

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 (*Poliophtila 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 reinstate 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 reinstatement 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 understate 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	Verebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						

Species		Historic range	Verebrate 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)	NA

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.

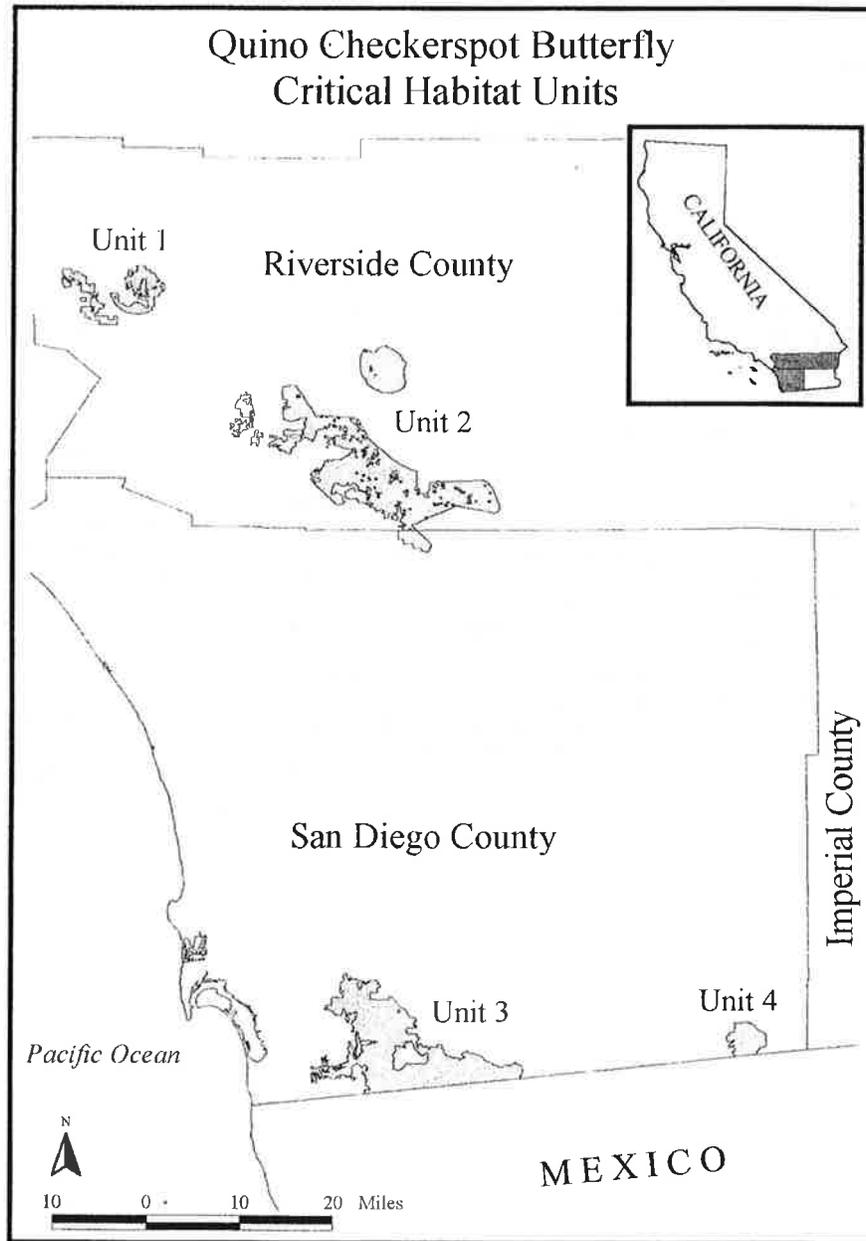
(3) Critical habitat does not include non-Federal lands covered by a legally operative incidental take permit for which the Quino

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:

BILLING CODE 4310-55-P



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, 3737200; 462000, 3737200; 462000, 3737100; 462100, 3737100; 462100, 3737000; 462300, 3737000; 462300, 3737100; 462400, 3737100; 462400, 3737000; 462600, 3736900; 462500, 3736900; 462500, 3736800;

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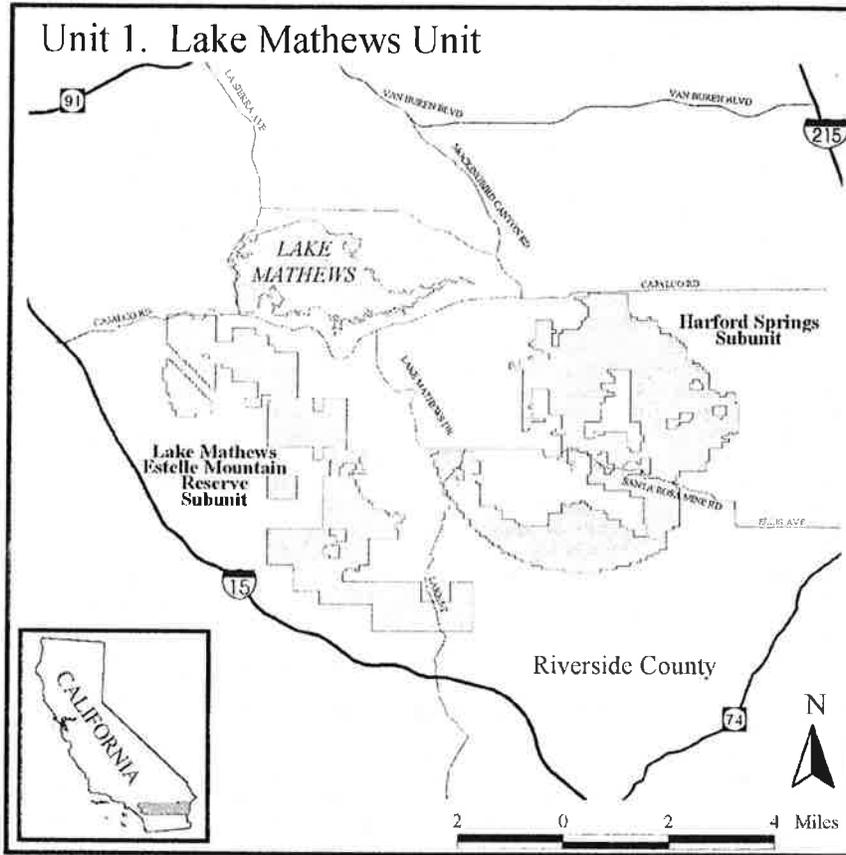
(ii) Harford Springs Subunit. From 1:24,000 USGS quadrangle maps Steele Peak and Lake Mathews, California, lands bounded by the following UTM NAD27 coordinates (E, N): 468200, 3743800; 469400, 3743800; 469400, 3743200; 469500, 3743200; 469500, 3743100; 469700, 3743100; 469700, 3743000; 470000, 3743000; 470000, 3743100; 470100, 3743100; 470100, 3743000; 470300, 3743000; 470300, 3742800; 470400, 3742800; 470400, 3742600; 470700, 3742600; 470700, 3742500; 470900, 3742500; 470900, 3742400; 471000, 3742400; 471000, 3742300; 471100, 3742300; 471100, 3742200; 471200, 3742200; 471200, 3741800; 471400, 3741800; 471400, 3741700; 471600, 3741600; 471700, 3741600; 471700, 3741500; 471800, 3741500; 471800, 3741400; 471900, 3741400; 471900, 3740900; 472100, 3740900; 472100, 3740800; 472200, 3740800; 472200, 3740700; 472400, 3740700; 472400, 3740800; 472700, 3740800; 472700, 3740500; 472800, 3740500; 472800, 3739600; 472700, 3739600; 472700, 3739500; 472600, 3739500; 472600, 3739600; 472500, 3739600; 472500, 3739500; 472300, 3739500; 472300, 3739400; 472500, 3739400; 472500, 3739400; 472300, 3739300; 472300, 3739300; 472300, 3739100; 471900, 3739100; 471900, 3738700; 471800, 3738700; 471800, 3738400; 471000,

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(iii) Map Unit 1 follows:

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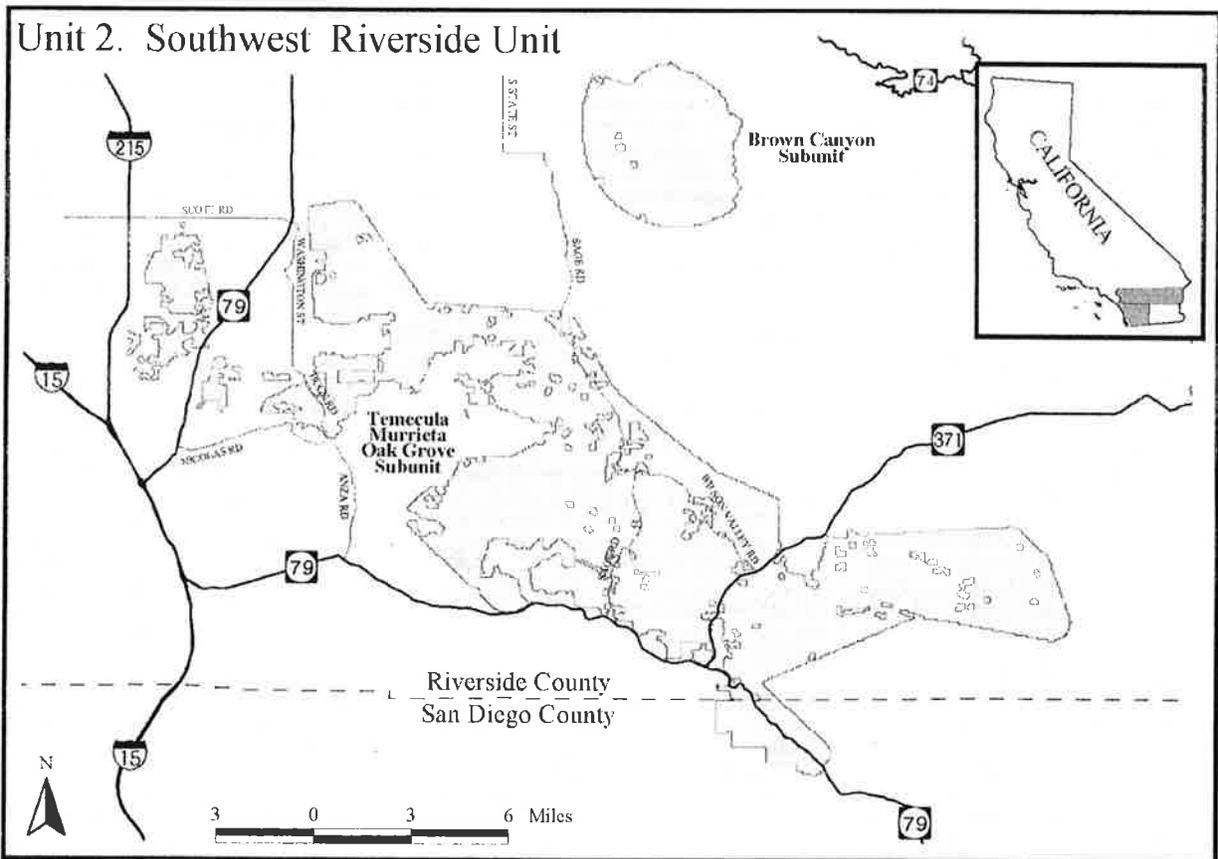
(iii) Temecula/Murrieta/Oak Grove Subunit: Land bounded by 507500, 3729300; 507600, 3729300; 507600, 3729200; 507500, 3729200; 507500, 3729300; excluding land bounded by 508400, 3726500; 508400, 3726400; 508300, 3726400; 508300, 3726200; 508600, 3726200; 508600, 3726500; 508400, 3726500; land bounded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

