

should work with CDFG in developing critical habitat designations for federally listed species.

*Our Response:* In developing the proposed rule, we solicited information from CDFG biologists familiar with the local land areas through out California, vernal pool species, and vernal pool habitat. We used the local expertise of our counterparts in CDFG regional offices to help us determine which areas were essential to the 15 vernal pool species addressed in this rule, and to determine the appropriate boundaries for the critical habitat. Further, one of the primary data sources that was used in the development of our proposal and this final rule was the State Natural Heritage occurrence and natural diversity database—the CNDDDB. We additionally consulted with the CDFG when we had questions regarding species occurrence data and if any new information was available which was not in the database. We view the CDFG as a partner in natural resource management and protection in California, and will continue to work closely with them.

*State Comment 2:* Some areas within the proposed critical habitat designation do not contain the necessary habitat requirements for the species (e.g., Grasslands Ecological Unit, Merced County).

*Our Response:* On the basis of information provided by the public, the scientific community, and other Federal, State, and local government officials, we have revised the critical habitat unit boundaries for the 15 vernal pool species, including the area encompassing the Grasslands Ecological Unit, to better reflect those areas containing the primary constituent elements (PCEs) (see Methods, Summary of Changes from Proposed Rule, and Unit Maps).

*State Comment 3:* The CDFG believes all CDFG lands should be excluded from critical habitat, given the requirement of consultation pursuant to section 7 of the Act for Federal actions, and CDFG's trustee responsibility for protecting the State's wildlife resources, including federally listed species.

*Our Response:* We have excluded CDFG owned lands within the Battle Creek, Big Sandy, Grizzly Island, Hill Slough, North Grasslands, and Oroville Wildlife Areas and State-owned lands within Allensworth, Boggs Lake, Butte Creek Canyon, Calhoun Cut, Carrizo Plains, Dales Lake, Fagan Marsh, Phoenix Field, San Joaquin River, Stone Corral, and Thomes Creek Ecological Reserves. The total amount of land excluded for State-owned lands excluded within wildlife areas or

ecological reserves is approximately 20,933 ac (8,373 ha). These exclusions are based on the CDFG's trustee responsibility for protecting the State's wildlife resources, including federally listed species.

*State Comment 4:* The CDFG believes that designating critical habitat on lands covered under Habitat Conservation Plans (HCPs) and Natural Community Conservation Plans (NCCPs) provides little benefits for species covered under these plans.

*Our Response:* We recognize that critical habitat is only one of many conservation tools for federally listed species. However, HCPs are one of the most important tools for reconciling land use with the conservation of listed species on non-Federal lands. Section 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. For this designation, we find that the benefits of exclusion outweigh the benefits of designation for all approved and legally operative HCPs in which vernal pool species are covered. Please refer to the Relationship of Critical Habitat to Habitat Conservation Plans and Relationship of Critical Habitat to the Western Riverside Multiple Species Habitat Conservation Plan sections of this final rule for a more detailed discussion of how approved and pending HCPs have been addressed in this final designation.

*State Comment 5:* The CDFG believes that all future HCPs and NCCPs should be removed from critical habitat once they are approved.

*Our Response:* We anticipate that future HCPs in the range of the 15 vernal pool species will include them as a covered species and provide for their long term conservation. We expect that HCPs undertaken by local jurisdictions (e.g., counties and cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long term conservation of the species. Section 10(a)(1)(B) of the Act states that HCPs must meet issuance criteria, including minimizing and mitigating any take of the listed species covered by the permit to the maximum extent practicable, and that the taking must not appreciably reduce the likelihood of the survival and recovery of the species in the wild. We fully expect that our future analyses of HCPs

and section 10(a)(1)(B) permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and section 10(a)(1)(B) permits will not result in the destruction or adverse modification of critical habitat designated for the vernal pool species. The take minimization and mitigation measures provided under these HCPs are expected to adequately protect the essential habitat lands designated as critical habitat in this rule, such that the value of these lands for the survival and recovery of the vernal pool species is not appreciably diminished through direct or indirect alterations. If an HCP that addresses the vernal pool species as covered species is ultimately approved, we will reassess the critical habitat boundaries in light of the HCP. If, consistent with available funding and program priorities, we elect to revise this designation, we will do so through a subsequent rulemaking.

The designation of critical habitat should not deter participation in the NCCP or HCP processes. Approvals issued under these processes include assurances of no additional mitigation through the HCP No Surprises regulation (63 FR 8859). The development of new HCPs or NCCPs should not be affected by designation of critical habitat primarily because we view the standards of jeopardy for listed species and of adverse modification for critical habitat as being virtually identical. We discuss these standards in detail in the Section 7 Consultation section portion of this document.

*State Comment 6:* CDFG expressed concern that designation of critical habitat will increase the regulatory and/or economic burden for project proponents, because many of their programs, such as vegetation management and fire hazard reduction, are administered on private lands with Federal cost-share funds. CDFG also requested us to address land management activities that benefit vernal pool habitats.

*Our Response:* We do not anticipate that this designation will result in significant increases in regulatory requirements for programs involving Federal cost-share funds over those which have existed since the time of the listing of each of the 15 vernal pool species. All of these activities, to the extent that they modify vernal pool habitat, have the potential to affect federally listed species and thus trigger the informal or formal consultation requirements of section 7 of the Act. Even beneficial land management actions, if they are likely to result in "take" of listed vernal pool crustaceans, must receive appropriate incidental take