

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****RIN 1018-AH03****Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Quino Checkerspot Butterfly (*Euphydryas editha quino*)**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Quino checkerspot butterfly (*Euphydryas editha quino*) pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 69,440 hectares (ha) (171,605 acres (ac)) in Riverside and San Diego Counties, California, are designated as critical habitat for the Quino checkerspot butterfly.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. The primary constituent elements for the Quino checkerspot butterfly are those habitat components that are essential for the Quino checkerspot butterfly. All areas designated as critical habitat for the Quino checkerspot butterfly contain one or more of the primary constituent elements essential to the conservation of the species. This final rule takes into consideration the potential economic and other effects of designating critical habitat for the Quino checkerspot butterfly.

We solicited data and comments from the public on all aspects of the proposed rule and draft economic analysis. We revised the proposal and the draft economic analysis to incorporate or address new information received from habitat and butterfly surveys conducted during the 2001 butterfly flight season; public comments on the proposed critical habitat designation and the draft economic analysis on the proposed designation; the Quino Checkerspot Butterfly Recovery Plan (Service, in prep.); and any new scientific and commercial information made available since the proposal was published.

DATES: This designation becomes effective on May 15, 2002.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation

of this final rule, are available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, CA 92008.

FOR FURTHER INFORMATION CONTACT:

Douglas Krofta, Chief, Branch of Listing, Carlsbad Fish and Wildlife Office, at the above address (telephone 760/431-9440; facsimile 760/431-9624).

SUPPLEMENTARY INFORMATION:**Background**

The Quino checkerspot butterfly (*Euphydryas editha quino*) is a member of the family Nymphalidae (brush-footed butterflies) and the subfamily Melitaeinae (checkerspots and fritillaries). The Quino checkerspot differs in physical appearance from other subspecies of *E. editha* in size, wing coloration, larval, and pupal characteristics (Mattoni *et al.* 1997). Researchers have spent more than 4 decades conducting extensive focused research on Edith's checkerspot (*Euphydryas editha*), in particular the federally-listed bay checkerspot butterfly (*Euphydryas editha bayensis*). While an extraordinary amount of information is available on Edith's checkerspot in general, specific information on the Quino checkerspot is sparse (Murphy and White 1984, Mattoni *et al.* 1997, Osborne and Redak 2000), including only two formal ecological studies (White and Levin 1981, Osborne and Redak 2000).

Therefore, much of the information used in developing this critical habitat designation, as well as the recovery and management strategy for the Quino checkerspot butterfly, as discussed in the recovery plan that is currently being finalized (Service, in prep.), is based on research on other subspecies of Edith's checkerspot, especially the bay checkerspot butterfly. Because there are a number of biological and ecological similarities between the two federally endangered subspecies of Edith's checkerspot, including shared host plant species, a primarily coastal (historic) distribution, and apparently similar within-patch dispersal behavior (Mattoni *et al.* 1997, White and Levin 1981), we believe that extrapolation of bay checkerspot butterfly research conclusions to the Quino checkerspot butterfly is justified in most cases.

The Quino checkerspot butterfly has undergone several nomenclatural changes. Originally described as *Melitaea quino* (Behr 1863), Gunder (1929) reduced it to a subspecies of *Euphydryas chalcedona*. At the same time, he described *Euphydryas editha*

wrighti from a checkerspot specimen collected in San Diego County. After reexamining Behr's descriptions and specimens, Emmel *et al.* (1998) concluded that the Quino checkerspot butterfly should be associated with *E. editha*, not *E. chalcedona*. For the Quino checkerspot butterfly, *E. editha quino* is now the accepted scientific name.

The life cycle of the Quino checkerspot butterfly includes four distinct life stages: egg, larva (caterpillar), pupa (chrysalis), and adult, with the larval stage divided into 5 to 7 instars (periods between molts, or shedding skin). There is typically one generation of adults per year, with a 4- to 6-week flight period beginning between late February and May, depending on weather conditions (Emmel and Emmel 1973). Adult emergence from pupae is staggered, resulting in a 1- to 2-month flight season, with each adult butterfly living approximately 10 to 14 days (Service, in prep.).

The adult Quino checkerspot butterfly has a wingspan of approximately 4 centimeters (cm) (1.5 inches (in.)). The top sides of the wings have a red, black, and cream colored checkered pattern while the bottom sides have a red and cream marbled pattern. The abdomen of the Quino checkerspot butterfly has red stripes across the top. Quino checkerspot butterfly larvae are dark black with a row of orange fleshy, hairy extensions on their backs. Pupae are mottled black on a pale blue-gray background.

Peak adult butterfly emergence for most brush-footed butterfly species, and probably for Quino checkerspot butterflies as well, occurs shortly after the beginning of the flight season, usually in the second or third week (Zonneveld 1991). Female bay checkerspot butterflies usually mate on the day they emerge from the pupa and lay 1 or 2 egg clusters per day for most of their adult life. Bay and Quino checkerspot egg clusters typically contain 20 to 150 eggs (M. Singer, C. Parmesan, and G. Pratt, pers. comm., 1999). Eggs deposited by adults on host plants hatch in 10 to 14 days. If sufficient rain falls in late summer or early fall, a rare second generation of fewer adults may occur (Mattoni *et al.* 1997).

Quino checkerspot butterfly larvae may undergo as many as seven molts prior to pupation. During the first two instars, pre-diapause (before summer dormancy) larvae cannot move more than a few centimeters and are usually restricted to the primary host plant species (plants on which the adult

female butterfly lays her eggs). Newly hatched larvae spin a web and feed in clusters on the plant where their eggs were deposited. During the third instar (about 10 days after hatching), larvae are able to move between individual host plants. Third instar larvae usually wander independently in search of food and may switch from feeding on the plant on which they hatched to another host plant, either of the same species or another one that serves as an alternate food source. If larvae have accumulated sufficient energy reserves, they enter diapause (summer dormancy) as host plants age and become dry and inedible, and usually remain in diapause until December or January. Although the exact location of diapausing Quino checkerspot butterfly larvae is not known, clusters of post-diapause larvae found near dense grass and shrub cover indicate that they may diapause in these areas (Osborne and Redak 2000). Laboratory observations have demonstrated Quino checkerspot butterfly larvae are capable of sustaining or reentering diapause for multiple years, the maximum duration of which has not yet been determined (G. Pratt, pers. comm., 2001).

Sufficient rainfall, usually during November or December, stimulates germination and growth of host plants, and apparently causes larvae to break diapause. Records of Quino checkerspot butterfly individuals collected following unusual summer rains indicate that it does not require winter chilling to break diapause, and may not diapause at all under some circumstances (Mattoni *et al.* 1997). Post-diapause larvae can crawl up to several meters in search of food and disperse among their host plants. Post-diapause larval dispersal has been well documented in the bay checkerspot butterfly. Post-diapause larvae seek microclimates (small habitats with uniform climate) with exposure to sunlight, which speeds development (White 1974, Weiss *et al.* 1987, Osborne and Redak 2000). Because of variable weather during winter and early spring, the time between the termination of diapause and pupation can range from 2 weeks, if conditions are warm and sunny, to over 2 months if cold, rainy conditions prevail (G. Pratt, pers. comm., 2001). Post-diapause larvae undergo from 2 to as many as 4 instars prior to pupating in webbed shelters near ground level. Adults emerge from pupae after approximately 10 days, depending on the weather (Mattoni *et al.* 1997).

Adult Quino checkerspot butterflies spend time searching for mates, basking in the sun to regulate body temperature, feeding on nectar, defending territories,

and in the case of females, searching for sites to deposit eggs. The Quino checkerspot butterfly, like other subspecies of Edith's checkerspot, shows a habitat preference for low-growing vegetation interspersed with barren spots (Osborne and Redak 2000). The thermodynamic requirements of the butterfly and its natural avoidance of shaded areas deter flight below the canopy of vegetation (M. Singer, pers. comm., 2001).

Male Quino checkerspot butterflies, and to a lesser extent females, are frequently observed on hilltops and ridgelines (Carlsbad Fish and Wildlife Office GIS Quino checkerspot butterfly database and metafile, Osborne 2001). A number of behaviors characteristic of species commonly found on hilltops have been documented. For example, male Quino checkerspots have been observed to perch consistently in prominent locations on hilltops devoid of host plants and "attack" any other males that approach (Osborne 2001, Pratt 2001). Further evidence that Edith's checkerspots may display facultative "hilltopping" behavior was found in Colorado, where males of an Edith's checkerspot population were also observed aggregating on hilltops, where females travel to seek mates, when population densities were low (Ehrlich and Wheye 1986 as discussed in Ehrlich and Murphy 1987). Hilltops may also represent centers of Quino checkerspot population density in some areas. Based on occurrence data, Quino checkerspot butterfly adults are frequently observed on hilltops (Service, in prep.), even in the absence of nearby larval host plants (Osborne 2001). Based on current knowledge of the Quino checkerspot butterfly ecology and biology, we believe hilltops provide essential breeding areas for some local populations.

Habitat patch distributions are defined by a matrix of adult resources (all larval resources are found within areas of adult movement), primarily nectar plants, oviposition plants, and basking sites. Habitat patches for the bay checkerspot butterfly can vary greatly in area and distribution (Harrison *et al.* 1988). Habitat patch fragmentation occurs when land use changes compromise adult movement patterns and frequently results from habitat destruction that reduces resource availability. Such fragmentation may significantly reduce the ability of habitat patches to support local populations.

Most Quino checkerspot butterfly populations are part of a larger metapopulation structure (sets of local habitat patch populations) (Service, in prep.). Isolated habitat patches are not

sufficient to ensure the long-term persistence of butterfly metapopulations (Hanski 1999). A local habitat patch population may be expected to persist on the time scale of years (Harrison 1989). Persistence of metapopulations for longer terms results from the interaction among sets of local habitat patch populations at larger geographic scales. Although local habitat patch populations may change in size independently, their probabilities of existing at a given time are not independent of one another because they are linked by processes of extirpation and mutual recolonization, processes that occur on the order of every 10 to 40 years for some butterflies, including the Quino checkerspot (Harrison *et al.* 1988, Murphy and White 1984).

Metapopulations should be stable over the course of decades, since most of their constituent habitat patch populations will be recolonized within approximately 10 years of extirpation. The intervening distance and topography among habitat patches primarily determine colonization rates (Harrison 1989). The long-term persistence of butterfly species with metapopulation dynamics depends on the maintenance of temporarily unoccupied habitat patches and recolonization events that link habitat patches within metapopulations (Murphy and White 1984; Hanski 1999; Service, in prep.). Maintenance of landscape connectivity (habitat patches linked by intervening dispersal areas) is essential in order to maintain metapopulation resilience. Land use changes that disperse between habitat patches and isolate local populations by compromising landscape connectivity can be just as detrimental to metapopulation survival as those that destroy or reduce the size of habitat patches (Service, in prep.).

Possibly the most extensive documentation of metapopulation dynamics in any species has been carried out over the past 42 years on several subspecies of Edith's checkerspot, primarily the endangered bay checkerspot (e.g., Ehrlich 1961, 1965; Singer 1972; Murphy and Ehrlich 1980; White and Levin 1981; Ehrlich and Murphy 1987; Harrison 1989; Boughton 1999, 2000). Although not every population of Edith's checkerspot studied has demonstrated metapopulation dynamics (Ehrlich and Murphy 1987), the majority of studies (e.g., Ehrlich 1961, 1965; Singer 1972; Murphy and Ehrlich 1980; White and Levin 1981; Ehrlich and Murphy 1987; Harrison 1989; Boughton 1999, 2000) and local climate and habitat patterns

(Service, in prep.) indicate most Quino checkerspot populations should display some type of metapopulation dynamics. Until the specific long-term dynamics or genetic composition of Quino checkerspot populations are documented and suggest otherwise, it is prudent to assume that local populations belong to a greater metapopulation at some spatial and temporal scale (Hanski 1999; Service, in prep.).

Mark-release-recapture studies indicate that in most seasons Edith's checkerspot subspecies exhibit sedentary behavior during the majority of their adult lives, although these studies were not specifically designed to quantify long-distance dispersal. In this type of study, researchers mark captured individuals, release them, and then recapture as many as possible within a target area after a period of time. Most recaptures have occurred within 100 to 200 meters (m) (490 to 980 feet (ft)) of release (Ehrlich 1961, 1965; Gilbert and Singer 1973; White and Levin 1981; Harrison *et al.* 1988; Harrison 1989; Boughton 1999, 2000). Harrison *et al.* (1988) documented no between-habitat patch transfers of marked individuals greater than 1 km (0.6 mi). Harrison (1989) recaptured bay checkerspots in a target habitat patch greater than 1 km (0.6 mi) from the point of release in only 5 percent of cases. However, dispersal tendency appears to be relatively variable in Edith's checkerspots (White and Levin 1981) and appears to have evolved to fit local or regional situations (Gilbert and Singer 1973). White and Levin (1981) noted that, "It seems likely from the lower return rate in 1972 (a dry year) and from the observed pattern of out-dispersal, that many marked (male Quino checkerspot butterflies) individuals dispersed beyond the area covered by our efforts that year." Research indicated that females were more likely to emigrate than males (Ehrlich *et al.* 1984); and older adults appeared to have a greater tendency to disperse as butterfly densities, host plant suitability, and female egg load weights declined (White and Levin 1981, Harrison 1989).

When quality host plants are in short supply, larvae respond by diapausing (if they are mature enough) and adults respond by dispersing (White and Levin 1981, Murphy and White 1984). Several populations of Quino checkerspots studied for almost a decade increased in number by nearly two orders of magnitude in 1977, and many habitat patches were defoliated by larvae, resulting in very high rates of dispersal (Murphy and White 1984). Dispersal tendency also increased when dry

conditions reduced the number and suitability of host plants (White and Levin 1981). Long-distance dispersal in bay checkerspot butterflies has been documented as far as 6.4 km (3.9 mi) (Murphy and Ehrlich 1980), 5.6 km (3.4 mi) (1 male), and 2 km (1.8 mi) (1 female) (Harrison 1989). Individual long-distance dispersal may be prevalent under certain conditions, but the likelihood of long-distance colonization by a given individual is usually low because environmental conditions promoting dispersal are not likely to also promote colonization due to reduced butterfly densities and host plant quality.

Dispersal direction from habitat patches seems to be random in the bay checkerspot butterfly, but dispersing butterflies are likely to move into habitat patches when they can detect them (pass within approximately 50 m (163 ft)), and are most likely to remain where the existing density of butterflies is lowest (Harrison 1989). Bay checkerspot butterfly patch occupancy patterns also suggest that patches separated from a source population by hilly terrain are less likely to be colonized than those separated by flat ground (Harrison 1989). Harrison (1989) concludes that because establishment rates were low during her study, and initial dispersal direction was random, relatively large numbers of butterflies must have emigrated from the source population at some point to explain the apparent long term habitat patch re-colonization pattern. High habitat patch colonization rates probably only occur during rare outbreak years, when high local densities combine with favorable establishment conditions in unoccupied patches (Harrison 1989). Rare outbreak events are thought to play a crucial role in Quino checkerspot butterfly metapopulation resilience (Murphy and White 1984).

Long-distance habitat patch colonization may be achieved within a single season through dispersal of individual butterflies, or over several seasons through stepping-stone habitat patch colonization events. Bay checkerspot island habitat patch recolonization distances from the Morgan Hill mainland habitat patch population averaged 3.4 km (2.1 mi) between the late 1970s and late 1980s, with a minimum distance (individual butterfly movement) of 1.4 km (0.9 mi), and a maximum of 4.4 km (2.7 mi) (Harrison *et al.* 1988). An overview of dispersal studies suggests that long-distance movements by individuals are not common, but may allow for infrequent between-patch exchanges of up to 6.0 km (3.7 mi) under optimal

conditions. Bay checkerspot butterfly habitat patch colonization patterns and models suggest that habitat patches as distant as 7.0 km (4.3 mi) may provide sources of recolonization for each other via stepping-stone dispersal over a 40- to 50-year period (Harrison 1988 *et al.*, Harrison 1989).

Quino checkerspot butterfly oviposition (egg deposition) has most often been documented on *Plantago erecta* (dwarf plantain). However, egg clusters and pre-diapause larvae have also recently been documented on other species of host plant. *Plantago patagonica* (woolly plantain) and *Anterrhinum coulterianum* (white snapdragon) appear to be the primary host plants utilized above the elevational limits of dwarf plantain (approximately 3000 m (9750 ft)) (Pratt 2001). In 2000 (a dry year), all larval clusters at the Silverado pre-approved mitigation area in Riverside County were found on woolly plantain (and few white snapdragon plants were observed). In 2001, however, when both host plants were abundant, all larval clusters were found on white snapdragon despite the presence of woolly plantain (Pratt 2001). In 2001, a site near Barrett Junction in southern San Diego County yielded another interesting primary host plant observation. Although dwarf plantain was abundant, the plants were small in stature and all larval clusters were found on *Cordylanthus rigidus* (thread-leaved bird's beak) within the patches of dwarf plantain, confirming earlier observations of this species as a primary host plant (Pratt 2001). All host plant species occur in coastal sage scrub, open chaparral, grassland, and similar open-canopy plant communities. Dwarf plantain is often associated with soils with fine-textured clay or with cryptogamic crusts (i.e., soil crusts composed of fungi, mosses, and lichens).

The two most important factors affecting the suitability of host plants for Quino checkerspot butterfly oviposition are exposure to solar radiation and host plant phenology (timing of development). Quino checkerspot butterflies deposit eggs on plants located in full sun, preferably surrounded by bare ground or sparse, low-growing vegetation (Weiss *et al.* 1987, 1988; Osborne and Redak 2000). Primary host plants must remain edible for approximately 8 weeks to support pre-diapause larvae if no secondary host plants (species of host plant adults do not deposit eggs on) are available (Singer 1972, Singer and Ehrlich 1979).

Secondary host plants may be important before and after larval

diapause. Secondary host plants are important for pre-diapause larvae when the primary hosts become unavailable before larvae can enter diapause, and for post-diapause larvae when primary host plant availability is limited when the larvae emerge from diapause. Such was the case with many populations of the bay checkerspot where dwarf plantain was the primary host plant, but most larvae survived to reach diapause by migrating to *Castilleja exserta* (owl's clover). Pre-diapause larvae fed on owl's clover until diapause, then returned to feeding on dwarf plantain when they broke diapause in the winter (Singer 1972, Ehrlich *et al.* 1975). Some populations of the Quino checkerspot butterflies may depend on secondary hosts for their survival. Multiple overlapping primary and secondary host plant distributions within a habitat patch probably contribute to patch suitability. For example, in 2001 a host plant micro-patch was documented in southwestern San Diego County where thread-leaved bird's beak was the primary host plant, but dwarf plantain (relatively small in stature) and owl's clover were also present (Pratt 2001). It is possible that dwarf plantain is an important post-diapause secondary host plant at sites such as the one near Barrett Junction because thread-leaved bird's beak is very immature, and less abundant, than dwarf plantain when larvae come out of diapause (Pratt 2001).

Edith's checkerspot butterflies use a much wider range of plant species for adult nectar feeding than for larval foliage feeding. The butterflies frequently take nectar from *Lomatium* spp. (lomatium), *Muilla* spp. (goldenstar), *Achillea millefolium* (milfoil or yarrow), *Amsinkia* spp. (fiddleneck), *Lasthenia* spp. (goldfields), *Plagiodothrys* and *Cryptantha* spp. (popcorn flowers), *Gilia* spp. (gilia), *Eriogonum fasciculatum* (California buckwheat), *Allium* spp. (onion), and *Eriodictyon* spp. (yerba santa) (D. Murphy and G. Pratt, pers. comm., 2000). *Salvia columbariae* (chia) may also be used for nectar feeding (Orsak 1978; K. Osborne, pers. comm., 2001), but is probably not preferred (G. Pratt, D. Murphy, pers. comm., 2001). Quino checkerspot butterflies have been observed flying several hundred meters from the nearest larval habitat patch to nectar sources.

