

contain vernal pools and do not meet the proposed rule's definition of critical habitat; (3) vernal pool fairy shrimp have not been documented in the San Jacinto Unit (33A); and (4) vernal pool fairy shrimp and the common versatile shrimp (*Branchinecta lindahli*) cannot co-occur.

Our Response: Although the boundary of the Unit 33A is the approximate 20-year floodplain as identified by Riverside County Flood Control and Water Conservation District, it was used because more than 99 percent of the known vernal pool associated species in the floodplain occur within area delineated by that boundary. The reach of the San Jacinto River included in the designation is extremely flat, causing the river to pond on the floodplain from the low-flow channel to the approximate 100-year floodplain. In the rainy season, the river floodplain contains vernal pools, moist flats, and other ephemeral wetlands. Areas which do not expressly contain ephemeral wetlands or vernal pools are included to provide hydrology to vernal pools.

Although surveys conducted in this unit during 2000 failed to detect vernal pool fairy shrimp, although the common versatile fairy shrimp was detected, it is important to note that not all of the pools in the floodplain were surveyed, and rainfall conditions were not conducive to detecting fairy shrimp. (i.e., in some places pools did not fill or filled only briefly an insufficient time for shrimp, if present, to hatch).

This unit can be characterized as an alkali playa, one of the habitat types that supports vernal pool fairy shrimp, and shares soil and hydrologic characteristics with Unit 33B, where the common versatile and vernal pool fairy shrimp co-occur. Both species are also present at Skunk Hollow. Eriksen and Belk (1999) also report that the common versatile fairy shrimp is known to co-occur with the vernal pool fairy shrimp, although the two species may be detectable at varying times during a vernal pool's wet phase.

This unit is essential to vernal pool fairy shrimp because it represents the largest unfragmented, hydrologically and ecologically functional vernal pool complex in the southern portion of the species' range. The area of habitat is large enough to allow localized occurrences to expand and contract, providing for normal population dynamics and making the populations within this unit less susceptible to environmental variation or negative impacts associated with human disturbances or naturally occurring catastrophic events. Although it is not known to be occupied, it contains the

same edaphic and land form characteristics as lands within Unit 33B, which is occupied by the species.

Comment 12: One commenter stated that the Riverside County units (33–35) should be removed from designation because they represent only a small portion of the range of the vernal pool fairy shrimp, and these areas are already being protected.

Our Response: The area proposed as critical habitat for the vernal pool fairy shrimp in Riverside County does comprise a small portion of the overall area proposed as critical habitat for the species. However, the vernal pools in these units supporting populations of the vernal pool fairy shrimp represent the southernmost distribution of the species in the United States. They are essential to ensuring the genetic and geographic distribution of the species necessary for its long-term conservation.

We are excluding the critical habitat in Riverside County, California (Units 33, 34 and 35) from this final designation. We are excluding Unit 33 for the vernal pool fairy shrimp from final designation because the vernal pool habitat within this unit will be covered by the draft Western Riverside Multiple Species Habitat Conservation Plan (MSHCP). Although the MSHCP has not been finalized the measures afforded within the plan and the current assurances that the plan will be completed will assist in the conservation of the species. We are also excluding Unit 34 for the vernal pool fairy shrimp from final designation because the vernal pool within this unit is covered by an approved, legally operative HCP. Although the Rancho Bella Vista HCP does not include the vernal pool fairy shrimp as a covered species, the endangered Riverside fairy shrimp is covered by this HCP. Because the Riverside fairy shrimp co-occurs with the vernal pool fairy shrimp in this unit, we anticipate that management actions taken to conserve Riverside fairy shrimp will provide equal benefits to the vernal pool fairy shrimp. We have also excluded Unit 35 for vernal pool fairy shrimp from final designation because this area, which lies within the Santa Rosa Plateau Ecological Reserve, is managed for the conservation of vernal pools that support populations of the vernal pool fairy shrimp. Please refer to the Relationship of Critical Habitat to Habitat Conservation Plans, Relationship of Critical Habitat to the Western Riverside Multiple Species Habitat Conservation Plan, and Relationship of Critical Habitat to Santa Rosa Plateau Ecological Reserve: A State, Federal, and Local Cooperatively Managed Reserve sections of this final

rule for a more detailed discussion of these exclusions.

Comment 13: Riverside County Flood Control and Water Conservation District stated that they are working with the City of Hemet to model the watershed in Unit 33B. They suggested that the designation be reduced or eliminated until the information is available.

Our Response: We have excluding Unit 33 from this final designation of critical habitat for the 15 vernal pool species on the basis of the development of the Western Riverside Multi-Species Habitat Conservation Plan (see Response to Comment 12 above).

Issue 2—Costs and Regulatory Burden

Comment 14: Regarding the Fort Ord Unit of critical habitat for *Lasthenia conjugens*, the Bureau of Land Management (BLM) provides comments about inclusion of two parcels, totaling less than 40 ac (16.2 ha), that are (or will be) transferred to the BLM and are designated for development under the Army's existing base cleanup, disposal, and reuse plan. The BLM expresses concern that inclusion of these parcels may require numerous consultations with us for small BLM development projects, such as the construction of a storage shed, that would have minor or negligible impacts on the species and its critical habitat. This would add an undue regulatory burden on BLM and the Service.

Our Response: All Federal agencies are required to evaluate whether projects they authorize, fund, or carry out, may adversely affect a federally listed species and/or its designated critical habitat. The parcels under discussion do not possess ephemeral wetlands themselves, but activities on them may affect the watershed of ephemeral wetlands located on adjacent parcels. To improve the efficiency of the consultation process, we recommend BLM staff with hydrologic expertise evaluate the potential for BLM activities to affect the hydrology of ephemeral wetlands in critical habitat. If BLM projects are not likely to adversely affect critical habitat, then a consultation with us would not be necessary. For projects that are likely to have only discountable, insignificant, or wholly beneficial effects on critical habitat, we would concur in writing and no further consultation will be necessary. For projects likely to have adverse effects on critical habitat, formal consultation would be required pursuant to section 7 of the Act. We encourage BLM to pursue a programmatic evaluation of, and consultation on, its current and future activities on former Fort Ord lands. In regard to these specific parcels, we have