

Frequently Asked Questions about Critical Habitat & the Otay tarplant

Q. What is the Otay tarplant?

The Otay tarplant (*Deinandra conjugens*), a member of the sunflower family, is a yellow-flowered annual that is associated with clay soils, grassland, open coastal sage scrub, and maritime succulent scrub habitats in San Diego County, California, and northwestern Baja California, Mexico. Ranging from 2 to 10 inches in height, the short, fuzzy-stemmed Otay tarplant produces small clusters of yellow flower heads and has deep green or gray-green leaves covered with soft, shaggy hairs. The Otay tarplant was listed as a threatened species, under the Endangered Species Act (Act), as amended, on October 13, 1998. At the time the Otay tarplant was listed under the Act, more than 70 percent of the plant's estimated historic habitat had been lost to development and agriculture. Currently, there are 22 known populations of the plant. These remaining populations are found on Federal, State, and private lands in southwestern San Diego County.

Q. What is critical habitat?

Critical habitat is defined as specific areas that have been found to be essential to the conservation of a federally listed species, and which may require special management considerations or protection. Critical habitat is determined using the best available scientific and commercial information about the physical and biological needs of the species. These needs may include one or more of the following:

- ◆ space for individual and population growth, and for normal behavior;
- ◆ food, water, light, air, minerals or other nutritional or physiological needs;
- ◆ cover or shelter;
- ◆ sites for breeding, reproduction, and rearing of offspring; and
- ◆ habitat that is protected from disturbance or is representative of the historical geographic and ecological distribution of a species.

In order to be proposed as critical habitat, we must first determine if an area is “essential to the conservation of the species.” The proposed critical habitat designation must also identify, to the extent known, habitats that contain the primary constituent elements necessary for the life cycle needs of the species.

Q. What are primary constituent elements essential to the conservation of the Otay tarplant?

The primary constituent elements for the Otay tarplant are those habitat components essential for the primary biological needs of the species and its dormant seeds including space for individual and population growth; food, water, air, light, minerals, or other nutritional or physiological requirements; and suitable habitat for pollen and seed dispersal agents. Primary constituent elements can exist in undeveloped areas that support various types of sage scrub, chaparral, grassland, and similar plant communities that provide habitat for the Otay tarplant.

Q. Why is the Service proposing to designate approximately 6,630 acres as critical habitat for the Otay tarplant?

When we listed the Otay tarplant, we believed that designating critical habitat was not prudent. Since the species occurs primarily on private lands, where there is little or no Federal involvement, we concluded that such designation would not benefit the species. On July 15, 1999, the Southwest Center for Biological Diversity and the California Native Plant Society filed a lawsuit in Federal District Court in California against the Department of the Interior (DOI) for failing, in part, to designate critical habitat for the Otay tarplant.

On December 21, 2000, a stipulated settlement agreement was reached between DOI and the plaintiffs whereby the Service agreed to review the initial not prudent decision and, if critical habitat designation was prudent, then the Service would prepare a proposal to be signed by May 30, 2001. We reviewed the previous not prudent finding and now believe that there is some benefit to designating critical habitat for the Otay tarplant.

We conclude that proposing critical habitat for the Otay tarplant is prudent because three significant occurrences of the tarplant are on Federal lands - two are on lands managed by the San Diego National Wildlife Refuge and one is on land managed by the Immigration and Naturalization Service - which would require the Federal agencies to consult with us on activities they undertake, authorize, fund, or permit which may affect the tarplant and or its critical habitat. In addition, there may also be educational benefits to designating critical habitat. For example, designation of critical habitat on non-Federal lands may benefit the species by formally identifying those areas essential to the conservation of the species, and thus, areas that are likely to be the focus of recovery efforts.

All lands proposed as critical habitat for the Otay tarplant support known populations of the plant and/or contain one or more of the primary constituent elements that provide for the life cycle needs of the species.

Q. What about lands already covered by a habitat conservation plan?

We are not proposing critical habitat on lands within approved and implemented Habitat Conservation Plans (HCP) which include the Otay tarplant as a covered species. Approved and permitted HCPs are designed to ensure the long-term survival of covered species within the conservation plan area. Lands within an approved HCP that we would ordinarily define as critical habitat will normally be protected in reserves or other conservation lands under the terms of the HCP and its implementing agreement.

We have excluded lands within the San Diego Gas and Electric HCP; and the City of San Diego's Subarea Plan and County of San Diego's Subarea Plan, both of which are within the larger Multiple Species Conservation Program (MSCP).

