the CO must notify the protestor that the protest cannot be considered on the instant acquisition but will be considered in any future actions. However, the CO may question at any time, before or after award, the representation declaration status of an IEE.

[FR Doc. 2012–18189 Filed 7–25–12; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2011–0097; 4500030114]

RIN 1018–AX41

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Lost River Sucker and Shortnose Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on the December 7, 2011, proposed designation of critical habitat for the Lost River sucker (*Deltistes luxatus*) and shortnose sucker (*Chasmistes brevirostris*) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed designation of critical habitat for Lost River sucker and shortnose sucker and an amended required determinations section of the proposal.

DATES: We will consider all comments received or postmarked on or before August 27, 2012. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: *Document availability:* You may obtain copies of the proposed rule and the draft economic analysis on the Internet at *http://www.regulations.gov* at Docket Number FWS–R8–ES–2011–0097, or by mail from the Klamath Falls Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Comment submission: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R8–ES–2010–0097, which is the docket number for this rulemaking. Then, on the left side of the screen, under the Document Type heading, click on the Proposed Rules link to locate this document and submit a comment.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2011–0097; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Laurie R. Sada, Field Supervisor, U.S. Fish and Wildlife Service, Klamath Falls Fish and Wildlife Office, 1936 California Avenue, Klamath Falls, OR 97601, by telephone (541–885–8481), or by facsimile (541–885–7837). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed designation of critical habitat for the Lost River sucker and shortnose sucker that was published in the **Federal Register** on December 7, 2011 (76 FR 76337), our DEA of the proposed designation, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of Lost River sucker and shortnose sucker habitat;

(b) What areas that were occupied at the time of listing and contain physical and biological features essential to the conservation of the species should be included in the designation and why;

(c) Special management considerations or protection that may be needed for the physical and biological features essential to the conservation of the species in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing meet our criteria for being essential for the conservation of the species and, therefore, should be included in the designation and why.

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

(4) Information on the projected and reasonably likely impacts of climate change on the Lost River sucker and shortnose sucker, the features essential to their conservation, and the areas proposed as critical habitat.

(5) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(6) Any probable economic, national security, environmental, cultural, or other relevant impacts of designating as critical habitat any area that may be included in the final designation. In particular, we seek information on any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts.

(7) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

(8) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the draft economic analysis, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

If you submitted comments or information on the proposed rule (76 FR 76337) during the initial comment period from December 7, 2011, to February 6, 2012, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final determination. Our final determination concerning revised

critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. We will post all hardcopy comments on *http://www.regulations.gov* as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on *http://www.regulations.gov* at Docket No. FWS–R8–ES–2011–0097, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Klamath Falls Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at *http://www.regulations.gov* at Docket Number FWS–R8–ES–2011–0097, or by mail from the Klamath Falls Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the Lost River sucker and shortnose sucker in this document. For more information on the Lost River sucker and shortnose sucker or their habitat, refer to the final listing rule published in the **Federal Register** on July 18, 1988 (53 FR 27130), the 2007 5-year reviews completed for the Lost River sucker and shortnose sucker (Service 2007a and 2007b), and the Draft Revised Lost River Sucker and Shortnose Sucker Recovery Plan (Service 2011). These documents are available on the Klamath Falls Fish and Wildlife Office web site at *http://www.fws.gov/klamathfallsfwo/,* on the Environmental Conservation Online System (*http://ecos.fws.gov/ecos/indexPublic.do*), at *http://www.regulations.gov* (at Docket Number FWS–R8–ES–2011–0097), or from the Klamath Falls Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Lost River sucker and shortnose sucker are members of the fish family Catostomidae and are endemic to the upper Klamath River basin (National Research Council of the National Academies ((NRC) 2004, pp. 184, 189). Both species predominantly inhabit lake environments but also utilize riverine, marsh, and shoreline habitats for portions of their life history. Lost River sucker are distributed within Upper Klamath Lake and its tributaries (Klamath County, Oregon), Clear Lake Reservoir and its tributaries (Modoc County, California), Tule Lake (Siskiyou and Modoc Counties, California), Lost River (Klamath County, Oregon, and Modoc County, California), Link River (Klamath County, Oregon), and the Klamath River mainstem, including Keno, J.C. Boyle, Copco, and Iron Gate Reservoirs (Klamath County, Oregon, and Siskiyou County, California; Moyle 2002, p. 199; NRC 2004, pp. 190–192). The distribution of shortnose sucker overlaps with that of Lost River sucker, but shortnose sucker also occurs in Gerber Reservoir (Klamath County, Oregon) and upper Willow Creek (Modoc County, California, and Lake County, Oregon), a tributary to Clear Lake Reservoir (Buettner and Scoppettone 1991, p. 18; Moyle 2002, p. 203; NRC 2004, pp. 190–192).