Although habitat patches may theoretically be delineated by long-term studies based on host and nectar plant distribution and density, delineation of long-term habitat patch footprints, or extant larval occupancy, may be difficult to estimate at any given point

in time (Service, in prep.). Plant population quality, density, and distribution change over time for a variety of reasons, and Quino checkerspot populations have evolved to respond to shifting habitat patch suitability in space and time (Service, in prep.). For example, environmental conditions may not favor plant germination one season, or favor germination of other plant species, but low-density germination of host plant individuals or a seed bank may still result in abundant germination at a later date. Lower primary host plant density may be sufficient if secondary host plant species are present, and feeding by herbivores, including Quino checkerspot butterfly larvae, will reduce the density of host plants, even under the best environmental conditions (Service, in prep.). During years when host plant densities are too low to support larvae to maturity, the larvae may remain in diapause for 2 or more years. Host plant densities may even remain very low for a long enough period to result in the extirpation of larval residents (of micropatches) or local populations (of habitat patches). If the canopy opens or environmental conditions improve, these sites may support larvae again. Because the size, quality, and number of host plant micropatches and habitat patches fluctuate regularly, so do Quino checkerspot population distributions and the number of Quino checkerspot individuals that mature each season.

The Quino checkerspot butterfly is threatened primarily by urban and agricultural development, non-native plant species invasion, off-road vehicle use, grazing, and fire management practices (62 FR 2313). These threats destroy and degrade the quality of habitat and result in the extirpation of local Quino checkerspot populations. Quino checkerspot butterfly population decline likely has been, and will continue to be, caused in part by enhanced nitrogen deposition, elevated atmospheric carbon dioxide concentrations, and climate change (Service, in prep.). Nonetheless, urban development poses the greatest threat and exacerbates all other threats. Activities resulting in habitat fragmentation or host or nectar plant removal reduce habitat quality and increase the probability of local Quino checkerspot butterfly population extirpation and species extinction.

Other threats to the species identified in the final listing rule (62 FR 2313) include illegal trash dumping and predation. Dumping, a documented problem for some populations (G. Pratt, pers. comm., 2000, 2001), is detrimental

because of resulting habitat degradation and destruction. Over-collection by butterfly hobbyists and dealers is a probable threat, although the magnitude of this activity is unknown. Stamp (1984) and White (1986) examined the effects of parasitism and predation on the genus *Euphydryas*, although it is not clear whether these mortality factors pose a significant threat to this species. Predation by Argentine ants (*Iridomyrmex humilis*) has been observed in colonies of the butterfly in the laboratory (G. Pratt, pers. comm., 2000) and intense predation by non-native Brazilian fire ants (*Solenopsis invicta*) is likely where they co-occur with Quino checkerspot butterflies (Porter and Savignano 1990). Brazilian fire ants were documented in 1998 in the vicinity of historic Quino checkerspot butterfly habitat in Orange County and have subsequently been found in Riverside and Los Angeles Counties (California Department of Food and Agriculture 1999).

The recovery strategy for the Quino checkerspot butterfly focuses on conservation of occurrence complexes within recovery units, as discussed in the recovery plan that is currently being finalized (Service, in prep.). Occurrence complexes are based on Quino checkerspot butterfly observations, probably within a greater distribution of undocumented metapopulations. Occurrences are mapped in the recovery plan (Service, in prep.) using a 1 km (0.6 mi) dispersal radius. This distance delineates the area within which we would expect to find the habitat patch associated with an individual observed butterfly (Gilbert and Singer 1973, Harrison *et al.* 1988, Harrison 1989). Occurrences within 2 km (1.2 mi) of each other are considered to be part of the same occurrence complex because such observations are proximal enough that the observed butterflies would have come from the same population (Ehrlich and Murphy 1987, Harrison *et al.* 1988, Harrison 1989).

Recovery units represent the primary areas for managing recovery efforts (Service, in prep.). Most recovery units contain of one or more core occurrence complexes and correspond to habitat regions described in the recovery plan (Service, in prep.). Several factors were considered in identifying recovery units, including biological factors, political boundaries, and ongoing conservation efforts. In some instances, recovery unit boundaries were modified to maximize efficiency of reserves, encompass areas of common threats, or accommodate logistic concerns. Recovery units include areas of apparent landscape connectivity that are

not currently known to be occupied (e.g., the Railroad Canyon Reservoir (Canyon Lake) area in Riverside County), when evidence warranted inclusion. Because of their broad scale, recovery units include lands both essential and non-essential to the long term conservation of the Quino checkerspot butterfly.

Although the Quino checkerspot butterfly is a subspecies of Edith's checkerspot, for ease in description we refer to it as a species for the remainder of this document.

Previous Federal Action

On September 30, 1988, we received a petition dated September 26, 1988 to list the Quino checkerspot butterfly as endangered under the Act from Dr. Dennis Murphy of the Stanford University Center for Conservation Biology. At the time the petition was submitted, Quino checkerspot butterfly observations had not been reported for several years. The status of the Quino checkerspot butterfly had been under review since 1984 (49 FR 21664). It was classified as a Category 1 candidate species on November 21, 1991 (56 FR 58804), meaning that information on file was sufficient to support a proposal to list this species as endangered or threatened.

On August 4, 1994, we published a petition finding in the **Federal Register** (59 FR 39868) with a proposed rule to list the Quino checkerspot butterfly as endangered. This publication included the 90-day finding that the petition presented substantial information that listing the Quino checkerspot butterfly may be warranted, the 12-month petition finding that listing the Quino checkerspot butterfly was warranted, and the proposed rule to list the species. On September 26, 1994, we published a notice extending the public comment period and announcing a public hearing on the proposed rule for the Quino checkerspot butterfly and several other species (59 FR 49045). We published a final rule listing the Quino checkerspot butterfly as endangered on January 16, 1997 (62 FR 2313). In the final listing rule, we determined that designation of critical habitat was not prudent for the Quino checkerspot butterfly.

On June 30, 1999, the Center for Biological Diversity filed suit in the U.S. District Court, challenging the not-prudent finding for critical habitat as published in the final listing rule for the Quino checkerspot butterfly. The plaintiff contended that we did not properly consider the benefits of designating critical habitat or adequately document known or perceived threats that would result from

a critical habitat designation. On February 16, 2000, we agreed to a stipulated settlement that required us to re-evaluate the existing not-prudent finding. If we found that critical habitat was prudent, then a proposal to designate critical habitat was to be submitted for publication in the **Federal Register** by February 1, 2001, and a final designation made by October 1, 2001. If we found that critical habitat was not prudent, then a final determination was to be submitted for publication in the **Federal Register** by June 1, 2001.

In accordance with the stipulated settlement agreement, we re-evaluated the not-prudent finding as determined at the time of listing. Following our re-evaluation, we determined that designating critical habitat was, in fact, prudent and published a proposed rule to designate it on February 7, 2001 (66 FR 9476).

Because completion of the draft economic analysis for the proposed designation was delayed and we required time to hold public hearings, we requested a 90-day extension to adequately address public comments and complete the final designation from the plaintiffs. The plaintiffs agreed to the extension and on October 2, 2001 the District Court approved the 90-day extension requiring us to complete the final designation by January 4, 2002. We subsequently received another extension giving us until April 4, 2002 to complete the final designation of critical habitat for the Quino checkerspot butterfly.

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 threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through prohibition against destruction or adverse modification of critical habitat 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 destruction or adverse modification of proposed critical habitat. In our regulations at 50 CFR 402.02 we define destruction or adverse modification as “the direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.” Aside from the added protection that may be provided under section 7, the Act does not provide for other forms of protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional protections under the Act against such activities.

To be included in a critical habitat designation, the habitat must first be “essential to the conservation of the species.” Critical habitat designations identify, to the extent known, habitat areas that provide for the essential life cycle needs of the species (i.e., areas containing the primary constituent elements, as defined at 50 CFR 424.12(b)) using the best scientific and commercial data available.

Section 4 requires that we designate critical habitat for a species, to the maximum extent determinable and practicable, at the time of listing. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas which are essential for the conservation of the species. Nevertheless, we are required to designate those areas we know to be essential, at the time of designation, using the best information available.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs of the species, then the area should not be included in the critical habitat designation.

Our regulations state that, “The Secretary shall designate as critical

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

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

Habitat is often dynamic and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, it is understood that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for conservation of the species. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. Therefore, federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future

recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

We used the best scientific and commercial data available to determine areas essential to the conservation of the Quino checkerspot butterfly. We reviewed available information that pertains to the habitat requirements of this species, including data from research and survey observations published in peer-reviewed articles; information from private and institutional collections; regional GIS coverages; data collected from biological reports submitted by holders of section 10(a)(1)(A) recovery permits, including data from the 2001 flight season; and recommendations from the Quino checkerspot butterfly recovery team during the development of the draft and final recovery plans for the butterfly.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to, space for individual and population growth and normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing (or development) of offspring; and habitats that are protected from disturbance or representative of the historic geographical and ecological distribution of a species. All areas designated as critical habitat for the Quino checkerspot butterfly contain one or more of these physical or biological features.

The areas designated as critical habitat are designed to provide sufficient habitat to maintain self-sustaining populations of Quino checkerspot butterflies throughout its range and provide those habitat components essential for the conservation of the species. Habitat components that are essential for the Quino checkerspot butterfly (*i.e.*, primary constituent elements) include the biological needs of larval diapause, feeding, and pupation, adult oviposition, nectaring, roosting and basking, and dispersal, genetic

exchange, and shelter. The critical habitat units are configured to provide room for metapopulation dynamics, which is essential for the conservation of the species, including dispersal corridors.

Primary constituent elements occur in undeveloped areas that support various types of open-canopy woody and herbaceous plant communities. They include, but are not limited to, plant communities that provide populations of host plant and nectar sources for the Quino checkerspot butterfly.

The primary host plants (species of plants that butterflies deposit eggs on) that have been documented for the Quino checkerspot butterfly include dwarf plantain, woolly plantain, white snapdragon, and thread-leaved bird's beak, with dwarf plantain being both the most common and the most commonly used as a host. Dwarf plantain is an annual herb found in coastal sage scrub, open chaparral, grassland and similar plant communities. The plant is often associated with cryptogamic crusts and fine-textured clay soils.

Some local populations of Quino checkerspot butterfly larvae may depend on secondary host plants to survive. Typically, secondary hosts are important when the primary host plants begin to dry up and become inedible before larvae are mature enough to respond by entering diapause (Singer 1972, Ehrlich *et al.* 1975). Owl's clover is important as a pre-diapause secondary host plant. Secondary host plant species may also be important for post-diapause larvae if primary host plant species are not abundant enough when the larvae come out of diapause. Species that serve as primary host plants at one site may serve as secondary host plants at another. Use may also vary annually, depending on local population preferences and environmental conditions.

Adult Quino checkerspot butterflies use a variety of plants for nectar feeding. Quino checkerspot butterflies prefer flowers with a platform-like surface on which they can remain upright while feeding (D. Murphy and G. Pratt, pers. comm., 2000). The Quino checkerspot butterfly frequently takes nectar from lomatium, goldenstar, yarrow, fiddleneck, goldfields, popcorn flower, gilia, California buckwheat, onion, and yerba santa (D. Murphy and G. Pratt, pers. comm., 2000).

Topographic features (*i.e.*, hills and ridges) that are relatively prominent for the geographic area associated with an occupied habitat patch are also frequently inhabited by Quino checkerspot butterflies during mating season. Male Quino checkerspot

butterflies have been observed to patrol territories, perch in open areas on hilltops, and chase away competing males when they approach (Osborne 2001, Pratt 2001). Further evidence that Edith's checkerspots may display facultative "hilltopping" behavior was found in Colorado. Males of another subspecies of Edith's checkerspot also appeared to aggregate on hilltops, where females travel to seek mates, when population densities were low (Ehrlich and Wheye 1986 as discussed in Ehrlich and Murphy 1987). Such "hilltopping" behavior is believed to be important to reproduction in some local populations (Service, in prep.). These topographic features also constitute primary constituent elements of Quino checkerspot butterfly habitat.

In summary, the primary constituent elements of Quino checkerspot butterfly habitat consist of:

(1) Grassland and open-canopy woody plant communities, such as coastal sage scrub, open red shank chaparral, and open juniper woodland, with host plants or nectar plants;

(2) Undeveloped areas containing grassland or open-canopy woody plant communities, within and between habitat patches, utilized for Quino checkerspot butterfly mating, basking, and movement; or

(3) Prominent topographic features, such as hills and/or ridges, with an open woody or herbaceous canopy at the top. Prominence should be determined relative to other local topographic features.

Criteria Used To Identify Critical Habitat Units

The draft recovery plan (Service 2001) for the Quino checkerspot butterfly identifies the specific recovery needs of the species, and serves as guidance for identifying areas essential to conservation of the Quino checkerspot butterfly to propose as critical habitat. This recovery plan is being finalized based on data from the 2001 adult butterfly flight season and public comments received on the draft recovery plan. The final recovery plan (Service, in prep.) details a strategy for recovering the butterfly to the point at which it can be downlisted to threatened. This recovery strategy focuses on lands described as essential for the long term conservation of the Quino checkerspot butterfly because they: (1) Contain extant populations that must be managed to recover the species; (2) provide landscape connectivity or linkages among populations, or at least are required to maintain natural long term resilience and genetic exchange among smaller populations or

metapopulations; or (3) contain habitats that were part of a historical population distribution adjacent to occupied areas and either contain habitat necessary to support the expansion of small, low-density populations or have the potential to contain suitable habitat for them if they are restored.

Areas supporting core populations (large occurrence complexes) of the Quino checkerspot butterfly, or that have the potential to support core populations (i.e., areas currently containing or supporting primary constituent elements), are essential to the long term conservation of the species because they represent the foundation for continued persistence of the species. Furthermore, some habitat areas that would not be considered essential if they were geographically isolated are, in fact, essential when situated in locations where they facilitate continued landscape connectivity among surrounding local populations or otherwise play a significant role in maintaining metapopulation viability (e.g., by providing sources of immigrants to recolonize adjacent habitat patches following periodic extirpation events). Populations on the periphery of the species' range, or in atypical environments, are important for maintaining the genetic diversity of the species and could be essential to evolutionary adaptation to rapidly changing climatic and environmental conditions (Lesica and Allendorf 1995).

In the proposed designation of critical habitat for the Quino checkerspot butterfly we used a 4.8 km (3 mi) radius from each recent occurrence to define areas essential to the conservation of the butterfly. Following the proposal, we re-evaluated the use of this approach based on public comments and data in peer-reviewed literature. In the final recovery plan (Service, in prep.), we define spatially clustered Quino checkerspot butterfly observations as occurrence complexes. Based on our understanding of likely Quino movement patterns, occurrence complexes are estimated and mapped using a 1 km (0.6 mi) dispersal distance around recent butterfly occurrences. This method ensures inclusion of the habitat likely used by the butterflies in each observation. We have based this final critical habitat designation on these occurrence complexes. For portions of this final critical habitat designation (the Temecula/Murrieta/Oak Grove subunit and the Otay unit), we used a configuration of the mapped occurrence complexes that provided for landscape connectivity and viable Quino checkerspot butterfly metapopulations.

In these two areas, we mapped the distribution of the occurrence complexes defined by the 1 km (0.6 mi) dispersal distance around recent butterfly occurrences and evaluated those intervening lands proximal to the complexes. Initially, we evaluated lands that were included in the proposal. For this final rule, we then defined critical habitat by first connecting the outer tangents of complexes, thereby including the essential lands among complexes, to form a cohesive unit that would provide for survival and conservation of regional populations. We made the determination that the lands among the complexes are essential based on knowledge of the ecology of the Quino checkerspot butterfly, the relationship of occurrence complexes to each other, interpretation of aerial photography, GIS land use coverage, and information from field visits. Finally, we excluded lands within the complex configuration that we knew were not essential, for example, developed areas greater than 2.0 ha (5.0 ac), and lands dominated by Tecate cypress woodland.

We then used these occurrence complexes to prepare initial maps of the final critical habitat units. Where occurrence complexes are relatively close to each other, within about 4.8 km (3 mi) of another occurrence complex, we prepared the initial unit maps by connecting the peripheries of all the nearby occurrence complexes. Based on what we understand about Quino checkerspot butterfly dispersal behavior, we believe the butterflies within these areas represent a regional metapopulation; the occurrence complexes may represent subpopulations of these metapopulations which are located close enough to other subpopulations to provide for recolonization in the event of local extirpation.

As we discussed above, 4.8 km (3 mi) is the maximum estimated 10-year recolonization distance using a stepping-stone dispersal model, based on results from the Morgan Hill bay checkerspot population (Harrison et al. 1988); that is, it is unlikely that populations located more than 4.8 km (3 mi) from the nearest known population play a significant role in maintaining a metapopulation (unless there are closer populations we have not yet identified). However, for specific reasons described below for each unit, we believe that several of these more isolated occurrence complexes are in areas essential to the conservation of the butterfly. We used a different approach, similar to that which we used in the proposed rule, to develop initial unit

maps for these isolated occurrences. In these cases, we initially evaluated areas that were included in the proposal and were within 4.8 km (3 mi) of each recent observation. We made the determination that the lands surrounding the complexes are essential based on knowledge of the ecology of the Quino checkerspot butterfly, interpretation of aerial photography, GIS land use coverage, and information from field visits. Finally, we excluded all lands within 4.8 km (3 mi) of occurrences that available data indicated were not essential, for example, agricultural areas greater than 2.0 ha (5.0 ac) and hills with very little vegetation dominated almost entirely by boulders and exposed rock. We believe that this identifies the minimum area needed to provide sufficient habitat to support the long-term conservation of the butterfly in these locations. This method was used to map isolated occurrence complexes in the Harford Springs subunit of Unit 1, the Brown Canyon subunit of Unit 2, and the Jacumba Unit.

For the Lake Mathews/Estelle Mountain Reserve subunit of Unit 1 that is currently not known to be occupied, we used a variation of the methodology based on the 4.8 km (3 mi) dispersal radii. In the proposed designation, we used the 4.8 km (3 mi) method based on 1982 occurrence data and expanded the subunit to include an additional portion of the Lake Mathews/Estelle Mountain Reserve to the south that was not captured. For this final designation, we limited critical habitat in this subunit to only those lands within the Lake Mathews/Estelle Mountain Reserve. This reserve captures the highest quality habitat known to remain within the dispersal radius and is the focal point of future recovery efforts (Service, in prep.).

For the development of this final designation we also took into consideration information provided through public comments, the draft and final economic analyses, and biological information that became available since the proposed designation was published. This latter information included data from the 2001 adult butterfly flight season, which

corroborated and further supported decisions made during the development of the proposed designation in most cases. In general, the data from the 2001 flight season: (1) Provided additional support for the inclusion of areas into critical habitat that we determined to be essential during the development of the proposed rule; (2) indicated several areas believed to be essential but not known to be occupied were now, in fact, occupied (specifically in the northeastern portion of Unit 3); and (3) documented several new areas of occupancy outside of proposed critical habitat. These areas outside of proposed critical habitat, in which the Quino checkerspot butterfly has recently been documented (2001), have not been included in this final designation. These new occurrences are discussed later in the Critical Habitat and Summary of Comments and Recommendations sections of this final rule.