Q. What about lands where regional HCPs are being developed or will be developed in the future?

The proposed designation of critical habitat for the Otay tarplant should not impede ongoing efforts to develop and

implement new HCPs in southern California, including the City of Chula Vista's Draft Subarea Plan. The Service has worked and will continue to work closely with the City of Chula Vista on the design of their preserve in relation to the Otay tarplant. The City of Chula Vista's draft preserve design contains many of the largest, essential Otay tarplant populations, areas for connectivity within and among these populations, and habitat to support pollinators and fruit dispersal agents. The City of Chula Vista is expected to complete their subarea planning processes in the near future.

Q. Does the designation of critical habitat create preserves?

No. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve or preserve. It does not allow government or public access to private lands and will not result in closure of the area to all access or use.

Q. What happens if my private property is designated as critical habitat for the Otay tarplant?

The designation will not affect you unless you are undertaking an activity that requires Federal funds, permits or authorization. If a Federal agency is involved in the activity and the project may adversely affect critical habitat, then the agency would be required to consult with the Service. If the activity would destroy or adversely modify critical habitat, the Service will provide reasonable and prudent alternatives, if possible, to allow the activity to go forward.

Q. How will any final designation of critical habitat affect activities for which a party has already consulted with the Service, under section 7 of the Act?

Federal regulations require agencies to reinitiate consultation with the Service on previously reviewed actions if critical habitat is designated after the initial consultation, and if those actions may adversely affect critical habitat. This applies only if those agencies have retained some type of involvement or control over the action, or if such involvement is authorized by law. Federal agencies may request to reinitiate consultation with us if a project is likely to affect or adversely modify critical habitat.

Q. What happens if a project is reviewed as part of a reinitiation of consultation and the Service determines it will adversely modify critical habitat?

It is highly unlikely that an activity that was reviewed and permitted by the Service under section 7 of the Act, prior to the designation of critical habitat, will be changed because critical habitat is now designated for the area. When reviewing projects under section 7, we must determine if the proposed action will "jeopardize the continued existence" of a species by asking the question "will the project appreciably reduce the likelihood of the species' survival and recovery?" A project that will "destroy or adversely modify" critical habitat is one that will appreciably reduce the value of critical habitat for the survival and recovery of the species. Regardless of whether critical habitat has been designated, we must still consider the effect a project may have on the continued existence and recovery of a federally listed species.

Q. Is an economic analysis required as part of designating critical habitat?

Yes. The Service must take into account the economic and any other relevant impact of identifying any particular area

as critical habitat. Unless the designation of an area as critical habitat would result in the extinction of the species, we may exclude an area from critical habitat if we determine that the benefits (economic and otherwise) of excluding it outweigh the benefits of including it. This determination is based on the best scientific, economic and commercial information available.

Q. Is critical habitat designated for all listed species?

No. Critical habitat has been designated for 135 of the 1,244 species now listed as threatened and endangered under the Act. The Act requires us to identify critical habitat at the time a species is listed. However, in some cases, designating critical habitat may be considered “not prudent” if it would cause harm to the species, such as increasing the possibility of vandalism or collection. We may find that a designation is “not determinable” if we don’t have enough information when a species is listed to define areas as critical habitat.

Q. Will the public be given an opportunity to comment on proposed critical habitat for the Otay tarplant?

Yes. The Service wants to ensure that any final action resulting from this proposal will be as accurate and as effective as possible. We are actively soliciting comments or suggestions from the public, other government agencies, the scientific community, industry representatives, and any other interested party. In particular, we are seeking comments regarding:

- ◆ The reasons why any area should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species due to designation;
- ◆ Specific information on the amount and distribution of the Otay tarplant and what habitat is essential to the conservation of the species and why;
- ◆ Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;
- ◆ Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families; and
- ◆ Economic and other values associated with designating critical habitat for the Otay tarplant, such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, “existence values,” and reductions in administrative costs).

Written comments, data, and information about the proposed designation of critical habitat for the Otay tarplant received by 5:00 p.m. on August 13, 2001 will be considered in any final determination of critical habitat. All comments and materials should be sent to Field Supervisor, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008.

Comments may also be submitted by electronic mail to **fw1cfwo_deco@fws.gov**. Please submit electronic comments in ASCII file format and avoid the use of special characters and encryption. Please include “Attn: RIN 1018-AH00”, your name, and return address in the e-mail message. If you do not receive a confirmation from the system that your e-

mail message was received, contact the Service directly by calling the Carlsbad Fish and Wildlife Office at 760/431-9440.

All comments and materials received will be available for public inspection, by appointment, during normal business hours, at the Carlsbad Fish and Wildlife Office.

Prepared by: U.S. Fish and Wildlife Service
Carlsbad Fish and Wildlife

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