Previous Federal Actions

On December 7, 2011, we published a proposed rule to designate critical habitat for the Lost River sucker and shortnose sucker (76 FR 76337). We proposed to designate approximately 146 miles (mi) (234 kilometers (km)) of streams and 117,848 acres (ac) (47,691 hectares) (ha) of lakes and reservoirs for Lost River sucker and approximately 128 mi (207 km) of streams and 123,590 ac (50,015 ha) of lakes and reservoirs for shortnose sucker in 2 units located in Klamath and Lake Counties, Oregon, and Modoc County, California, as critical habitat. That proposal was a reproposal of a proposed rule we published December 1, 1994 (59 FR 61744), and had a 60-day comment period, ending February 6, 2012. We will submit for publication in the **Federal Register** a final critical habitat designation for the Lost River sucker and shortnose sucker on or before November 30, 2012. For further discussion on previous Federal actions please see the December 7, 2011, revised proposed rule (76 FR 76337).

Critical Habitat

Section 3 of the Act defines critical habitat as the specific areas within the geographical 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 essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical 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. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of the Lost River sucker and shortnose sucker, the benefits of critical habitat include public awareness of the

presence of the Lost River sucker and shortnose sucker and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for the Lost River sucker and shortnose sucker due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation (DEA), which is available for review and comment (see **ADDRESSES** section).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the Lost River sucker and shortnose sucker. The DEA separates conservation measures into two distinct categories according to ''without critical habitat'' and ''with critical habitat'' scenarios. The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections otherwise afforded to the Lost River sucker and shortnose sucker (e.g., under the Federal listing and other Federal, State, and local regulations). The ''with critical habitat'' scenario describes the incremental impacts specifically due to designation of critical habitat for the species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts). For a further description of the methodology of the analysis, see Chapter 2, ''Framework for the Analysis,'' of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the Lost River sucker and shortnose sucker over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. It identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing. The DEA quantifies economic impacts of Lost River sucker and shortnose sucker conservation efforts associated with the following categories: (1) Activities affecting water supply—these activities may include water management activities such as dam operation and hydropower production within the reservoirs comprising critical habitat, particularly the Klamath Project on Upper Klamath Lake; (2) activities affecting water quality—these activities may include agricultural activities, including livestock grazing, as well as in-water construction activities; and (3) activities affecting fish passage—these activities may include flood control or water diversions that may result in entrainment or lack of access to spawning habitat.

No significant economic impacts are likely to result from the designation of critical habitat. Incremental costs are limited to additional administrative effort to consider potential adverse modification of critical habitat as part of future section 7 consultations for the suckers. In total, incremental administrative efforts are estimated at $586,000, or $51,700 on an annualized basis (assuming a 7 percent discount rate).

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Required Determinations—Amended

In our December 7, 2011, proposed rule (76 FR 76337), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the DEA data, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), 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 RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rule making.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and 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 designation as well as 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 proposed designation of critical habitat for the Lost River sucker and shortnose sucker would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as water management, grazing, transportation, herbicide and pesticide application, forest management, or stream restoration activities. In order to determine whether it is appropriate for our agency to certify that this proposed rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Lost River sucker and shortnose sucker is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the Lost River sucker and shortnose sucker. Only the impacts which may be associated with grazing activities are considered to be borne by small entities and are the focus of the draft economic analysis (Industrial Economics Incorporated (IEc) 2012, p. A–4). Across the study area, 125 businesses are engaged in the beef cattle ranching and farming industry. Of these, 121, or 97 percent, have annual revenues at or below the small business threshold of $750,000, and thus are considered small. A section 7 consultation on grazing activity may cover one or more grazing allotments, and a small entity may be permitted to graze on one or more of these allotments. Because the number of allotments and grazing permittees varies from consultation to consultation, the economic analysis made the simplifying assumption that 1 small entity is affected in each of the 20 allotments adjacent to proposed critical habitat. To estimate average annual revenues per grazing entity, the economic analysis relied on data from the National Agricultural Statistics Service, which provides information on the value of calf and cattle sales as well as the number of farms. Using these data, the economic analysis estimated a value of calf and cattle sales per farm for all the counties in the study area. The economic analysis then averaged this value across the counties to estimate annual revenues per grazing entity of $132,000. The economic analysis noted that this average is significantly below the threshold level defining a small entity. The economic analysis estimated total annualized impacts to the 20 entities that may incur administrative costs of approximately $24,600, or annualized impacts of $2,170. Assuming 20 affected small business entities and that each entity has annual revenues of $132,000, these annualized impacts per small entity are expected to comprise 0.08 percent of annual revenues. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts to small businesses (IEc 2012, pp. A–1–A–6).

Following our evaluation of potential effects to small business entities from this rulemaking, we do not believe that the 20 small business entities in the affected sector represent a substantial number. However, we will further evaluate the potential effects to these small businesses after we receive comments on the draft economic analysis and as we develop our final rulemaking.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. We have identified 20 small entities that may be impacted by the proposed critical habitat designation. However, the potential impacts on those entities are expected to comprise only 0.08 percent of their annual revenues. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the staff members of the Klamath Falls Fish and Wildlife Office, Region 8, U.S. Fish and Wildlife Service.

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

Dated: July 17, 2012.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2012–18198 Filed 7–25–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2012–0051; 4500030113]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Gila Mayfly as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the Gila mayfly (*Lachlania dencyanna*) as endangered under the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing the Gila mayfly may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to determine if listing the Gila mayfly is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species. Based on the status review, we will issue a 12-month finding on the petition, which will address whether