

proponents who want to conduct activities on their lands that do not contain the PCEs.

*Our Response:* As indicated in this rule, we attempted to exclude lands from the final designation that do not contain the PCEs essential to the conservation of the 15 vernal pool species. Activities, for which there is not a Federal nexus, occurring on lands with the boundaries of designated critical habitat that do not effect the species and/or their PCEs would not result in a consultation pursuant to section 7 of the Act. Consequently, we would not anticipate that the designation of critical habitat in these areas would result in an increased regulatory burden or cost to the project proponent. In areas where a Federal nexus does not exist, there is not regulatory burden of critical habitat. As such, we would not anticipate that activities in these areas would result in a significant additional regulatory burden resulting from the designation.

*Comment 35:* Some landowners expressed concern that because their property was located within the proposed critical habitat designation they would be subject to additional constraints, costs and regulations under CEQA and NEPA. The commenters further expressed that the draft economic analysis inaccurately characterized impact that would result from both CEQA and the National Environmental Policy Act (NEPA) following the designation of critical habitat for the 15 vernal pool species.

*Our Response:* According to section 15065 (California Code of Regulations Title 14, Chapter 3) of CEQA guidelines, environmental impact reports are required by local lead agencies when, among other things, a project has the potential to "reduce the number or restrict the range of an endangered, rare or threatened species." Because nine of the 11 vernal pool plants are either State listed endangered or threatened, and federally listed species are presumed to meet the CEQA definition of "endangered, rare or threatened species" under 15380 (California Code of Regulations Title 14, Chapter 3), no significant additional constraints, or costs, should result from the designation of critical habitat beyond those now in place for all federally listed species, including the 15 vernal pool species in this rule.

We believe that we made the best 20-year estimation of what the added costs would be from impacts of the designation of critical habitat for the 15 vernal pool species. Under both the environmental review processes of CEQA and NEPA, a project proponent is

required to identify biological resources or conduct an environmental assessment, including any designated critical habitat on proposed project sites, and identify any significant environmental effects to those resources that could result from the project. The processes also need to be disclosed and have opportunities for public comments. We believe that the economic analysis accurately assesses the impacts to State and Federal regulatory processes.

*Comment 36:* One commenter stated that, contrary to our assumption in the draft economic analysis, the Los Angeles District Office of the Corps may take regulatory jurisdiction over vernal pools that occur within their geographic jurisdiction.

*Our Response:* The economic analysis made the assumption that the Los Angeles District may not take jurisdiction of the vernal pools that are in critical habitat for the vernal pools within their watershed-based jurisdiction based on conversations with the representatives from the Los Angeles District Office of the Corps. We believe that the Corps has the discretion of whether or not to take jurisdiction of any waters of the United States. The consequences of this discretion may increase or decrease the number of formal consultations and associated costs that may occur over the next 20 years. We made the best estimate of the number of formal consultations and their associated costs that we may have over the next 20 years based upon our history of formal consultations with the Corps across the range of the 15 vernal pool species.

*Comment 37:* Several commenters stated that the economic analysis should be completed and made available concurrently with the proposal to designate critical habitat, and that critical habitat should not have been proposed before an economic analysis of the proposal was complete.

*Our Response:* Pursuant to Act and clarified in our implementing regulations at 50 CFR 424.19, we are required to, "after proposing designation of such an area, consider the probable economic and other impacts of the designation upon proposed or ongoing activities." Following the publication of our proposed designation of critical habitat for the 15 vernal pool species, we developed a draft economic analysis of the proposed designation that was released for public review and comment. The analysis was subsequently revised based on public comment and other information made available to us and a final economic analysis was produced. This final

analysis was used to assist us in developing the final designation. Consequently, we believe that we have interpreted the regulations and process correctly. Please refer to the draft and final economic analyses for this rulemaking for more detailed discussions of the methods employed in the analysis and the results.

*Comment 38:* Several commenters stated that the economic analysis estimates far too few section 7 consultations under the Act.

*Our Response:* After using our historical database of section 7 consultations, and speaking with numerous Federal agencies about the likelihood of future consultations after critical habitat is designated, we believe that we correctly and reasonably estimated the number of section 7 consultations that would occur despite the lack of certainties about 20-year growth models used to predict urban growth, multiple uses of open space that includes vernal pool preservation areas, the lack of a fixed amount of upland habitat associated with vernal pool complexes, and the locally variable values of non-residential lands.

*Comment 39:* Several commenters stated that the CURBA model underestimates the growth and costs associated with the impacts of critical habitat designation for the 15 vernal pool species.

*Our Response:* We used the CURBA model, along with information from interviews with representatives of Federal agencies, county and local government planning officials, information we had on the number of completed formal consultations, and those consultations that were initiated but not completed, to improve our attempt to correctly estimate the number and costs of formal consultations within the next 20 years. Based upon additional discussions with these representatives from the above-mentioned entities, we have revised upward the number of informal consultations from 240 to 470, and decreased the number of formal consultations from 235 to 157. Because, the pace of development in any region fluctuates broadly from year to year due to the unevenness in market timing and planning practices, the CURBA model offers a more standard method of forecasting the acreage required to accommodate new growth throughout the proposed critical habitat area.

*Comment 40:* Several commenters stated that the economic analysis should focus on the potential costs attributable solely to critical habitat and not on the costs associated with the listing of the species.