6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

34. None.

Ordering Clause

Accordingly, it is ordered that the Notice of Proposed Rulemaking is adopted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–26385 Filed 11–29–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT66

Endangered and Threatened Wildlife and Plants; Proposed Critical Habitat Designation for the Buena Vista Lake Shrew

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of draft economic analysis and reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft economic analysis for the proposed designation of critical habitat for Buena Vista Lake shrew in California under the Endangered Species Act of 1973, as amended (Act). We are also reopening the public comment period for the proposal to designate critical habitat for this species to allow all interested parties to comment on the proposed rule and the associated draft economic analysis. Comments previously submitted on the proposed rule need not be resubmitted as they have been incorporated into the public record as part of this reopening of the comment period, and will be fully considered in preparation of the final rule.

DATES: We will accept all comments and information received on or before December 15, 2004. Any comments that we receive after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposed rule by any one of several methods:

(1) You may submit written comments and information to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825, or by facsimile 916/414–6710.

(2) You may hand-deliver written comments to our office, at the address given above.

(3) You may send comments by electronic mail (e-mail) to: *BVLS_pCH@fws.gov*. Please see the ''Public Comments Solicited'' section below for file format and other information about electronic filing. In the event that our Internet connection is not functional, please submit your comments by the alternate methods mentioned above.

Comments and materials received, as well as supporting documentation used in preparation of the proposed critical habitat rule, will be available for public inspection, by appointment, during normal business hours at the above address. You may obtain copies of the draft economic analysis for the proposed designation of critical habitat for Buena Vista Lake shrew by contacting the Sacramento Fish and Wildlife Office at the above address. The draft economic analysis and the proposed rule for critical habitat designation are also available on the Internet at *http://sacramento.fws.gov/*. In the event that our Internet connection is not functional, please obtain copies of documents directly from the Sacramento Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Arnold Roessler, Sacramento Fish and Wildlife Office, at the address above (telephone 916/414–6600; facsimile 916/414–6710).

SUPPLEMENTARY INFORMATION:

Public Comment Solicited

We solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning our draft economic analysis and the proposed rule to designate critical habitat for the Buena Vista Lake shrew. We particularly seek comments concerning:

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

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

(3) Land use designations and current or planned activities in the subject area and their possible impacts on proposed habitat, specifically impacts of the designation on the operation and maintenance of irrigation canals, and on existing and any planned future oil and gas activities within or near the proposed designation;

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

(5) Whether the economic analysis identifies all State and local costs attributable to the proposed critical habitat designation. If not, what costs are overlooked;

(6) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(7) Whether the economic analysis correctly assesses the effect on regional costs associated with land use controls that derive from the designation;

(8) Assumptions reflected in the economic analysis regarding land use practices and current, planned, or reasonably foreseeable activities in the subject areas, including comments or information relating to the potential effects that the designation could have on private landowners as a result of actual or foreseeable State and local government responses due to the California Environmental Quality Act;

(9) Whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation;

(10) Whether the economic analysis appropriately identifies all costs that could result from the designation; and

(11) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

All comments and information submitted during the initial comment period on the proposed rule need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning the draft economic analysis and proposed rule by any one of several methods (see **ADDRESSES** section).

Please submit Internet comments to *BVLS_pCH@fws.gov* in an ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: Buena Vista Lake shrew Critical Habitat'' in your e-mail subject header, and your name and return

address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Sacramento Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

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

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours, in our Sacramento Fish and Wildlife Office at the above address.

In our August 19, 2004, proposed rule to designate critical habitat for the Buena Vista Lake shrew (69 FR 51417) we indicated that we would reopen the public comment period for an additional 60 days upon publication of this notice of availability of the draft economic analysis of the proposed designation. However, due to delays in completing the draft economic analysis and a court-ordered deadline for the completion of the final rule, we are unable to reopen the public comment period for that length of time. In order to ensure compliance with the United States District Court for the Eastern District of California's order (*Kern County Farm Bureau* et al. v. *Anne Badgley, Regional Director of the United States Fish and Wildlife Service, Region 1* et al., CV F 02–5376 AWIDLB) requiring us to publish a final determination no later than January 12, 2005, we are only able to reopen the public comment period for 15 days.

Background

On August 19, 2004, we published a proposed rule to designate critical habitat, pursuant to the Endangered Species Act of 1973, as amended (Act) for the Buena Vista Lake shrew (69 FR 51417). We proposed a total of 4,649 acres in 5 units of critical habitat within the Central Valley of California. The Buena Vista Lake shrew formerly occurred in wetlands around Buena Vista Lake, and presumably throughout the Tulare Basin. The animals were likely distributed throughout the swampy margins of Kern, Buena Vista, Goose, and Tulare Lakes. By the time the first shrews were collected and described, these lakes had already been drained and mostly cultivated with only sparse remnants of the original flora and fauna remaining. Essential habitat features of the shrew include riparian or wetland communities supporting a complex vegetative structure with a thick cover of leaf litter or dense mats of low-lying vegetation; suitable moisture supplied by a shallow water table, irrigation, or proximity to permanent or semipermanent water; and a consistent and diverse supply of prey. The shrew is now known from five isolated riparian or wetland remnants within the Tulare Basin of the Central Valley of California. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regards to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary of the Interior shall designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact of specifying any particular area as critical habitat. The public comment period for the August 19, 2004, proposal originally closed on October 18, 2004.

