatcatcher.

#### **Relationship to Lands Managed by DoD Under Section 3(5)(A) Definition**

##### ***Marine Corps Air Station, Miramar***

The Sikes Act requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. We believe that bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat discussed above, as the lands do not require special management. Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP is complete and provide a conservation benefit to the species; (2) the plan provides assurances that the conservation management strategies will be implemented; and (3) the plan provides assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions (adaptive management) as necessary. If all of these

criteria are met, then the lands covered under the plan would not meet the second provision of the definition of critical habitat pursuant to section 3(5)(A)(i)(II) and consequently not proposed as critical habitat for the covered species.

MCAS, Miramar has completed a final INRMP that provides for adequate conservation management and protection for the gnatcatcher. We have reviewed this plan and have determined that it addresses and meets the three criteria discussed above. Therefore, lands on MCAS, Miramar that are biologically essential to the gnatcatcher do not meet the second provision of the definition of critical habitat pursuant to section 3(5)(A)(i)(II) as they do not require special management and protection. Consequently, these lands essential to the gnatcatcher have not been included in the proposed designation of critical habitat for the species. Further, to the extent that the areas biologically essential to the gnatcatcher on MCAS, Miramar may 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).

The primary benefit of proposing critical habitat is to identify lands essential to the conservation of the species which, if critical habitat was designated, would require consultation with us to ensure activities would not adversely modify critical habitat or jeopardize the continued existence of the species. As previously discussed MCAS, Miramar has completed a final INRMP that provides for sufficient conservation management and protection for the coastal California gnatcatcher. Therefore, we do not believe that designation of areas on MCAS, Miramar as critical habitat will appreciably benefit the coastal California gnatcatcher beyond the protection already afforded the species under the Act and the completed INRMP. Exclusion of these lands would not result in the extinction of the species.

However, even if the lands on MCAS, Miramar did require special management and meet the definition of critical habitat, there would be appreciable benefits to excluding these areas from critical habitat pursuant to section 4(b)(2). If critical habitat were to be designated, this facility would be compelled to consult under section 7 of the Act on any activity that may affect designated critical habitat. Given the INRMP, the additional burden of consulting could impair its ability to