

consultation process; (3) the allowance for meaningful collaboration and cooperation in scientific studies to learn more about the life history and habitat requirements of species that may occur on their land; and (4) providing conservation benefits to the vernal pool ecosystem and vernal pool species that depend on it, that might not otherwise occur.

The Mechoopda Tribe has committed to greater conservation measures on their lands than would be available through the designation of critical habitat. As described in the Mechoopda's revised management plan, our working relationship with the Mechoopda Tribe will result in the implementation of beneficial natural resource programs, including species preservation. The Mechoopda Tribe has demonstrated their commitment to ensuring the long-term viability of federally listed species on Tribal lands by implementing conservation measures that will contribute to their recovery. Exclusion from critical habitat will contribute to an improved partnership with the Mechoopda Tribe, the incentive of avoiding the perceived additional regulatory requirements, and opportunities to streamline regulatory compliance.

If listed vernal pool species are found on the Tribe's land, the Mechoopda consult with us for any project that may adversely affect listed species under section 7(a)(2), regardless of whether critical habitat is designated or not. Thus, we find little additional benefit through section 7 consultation for critical habitat. Furthermore, the Mechoopda Tribe has been under the Environmental Protection Agency's (EPA's) General Assistance Program. The Mechoopda Tribe has adopted an Environmental Policy Act that is intended to establish and maintain the highest attainable standards of environmental quality within any and all land held in trust for the benefit of the Tribe. In addition to the Mechoopda Tribe's environmental protection ordinances, activities on Tribal lands are subject to the provisions the Clean Water Act. Projects proposed on Tribal lands subject to Federal funding or approval will also be subject to compliance with NEPA.

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

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding Mechoopda Tribal land as critical habitat outweigh the benefits of

including it as critical habitat for the vernal pool tadpole shrimp (unit 4).

In summary, the benefits of including the Tribe's land are limited to minor educational benefits. 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 Mechoopda Tribal lands has their own environmental organization, the Mechoopda EPA, which is responsible for the management of the Tribe's natural resources, and which recognizes the importance of implementing conservation measures that will contribute to the conservation of federally-listed species on their lands. The Mechoopda Tribe have already demonstrated their willingness to work with us to address the habitat needs of listed species that may occur on their lands. The exclusion of critical habitat for the Mechoopda trust lands is consistent with our published policies on Native American natural resource management by allowing the Mechoopda Tribe to manage their own natural resources.

Further, we have determined that excluding these lands will not result in the extinction of the vernal pool tadpole shrimp. If significant additional information become available that changes our analysis of the benefits of excluding compared to the benefits of including Mechoopda Tribal land in the critical habitat designation, we may revise this final designation accordingly.

### **Exclusion Summary**

We have reviewed the overall effect of the exclusion of the above mentioned approved and draft HCPs, the Santa Rosa Plateau Ecological Reserve, State managed lands, National Wildlife Refuge lands, National Fish hatchery lands, Tribal trust lands, military installations, and Butte, Madera, Merced, Solano, and Sacramento Counties, California on the vernal pool species and their designated critical habitat and have determined that the benefits of excluding these areas outweighs the benefits of including them in this critical habitat designation. The lands removed from critical habitat as a result of these exclusions will not jeopardize the long-term survival and conservation of the species or lead to their extinction.

### **Economic Analysis**

Our draft and final analyses evaluated the potential future effects associated with the section 7 consultation requirements for the 15 vernal pool

species that may occur coextensively with this designation, as well as the subset of effects associated solely with the critical habitat designation. To quantify the economic impacts that are coextensive with the critical habitat designation, the analysis evaluated a "without section 7" scenario and compared it to a "with section 7" scenario. The "without section 7" baseline represented the level of protection currently afforded the species under the Act if section 7 protective measures were absent, and includes protections afforded by other Federal, State, and local laws such as the CEQA. The "with section 7" scenario identifies land-use activities likely to involve a Federal nexus that may affect the species or its designated critical habitat, and that therefore have the potential to be subject to future consultations under section 7 of the Act.

Upon identifying section 7 impacts, the analysis considers the subset of impacts that can be attributed exclusively to the critical habitat designation. The subset of section 7 impacts likely to be affected solely by the designation of critical habitat represents a lower-bound estimate of potential impact. The categories of potential costs and benefits considered in the analysis includes costs associated with: (1) Conducting section 7 consultations associated with the listing or with the critical habitat; (2) modifications to project, activities, or land uses resulting from the section 7 consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat; (4) surplus effects associated with changes in the housing market, and (5) potential offsetting benefits associated with critical habitat including educational benefits. There may also be indirect economic effects associated with the designation of critical habitat. Indirect effects are impacts associated with actions that do not have a Federal nexus or otherwise are not subject to the provisions of section 7 under the Act. Examples of indirect effects that are considered in the economic analysis include impacts associated with creation of Habitat Conservation Plans, impacts under other State and local laws, and impacts associated with timing delays and regulatory uncertainty.

In our final analysis, we found that total costs that may be attributable to future section 7 consultations resulting from the listing of the 15 vernal pool species and the critical habitat designation could be about \$1.3 billion over the next 20 years, or about \$115 million annually. The costs attributable