

coastal areas from the Nushagak Peninsula of southwestern Alaska north to Barrow and east nearly to the Canadian Border. The species is threatened by habitat degradation, lead poisoning, increased predation rates, and hunting and other human disturbance. The Steller's eider is a sea duck found in coastal and marine waters from the eastern Aleutian Islands around the western and northern coasts of Alaska to the Canada border. The Alaska-breeding population of this species is thought to have decreased significantly, but the causes of the suspected decline are unknown. On February 8, 2000, the Service published a proposed rule (65 FR 6114) to designate critical habitat for the spectacled eider, and on March 13, 2000, the Service published a proposed rule (65 FR 13262) to designate critical habitat for the Alaska-breeding population of the Steller's eider.

The comment period for the proposed rule designating critical habitat for spectacled eiders originally closed on May 8, 2000. The comment period for the proposed rule designating critical habitat for Steller's eiders originally closed on May 12, 2000. We subsequently extended the comment periods for both species to June 30, 2000, in response to concerns expressed by several parties that the original comment periods did not allow adequate time for review and comment by affected individuals and communities. Additionally, we anticipated that the comment periods for the economic analyses associated with the proposed critical habitat designations would be open during June 2000, and we wished to solicit comments on the proposed rules and their respective economic analyses simultaneously. The development of the economic analyses for the proposed critical habitat designations was unexpectedly delayed, and we now anticipate that the economic analyses will be available for public review and comment during August 2000. Accordingly, to ensure simultaneous comment on proposed critical habitat and the associated economic analyses, the Service is extending the comment periods for both proposed rules until August 31, 2000. Written comments may be submitted to the appropriate Service office as specified in the **ADDRESSES** section.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will

honor to the extent allowable by law. In certain circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The deadline for requesting public hearings on the proposed rule regarding critical habitat for the spectacled eider was March 24, 2000. The deadline for requesting public hearings for the proposed rule regarding critical habitat for Steller's eider was April 27, 2000. We have not extended these deadlines. In order to be considered valid, requests for public hearings must have been submitted in writing and received at the appropriate office by the relevant deadline.

Author: The primary author of this notice is Susan Detwiler, U.S. Fish and Wildlife Service, Division of Endangered Species, 1011 E. Tudor Rd., Anchorage, AK 99503.

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: June 27, 2000.

Gary Edwards,

Acting Regional Director, Region 7, Fish and Wildlife Service.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AG17

Endangered and Threatened Wildlife and Plants; Proposed Determination of Critical Habitat for the Peninsular Bighorn Sheep

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for the Peninsular bighorn sheep pursuant to the Endangered Species Act of 1973, as amended (Act). The proposed critical habitat boundary encompasses

approximately 354,343 hectares (ha) (875,613 acres (ac)) of Peninsular bighorn sheep habitat in Riverside, San Diego, and Imperial Counties, California.

Critical habitat identifies specific areas that have physical and biological features that are essential to the conservation of a listed species, and that may require special management considerations or protection. The primary elements for the bighorn are those habitat components that are essential for the primary biological needs of feeding, sheltering, reproduction, dispersal, and genetic exchange.

If this proposed rule is made final, section 7 of the Act would prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency.

Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat. We solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: Comments from all interested parties must be received by August 31, 2000. A public hearing is scheduled to be held on July 20, 2000, in Palm Springs, Riverside County, California (see **ADDRESSES** section below for details).

ADDRESSES:

Comments: You may submit your comments and materials concerning this proposal by any one of several methods.

1. You may mail written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

2. You may hand-deliver written comments to our Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008.

3. You may send comments by electronic mail (e-mail) to FW1PBSH@fws.gov. Please submit comments in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: [RIN number]" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 760-431-9440.

Public Hearings

We have scheduled two public hearings for Thursday, July 20, 2000, from 1 p.m. until 3 p.m. and from 6 p.m. until 8 p.m. at the Wyndham Palm Springs Hotel, 888 E. Tahquitz Canyon Way, Palm Springs, California.

Document Availability

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Ken Berg, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone: 760/431-9440; facsimile 760/431-9624).

SUPPLEMENTARY INFORMATION:

Background

The bighorn sheep (*Ovis canadensis*) is a large mammal (family Bovidae) originally described by Shaw in 1804 (Wilson and Reeder 1993). Wild sheep became established in North America after crossing the Bering land bridge from Eurasia during the late Pleistocene (Geist 1971), and their range has since spread to include desert habitats as far south as northern Mexico (Manville 1980). In North America, two species of wild sheep currently are recognized: the thornhorn sheep (*Ovis dalli*) and the bighorn sheep (*Ovis canadensis*).

Peninsular bighorn sheep were once divided into seven recognized subspecies based on differences in skull measurements (Cowan 1940, Buechner 1960, Shackleton 1985). These subspecies included Audubon bighorn sheep (*Ovis canadensis auduboni*), Peninsular bighorn sheep (*Ovis canadensis cremnobates*), Nelson bighorn sheep (*Ovis canadensis nelsoni*), Mexican bighorn sheep (*Ovis canadensis mexicana*), Weems bighorn sheep (*Ovis canadensis weemsi*), California bighorn sheep (*Ovis canadensis californiana*), and Rocky Mountain bighorn sheep (*Ovis canadensis canadensis*). Audubon bighorn sheep are now extinct. As described below, this taxonomy has since been revised.

The term "desert bighorn" is used to describe bighorn sheep that inhabit dry and relatively barren desert environments and typically includes bighorn sheep subspecies that have, to date, been classified as *nelsoni*, *mexicana*, *cremnobates*, and *weemsi* (Manville 1980). The validity of these subspecies delineations has been questioned and reassessed. Based on

morphometric and genetic analyses, Wehausen and Ramey (1993) synonymized Peninsular bighorn with the subspecies *nelsoni*, which is the current taxonomy.

Bighorn sheep (*Ovis canadensis*) are found along the Peninsular Mountain Ranges from the San Jacinto Mountains of southern California south into the Volcan Tres Virgenes Mountains near Santa Rosalia, Baja California, Mexico, a total distance of approximately 800 kilometers (km) (500 miles (mi)). The area occupied by the distinct vertebrate population segment covered herein coincides with the range of the former subspecies *Ovis canadensis cremnobates* in California. The California Fish and Game Commission listed *Ovis canadensis cremnobates* as "rare" in 1971. The designation was changed to "threatened" by the California Department of Fish and Game (CDFG) to conform with terminology of the amended California Endangered Species Act.

The Peninsular bighorn sheep is similar in appearance to other desert bighorn sheep. The coat is pale brown, and the permanent horns, which become rough and scarred with age, vary in color from yellowish-brown to dark brown. The horns are massive and coiled in males; in females, they are smaller and not coiled. In comparison to other desert bighorn sheep, the Peninsular bighorn sheep is generally described as having paler coloration and having horns with very heavy bases (Cowan 1940).

The Peninsular bighorn sheep occurs on steep, open slopes, canyons, and washes in hot and dry desert regions where the land is rough, rocky, and sparsely vegetated. Most of these sheep live between 91 and 1,219 meters (m) (300 and 4,000 feet (ft)) in elevation, where average annual precipitation is less than 10 centimeters (cm) (4 inches (in)) and daily high temperatures average 104° Fahrenheit in the summer. Caves and other forms of shelter (e.g., rock outcrops) are used during inclement weather. Lambing areas are associated with ridge benches or canyon rims adjacent to steep slopes or escarpments. Alluvial fans (sloping masses of gravel, sand, clay, and other sediments that widen out like fans at the base of canyons and washes) are also used for breeding, feeding, and movement.

Peninsular bighorn sheep use a wide variety of plant species as their food source (Turner 1976, Scott 1986). Cunningham (1982) determined that the bighorn sheep diet in Carrizo Canyon (at the south end of the U.S. Peninsular Ranges) consisted of 57 percent shrubs,

32 percent herbaceous annuals and perennials, 8 percent cacti, and 2 percent grasses. Scott (1986) and Turner (1976) reported similar diet compositions at the north end of the range. Diet composition varied among seasons (Cunningham 1982, Scott 1986), presumably because of variability in forage availability, selection of specific plant species during different times of the year (Scott 1986), and seasonal movements of bighorn sheep. As with water sources, forage resources near escape terrain may be most valuable to bighorn sheep, especially ewes (Bleich *et al.* 1997).

Peninsular bighorn sheep typically produce only one lamb per year. In the Peninsular Ranges, ewes estimated to be between 2 and 16 years of age have been documented to produce lambs (Ostermann *et al.* in prep., Rubin *et al.* in prep.). Rams are believed to be capable of successful breeding as early as 6 months of age (Turner and Hansen 1980). Lambs are born after a gestation of approximately 174 days (Shackleton *et al.* 1984). Lambing occurs from January through August (Service 1999); however, most lambs are born between February and April. Ewes and lambs frequently occupy steep terrain that provides escape cover and shelter from excessive heat; they tend to congregate near dependable water sources during the summer. Lambs are able to eat native grass within 2 weeks of their birth and are weaned between 4 and 6 months of age.

Bighorn ewes exhibit a high degree of site fidelity to their home range; this behavior is learned by their offspring (Geist 1971). By following older animals, young bighorn sheep gather knowledge regarding escape terrain, water sources, and lambing habitat (Geist 1971). Ewes that share portions of a range are likely to be more closely related to each other than they are to other ewes (Festa-Bianchet 1991, Boyce *et al.* 1999); and are referred to as "ewe groups" in this proposal. Rams do not show the same level of site fidelity and tend to range more widely, often moving among ewe groups. As young rams reach 2 to 4 years of age, they follow older rams away from their birth group during the fall breeding period, or rut, and often return after this period (Geist 1971, Festa-Bianchet 1991).

From May through October, Peninsular bighorn sheep are dependent on permanent sources of water and are typically more localized in distribution. Bighorn sheep populations aggregate during this period due to a combination of breeding activities and diminishing water sources. Summer concentration areas are associated primarily with

dependable water sources, and ideally provide a diversity of vegetation to meet the forage requirements of bighorn sheep.

