

funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species.

Activities that, when carried out, funded, or authorized by a Federal agency may directly or indirectly destroy or adversely modify critical habitat for vernal pool crustaceans or vernal pool plants include, but are not limited to:

(1) Activities regulated by the Corps, EPA, or NRCS under the Clean Water Act and other acts or regulations, including but not limited to, discharge of fill into waters of the U.S., and promulgation of water quality standards;

(2) Construction and maintenance of roads, highways, and rights-of way by Caltrans which may modify vernal pool habitat or affect their hydrologic functions;

(3) Sale or exchange of lands by a Federal agency to a non-Federal entity;

(4) Construction, relicensing, and operation of dams or other water impoundments by the BOR, Corps, or Federal Energy Regulatory Commission (FERC);

(5) Airport construction, improvement, or maintenance activities funded or authorized by the Federal Aviation Administration;

(6) Licensing of construction of communication sites by the Federal Communications Commission;

(7) Funding of construction or development activities by the U.S. Department of Housing and Urban Development;

(8) Military training and maneuvers on DoD lands;

(9) Execution of water service by the BOR;

(10) Promulgation and implementation of a land use plan by a Federal agency such as the BLM, USFS, or DoD that may alter management practices for critical habitat; and

(11) Approval of pesticide labels by EPA.

If you have questions regarding whether specific activities may constitute adverse modification of critical habitat in California, contact the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section). If the critical habitat occurs in Oregon, contact the Field Supervisor, Oregon Fish and Wildlife Office, 2600 SE. 98th

Avenue, Portland, OR 97266. Requests for copies of the regulations on listed plants and wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 NE. 11th Ave, Portland, OR 97232 (telephone 503/231-2063; facsimile 503/231-6243).

#### **Exclusions Under Section 4(b)(2) of the Act**

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available, and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species concerned.

#### **Economic Exclusions**

On the basis of the final economic analysis and other relevant impacts, as outlined under section 4(b)(2) of the Act, and the economic effects associated with this rule, certain exclusions have been made to this final designation, as detailed below. Because of the settlement agreement that requires us to deliver this rule to the **Federal Register** by July 15, 2003, there was insufficient time to revise the rule to fully reflect these exclusions. A technical amendment to the rule to take these areas out of the maps and legal descriptions, as well to change all the appropriate references in the text of this preamble will be completed as soon as funding allows.

The following counties are excluded from this rule under Section 4(b)(2): Butte, Madera, Merced, Solano, and Sacramento. We find that the benefits of excluding these areas from critical habitat outweigh the benefits of including them.

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we prepared a draft economic analysis of the proposed rulemaking to estimate the potential economic effect of the proposed designation. The draft analysis was made available for review on November 21, 2002 (67 FR 70201). We accepted public comment on the draft analysis until December 23, 2002. On March 14, 2003, we reopened the public comment period and accepted comments on the proposed rule and DEA until March 28, 2003 (68 FR 12336). On the basis of public comment, we prepared a final economic analysis of the proposed designation that was used in the development of this final rule.

#### *(1) Benefits of Excluding*

In our final analysis, we found that future section 7 consultations resulting from the listing of the 15 vernal pool species and the critical habitat designation could potentially impose total economic costs for consultation and modifications to projects of \$1.3 billion over 20 years or \$115 million per year.

Most of the costs arise from our assumptions about land value and consumer surplus losses. Some of the costs result from the loss in land value of land that may need to be set aside on project sites under section 7 requirements. Other costs are from the unavailability of developable land in certain areas. For most regions, the scale and significance of the additional project modifications associated with section 7 and critical habitat designations are not sufficient to affect regional real estate market dynamics. In other words, although some land may not be developed as a result of critical habitat, plenty of substitute land is available. In these geographic areas, the overall number of new housing units built over the next 20 years is not expected to change as a result of the designation. The cost burden of project modifications falls on regulated landowners. However, in more land-constrained counties the setting-aside of vernal pool habitat may result in a reduction in the number of new homes that are built.

For each of the excluded counties these costs were high. Costs in Butte County \$64 million, Madera County \$24 million, Merced County \$91 million, Solano County \$321 million, and Sacramento County \$682 million. We believe that these costs are disproportionately high when compared to the costs of section 7 impacts elsewhere in this and other designations. In addition, we have considered the following factors.: