

practices will avoid take. In other situations, best management practices will minimize take. Where take still results, mitigation will be used to offset the impacts.

(b) As required by section 10 regulations, the HCP requires Denver Water to perform compliance monitoring and effectiveness monitoring to determine whether the terms and conditions of the HCP are being met. Monitoring activities will: document pre- and post-impact site conditions; determine the extent of take of occupied and potential habitat; determine the success of Preble's habitat revegetation efforts; report on additional Denver Water actions, including initiation of mitigation, discussion of best management practices utilized, if any, and other management decisions that address implementation of the HCP; hold an annual meeting between Denver Water and the Service; and prepare an Annual Monitoring Report.

(c) Adaptive management will be employed to gain new data, research or new information regarding the biology of the Preble's. The use of adaptive management in areas of questionable Preble's habitat suitability, Preble's use, or Preble's presence will likely increase the potential for success within the HCP and increase the potential for new and useful information on Preble's biology to be acquired.

(d) The HCP will result in the protection of over 2,700 ha (6,000 ac) of potential and occupied habitat. Denver Water will limit temporary impacts to 10 ha (25 ac) of occupied and potential habitat at any one time. Temporary impacts are not to exceed 30 ha (74 ac) over the term of the HCP. Denver Water will also track all impacts, restore disturbed vegetation, and track all successful restorations to ensure the above limits are not exceeded.

(e) To offset foreseeable permanent impacts to one-acre of habitat, Denver Water will create 0.10 ha (0.25 ac) of riparian shrub, 0.91 ha (2.25 ac) of upland occupied and potential habitat, and revegetate a number of trails and dirt roads. Should permanent impacts exceed the one-acre, this HCP covers a maximum of 4 ha (10 ac) of permanent impacts, and will mitigate this through: a conservation easement at a ratio of 8:1; by enhancements at a ratio of 2:1; or a combination of preservation at 6:1 and enhancements at 1:1.

(f) Other mitigation includes: weed management; education, training, and the distribution of information to Denver Water employees to promote avoidance, minimization, or best management practices as applicable and practicable; restoration of habitat

linkage corridors; population monitoring and research; and provide trapping data to the Service.

Based on our evaluation of special management considerations and protection provided by the Denver Water HCP, the Lefever Property HCP, and Dahle Property HCP, and in light of the definition of critical habitat in section 3(5)(A) of the Act, we have considered, but not designated these areas as critical habitat. We believe that the Denver Water HCP, the Lefever Property HCP, and Dahle Property HCP meets the three criteria used by the Service to determine if a plan provides adequate special management or protection to a listed species. First, the HCPs provide a conservation benefit to the species through the various management actions discussed above. Second, the HCP provides assurances that the conservation management strategies and actions will be implemented. Denver Water has budgeted \$30,000 in 2003 Operations Plan for activities required by the HCP. In consecutive years, it will have a separate line item in the budget. The Lefever Property HCP has funding assurances in the form of a \$10,000 letter of credit, has been secured to ensure all obligations of the HCP are fulfilled. The Dahle Property HCP applicant will provide funding for this agreement. Third, the HCPs provides assurances that the conservation strategies and measures will be effective because they are based on the best scientific data available and they require monitoring and reporting to ensure compliance and success. The Denver Water HCP also employs adaptive management where practicable and appropriate.

(2) Benefits of Inclusion Under Section 4(b)(2)

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, the benefit of designating such lands as critical habitat is negligible 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 will already be protected by the terms of the HCP and the incidental take permit. The HCP and the incidental take permit 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 the Service as a result of an HCP application must itself undergo section 7 consultation. This consultation will address the likelihood of adverse modification or destruction of critical habitat and jeopardy to the listed. 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 provides 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 compatible land use. The educational benefits of critical habitat, including informing the public of areas that are essential 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 all HCPs. For these reasons we believe that the designation of critical habitat has little or no benefit in areas covered by HCPs.

(3) Benefits of Exclusion Under Section 4(b)(2)

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 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 both listed and non-listed species. 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 or considering developing HCPs. Excluding HCPs provides us with an opportunity to streamline regulatory