We have prepared a draft economic analysis of the effects of the proposed critical habitat designation, and are now announcing its availability for review. The economic analysis addresses the impacts of the Buena Vista Lake shrew conservation efforts on activities occurring on lands proposed for designation. The analysis includes cost effects on agricultural producers adjacent or proximate to three Critical Habitat Units (CHU), biological monitoring, Habitat Conservation Plan (HCP) development, and supplemental water purchases, as well as potential uncertainty to landowners and project delay.

The economic analysis includes both retrospective, or pre-designation, and prospective, or post-designation, economic costs to various entities as a result of Buena Vista Lake shrew conservation activities. Retrospective costs are those costs estimated to have occurred from the time the species was listed in April 2002 until the proposal of critical habitat in August 2004. The estimated retrospective cost is $122,237. These costs are primarily certain administrative costs associated with the ongoing preparation of a Comprehensive Conservation Plan at the Kern National Wildlife Refuge CHU and the ongoing section 7 consultation related to the preparation of a biological opinion regarding the Goose Lake proposed CHU.

Present values shown are calculated at three and seven percent discount rates. Total prospective costs range from $6.7 to $14.2 million under a three percent discount rate, and $4.8 to $10.1 million under a seven percent rate. Thus, prospective average annual costs range from $452,266 to $955,833. These costs include effects on agricultural producers adjacent or proximate to three CHUs, biological monitoring, HCP development, and supplemental water purchases. The ranges reflect totals with and without supplemental water for Kern Lake, Coles Levee, and Kern Fan Water Recharge CHUs. Both the Kern National Wildlife Refuge and Goose Lake CHUs are assumed to require supplemental water, and thus do not contribute to a range of costs.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the proposed designation of critical habitat is a significant rule only in that it may raise novel legal and policy issues. However, the Economic Analysis indicates that the proposed designation will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule.

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 Fairness 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 (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. The SBREFA also amended the RFA to require a certification statement. Based on the information that is available to us at this time from the economic analysis, we are certifying that this proposed designation of critical habitat will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). 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 considered 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.

The Regulatory Flexibility Act does not explicitly define either ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a ''significant economic impact.'' Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the Regulatory Flexibility Act. (*Mid-Tex Electric Co-Op, Inc.* v. *F.E.R.C. and American Trucking Associations, Inc.* v. *EPA*).

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation if they lack a Federal nexus. In areas where the species is present, Federal agencies funding, permitting, or implementing activities are already required to avoid jeopardizing the continued existence of the Buena Vista Lake shrew through consultation with us under section 7 of the Act. If this critical habitat designation is finalized, Federal agencies must also consult with us to ensure that their activities do not destroy or adversely modify designated critical habitat through consultation with us.

Should a federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat. In our experience, the vast majority of such projects can be successfully implemented with at most minor changes that avoid significant economic impacts to project proponents.

Based on our experience with section 7 consultations for all listed species, virtually all projects-including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—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. The kinds of actions that may be included in future reasonable and prudent alternatives include avoidance, conservation set-asides, management of competing non-native species, restoration of degraded habitat, construction of protective fencing, and regular monitoring. These measures are not likely to result in a significant economic impact to project proponents.

In the case of the Buena Vista Lake shrew, we anticipate that that the proposed designation of critical habitat is not likely to have a significant impact on any small entities or classes of small entities. However, no section 7 consultations have been completed since the listing in 2002; in addition, no identifiable changes in economic activities resulting from shrew conservation efforts have taken place since the listing. The costs presented in the economic analysis reflect, where data permit, ranges representing the reasonably foreseeable future. These costs are likely to be incurred because of shrew conservation activities related to agriculture, operation and maintenance of groundwater recharge projects and resultant effects on water supplies, and water requirements for habitat.

We considered the potential relative cost of compliance to these small entities and evaluated only small entities that are expected to be directly affected by the proposed designation of critical habitat. Based on the economic analysis, we do not anticipate that the proposed designation of critical habitat for the Buena Vista Lake shrew will result in increased compliance costs for small entities. The proposed designation of critical habitat does not, therefore, create a new cost for the small entities to comply with the proposed designation. Instead, proposed designation only impacts Federal agencies that conduct, fund, or permit activities that may affect critical habitat for the shrew. Thus, we conclude that the proposed designation of critical habitat is not likely to result in a significant impact to this group of small entities. Therefore, we are certifying that the proposed designation of critical habitat for the shrew will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

In summary, we have considered whether this proposed designation would result in a significant economic impact on a substantial number of small entities, and we have concluded that it would not. Future consultations are not likely to affect a substantial number of small entities. We anticipate that the types of activities we review under section 7 of the Act will not change significantly in the future.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.)

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. The Economic Analysis indicates that the proposed designation will not have an annual effect on the economy of $100

million or more. Therefore, we believe that this critical habitat designation will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will 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.

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 critical habitat for the Buena Vista Lake shrew. Our assessment concludes that this proposed rule does not pose significant takings implications.

Author

The primary author of this notice is Shannon Holbrook, Sacramento Fish and Wildlife Services Office (*see* **ADDRESSES** section).

Authority

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

Dated: November 23, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–26472 Filed 11–29–04; 8:45 am]

BILLING CODE 4310–55–P