

Another possible benefit to including these lands is that the designation of critical habitat can serve to educate landowners and the public regarding the potential conservation value of an area. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. Any information about the vernal pool species for which critical habitat was proposed in units 35 and 14, and a portion of unit 18 that reaches a wide audience, including other parties engaged in conservation activities, would be considered valuable.

### *(2) Benefits of Exclusion*

The benefits of excluding HCPs or NCCP/HCPs include relieving landowners, communities and counties of any additional regulatory burden that might be imposed by critical habitat. This benefit is particularly compelling because we have made the determination that once a HCP of NCCP/HCP is negotiated and approved by us after public comment, activities consistent with the plan will satisfy the requirements of the Act. Many HCPs or NCCP/HCPs, particularly large regional HCPs or NCCP/HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the conservation of covered species. Imposing an additional regulatory review after HCP or NCCP/HCP completion may jeopardize conservation efforts and partnerships in many areas, and could be viewed as a disincentive to those developing HCPs or NCCP/HCPs. Excluding HCPs or NCCP/HCPs provides us an opportunity to streamline regulatory compliance, and provides regulatory certainty for HCP and NCCP/HCP participants.

Another crucial benefit of excluding HCPs or NCCP/HCPs is that it would encourage the continued development of partnerships with HCP or NCCP/HCPs participants, including states, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish. By excluding areas covered by HCPs or NCCP/HCPs from critical habitat designation, we clearly maintain our commitments, preserve these partnerships, and, we believe, set the stage for more effective conservation actions in the future.

In addition, an HCP or NCCP/HCP application must itself be consulted upon. While this consultation will not look specifically at the issue of adverse modification of critical habitat, unless critical habitat has already been designated within the proposed plan

area, it will look at the very similar concept of jeopardy to the listed species in the plan area. Because HCPs or NCCP/HCPs, particularly large regional HCPs or NCCP/HCPs, address land use within the plan boundaries, habitat issues within the plan boundaries will have been thoroughly addressed in the HCP or NCCP/HCP and consulted upon. Federal actions in areas occupied by listed species would still require consultation under section 7 of the Act.

Further, HCPs and NCCP/HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs and NCCP/HCPs assure the long-term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5 Point Policy for HCPs (64 FR 35242) and the HCP No Surprises regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations which, in contrast to HCPs, often do not commit the project proponent to long-term special management or protections. Thus, a consultation typically does not accord the lands it covers the extensive benefits a HCP or NCCP/HCP provides. The development and implementation of HCPs or NCCP/HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species conservation, and the creation of innovative solutions to conserve species while allowing for development.

### *(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion*

We have reviewed and evaluated HCPs and NCCP/HCPs currently approved and have been implemented within the areas being designated as critical habitat for the vernal pool crustaceans and plants. Based on this evaluation, we find that the benefits of exclusion outweigh the benefits of designating the Skunk Hollow area (Unit 35 for vernal pool fairy shrimp), and a portion of the San Joaquin area (Unit 18 for vernal pool fairy shrimp and Unit 14 for vernal pool tadpole shrimp as critical habitat.

While neither HCP or NCCP/HCP includes vernal pool fairy shrimp as a covered species, both HCPs provide protection for the vernal pool complex and its associated watershed in perpetuity. Further, the Rancho Bell Vista HCP addresses the endangered Riverside fairy shrimp as a covered species. The management and protections afforded the vernal pool and Riverside fairy shrimp provide for the

long-term conservation of this pool and vernal pool fairy shrimp. It also preserves the partnerships that we have developed with the local jurisdiction and project proponents in the development of the HCP and NCCP/HCP. We also believe that the management and protections afforded the vernal pool fairy shrimp and vernal pool tadpole shrimp in the build-out areas through the SJMSCP are adequate for the long-term conservation of these species.

The education benefits of critical habitat, including informing the public of areas that are important for long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish a HCP or NCCP/HCP, as well as the public participation that occurs in the development of many regional HCPs or NCCP/HCPs. For these reasons, then, we believe, that designation of critical habitat has little benefit in areas covered by HCPs, provided that the HCP or NCCP/HCP and its associated IA are legally operative, and that the HCP or NCCP/HCP specifically and adequately covers the species for which critical habitat is being designated. We do not believe that this exclusion would result in the extinction of these vernal pool species.

### **Relationship of Critical Habitat to the Draft Western Riverside Multiple Species Habitat Conservation Plan (MSHCP)**

The Draft Western Riverside MSHCP has been in development for several years. Participants in this HCP include 14 cities, the County of Riverside, including the County Flood Control and Water Conservation District, County Waste Department; the California Department of Transportation, and the California Department of Parks and Recreation. The Western Riverside MSHCP is also proposed as a subregional plan under the State's NCCP and is being developed in cooperation with CDFG. Within the 1.26 million-acre (510,000 ha) planning area of the MSHCP, approximately 153,000 ac (62,000 ha) of diverse habitats are proposed for conservation. The proposed conservation of 153,000 ac (62,000 ha) will complement other, existing natural and open space areas that are already conserved through other means (e.g., State Parks, USFS, and County Park lands).

The County of Riverside and the participating jurisdictions have signaled their sustained support for the Western Riverside MSHCP as evidenced by the November 5, 2002, passage of a local