We identified and mapped areas essential to the conservation of the species using the configuration of occurrence complexes and the characteristics of essential habitat described above. The initial unit and subunit maps were based on interpretation of aerial photography at a scale of 1:24,000 (comparable to the scale of a 7.5 minute U.S. Geological Survey Quadrangle topographic map) and current digital ortho-photography. We then revised these initial units based on other information, including boundaries of approved habitat conservation plans (HCPs), information developed through section 7 consultations, boundaries of active restoration efforts for the butterfly, and information obtained from ongoing analyses used for the development of reserve systems for future conservation plans that may cover the butterfly (e.g., Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP)). Additionally, in Riverside County (Units 1 and 2), we used an updated GIS land use coverage from the County of Riverside to exclude lands greater than or equal to 2.0 ha (5.0 ac) designated as urban or intense agriculture. A comparable updated GIS coverage was not available for use for

San Diego County. However, we attempted to manually exclude areas of similar description from those critical habitat units (Units 3 and 4).

For the purpose of this designation, critical habitat units have been described using Universal Transverse Mercator (UTM) North American Datum of 1927 (NAD 27) coordinates derived from a 100-m grid that approximated the essential critical habitat line delineated from digital aerial photography with the exception of the Lake Mathews portion of Unit 1 and Unit 3 (Otay Unit). The Lake Mathews portion of Unit 1 was described referencing the Lake Mathews/Estelle Mountain Reserve. The Otay Unit was described using a combination of UTM coordinates and boundaries for the Multiple Habitat Preservation Area, the County of San Diego's pre-approved mitigation areas, the Major Amendment Areas, State and Federal lands, and State Route 94.

In defining critical habitat boundaries, we made an effort to exclude all developed areas, such as towns, housing developments, and other lands unlikely to contain primary constituent elements essential for Quino checkerspot butterfly conservation. Our 100-m UTM grid minimum mapping unit was designed to minimize the amount of development along the urban edge included in our designation. However, this minimum mapping unit did not allow us to exclude all developed areas, such as buildings, paved or improved roads, aqueducts, railroads, other paved areas, lawns, large areas of closed canopy woody vegetation such as chaparral and cypress, active agricultural fields, and other urban landscaped areas that do not contain primary constituent elements. Federal actions limited to these areas would not trigger a section 7 consultation unless they would affect the species and/or primary constituent elements in adjacent critical habitat.

Critical Habitat

The approximate area encompassing the designation of critical habitat for the Quino checkerspot butterfly by county and land ownership is shown in Table 1.

TABLE 1. APPROXIMATE CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY COUNTY AND LAND OWNERSHIP (AREA ESTIMATES REFLECT CRITICAL HABITAT UNIT BOUNDARIES.¹)

County	Federal ²	Tribal	Local/State	Private	Total
Riverside	3,985 ha (9,850 ac)	525 ha (1,300 ac)	4,805 ha (11,875 ac)	29,945 ha (74,005 ac)	39,260 ha (97,030 ac)
San Diego	9,785 ha (24,175 ac)	0 ha (0 ac)	3,800 ha (9,395 ac)	16,595 ha (41,005 ac)	30,180 ha (74,575 ac)

TABLE 1. APPROXIMATE CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY COUNTY AND LAND OWNERSHIP (AREA ESTIMATES REFLECT CRITICAL HABITAT UNIT BOUNDARIES.¹)—Continued

County	Federal ²	Tribal	Local/State	Private	Total
Total	13,770 ha (34,025 ac)	525 ha (1,300 ac)	8,605 ha (21,270 ac)	46,540 ha (115,010 ac)	69,440 ha (171,605 ac)

¹ Approximate hectares have been converted to acres (1 ha = 2.47 ac). Based on the level of imprecision of mapping at this scale, approximate hectares and acres have been rounded to the nearest 5.

² Federal lands include Bureau of Land Management (BLM), Department of Defense (DOD), National Forest, and Service lands.

Critical habitat includes Quino checkerspot butterfly habitat throughout the species' current range in the United States (*i.e.*, Riverside and San Diego Counties, California). Lands designated are under private, local, State, Federal, and Tribal ownership, with Federal lands including lands owned or managed by BLM, Forest Service, DOD, and the Service. Lands designated as critical habitat have been divided into four critical habitat units.

We are designating critical habitat on lands that are considered essential to the conservation of the Quino checkerspot butterfly. Using the recovery plan for guidance (Service, in prep.), we determine that an area is essential if it has one or more of the following characteristics: (1) Lands considered to be occupied within recovery unit boundaries that are part of occurrence complexes identified in the recovery plan (Service, in prep.); (2) lands that provide landscape connectivity among occurrence complexes; and (3) lands not known to be occupied that contain confirmed historic Quino checkerspot butterfly locations identified as essential in the recovery plan (Service, in prep.). In this final rule, we are designating approximately 2,450 ha (6,050 ac) of land within the Estelle Mountain Reserve in Unit 1 (western Riverside County) that is currently not known to be occupied by the Quino checkerspot butterfly.

Areas designated as critical habitat are designed to provide sufficient habitat to maintain self-sustaining populations of the Quino checkerspot butterfly throughout its range and provide those habitat components essential for the conservation of the species. Critical habitat units are configured to provide for metapopulation dynamics, including dispersal, which, as stated in the recovery plan (Service, in prep.), are essential for the conservation of the species.

A brief description of each unit and the reasons for proposing to designate it as critical habitat are presented below.

Unit 1: Lake Mathews Unit

Unit 1 encompasses approximately 5,765 ha (14,250 ac) within the northwestern portion of Riverside County and occurs within the Northwest Riverside Recovery Unit described in the recovery plan. All habitat identified as essential in this recovery unit is being designated as critical habitat, except the habitat within the Lake Mathews MSHCP, which is being excluded under section 4(b)(2) of the Act (discussed below in the section entitled “Exclusions Under Section 4(b)(2)”). Approximately 220 ha (540 ac) of this unit is Federal land, approximately 2,655 ha (6,565 ac) is State or local government land, and the remaining 2,890 ha (7,145 ac) is private land. This unit is divided into two subunits: The Harford Springs subunit and the Lake Mathews/Estelle Mountain Reserve subunit.

The Harford Springs subunit includes approximately 3,320 ha (8,200 ac) of lands, including Harford Springs County Park. Quino checkerspot butterflies were observed in Harford Springs County Park in 1998. This site was once part of a more extensive, well-documented distribution with one of the most well-known historic collection locations (*i.e.*, Lilly Hill). The Quino checkerspot butterfly was historically abundant in this area, with consistently high densities reported by collectors from the 1950s to the mid 1980s (Orsak 1978; K. Osborne and G. Pratt, pers. comm., 2000).

The Lake Mathews/Estelle Mountain Reserve subunit, about 2,450 ha (6,050 ac) in size, is currently not known to be occupied, but considered essential to the conservation of the species (Service, in prep.). This subunit contains the Lake Mathews population site. Quino checkerspot butterflies were last observed at the southern margin of Lake Mathews in 1982 (Carlsbad Fish and Wildlife Office GIS Quino checkerspot butterfly database and metafile) when dozens of butterflies were documented. Similar to the area containing the Harford Springs occurrence complex, the Quino checkerspot butterfly was historically abundant at this location. Essential habitat for the butterfly exists

in the vicinity of Lake Mathews and within the Lake Mathews/Estelle Mountain Reserve established for the Stephens' kangaroo rat, which is directly south of the Lake (Service, in prep.). As discussed later in this rule, the lands within the Lake Mathews MSHCP, where the 1982 occurrences were documented, have been excluded from critical habitat designation because the Lake Mathews MSHCP provides coverage for the Quino checkerspot butterfly. The land, including the butterfly habitat, within the Lake Mathews/Estelle Mountain Reserve to the south is not currently managed for the Quino checkerspot butterfly. This area is considered essential and included in designated critical habitat because: (1) The butterfly was historically regionally abundant, as recently as 1982; (2) quality habitat containing the primary constituent elements exists; and (3) it is the focus of restoration and reestablishment efforts as described in the recovery plan (Service, in prep.).

The Harford Springs and Lake Mathews/Estelle Mountain Reserve subunits are characterized by diverse topography and high-quality habitat patches, with extensive, dense stands of dwarf plantain in open spaces within juniper woodland, coastal sage scrub, and grassland communities. Landscape connectivity still exists between Harford Springs County Park and the Lake Mathews area. The Lake Mathews/Estelle Mountain Reserve also contains possibly the “largest continuous stand of dwarf plantain in Riverside County,” south of Lake Mathews in the vicinity of Black Rocks, west of Monument Peak (K. Osborne, pers. comm., 2000).

Unit 2: Southwest Riverside Unit

Unit 2 encompasses approximately 34,780 ha (85,950 ac) within southwestern Riverside County and northern San Diego County. This critical habitat unit supports all or part of 21 of the 22 occurrence complexes identified as important to Quino checkerspot butterfly recovery in the southwestern Riverside region (Service, in prep.). Mapped portions of some of the complexes identified as important to

recovery in the final recovery plan (Service, in prep.) were not designated because those portions fell outside the proposed critical habitat. Under the Act and the Administrative Procedure Act (5 U.S.C. 702 & 706), we are required to allow the public an opportunity to comment on the proposed rulemaking. Therefore, we are unable to include this area in the final rule. This critical habitat similarly contains two subunits, the Brown Canyon subunit and the Temecula/Murrieta/Oak Grove subunit. All lands within this critical habitat unit (*i.e.*, both subunits) are considered to be occupied by the Quino checkerspot butterfly.

Unit 2 includes approximately 3,955 ha (9,775 ac) of Federal lands; an estimated 525 ha (1,300 ac) of lands within the Cahuilla Band of Mission Indians' Reservation, just north of the Silverado Ranch mitigation bank; approximately 2,150 ha (5,310 ac) of lands under State or local jurisdictional ownership; and an estimated 28,150 ha (69,565 ac) of lands in private ownership. We discuss the relationship of designated critical habitat for the Quino checkerspot butterfly to the inclusion of lands within the Cahuilla Band of Mission Indians' Reservation below (see the section "Government-to-Government Relationship With Tribes").

The Brown Canyon subunit encompasses approximately 4,915 ha (12,140 ac) of land east-southeast of the town of Hemet in Riverside County. This subunit contains the Brown Canyon occurrence complex, a persistent population identified as essential in the recovery plan (Service, in prep.). Because it is not proximal to other occurrence complexes in Unit 2, and may lack landscape connectivity with the main Temecula/Murrieta/Oak Grove subunit, this subunit has been defined using the 4.8 km (3 mi) dispersal radius to maintain a critical mass of habitat (refer to the Criteria Used To Identify Critical Habitat section of this final rule). The Brown Canyon occurrence complex is the northeastern-most complex within the current range of the butterfly, and is contiguous with the last remaining undeveloped landscape corridor to the northern portion of its former range. If the species is undergoing a northern range shift, as hypothesized (Parmesan 1996 as discussed in the draft recovery plan, Service 2001), this occurrence complex potentially represents the only remaining route for northern expansion of the species. Further, the resiliency of this population has not likely been compromised by habitat impacts associated with development and recreational use due to the insulation

provided by surrounding hilly terrain and publicly owned lands.

The Temecula/Murrieta/Oak Grove subunit encompasses approximately 29,865 ha (73,810 ac) in southwest Riverside County. This unit stretches east from Interstate 215 near the towns of Murrieta and Temecula to the mountains and desert edge, north to near the town of Hemet in Riverside County, and south to Oak Grove Valley in San Diego County.

Recent observations have been recorded throughout the Temecula/Murrieta/Oak Grove subunit, indicating a degree of landscape connectivity throughout, especially in the less-urbanized eastern areas. Several large occurrence complexes are found within the subunit in the vicinity of Warm Springs Creek near the town of Murrieta, in the vicinity of Lake Skinner within the proposed Southwest Riverside County Multiple Species Reserve, and on BLM and pre-approved mitigation lands at Oak Mountain, near Wilson Valley, and south of the Cahuilla Band of Mission Indians' Reservation. The easternmost Quino checkerspot butterfly population is a recent extension of the known geographic and elevational range for the species (Pratt *et al.*, submitted). A new primary host plant for the species, white snapdragon, was documented in this area in 2001 and represents a vital element of habitat heterogeneity in the species' range. The Bautista Road occurrence complex (northeast of the town of Anza in Riverside County) occurs at the periphery of the known regional butterfly distribution within the recovery unit and outside of critical habitat. However, this occurrence complex is not included in designated critical habitat because it was first documented in 2001 following the publication of the proposal and we do not currently have sufficient information concerning habitat within the complex and landscape connectivity to other complexes to determine that it is essential to the conservation of the species.

Unit 3: Otay Unit

Unit 3 encompasses approximately 26,075 ha (64,430 ac) within the southwestern portion of San Diego County. Land ownership for this unit includes approximately 9,440 ha (23,330 ac) of Federal land, including 180 ha (450 ac) of the Naval Space Surveillance Station managed by the DOD and lands within the San Diego National Wildlife Refuge (SDNWR) Otay-Sweetwater Unit; approximately 3,620 ha (8,945 ac) under State or local jurisdictional ownership; and

approximately 13,015 ha (32,155 ac) that are privately owned. All lands within this critical habitat unit are considered to be occupied by the Quino checkerspot butterfly.

Lands encompassed by this unit stretch south from the San Diego National Wildlife Refuge (SDNWR) Otay-Sweetwater Unit and State Route 94 to the international border with Mexico, west along Otay River Valley and the northern rim of Otay Mesa, and east to the town of Tecate. Unit 3 supports all or part of 12 of the 13 occurrence complexes identified in the final recovery plan (Service, in prep.) as important to recovery in southwestern San Diego County. Mapped portions of some of the complexes identified as important to recovery in the final recovery plan (Service, in prep.) were not designated because those portions fell outside the proposed critical habitat.

Recent Quino checkerspot butterfly observations are concentrated in lower elevation areas surrounding east Otay Valley, Otay Mountain, the Jamul Mountains, and San Miguel Mountain. The Otay Lakes area historically supported large populations that extended south to Otay Mesa and across the international border (White and Levin 1981, Murphy and White 1984). The western portion of this unit contains the only known occupied habitat with a marine climate influence, an environmental factor prevalent throughout most of the species' historic range and thought to be beneficial to population resilience because it provides climatic stability and higher average humidity, minimizing host plant susceptibility to drought (Service, in prep.). The Otay area west of the mountain, therefore, represents a vital element of habitat heterogeneity within the species' range.

The Dulzura Occurrence Complex was documented during the 2001 flight season outside of proposed critical habitat. Based on an initial analysis during the ongoing amendment process for the MSCP in late 2001, we determined that this occurrence complex is essential to the conservation of the Quino checkerspot butterfly. Under the Act and the Administrative Procedure Act (5 U.S.C. 702 & 706), we are required to allow the public an opportunity to comment on the proposed rulemaking. Therefore, because the Dulzura Occurrence Complex was not in the proposed rule we are unable to include this area in the final rule. Due to the short court-ordered schedule for completing this designation and budgetary constraints, we are unable to re-propose critical habitat at this time.

It is important to note that the land that supports the Dulzura occurrence complex does not appear to be threatened by actions that may negatively affect the butterfly or its habitat. The land that supports this new occurrence complex is primarily in a designated wilderness area owned and managed by the BLM. Because of regulations governing designated wilderness areas (e.g., minimizing development and off-road impacts), habitat essential to the Quino checkerspot butterfly is unlikely to be impacted by such threats. We will continue to work closely with BLM concerning the protection and management of the Quino checkerspot butterfly in this area. Further, as indicated, the occurrence complex is being considered in the current amendment process to the MSCP. If amended, the MSCP will provide for additional protections and management for the Quino checkerspot butterfly and its habitat. Furthermore, because the area is occupied by the butterfly, any actions that have a Federal nexus and may affect the butterfly will require consultation under section 7 of the Act.

Unit 4: Jacumba Unit

Unit 4 encompasses approximately 2,820 ha (9,970 ac) of land in southeastern San Diego County south of Interstate 8 in the vicinity of the town of Jacumba. This critical habitat unit supports the Jacumba occurrence complex identified as important to recovery in the recovery plan. Land ownership for this unit includes approximately 154 ha (380 ac) of Federal land, approximately 180 ha (450 ac) under State or local jurisdictional ownership, and approximately 2,485 ha (6,145 ac) under private ownership. All lands within this critical habitat unit are considered to be occupied by the Quino checkerspot butterfly.

The Jacumba occurrence complex occurs within the Southeast San Diego Recovery Unit described in the recovery plan (Service, in prep.). This apparently isolated population center occurs in a unique high-desert region of juniper woodlands, which provides a vital element of habitat heterogeneity in the species' range. Recent Quino checkerspot butterfly observations are concentrated northwest of the community of Jacumba in Anza Borrego Desert State Park and private lands. The metapopulation distribution likely extends south across the international border. Occupancy has been documented approximately 6 km (3.7 mi) to the south in El Condor (Baja California, Mexico) and the U.S.

occurrence complex may belong to the same metapopulation.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the value of critical habitat for the conservation 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 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) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing 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 the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat was designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat is designated, if no substantial 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) of the Act 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 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, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we would 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 with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat.

Activities on Federal lands that may affect the Quino checkerspot butterfly 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 U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, or some other Federal action, including funding (e.g., from the Federal Highway Administration, Federal Aviation Administration, Federal Emergency Management Agency, or Natural Resources Conservation Service) will also continue to 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 result in the destruction or adverse modification of critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for the survival and recovery of the Quino checkerspot butterfly is appreciably reduced. We note that such activities also may jeopardize the continued existence of the species.

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 result in the destruction or adverse modification of critical habitat would almost always result in jeopardy to the species concerned, particularly when the area affected by the proposed action is occupied by the species concerned. In those cases, critical habitat provides little additional protection to a species, and the ramifications of its designation are few or none. However, critical habitat designation in unoccupied areas may trigger consultation under section 7 of the Act where it would not have otherwise occurred if critical habitat had not been designated.

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, including vernal pool and other Quino checkerspot butterfly habitat areas in watersheds, by the Corps under section 404 of the Clean Water Act;

(2) Regulation of grazing, mining, and recreation by the BLM, Forest Service or the Service;

(3) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities on Federal land by BLM, Forest Service, DOD, and the Service;

(4) Regulation of airport improvement activities by the Federal Aviation Administration jurisdiction;

(5) Construction of roads and fences along the International Border with Mexico and immigration enforcement

activities by the Immigration and Naturalization Service/Border Patrol that take place in Quino checkerspot butterfly habitat;

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

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

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

(9) Construction of fire breaks by the BLM, Forest Service, Service, or other Federal agencies for the maintenance or control of fire management and suppression activities.

Federal agencies already consult with us on activities in areas currently occupied by the species, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the species. In the area designated as critical habitat that is currently not known to be occupied by the Quino checkerspot butterfly, we already consult on other listed species, including the coastal California gnatcatcher (*Polioptila californica californica*) and the Stephens' kangaroo rat (*Dipodomys stephensi*), and have designated critical habitat. Thus, we do not anticipate a significant additional regulatory burden will result from the designation of critical habitat for the Quino checkerspot butterfly.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (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 Avenue, Portland, Oregon 97232 (telephone 503/231-6131; facsimile 503/231-6243).

Exclusions Under Section 4(b)(2)

Subsection 4(b)(2) of the Act allows us to exclude areas from critical habitat designation where the benefits of exclusion outweigh the benefits of designation, provided such exclusion will not result in the extinction of the species. For the following reasons, we believe that in most instances, the benefits of excluding legally operative HCPs, for which the Quino checkerspot butterfly is a covered species and take has been authorized, from critical habitat designations will outweigh the benefits of including them.

