

Our Response: In developing our draft economic analysis, we attempted to differentiate between the costs attributed to the proposed designation of critical habitat from those attributable to the species being federally listed. These impacts are presented and discussed in our draft economic analysis and the final economic analysis. However, as discussed below in response to Comment 41, the methodology of our economic analysis is consistent with the 10th Circuit Court's instructions to make our economic analyses of critical habitat meaningful, which in the Court's mind, requires the economic analysis to consider all of the potential costs associated with the designation of critical habitat, regardless of whether or not those costs are co-extensive with other parts of the Act. As a result, our economic analysis now also consider the total costs associated with section 7 of the Act. Please refer to our draft and final economic analyses for a more thorough discussion of the methodology employed in the our analysis.

Comment 41: The economic analysis not done in a manner consistent with the *New Mexico Cattle Growers Association v. U.S. Fish and Wildlife Service*, 248 F. 3d 1277 (10th Cir. 2001) decision.

Our Response: In this 10th Circuit Court case, the court instructed us to conduct a full analysis of all the economic impacts of critical habitat designation, regardless of whether or not those impacts are attributable co-extensively to other causes. In order to ensure that no costs of the proposed designation are omitted, the economic analysis for the 15 vernal pool species examined and fully considered all potential effects associated with all section 7 consultation effects in or near proposed critical habitat. In doing so, the economic analysis ensures that any critical habitat impacts that are co-extensive with the listing of the species are not overlooked. As a result of this approach, the economic analysis may likely overstate the regulatory effects under section 7 of the Act that are attributable to the proposed designation of critical habitat. Therefore, we believe that our analysis has been done in compliance with the Court's decision. Please refer to the draft and final economic analyses for a more detailed discussion of this issue.

Comment 42: Several commenters stated that the assumptions in the DEA suggesting that the designation of critical habitat for the 15 vernal pool species is not expected to result in significant restrictions in addition to those currently in place due to the

species already being federally listed are flawed.

Our Response: In the proposed rule and DEA, we indicated that we do not expect that the designation of critical habitat would result in significant additional regulatory or economic burdens or restrictions incremental to those afforded the species pursuant to being listed under the Act. This assertion is based on the regulatory protections afforded the 15 vernal pool species from them being federally listed under the Act, and the fact that the majority of the lands designated as critical habitat are considered occupied by the species.

Comment 43: One commenter stated that the DEA failed to adequately consider the effect the proposed rule could have on the development community.

Our Response: The DEA discussed the potential impact the proposed rule could have on the development community. Specifically, the analysis discussed how the proposal would not impose any significant additional economic impacts beyond those currently in existence for occupied areas of critical habitat. We acknowledged that critical habitat designation could have slight effects on certain industries such as real estate development, farming, and ranching. But the biggest effects to these industries result from the impact their activities have on the vernal pool crustaceans, which are afforded protection due to their status as federally protected threatened or endangered species. Because the majority of critical habitat units are currently occupied by the vernal pool crustaceans or vernal pool plants, we do not expect any significant increase in consultations or related project delay or costs to be attributable to the designation of critical habitat.

Comment 44: Several commenters stated that the DEA was biased because it analyzed costs and not benefits, and that it should further expand on the value of protecting vernal pool habitats. Several commenters stated that the DEA overestimates costs. One commenter stated that the development industry would simply avoid those areas which would require compensation for vernal pool habitats focusing their efforts on adjacent properties, thus minimizing costs associated with the designation.

Our Response: There may be many opinions as to a particular species' contribution to society, including their aesthetic, scientific, or other significant contribution. However, placing a specific monetary value on endangered species, critical habitat, and other non-consumptive environmental or natural

systems is subjective and not quantifiable in terms of economics. Although the recreational use aspect of natural areas can be identified, the economical benefit of a species' existence in relation to a monetary figure cannot be analyzed. The final economic analysis has taken into account the factor that the development industry would simply avoid areas which had habitat for the vernal pool crustaceans and vernal pool plants.

Comment 45: Numerous commenters said that the designation would greatly increase the costs (surveys, consultant fees, habitat compensation fees, land acquisition, etc.) and regulatory burden (California Environmental Quality Act (CEQA), section 7 or section 10 of the Act, section 404 of the Clean Water Act (CWA), etc.) on landowners and local governments, as well as delays in permit processing and issuance of biological opinions. These cost and burdens would have a negative impact on ranching/farming activities, local economies, the development industry, and personal income. A few commenters stated that we should pay for any increased costs required for surveying.

Our Response: In the development of the draft and final economic analyses for this rulemaking, our economist evaluated potential economic effects of the issues raised by the commenters that could potentially result from the proposed designation, as well as the co-extensive costs associated with the species being federally listed. Please refer to both the draft and final economic analyses for a more thorough discussion of how these issues were addressed. Additionally, while our analysis did show that approximately \$23.4 million per year would be attributed to the designation, it is small in comparison to the value of new construction activities in the affected counties, which amounted to over \$19 billion in 2000 alone. Critical habitat designation only affect actions with a Federal nexus, so any actions carried out on non-Federal lands without Federal funding, permitting, or authorization should not be affected. Further, critical habitat designation may actually reduce delays and help prevent the possibility of arbitrary biological opinions by establishing the habitat needs of the species prior to the evaluation of specific projects. By alerting the public to those habitat needs during the critical habitat designation process, we may also help to avoid unpleasant surprises for people who might not otherwise have been aware of the need to take section 7 considerations into account.