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In the vicinity of Lake Skinner, Wilson Valley, and Oak Grove, land bounded by the following UTM NAD27 coordinates (E, N): 513500, 3702800; 513200, 3702800; 513200, 3702700; 513000, 3702700; 513000, 3702800; 512900, 3702800; 512900, 3702700; 512700, 3702700; 512700, 3702500; 512800, 3702500; 512800, 3702400; 513000, 3702400; 513000, 3702500; 513100, 3702500; 513100, 3702400; 513300, 3702400; 513300, 3702200; 513200, 3702200; 513200, 3702100; 513100, 3702100; 513100, 3702000; 513200, 3702000; 513200, 3701800; 513100, 3701800; 513100, 3701300; 511700, 3701300; 511700, 3700500; 511000, 3700500; 511000, 3701100; 510900, 3701100; 510900, 3701200; 510800, 3701200; 510800, 3701300; 510700, 3701300; 510700, 3701400; 510500, 3701400; 510500, 3701600; 510900, 3701600; 510900, 3701800; 510700, 3701800; 510700, 3701900; 510100, 3701900; 510100, 3701800; 510000, 3701800; 510000, 3701700; 509700, 3701700; 509700, 3701600; 509600, 3701600; 509600, 3701700; 509500, 3701700; 509500, 3701800; 509400, 3701800; 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(iv) Map Unit 2 follows:



(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; 508000, 3603600; 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, 3604700; 498500, 3604700; 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, 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,

3611800; 516000, 3611800; 516000, 3611700; 516700, 3611700; 516700, 3611800; 516800, 3611800; 516800, 3611700; 516900, 3611700; 516900, 3611500; 517000, 3611500; 517000, 3611300; 516900, 3611300; 516900, 3611100; 517100, 3611100; 517100, 3611200; 517300, 3611200; 517300, 3611000; 517400, 3611000; 517400, 3610800; 517100, 3610800; 517100, 3610600; 517000, 3610600; 517000, 3610500; 516900, 3610500; 516900, 3610400; 516800, 3610400; 516800, 3610300; 516700, 3610300; 516700, 3610100; 516800, 3610100; 516800, 3609900; 516900, 3609900; 516900, 3609300; 517000, 3609300; 517000, 3609400; 517100, 3609400; 517100, 3609600; 517200, 3609600; 517200, 3609900; 517100, 3609900; 517100, 3610000; 517200, 3610000; 517200, 3610100; 517400, 3610100; 517400, 3610000; 517600, 3610000; 517600, 3609900; 517700, 3609900; 517700, 3609700; 517900, 3609700; 517900, 3609500; 518200, 3609500; 518200, 3609700; 518500, 3609700; 518500, 3609600; 518600, 3609600; 518600, 3609400; 518800, 3609400; 518800, 3609100; 519100, 3609100; 519100, 3609600; 519200, 3609600; thence south to the MHPA boundary at UTM x-coordinate 519200; thence east along the MHPA to UTM y-coordinate 3609600; thence south and following UTM coordinates 521200, 3609600; 521200, 3609300; 521100, 3609300; 521100, 3609200; 521400, 3609200; 521400, 3609100; 521500, 3609100; 521500, 3608600; 521600, 3608600; 521600, 3608400; 521700, 3608400; 521700, 3608300; 521800, 3608300; 521800, 3608200; 521900, 3608200; 521900, 3608000; 522000, 3608000; 522000, 3607900; 522600, 3607900; 522600, 3607800; 522900, 3607800; 522900, 3607700; 523000, 3607700; 523000, 3607600; 523100, 3607600; 523100, 3607700; 523300, 3607700; 523300, 3607600; 523400, 3607600; 523400, 3607700; 523600, 3607700; 523600, 3607600; 524100, 3607600; 524100, 3607500; 524200, 3607500; 524200, 3607300; 524300, 3607300; 524300, 3607400; 524500, 3607400; 524500, 3607500; 524600, 3607500; 524600, 3607600; 524800, 3607600; 524900, 3607600; 524900, 3607600; 525100, 3607600; 525100, 3607900; 524900, 3607900; 524900, 3608000; 524700, 3608200; 524600, 3608200; 524600, 3608400; 524700, 3608400; 524700, 3608600; thence east to Highway 94 at UTM y-coordinate 3608600; thence southeastward along Highway 94 to UTM x-coordinate 534000; thence south and following UTM coordinates (E, N) 534000, 3606900; 534000, 3606600; 534100, 3606600; 534100, 3606500; 534500, 3606500; 534500, 3606400; 534700, 3606400; 534700, 3606300; 534800, 3606300; 534800, 3606200; 534900, 3606200; 534900, 3606000; 535100, 3606000; 535100, 3605600; 535200, 3605600; 535200, 3605300; 535100, 3605300; 535100, 3605000; 535000, 3605000; 535000, 3604800; 534900, 3604800; 534900, 3604700; 534800, 3604700; 534800, 3604600; 534700, 3604600; 534700, 3604500; 534800, 3604500; 534800, 3604400; 534600, 3604400; 534600, 3604300; 534700, 3604300; 534700, 3604200; thence south to the U.S./ Mexico border at UTM x-coordinate 534700; returning to the point of beginning on the U.S./Mexico border at UTM x-coordinate 507800; excluding the Otay landfill, the planned recreational areas in the Otay River Valley and the university site as illustrated in the City of Chula Vista's

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; 516000, 3610300; 516100, 3610300; 516100, 3610000; 516200, 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, 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; 517800, 3608100; 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; 575300, 3608700; 575400, 3608700; 575400, 3608800; 575500, 3608800; 575500, 3608900; 575600, 3608900; 575600, 3609100; 575700, 3609100; 575700, 3609300; 575800, 3609300; 575800, 3609500; 576200, 3609500; 576200, 3609600;

576500, 3609600; 576500, 3609700; 576800, 3609700; 576800, 3609800; 576900, 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,

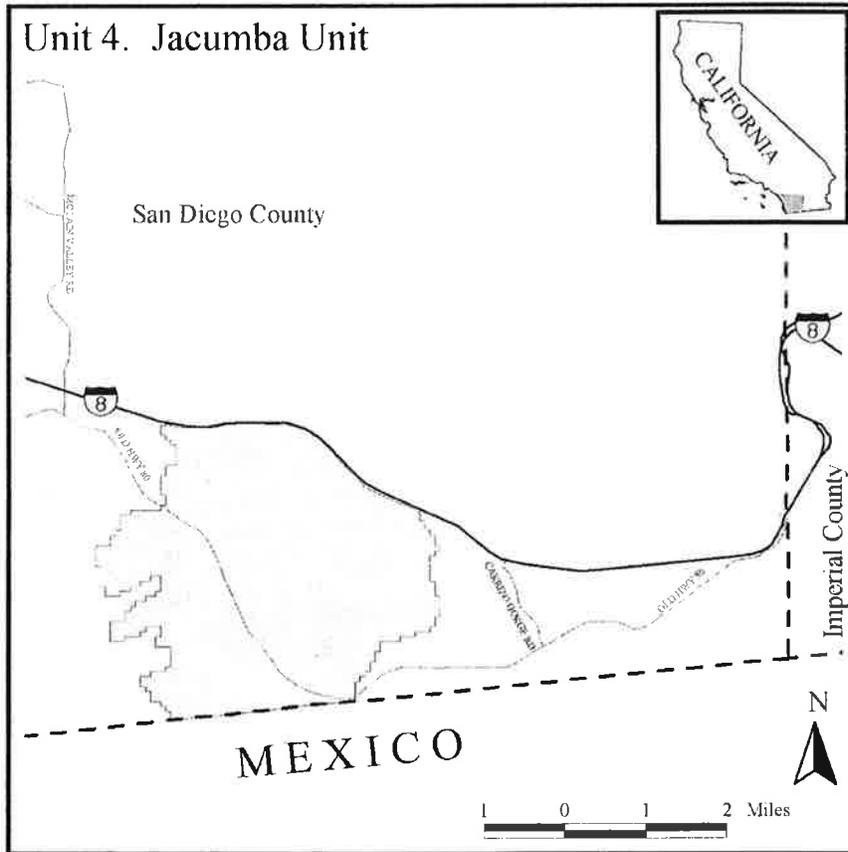
3611600; 576800, 3611600; 576800, 3611700; 576700, 3611700; 576700, 3611900; 576600, 3611900; thence north to Interstate 8 at UTM x-coordinate 576600; thence west along Interstate 8 to UTM x-coordinate 571500, thence southward following UTM coordinates (E, N) 571500, 3613800; 571400, 3613800; 571400, 3613600; 571500, 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, 3611600; 570400, 3611400; 570100, 3611400; 570100, 3611000; 570200, 3611000; 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; 571300, 3610400; 571100, 3610400; 571100, 3610300; 570900, 3610300; 570900, 3610200; 570800, 3610200; 570800, 3610100; 570700, 3610100; 570700, 3609900; 570400, 3609900; 570400, 3609500; 570700, 3609500; 570700, 3609600; 571000, 3609600; 571000, 3609700; 571100, 3609700; 571100, 3609800;