1. Benefits of Inclusion

The benefits of including HCP lands in critical habitat are normally small. The principal benefit of any designated critical habitat is that activities that may affect such habitat require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid adverse modification of critical habitat. Where HCPs are in place, our experience indicates that this benefit is small or non-existent. Currently approved and permitted HCPs are already designed to ensure the long term survival of covered species within the plan area. Where we have an approved HCP, lands that we ordinarily would define as critical habitat for the covered species will normally be protected in reserves and other conservation lands by the terms of the HCPs and their implementing agreements. These HCPs and Implementing Agreements (IAs) include management measures and protections for conservation lands that are crafted to protect, restore, and enhance their value as habitat for covered species.

In addition, an HCP application itself requires consultation under section 7 of the Act. As part of this process, we are required to evaluate the issuance of incidental take permits for a proposed action to ensure that the action as proposed would not jeopardize the continued existence of the species covered under the HCP or result in the destruction or adverse modification of designated critical habitat. Because HCPs, particularly large regional HCPs, address land use within the plan boundaries, habitat issues will have been thoroughly addressed in the HCP and through consultation on the HCP. Our experience is also that, under most circumstances, consultations under the jeopardy standard will achieve the same result as consultations under the adverse modification standard.

Further, HCPs typically provide greater conservation benefits to a covered species than section 7 consultations because HCPs assure the long term protection and management of a covered species and its habitat, and funding for such management, through the standards found in the joint Service and National Marine Fisheries Service HCP Handbook, 5-Point Addendum to the HCP Handbook (64 FR 35242), and the HCP No Surprises regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations which, in contrast to HCPs, often do not commit the project proponent to implementing long-term special management or protections. Thus, a

consultation typically does not accord the lands it covers the extensive benefits an HCP provides.

The development and implementation of HCPs provide other important conservation benefits, including the collection and development of additional biological information to guide conservation efforts and assist in species recovery, and the creation of innovative solutions to conserve species while allowing for development. The educational benefits of critical habitat, including informing the public of areas that are important for the long-term survival and conservation of the species, are essentially the same as those that would occur from the public notice and comment procedures required to establish an HCP, as well as the public participation that occurs in the development of many regional HCPs. For these reasons, we believe that designation of critical habitat has little benefit in areas covered by approved and legally operative HCPs.

2. Benefits of Exclusion

The benefits of excluding HCPs from designation as critical habitat may be more significant than the benefits of including HCPs in critical habitat. Benefits include relieving landowners, communities, and counties of any additional minor regulatory review that might be imposed by critical habitat. Many HCPs, particularly regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery of covered species. Most regional plans benefit many species, both listed and unlisted. Imposing additional regulatory review after HCP completion may jeopardize conservation efforts and partnerships in many areas, and could be viewed as a disincentive to those developing HCPs. Excluding HCPs provides us with an opportunity to streamline regulatory compliance and confirm regulatory assurances for HCP participants.

A related benefit of excluding HCPs is that it would encourage the continued development of partnerships with HCP participants, including States, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish alone. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships and, we believe, set the stage for more effective conservation actions in the future.

In general, then, we believe the benefits of critical habitat designation to be small in areas covered by approved

and legally operative HCPs. We also believe that the benefits of excluding HCPs from designation are significant. Weighing the small benefits of inclusion against the benefits of exclusion, including the benefits of relieving property owners of an additional layer of approvals and regulation, together with the encouragement of conservation partnerships, would generally result in HCPs being excluded from critical habitat designation under section 4(b)(2) of the Act.

Not all HCPs are alike with regard to species coverage and design. Within this general analytical framework, we need to evaluate completed and legally operative HCPs in which the Quino checkerspot butterfly is a covered species on a case-by-case basis to determine whether the benefits of excluding these particular areas outweigh the benefits of including them.

Relationship to Habitat Conservation Plans

Section 4(b)(2) of the Act allows us broad discretion to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We expect that critical habitat may be used as a tool to identify those areas essential for the conservation of the species, and we encourage development of HCPs for such areas on non-Federal lands. HCPs currently under development are intended to provide for protection and management of habitat areas essential for the conservation of the Quino checkerspot butterfly, while directing development and habitat modification to nonessential areas of lower habitat value.

Only HCPs within the boundaries of designated critical habitat units are discussed here. Those approved and legally operative HCPs that provide coverage and incidental take approval for the Quino checkerspot butterfly have been excluded from this designation. These include the Assessment District 161 Subregional HCP, the Rancho Bella Vista HCP, and the Lake Mathews MSHCP in Riverside County that provide coverage and incidental take authorization for the Quino checkerspot butterfly.

The Riverside County Assessment District 161 Subregional HCP, which authorizes take of the Quino checkerspot butterfly, has been completed and approved. This HCP includes protection measures for Quino checkerspot butterfly habitat, habitat restoration research, educational outreach, and captive propagation. The

Rancho Bella Vista HCP also occurs within the Riverside County Assessment District 161, but an independent HCP was approved for this project. Although no Quino checkerspot butterflies have been observed within the project boundaries, the butterfly is known from adjacent occupied habitat patches and is covered by the Rancho Bella Vista HCP. This HCP provides for conservation of the Quino checkerspot butterfly through monitoring of this species, habitat and dispersal corridor preservation and management, and habitat restoration and enhancement.

The Lake Mathews MSHCP has been completed and approved by the California Department of Fish and Game (CDFG) and the Service. As explained below in the Summary of Comments section and the Recommendations and Summary of Changes from the Proposed Rule section, this HCP and accompanying section 10(a)(1)(B) permits provide for conservation and management of Quino checkerspot butterfly habitat and take authorization for the butterfly. Although the Quino checkerspot butterfly has not been recently observed (since 1982) within reserve boundaries, dozens of butterflies were documented within the reserve during the 1981 and 1982 adult butterfly flight seasons.

The benefits of excluding lands covered by these HCPs would be significant in preserving positive relationships with our conservation partners, lessening potential additional regulatory review and potential economic burdens, reinforcing the regulatory assurances provided for in implementation agreements for approved HCPs, and providing for more established and cooperative partnerships for future conservation efforts.

In summary, excluding lands covered by HCPs in critical habitat designations outweigh the benefits of including lands covered by HCPs. Furthermore, we have determined in section 7 consultations on these approved HCPs that they would not jeopardize the continued existence of the Quino checkerspot butterfly, which means that they will not appreciably reduce likelihood of the survival and recovery of the species. Consequently, excluding these lands from the critical habitat designation will not result in the extinction of the species. Therefore, these lands have not been designated as critical habitat for the species.

Currently, there are several HCPs within the boundaries of designated critical habitat that are now under development or being amended to provide protection for the Quino

checkerspot butterfly and its habitat. These include the County of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan, the North San Diego County Subarea of the San Diego MSCP, and the Western Riverside MSHCP. These are discussed in more detail below.

The San Diego MSCP encompasses approximately 236,000 ha (582,000 ac) of southwestern San Diego County, and involves multiple jurisdictions. Approximately 69,600 ha (172,000 ac) are targeted to be conserved. We approved the overall MSCP and the City of San Diego's Subarea Plan in July 1997. The City of Poway's plan was approved in 1996; the County of San Diego's in 1998; San Diego Gas and Electric's in 1995; and the City of La Mesa's in 2000. Other jurisdictions, including the City of Chula Vista, are expected to complete their subarea planning processes in the near future. The Quino checkerspot butterfly is not a covered species for any of the approved subarea plans under the MSCP; therefore we are including areas essential to the conservation of the species that are covered by these subarea plans in designated critical habitat. However, both the County of San Diego and San Diego Gas and Electric are developing amendments to their permits to gain coverage for the Quino checkerspot butterfly, and the City of Chula Vista has included the Quino Checkerspot butterfly on its target list of species for coverage.

The Quino checkerspot butterfly is also a target species for the North San Diego County Subarea (Subarea) of the MSCP currently under development. This Subarea encompasses the area north of the MSCP planning areas and unincorporated lands east of the existing Multiple Habitat Conservation Program (another regional HCP currently being developed for northern San Diego County). Because the Quino checkerspot butterfly is not yet a covered species, we are including appropriate areas of this Subarea of the MSCP in this critical habitat designation.

The Western Riverside MSHCP was initiated by the County of Riverside on October 8, 1998. The planning area encompasses 530,000 ha (1.3 million ac) and is proposed to include conservation measures for over 100 species, including the Quino checkerspot butterfly. Currently, 12 cities within the western portion of Riverside County have endorsed, and will participate in, this planning effort. A draft Western Riverside MSHCP is proposed to be released for public review in 2002. Because this HCP is not yet completed,

we are including lands within the planning area in this critical habitat designation.

Habitat conservation plans currently under development or being amended are intended to provide for the protection and management of habitat areas essential to the conservation of the Quino checkerspot butterfly, while directing development and habitat modification to nonessential areas of lower habitat value. The HCP development process provides an opportunity for additional data collection and analysis regarding the use of particular habitat areas by the Quino checkerspot butterfly. The HCP 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 linked habitat blocks. 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 fully expect that our analyses of proposed HCPs will show that covered activities carried out in accordance with the provisions of the HCPs and accompanying section 7 biological opinions will not result in destruction or adverse modification of critical habitat.

We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify appropriate conservation and management actions. The take minimization and mitigation measures provided under these HCPs are expected to protect the essential habitat lands designated as critical habitat in this rule and provide for the conservation of the covered species. If an HCP or HCP amendment that addresses the Quino checkerspot butterfly is ultimately approved, we will reassess the critical habitat boundaries in light of the HCP. If, consistent with available funding and program priorities, we elect to revise this designation, we will do so through a subsequent rulemaking.

Should additional information become available that changes our analysis of the benefits of excluding any of these (or other) areas compared to the benefits of including them in the critical habitat designation, we may revise the designation. If, consistent with available funding and program priorities, we elect to revise this designation, we will do so through a subsequent rulemaking.

Summary of Comments and Recommendations

In the February 7, 2001, proposed critical habitat designation (66 FR 9476), we requested all interested parties submit comments on specifics of the proposal, including information related to biological justification, policy, treatment of HCPs, and proposed critical habitat boundaries. The first comment period closed on April 9, 2001. The comment period was reopened from June 20, 2001, to July 30, 2001 (66 FR 33046), to allow for additional comments on the proposed designation, and comments on the draft economic analysis of the proposed designation. Comments received after the close of this latter comment period were determined not to provide substantive comment that had not already been raised or addressed and entered into the supportive record for this rulemaking.

We contacted all appropriate State and Federal agencies, Tribes, county governments, elected officials, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of notices in the following newspapers in southern California: San Diego Union Tribune and Riverside Press Enterprise on February 9, 2001, and again in both papers on June 20, 2001. In addition to inviting public comment on the proposed designation and the draft economic analysis for the proposed designation, the later notices announced the dates and times of public hearings on the proposed designation. These hearings were held on July 17, 2001, in Escondido, California from 1 p.m. to 3 p.m. and 6 p.m. to 8 p.m. Transcripts of these hearings are available for inspection (see **ADDRESSES** section).

We requested five biologists, who have knowledge of the Quino checkerspot butterfly and its ecology, peer review the proposed critical habitat designation. None of the peer reviewers submitted comments on the proposed critical habitat designation.

We received a total of 37 written comments during the two comment periods. Comments were received from 2 Federal agencies, 4 local agencies, and 22 separate private organizations or individuals. We reviewed all comments received for substantive issues and new information regarding critical habitat and the Quino checkerspot butterfly. Similar comments were grouped into three general issues relating specifically to the proposed critical habitat determination and draft economic analysis on the proposed determination. Comments were either incorporated directly into the final rule or final

addendum to the economic analysis or addressed in the following summary.

Issue 1: Biological Justification and Methodology

1. Comment: Several commenters requested that we take into consideration data collected from the 2001 adult butterfly flight season, as the best available science, while developing the final designation of critical habitat.

Our Response: As stated in several sections of this final designation, including the Methods and Summary of Changes from the Proposed Rule, we relied on data from the 2001 flight season to develop the boundaries of final critical habitat for the Quino checkerspot butterfly. Data from the 2001 flight season, for the most part, corroborated decisions made during the development of the proposed critical habitat, and identified several new areas of occupancy outside of lands defined in the proposal. These areas outside of the proposed critical habitat, in which the Quino checkerspot butterfly was documented for the first time in 2001, have not been included in the final designation for reasons discussed in the Critical Habitat section of this rule.

2. Comment: The scale of proposed critical habitat for the Quino checkerspot butterfly is overly broad, resulting in vague unit boundaries. Several commenters questioned the biological justification for proposing critical habitat for the Quino checkerspot butterfly using such a landscape-scale approach when they believed that more precise information is available for use by the Service. Furthermore, several commenters voiced concern that their property was within proposed critical habitat boundaries for the Quino checkerspot butterfly even though their land contained no butterflies or primary constituent elements.

Our Response: We recognize that not all parcels of land designated as critical habitat will contain the habitat components essential to the conservation of the Quino checkerspot butterfly. Due to time constraints, and the absence of more detailed map information during the preparation of the proposed and final designations, we used a 100-m UTM grid and reserve boundaries to describe the boundaries of critical habitat. Additionally, we have revised and refined our approach to mapping Quino checkerspot butterfly critical habitat. Some lands included in the proposed designation have not been included in this final designation. Based on our refined methodology, we included only those lands that we believe to be essential to the

conservation of the Quino checkerspot butterfly in the final designation of critical habitat.

In developing the final designation, we made an effort to minimize the inclusion of nonessential areas that do not contain the primary constituent elements for the butterfly. However, due to our mapping scale, some areas not essential to the conservation of the Quino checkerspot butterfly were included within the boundaries of final critical habitat. These areas, such as towns, housing developments, or other developed lands are unlikely to provide habitat for the butterfly. Because they do not contain one or more of the primary constituent elements for the species, Federal actions limited to those areas will not trigger a section 7 consultation, unless they affect the species or primary constituent elements in adjacent critical habitat.

3. Comment: The descriptions of the primary constituent elements of critical habitat for the Quino checkerspot butterfly are vague.

Our Response: The description of the primary constituent elements for the Quino checkerspot butterfly was based on the best available scientific and commercial data regarding the species, including a compilation of data from peer-reviewed published literature, unpublished or non-peer-reviewed survey and research reports, opinions of biologists knowledgeable about the Quino checkerspot butterfly and its habitat, and the draft recovery plan. We have updated the biological information, including the primary constituent elements, based on the 2001 adult butterfly flight season and refined their description in response to public comment. The primary constituent elements, as described in this final rule, represent our best estimate of what habitat components are essential for the conservation of the species. Please refer to the Primary Constituent Elements section of this final rule for a more detailed discussion of the primary constituent elements for the Quino checkerspot butterfly.

4. Comment: The proposed rule inappropriately uses a "recovery standard" to determine critical habitat, resulting in the inclusion of large areas in which the Quino checkerspot butterfly is not known to occur or have occurred. The Service ignores the intent of Congress to designate only occupied areas and those areas essential to a species' conservation, and the Service has failed to determine if these unoccupied areas are essential to the Quino checkerspot butterfly.

Our Response: The definition of critical habitat in section 3(5)(A) of the

Act includes "(i) 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." The term "conservation," as defined in section 3(3) of the Act, means "to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary."

The draft recovery plan (Service 2001) and the final recovery plan (Service, in prep.) detail efforts required to meet recovery needs of the Quino checkerspot butterfly, and provide a description of habitat attributes essential to the survival and recovery of the species. We did not include all areas currently occupied by butterfly, but designated those areas that possess core populations, have unique ecological characteristics, and/or represent the historic geographic areas where the species can be re-established. After weighing the best available information, including both the draft and final (Service, in prep.) versions of the recovery plan, we conclude that the areas designated by this final rule, including areas that are not known to be currently occupied, are essential for the recovery of the species and eventual removal from the List of Endangered and Threatened species.

5. Comment: Several commenters were concerned with the methodology by which we defined areas that we believed to be occupied in the proposed designation of critical habitat.

Our Response: In the proposed designation of critical habitat for the Quino checkerspot butterfly we used a 4.8 km (3 mi) radius from each occurrence to define occupancy and lands essential to the conservation of the butterfly. This distance was based on the maximum recolonization distance over a 10-year period of a peripheral (island) habitat patch from the core (mainland) patch documented in the Morgan Hill bay checkerspot metapopulation (Harrison *et al.* 1988). Following the proposal, we re-evaluated how we defined occupancy in those areas.

For this final rule, we mapped known occurrences using a 1 km (0.6 mi) dispersal distance around recent

butterfly observations. Occurrences within 2 km (1.2 mi) of each other, where the 1 km (0.6 mi) dispersal radii intersect, are considered part of the same occurrence complex. To map the critical habitat units for this final designation we connected the outer periphery of nearby occurrence complexes. The specific, final configuration around these complexes is based on local and regional habitat variability, final recovery plan (Service, in prep.) recommendations, and ongoing restoration and re-establishment efforts for the butterfly that provide for viable Quino checkerspot butterfly metapopulations.

6. *Comment:* Several commenters were concerned that we based much of our information pertaining to dispersal distance, and therefore, occupancy and critical habitat, on research done with a surrogate species, the bay checkerspot butterfly.

Our Response: In the biological sciences, information is not always known concerning the biology, ecology, behavior, etc., of each plant or animal species. In cases when information is lacking on a species of interest, it has been a common practice of scientists to extrapolate trends, or other relevant data, from research that has been conducted on similar species. Because research on the Quino checkerspot butterfly is limited, much of data we use concerning biological and ecological trends, including behavior, has been extrapolated from research on other subspecies of Edith's checkerspot, especially the ecologically similar bay checkerspot butterfly.

As discussed in the background section of this rule, researchers have spent over three decades conducting extensive focused research on Edith's checkerspot subspecies, in particular the federally listed bay checkerspot butterfly. While an extraordinary amount of information is available on Edith's checkerspot in general, specific information on the Quino checkerspot is sparse (Murphy and White 1984, Mattoni *et al.* 1997, Osborne and Redak 2000), including only two formal ecological studies (White and Levin 1981, Osborne and Redak 2000). Therefore, much of the information on which we have based the recovery and management strategy for the Quino checkerspot butterfly, as discussed in the final recovery plan (Service, in prep.), and critical habitat designation comes from research on other subspecies of Edith's checkerspot. Because of the biological and ecological similarities between these two subspecies of Edith's checkerspot, including shared host plant species, a

primarily coastal (historic) distribution, and similar within-patch dispersal behavior (Mattoni *et al.* 1997, White and Levin 1981), we are confident that the bay checkerspot is a reasonable surrogate species from which to extrapolate the results of research. We believe this is among the best scientific information available for designation of critical habitat for the Quino checkerspot butterfly.

Issue 2: Policy and Regulations

7. *Comment:* Several commenters indicated that our reevaluation of the prudence of designating critical habitat for the Quino checkerspot butterfly was arbitrary.

Our Response: In our final rule listing the Quino checkerspot as endangered under the Act (62 FR 2313), we found that designation of critical habitat was not prudent because we believed that designation could increase the degree of threats to the species and would not provide any benefit. As we discuss in the Previous Federal Action section of this final rule, we were challenged on our original not-prudent finding. On February 16, 2000, we agreed to a stipulated settlement that required us to re-evaluate the existing not-prudent finding. The proposed rule detailed our reasons for determining that critical habitat is, in fact, prudent for the Quino checkerspot butterfly. We prepared this analysis in accordance with the Act and recent relevant case law regarding application of the "not prudent" exception to designating critical habitat.

8. *Comment:* We did not provide for adequate public notice of the proposed rule and sufficient opportunity for public comment.

Our Response: We published the proposed rule to designate critical habitat for the Quino checkerspot butterfly on February 7, 2001 (66 FR 9476), and accepted comments from the public for 60 days, until April 9, 2001. The comment period was reopened from June 20, 2001, to July 30, 2001 (66 FR 33046), to allow for additional comments on the proposed designation, and comments on the draft economic analysis of the proposed critical habitat. Comments received following the close of the first comment period, but prior to the opening of the second comment period, were addressed and entered into the supportive record for this rulemaking as part of the second comment period.

