

benefits of including these areas. The Mechoopda Tribe submitted a management plan that provides for special management considerations or protections for listed vernal pool species. The Tribe demonstrated its commitment to ensuring the long-term viability of federally listed species on Tribal lands by implementing appropriate conservation measures that will contribute to species' long-term survival by ensuring the conservation of vernal pool resources on Tribal property. The approximate amount of land which the Mechoopda Tribe requested to exclude is approximately 645 ac (260 ha). The proposed critical habitat for the area included habitat for the vernal pool tadpole shrimp (Unit 4). The benefits of including the Tribe's land are limited to minor educational benefits, since the Tribe has committed to consult with us on any effects to the species. The benefits of excluding these areas from being designated as critical habitat are more significant, and include encouraging the continued development and implementation of special management measures. The exclusion of critical habitat for the Mechoopda trust lands is consistent with our published policies (Secretarial Order 3206, Presidential Memorandum dated April 29, 1994: Government-to-Government Relations with Native American Tribal Governments (May 4, 1994, 59 FR 22951)) on Native American natural resource management because this exclusion allows the Tribe to manage its own natural resources.

Finally, as a result of comments received, we made editorial changes to the sections of the rule pertaining to the methods used, the PCEs, the criteria used to identify critical habitat, and the unit descriptions for all 15 vernal pool species. We made these changes to eliminate redundancy, improve clarity, and provide a more in-depth explanation of the biological necessity of the designation for the 15 vernal pool species.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographic area occupied by a species at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation," as defined by

the Act, means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Section 7(a)(2) of the Act requires that Federal agencies shall, in consultation with us, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of critical habitat. Section 7 also requires conferences on Federal actions that are likely to jeopardize the continued existence of any species proposed to be listed or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, and consequently critical habitat designation does not afford any additional regulatory protection under the Act under those circumstances.

In order to be included in a critical habitat designation, the habitat must be essential to the conservation of the species. Critical habitat designations identify, to the extent known and using the best scientific and commercial data available, habitat areas that provide essential life-cycle needs of the species (*i.e.*, areas on which are found the PCEs, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat for a species, to the extent such habitat is determinable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we may not have sufficient information to identify all the areas essential for the conservation of the species or, alternatively, we may inadvertently include areas that later will be shown to be nonessential. Nevertheless, we are required to designate those areas we know to be critical habitat, using the best information available to us. Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Within the geographic area occupied by the species, we will designate only

areas currently known to be essential. Essential areas already have the features and habitat characteristics that are necessary to sustain the species. If the information available at the time of designation does not show that an area provides essential life-cycle needs of the species, then the area should not be included in the critical habitat designation.

Our regulations state that "The Secretary shall designate critical habitat outside the geographic areas presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species" (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in those areas outside.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires us, to the extent consistent with the Act, and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should, at a minimum, be the listing package for the species. Additional information may be obtained from recovery plans, articles in peer-reviewed journals, conservation plans developed by States and Counties, scientific status surveys and studies, biological assessments, unpublished materials, and solicited expert opinion.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of the designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the conservation of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for the conservation of the species. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be