571400, 3609800; 571400, 3609600; 571300, 3609600; 571300, 3609400; 571600, 3609400; 571600, 3609000; 571500, 3609000; 571500, 3608900; 571200, 3608900; 571200, 3608800; 571000, 3608800; 571000, 3608600; 571100, 3608600; 571100, 3608500; 571200, 3608500; 571200, 3608300; 571400, 3608300; 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



* * * * *

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

Sites chosen by diapausing or quiescent stage quino checkerspot butterfly, *Euphydryas editha quino*, (Lepidoptera: Nymphalidae) larvae

Gordon F. Pratt · John F. Emmel

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Abstract This study examines whether in nature endangered quino checkerspot (*Euphydryas editha quino*) larvae will return to diapause and if so where they choose to hide. Multiple years of diapause probably help larvae survive drought years and sites chosen have high survival value to the species. Ninety square meters of habitat were created by removing non native plants and replacing them with natives found at checkerspot occupied sites. During the 2005–2006 winter 1,000 post-diapause larvae were released. From these larvae 31 adults (20 males and 11 females) developed over a 2.5 month period (March 20–June 6) from 41 pupae. One chrysalis was parasitized by a parasitic wasp *Pteromalus puparum* (L.) in the family Pteromalidae, one was partially eaten by an animal, while the remaining eight pupae died of unknown causes. Thirty quadrats (1 square meter each) were cleared of vegetation, leaf and branch litter, rocks, and checkerspot larvae from July 5 to August 1, 2006. Forty-nine larvae were found that returned to diapause. Most larvae (31) chose to make shelters on California buckwheat, which is not a checkerspot food plant, two to five cm above the ground. One shelter had 22, another had seven, and two others had single larvae. Five of 10 larvae found in leaf litter below California buckwheat were crawling and not associated with shelters suggesting they had been dislodged from shelters. California buckwheat may be important in habitat restoration for the checkerspot, particularly at sites below 900 meters elevation where summer conditions are hot and dry. No

additional larvae were found the following spring, when they should have exited diapause. Therefore 910 (91%) larvae were lost to some undocumented form of mortality.

Keywords Insecta · California buckwheat · Pteromalidae · Conservation · Restoration

Introduction

The quino checkerspot, *Euphydryas editha quino* (Behr), was at one time one of the most abundant southern California butterflies (Mattoni et al. 1997). As recent as 1977 there were quino checkerspot population explosions reaching nearly two orders of magnitude over normal densities (Murphy and White 1984). Checkerspot numbers according to Murphy and White (1984) reached hundreds of thousands at four sites. About 10 years later in the late 1980s when the checkerspot was petitioned for the endangered species list, it was already believed extinct. Fortunately, in the mid 1990s new quino checkerspot populations were discovered in southwestern Riverside County and later in southwestern and southeastern San Diego County (Mattoni et al. 1997).

Quino checkerspots have an interesting life history. They are univoltine with a late winter/early spring emergence and rarely observed at other seasons after high rainfall (Murphy and White 1984). Female checkerspots generally emerge 2–3 days after the first males and mating is immediate upon their emergence. Within a day the females oviposit clusters of one hundred or more eggs at the base of their annual food plants. These clusters are often on the most open exposed food plants. Because of the short life spans of the annual food plants the first clusters to be oviposited are the most likely to survive to diapause (Murphy and White 1984; Pratt

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et al. 2001). The egg clutch hatches within 2 weeks, the larvae create a protective silken shelter over the food plant, and they feed upon it until it dries out or is completely defoliated. The larvae leave the plant and search for additional resources until they are ready to enter diapause as third or fourth instar larvae. Once in diapause they remain until fall and/or winter precipitation brings up their annual food plants and at this time the post-diapause larvae either develop to adults or re-enter diapause a second or more years (Murphy and White 1984).

Despite past quino checkerspot abundance and extensive work on other populations of Edith's Checkerspot, very little was known of the butterfly's field biology. As an example, the checkerspot was believed to be restricted to below 910 m elevation. It is now known to occur continuously up to slightly above 1,515 m elevation (Pratt et al. 2001). Also quino checkerspot larvae were thought restricted to a single food plant, *Plantago erecta* E. Morris (Erect Plantain). Larval clusters were later found feeding upon as many as four new plant species in four genera: *Plantago patagonica* Jacq. (Patagonia plantain), *Antirrhinum coulterianum* Benth. (white snapdragon), *Castilleja exserta* (A. A. Heller) (purple owl's clover), and *Cordylanthus rigidus* (Benth.) Jepson (rigid bird's beak) (Pratt et al. 2001). An additional checkerspot food plant species and genus, *Collinsia concolor* E. Greene (southern Chinese houses), was identified during the 2008 season (Pratt and Pierce in press).

Most North American butterflies have biological adaptations that allow them to survive periods when there are little to no food resources (Scott 1979, 1986). Butterflies usually go through some quiescent stage (diapause) as eggs, larvae, pupae, or adults during which there is low to no measurable metabolism (Chapman 1971). Quino checkerspots diapause as larvae, but there is some question whether these dormant larvae are actually in diapause since they respond immediately to disturbance by crawling. They also start feeding after being exposed to a 10 day period of high humidity without even a cold period (Pratt personnel observation). Checkerspot larvae generally remain quiescent from May through January or February (Osborne and Redak 2000). This period can be extended when the food plant quality is not sufficient to support larval development (Murphy and White 1984; Mattoni et al. 1997; Emmel and Pratt personnel observation). Poor plant quality is usually a result of low precipitation and/or midwinter intervening hot dry periods.

Prolonged or multiple years of diapause is found in many Lepidoptera including the butterfly families: Pieridae, Papilionidae, Nymphalidae, and Lycaenidae (Scott 1979; Powell 1987; Emmel and Pratt personnel observation). The stage of prolonged diapause varies with species and largely ranges from different larval stages to pupae (Scott 1979). Of known

moths and butterflies the yucca moth *Prodoxus y-inversus* (Riley), which diapauses as a mature larva, has exhibited the longest diapause period up to 30 years (Powell 2001). Prolonged diapause is most frequent in butterfly species that are adapted to areas with extremely variable precipitation (Scott 1979, 1986). The pupae of small blues in the *Euphilotes* genus, particularly ones adapted to annual buckwheats, can diapause for at least 5 years waiting for presumably the appropriate precipitation (Pratt and Ballmer 1987; Pratt 1988; Pratt and Emmel personnel observation). Even the Icaroides blue *Icaricia icarioides* (Boisduval), which has a number of endangered subspecies, has exhibited multiple years of diapause by entering a second year of diapause as third instar larvae (Emmel personnel observation). This behavior by the quino checkerspot as well as other members of *Euphydryas* checkerspots is used as an adaptation to survive seasons of low rainfall that produce poor plant resources (Singer and Ehrlich 1979; Ehrlich and Murphy 1981; Murphy and White 1984).

Since quino checkerspots spend most of their life in larval diapause, where they choose to hide during this period is extremely important for their survival. If these sites are not available, then quino checkerspots may not survive even a single generation. Despite their importance, very little is known of them other than observed under laboratory conditions. Larvae in captivity enter diapause on soil surface, under leaf litter, and up in plants several centimeters above the soil surface. But the choices made could be due to a smaller number of unnatural sites and temperature differences in captivity compared to field conditions. The purpose of this study was to examine natural habitat choices made by post diapause larvae that return to the dormant stage. There is controversy as to whether larvae will return to dormancy in nature, so this study will also examine the frequency of larvae that return to diapause for two or more seasons.

Materials and methods

A small number of quino checkerspot butterflies were observed on Vista Murrieta High School's property prior to construction. As part of mitigation the school was required to build an endangered butterfly captive breeding facility. An area adjacent to the facility was also provided to grow plants. This area was used to create an experimental habitat, which resembled a natural fragmented site with scattered native bushes, rocks, food plants, and other annuals growing on largely open soils. Quino checkerspot larvae were unlikely to have survived on site prior to habitat construction since it was completely bulldozed and all plants were removed. Also no larvae or adults were observed the following year after the school's construction

in 2004. Some *Plantago erecta* seeds survived the bulldozing and sprouted on the outdoor habitat before any seeds were spread.

Habitat construction

Ninety square meters were cleared and kept clear of weeds, such as *Erodium* L'Hér. sp. (Storksbill), *Brassica* L. sp. (mustards), and non-native grasses and composites from late 2004 to 2006. The soil was compacted, watered, and various sized rocks were scattered. The following potential larval food plant seeds were spread: *Plantago patagonica*, *Antirrhinum coulterianum*, and *Collinsia concolor* from Anza, California, *Plantago erecta* from the Temecula area, *Plantago elongata* Pursh (elongate plantain) from San Diego vernal pools, *Castilleja exserta* from Wilson Valley, Riverside County, California, and *Cordylanthus rigidus* from Marron Valley, San Diego County, California. *Collinsia heterophylla* Graham (purple Chinese houses) seeds from Theodore Payne Foundation, Sun Valley, California, were from an unknown location. *Castilleja exserta* was also hydroseeded nearby during high school construction.