We contacted all appropriate State and Federal agencies, Tribes, county governments, elected officials, and other interested parties and invited them to comment. In addition, we invited public comment through the publication of

notices in the following newspapers in southern California: San Diego Union Tribune and Riverside Press Enterprise on February 9, 2001, and again in both papers on June 20, 2001. We provided notification of the draft economic analysis through telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, local jurisdictions, and interest groups. We also published the draft economic analysis and associated material on our Fish and Wildlife Office internet site following the draft's release on June 20, 2001. In addition to inviting public comment on the proposed designation and the draft economic analysis for the proposed designation, the later notices announced the dates and times of public hearings on the proposed designation. These hearings were held on July 17, 2001, in Escondido, California from 1 to 3 p.m. and 6 to 8 p.m. Transcripts of these hearings are available for inspection (see **ADDRESSES** section).

9. *Comment:* Several commenters indicated that we violated the Administrative Procedure Act because the proposal does not provide adequate description of the location of critical habitat units for impacted landowners, causing a burden to landowners who must determine which portions of their land contain critical habitat.

Our Response: We identified specific areas in the proposed determination that are referenced by UTM coordinates, which are found on standard topographic maps. We also made available, during the public comment period at the Carlsbad Fish and Wildlife Office, a public viewing room where the proposed critical habitat units, superimposed on 7.5 minute topographic maps, could be inspected. Furthermore, we distributed geographic data and maps of the proposed critical habitat to individuals, organizations, local jurisdictions, and State and Federal agencies that requested them. We believe the information made available to the public was sufficiently detailed to allow for determination of critical habitat boundaries. This final rule contains the legal descriptions of areas designated as critical habitat required under 50 CFR 424.12(c). The accompanying maps are for illustration purposes only. If additional clarification is necessary, contact the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

10. *Comment:* An Environmental Impact Statement, as defined under National Environmental Policy Act of 1969 (NEPA), should be written to address the potential significant impacts of the proposed designation of Quino checkerspot butterfly critical habitat.

Our Response: We have determined that an Environmental Assessment and/or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

11. Comment: The Bureau of Indian Affairs commented on behalf of the Cahuilla Band of Mission Indians requesting that the portion of their Reservation in Riverside County included in the proposed designation be excluded from the final designation based on the provision contained within Secretarial Order 3206.

Our Response: As we discuss in the section on Government-to-Government Relationship with Tribes of this final rule, the Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (1997) provides that critical habitat should not be designated in an area that may impact Tribal trust resources unless it is determined to be essential to conserve a listed species. The Secretarial Order further states that in designating critical habitat, "the Service shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands."

In our proposed critical habitat rule, we indicated that approximately 4,405 ha (10,890 ac) of lands within the Cahuilla Band of Mission Indians' Reservation in western Riverside County were essential for the conservation of the Quino checkerspot butterfly. This determination was based on the close proximity of two butterfly occurrence complexes—the Silverado and Southwest Cahuilla complexes—and the continuity of butterfly habitat adjacent to and along the southern portion of the Reservation. We are committed to developing a positive working relationship with the Tribe and will continue attempting to work with them to develop conservation measures for the butterfly. However, due to the time constraints for completing this final rule, we were required to finalize the designation based on our own analysis of the relative importance of the lands within the Cahuilla Band of Mission Indians' Reservation for the conservation of the Quino checkerspot butterfly.

Additional information corroborating the distribution of the species, relative to the Reservation, became available

following the publication of the critical habitat proposal. During the 2001 Quino adult flight season, an additional population of Quino checkerspot butterfly was identified in close proximity to the southern boundary of the Reservation. This occurrence complex has been labeled the Tule Peak complex. Consequently, based on data from the 1998 through the 2001 flight seasons, there are an estimated 226 butterfly occurrences grouped into three occurrence complexes adjacent to the southern boundary of the Reservation. These complexes include the majority of documented Quino checkerspot butterflies in the eastern portion of western Riverside County and constitute one or more significant and substantial regional core populations of the species.

Based on the proximity of these occurrence complexes to the Reservation and the apparent continuity of butterfly habitat from the complexes across much of the Reservation, we have determined that lands on the Reservation defined by the occurrence complexes that support the primary constituent elements for the Quino checkerspot butterfly are essential to the conservation of this species and are therefore designated as critical habitat. Based on the distribution and dispersal of the Quino checkerspot butterfly and our analysis of areas essential for the conservation of this species, we have reduced the area designated as critical habitat to 525 ha (1,300 ac) on the Cahuilla Band of Mission Indians' Reservation.

12. Comment: Several commenters stated that critical habitat should be retained within the boundaries of approved HCPs covering the Quino checkerspot butterfly. They felt that HCPs cannot be viewed as a functional substitute for critical habitat designation, and the approved HCPs provided inadequate protection and special management considerations for the species and their habitat. Other commenters supported the exclusion of approved HCPs covering the Quino checkerspot butterfly from critical habitat designation, and several of these same commenters wanted pending HCPs to be excluded as well. They supported their recommendations by asserting that landowners will be reluctant to participate in HCPs unless they have incentives, including the removal of critical habitat from HCP boundaries.

Our Response: We recognize that critical habitat is only one of many conservation tools for federally listed species. However, HCPs are one of the most important tools for reconciling land use with the conservation of listed

species on non-Federal lands. Section 4(b)(2) of the Act allows us to exclude from critical habitat designation areas where the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We believe that in most instances the benefits of excluding HCPs from critical habitat designations will outweigh the benefits of including them. For this designation, we find that the benefits of exclusion outweigh the benefits of designation for all approved and legally operative HCPs in which the Quino checkerspot butterfly is a covered species, take of the butterfly is authorized under an incidental take permit, and the plan provides provisions for long-term conservation. These include the following HCPs in Riverside County: Assessment District 161 Subregional HCP, Rancho Bella Vista HCP, and the Lake Mathews MSHCP. There are no currently approved and legally operative HCPs in which the Quino checkerspot butterfly is a covered species in San Diego County. However, several are working on amendments to their HCPs that will provide coverage for the butterfly. These amendments are not yet complete.

We anticipate that future HCPs in the range of the Quino checkerspot butterfly will include it as a covered species and provide for its long term conservation. We expect that HCPs undertaken by local jurisdictions (e.g., counties and 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. Section 10(a)(1)(B) of the Act states that HCPs must meet issuance criteria, including minimizing and mitigating any take of the listed species covered by the permit to the maximum extent practicable, and that the taking must not appreciably reduce the likelihood of the survival and recovery of the species in the wild. We fully expect that our future analyses of HCPs and section 10(a)(1)(B) permits under section 7 will show that covered activities carried out in accordance with the provisions of the HCPs and section 10(a)(1)(B) permits will not result in the destruction or adverse modification of critical habitat designated for the Quino checkerspot butterfly. The take minimization and mitigation measures provided under these HCPs are expected to adequately protect the essential habitat lands designated as critical habitat in this rule, such that the value of these lands for the survival and recovery of the Quino checkerspot

butterfly is not appreciably diminished through direct or indirect alterations. If an HCP that addresses the Quino checkerspot butterfly as a covered species is ultimately approved, we will reassess the critical habitat boundaries in light of the HCP. If, consistent with available funding and program priorities, we elect to revise this designation, we will do so through a subsequent rulemaking.

The designation of critical habitat should not deter participation in the NCCP or HCP processes. Approvals issued under these processes include assurances of no additional mitigation through the HCP No Surprises regulation (63 FR 8859). The development of new HCPs or NCCPs should not be affected by designation of critical habitat primarily because we view the standards of jeopardy for listed species and of adverse modification for critical habitat as being virtually identical. We discuss these standards in detail in the Section 7 Consultation section portion of this document.

13. *Comment:* One commenter requested that the Lake Mathews MSHCP be removed from the final designation because it is an approved HCP that provides coverage for the Quino checkerspot butterfly.

Our Response: As discussed in two sections of this final rule, Relationship To Habitat Conservation Plans and Summary of Changes from the Proposed Rule, we reviewed the approved HCP and accompanying Implementation Agreement. We found that the Lake Mathews MSHCP: (1) Is an approved and legally operative HCP in which the Quino is a covered species, (2) provides take authorization for the Quino checkerspot butterfly, and (3) provides special management considerations for and protection of Quino habitat. Consequently, we believe that the Lake Mathews MSHCP meets the criteria for exclusion under section 4(b)(2) of the Act and has therefore been excluded from final critical habitat for the Quino checkerspot butterfly.

14. *Comment:* One commenter expressed concern over the inclusion of El Sobrante landfill HCP planning area in final critical habitat.

Our Response: Portions of the El Sobrante landfill have been excluded from the final critical habitat designation because they do not contain habitat essential to the conservation of the Quino checkerspot butterfly. However, because the Quino checkerspot butterfly is not a covered species in the HCP, those lands within the HCP planning area that are believed to be essential to the conservation of the

butterfly are included in final critical habitat.

15. *Comment:* The Cleveland National Forest expressed concern over the inclusion of the Oak Grove fire station and other Forest Service facilities in proposed critical habitat.

Our Response: As a result of using the configuration of occurrence complexes defined by 1 km (0.6 mi) around essential core butterfly populations to delineate lands essential to the conservation of the Quino checkerspot butterfly, the Oak Grove fire station and other Forest Service facilities are not included in this final designation of critical habitat.

16. *Comment:* One of the members of the Quino checkerspot butterfly recovery team expressed concern over the exclusion of Spring Canyon and the majority of the West Otay Mesa occurrence complex from proposed critical habitat.

Our Response: The West Otay Mesa occurrence complex was discovered during the 2001 adult butterfly flight season, after the publication of the proposed critical habitat. We evaluated this occurrence complex to determine if it was essential to the conservation of the butterfly and should be included in critical habitat through a re-proposal. Currently, we do not have sufficient information concerning this occurrence complex to determine that it is essential to the conservation of the Quino checkerspot butterfly. Therefore, based on available information, we have not included Spring Oak Canyon and portions of the West Mesa occurrence complex in designated critical habitat.

17. *Comment:* Several commenters expressed concern that the proposed designation of critical habitat for the Quino checkerspot butterfly included areas with existing pipelines, aqueducts, and similar water exchange facilities. They believed that if these lands were designated as critical habitat, the maintenance of these facilities would be negatively affected. Therefore, they requested that these lands be excluded from critical habitat.

Our Response: Existing pipelines and aqueducts generally lack the primary constituent elements for the Quino checkerspot butterfly. Facilities that remain within the boundaries of this final determination are considered to be critical habitat. Periodic maintenance of existing pipelines, roads, or aqueducts would not constitute an adverse effect to critical habitat when primary constituent elements are not affected. If maintenance activities would adversely affect primary constituent elements, and a Federal nexus existed, then a

consultation pursuant to section 7 may be required.

18. *Comment:* One commenter expressed concern over the use of Service files, in particular those of the Carlsbad Fish and Wildlife Office (CFWO), to extrapolate future consultations, project modifications, and re-initiate consultations based on consultation histories for the purpose of evaluating the potential economic effects of the designation. The commenter cited the findings of a recent Government Accounting Office report that indicated that files at the CFWO were unorganized, incomplete, and poorly managed.

Our Response: As a result of the Government Accounting Office's review of the CFWO's files and the subsequent report indicating some weaknesses in file management, we have instituted an electronic file management system that has corrected many of the apparent weaknesses. Because the Quino checkerspot butterfly has only been listed since 1997 and has been a highly scrutinized listed species, files and information relevant to the butterfly have been, and are, well organized, complete, and properly managed. Therefore, we, the Division of Economics, and Industrial Economics, Inc. have a high level of confidence in information extrapolated from those files. Additionally, as discussed in the draft economic analysis, estimates of costs attributable to future consultations and project modifications are averaged from data collected at Fish and Wildlife Offices across the country.

19. *Comment:* Some landowners expressed concern that because their property was located within critical habitat for the Quino checkerspot butterfly they would be subject to additional constraints under the California Environmental Quality Act (CEQA).

Our Response: According to 15065 (California Code of Regulations Title 14, Chapter 3) of CEQA guidelines, environmental impact reports are required by local lead agencies when, among other things, a project has the potential to "reduce the number or restrict the range of an endangered, rare or threatened species." Though federally listed species are presumed to meet the CEQA definition of "endangered, rare or threatened species" under 15380 (California Code of Regulations Title 14, Chapter 3), no additional constraints should result from the designation of critical habitat beyond that now in place for all federally listed species, including the Quino checkerspot butterfly.

20. *Comment:* Several commenters asserted that because more than 89 percent of Quino checkerspot butterfly sightings through the 2000 adult flight season occurred within the preserve areas (MHPA) for the San Diego MSCP, critical habitat should be limited to the preserve areas. They further contended that lands outside of the MHPA are not necessary, nor essential, and therefore, should not be designated as critical habitat for the butterfly in the region.

Our Response: While there may be considerable overlap between those areas we have designated as critical habitat and the boundaries of the MHPA and pre-approved mitigation areas, the MHPA and pre-approved mitigation areas were not originally drawn to take into consideration the conservation needs of the Quino checkerspot butterfly. We are now in the process of re-assessing the boundaries of the MHPA relative to the Quino checkerspot butterfly through the amendments to the MSCP for coverage of the butterfly to ensure that lands essential to the conservation of the butterfly are captured within the MHPA.

Issue 3: Economic Issues

21. *Comment:* Several commenters expressed concern that the proposed rule was not accompanied by an economic analysis as required by law.

Our Response: Pursuant to section 4(b)(2) of the Act, we are to evaluate, among other relevant factors, the potential economic effects of the designation of critical habitat for the Quino checkerspot butterfly. We published our proposed designation in the **Federal Register** on February 7, 2001 (66 FR 9476). At that time, our Division of Economics and their consultants, Industrial Economics, Inc., initiated the draft economic analysis. The draft economic analysis was made available for public comment and review beginning on June 30, 2001 (66 FR 33046). Following a 30-day public comment period on the proposal and draft economic analysis, a final addendum to the economic analysis was proposed. Both the draft economic analysis and final addendum were used in the development of this final designation of critical habitat for the Quino checkerspot butterfly. Please refer to the Economic Analysis section of this final rule for a more detailed discussion of these documents.

22. *Comment:* Several commenters were concerned that our economic analysis was incorrect to assume that a Regulatory Flexibility Analysis was not required or that we did not appropriately address potential economic effects of the designation.

Our Response: The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. We are certifying that this rule will, in fact, not have a significant economic impact on a substantial number of small entities and, as a result, we do not need to prepare either an initial or final regulatory flexibility analysis. Please refer to the Economic Analysis and Regulatory Flexibility Act sections of this rule for further discussions concerning the potential economic effects of this designation.

23. *Comment:* Several commenters stated that we should have analyzed the cumulative effect of the critical habitat designation for the Quino checkerspot butterfly along with the effect of existing and proposed critical habitat for other species in the area.

Our Response: The commenters appear to be using the term "cumulative impacts" in the context of the National Environmental Policy Act. This is not appropriate in analyzing the effects of a regulation designating critical habitat for a listed species. We are required to consider only the effect of the proposed government action, which in this case is the designation of critical habitat for the Quino checkerspot butterfly. The appropriate baseline for use in this analysis is the regulatory environment without this regulation. Against this baseline, we attempt to identify and measure the incremental costs and benefits associated with this designation of critical habitat. When critical habitat for other species has already been designated, it is properly considered part of the baseline for this analysis. Proposed and future critical habitat designations for other species in the area will be part of separate rulemakings, and consequently, their economic effects will be considered separately.

24. *Comment:* Several commenters expressed concern that the draft economic analysis failed to consider the effect the critical habitat designation for the Quino checkerspot butterfly would have on the demand for new housing and land values, and that the economic analysis ignores the impact of the designation on California's critical housing shortage.

Our Response: We are aware that some of the land that we are designating

as critical habitat for the Quino checkerspot butterfly faces significant development pressure. Development activities can have a significant effect on the land and the species dependent on the habitat being developed. We also recognize that many large-scale development projects are subject to some type of Federal nexus before work actually begins. As a result, we expect that future consultations will, in part, include planned and future real estate development.

We included additional analysis of these impacts in the addendum to the economic analysis. Estimates of acres likely to become urbanized over ten years were derived from California Urban and Biodiversity Analysis (CURBA) model estimates. A sensitivity analysis of these figures found that changing the model results by 25 percent or less resulted in a very small change in the number of estimated consultations due to the designation. Planners at the San Diego Planning and Land Use Department, Land Use and Environment Group (LUEG) state that, in these areas, development pressure is primarily from large landowners requesting permits for residential developments (Planner, San Diego Department of Planning and Land Use, pers. comm., March 22, 2001). Thus, as a conservative estimate, this analysis assumes that all urbanized acres will be developed as residential housing projects. The low consultation estimate assumes that proposed projects will average 100 acres in size, and that 20 percent of proposed projects will have a Federal nexus and primary constituent elements (PCEs). These figures are based on historical evidence from Quino checkerspot surveys and estimates of typical project size by the Service and others. The high estimate assumes that proposed projects will average 75 acres in size, and that 80 percent of these projects will have a Federal nexus and PCEs. Thus, the high estimate is likely to represent an upper bound estimate of the number of likely future consultations. This calculation results in an estimate of approximately 19 to 98 consultations on the Quino checkerspot over the next ten years regarding residential or light commercial development projects. Total costs for such consultations are estimated to be approximately \$190,000 to \$1,587,000. As noted in the draft economic analysis, project modifications are assumed to include the following project modifications: Habitat mitigation, captive breeding programs (0 to 50 percent of consultations), biological monitor present, pre-construction

surveys, signage, no night lighting, and construction season limits. Total costs of project modifications are estimated at \$3.9 to \$38.1 million.

However, we believe that these resulting consultations will not take place solely with respect to critical habitat issues. While it is true that development activities can adversely affect designated critical habitat, we believe that our future consultations regarding new housing development will take place because such actions have the potential to adversely affect a federally listed species. We believe that such planned projects would require a section 7 consultation or a section 10 permit regardless of the critical habitat designation because areas other than those covered by the reserve are occupied by the butterfly or other federally listed species, including the coastal California gnatcatcher (*Polioptila californica californica*), Stephens' kangaroo rat (*Dipodomys stephensi*), Munz' onion (*Allium munzii*), least Bell's vireo (*Vireo bellii pusillus*), southwestern willow flycatcher (*Empidonax traillii extimus*), and arroyo toad (*Bufo californicus*). As we have previously mentioned, section 7 of the Act requires Federal agencies to consult with us whenever actions they fund, authorize, or carry out may affect a listed species or adversely modify its critical habitat.

25. *Comment:* Some commenters felt that the economic analysis is flawed because it is based on the premise that we have proposed designating only occupied habitat as critical habitat.

Our Response: The determination of whether or not proposed critical habitat is within the geographic range occupied by the Quino checkerspot butterfly is part of the biological decision-making process and lies beyond the scope of an economic analysis. Please refer to the Methods and Criteria Used To Define Critical Habitat Units sections of this rulemaking for a discussion of the decision-making process.

26. *Comment:* The assumption that future section 7 consultations would not be subject to regulatory uncertainty and legal challenge, and that the designation of critical habitat will cause no impacts above and beyond those caused by listing the species is faulty, legally indefensible, and contrary to the Act. "Adverse modification" and "jeopardy" are different, will result in different impacts, and should be analyzed as such in the economic analysis.