Bighorn sheep are primarily diurnal (Krausman *et al.* 1985) but may be active at any time of day or night (Miller *et al.* 1984). Their daily activity pattern includes feeding and resting periods. As bighorn sheep rely on vigilance to detect predators; they benefit from gregariousness and group alertness (Geist 1971, Berger 1978). Within each ewe group, ewes appear to associate with other ewes based on their availability rather than on their matrilineal (descent through the mother) relationships (Festa-Bianchet 1991, Boyce *et al.* 1999). These subgroups are dynamic; that is, they may split, reform, or change membership on a daily or hourly basis as animals move through their home ranges.

The decline of the Peninsular bighorn sheep is attributed to a combination of factors, including: (1) The effects of disease and parasitism (Buechner 1960, DeForge and Scott 1982, DeForge *et al.* 1982, Jessup 1985, Wehausen *et al.* 1987, Elliott *et al.* 1994); (2) low lamb recruitment (DeForge *et al.* 1982, Wehausen *et al.* 1987, DeForge *et al.* 1995); (3) habitat loss, degradation, and fragmentation (Service 1999); and (4) predation (DeForge *et al.* 1997, Hayes *et al.* in prep.).

Disease has been identified as one of the factors responsible for population declines in the Peninsular Ranges and elsewhere. Analysis of exposure to disease-causing agents between 1978 and 1990 showed that Peninsular bighorn sheep populations and surrounding populations in southern California have higher levels of pathogen exposure than other populations of bighorn sheep in the State (Elliott *et al.* 1994). However, tests of exposure to pathogens have revealed the presence of antibodies to several infectious disease agents in healthy as well as clinically ill animals (Clark *et al.* 1993, Elliott *et al.* 1994; DeForge *et al.* 1997), and essentially all of the viruses, bacteria, and parasites that have been reported from Peninsular St. sheep appear to be widespread among desert big horn sheep in the western United States (Jessup *et al.* 1990). All evidence indicates that the influence of disease in the Peninsular Ranges has subsided in more recent years. For example, examinations of big horn sheep throughout the range indicate that most animals are clinically normal (DeForge *et al.* 1997, Borjesson *et al.* 2000). The reduced influence of disease on Peninsular big horn sheep (at the same time they are in decline) suggests that

other factors, such as predation, habitat loss and modification, and human-related disturbance, currently limit the population.

In the Peninsular Ranges, a growing human population and increased activity adjacent to and within big horn sheep habitat are adversely affecting big horn sheep. Human development impacts sheep through habitat loss, fragmentation, or other modification; impacts also extend into big horn sheep habitat beyond the urban edge. These include increased noise, predator attraction, and an increased number of humans and their pets that venture into sheep habitat. Numerous researchers have expressed concern over the impact that human activity in big horn sheep habitat has on big horn sheep (*e.g.*, Jorgensen and Turner 1973, Hicks 1978, Leech 1979, Graham 1980, Cunningham 1982, DeForge and Scott 1982, Gross 1987, Smith and Krausman 1988, Sanchez *et al.* 1988). Although cases have been cited in which big horn sheep populations did not appear to be impacted by human activity (*e.g.*, Hicks and Elder 1979, Hamilton *et al.* 1982), numerous researchers, including the previous authors, have documented altered big horn sheep behavior in response to human-related disturbance. In addition to development, a variety of other human activities, such as hiking, mountain biking, horseback riding, camping, hunting, livestock grazing, and use of aircraft and off-road-vehicles, have the potential to disrupt normal big horn sheep social behaviors. Big Horn sheep may also alter their use of essential resources resulting in physiological effects or abandon traditional habitat as a result of human disturbance (McQuivey 1978, MacArthur *et al.* 1979, Leech 1979, Leslie and Douglas 1980, Graham 1980, MacArthur *et al.* 1982, Bates and Workman 1983, Miller and Smith 1985, Krausman and Leopold 1986, Krausman *et al.* 1989, Papouchis *et al.* 1999).

Mountain lion predation is an apparent limiting factor to some ewe groups in the Peninsular Ranges (Hayes *et al.* in prep.). Reported incidents of lion predation were not common in the past and predation was not considered to be a serious risk to big horn sheep (Weaver and Mensch 1970, Jorgensen and Turner 1975, Cunningham 1982), but the increase in the number of radio-collared big horn sheep since 1993 has increased the detection of such mortalities. Such observations need to be interpreted carefully, however, because it is possible that changes in other causes of mortality (such as diseases) have altered the proportion of mortalities attributed to lion predation.

Although predation by other species such as coyotes and bobcats could reduce lamb recruitment, its impact is not well understood.

The Peninsular big horn sheep in the United States declined from an estimated 1,171 individuals in 1971 to about 570 individuals in 1991 (Bleach *et al.* 1992). Recent estimates now number the population at approximately 335 in about eight ewe groups in the wild in the United States

There are also two captive populations of Peninsular bighorn sheep. The Living Desert Museum, an educational and zoo facility in Palm Desert, California, maintains a small group (seven adult females and two adult males). The Bighorn Institute, also in Palm Desert, maintains a small captive herd of approximately 15 to 20 animals. This private, nonprofit organization, established in 1982 through a Memorandum of Understanding with the California Department of Fish and Game, conducts research and maintains a breeding herd at its facility. Since 1985, 77 animals from this herd have been released into the wild. Releases have occurred in the northern Santa Rosa Mountains (seventy-four releases from 1985 to 1998) and in the San Jacinto Mountains (3 during 1997) (Ostermann *et al.* in prep.).

The habitat still remaining for the Peninsular bighorn sheep in the United States is managed by: the California Department of Parks and Recreation (416,398 ac or 47 percent); California Department of Fish and Game (25,613 ac or 3 percent), Bureau of Land Management (BLM) (228,568 ac or 26 percent), private landowners (149,906 ac or 17 percent), Trust (20,462 ac or 2 percent) (tribal and allotted lands), U.S. Forest Service (23,073 ac or 3 percent), and other State and local entities (11,593 ac or 1 percent).

The Santa Rosa Mountains National Monument has been proposed in the Santa Rosa and San Jacinto Mountains. Since the proposed monument boundaries have not been finalized, we do not know how much of the monument will be within proposed Peninsular bighorn sheep critical habitat. The preliminary proposed monument configuration encompasses a variety of BLM, U.S. Forest Service, State, and private lands. Approximately 35% of the proposed critical habitat for Peninsular bighorn sheep overlaps this configuration.

Previous Federal Action

On September 18, 1985, the Service designated the Peninsular bighorn sheep as a category 2 candidate and solicited

status information (50 FR 37958). Category 2 included taxa for which the Service had information indicating that proposing to list as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not currently available to support a proposed rule. In the January 6, 1989 (54 FR 554), Notice of Review, the Peninsular bighorn sheep was retained in category 2. In 1990, we initiated an internal status review of category 2 species. We completed this review in the spring of 1991; Peninsular bighorn sheep were changed from category 2 to category 1. Category 1 were those taxa for which we had sufficient information on biological vulnerability and threats to support proposals to list them as endangered or threatened. However, we inadvertently omitted this change to category 1 in the November 21, 1991, Animal Notice of Review (56 FR 58804), and the Peninsular bighorn sheep retained category 2 status. Beginning with our February 28, 1996, Notice of Review (61 FR 235), we discontinued the designation of multiple categories of candidates, and we now consider only taxa that meet the definition of former category 1 taxa as candidates for listing.

On July 15, 1991, we received a petition from the San Geronio Chapter of the Sierra Club to list the Peninsular bighorn sheep as an endangered species. The petition requested that the Service list, through emergency or normal procedures, the Peninsular bighorn sheep throughout its entire range. Alternatively, the petition requested the listing in at least the Santa Rosa and San Jacinto mountains of southern California. The Service used information from the status review and the July 15, 1991, petition to determine that substantial information existed indicating that the Peninsular bighorn sheep may be in danger of extinction throughout all or a significant portion of its range. This finding was made on December 30, 1991, pursuant to section 4(b)(3)(A) of the Act and was published in the **Federal Register** on May 8, 1992, as a proposed rule to list the Peninsular bighorn sheep as endangered (57 FR 19837). The proposed rule constituted the 1-year finding for the July 15, 1991, petitioned action. The proposed listing status was cited in the subsequent November 15, 1994 (59 FR 58982), and February 28, 1996 (61 FR 7596), Notices of Review. On February 14, 1995, the Sierra Club Legal Defense Fund (plaintiff) filed suit in Federal District Court for the Eastern District of California to compel the Secretary of the Interior and the Director of the Service

to make a final determination to list the Peninsular bighorn sheep as an endangered or threatened species.

On April 10, 1995, Congress enacted a moratorium prohibiting work on listing actions (Public Law 104-6), thus preventing the Service from taking final listing action on the Peninsular bighorn sheep. The moratorium was lifted on April 26, 1996, by means of a Presidential waiver, at which time limited funding for listing actions was made available through the Omnibus Appropriations Act (Pub. L. No. 104-134, 100 Stat. 1321, 1996). The Service published guidance for restarting the listing program on May 16, 1996 (61 FR 24722).

In response to the Sierra Club Legal Defense suit, the District Court issued a stay order on April 10, 1996. On October 15, 1996, the plaintiff asked the Court to lift the stay and require the final Peninsular bighorn sheep listing decision within 30 days. On November 26, 1996, the District Court entered an order denying the plaintiff's request to lift the stay, but certified the issue underlying that denial for interlocutory (temporary) appeal.

Due to new information becoming available during the lapse between the original comment period (November 4, 1992) and lifting the listing moratorium, the Service reopened the public comment period on April 7, 1997, for 30 days (62 FR 16518). Because of additional requests, the Service reopened the public comment period again on June 17, 1997, for an additional 15 days (62 FR 32733).

To acquire additional information on the status, distribution, and management of bighorn sheep in Baja California, Mexico, the public comment period was reopened on October 27, 1997 (62 FR 55563), for another 15 days. During this third and last comment period extension, the Mexican Government submitted information that they had instituted a new conservation program for bighorn sheep. Due in part to the implementation of this conservation program, the southern boundary of the distinct vertebrate population segment was re-delineated at the United States/Mexico International Border.