Potential quino checkerspot butterfly nectar source annuals developed on the habitat. *Lasthenia californica* Lindley (slender goldfields) from Wilson Valley, *Chaenactis glabriuscula* DC. (yellow pincushion) from Wilson Valley, and *Phacelia minor* (Harvey) (wild Canterbury bells) from Theodore Payne Foundation grew from hand spread seed. Additional annuals that developed on the habitat were *Calandrinia ciliata* (Ruiz Lopez and Pavón) (red maids), an *Amsinckia* Lehm. sp. (fiddleneck), and a *Cryptantha* Lehm. sp. *Amsinckia menziesii* (Lehm.) (common fiddleneck) and *Lasthenia californica* were hydroseeded near the habitat during school construction. Only the *Cryptantha* sp. which came up in 2005 did not come up in 2006. Other native annuals present at other quino checkerspot occupied sites came up naturally. The annuals that sprouted on the constructed habitat were a *Plagiobothrys* F. & M. sp., two annual *Lotus* L. sp. [one was *L. purshianus* (Benth.)], dove weed (*Eremocarpus setigerus* Benth.), and tarweed (*Hemizonia* DC. sp.). Some dove weed was removed in 2005 to prevent it from becoming dominant. The lives of the food plant and nectar annuals were extended by watering once a week during periods of no rainfall.

California buckwheats (*Eriogonum fasciculatum* Benth.) were spaced out and planted. Most plants were sprouted 2 years earlier from Lake Skinner seed. One buckwheat was collected as a small bush from south of Anza. Two bushes developed naturally from seed dispersed from hydroseeded plants at the high school. These bushes differed somewhat in height, shade, and cover. The major perennial bushes other than California buckwheat were *Lotus scoparius* (Nutt. in T. & G.) (deerweed) and *Encelia*

californica Nutt. (California encelia). The *E. californica* was hydroseeded during school construction. California everlasting (*Gnaphalium californicum* DC.) seeded itself and formed a large annual or biennial.

Field collection of females

A review of the captive breeding methodology is found in quinocheckerspot.com. Much information can be learned from rearing endangered butterflies that will help in conservation. In order to reduce the negative effects of collecting upon field populations, female checkerspots were collected late in the season. Since the food plants are dying and desiccating, larvae from these females are unlikely to survive. Development time from freshly oviposited egg to late second instar, the earliest stage to enter diapause, generally takes about 4 weeks (Pratt and Emmel personal observation). Larvae must feed before they can successfully enter diapause, while food plants do not live long due to dry conditions that follow winter/spring rains. So larvae from eggs oviposited first are most likely to enter diapause, while larvae from eggs oviposited last in the season are least likely to make it to diapause (Singer and Ehrlich 1979). Flower nectar is also reduced late in the season so older females usually have less resources to make egg clutches (Ehrlich and Murphy 1981). By feeding these older females a mixture of honey water (one to three), they will in captivity oviposit many more eggs than they would in nature. Survival of those larvae that hatch can be increased by feeding them laboratory grown plants.

Captive breeding

The larvae were reared to diapause, broken from diapause the following season, and reared to adults. Some females were mated to males from different parentage in the lab colony, while others in order to improve the genetics of the captive bred population were mated with field collected males. Adult emergence was timed to field populations and females were taken to the field where the source females were collected and mated with field collected males. For each lab reared female a male was carefully collected to prevent damage to legs, antennae, and wings and mated to the female in a cage. Once mated, the male was released back to the location at which it was collected. Lab reared males mated successfully 5 times in captivity and all matings were fertile, so these released males were probably capable of mating multiple times.

Larval diapause and release

Quino checkerspot larvae were broken from diapause by placing them on wet paper towels within Gladlock storage

containers. The containers, with *Penstemon* Mitch. leaves placed on the bottom as food, were opened twice daily, eight to 16 h apart to reduce mold. The containers were cleaned after extensive feeding by larvae. After 10 days the larvae were put onto the created habitat. Only quino checkerspot larvae originally from Lake Skinner, Riverside County (13 km east of the study habitat) were used for this experiment; this ensured that any escaping adults were from a local checkerspot population. The 1,000 released larvae were as follows: 106 two year old larvae (all remaining larvae are one year old) from one female line released on 12 December, 2005, 85 larvae from a cross of female line 2 mated to a field collected male released on 14 January, 501 larvae (118 larvae from a cross of female line 2 mated to a field collected male, 107 larvae from a cross of female line 3 mated to a field collected male, 152 larvae from a cross of female line 4 mated to a field collected male, and 124 larvae from a 2005 field collected female number 2) released on 6 February, and 308 larvae (107 larvae from a cross of female line 4 mated to a field collected male, 109 larvae from a cross of female line 2 mated to a field collected male, and 92 larvae from a cross of female line 3 mated to a field collected male) released on 7 February, 2006.

The released larvae fed upon annual food plants on the created habitat and were allowed to re-enter diapause. Twice a week, February through April, all but one last instar larvae were found and transferred to a field cage placed over flats of *Plantago erecta*. Once quino checkerspot larvae become last instars they are believed incapable of returning to diapause, therefore isolating last instar larvae minimized escaping adults.

Survey methods (collections from 30 quadrats)

From July 5 to August 1, 2006 leaf litter, wood chips, branches, and rocks were cleared from 30 quadrats. Each quadrat was one square meter in size. Rocks were removed first and carefully checked for diapausing larvae. With pruning shears branches of all bushes were collected and placed in bags. The reason for collecting the branches was diapausing larvae were small and easily dislodged. Before collecting the main stalk of each bush, it was carefully checked and the leaf litter beneath the bush was collected. We compared with chi-square analysis the numbers of larvae against those expected on substrates if larvae were randomly distributed.

Results

Most larvae did not leave the created habitat. Some larvae (>10) were even observed crawling directly back to the created habitat. On the other hand, one larva was observed

over 10 m away on blacktop and was unlikely to find its way back.

A few rocks, wood chips, and leaf litter were searched in early January, 2006. About four or five larvae immediately returned to diapause under rocks and in leaf litter. Approximately a dozen larvae were found hiding while either not feeding or molting to the next instar. Larvae in diapause were identified from hiding larvae by a silken shelter, a characteristic curled “c” shape, and remaining in the same location for several days. The two or three larvae that immediately re-entered diapause under rocks either moved or died sometime before collection of the quadrats in early July to early August.

Larvae in diapause were not distributed on substrates of quadrats randomly (Table 1). Thirty-one larvae were found in shelters on California buckwheat, *Eriogonum fasciculatum*, while five larvae were found wandering in leaf litter below them. All larvae on California buckwheat were within shelters in shaded cavities where branches separated from the main trunk. Four of nine buckwheat cavities had diapausing larvae: one had 22, another had seven, and the other two had one each. No larvae were found on buckwheat branches. The five larvae observed crawling beneath the buckwheat were likely dislodged from branches during sampling, since they were observed beneath bushes after branches were pruned. Forty-six (94%) of the 49 larvae in diapause were found on the nine quadrats which had a California buckwheat plant.

Diapausing quino checkerspot larvae were found on two additional plant species: *Gnaphalium californicum* (two on one and three and two on another) and *Amsinkia* sp. (1) (Table 1). One cluster of three larvae found on the *Gnaphalium* was found 20 cm above the soil surface. The remaining 10 larvae were found in leaf litter. These larvae were found in the shade of bushes, particularly California buckweats and some California encelia. Five larvae in leaf litter were actively crawling, while the other five larvae were in shelters within curled leaves. The leaves chosen were brown and thick and were likely of *Phacelia minor*. The leaves had curled in such a way that they were completely closed. Most leaves silkened in the same way were often inhabited by spiders.

Other quino checkerspot larval behaviors were observed in this study. Post-diapause larvae, though the source population fed exclusively upon *Plantago erecta*, fed readily upon *Antirrhinum coulterianum* (>6), *Plantago patagonica* (>10) and *Plantago elongata* (1). Once *A. coulterianum* and *Plantago patagonica* plants began sending up flower stalks, they became less attractive to feeding by post-diapause larvae. They fed preferentially on freshly sprouted *Plantago erecta* over other food plants. On 2 March, 2006, a larva searched for a pupation site; it stopped at the northeast side of a rock and stretched up and

Table 1 One-way chi-square analysis of substrate-use by quino checkerspot larvae

Substrate	# Quads	Proportion with Substrate	Obs. ^a # Larvae	Exp. ^b # Larvae	Chi-square Obs. vs Exp.	Dev.
Leaf litter	30	0.170	10	8.35	0.3	1.6
Rocks	26	0.148	0	7.24	7.2	-7.2
<i>Eriogonum fasciculatum</i>	9	0.051	31	2.51	324.0	28.5
<i>Gnaphalium californicum</i>	3	0.017	7	0.84	45.5	6.2
<i>Conyza canadensis</i>	24	0.136	0	6.68	6.7	-6.7
<i>Chaenactis glabriuscula</i>	26	0.148	0	7.24	7.2	-7.2
<i>Plantago</i> species	17	0.097	0	4.73	4.7	-4.7
<i>Amsinkia</i> species	15	0.085	1	4.18	2.4	-3.2
<i>Encelia californica</i>	16	0.091	0	4.45	4.5	-4.5
<i>Lotus scoparius</i>	6	0.034	0	1.67	1.7	-1.7
<i>Phacelia minor</i>	4	0.023	0	1.11	1.1	-1.1
Total	176	1	49	49	405.3 ^c	0.0

P < 0.001

^a Obs observed

^b Exp expected

^c *df* = 10

down and back and forth. A few moments later it was observed exhibiting the same behavior at a nearby rock shadow, which covered a larger area with more annuals. It pupated at this site. Twenty-three days later the pupa was found on the ground near the pupation site, it was divided in half, and left mostly uneaten.

Approximately fifty mature larvae were placed in a field cage, where they were allowed to feed until they pupated. Forty pupae were collected from the field cage 2 days after each one pupated and placed in a cage indoors by a south-facing window where adults were allowed to emerge. This collection minimized escape, since adults that eclose in the field cage could have escaped when opened outdoors. One pupa produced parasites that were identified as *Pteromalus puparum* (L.) which is a parasitic chalcid wasp in the family Pteromalidae. Twenty males and 11 females of quino checkerspots emerged from thirty-nine pupae.

Other larvae found on California buckwheat (*Eriogonum fasciculatum*) were one *Euphilotes bernardino* (Barnes and McDunnough), three *Apodemia virgulti* (*mormo*) *virgulti* (Behr), one geometrid moth, and three or four microlepidoptera. The *Euphilotes bernardino* larva was finished feeding and was searching for a pupation site. The *Apodemia virgulti* larvae were sitting inside shelters on the underside of buckwheat branches. The purplish brown microlepidoptera larvae were probably in diapause (or a quiescent state) and in silken webs at the base of a bush.

Additional plants found on the quadrats not listed in Table 1 because of low numbers and lack of quino checkerspot larvae were: (the number following the plant species in parenthesis is the number of quadrats the plant was found

on) *Hemizonia* DC. sp. (4), *Camissonia robusta* Raven (1), *Centaurea* L. sp. (3), *Lotus purshianus* (4), *Rumex salicifolius* J. A. Weinm. (1), *Antirrhinum coulterianum* (2), *Microseris douglasii* (DC.) (1), *Baccharis salicifolia* (Ruíz Lopez & Pavón) sp. (1), *Lasthenia californica* (2), *Rafinesquia californica* Nutt. (1), *Chenopodium* L. sp. (1), *Eremocarpus setigerus* (15), *Brassica* sp. (1), and grass sp. (8). Most of the annuals were poorly represented because most had dried up and disappeared.

Discussion

Prolonged diapause can add a level of complexity to butterfly conservation. Butterflies can remain in diapause for multiple years as “seed banks” of diapausing larvae or pupae. Therefore observed numbers of adults during monitoring do not necessarily reflect how poorly or how well the species is doing. The endangered Palos Verdes Blue *Glaucopsyche lygdamus palosverdesensis* Perkins and Emmel, for example, which had adult numbers drop dangerously low during monitoring at the Defense Fuel Support Point in San Pedro, California in 2003 (peak of 4), exhibited its highest numbers the following year (peak of 43), indicating that a large number of pupae remained in diapause (Longcore 2003; Pratt 2004). A similar observation was exhibited with the quino checkerspot in the San Diego area. In the winter/spring of 1977 an outbreak of checkerspot larvae completely defoliated the food plant *Plantago erecta* so there was no food for prediapause larvae, yet the following season produced normal levels of

food plants and quino checkerspots (Murphy and White 1984).

Genes involved in prolonged diapause need to be maintained in captive reared populations of endangered butterflies since prolonged diapause is important in long term survival in nature. Without these genes, butterflies released after habitat restoration will not survive through extremely dry winter/springs or other disasters that eliminate all progeny during a single season. Unfortunately preserving genes important in prolonged diapause is not easy in captive rearing since the procedures used to increase butterfly numbers often selects for those that do not diapause multiple years. For instance butterflies that develop the first year of captive rearing are ones that did not go through multiple years of diapause. If these butterflies are mated with each other to increase population numbers this could select for lines that are not adapted to long term diapause. Quino checkerspots that take multiple years to develop in captivity should be selected and mated with those that take 1 year and others that take multiple years to mature.

There has been little research on the dormant stage of quino checkerspots, despite most of their time being spent in this stage in nature (Mattoni et al. 1997; Osborne and Redak 2000). The earliest seasonal observations of quino checkerspot larvae at Lake Skinner were groups of larvae at margins of dense grass and shrub cover, which later separated by random dispersal (Osborne and Redak 2000). These observations suggest larvae diapaused under or within bushes or grass clumps. Larvae of other *Euphydryas editha* subspecies have been field collected but exactly where they were found was not reported (Singer and Ehrlich 1979). The weights of these larvae suggest some diapaused one summer through winter, fed the following spring, grew some, and returned to a second year of diapause (Singer and Ehrlich 1979).

Dormant stage or diapausing quino checkerspot larvae were found in four different structure sites in the following order: California buckwheat (*Eriogonum fasciculatum*), leaf litter, California everlasting (*Gnaphalium californicum*), and fiddleneck (*Amsinkia* species). Most larvae were observed at the trunk of California buckwheat, which was interesting since buckwheat is not a food plant for the quino checkerspot. The next most frequent site was leaf litter, but half of these larvae were either moving or outside of a shelter, so they were likely not dormant in leaf litter and probably dislodged from shelters on buckwheat branches. The next most frequent site was California everlasting, *Gnaphalium californicum*. Because of low numbers of this plant on the 30 quadrats, its significance is in question. There was only one quino checkerspot larva found in the basal leaves of *Amsinkia*; these leaves were found on 15 of the 30 quadrats.

From a survey to define characteristics that identify quino checkerspot habitat, one non-food plant California buckwheat (*Eriogonum fasciculatum*) was found at all checkerspot occupied sites in southern California (Pratt 2001). This plant was present at more occupied sites than even the main food plant, *Plantago erecta*. California buckwheat indicating checkerspot habitat was controversial since it was common throughout much of southern California (Hickman 1993) and there was no explanation why this buckwheat would indicate habitat. It was argued that California buckwheat was found at all checkerspot habitats just because it was very common throughout southern California. This buckwheat is not a food plant and flowers of these plants are not important food sources for adults, so there was no reason it would be important for the checkerspot's survival. But even the edges of checkerspot habitat are often better defined by the buckwheat than actual quino checkerspot food plants, particularly since the food plants are small annuals, vary at different sites, and are not visible most of the year.

California buckwheats form a shady somewhat humid habitat by holding their leaves throughout most of the year. As a comparison California encelia (*Encelia californica*) and deerweed (*Lotus scoparius*) leaf out and bloom after fall and winter rains and drop their leaves by mid spring to early summer. In addition California buckwheats grow by branching from a thickened trunk twisting in such a way that creates a shaded cavity deep within the bush. The importance of California buckwheat for quino checkerspot diapausing larvae could be the reason for its presence at all occupied sites below a thousand meters elevation. Higher humidity and cooler temperatures provided by these plants may increase checkerspot larval survival through the hot dry southern California summer.

California everlasting could be a good site for diapausing larvae, but these sites were within the shade of California buckwheat, so buckwheat may have played a greater role in diapause choice. California everlasting is not present at many quino checkerspot occupied sites. Although the everlasting is either an annual or biennial, it has thick leaves that turn dark brown, curl, and are held up above the hot ground. The dead plant also lasts through the summer.

Over 250 *Conyza canadensis* (L.) Cronq. plants were surveyed by this study. This annual remains alive throughout most of the summer and has leaves at the base that could have made a good diapause site for quino checkerspot larvae. In spite of all these surveyed plants, no quino checkerspot larvae were found associated with *C. canadensis*. Perhaps shade is more important and they did not have enough shade or protection for quiescent state larvae as do the everlasting and buckwheat.

Two quino checkerspot larvae were observed entering a quiescent state between overhanging rocks in January. It

was surprising they were not observed in early July to early August beneath or between rocks. During July in Marron Valley (a checkerspot occupied site) soil and rock temperatures were close to 70°C, even though air temperatures were nearly 30 degrees lower. These soil and rock temperatures were rather high for survival and a larva may have to either move to a cooler site such as beneath bushes or die from overheating.

No larvae were observed feeding after early April. Quino checkerspot larvae that were not last instar probably returned to a quiescent state. This was surprising since there were extensive cool rains that came in March and April, yet *Plantago* did not sprout from these rains. Perhaps *Plantago* seeds require a specific photoperiod to sprout. If seed sprouting occurs only during short days, longer day lengths in April may be too long for *Plantago* seeds to sprout.

Laboratory results predict after larval mortality, 50% or more of those surviving should return to a quiescent state, while the remainder will become adults. For instance, from 789 postdiapause larvae from 8 different Lake Skinner female lines in 2007 there was a total mortality of 37%, while 72% of the remaining larvae returned to diapause (Pratt 2007). An experiment of 630 postdiapause larvae from a Lake Skinner female line in 2008 gave 36.5% mortality, while 49% of the remaining larvae returned to diapause (Pratt and Switzer 2008). It is not surprising that field mortality is over double that of laboratory. The 49 larvae found dormant in summer represented about 54% of the remaining larvae, which was close to expected. Since the habitat was watered frequently, larval numbers that return to diapause is probably much higher most seasons in nature due to drier conditions.

The sampled area represented about 33% of the total constructed habitat, so if the whole area had been surveyed the total dormant larvae could have increased to 150. But no larvae were observed the following season, which would be expected if diapausing larvae remained in the habitat. Mortality could have been around 91% considering there were probably many larvae preyed upon, parasitized, and other factors. This mortality was not much higher than expected since mortality for other *Euphydryas editha* populations were 74% (on *Collinsia torreyi* A. Gray) and 91% (on *Pedicularis semibarbata* A. Gray) during post-diapause larval development (Moore 1989).

Secondary *Plantago* sprouting from later precipitation may be important for development of quino checkerspot larvae to adults. These fresh young plants were preferred by later instar quino checkerspot larvae. Larvae that start feeding on food plants that are in the process of blooming may stimulate them to return to a quiescent state. But if a larva reaches the last instar by feeding on freshly sprouted food plants, it may still pupate even though it feeds on plants that are in the process of blooming.

Restoration

Up to this point there has been emphasis on increased annual and reduced perennial plants within quino checkerspot habitat. This is due to quino checkerspots preferring to fly over nearly barren ground and larvae feeding and pupating upon open habitats that favor development of annuals (Osborne and Redak 2000). This larval release suggests shade may be important in their survival. Although this part of the habitat may represent a small portion, bushes or other structures that provide shade throughout the summer may be important for high long term larval survival. California buckwheat could be an important source of shade since this bush keeps its leaves throughout the summer unlike other perennials found in occupied checkerspot sites.

Plantago elongata, which occurs around vernal pools in the San Diego area, could be an important food plant for late instar checkerspot larvae. At least one larva was observed feeding upon this annual even with multiple choices. Greater food plant choices could improve habitat quality at occupied sites. Larvae fed upon multiple annuals, even though they came from a population associated with a single food plant. Although these plants may not naturally occur together, there is now far less checkerspot habitat, so long term survival may depend on improved habitat quality. Food plants may respond to seasons differently, some plants may be favored from early precipitation, while others from later rains. A greater variety of food plants may mean at least one food plant will be available most seasons.

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Quino Checker spot Butterfly
Survey Protocol

February 2014

U.S. Fish and Wildlife Service
2177 Salk Avenue, Suite 250
Carlsbad, CA 92008

The Quino checkerspot butterfly (*Euphydryas editha quino*, "Quino") was listed as an endangered species on January 16, 1997 (62 FR 2313), and is protected under the provisions of the Endangered Species Act of 1973, as amended (Act). This survey protocol provides recommended guidance on survey methodology for biologists possessing a current recovery permit for Quino pursuant to section 10(a)(1)(A) of the Act.

We recommend site assessments be conducted for all projects mapped within the potential range of Quino (see attached map: Recommended Quino Survey Area). Site assessments are used to determine if a project site contains areas where surveying for Quino is recommended. If a site does not contain such areas, (i.e., is comprised solely of "excluded" areas as defined below), surveys would not be recommended.

SITE ASSESSMENTS

- ❖ Site assessments involve conducting a general field survey of the site and mapping excluded areas and Quino survey areas on a U.S. Geological Survey 7.5' (1:24,000) topographic quadrangle map that has been enlarged 200 percent.
- ❖ The site assessment shall be conducted prior to the first Quino survey.
- ❖ Excluded Areas
 - The following areas are not recommended for Quino surveys:
 - Orchards, developed areas, or small in-fill parcels (plots smaller than an acre completely surrounded by urban development) largely dominated by non-native vegetation;
 - Active/in-use agricultural fields without natural or remnant inclusions of native vegetation or that are completely without any fallowed or unplowed areas;
 - Closed-canopy woody vegetation including forests, riparian areas, shrub-lands, and chaparral. "Closed-canopy woody vegetation" describes shrubs or trees growing closely together in which the upper portions of the vegetation converge (are touching) to the point that the open space between two or more plants is not significantly different than the open space within a single plant. Closed canopy shrub-land and chaparral are defined as vegetation so thick that it is inaccessible to humans except by destruction of woody vegetation (branches).
- ❖ Quino Survey Areas
 - All areas that are not excluded, regardless of the presence or absence of Quino host plants or nectar sources.

QUINO SURVEYS

- ❖ Quino protocol surveys shall not be conducted concurrently with any other focused survey (e.g. a coastal California gnatcatcher or Quino host plant survey).
- ❖ The entire Quino Survey Area of a site shall be surveyed for Quino each week.
- ❖ The first weekly survey for Quino shall begin during the third week of February.
- ❖ The survey season will end the second Saturday in May.
- ❖ Surveys shall be conducted weekly and spaced no closer than 4 days apart (see WEATHER-RELATED CONDITIONS below).
- ❖ At a minimum, surveys shall be conducted for 5 continuous weeks, beginning during the third week of February.
 - If no Quino are detected during the first 5 weeks, surveys will continue to the end of the survey season or until a Quino is detected;
 - If a Quino is detected during any survey within the first 5 weeks, surveys do not need to be conducted after the fifth week;
 - If surveys continue past the fifth week, surveys may stop if during any survey a Quino is detected.
- ❖ Surveys should be conducted at an average rate of 10-15 acres (4-6 hectares) per hour.
- ❖ Survey routes shall be roughly parallel to each other and spaced approximately 30 feet (10 meters) apart.
- ❖ Survey routes shall be within 15 feet (5 meters) of site boundaries and/or the perimeter of excluded areas.

WEATHER-RELATED CONDITIONS

Permitted biologists are expected to assess weather conditions during the survey period, and to also assess seasonal weather patterns (e.g. drought) that could lead to inaccurate conclusions regarding the species' presence/absence.

- ❖ Surveys will not be conducted when the following weather conditions exist:
 - Fog, drizzle, or rain;
 - Sustained or gusting winds that average greater than 15 miles (24 kilometers) per hour measured over a 30 second period at a height of 4-6 feet (1.2-1.8 meters) above ground level;
 - Temperature in the shade at ground level is less than 60° F (15.5° C) on a clear, sunny day with less than 50 percent cloud cover, or less than 70° F (21° C) on days with 50 percent or more cloud cover;
 - A weekly survey should only be missed because of week-long adverse weather;
 - If a weekly survey is missed due to weather conditions, two surveys should be conducted on non-consecutive days the following week.

SURVEY MAPS

- ❖ Locations of all Quino adults and larvae observed shall be mapped on a non-enlarged 7.5' USGS topographic map.
- ❖ Locations of all Quino adult and larvae shall also be recorded on data sheets using Universal Transverse Mercator (UTM) coordinates, with accuracy of +/- 15 feet (5 meters).

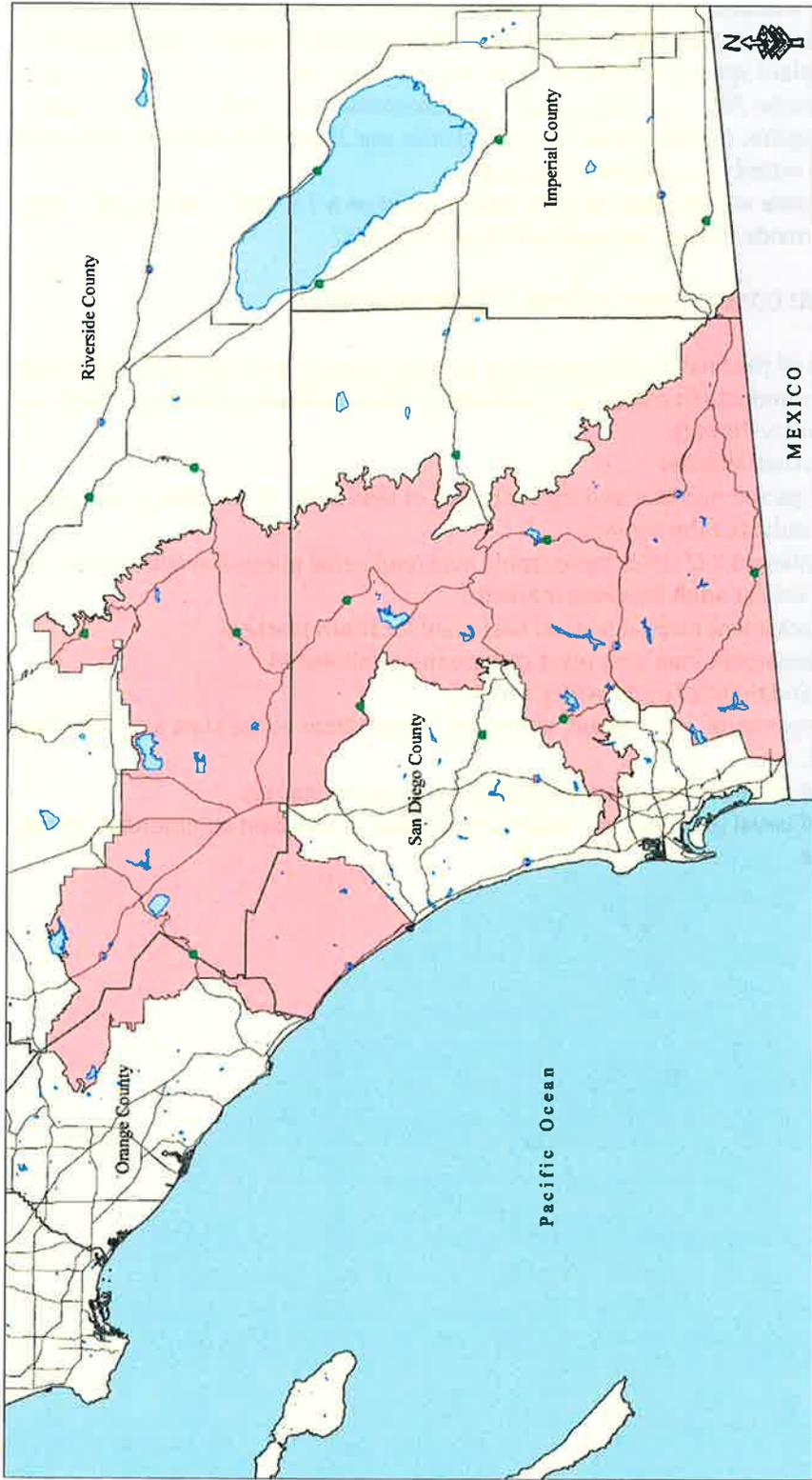
- ❖ All areas of Quino larval host plants shall be mapped on a 7.5' USGS topographic map. Host plants shall be mapped for relative abundance (i.e., less than 10 individuals in this patch vs. more than 100 individuals and less than 500 individuals in this patch) (see attached example: Map showing plant species distribution and relative abundance). As of 2014, the list of larval host plants include: *Plantago erecta*, *Plantago patagonica*, *Antirrhinum coulterianum*, *Cordylanthus rigidus*, *Castilleja exserta*, and *Collinsia* spp. If other larval host plants are observed, they should be noted and mapped accordingly.
- ❖ Areas with suitable nectar plants shall also be mapped on a 7.5' USGS topographic map. It is not necessary to provide relative abundances of nectar plants.