Our Response: We agree with the commenter's assertion that "jeopardy" and "adverse modification" represent different standards. However, the outcome of a consultation using one

standard may be very similar to that of a consultation under the other. 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 both the survival and recovery of a listed species. Actions likely to result in the destruction or adverse modification of critical habitat are those that would appreciably reduce the value of critical habitat for the recovery of the listed species. Common to both definitions is an appreciable detrimental effect on recovery of a listed species. Given the similarity of these definitions, actions likely to result in the destruction or adverse modification of critical habitat would almost always result in jeopardy to the species concerned, particularly where, as here, designation of critical habitat is primarily limited to habitat within the geographic range occupied by the Quino checkerspot butterfly.

27. *Comment:* Several commenters stated that the assumptions in the draft economic analysis suggesting that the designation of critical habitat for the Quino checkerspot butterfly is not expected to result in significant restrictions in addition to those currently in place due to the butterfly being federally listed are flawed.

Our Response: In the proposed rule and draft economic analysis, we indicated that we do not expect that the designation of critical habitat would provide significant additional regulatory or economic burdens or restrictions incremental to those afforded the species pursuant to the Act. This assertion is based on the regulatory protections afforded the butterfly and the fact that most of the lands (96.5 percent) designated as critical habitat are considered occupied by the species. Additionally, the lands which are not currently known to be occupied that are included in the designation because of future re-establishment efforts are within the Lake Mathews/Estelle Mountain Reserve in Unit 1. For additional information please refer to our draft economic analysis and final addendum to the economic analysis and the Regulatory Flexibility section of this final rule.

28. *Comment:* Several commenters stated that the draft economic analysis only looked at "current and planned" land uses and ignored the designation's impact on future, not yet planned uses.

Our Response: In our economic analysis, we attempted to estimate

economic impacts that are reasonably certain to result from designation of critical habitat for the Quino checkerspot butterfly over a ten-year period. Consideration of unplanned and unforeseeable future costs and benefits would be purely speculative and would not add anything of appreciable value to the economic analysis of this rulemaking. For further information concerning our economic analysis and potential economic impacts resulting from the designation discussed therein, please refer to the Economic Analysis and Required Determinations sections of this final rule. Additional copies of the draft economic analysis and final addendum to the draft economic analysis are available from the Carlsbad Fish and Wildlife Office (refer to ADDRESSES section).

29. *Comment:* Several commenters expressed concern over the fact that they did not believe that our draft economic analysis evaluated the potential economic effects of the designation consistently with the recent 10th Circuit Court ruling on the southwestern willow flycatcher critical habitat.

Our Response: On May 11, 2001, the U.S. Court of Appeals in the Tenth Circuit issued a ruling that addressed the analytical approach used by the Service to estimate the economic impacts associated with the critical habitat designation for the southwestern willow flycatcher. Specifically, the court rejected the approach used by the Service to define and characterize baseline conditions. Defining the baseline is a critical step within an economic analysis, as the baseline in turn identifies the type and magnitude of incremental impacts that are attributed to the policy or change under scrutiny. In the flycatcher analysis, the Service defined baseline conditions to include the effects associated with the listing of the flycatcher and, as is typical of many regulatory analyses, proceeded to present only the incremental effects of the rule.

The court's decision, in part, reflects the uniqueness of many of the more recent critical habitat rulemakings. The flycatcher was initially listed by the Service as an endangered species in 1995, several years prior to designating critical habitat. Once a species has been officially listed as endangered under the Act, it is afforded special protection under Federal law. In particular, it is illegal for any one to "take" a protected species once it is listed. "Take" is defined to mean harass, harm pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Implementing regulations

promulgated by the Service further define "harm" to mean " * * * an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering."

Because the southwestern willow flycatcher was initially listed as endangered by the Service in 1995, several years before the designation of critical habitat, the flycatcher, along with its habitat, already received considerable protection before the designation of critical habitat in 1997. As a result, the economic analysis concluded that the resulting impacts of the designation would be insignificant. This conclusion was based on the facts that: (1) The designation of critical habitat only requires the Federal government to consider whether their actions could adversely modify critical habitat; and (2) the Federal government already was required to consult on actions that may adversely affect the flycatcher and to ensure that its actions did not jeopardize the flycatcher.

For a Federal action to adversely modify critical habitat the action would have to adversely affect the critical habitat's constituent elements or their management in a manner likely to appreciably diminish or preclude the role of that habitat in both the survival and recovery of the species. However, the Service defines jeopardy, which was a pre-existing condition prior to the designation of critical habitat, as to "engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species." The "survival and recovery" standard is used in the definition of both terms and as a result, the additional protection afforded the flycatcher due to the designation of critical habitat was determined to be negligible.

The court, however, considered why Congress would want an economic analysis performed by the Service when making a decision about designating critical habitat if, in fact, the designation of critical habitat adds no significant additional protection to a listed species. In the court's mind, "(b)ecause (the) economic analysis done using the Service's baseline model is rendered essentially without meaning by 50 CFR 402.02, we conclude Congress intended that the Service conduct a full analysis of all of the economic impacts of a critical habitat designation, regardless of

whether those impacts are attributable co-extensively to other causes."

Even though the court's ruling applies only to the designation of critical habitat for the southwestern willow flycatcher, this analysis attempts to comply with the court's instructions by revising the approach to defining baseline conditions within the areas of proposed critical habitat. This approach to baseline definition employed in the analysis of the designation of critical habitat for the Quino checkerspot butterfly is similar to that employed in previous approaches in that the goal is to understand the incremental effects of a designation. However, it does provide more extensive discussion of pre-existing baseline conditions than previous critical habitat economic analyses. Typical economic analyses concentrate mostly on identifying and measuring, to the extent feasible, economic effects most likely to occur because of the action being considered. Baseline conditions, while identified and discussed, are rarely characterized or measured in any detailed manner because, by definition, these conditions remain unaffected by the outcome of the decision being contemplated. While the goal of this analysis remains the same as previous critical habitat economic analyses, that is to identify and measure the estimated incremental effects of the proposed rulemaking, the information provided in this analysis concerning baseline conditions is more detailed than that presented in previous studies. The final addendum to this analysis provided further information concerning the baseline and potential incremental effects of the designation of critical habitat for the Quino checkerspot butterfly.

Summary of Changes From the Proposed Rule

Based on a review of public comments received on the proposed determination of critical habitat and economic analysis for the Quino checkerspot butterfly, we reevaluated our proposed designation of critical habitat for this species. The primary changes include the following: (1) Revising the mapping using the distribution of occurrence complexes (based on 1 km (0.6 mi) radii of recent observations) known to be essential for viable Quino checkerspot butterfly populations in this final rule (except for the isolated populations at Jacumba, Brown Canyon, and Lake Mathews), instead of the 4.8 km (3 mi) dispersal distance used in the proposal to define lands essential to the conservation of the butterfly (refer to the Criteria Used To Identify Critical Habitat section of

this rule for a more detailed discussion of this revised methodology); (2) the removal of the Lake Mathews MSHCP in Riverside County that provides coverage and incidental take authorization for the Quino checkerspot butterfly; (3) the inclusion of occurrence data collected during the 2001 adult butterfly flight season; (4) removal of areas not known to be essential; and 5) refinements to provide consistency with the final recovery plan for the Quino checkerspot butterfly.

The Lake Mathews MSHCP in Riverside County was included in proposed critical habitat for the Quino checkerspot butterfly because we believe the habitat is essential to the conservation of the butterfly. During the public comment period we received comments from the Metropolitan Water District of Southern California (MWD) concerning the inclusion of the Lake Mathews MSHCP in proposed critical habitat for the Quino checkerspot butterfly. They indicated that the butterfly was a covered species under the Lake Mathews MSHCP, and that it provided sufficient special management for the butterfly. Additionally, they indicated that there was conditional take authorization for Quino checkerspot butterflies. We subsequently reviewed the Lake Mathews MSHCP and its Implementation Agreement to determine whether the management afforded the butterfly through its provisions would be sufficient for consideration to be excluded from final critical habitat under section 4(b)(2) of the Act. We found that the Lake Mathews MSHCP: (1) Is an approved and legally operative HCP in which the Quino checkerspot butterfly is a covered species, (2) provides take authorization for the Quino checkerspot butterfly, and (3) provides special management considerations for, and protections of, Quino checkerspot butterfly habitat. Consequently, we believe that the Lake Mathews MSHCP meets the criteria for exclusion under section 4(b)(2) of the Act. It has, therefore, been excluded from the final designation of critical habitat for the Quino checkerspot butterfly.

The proposed critical habitat was published in February of 2001, prior to the start of the 2001 adult butterfly flight season. It was our intent to use the data collected during the 2001 flight season to develop the final critical habitat rule, so that the final designation was based on the best available scientific and commercial data. In fact, many of the comments we received from the public suggested that we take into consideration the 2001 data prior to

finalizing the rule. Therefore, we used the data from the 2001 flight season in developing our final designation of critical habitat for the Quino checkerspot butterfly.

The data from the 2001 flight season, for the most part, corroborated decisions made during the development of the proposed critical habitat and provided additional information concerning the known occupancy of areas we believed to be essential to the conservation of the butterfly. Four new occurrence complexes were documented in Riverside County and seven in San Diego County. These new complexes occur primarily within the boundaries of areas we proposed as critical habitat. The locations of three new occurrence complexes are completely outside of our proposed critical habitat boundaries. We do not currently have sufficient information to determine if two of these complexes are essential to the conservation of the Quino checkerspot butterfly. However, one of the new occurrence complexes is believed to be essential to the conservation of the Quino checkerspot butterfly. This complex (the Dulzura Occurrence Complex) is located adjacent to the Otay Mesa Unit in a BLM designated wilderness area (please refer to the unit descriptions in the Critical Habitat section of this rule for a discussion of why this complex was not designated as critical habitat). As a result of the information pertaining to the new occurrence complexes, portions of Units 2 and 3, which were not previously known to be occupied by the Quino checkerspot butterfly, are now considered to be occupied.

Additionally, based on the 2001 adult flight season data, public comments, and updated aerial photography, we reassessed the lands that we determined to be essential to the conservation of the butterfly during the development of the final designation. Based on this reevaluation, we made some significant changes to Units 1, 2, and 4 which resulted in a reduction of 52,374 ha (129,405 ac) of land being designated as critical habitat for the Quino checkerspot.

The primary changes to Unit 1 consisted of removing the Lake Mathews MSHCP (discussed above), reducing the habitat not known to be occupied to within the boundaries of the Estelle Mountain Reserve, and refining the Harford Springs subunit to exclude areas not known to be essential to the conservation of the butterfly. This resulted in a reduction of approximately 7,212 ha (17,830 ac) from Unit 1.

The primary changes to Unit 2 consisted of: (1) Removing additional

lands not known to be essential (e.g., urban and agricultural lands); (2) removing portions of the Assessment District 161 HCP, that were mistakenly included in the proposed designation; and (3) implementing the revised methodology based on the 1 km (0.6 mi) dispersal distance. This resulted in a reduction of critical habitat in the following areas: (1) West of Oak Mountain and Vail Lake, in the vicinity of Pauba Valley; (2) on the Cahuilla Indian Reservation; (3) northeast and southeast of the town of Oak Grove in San Diego County; and (4) south of the town of Hemet, southwest of Diamond Valley Reservoir, and northwest of the town of Anza (*i.e.*, roughly between the towns of Sage and Hemet in Riverside County). These changes resulted in a reduction of approximately 35,457 ha (87,610 ac) lands being designated as critical habitat in Unit 2 from those that were proposed.

The primary changes that occurred to Unit 3 were: (1) Removing Otay Lake, which was mistakenly included in the proposed designation; (2) removing nonessential lands on Otay Mountain, primarily Tecate cypress woodland; (3) removing lands not known to be essential northwest of the town of Tecate; and (4) implementing the revised methodology based on the 1 km (0.6 mi) dispersal distance. This resulted in a reduction approximately 3,253 ha (8,040 ac).

The primary change to Unit 4 consists of removing lands not known to be essential north of Interstate 8 and east of the town of Jacumba, including associated active agricultural fields. This resulted in a reduction of 6,447 ha (15,930 ac) from this unit.

Further, because the final recovery plan for the Quino checkerspot butterfly was drafted concurrently with the final designation of critical habitat, we wanted to ensure recommendations for the conservation of the Quino checkerspot butterfly were consistent. Based on the 2001 data, the habitat complexes were redefined and renamed occurrence complexes, and new biological information was acquired about host and nectar plants. We believed that it was important to capture this new information consistently in both documents. Therefore, the background section and unit descriptions in this rule have been updated to reflect the new information and are now consistent with the final recovery plan being developed.

Additionally, based on the refinements to designated critical habitat discussed above, the amount of land in the designation that is currently not known to be occupied has been

reduced from approximately 18,416 ha (45,510 ac) to an estimated 2,450 ha (6,050 ac). As a result, 96.5 percent of the designation is currently known to be occupied by the Quino checkerspot butterfly. The approximately 3.5 percent of the designation that is not currently known to be occupied is located with the Lake Mathews/Estelle Mountain Reserve in the Lake Mathews/Estelle Mountain Reserve subunit of Unit 1 in western Riverside County.

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 specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

Following the publication of the proposed critical habitat designation, a draft economic analysis was conducted to estimate the potential economic effect of the designation. The draft analysis was made publicly available for review on June 20, 2001 (66 FR 33046). We accepted comments on the draft analysis until July 30, 2001. Additionally, we held two public hearings on the proposed designation and the draft economic analysis on July 17, 2001, in Escondido, California.

Our draft economic analysis evaluated the potential future effects associated with the listing of the Quino checkerspot butterfly as an endangered species under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. To quantify the proportion of total potential economic impacts attributable to the critical habitat designation, the analysis evaluated a "without critical habitat" baseline and compared it to a "with critical habitat" scenario. The "without critical habitat" baseline represented the current and expected economic activity under all modifications prior to the critical habitat designation, including protections afforded the species under Federal and State laws. The difference between the two scenarios measured the net change in economic activity attributable to the designation of critical habitat. The categories of potential costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations associated with

the listing or with the critical habitat, including incremental consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat; and (4) potential offsetting beneficial costs associated with critical habitat, including educational benefits.

The majority of consultations resulting from the critical habitat designation for the Quino checkerspot butterfly are likely to address land development, road construction, or road expansion activities. The draft analysis estimated that over a 10-year period, the critical habitat designation would result in approximately 10 additional biological surveys, 21 to 40 additional formal consultations, and 3 re-initiations of consultations that were previously initiated due to the presence of the butterfly. In addition, it was estimated that we would provide technical assistance for 180 inquiries regarding uncertainty about the presence or extent of critical habitat. Furthermore, many consultations would likely result in recommendations for project modifications. Based on our draft analysis, we concluded that the designation of critical habitat would not result in a significant economic impact and estimated that the potential economic effects over a 10-year period would range from \$3.5 to \$14.1 million.

Following the close of the comment period on the draft economic analysis, a final addendum was completed which incorporated public comments on the draft analysis. The potential economic effects of the designation were reevaluated. Based on this new analysis, it was determined that there would be potential for additional consultations and assistance over and above the estimates projected in the draft analysis. Subsequently, the addendum concluded that the designation may result in potential economic effects ranging from between \$5.4 and \$19.9 million over a 10-year period. Because these values were believed to be relatively insignificant over the projected time period, the addendum concluded that no significant economic impacts were anticipated from the designation of critical habitat for the Quino checkerspot butterfly. Additionally, these values may overestimate the potential economic effects of the designation because a number of areas that were not considered to be occupied in the proposed designation, and therefore the economic analysis, are now known to be occupied based on data from the 2001 adult butterfly flight

season. Further, the final designation has been reduced to encompass 69,440 ha (171,605 ac) versus the 124,814 ha (301,010 ac) proposed as critical habitat, a difference of approximately 52,374 ha (129,405 ac). Consequently, future consultations occurring in these areas would be due to the presence of the butterfly and not be solely attributable to the designation of critical habitat.

A more detailed discussion of our analyses is contained in the Draft Economic Analysis of Proposed Critical Habitat Designation for the Quino Checkerspot Butterfly (June 2001) and the Addendum to Economic Analysis of Critical Habitat Designation for the Quino Checkerspot Butterfly (January 2002). Both documents are included in the supporting documentation for this rulemaking and available for inspection at the Carlsbad Fish and Wildlife Office (refer to **ADDRESSES** Section).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below.

a. This rule will not have an annual economic effect of \$100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The Quino checkerspot butterfly was listed as an endangered species in 1997. In fiscal years 1997 through 2001, we have conducted, or are in the process of conducting, an estimated 11 formal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of the Quino checkerspot butterfly. We have also issued section 10(a)(1)(B) incidental take permits for approximately 12 projects in areas where the species occurs, in which the project proponents have prepared either individual HCPs or were signatories to the AD161 HCP in western Riverside County.

Under the Act, Federal agencies shall consult with the Service to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitat. The Act does not impose any restrictions through critical habitat designation on non-Federal persons unless they are conducting activities funded, authorized, or permitted by a Federal agency. Based upon our experience with

this species, we conclude that any Federal action that is likely to result in the destruction or adverse modification of critical habitat would also be considered likely to jeopardize the continued existence of this species in areas occupied by the species. Accordingly, the designation of occupied areas as critical habitat for the Quino checkerspot butterfly is not anticipated to have any incremental impacts on actions that may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding beyond the effects resulting from the listing of this species. Non-Federal persons that do not have a Federal involvement in 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). The designation of areas as critical habitat, where section 7 consultations would not have occurred but for the critical habitat designation, may have impacts on actions that may or may not be conducted by Federal agencies or non-Federal persons who receive Federal authorization or funding that are not attributable to the listing of the species. These impacts were evaluated in our economic analysis (under section 4 of the Act; see Economic Analysis section of this rule).

b. This rule will not create inconsistencies with other agencies' actions. As discussed above, Federal agencies are required to ensure that their actions do not jeopardize the continued existence of the Quino checkerspot butterfly since its listing under the Act in 1997. In our economic analysis (see Economic Analysis section of this rule), we have evaluated the impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation. The designation of critical habitat is not expected to impose any additional restrictions beyond those that currently exist on currently occupied lands and will not create inconsistencies with other agencies' actions on unoccupied lands.

Specifically, land management activities in areas not currently known to be occupied, such as the Lake Mathews/Estelle Mountain Reserve in the Lake Mathews/Estelle Mountain Reserve subunit of Unit 1, are expected to benefit the Quino checkerspot butterfly and other listed species in the long term; therefore, those actions should not be significantly affected by this designation.

c. This rule is not expected to 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 analysis (resulting from critical habitat designation) will have any significant incremental effects.

d. OMB has determined that this rule may raise novel legal or policy issues. Therefore, this rule is significant under E.O. 12866, and, as a result, has undergone OMB review.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic effect on a substantial number of small entities. In this rule, we are certifying that the critical habitat designation for the Quino checkerspot butterfly will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

Small entities include small organizations, such as independent non-profit organizations, small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under

this rule as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, water storage and transfer, etc.). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement, and so will not be affected by critical habitat designation. In areas where the species may be present, Federal agencies already are required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect the Quino checkerspot butterfly. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in additional economic impacts to small entities due to the requirement to reinitiate consultation for ongoing Federal activities, or due to consultations being triggered in critical habitat where the species is currently not known to occur.

Since the Quino checkerspot butterfly was listed in January 1997, we have conducted only 11 formal consultations. The analysis provided in the Addendum to Economic Analysis of Critical Habitat Designation for the Quino Checkerspot Butterfly (January 2002) indicates that the potential number of small entities affected is approximately 1 percent. These consultations were for the construction of State Route 125 in San Diego County and for the construction of new housing developments and road expansions/improvements in Riverside County (California Department of Transportation and large development corporations) and related to HCPs done in both areas. The designation of critical habitat for the Quino checkerspot butterfly may result in the reinitiation of

these consultations. However, as stated above, these consultations do not affect a substantial number of small entities. Furthermore, because the consultations already addressed the presence of the Quino checkerspot butterfly and the effects of the actions on the continued existence of the species, (*i.e.*, jeopardy), we believe that the designation of critical habitat would not result in significant additional regulatory or economic burdens on these entities.

In areas where the species is currently not known to occur, designation of critical habitat could trigger additional review of federally funded, authorized, or permitted activities under section 7 of the Act. The area of the designation that is not known to be occupied is located in Lake Mathews/Estelle Mountain Reserve subunit of Unit 1. This subunit encompasses approximately 2,450 ha (6,050 ac) of land and is located within the Lake Mathews/Estelle Mountain Reserve established for the Stephens' kangaroo rat. We do not anticipate any federal actions to occur on this reserve at this time.

Current activities with Federal involvement that may require consultation include: Regulation of activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act; regulation of water flows, damming, diversion, and channelization by any Federal agency; regulation of grazing, mining, and recreation by the BLM, Forest Service, or the Service; road construction, maintenance, and right of way designation; regulation of agricultural activities; regulation of airport improvement activities by the Federal Aviation Administration; 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, Department of Energy, or any other Federal agency. Many of the activities sponsored by Federal agencies within critical habitat areas are carried out by small entities (as defined by the Regulatory Flexibility Act) through contracts, grants, permits, or other Federal authorizations. Based on past consultation history, anticipated future consultations would not involve a substantial number of small entities. Therefore, the designation of critical

habitat is not anticipated to have any significant additional effects on these activities.

In the economic analysis for the proposed rule, we found that the proposed designation could potentially impose total economic costs for consultations and modifications to projects within proposed critical habitat for the Quino checkerspot butterfly to range between \$5.4 to \$19.9 million dollars over a 10-year period. This figure includes the total costs associated with heavy construction (*i.e.*, highway construction), estimated to range between \$0.6 and \$1.4 million, and the total costs associated with commercial and residential real estate development, estimated to range between \$0.8 and \$8.2 million dollars.

In determining whether this rule could "significantly affect a substantial number of small entities," the economic analysis first determined whether critical habitat could potentially affect a "substantial number" of small entities in counties supporting critical habitat areas. While SBREFA does not explicitly define "substantial number," the Small Business Administration, as well as other Federal agencies, have interpreted this to represent an impact on 20 percent or greater of the number of small entities in any industry. Residential development on private land constitutes the primary activity expected to be impacted by the designation of critical habitat for the Quino checkerspot butterfly.

To be conservative (*i.e.*, more likely overstate impacts than underestimate them), the economic analysis assumed that all potentially affected parties that may be engaged in development activities within critical habitat are small entities. There are approximately 715 residential development and construction companies in San Diego and Riverside Counties that are small businesses. Of these, approximately nine may potentially be affected by the designation of critical habitat for the Quino checkerspot butterfly, according to the Addendum to Economic Analysis of Critical Habitat Designation for the Quino Checkerspot Butterfly (January 2002). Therefore, approximately 1 percent of residential development and construction companies in San Diego and Riverside Counties may be affected by the designation of critical habitat for the Quino checkerspot butterfly. Because 1 percent is far less than the 20 percent threshold that would be considered "substantial," this analysis concludes that this designation will not affect a substantial number of small entities in the residential development and construction industries as a result

of the designation of critical habitat for the Quino checkerspot butterfly. The analysis also estimated that less than 0.2 percent of the small businesses in the highway construction industry could be affected.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements. First, if we conclude in a biological opinion that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we will make every effort to offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or destroying or adversely modifying critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption was obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing a reasonable and prudent alternative. Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or to develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the

scope of authority of the Federal agency involved in the consultation. As we have a limited consultation history for the Quino checkerspot butterfly, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation.

It is likely that a developer could modify a project or take measures to protect the Quino checkerspot butterfly. Based on the types of modifications and measures that have been implemented in the past for this species, a developer may take such steps as re-aligning the project to avoid sensitive areas, sponsoring a captive breeding program, having a biological monitor present during the construction phase, and performing pre-construction surveys. The total estimated cost for implementing these measures is estimated to range between \$3.9 and \$38.1 million dollars over a 10-year period within critical habitat. However, it is estimated that the majority of these costs would occur regardless of the critical habitat designation. It should also be noted that developers likely would already be required to undertake such measures due to regulations in CEQA. These measures are not likely to result in a significant economic impact to project proponents. The rule itself, as proposed, is estimated to result in total costs between \$0.8 and \$8.2 million to this industry (this figure includes the additional costs of participating in section 7 consultations).

The cost per-business, for real estate development activities that will likely require a consultation with the Service, was estimated to average \$360,622 per project. Given that approximately nine small businesses, at the most, could bear these costs each year (in estimating effects to small businesses, the analysis conservatively assumes that all potentially affected businesses are small), only about 1 percent of the total number of small real estate development businesses in the area would incur costs considered significant. Furthermore, given that the analysis assumes that the size of such projects would range between 75 and 100 ac, the average cost per project associated with section 7 represents a small percentage, overall, on the total worth of the project.

As required under section 4(b)(2) of the Act, we conducted an analysis of the potential economic impacts of this critical habitat designation, and that analysis was made available for public review and comment before finalization of this designation. Based on estimates

provided in the economic analysis, the potential economic impact of critical habitat designation for the Quino checkerspot butterfly over the next 10 years is estimated to range between \$5.4 and \$19.9 million. Assuming that these costs are spread out evenly over the period of study, the average annual cost of the designation, as proposed ranges between \$0.5 and \$2.0 million.

Furthermore, due to the changes made in the final rule regarding the designation of private lands (a reduction of approximately 46,540 ha (115,010 ac from the proposal), the actual impact of critical habitat designation on private landowners will be less than that estimated in the economic analysis.

In summary, we have considered whether this rule would result in significant economic effects on a substantial number of small entities. We have determined, for the above reasons, that it will not affect a substantial number of small entities. Furthermore, we believe that the potential compliance costs for the number of small entities that may be affected by this rule will not be significant. Therefore, we are certifying that the designation of critical habitat for the Quino checkerspot butterfly will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis is not required.

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

As discussed above, this rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This final designation of critical habitat: (a) does not have an annual effect on the economy of \$100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions because, as explained in our economic analysis, the designation is anticipated to have a total estimated economic effect ranging between \$5.4 and \$19.9 million over a 10-year period. Additionally, these values may be an overestimate of the potential economic effects of the designation because approximately 18,416 ha (45,510 ac) of land not known to be occupied in the proposed designation, and considered not occupied in the economic analysis, are now known to be occupied based on data from the 2001 adult butterfly flight season (only 2,450 ha (6,050 ac) are not known to be occupied in this final designation); and, (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability

of U.S.-based enterprises to compete with foreign-based enterprises.

Proposed and final rules designating critical habitat for listed species are issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Competition, employment, investment productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises are not affected by this action and will not be affected by the final rule designating critical habitat for this species. This final rule will not place additional burdens on any entity. We anticipate that the designation of critical habitat will not have any additional effects on these activities in areas of critical habitat occupied by the species. In addition, we anticipate that the designation will not have any adverse effects on activities in areas not known to be occupied due to the presence of other federally listed species.

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, as designated, will not “significantly or uniquely” affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that any programs having Federal funds, permits, or other authorized activities must ensure that their actions will not destroy or adversely modify critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further significant restrictions are anticipated in areas of occupied designated critical habitat.

b. This rule, as designated, 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, (“Government Actions and Interference with Constitutionally Protected Private Property Rights”), we have analyzed the potential takings implications of designating 69,440 ha (171,605 ac) of lands in Riverside and San Diego Counties, California as critical habitat for the Quino checkerspot butterfly in a takings implication assessment. The takings implications assessment concludes that

this final designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

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, we requested information from, and coordinated development of this critical habitat designation, with appropriate State resource agencies in California. The designation of critical habitat within the geographic range occupied by the Quino checkerspot butterfly imposes no significant 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 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).

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 are designating critical habitat in accordance with the provisions of the Endangered Species Act. 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 Quino checkerspot butterfly.

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 determined 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 Endangered Species Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This critical habitat designation does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we are coordinating with federally recognized Tribes on a Government-to-Government basis. Further, Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (1997) provides that critical habitat should not be designated in an area that may impact Tribal trust resources unless it is determined to be essential to the conservation of a listed species. The Secretarial Order further states that in designating critical habitat, "the Service shall evaluate and document the extent to which the conservation needs of a listed species can be achieved by limiting the designation to other lands."

In our proposed critical habitat rule, we indicated that approximately 4,405 ha (10,890 ac) of lands within the Cahuilla Band of Mission Indians' Reservation in western Riverside County were essential for the conservation of the Quino checkerspot butterfly. This determination was based on the close proximity of two butterfly occurrence complexes—the Silverado and Southwest Cahuilla complexes—and the continuity of butterfly habitat adjacent to and along the southern portion of the Reservation. We are committed to developing a positive working relationship with the Tribe and will continue our attempts to work with them on developing conservation measures for the butterfly. However, due to time constraints for completing this final rule, we were required to finalize the designation based on our

own analysis of the relative importance of the lands within the Cahuilla Band of Mission Indians' Reservation for the conservation of the Quino checkerspot butterfly.

Additional information about the distribution of the species on or near the Reservation became available following the publication of the critical habitat proposal. During the 2001 Quino adult flight season, an additional population of Quino checkerspot butterflies was identified in close proximity to the southern boundary of the Reservation. This occurrence complex has been labeled the Tule Peak complex. Consequently, based on data from the 1998 through the 2001 flight seasons, there are an estimated 226 butterfly occurrences grouped into three occurrence complexes adjacent to and overlapping the southern boundary of the Reservation. These complexes include the majority of documented Quino checkerspot butterflies in the eastern portion of western Riverside County and constitute one or more significant and substantial essential core regional populations of the species.

Because these occurrence complexes overlap lands within the Reservation, and due to the apparent continuity of butterfly habitat from the complexes across much of the Reservation, we have determined that lands on the Reservation defined by the occurrence complexes that support the primary constituent elements for the Quino checkerspot butterfly are essential to the conservation of this species and are therefore designated as critical habitat. Based on the distribution and dispersal of the Quino checkerspot butterfly and our analysis of areas essential for the conservation of this species, we have reduced the area designated as critical habitat to 525 ha (1,300 ac) on the Cahuilla Band of Mission Indian's Reservation.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Though this

rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Relationship to Mexico

Although this species occurs in Mexico, as well as the United States, according to CFR 402.12(h), "Critical habitat shall not be designated with foreign countries or in other areas outside of the United States' jurisdiction." Therefore, Mexico will not be affected by this designation.

References Cited

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

Authors

The primary authors of this designation are Douglas Krofta and Alison Anderson of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations 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 "Butterfly, Quino checkerspot" under "INSECTS" 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						

* * * * *
INSECTS

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Butterfly, Quino checkerspot.	<i>Euphydryas editha quino</i>	U.S.A. (CA), Mexico	Entire	*	E	604	17.95(i) *
		*	*	*	*	*	*

3. Amend § 17.95(i) by adding critical habitat for the Quino checkerspot butterfly (*Euphydryas editha quino*), in the same alphabetical order as this subspecies occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) Insects. * * *

Quino Checkerspot Butterfly (*Euphydryas editha quino*).

(1) Critical habitat units are depicted for Riverside and San Diego Counties, California, on the maps below.

(2) Primary constituent elements occur in undeveloped areas that support various types of open-canopy woody and herbaceous plant communities. They include, but are not limited to, plant communities that provide populations of host plant and nectar sources

for the Quino checkerspot butterfly. The primary constituent elements for the Quino checkerspot butterfly consist of:

(i) Grassland and open-canopy woody plant communities, such as coastal sage scrub, open red shank chaparral, and open juniper woodland, with host plants or nectar plants;

(ii) Undeveloped areas containing grassland or open-canopy woody plant communities, within and between habitat patches, utilized for Quino checkerspot butterfly mating, basking, and movement; or

(iii) Prominent topographic features, such as hills and/or ridges, with an open woody or herbaceous canopy at the top. Prominence should be determined relative to other local topographic features.

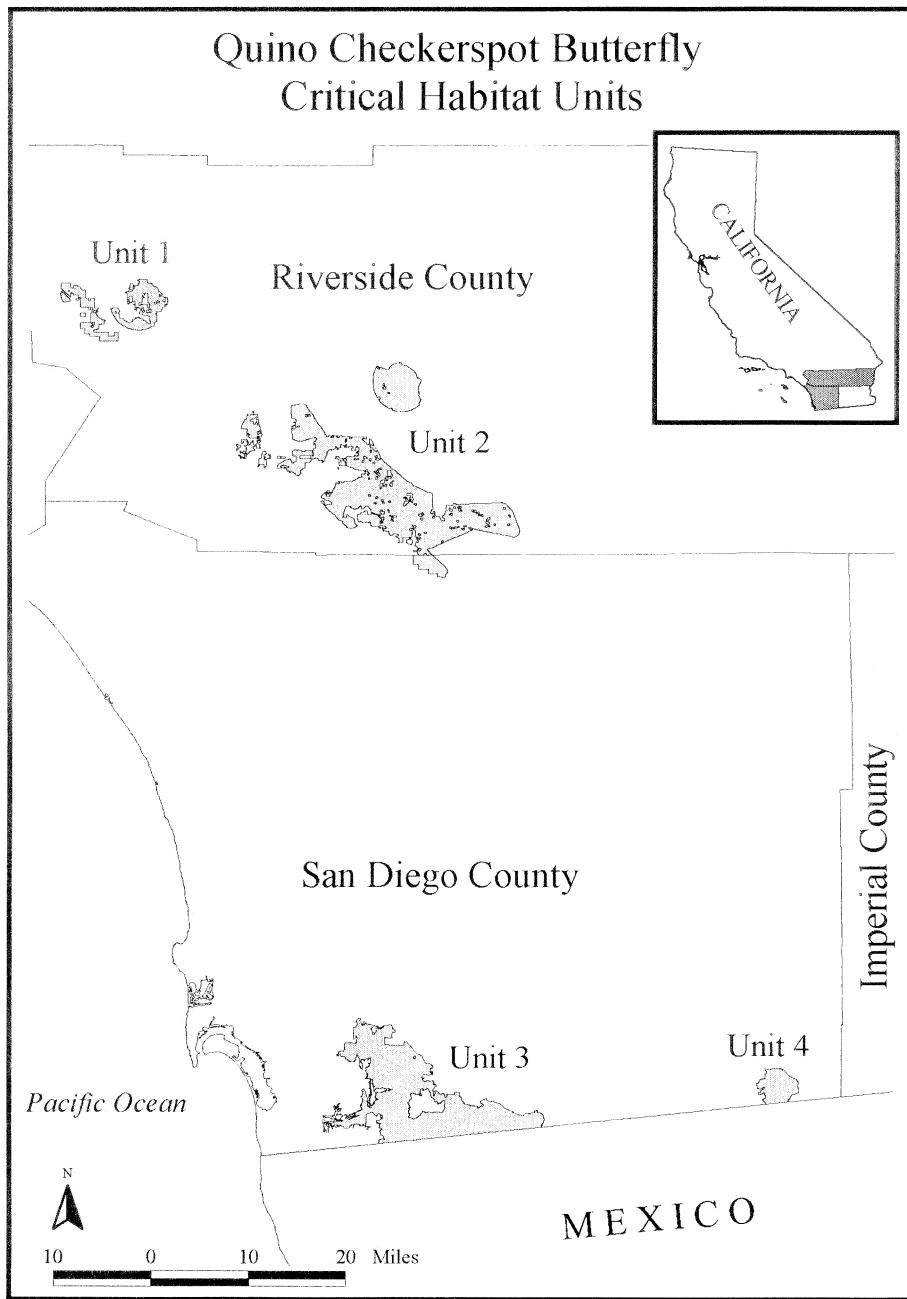
(3) Critical habitat does not include non-Federal lands covered by a legally operative incidental take permit for which the Quino

checkerspot butterfly is a covered species and has take authorization, issued under section 10(a)(1)(B) of the Act on or before April 15, 2002.

(4) Existing features and structures within the boundaries of mapped critical habitat units, such as buildings, paved or improved roads, aqueducts, railroads, airports, other paved areas, lawns, large areas of closed canopy woody vegetation such as chaparral and cypress, active agricultural fields, and other urban landscaped areas are not and do not contain constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

(5) Critical Habitat Map Units—Index Map follows:

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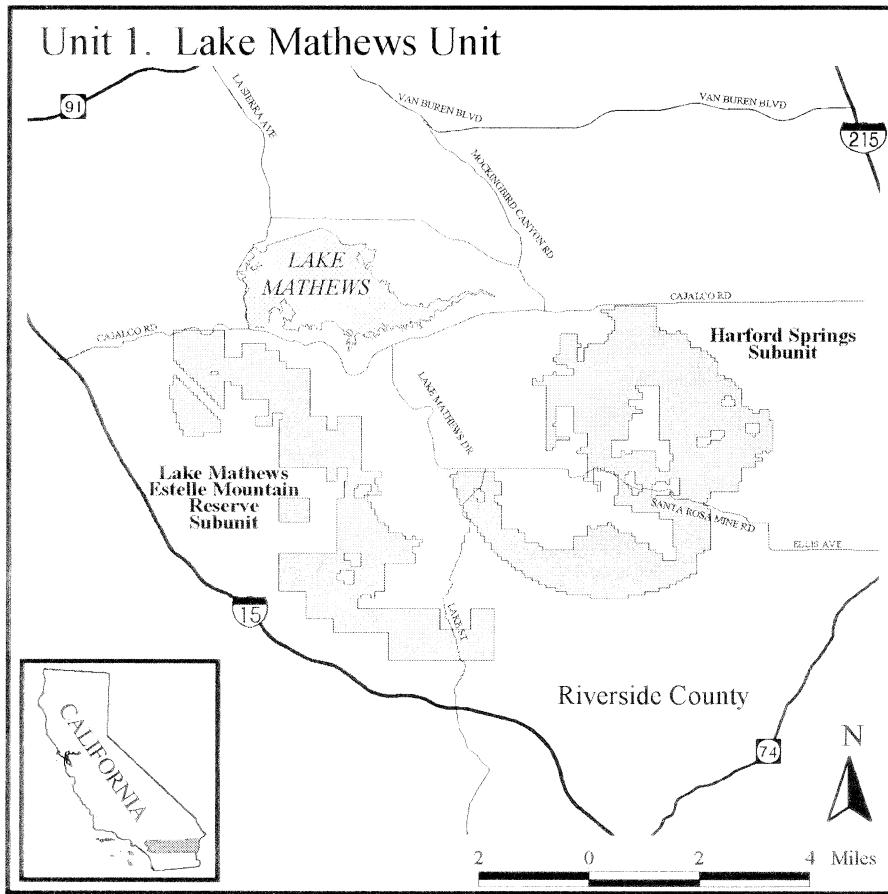
**BILLING CODE 4310-55-C**

(6) Map Unit 1: Lake Mathews, Riverside County, California.

(i) Lake Mathews/Estelle Mountain Reserve Subunit. From 1:24,000 USGS quadrangle maps Alberhill and Lake Mathews, California, lands bounded by the following Universal Transverse Mercator (UTM) North American Datum of 1927 (NAD27) coordinates (E, N): 461000, 3738300; 461000, 3738100; 461100, 3738100; 461100, 3737900; 461200, 3737900; 461200, 3737700; 461300, 3737700; 461300, 3737500; 461500, 3737500; 461500, 3737400; 461600, 3737400; 461600, 3737200; 462000, 3737200; 462000, 3737100; 462100, 3737100; 462100, 3737000; 462300, 3737000; 462400, 3737000; 462600, 3737000; 462600, 3736900; 462500, 3736900; 462500, 3736800;

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BILLING CODE 4310-55-P

**BILLING CODE 4310-55-C**

(7) Unit 2: Southwest Riverside County, California.