On March 18, 1998, the bighorn sheep occupying the Peninsular Ranges of southern California were listed as endangered (63 FR 13134) pursuant to the Act. At the time of the listing, we concluded that designation of critical habitat was not prudent. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The

identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. We concluded that critical habitat designation for the Peninsular bighorn sheep was not prudent because both of the described situations existed. We were concerned that publishing detailed maps of bighorn habitat would encourage human disturbance in sensitive areas, such as lambing habitat, rutting areas, and water sources, and result in increased disruption of bighorn sheep. We cited the rapidly growing human population in the Coachella Valley and the increasing recreational interest within bighorn habitat. We also concluded that designation of critical habitat did not add an additional regulatory benefit to bighorn sheep due to the limited Federal regulatory jurisdiction, through section 7 of the Act, for the majority of habitat necessary for conservation of the species. Therefore, we concluded that designation of critical habitat could increase the degree of threats to the species and would not provide any additional protection beyond existing regulatory mechanisms.

On December 18, 1998, the Southwest Center for Biological Diversity (Center) and Desert Survivors filed a complaint against the Service alleging that our "not prudent" findings were unsubstantiated. On September 17, 1999, we entered into a Settlement Agreement with the Center and Desert Survivors that stipulated a schedule for reviewing our prudency determination and publishing a Recovery Plan for Peninsular bighorn sheep. The schedule included the following dates—draft Recovery Plan, December 31, 1999; new proposed critical habitat determination, June 30, 2000; final Recovery Plan, October 31, 2000; and final determination of critical habitat as not prudent, September 30, 2000, or final critical habitat, by December 31, 2000. On December 31, 1999, we published the draft Recovery Plan for the Bighorn Sheep in the Peninsular Ranges (Service 1999).

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" 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.

We have reconsidered our previous prudence determination regarding the threats posed by a potential increase in disturbance of especially sensitive bighorn areas, such as lambing areas. Peninsular bighorn sheep distribution is not solely dependent on isolated habitat features, but requires a continuum of essential resources that allows the species to adapt to natural and unnatural environmental processes. Though bighorn sheep exhibit a high degree of site fidelity to their home range, their distributions are continually changing in response to changes in the environment. Peninsular bighorn sheep are considered a metapopulation, which is a group of smaller populations that occasionally exchange individuals and/or genetic material, usually through ram movement. As in any metapopulation, habitat restriction and fragmentation can impede dispersal and recolonization potential, thereby degrading the ability of the sub populations to interact. This is particularly true for large mammals that range widely to locate and exploit unpredictably changing sources of food, water, and shelter. Accordingly, we have used an ecosystem approach to delineate critical habitat that includes all of the essential habitat components, and does not highlight localized bighorn areas. Consequently, we conclude that designating critical habitat is not expected to increase the degree of threat from human activities.

Furthermore, we have determined that the limited section 7 nexus for the majority of Peninsular bighorn habitat, as discussed in the final listing rule, is not, by itself, an adequate basis for making a "not prudent" finding. Designation of critical habitat will also provide some educational benefit by identifying the range-wide habitat essential to the conservation of the species, and help provide a focus for interagency recovery efforts. Therefore, we now conclude that the benefits of designating critical habitat outweigh the potential negative impacts.

Critical habitat receives protection under the Act through the prohibition against destruction or adverse modification of critical habitat as set forth under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the

adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to lands designated as critical habitat. Critical habitat designation would not afford any protection under the Act to activities on private or other non-Federal lands that do not involve a Federal action.

Designating critical habitat does not, in itself, lead to recovery of a listed species. Designation does not create a management plan, set aside areas as preserves, establish numerical population goals, prescribe specific management actions (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Critical habitat identifies specific areas that have features that are essential to the conservation of a listed species and that may require special management considerations or protection. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery plans and management plans, and through section 7 consultation and section 10 permits.

Methods

In identifying areas that are essential to conserve the Peninsular bighorn sheep, we used the best scientific and commercial data available. This included data from research and survey observations published in peer-reviewed articles; recovery criteria and habitat analyses outlined in the draft Recovery Plan; discussions with, and data made available through, the Peninsular Bighorn Sheep Recovery Team; and regional Geographic Information System (GIS) coverages.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species. These include, but are not limited to, space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction and rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distribution of a species.

The areas that we are proposing to designate as critical habitat for Peninsular bighorn sheep provide some

or all of those habitat components essential for the primary biological needs of feeding, resting, reproduction and population recruitment, dispersal, connectivity between ewe groups, and isolation from detrimental human disturbance. The primary biological and physical constituent elements that are essential to the conservation of Peninsular bighorn sheep include space for the normal behavior of groups and individuals; protection from disturbance; availability of a variety of native desert vegetation, including alluvial habitat that provides essential seasonal forage; a range of habitats that provide forage during periods of environmental stress, such as drought or predation; steep, remote habitat for lambing, rearing of young, and escape from disturbance and/or predation; water sources; suitable corridors allowing individual bighorn to move freely between ewe groups; and space and the essential habitat components to accommodate a recovered population. Areas with these primary constituent elements support or have the potential to support native forage elements, and provide, or could provide, connectivity between or within ewe groups.

Criteria Used To Identify Critical Habitat

The criteria for delineating Peninsular bighorn habitat was based on biological information in pertinent literature and the expert opinion of those most familiar with bighorn sheep in the Peninsular Ranges (*i.e.*, the recovery team). We used a quarter-section grid based on the Public Land Survey township, section, range coordinate system to delineate those areas identified in the draft recovery plan that contain the primary constituent elements. A small area of San Diego County within the Valle de San Felipe Land Grant was defined using Universal Transverse Mercator (UTM) coordinates.

We did not map critical habitat in sufficient detail to exclude all developed areas, such as scattered residential housing in sparsely inhabited regions, that do not contain primary constituent elements essential for bighorn conservation. Within the delineated critical habitat boundary, only lands supporting one or more constituent elements are considered critical habitat. Road and railroad rights-of-way and flood control facilities that must be traversed to maintain connectivity between sub-populations, or otherwise may provide food, water, or cover for Peninsular bighorn sheep are considered to support primary constituent elements.

We excluded habitat that is not considered essential to bighorn recovery from the proposed critical habitat boundary. This includes areas such as those that were historically used for migration between other mountain ranges but have been eliminated as migration areas due to development. While bighorn have been documented to use areas outside of proposed critical habitat, these areas are considered to be

non-essential, largely due to fragmentation and/or proximity to development.

All proposed critical habitat is currently occupied and necessary to maintain connectivity between ewe groups. Maintaining connectivity between ewe groups and access to changing resource availability in a variable environment is a necessary component for continued viability of the

metapopulations and to achieve recovery of Peninsular bighorn. Bighorn sheep are wide-ranging large animals that often move great distances. Thus we consider all critical habitat to be occupied by the species.

Proposed Critical Habitat Designation

The approximate area of proposed critical habitat by county and land ownership is shown in Table 1.

TABLE 1.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA (HECTARES (ACRES)) BY COUNTY AND LAND OWNERSHIP

County	Federal*	Trust (tribal and allotted lands)	Local/State	Private	Total
Riverside	39,713 ha (98,135 ac)	6,594 ha (16,293 ac)	17,725 ha (43,081 ac)	35,256 ha (87,121 ac)	99,288 ha (245,350 ac)
San Diego	20,112 ha (49,699 ac)	0 ha (0 ac)	152,839 ha (377,677 ac)	16,245 ha (40,143 ac)	189,196 ha (467,519 ac)
Imperial	42,009 ha (103,808 ac)	1,687 ha (4,168 ac)	13,001 ha (32,126 ac)	9,163 ha (22,642 ac)	65,859 ha (162,744 ac)
Total	101,834 ha (251,642 ac)	8,281 ha (20,461 ac)	183,565 ha (453,604 ac)	60,664 ha (149,906 ac)	354,343 ha (875,613 ac)

* Federal lands include Bureau of Land Management and National Forest (U.S. Forest Service) lands.

Proposed critical habitat includes bighorn habitat in Riverside, San Diego, and Imperial Counties, California. Lands proposed are under private, Local/State, Trust (tribal and allotted lands), and Federal ownership, with Federal lands including those lands managed by the Bureau of Land Management (BLM) and U.S. Forest Service.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is

likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation we ensure that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse

modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect the Peninsular bighorn sheep or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the Corps under section 404 of the Clean Water Act, or some other Federal action, including funding (e.g., Federal Highway Administration, Federal Aviation Administration, or Federal Emergency Management Agency funding), will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not federally funded or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly, 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. Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the bighorn is appreciably reduced. 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 adversely affect critical habitat include, but are not limited to:

(1) Unauthorized destruction or degradation of habitat (as defined in the primary constituent elements discussion), including, but not limited to, clearing vegetation, bulldozing terrain, overgrazing, construction, road building, mining, and disturbing natural hydrology; and

(2) Appreciably decreasing habitat value or quality through indirect effects (e.g., noise, edge effects, low-flying aircraft, invasion of exotic plants or animals, or fragmentation).

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to "jeopardize the continued existence" of a species are those that would appreciably reduce the likelihood of the species survival and recovery. Actions likely to "destroy or

adversely modify" critical habitat are those that would appreciably reduce the value of critical habitat for the survival and recovery of the listed species.

Common to both definitions is an appreciable detrimental effect on both survival and recovery of a listed species. Given the similarity of these definitions, actions likely to destroy or adversely modify critical habitat would almost always result in jeopardy to the species concerned, particularly when the area of the proposed action is occupied by the species concerned. In those cases, the ramifications of designation of critical habitat are few or none. However, if occupied habitat becomes unoccupied in the future, there is a potential benefit to designation of critical habitat in such areas.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Regulation of grazing, mining, and recreation by the Bureau of Land Management and U.S. Forest Service;

(4) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities by Federal agencies;

(5) Regulation of airspace and flight plans within the Federal Aviation Administration jurisdiction;

(6) Military training, maneuvers, and flights on applicable Department of Defense lands;

(7) Construction of roads and fences along the international border with Mexico, and associated immigration enforcement activities by the Immigration and Naturalization Service;

(8) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(9) Construction of communication sites licensed by the Federal Communications Commission; and

(10) Activities funded by the U.S. Environmental Protection Agency, U.S. Department of Energy, or any other Federal agency.

All proposed critical habitat is currently occupied and necessary to maintain connectivity between ewe groups. Bighorn sheep are wide-ranging large animals that often move great distances. Thus we consider all critical habitat to be occupied by the species. As

Federal agencies already consult with us on activities in these areas that may affect the species to ensure that their actions do not jeopardize the continued existence of the species; we do not anticipate that additional regulatory protection will result from critical habitat designation.