REPORTING TERMS AND CONDITIONS FOR PERMITTED BIOLOGISTS

- ❖ Within 45 days of the final survey, permitted biologists are to send a written report signed by all biologists who conducted surveys (i.e., pursuant to the terms and conditions of their section 10(a)1(A) Recovery Permit).
- ❖ Survey reports shall include:
 - Name, permit number, and legible copies of field notes of the permitted biologist(s) who conducted the surveys;
 - Non-enlarged 7.5' USGS topographic map (and aerial photo if available) with Quino larvae and/or adult locations marked;
 - Site assessment map with larval host plant locations marked;
 - Site assessment map with plant communities delineated;
 - Dates and times of each weekly survey;
 - Air temperature, wind speed, and weather conditions at the start and end of each survey;
 - A list of all butterflies observed during each weekly survey;
 - A list of larval potential host and/or nectar plants and plant communities observed on the site.



U.S. Fish & Wildlife Service
Carlsbad Fish and Wildlife Office
2177 Salt Ave., Suite 250, Carlsbad, California 92008



Recommended Quino Survey Area

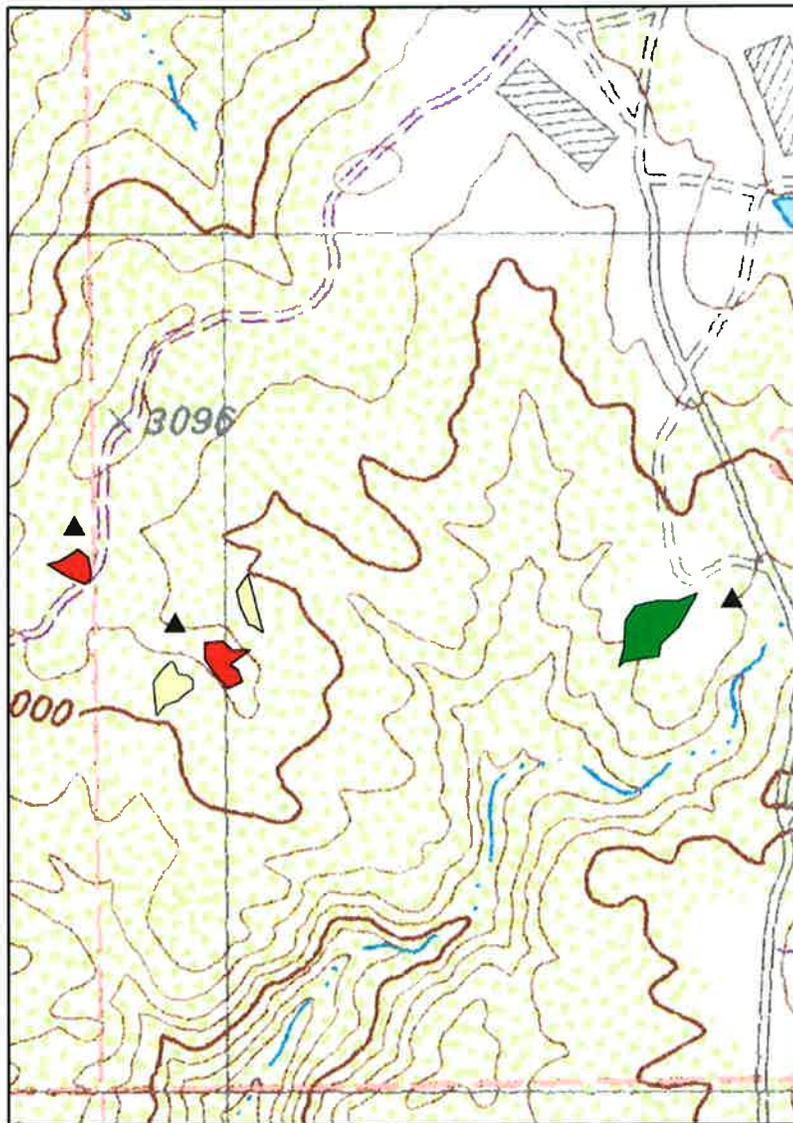
Legend
Survey Area



Prepared by: JAC/SP/MS
CARLSBAD FIELD OFFICE
3850 PACIFIC COAST HIGHWAY
CARLSBAD, CALIFORNIA 92008
Date: 02/21/2014
Information displayed is DELIBERATIVE and subject to change

Map showing plant species distribution and relative abundance.

- ▲ QCB
- Low Density Host Plant (Define by plants per square meter)
- Medium Density Host Plant (Define by plants per square meter)
- High Density Host Plant (Define by plants per square meter)





IN REPLY REFER TO
FWS/R8C/PP/MB

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Pacific Southwest Region
2800 Cottage Way, Suite W-2606
Sacramento, California 95825



JUN 22 2012

Memorandum

To: Regional Director, Pacific Region, Bureau of Indian Affairs
Sacramento, California

From: Regional Director, Pacific Southwest Region
Sacramento, California

Subject: Draft Avian and Bat Protection Plan for the Tule Reduced Ridgeline Wind Project

We are writing in response to your request for our evaluation of the draft Project-Specific Avian and Bat Protection Plan (ABPP) for the Tule Reduced Ridgeline Wind Project. The U.S. Fish and Wildlife Service (Service) has reviewed this document and determined that construction and operation of Phase II of the Tule Wind facility has a high potential to result in injury or mortality of golden eagles (*Aquila chrysaetos*), and the loss of golden eagle breeding territories. If your agency moves forward with approving this project, mortality estimates will need to be refined in order to determine the effects to the golden eagle population.

The Draft ABPP states that Tule Wind LLC has agreed to apply for a programmatic eagle take permit prior to operation of the Reduced Ridgeline Project consistent with current Service guidance and to abide by the terms and conditions of such take permit when issued. Permit applications must meet the conservation standard of the Eagle Act (maintaining stable or increasing breeding populations), as well as the permit issuance criteria outlined in our 2009 take permit rule in order to qualify for a permit.

Due to the Service's concerns about uncertainty with regards to the status of the population of golden eagles, the take threshold for this species is currently set at zero; take cannot be authorized unless advanced conservation practices (ACPs) and compensation measures are implemented that meet the "no net loss" permit standard of the Bald and Golden Eagle Protection Act. Activities that risk loss or abandonment of a nesting territory have a much greater impact on eagle populations than the intermittent loss of individuals. We addressed this in our 2009 Final Environmental Assessment (FEA) for the take permit rule and determined that an activity that resulted in (or was likely to result in) permanent loss of production from a golden eagle territory would be the equivalent of taking 4 individuals per year. Any take from the loss of an eagle territory, along with the predicted fatalities would need to be compensated to meet the Services permit issuance criteria.

As you are aware, the Service and Bureau of Land Management have been heavily involved in the development of the Desert Renewable Energy Conservation Plan (DRECP), and discussions are underway to address the impacts to eagles from renewable energy development in southern

California as part of this planning effort. In the DRECP area, the loss of a territory would be very costly to the Department's goal of maximizing energy production while maintaining sustainable populations of eagles.

In addition to developing an Eagle Conservation Plan for eagles, we recommend that project proponents develop Bird and Bat Conservation Strategies (formerly ABPPs) to address and reduce potential risk to other species of birds protected under the Migratory Bird Treaty Act (MBTA), as well as bats. The MBTA has no provision for allowing unauthorized take of migratory birds that may be killed or injured by otherwise lawful activities. Project proponents and other agencies are encouraged to work closely with Service biologists to identify available protective measures when developing project plans and/or avian (and bat) protection plans, and to implement those measures during construction and operation of facilities and equipment. While it is not possible to absolve individuals or companies from MBTA or BGEPA liability, the Office of Law Enforcement focuses its resources on investigating and prosecuting those who take migratory birds without identifying and implementing reasonable and effective measures to avoid the take.

Specific to the Tule Wind Project, the Service appreciates the Bureau of Indian Affairs and the project proponent's efforts in coordinating with the Service and in conducting studies during 2011 and 2012 in an effort to address potential impacts to eagles. The Service does not agree with the project proponent's assertion that risk of taking eagles from project operations of Phase II would be low to moderate, based on the data presented to date.

The conditions outlined in the Draft ABPP as presented would not likely meet the conservation standard of the Bald and Golden Eagle Protection Act. We recommend the Bureau of Indian Affairs and the project proponent considers a different turbine siting design or moving the project to another location to minimize and avoid eagle take. Our detailed comments on the Draft ABPP are attached for your review. If requested, we will reconsider a comprehensive re-assessment of risks to eagles posed by the project, when the additional biological data being collected in 2012 have been incorporated into an ECP and provided to the Service.

If you have any questions regarding this project, please contact myself or Deputy Regional Director, Alexandra Pitts at (916) 414-6467.

Attachment: ABPP Review

cc: Chairman, Ewiiapaayp Band of Kumeyaay Indians, Alpine, CA
Jeffrey Durocher, Iberdrola Renewables, Portland, OR
Bill Condon, California Department of Fish and Game, Sacramento, CA
Scott Sobiech, FWS, Carlsbad, CA

Below is a summary of our comments and concerns on the Tule Phase II Draft ABPP.

- Phase II of this project represents a high risk for golden eagle mortality and “disturbance” based on the known number of golden eagle territories within a 10-mile radius of the project site.
- The proximity (495 ft) of the active Cane Brake nest site to proposed turbine locations has great potential to cause the loss of a territory and would likely cause ongoing mortality of breeding eagles and their offspring. The options proposed in the draft ABPP to curtail up to 4 turbines near this nest site, would not alleviate the potential loss of this territory. The curtailment options presented do not span enough of the golden eagle breeding season and fledgling period to avoid loss of the Cane Brake nest territory.
- A range of options to minimize risk to eagles are proposed, including curtailment of some turbines during a portion of the breeding season and the elimination of all turbines with the exception of the six turbines proposed on State lands. The option of moving forward with only six turbines near the base of the ridgeline warrants further consideration. However, the Draft ABPP does not clearly state what data was included in the fatality estimate for this option. Additional analysis of the data will likely be needed to refine mortality estimates for these 6 turbines.
- In February 2012, we recommend BIA and the applicant use the eagle observational data collected in 2011 and the juvenile eagle telemetry data to assess risk. We also recommend use of the Bayesian risk model the Service utilized to assess risk on the proposed West Butte Wind Project in Oregon. Neither of these two recommendations were incorporated into the Draft ABPP submitted for our review. Therefore, we request that all the raw eagle use data collected for this project to date, including the telemetry data, be provided to the Service for our review and use in developing a mortality estimate using the Bayesian risk model.