(i) From USGS 1:24,000 quadrangle maps Romoland, Winchester, Hemet, Blackburn Canyon, Murrieta, Bachelor Mountain, Sage, Cahuilla Mountain, Anza, Pechanga, Vail Lake, Aguanga, and Beauty Mountain, California.

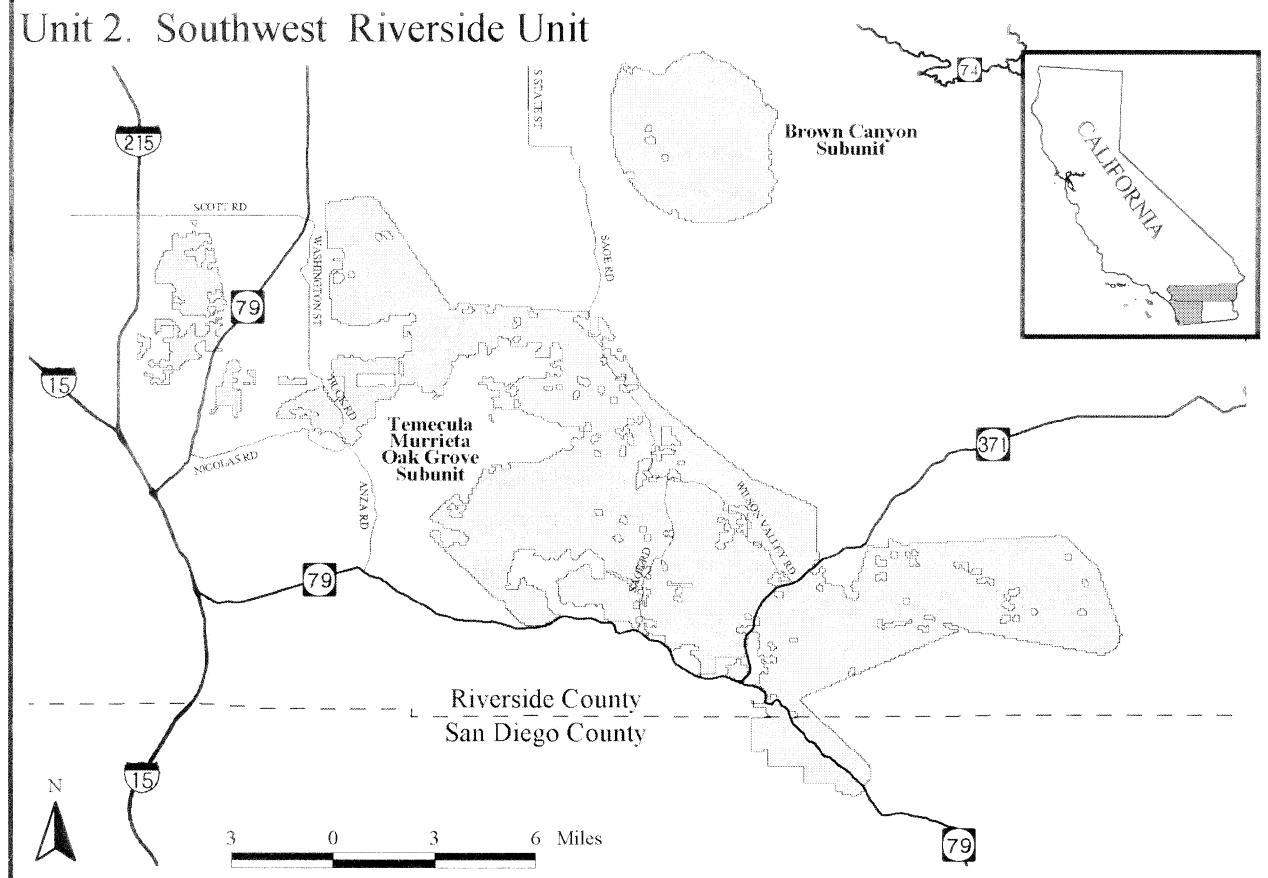
(ii) Brown Canyon Subunit: In the vicinity of Hemet and Brown Canyon, land bounded by the following UTM NAD27 coordinates (E, N): 511000, 3730000; 511100, 3730000; 511100, 3729900; 511300, 3729900; 511300, 3729800; 511400, 3729800; 511400, 3729700; 511500, 3729700; 511500, 3729600; 511900, 3729600; 511900, 3729500; 512200, 3729500; 512200, 3729400; 512400, 3729400; 512400, 3729300; 512500, 3729300; 512500, 3729200; 512600, 3729200; 512600, 3729100; 512800, 3729100; 512800, 3729000; 512900, 3729000, 3729000; 512900, 3728900; 513100, 3728900; 513100, 3728800; 513200, 3728800; 513200, 3728700; 513400, 3728700; 513400, 3728600; 513500, 3728600; 513500, 3728400; 513600, 3728400; 513600, 3728300; 513700, 3728300; 513700, 3728200; 513800, 3728200; 513800, 3728000; 513900, 3728000; 513900, 3727600; 514000, 3727600; 514000, 3727400; 514100, 3727400; 514100, 3727400; 514100, 3727500; 514200, 3727500; 514200, 3727400; 514300, 3727400; 514300, 3727300; 514500, 3727300; 514500, 3727200; 514600, 3727200; 514600, 3726800; 514500, 3726800; 514500, 3726500; 514400, 3726500; 514400, 3726300; 514300, 3726300; 514300, 3726100; 514200, 3726100; 514200, 3725300; 514300,

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(iii) Temecula/Murrieta/Oak Grove Subunit: Land bounded by 507500, 3729300; 507600, 3729300; 507600, 3729200; 507500, 3729200; 507500, 3729300; excluding land bounded by 508400, 3726500; 508400, 3726400; 508300, 3726400; 508300, 3726200; 508600, 3726200; 508600, 3726500; 508400, 3726500; land bounded by 508500, 3726000; 508500, 3725900; 508300, 3725900; 508300, 3725700; 508400, 3725700; 508400, 3725600;

(iv) Map Unit 2 follows:

Unit 2. Southwest Riverside Unit



(8) Unit 3: Otay, San Diego County, California.

(i) From USGS 1:24,000 quadrangle maps Dulzura, Jamul Mountains, Potrero, Tecate, Otay Mountain, Imperial Beach, and Otay Mesa. Beginning at the U.S./Mexico border at UTM NAD27 x-coordinate 507800 thence north along the following UTM NAD27 coordinates (E, N): 507800, 3601600 ; 507900, 3601600; 507900, 3602100; 508100, 3602100; 508100, 3602200; 508700, 3602200; 508700, 3602400; 508600, 3602400; 508600, 3602700; 508200, 3602700; 508200, 3603200; 508100, 3603200; 508100, 3603400; 508000, 3603400; 508100, 3603600; 508100, 3603700; 508200, 3603700; 508200, 3603800; 508400, 3603800; thence north to the County of San Diego Major Amendment (CSDMA) boundary at UTM x-coordinate 508400; thence northwest following the CSDMA boundary to UTM x-coordinate 508300; thence south and returning north following UTM coordinates 508300, 3604000; 507900, 3604000; 507900, 3604100; 508000, 3604100; 508000, 3604600; 508100, 3604600; 508100, 3604700; thence east to the CSDMA boundary at UTM y-coordinate 3604700; thence north along the CSDMA boundary to the Multiple Habitat Planning Area (MHPA) boundary; thence northwestward along the MHPA boundary to CSDMA boundary; thence around the CSDMA boundary to the MHPA boundary; thence northward along the MHPA boundary to UTM y-coordinate 3606500; thence west to UTM coordinates (E, N): 506700, 3606500; thence north to the City of Chula Vista Preserve Design (CCVPD) boundary at UTM x-coordinate 506700; thence southwestward along the CCVPD boundary to the MHPA, thence south to the CSDMA boundary; thence around the CSDMA boundary to the MHPA boundary; thence along the MHPA boundary to UTM y-coordinate 3604500; thence east following UTM coordinates 504600, 3604500; 504600, 3604600; 503700, 3604600; thence north to the MHPA boundary at UTM x-coordinate 503700; thence west along the MHPA boundary and continuing along Federal lands boundaries; thence west and north along the Federal lands boundaries to the MHPA boundary; thence westward along the MHPA boundary to Otay Mesa Road; thence west along Otay Mesa Road to the MHPA boundary; thence northward along the MHPA boundary to UTM x-coordinate 498900; thence south and following UTM coordinates 498900, 3603400; 498800, 3603400; 498800, 3603500; 498700, 3603500; 498700, 3603700; 498800, 3603700; thence south to the MHPA boundary at UTM x-coordinate 498800; thence northward along the MHPA boundary to UTM y-coordinate 3604200; thence east and following UTM coordinates 498600, 3604200; 498600, 3604200; 498500, 3604200; 498500, 3605400; 498700, 3605400; thence to the MHPA boundary at UTM x-coordinate 498700; thence east and back west along the CCVPD boundary to UTM x-coordinate 489700; thence south and following UTM coordinates 498700, 3605700; 498600, 3605700; 498600, 3606100; 498700, 3606100; thence south to the CCVPD boundary at UTM x-coordinate 498700; thence eastward along the CCVPD boundary to the MHPA boundary; thence northward along the MHPA boundary

to UTM x-coordinate 506400; thence west and following UTM coordinates 506400, 3607900; 506300, 3607900; 506300, 3608100; thence east to the MHPA boundary at UTM y-coordinate 3608100; thence northward along the MHPA to UTM x-coordinate 505900; thence north along UTM x-coordinate 505900 to the CCVPD; thence north and east along the CCVPD boundary to UTM x-coordinate 506200; thence north to UTM coordinates (E,N) 506200, 3614200, thence east to the CCVPD boundary at UTM y-coordinate 3614200; thence north and east along the CCVPD boundary to the MHPA boundary; thence north along the MHPA boundary to UTM x-coordinate 503800; thence south and following UTM coordinates 503800, 3614900; 503000, 3614900; thence north to the SDNWR boundary at UTM x-coordinate 503000; thence around the SDNWR boundary to the MHPA boundary; thence southeastward along the MHPA boundary to the SDNWR boundary; thence northeastward and returning southwestward along the SDNWR boundary to the MHPA boundary; thence south along the MHPA boundary to the CSDMA boundary; thence south along the CSDMA boundary to the MHPA boundary; thence north along the MHPA boundary to UTM y-coordinate 3620200; thence west and following UTM coordinates 507300, 3620200; 507300, 3620300; thence east to the MHPA boundary at UTM y-coordinate 3620300; thence north along the MHPA boundary to Highway 94; thence east along Highway 94 to the MHPA boundary; thence southeastward along the MHPA boundary to the SDNWR boundary; thence north along the SDNWR boundary to Highway 94; thence east along Highway 94 to the SDNWR boundary; thence south the SDNWR boundary to UTM y-coordinate 3619400; thence east and following UTM coordinates 510000, 3619400; 510000, 3618800; 509900, 3618800; thence north to the MHPA boundary at UTM x-coordinate 509900; thence west along the MHPA boundary to UTM x-coordinate 509800; thence south and following UTM coordinates 509800, 3618800; 509400, 3618800; thence north to the MHPA boundary at UTM x-coordinate 509400; thence west along the MHPA boundary to UTM x-coordinate 508800; thence south and following UTM coordinates 508800, 3617800; 509500, 3617800; 509500, 3617700; 510200, 3617600; 510300, 3617600; 510300, 3617700; thence east to California Department of Fish and Game (CDFG) lands at UTM y-coordinate 3617700; thence north and east along the CDFG lands to Highway 94; thence southeastward along Highway 94 to the MHPA boundary; thence west along the MHPA boundary to CDFG lands; thence south and west along the CDFG lands to the MHPA boundary; thence around the MHPA boundary to CDFG lands; thence along the CDFG lands to UTM x-coordinate 514900; thence south and following UTM coordinates 514900, 3612300; 515400, 3612300; 515400, 3612200; 515300, 3612200; 515300, 3612100; 515100, 3612100; 515100, 3612000; 515000, 3612000; 515000, 3611900; 515200, 3611900; 515200, 3611700; 515400, 3611700; 515400, 3611600; 515600, 3611600; 515600, 3611700; 515700, 3611700; 515700,

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subarea plan; land bounded by the following UTM coordinates (E, N) 508700, 3602200; 508700, 3602100; 508800, 3602100; 508800, 3602200; 508700, 3602200; and land bounded by the following UTM coordinates (E, N) 514700, 3610400; 515200, 3610400; 515200, 3610200; 515100, 3610200; 515100, 3610100; 515300, 3610100; 515300, 3610200; 515500, 3610200; 515500, 3610300; 515700, 3610300; 515700, 3610400; 516000, 3610400; 516100, 3610300; 516100, 3610000; 516200, 3609800; 516300, 3609800; 516300, 3609400; 516400, 3609400; 516400, 3609200; 516500, 3609200; 516500, 3609000; 516700, 3609000; 516700, 3608900; 516800, 3608900; 516800, 3608800; 517000, 3608800; 517000, 3608700; 517100, 3608700; 517100, 3608300; 517200, 3608200; 517300, 3608200; 517300, 3608300; 517500, 3608300; 517500, 3608200; 517600, 3608200; 517600, 3608000; 517500, 3608000; 517500, 3607900; 517700, 3607900; 517700, 3608000; 517800, 3608000; 518000, 3608100; 518000, 3608000; 518100, 3608000; 518100, 3608200; 518200, 3608200; 518200, 3608300; 518300, 3608300; 518300, 3608400; 518400, 3608400; 518400,

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(ii) Map Unit 3 follows:

BILLING CODE 4310-55-P



BILLING CODE 4310-55-C

(9) Unit 4: Jacumba, San Diego County, California.

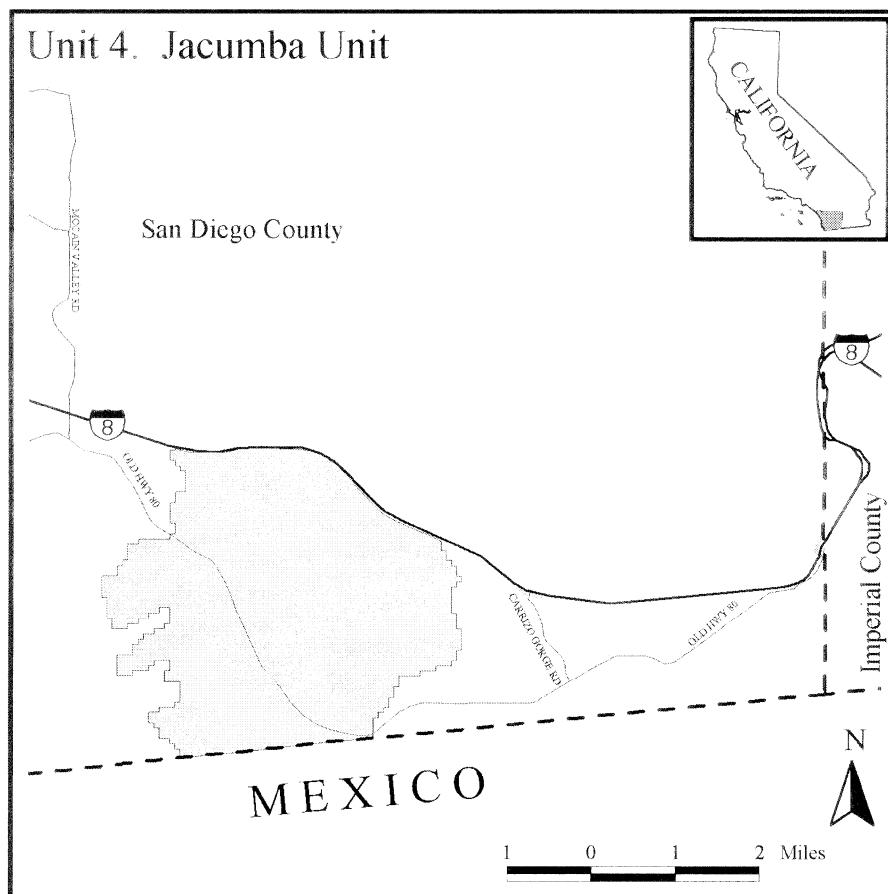
(i) From USGS 1:24,000 quadrangle maps Jacumba, Jacumba OE S, and Live Oak Springs. Beginning at the U.S./Mexico border at UTM NAD27 x-coordinate 575300, lands

bounded by the following UTM NAD27 coordinates (E, N): 575300, 3608400; 5753608700; 575400, 3608700; 575400, 36085500, 3608800; 575500, 3608900; 575600, 3609100; 575700, 3609500; 576200, 3609500; 576200, 3609

576500, 3609600; 576500, 3609700; 576800, 3609700; 576800, 3609800; 576900, 3610000; 577000, 3610000; 577000, 3610400; 576900, 3610400; 576900, 3610700; 576800, 3610700; 576800, 3611200; 576900, 3611200; 576900, 3611300; 577000, 3611300; 577000, 3611400; 576900, 3611400; 576900,

3611600; 576800, 3611600; 576800, 3611700; 576700, 3611700; 576700, 3611900; 576600, 3611900; thence north to Interstate 8 at UTM x-coordinate 576600; thence west along Interstate 8 to UTM x-coordinate 571500, thence southward following UTM coordinates (E, N) 571500, 3613800; 571400, 3613800; 571400, 3613600; 571500, 3613500; 571600, 3613500; 571600, 3613400; 571700, 3613400; 571700, 3613000; 571500, 3613000; 571500, 3612800; 571400, 3612800; 571400, 3612400; 571500, 3612400; 571500, 3612200; 571400, 3612200; 571400, 3612100; 570800, 3612100; 570800, 3612000; 570600, 3612000; 570600, 3611700; 570500, 3611700; 570500, 3611600; 570400, 3611400; 570100, 3611400; 570100, 361000; 570200, 361000; 570200, 3610600; 570300, 3610600; 570300, 3610400; 570600, 3610400; 570600, 3610500; 570800, 3610500; 570800, 3610600; 571000, 3610600; 571000, 3610700; 571200, 3610700; 571200, 3610800; 571400, 3610800; 571400, 3610500; 571300, 3610500; 5710500, 3610400; 571100, 3610400; 571100, 3610300; 570900, 3610300; 570900, 3610200; 570800, 3610200; 570800, 3610100; 570700, 3610100; 570700, 3609900; 570400, 3609900; 570400, 3609500; 570700, 3609600; 571000, 3609600; 571000, 3609700; 571100, 3609700; 571100, 3609800; 571400, 3609800; 571400, 3609600; 571300, 3609600; 571300, 3609400; 571300, 3609400; 571600, 3609000; 571500, 3609000; 571500, 3608900; 571200, 3608900; 571200, 3608800; 571000, 3608800; 571000, 3608600; 571100, 3608600; 571100, 3608600; 571100, 3608500; 571200, 3608500; 571200, 3608500; 571400, 3608200; 571500, 3608200; 571500, 3608100; 571600, 3608100; thence south to the U.S./Mexico border at UTM x-coordinate 571600; returning to the point of beginning on the U.S./Mexico border at UTM x-coordinate 575300.

(ii) Map Unit 4 follows:
BILLING CODE 4310-55-P



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Dated: April 2, 2002.

Paul Hoffman,
Acting Assistant Secretary for Fish and
Wildlife and Parks.
[FR Doc. 02-8525 Filed 4-12-02; 8:45 am]
BILLING CODE 4310-55-C