Relationship to Habitat Conservation Plans

We expect that critical habitat may be used as a tool to identify those areas essential for the conservation of the species, and we will encourage development of Habitat Conservation Plans (HCPs) for such areas on non-Federal lands. Habitat conservation plans currently under development are intended to provide for protection and management of habitat areas essential for the conservation of the Peninsular bighorn sheep, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the Peninsular bighorn sheep. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a biologically configured system of interlinked habitat blocks.

The Coachella Valley Multiple Species Habitat Conservation Plan, currently under preparation, proposes coverage for Peninsular bighorn sheep. This effort represents an important opportunity to address the long-term conservation needs of Peninsular bighorn sheep throughout the private lands under city and county jurisdiction in Riverside County, and to integrate management with intermixed public lands. Within Imperial and San Diego Counties, Federal land ownership patterns, Federal funding and permitting, and extensive habitat protection on State lands, limit the prospects for HCPs that would include Peninsular bighorn sheep. We fully expect that HCPs undertaken by local jurisdictions (e.g., counties, cities) and other parties will identify, protect, and provide appropriate management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. We believe and fully expect that our analyses of proposed HCPs and proposed projects under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and biological opinions will not result in

destruction or adverse modification of critical habitat.

We provide technical assistance and work closely with applicants throughout the development of HCPs to identify lands essential for the long-term conservation of the Peninsular bighorn sheep and appropriate conservation and management actions. Several HCP efforts are currently under way that address listed and nonlisted species in areas within the range of the Peninsular bighorn sheep and in areas we propose as critical habitat. These HCPs, which will incorporate appropriate adaptive management, should provide for the conservation of the species. We are soliciting comments on whether future approval of HCPs and issuance of section 10(a)(1)(B) permits for the Peninsular bighorn sheep should trigger revision of designated critical habitat to exclude lands within the HCP area and, if so, by what mechanism (see Public Comments Solicited section).

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Offices (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, OR 97232 (telephone 503/231-2063; facsimile 503/231-6243).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data 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 such exclusions outweigh the benefits of designating these areas as critical habitat. We cannot exclude areas from critical habitat when the exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to making a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day comment period at that time.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or

suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any benefits of exclusion;

(2) Specific information on the amount and distribution of Peninsular bighorn sheep habitat, and what habitat is essential to the conservation of the species, and why;

(3) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and,

(5) Economic and other values associated with designating critical habitat for the Peninsular bighorn sheep, such as those derived from nonconsumptive uses (e.g. enhanced watershed protection, increased soil retention, "existence values," and reductions in administrative costs).

There are conservation-planning efforts now under way in areas we are proposing as critical habitat for the Peninsular bighorn sheep. We believe that areas covered by an approved HCP for the species would provide the long-term commitments necessary for the conservation of the species and would not meet the definition of critical habitat because they would not need special management consideration or protections. However, these HCPs are still being developed. Here we are proposing to designate critical habitat for areas that we believe are essential to the conservation of the species and need special management or protection.

We invite comments on the following, or other alternative approaches, for addressing critical habitat within the boundaries of future approved HCPs upon issuance of section 10(a)(1)(B) permits for the Peninsular bighorn sheep:

(1) Retain critical habitat designation within the HCP boundaries and use the section 7 consultation process on the issuance of the incidental take permit to ensure that any take we authorize will not destroy or adversely modify critical habitat;

(2) Revise the critical habitat designation upon approval of the HCP and issuance of the section 10(a)(1)(B) permit to retain only preserve areas, on

the premise that they encompass areas essential for the conservation of the species within the HCP area and require special management and protection in the future. Assuming that we conclude, at the time an HCP is approved and the associated incidental take permit is issued, that the plan protects those areas essential to the conservation of the Peninsular bighorn sheep, we would revise the critical habitat designation to exclude areas outside any reserves, preserves, or other conservation lands established under the plan. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries;

(3) As in (2) above, retain only preserve lands within the critical habitat designation, on the premise that they encompass areas essential for conservation of the species within the HCP area and require special management and protection in the future. However, under this approach, the exclusion of areas outside the preserve lands from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the boundaries of the preserve lands and the revision of designated critical habitat during the public review and comment process for HCP approval and permitting;

(4) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no additional special management or protection is required. This exclusion from critical habitat would occur automatically upon issuance of the incidental take permit. The public would be notified and have the opportunity to comment on the revision of designated critical habitat during the public notification process for HCP approval and permitting; or

(5) Remove designated critical habitat entirely from within the boundaries of an HCP when the plan is approved (including preserve lands), on the premise that the HCP establishes long-term commitments to conserve the species, and no further special management or protection is required. Consistent with our listing program priorities, we would publish a proposed rule in the **Federal Register** to revise the critical habitat boundaries.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and data received during the 60-day

comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal. Given the large geographic area covered by this proposal, the likelihood of requests, and the need to publish the final determination by December 31, 2000, we have scheduled two public hearings. The hearings are scheduled to be held on Thursday, July 20, 2000, from 1 p.m. until 3 p.m. and from 6 p.m. until 8 p.m. at the Wyndham Palm Springs Hotel, 888 E. Tahquitz Canyon Way, Palm Springs, California. Written comments submitted during the comment period will receive equal consideration as comments presented at the public hearing. For additional information on the public hearing see the **ADDRESSES** section.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make proposed rules easier to understand including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing,

etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make the proposed rule easier to understand?

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget (OMB), under Executive Order 12866.

(a) In the economic analysis, we will determine if this rule will have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The Peninsular bighorn sheep was listed as an endangered species in 1998. In fiscal years 1998 through 2000 we have conducted three formal section 7 consultations with other Federal agencies to ensure that their actions would not jeopardize the continued existence of the species.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 2 below).

TABLE 2.—IMPACTS OF PENINSULAR BIGHORN SHEEP LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only	Additional activities potentially affected by critical habitat designation
Federal activities potentially affected.	Activities such as those affecting U.S. waters by the Army Corps of Engineers under section 404 of the Clean Water Act; Regulation of water flows, damming, diversion, and channelization by Federal agencies; Regulation of grazing, mining, and recreation by the Bureau of Land Management and U.S. Forest Service; Road construction and maintenance, right-of-way designation, and regulation of agricultural activities; Regulation of airspace and flight plans within the Federal Aviation Administration jurisdiction; Military training, maneuvers, and flights on applicable Department of the Defense lands; Construction of roads and fences along the international border with Mexico, and associated immigration enforcement activities by the Immigration and Naturalization Service; Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency; Construction of communication sites licensed by the Federal Communications Commission; and Activities funded by the U.S. Environmental Protection Agency, U.S. Department of Energy, or any other Federal agency.	None.
Private or other non-Federal Activities potentially affected.	Activities that destroy bighorn whether directly (e.g. grading, overgrazing, construction, road building, mining, etc.) or through indirect effects (e.g. noise, edge effects, invasion of exotic species, or fragmentation) that require a Federal action (permit, authorization, or funding).	None.

Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based upon our experience with the

species and its needs, we conclude that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical

habitat would currently be considered as "jeopardy" under the Act. Accordingly, the designation of critical habitat does not have any incremental

impacts above the listing on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons that do not have any Federal involvement with their actions are not restricted by the designation of critical habitat, however, they continue to be bound by the provisions of the Act concerning "take" of the species.

(b) This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Peninsular bighorn sheep since the listing in 1998. The prohibition against adverse modification of critical habitat is not expected to impose any additional restrictions to those that currently exist in occupied areas of proposed critical habitat. Because of the potential for impacts on other Federal agency activities, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

(c) This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of the species, and as discussed above, we do not anticipate that the adverse modification prohibition (resulting from critical habitat designation) will have any incremental effects.

(d) This rule will not raise novel legal or policy issues. The proposed rule follows the requirements for determining critical habitat contained in the Endangered Species Act.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the economic analysis (under section 4 of the Act), we will determine whether designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under the Regulatory Planning and Review section, this rule is not expected to result in any restrictions in addition to those currently in existence. As indicated on Table 1 (see Proposed Critical Habitat Designation section) we have designated critical habitat on property owned by Federal, State, Tribal, and local governments, and private property.

Within these areas, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Regulation of activities affecting waters of the United States by the Army Corps of Engineers under section 404 of the Clean Water Act;

(2) Regulation of water flows, damming, diversion, and channelization by Federal agencies;

(3) Regulation of grazing, mining, and recreation by the Bureau of Land Management and U.S. Forest Service;

(4) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities by Federal agencies;

(5) Regulation of airspace and flight plans within the Federal Aviation Administration jurisdiction;

(6) Military training, maneuvers, and flights by Department of Defense lands;

(7) Construction of roads and fences along the International Border with Mexico, and associated immigration enforcement activities by the Immigration and Naturalization Service;

(8) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency;

(9) Construction of communication sites licensed by the Federal Communications Commission; and,

(10) Activities funded by the U.S. Environmental Protection Agency, U.S. Department of Energy, or any other Federal agency.

Many of these activities sponsored by Federal agencies within the proposed critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contract, grant, permit, or other Federal authorization. As discussed above, these actions are currently required to comply with the listing protections of the Act, and the designation of critical habitat is not anticipated to have any additional effects on these activities.

For actions on non-Federal property that do not have a Federal nexus (such as funding or authorization), the current restrictions concerning "take" of the species remain in effect, and this rule will have no additional restrictions.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of \$100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions in the economic analysis, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that any programs having Federal funds, permits or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated.

(b) This rule will not produce a Federal mandate of \$100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. As discussed above, the designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of the Peninsular bighorn sheep. Due to current public knowledge of the species protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. Additionally, critical habitat designation does not preclude development of habitat conservation plans and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have opportunity to utilize their property in ways consistent with the survival of the bighorn.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, the Service requested information from, and coordinated development of this critical

habitat proposal with, appropriate State resource agencies in California, as well as during the listing process. The designation of critical habitat for Peninsular bighorn sheep imposes no additional restrictions to those currently in place, and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur) and may lead to quicker recovery of the species.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Act and plan public hearings on the proposed designation during the comment period. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Peninsular bighorn sheep.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment and/or an Environmental

Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

We have determined that there are Tribal Trust lands essential for the conservation of the Peninsular bighorn sheep because they contain the primary constituent elements that support Peninsular bighorn sheep populations, and provide essential linkages between ewe groups in the Peninsular Ranges metapopulation. Therefore, we are proposing to designate critical habitat for the bighorn on Trust lands of the Morongo Band of Mission Indians, Aqua Caliente Band of Cahuilla Indians, and Torres-Martinez Desert Cahuilla Indians. Subsequent to this proposal, we will consult with the Tribes before making a final determination as to whether any Tribal lands should be included as critical habitat for the Peninsular bighorn sheep. We will consider whether these Tribal lands require special management considerations or protection; we may also exclude some or all of these lands from critical habitat upon a determination that the benefits of excluding them outweighs the benefits of designating these areas as critical habitat, as provided under section 4(b)(2) of the Act. This consultation will take place under the auspices of Secretarial Order 3206 and the Presidential Memorandum of April 29, 1994, which require us to coordinate with federally recognized Tribes on a Government-to-Government basis.