Specific Comments

1. Introduction. Pages 1-1 – 1-2

The introduction states, “This PSABPP will be adopted by the applicable State and Federal agencies and the Tribe as a controlling document for the protection of avian and bat resources during the construction, operation and decommissioning of the Reduced Ridgeline Project.” The State of California has laws and regulations administered by the California Department of Fish and Game that provide protection for golden eagles and other species of birds potentially affected by this project. We would like to coordinate our review of this document with the State. Please provide a contact for each State agency who is reviewing this document to facilitate a joint review.

2. Avian Point Counts. Page 2-6

The point locations used between 2005 and 2008 for both Phase I and Phase II (Figures 2-1) do not appear to provide good visual coverage of the known golden eagle nest site at the north end of the project (i.e., Cane Brake). These surveys were limited to 30-minute fixed observation distance point count surveys for which comprehensive avian data was being collected. We acknowledge the project proponents efforts, in 2011, to update the prior surveys with ground-based survey information for golden eagle territories closest to the Phase II turbine locations using the preferred long-sit count observations. However, the potential lack of information

gathered specific to golden eagles during the 2005 -2008 timeframe may underestimate the exposure minutes used to calculate the fatality rates for golden eagles on page 2-16.

3. Golden Eagle Telemetry Study. Pages 2-12 – 2-13

Please include the most current telemetry study data, including maps, within the ABPP. The discussion and assumptions about the Cane Break point locations and use of the ridgeline area are confusing and contradictory. Please clarify this section.

4. USFWS Fatality Model. Pages 2-16 – 2-20

The proximity of Cane Break eagle nest site classifies the project as a Category 1/High Risk Project in the Service's Draft Eagle Conservation Plan Guidance as it poses a high risk to eagles and the potential to avoid or mitigate impacts is low. There are two major concerns: 1) the project is in close proximity of eagle nests or cluster of nests in an occupied territory; and 2) the project footprint is visited regularly by eagles occupying a proximate nesting territory.

The Draft ABPP bases its risk characterization on 75 total exposure minutes and predicts at least 2.7-6.2 golden eagles may be killed over 20 years, depending on alternative project layouts and turbine curtailment strategies. However, eagle exposure minutes were primarily documented during the 1-year period in 2011 using the recommended long-sit unlimited distance point count observations. We suggest that the data from the recent observations (2011) may better represent eagle presence in the project area and provide a more robust risk characterization. For example, the earlier 30-minute point count data results in an exposure rate of <0.01 eagles per 20 minutes while the 2011 longer sit-count data results in a rate of 0.04 eagles per 20 minutes. Thus, the annual fatality estimates presented based on averaging the results of the 2005 – 2008 survey results with the 2011 result could represent an underestimate of predicted take levels. There is no discussion within the plan that acknowledges this difference or discusses how the fatality rates may be affected by the survey methods used.

The Draft ABPP lacks any discussion of the possibility that project construction and operation may cause abandonment of the Cane Brake nest site and how this overall loss of reproduction would affect the local golden eagle population or the Service's eagle permit regulation goal of maintaining stable or increasing breeding populations.

The proposed plan does not characterize risk to the non-breeding (floater, subadult, and juvenile) segment of the golden eagle population, which may use the proposed project area for dispersal, wintering areas, or migration. The plan should address how floater and subadult segments of the golden eagle population will interact with the project and how exposure minutes may change during years of higher precipitation and/or locally increased prey abundance. Because of the number of golden eagle territories documented within a 10-mile radius of the proposed project and the lack of robust surveys during the fall migration season, additional long-sit count surveys may be warranted at different times of the year.

Management scenario 3 would include turbines on Ewiiapaayp Tribal lands only and curtail the two northernmost turbines, H1 and H2, during daylight hours between January 1 and June 3. Management scenario 4 is similar in project layout but would curtail turbines H1 and H2 for a shorter seasonal period between February 1 and April 30. Despite the longer seasonal restriction in management scenario 3, the analysis in the document predicts scenario 3 results in more golden eagle mortality than in management scenario 4, which has a shorter seasonal restriction. Likewise, under management scenarios 6 and 7, the four northernmost turbines, H1-H4, are curtailed. Again, the analysis in the document predicts curtailment during the longer seasonal restriction between January 1 and June 3 as proposed under scenario 6 results in higher mortality

rates than curtailment for the shorter timeframe proposed under scenario 7. Even if higher activity was documented during surveys between February and April, this result is perplexing since the curtailment period between January and June is inclusive of the curtailment period between February and April. Please provide further explanation of these analysis results.

5. Comparison to Eagle Activity at Existing Wind Energy Projects. Pages 2-20 – 2-21

Information from multiple projects located in the United States is used to draw the conclusion that the proposed project would have minimal impact to golden eagles and other raptors. The plan assumes an estimated mean use of 0.03 eagles per 20 minutes to determine this use “is at the low end of those for wind projects of comparable scale in California, Oregon and Washington.” However, the specifics of the survey techniques, landscapes where the surveys were completed, golden eagle density at and near those project locations was not specifically identified to provide the reader with the context of the comparable work and its applicability to characterize risk to golden eagles and other raptors within the project area.

6. Risk Summary. Page 2-21 – 2-27

The plan presents results of fatality modeling and telemetry monitoring of juvenile golden eagles to conclude an overall “moderate” risk to golden eagles for development of wind energy on the Ewiiapaayp Tribal lands and a “low” risk to golden eagles for development of wind energy on the California State lands. After examining the limited data provided in the document, and the inferences drawn from those data, the Draft ABPP lacked or did not present robust data to support these conclusions. The Draft ABPP lacked information on chronology of nest sites and other detailed behavioral, ecological and biological data collected during the additional observation of the Cane Brake territory, which would apply to this project. The ABPP also states that “the patterns of flights recorded to date suggests the collision risk is primarily to the Cane

Brake nest (and primarily to fledglings),” but also acknowledges that “a small area of the Glen Cliff fledgling’s 50 percent fixed kernel home range overlapped the [project] boundary.” While the Glen Cliff fledgling was killed by a vehicle during the telemetry study, the potential collision risk to future fledglings produced from the Glen Cliff territory cannot be discounted.

In addition, there is no assessment of potential impacts to the Thing Valley golden eagle territory. This territory was active in 2010 prior to the initiation of construction on the Sunrise Powerlink Transmission Project. We are still assessing whether construction disturbance may have resulted in temporary abandonment of this territory despite implementation measures deemed adequate to prevent this result. Nonetheless, it is likely that this territory will be re-occupied in the future. Assessment of risk to this territory (adults, juveniles, and competing floaters) by extrapolating data from the other known territories could be included to improve the overall impact assessment. The plan suggests that surveys and telemetry work are ongoing to refine the estimate and detect overflights by resident and non-resident migrating golden eagles. Please provide this information when it becomes available.

We also recommend providing more detailed discussion regarding the cumulative effects to golden eagle populations within the 10-mile survey radius and 140-mile ‘natal dispersal’ distance from the project. There are numerous proposed and ongoing alternative energy projects in the vicinity, including Phase I of the Tule Wind Project, that have the potential to take golden eagles. The Draft ABPP needs to address the possible cumulative effects the proposed project, in conjunction with other ongoing projects on the golden eagle population in the project area (electrocution hazards, lead, rodenticide, car collisions, recreational disturbances, etc.).

7. Impact Assessment – Birds. Pages 2-28 – 2-32

The project proponent presents little data to analyze the impact of the project to other species of birds, including passerines and raptors. Turkey vultures and red-tailed hawks were noted to be present and other raptors such as owls likely occur near or within the project area. The Draft ABPP does not include an evaluation of potential rates of mortality for other avifauna, specific advanced conservation practices and/or propose any adaptive management measures, which can be used to lessen impacts to migratory birds.

8. Cumulative Impacts. Pages 2-34 – 2-35

The Draft ABPP does not adequately address cumulative impacts from habitat loss, habitat fragmentation, etc., resulting from this project, and other projects within the area. See additional comments above under “Risk Summary”.

9. Post-Construction Fatality Studies. Pages 4-1 – 4-5

Post-construction monitoring is proposed to include 30% of the planned turbines. Monitoring should include representative samples of all lethal project infrastructure (transmission lines, met towers, etc.), in addition to the turbines.

10. Monitoring and Surveys. Page 5-9

The Draft ABPP needs to clarify how prey base surveys will be conducted and how the resulting data will be used to inform adaptive management decisions. We also suggest the document include information reflecting how El Nino-Southern Oscillation, climate change, and prey population cycles will impact management decisions and long-term eagle presence at and near the project footprint. Eagle surveys should continue during project construction and post-construction to determine impacts to nesting eagles surrounding the project and eagle use of the project area.

11. Adaptive Management Plan. Pages 6-1 – 6-2

The proposed plan does not offer a specific strategy to mitigate golden eagle losses. The proposed plan instead defers this strategy to be developed by a Technical Advisory Council. We recommend identifying specific measures to be implemented in case the expected numbers of golden eagle fatalities occur. It is not clear how the Technical Advisory Council will operate or make decisions. Also, the proposed plan does not provide a specific explanation of how California Energy Commission guidance will be implemented.

Table 6-1. While the more intensive post-construction monitoring occurs over 3 years, Table 6-1 uses certain golden eagle mortalities over a 5 year period as the trigger for mitigation decisions. The more intensive monitoring should occur for at least 5 years to be consistent with Table 6-1.