

the proposed designation and to answer questions regarding critical habitat and the proposed rule: October 3, 2002, in Chico, California; October 16, 2002, in Fresno, California; and October 17, 2002, Sacramento, California. In addition to the public hearings and public workshops, we attended a public meeting organized by the Merced County Council in Merced, California on November 12, 2002, to discuss the proposed designation of critical habitat and answer questions regarding the area designated within Merced County. We provided information on where to obtain copies of the proposed rule and how to access the critical habitat website showing maps of the designation.

Written public comments were accepted at all the public hearings, workshops, and the Merced County Council meeting and entered into the supporting record for the rulemaking. Oral comments given at the public hearings were also accepted into the supporting record. In making our decision on the critical habitat designation, written comments were given the same weight as oral comments presented at hearings. We conducted much of our outreach through legal notices in numerous regional newspapers, telephone calls, letters, and news releases faxed and/or mailed to affected officials, local jurisdictions, and interest groups. We also posted the proposed determination, schedule of workshops and hearings, and other associated material on our Sacramento Fish and Wildlife Office internet site. We believe that we went through an elaborate and extensive notification and outreach process to make the public aware of this proposal. Further, our efforts in this process satisfied the requirements of the Act and the Administrative Procedures Act (5 U.S.C. 551 *et seq.*) (APA) for promulgating Federal regulations regarding listing actions.

Comment 21: The broad scale of the proposed critical habitat maps are not specific enough to allow for reasonable public comment, therefore, violating the Act, the APA, and 50 CFR 424.12(c).

Our Response: Regulation 50 CFR 424.12(c) requires us to define critical habitat according to "specific limits using reference points and lines as found on standard topographic maps of the area." We have done this by basing critical habitat legal descriptions on Universal Transverse Mercator (UTM) gridlines set every 328 feet (ft) (100 meters (m)). In addition to the legal descriptions, we also published maps providing an overview of the critical habitat boundaries in the proposed rule.

While the **Federal Register** maps are only intended for illustrative purposes, we do provide more detailed critical habitat maps on request. These detailed maps show specific critical habitat areas of interest overlaid on 1:24,000 scale U.S. Geological Survey (USGS) topographic maps. Additionally, we developed an interactive internet site which shows vernal pool critical habitat boundaries overlaid on a 1:250,000 scale USGS topographic maps. The site allows users to pan to and magnify any area of interest. The Internet site was not completed by the September 24, 2002, publication date of the proposed rule, but we did direct interested parties who contacted us to the site when it became available on October 10, 2002, and posted information and a link to the internet site from our Sacramento Fish and Wildlife Office Internet site.

Issue 4—Property Rights

Comment 22: Several commenters stated that the designation will result in a loss of public property rights and will decrease land values.

Our Response: The designation of critical habitat does not affect land ownership or establish a refuge, preserve, or other special conservation area. It does not allow government or public access to private lands, and will not result in closure of private or State areas to all access or use. The designation of critical habitat on privately-owned land does not mean the government wants to acquire or control the land. Critical habitat does not require landowners to carry out any special management actions or restrict the use of their land. Activities on private lands that do not require Federal permits, funding, or authorization are not affected by the designation of critical habitat. Consequently, critical habitat should not result in effects to property rights, and as previously discussed, property values.

Comment 23: Several commenters expressed concern that the proposed rule and subsequent designation will have significant takings implications, and that the designation is a "land grab" by the Federal government and that the landowners should be compensated.

Our Response: As we discussed in the Takings section of our proposed rule, we believe that, in accordance with Executive Order 12630, the designation of critical habitat for the 15 vernal pool species will not have significant takings implications. Our conclusion was based on the results of an initial takings implication assessment in which we determined that: (1) The designation would result in little additional regulatory burden above that currently

in place due to the 15 vernal pool species being federally listed because the majority of the designation is occupied by the species, and (2) the designation of critical habitat will not affect private lands in which there is not a Federal nexus. Consequently, we do not anticipate that property values, rights or ownership will be significantly affected by the critical habitat designation.

Comment 24: Several commenters expressed confusion regarding the types of agricultural activities and land use practices that, as a result of the designation, would may trigger a consultation under section 7 of the Act. Other commenters stated that the government will now oversee agricultural and ranching practices as a result of the Borden Ranch case (*Borden Ranch Partnership v U.S. Army Corps of Engineers* (9th Cir. 2001) 261F.3d 810,816.).

Our Response: Activities carried out, funded, authorized or permitted by a Federal agency (*i.e.*, Federal nexus) require consultation pursuant to section 7 of the Act if they may affect a federally listed species and/or its designated critical habitat. Our experience with consultations on the 15 listed vernal pool species is that few agricultural activities have involved a Federal nexus and have not required a consultation under section 7 of the Act. The Borden Ranch legal case, referenced above, involved the Clean Water Act and unauthorized fill of wetlands. Specifically, the activity that took place was not considered a routine agricultural practice, and thereby subject to regulation by the Army Corps of Engineers under the Clean Water Act. In regard to grazing, we do not foresee any change in the ability of private landowners to graze their property as a result of this designation. In addition, we anticipate that many activities, including grazing, presently occurring in areas designated as critical habitat can be managed to be compatible with the needs of vernal pool species and their habitat.

Issue 5—Mapping Methodology

Comment 25: Several commenters noted that the proposed critical habitat includes areas that do not contain the PCEs for the vernal pool crustaceans and vernal pool plants. This resulted in the following concerns: (a) That the boundaries of critical habitat should have been more precisely defined to exclude areas which obviously did not contain PCEs; (b) that private property would be affected by the designation even though it did not support the federally listed vernal pool species or