Lands within the Aqua Caliente Reservation necessary to the survival and recovery of Peninsular bighorn sheep occur within the current home range of the San Jacinto Mountains ewe group and provide a dispersal linkage to the northern Santa Rosa Mountains ewe group. The Tribe and Service are

coordinating on the development of a habitat management plan that would protect Peninsular bighorn sheep and more clearly define how Indian lands would contribute to regional conservation planning and the overall recovery program for Peninsular bighorn sheep. This management plan will be considered in our final decision on critical habitat designation.

On the Torres-Martinez Reservation, the Tribe and Service are coordinating on a habitat analysis and will complete a management plan, if appropriate, prior to making a decision on the value of Reservation lands to conservation of bighorn sheep.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary authors of this notice are the Carlsbad Fish and Wildlife Office staff (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons given in the preamble, we propose to amend 50 CFR part 17 as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat 3500; unless otherwise noted.

2. In § 17.11(h) revise the entry for “Sheep, bighorn” under “MAMMALS” to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	*
Sheep, bighorn	<i>Ovis canadensis</i>	U.S.A. (western conterminous States), Canada (southwestern), Mexico (northern).	U.S.A., (CA) Peninsular Ranges.	E	634	17.95(a)	NA
*	*	*	*	*	*	*	*

3. In § 17.95 add critical habitat for the bighorn sheep (Peninsular Ranges) (*Ovis canadensis*) under paragraph (a) in the same alphabetical order as this species occurs in § 17.11(h), to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

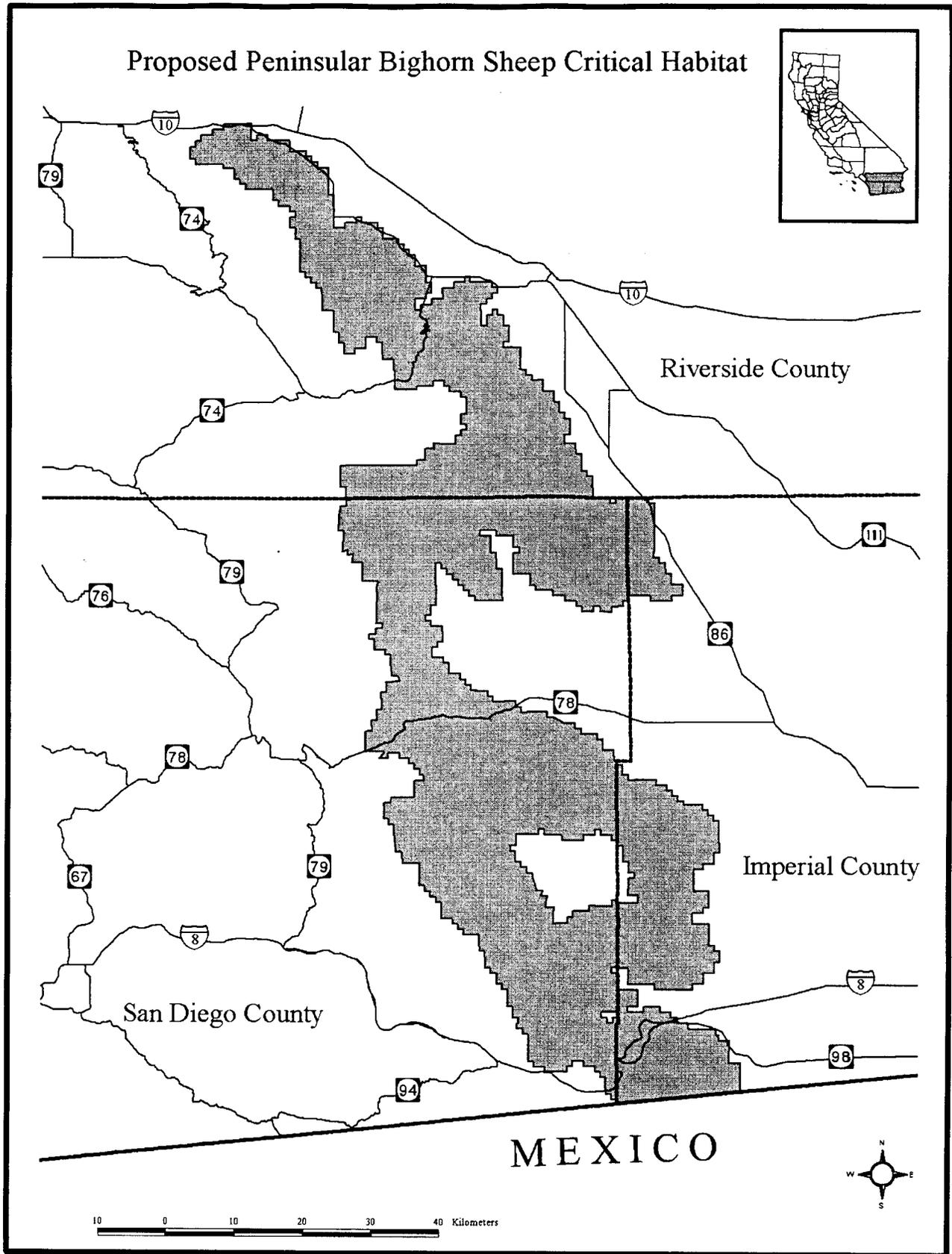
(a) *Mammals.*

* * * * *

Bighorn sheep (Peninsular Ranges) (*Ovis canadensis*)

1. Critical habitat is depicted for Riverside, San Diego, and Imperial Counties, California, on the maps below.

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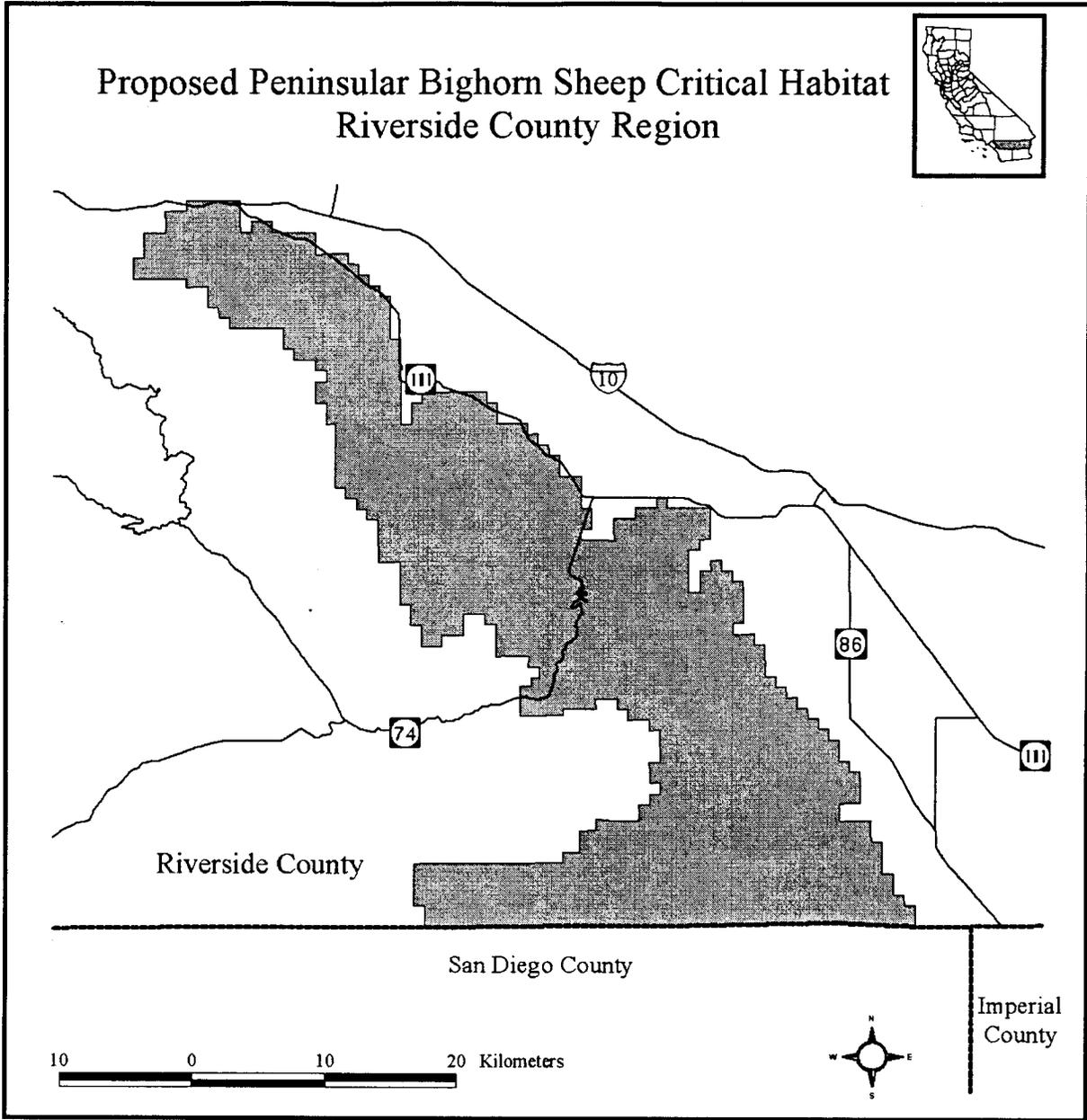


2. Within these areas, the primary constituent elements for Peninsular bighorn sheep are those habitat components that are essential for the primary biological needs of feeding, resting, reproduction and population recruitment, dispersal, connectivity between ewe groups, and isolation from detrimental human disturbance. The principal biological and physical constituent elements that are essential to the conservation of Peninsular bighorn sheep includes space for the normal behavior of groups and individuals; protection from disturbance; availability of a variety of native desert vegetation, including alluvial habitat that provides essential seasonal forage; the ability to utilize a range of habitats during periods of environmental stress, such as drought or predation; steep, remote habitat for lambing, rearing of young, and escape from disturbance and/or predation; water sources; the ability of individual bighorn to move freely between ewe groups; space and the essential habitat components to accommodate a recovered population. Primary constituent elements exist in areas that support, or have the potential to support, native forage elements and provide, or could provide, connectivity between or within ewe groups. These areas and associated habitat that provide the variety of necessary habitat components and connectivity were used to identify critical habitat.

Map Unit 1: Riverside County, California. From USGS 1:100,000 quadrangle maps Borrego Valley (1982), and Palm Springs (1982), California. Lands within T3S, R2E, S13; T3S, R2E, S14SE; T3S, R2E, S14NE; T3S, R2E, S23-S26; T3S, R2E, S27NE; T3S, R2E, S27SE; T3S, R3E, S7SE; T3S, R3E, S7SW; T3S, R3E, S8SE; T3S, R3E, S8SW; T3S, R3E, S9SW; T3S, R3E,

S15SE; T3S, R3E, S15SW; T3S, R3E, S16NW; T3S, R3E, S16SW; T3S, R3E, S17-S30; T3S, R3E, S31NW; T3S, R3E, S31NE; T3S, R3E, S32-S36; T3S, R4E, S29NW; T3S, R4E, S29SW; T3S, R4E, S29SE; T3S, R4E, S30-S32; T3S, R4E, S33NW; T3S, R4E, S33SW; T3S, R4E, S33SE; T4S, R3E, S1-S4; T4S, R3E, S5NW; T4S, R3E, S5NE; T4S, R3E, S5SE; T4S, R3E, S9NE; T4S, R3E, S9NW; T4S, R3E, S10NW; T4S, R3E, S10NE; T4S, R3E, S11NW; T4S, R3E, S11NE; T4S, R3E, S11SE; T4S, R3E, S12-S13; T4S, R3E, S14NE; T4S, R4E, S3NW; T4S, R4E, S3SW; T4S, R4E, S4-S9; T4S, R4E, S10NW; T4S, R4E, S10SW; T4S, R4E, S15-S18; T4S, R4E, S19NW; T4S, R4E, S19NE; T4S, R4E, S19SE; T4S, R4E, S20-S22; T4S, R4E, S25SW; T4S, R4E, S25SE; T4S, R4E, S27-S30; T4S, R4E, S31NE; T4S, R4E, S31SE; T4S, R4E, S32-34; T4S, R4E, S35SE; T4S, R4E, S35NE; T4S, R4E, S36; T4S, R5E, S29SE; T4S, R5E, S29SW; T4S, R5E, S30NW; T4S, R5E, S30SW; T4S, R5E, S30SE; T4S, R5E, S31-S32; T4S, R5E, S33NW; T4S, R5E, S33SW; T5S, R4E, S1-S5; T5S, R4E, S8-S17; T5S, R4E, S20NE; T5S, R4E, S21-S27; T5S, R4E, S28NE; T5S, R4E, S34-S36; T5S, R5E, S2SW; T5S, R5E, S3-S11; T5S, R5E, S12SW; T5S, R5E, S13NW; T5S, R5E, S13SW; T5S, R5E, S13SE; T5S, R5E, S14-35; T5S, R5E, S36NW; T5S, R5E, S36NE; T5S, R5E, S36SW; T5S, R6E, S18SW; T5S, R6E, S19NW; T5S, R6E, S19SW; T5S, R6E, S23SW; T5S, R6E, S25-S27; T5S, R6E, S28SW; T5S, R6E, S28SE; T5S, R6E, S30; T5S, R6E, S31NW; T5S, R6E, S31SE; T5S, R6E, S32SW; T5S, R6E, S32SE; T5S, R6E, S33-S36; T5S, R7E, S30NW; T5S, R7E, S30SW; T5S, R7E, S31NW; T6S, R4E, S1-S2; T6S, R4E, S3NW; T6S, R4E, S3NE; T6S, R4E, S11-S13; T6S, R4E, S14NW; T6S, R4E, S14NE; T6S, R4E, S14SE; T6S, R4E, S23NE; T6S, R4E, S24; T6S, R4E,

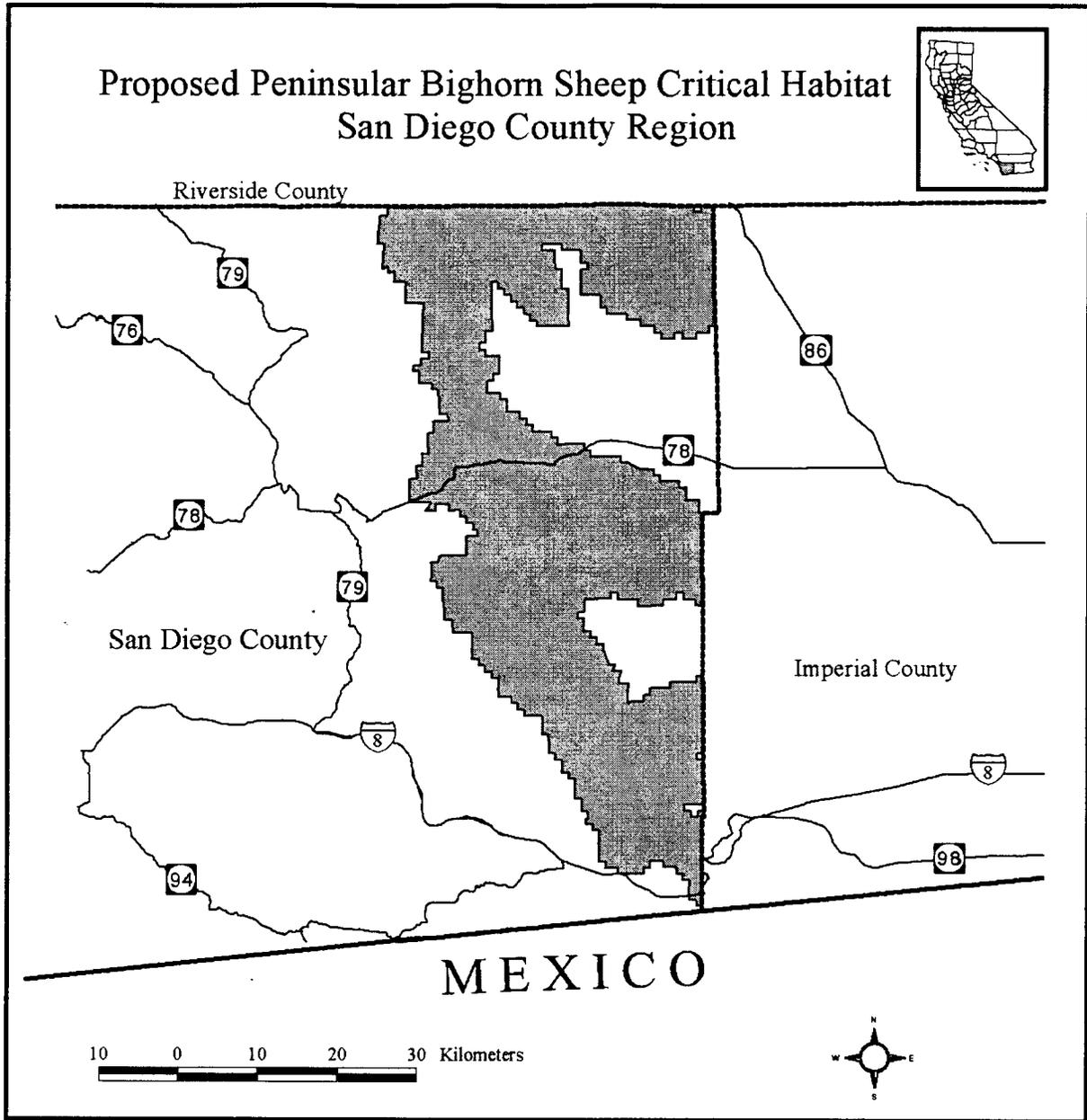
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Map Unit 2: San Diego County, California. From USGS 1:100,000 quadrangle maps Borrego Valley (1982) and El Cajon (1979), California. Lands within T9S, R4E, S1; T9S, R4E, S2SE; T9S, R4E, S11NE; T9S, R4E, S11SE; T9S, R4E, S12-S13; T9S, R4E, S14NE; T9S, R4E, S24; T9S, R4E, S25NW; T9S, R4E, S25NE; T9S, R4E, S25SE; T9S, R5E, S1-S36; T9S, R6E, S1-13; T9S, R6E, S14NW; T9S, R6E, S14NE; T9S, R6E, S15-S23; T9S, R6E, S24SW; T9S, R6E, S24SE; T9S, R6E, S25-S36; T9S, R7E, S1-S18; T9S, R7E, S19NE; T9S, R7E, S20NW; T9S, R7E, S20NE; T9S, R7E, S21-S27; T9S, R7E, S28NW; T9S, R7E, S28NE; T9S, R7E, S28SE; T9S, R7E, S31NW; T9S, R7E, S31SW; T9S, R7E, S33-S36; T9S, R8E, S1NE; T9S, R8E, S1SE; T9S, R8E, S1SW; T9S, R8E, S2NW; T9S, R8E, S2SW; T9S, R8E, S2SE; T9S, R8E, S3-S36; T10S, R5E, S1-S5; T10S, R5E, S8NW; T10S, R5E, S8NE; T10S, R5E, S9-S28; T10S, R5E, S33NE; T10S, R5E, S33NW; T10S, R5E, S33SE; T10S, R5E, S34-S36; T10S, R6E, S1-S4; T10S, R6E, S5NE; T10S, R6E, S6-S7; T10S, R6E, S9NE; T10S, R6E, S10-S14; T10S, R6E, S15NE; T10S, R6E, S18-S19; T10S, R6E, S23NE; T10S, R6E, S24NW; T10S, R6E, S24NE; T10S, R6E, S30NW; T10S, R6E, S30SW; T10S, R7E, S1-S4; T10S, R7E, S6NW; T10S, R7E, S6SW; T10S, R7E, S6SE; T10S, R7E, S7; T10S, R7E, S10NE; T10S, R7E, S10SE; T10S, R7E, S11-S12; T10S, R7E, S13NW; T10S, R7E, S13NE; T10S, R7E, S13SE; T10S, R7E, S14NW; T10S, R7E, S14NE; T10S, R7E, S18; T10S, R7E, S19NW; T10S, R7E, S19NE; T10S, R8E, S1-S18; T10S, R8E, S19NE; T10S, R8E, S20NE; T10S, R8E, S20NW; T10S, R8E, S20SE; T10S, R8E, S21-S23; T10S, R8E, S24NW; T10S, R8E, S24NE; T10S, R8E, S24SW; T10S, R8E, S26NW; T10S, R8E, S27NE; T10S, R8E, S28NW; T10S, R8E, S28NE; T11S, R5E, S1-S4; T11S, R5E, S5SE; T11S, R5E, S9-S14; T11S, R5E, S15NE; T11S, R5E, S15NW; T11S, R5E, S15SE; T11S, R5E, S22NE; T11S, R5E,

S22SE; T11S, R5E, S23-S26; T11S, R5E, S27NE; T11S, R5E, S34-S36; T11S, R6E, S5NW; T11S, R6E, S5SW; T11S, R6E, S6-S7; T11S, R6E, S18NW; T11S, R6E, S18SW; T11S, R6E, S19; T11S, R6E, S20NW; T11S, R6E, S20SW; T11S, R6E, S20SE; T11S, R6E, S28SW; T11S, R6E, S28SE; T11S, R6E, S29-S33; T11S, R6E, S34NW; T11S, R6E, S34SW; T11S, R6E, S34SE; T12S, R5E, S1-S3; T12S, R5E, S4NE; T12S, R5E, S4SE; T12S, R5E, S9NE; T12S, R5E, S9SE; T12S, R5E, S9SW; T12S, R5E, S10-S16; T12S, R5E, S17SE; T12S, R5E, S20NE; T12S, R5E, S20SE; T12S, R5E, S20SW; T12S, R5E, S21-S33; T12S, R5E, S34NE; T12S, R5E, S34NW; T12S, R5E, S35-S36; T12S, R6E, S1NW; T12S, R6E, S1SW; T12S, R6E, S1SE; T12S, R6E, S2-S36; T12S, R7E, S7-S8; T12S, R7E, S9SW; T12S, R7E, S13SE; T12S, R7E, S13SW; T12S, R7E, S14SW; T12S, R7E, S15-S36; T12S, R8E, S18SE; T12S, R8E, S18SW; T12S, R8E, S19; T12S, R8E, S20NW; T12S, R8E, S20SW; T12S, R8E, S20SE; T12S, R8E, S21SW; T12S, R8E, S21SE; T12S, R8E, S27SW; T12S, R8E, S28-S34; T12S, R8E, S35NW; T12S, R8E, S35SW; T13S, R5E, S1NW; T13S, R5E, S1NE; T13S, R5E, S1SE; T13S, R5E, S13SE; T13S, R5E, S13NE; T13S, R5E, S22SE; T13S, R5E, S23SW; T13S, R5E, S23SE; T13S, R5E, S24NE; T13S, R5E, S24SW; T13S, R5E, S24SE; T13S, R5E, S25-S27; T13S, R5E, S34NW; T13S, R5E, S34NE; T13S, R5E, S34SE; T13S, R5E, S35-S36; T13S, R6E, S1-S6; T13S, R6E, S7NW; T13S, R6E, S7NE; T13S, R6E, S7SE; T13S, R6E, S8-S36; T13S, R7E, S1-S36; T13S, R8E, S1-S36; T14S, R5E, S1-S2; T14S, R5E, S11-S13; T14S, R5E, S14NW; T14S, R5E, S14NE; T14S, R5E, S14SE; T14S, R5E, S23NE; T14S, R5E, S24NE; T14S, R5E, S24NW; T14S, R6E, S1-S30; T14S, R6E, S31NW; T14S, R6E, S31NE; T14S, R6E, S31SE; T14S, R6E, S32-S36; T14S, R7E, S1NW; T14S, R7E, S1NE; T14S, R7E, S1SE; T14S, R7E, S2-S9; T14S, R7E, S16NW; T14S, R7E, S16SE; T14S, R7E, S16SW; T14S,

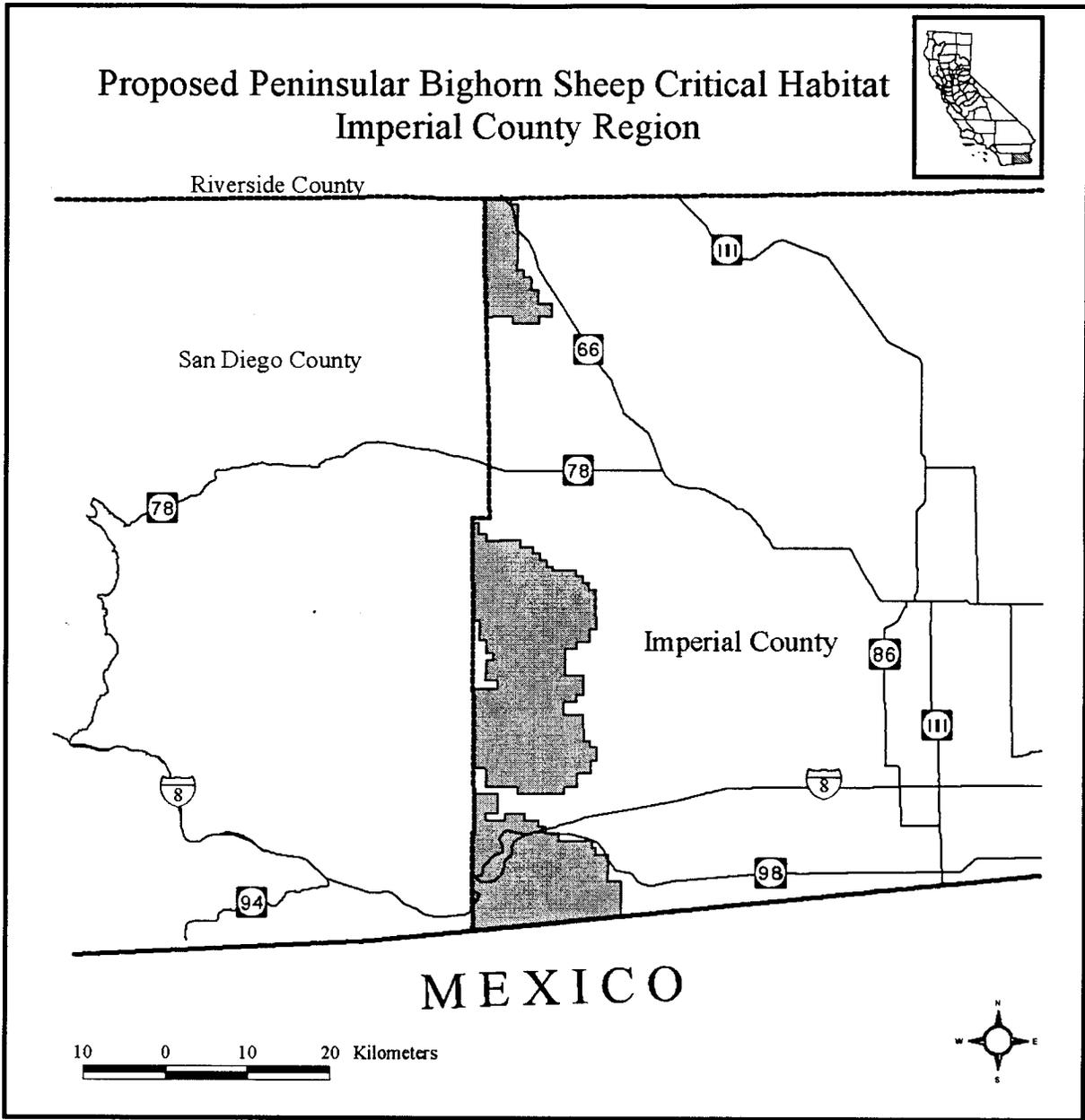
R7E, S17-S21; T14S, R7E, S22SW; T14S, R7E, S26SW; T14S, R7E, S27-S34; T14S, R7E, S35NW; T14S, R7E, S35SW; T14S, R8E, S1; T14S, R8E, S2NE; T14S, R8E, S2NW; T14S, R8E, S2SE; T14S, R8E, S3-S6; T14S, R8E, S8NW; T14S, R8E, S8NE; T14S, R8E, S9NW; T14S, R8E, S9NE; T14S, R8E, S12NE; T15S, R6E, S1-S4; T15S, R6E, S5NW; T15S, R6E, S5NE; T15S, R6E, S5SE; T15S, R6E, S9-S15; T15S, R6E, S16NW; T15S, R6E, S16NE; T15S, R6E, S22NE; T15S, R6E, S23-S24; T15S, R6E, S25NE; T15S, R6E, S25SE; T15S, R6E, S36NE; T15S, R7E, S1SW; T15S, R7E, S2-S11; T15S, R7E, S12NW; T15S, R7E, S12SW; T15S, R7E, S12SE; T15S, R7E, S13-S36; T15S, R8E, S10SE; T15S, R8E, S11SW; T15S, R8E, S11SE; T15S, R8E, S12NE; T15S, R8E, S12SW; T15S, R8E, S12SE; T15S, R8E, S13-S16; T15S, R8E, S17SE; T15S, R8E, S19-S36; T16S, R7E, S1-S6; T16S, R7E, S7NE; T16S, R7E, S8-S16; T16S, R7E, S17NW; T16S, R7E, S17NE; T16S, R7E, S17SE; T16S, R7E, S21-S27; T16S, R7E, S28NW; T16S, R7E, S28NE; T16S, R7E, S28SE; T16S, R7E, S33NE; T16S, R7E, S34-S36; T16S, R8E, S1-S34; T16S, R8E, S35NW; T16S, R8E, S35SW; T16S, R8E, S35SE; T16S, R8E, S36SE; T17S, R7E, S1-S2; T17S, R7E, S3NE; T17S, R7E, S3NW; T17S, R7E, S3SE; T17S, R7E, S11-S14; T17S, R7E, S23NW; T17S, R7E, S23NE; T17S, R7E, S23SE; T17S, R7E, S24; T17S, R7E, S25NE; T17S, R8E, S1-S20; T17S, R8E, S21NW; T17S, R8E, S21NE; T17S, R8E, S22-S25; T17S, R8E, S26NW; T17S, R8E, S26NE; T17S, R8E, S26SE; T17S, R8E, S29NW; T17S, R8E, S30NW; T17S, R8E, S30NE; T17S, R8E, S36; T18S, R8E, S1NW; T18S, R8E, S1NE; T18S, R8E, S1SE. The following lands within the Valle de San Felipe Land Grant bounded by UTM zone 11, NAD27 coordinates (X, Y): 547000, 3664000; 548000, 3664000; 548000, 3663000; 552000, 3663000; 552000, 3662000; 551000, 3662000; 551000, 3661000; 547000, 3661000; 547000, 3664000.



Map Unit 3: Imperial County, California. From USGS 1:100,000 quadrangle maps Borrego Valley (1982), El Cajon (1979), Salton Sea (1982), and El Centro (1982), California. Lands within T9S, R9E, S5SW; T9S, R9E, S6-S8; T9S, R9E, S9SW; T9S, R9E, S16NW; T9S, R9E, S16SW; T9S, R9E, S17-S20; T9S, R9E, S21NW; T9S, R9E, S21SW; T9S, R9E, S28NW; T9S, R9E, S28SW; T9S, R9E, S29-S32; T9S, R9E, S33NW; T9S, R9E, S33SE; T9S, R9E, S33SW; T10S, R9E, S3NW; T10S, R9E, S3SW; T10S, R9E, S4-S9; T10S, R9E, S10NW; T10S, R9E, S10SE; T10S, R9E, S10SW; T10S, R9E, S14-S18; T10S, R9E, S21NE; T10S, R9E, S21NW; T10S, R9E, S22NE; T10S, R9E, S22NW; T13S, R9E, S6SW; T13S, R9E, S7NW; T13S, R9E, S7SE; T13S, R9E, S7SW; T13S, R9E, S14SW; T13S, R9E, S15NW; T13S, R9E, S15SE; T13S, R9E, S15SW; T13S, R9E, S16-S23; T13S, R9E, S24SW; T13S, R9E, S25-S36; T13S, R10E, S29SW; T13S, R10E, S30-S32; T13S, R10E, S33SW;

T14S, R9E, S1-S17; T14S, R9E, S18NE; T14S, R9E, S18SE; T14S, R9E, S19NE; T14S, R9E, S20-S28; T14S, R9E, S29NE; T14S, R9E, S29NW; T14S, R9E, S29SE; T14S, R9E, S32-S36; T14S, R10E, S4NW; T14S, R10E, S4SW; T14S, R10E, S5-S8; T14S, R10E, S9NW; T14S, R10E, S9SW; T14S, R10E, S16NW; T14S, R10E, S17-S19; T14S, R10E, S20NE; T14S, R10E, S20NW; T14S, R10E, S30NW; T14S, R10E, S30SW; T14S, R10E, S31NW; T14S, R10E, S31SW; T15S, R9E, S1-S5; T15S, R9E, S6NE; T15S, R9E, S7-S36; T15S, R10E, S5SW; T15S, R10E, S6-S7; T15S, R10E, S8NW; T15S, R10E, S19; T15S, R10E, S20SW; T15S, R10E, S29NW; T15S, R10E, S29SW; T15S, R10E, S30-S33; T16.5S, R9.5E, S1NW; T16.5S, R9.5E, S1SE; T16.5S, R9.5E, S1SW; T16.5S, R9.5E, S2; T16.5S, R10E, S4SE; T16.5S, R10E, S4SW; T16.5S, R10E, S5SE; T16.5S, R10E, S5SW; T16.5S, R10E, S6SE; T16.5S, R10E, S6SW; T16S, R9E, S1-S14; T16S, R9E, S15NE; T16S, R9E,

S15NW; T16S, R9E, S15SE; T16S, R9E, S16NE; T16S, R9E, S16NW; T16S, R9E, S17NE; T16S, R9E, S17NW; T16S, R9E, S18NE; T16S, R9E, S19; T16S, R9E, S28SE; T16S, R9E, S28SW; T16S, R9E, S30NE; T16S, R9E, S30NW; T16S, R9E, S30SW; T16S, R9E, S31-S34; T16S, R9E, S35SW; T16S, R10E, S4-S7; T16S, R10E, S8NE; T16S, R10E, S8NW; T16S, R10E, S18NE; T16S, R10E, S18NW; T17S, R9E, S1-S36; T17S, R10E, S2-S10; T17S, R10E, S11NW; T17S, R10E, S11NE; T17S, R10E, S11SW; T17S, R10E, S13SW; T17S, R10E, S14NW; T17S, R10E, S14SW; T17S, R10E, S14SE; T17S, R10E, S15-S23; T17S, R10E, S24NW; T17S, R10E, S24SW; T17S, R10E, S25NW; T17S, R10E, S25SW; T17S, R10E, S26-S35; T17S, R10E, S36NW; T17S, R10E, S36SW; T18S, R9E, S1-S6; T18S, R9E, S7NE; T18S, R9E, S7SE; T18S, R9E, S7NW; T18S, R9E, S8-S11.



Dated: June 28, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000622191-0191-01; I.D. 041700D]

RIN 0648-AO35

Fisheries off West Coast States and in the Western Pacific; Pelagics Fisheries; Measures To Reduce the Incidental Catch of Seabirds in the Hawaii Pelagic Longline Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes a rule under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) that would require operators of vessels registered for use under Hawaii pelagic longline limited access permits to use two or more of six specific bird mitigation techniques when fishing with pelagic longline gear north of 25° N. lat.; annually attend a protected species workshop conducted by NMFS; and release all hooked or entangled sea birds in a manner that maximizes their post-release survival. This proposed rule would reduce fishery impacts on black-footed and Laysan albatrosses that are accidentally hooked or entangled and killed by Hawaii pelagic longliners during the setting and hauling of longline gear. This proposed rule would also reduce the potential for interactions between pelagic longline fishing vessels and endangered short-tailed albatrosses, which are known to occasionally visit the Northwestern Hawaiian Islands.

DATES: Comments on this proposed rule must be received at the appropriate address or fax number, (see **ADDRESSES**) no later than 5 p.m., Hawaiian standard time, on August 21, 2000.

ADDRESSES: Written comments on this proposed rule must be sent to Kathy Cousins, NMFS Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd. Suite 1101, Honolulu HI 96822; or sent via facsimile (fax) to 808-973-2941.

Comments will not be accepted if submitted via e-mail or Internet. Copies of a background document on the proposed regulatory action, including an environmental assessment (EA) and initial regulatory flexibility analysis (IRFA), are available from Kitty Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT:

Kathy Cousins, 808-973-2937, fax 808-973-2941, e-mail kathy.cousins@noaa.gov.

SUPPLEMENTARY INFORMATION: The Hawaii-based domestic pelagic longline fishery operates under a limited access regime with a maximum of 164 transferable permits. The number of active vessels in the fishery has ranged from 110 to 120; in 1998, there were 114 active vessels. Data on Hawaii-based pelagic longline interactions with seabirds have been collected by NMFS observers since 1994. Estimated annual black-footed albatross mortalities caused by pelagic longline gear range from a 1996 low of 1,568, to a 1994 high of 1,994; there were 1,963 mortalities estimated to have taken place in 1998. Laysan albatross estimated annual mortalities caused by pelagic longline gear range from a low in 1996 of 1,047 to a high in 1994 of 1,828, with 1,479 mortalities estimated to have occurred in 1998. There have been no observed fishery interactions with short-tailed albatrosses, although two short-tail albatrosses have been sighted near Hawaii pelagic longline operations at sea on separate occasions. In response to concerns expressed by the U.S. Fish and Wildlife Service (FWS), researchers, and conservationists about these fishery-related impacts on albatross populations, the Council has proposed regulatory changes under FMP framework procedures. These proposed changes were developed by the Council's Pelagics Plan Team, Advisory Panel, and Scientific and Statistical Committee. The Council discussed various alternative sea bird mitigation measures at its June 1999 meeting and again at its October 1999 meeting, when final action was taken to recommend to NMFS the measures set forth in this proposed rule.

The first proposed measure would require operators of vessels registered for use with Hawaii pelagic longline limited access permits to employ 2 or more of 6 specific bird take mitigation techniques when longlining north of 25° N. lat. Individual pelagic longline vessel operators would choose which 2 or more of the 6 mitigation methods to

employ based on their vessel operations and at-sea conditions. The six mitigation methods approved by the Council are: (1) discharge offal strategically from the side of the vessel opposite the gear while the vessel is setting or hauling pelagic longline gear; (2) begin to set pelagic longline gear at least 1 hour after sunset and complete the setting operation at least 1 hour before sunrise using only such lighting necessary for crew safety; (3) use only completely thawed bait which has been dyed blue; (4) tow a buoy or tori (bird) line, meeting the specifications proposed under 50 CFR 660.33(b)(4) while the longline gear is being set and hauled; (5) attach weights of at least 45 grams to branch lines within 1 meter of each hook; and, (6) set the line using a line setting machine with weights of at least 45 grams attached to branch lines within 1 meter of each hook. These techniques have been tested individually and were found to mitigate 71 to 98 percent of seabird interactions as compared to normal Hawaii pelagic longline operations.

Two geographical management options were investigated and the management area (north of 25° N. lat.) was selected by the Council because it encompasses the area with 95 percent of the fleet's annual average incidental seabird catch and impacts 33 percent of the average annual fleet effort. The second management area option (north of 23° N. lat.) was rejected because it would impact an additional 11 percent of fishing effort without significantly reducing incidental seabird catch.

A no action alternative was rejected because it would not meet the seabird conservation objective. A second rejected alternative would have required similar mitigation techniques, however, the choice of which 2 seabird take mitigation measures to use would have been made by the Council for all vessels fishing north of 25° N. lat. This alternative would have required all pelagic longline fishing vessels to use seabird mitigation methods without regard to particular vessel operating patterns and at-sea conditions. This rejected alternative would likely have resulted in unduly burdensome impacts on fishing operations. A third rejected alternative would have prohibited longline fishing within the exclusive economic zone (EEZ) around Hawaii north of 23° N. lat. This alternative was rejected because it would have potentially reduced seabird interactions by a maximum of only 62 percent.

The second proposed measure would require all owners and operators of longline vessels holding Hawaii longline limited access permits to attend