

consistent with EPA's published statement clarifying its interpretation of the section 313(d)(2) and (d)(3) criteria for modifying the section 313 list of toxic chemicals (59 FR 61432, November 30, 1994).

## VII. References

EPA has established an official public docket for this action under Docket ID No. EPA-HQ-TRI-2006-0319. The public docket includes information considered by EPA in developing this action, including the documents listed below, which are electronically or physically located in the docket. In addition, interested parties should consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether these referenced documents are electronically or physically located in the docket. For assistance in locating documents that are referenced in documents that EPA has placed in the docket, but that are not electronically or physically located in the docket, please consult the person listed in the above **FOR FURTHER INFORMATION CONTACT** section.

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13. NTP (National Toxicology Program). 1996. Toxicology and carcinogenesis studies of acetonitrile (CAS NO. 75-05-8) in F344/N rats and B6C3F1 mice (inhalation studies). NTP Technical Report Series 447.
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16. Argus Research Laboratories, Inc. 1984. Embryofetal toxicity and teratogenicity study of acetonitrile in New Zealand White rabbits (Segment II evaluation). Washington, DC: Office of Toxic Substances submission. Microfiche No. OTS 507279.
17. Saillenfait, A.M., P. Bonnet, J.P. Guenier et al. 1993. Relative developmental toxicities of inhaled aliphatic mononitriles in rats. *Fundam. Appl. Toxicol.* 20:365-375.
18. Johannsen, F.R., G.J. Levinskas, P.E. Berteau et al. 1986. Evaluation of the teratogenic potential of three aliphatic nitriles in the rat. *Fundam. Appl. Toxicol.* 7:33-40.
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## List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: February 25, 2013.

**Arnold E. Layne,**

*Director, Office of Information Analysis and Access.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R8-ES-2009-0062; 4500030114]

RIN 1018-AW85

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

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; revision and reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the July 10, 2012, revised proposal to designate critical habitat for the Buena Vista Lake shrew (*Sorex ornatus relictus*) (shrew) under the Endangered Species Act of 1973, as amended (Act). We announce a revision of the unit map labels. We provide maps with correct labels for all proposed units herein. We also announce the availability of a draft economic analysis (DEA) of the revised critical habitat proposal, and of an amended required determinations section of the revised proposal. We are reopening the comment period for an additional 60 days to allow all interested parties an opportunity to comment on the revised proposed rule, the associated DEA, and the amended required determinations section. Furthermore, we announce a public hearing for the purpose of taking oral or written comments on those documents. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

**DATES:** *Written Comments:* We will consider comments received on or before May 6, 2013. Comments must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be

considered in the final decision on this action.

**Public Hearing:** We will hold the public hearing on March 28, 2013. The first hearing session will start at 1:00 p.m. Pacific Time with doors opening at 12:30, and the second session at 6 p.m. with doors opening at 5:30. The location of the hearing is under **ADDRESSES**, below.

**ADDRESSES: Document availability:** You may obtain copies of the DEA and the revised proposed rule on the Internet at <http://www.regulations.gov> at Docket No. FWS-R8-ES-2009-0062, or by mail from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

**Written Comments:** You may submit written comments by one of the following methods:

(1) **Electronically:** Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Search for FWS-R8-ES-2009-0062, which is the docket number for this rulemaking.

(2) **By hard copy:** Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R8-ES-2009-0062; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203. Or deliver them by hand at the public hearing (see Public Hearing, below).

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).

**Public hearing:** We will hold a public hearing at the Doubletree Hotel, 3100 Camino Del Rio Court, Bakersfield, California. The hearing will take place on the date and times indicated above under **DATES**. People needing reasonable accommodations in order to attend and participate should contact Robert Moler, External Affairs Supervisor, Sacramento Fish and Wildlife Office, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**).

**FOR FURTHER INFORMATION CONTACT:** Jan Knight, Acting Field Supervisor, or Karen Leyse, Listing Coordinator, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W-2605, Sacramento, CA 95825; by telephone (916) 414-6600; or by facsimile (916) 414-6713. 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 revised proposed designation of critical habitat for the shrew that we published in the **Federal Register** on July 10, 2012 (77 FR 40706), our DEA of the revised 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 is not prudent.

(2) Specific information on:

(a) The distribution of the shrew, including the locations of any additional populations of this species that would help us further refine boundaries of critical habitat;

(b) The amount and distribution of shrew habitat, including areas that provide habitat for the shrew that we did not discuss in the revised proposed critical habitat rule;

(c) Any areas occupied by the species at the time of listing that contain features essential for the conservation of the species that we should include in the designation, and why; and

(d) Any areas not occupied at the time of listing that are essential to the conservation of the species, and why.

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

(4) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

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

(6) Information on the extent to which the description of economic impacts in the DEA is complete and accurate.

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

(8) Whether any specific areas being proposed as critical habitat should be excluded under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any particular area outweigh the benefits of including that area under section 4(b)(2) of the Act. See Areas Previously Considered for Exclusion Under Section 4(b)(2) of the Act section below for further discussion.

If you submitted comments or information on the 2009 proposed rule (74 FR 53999, Oct 21, 2009 and 76 FR 23781, April 28, 2011), or on the July 10, 2012, revised proposed rule (77 FR 40706) during any of the previous comment periods, please do not resubmit them. We will incorporate them into the public record as part of this comment period, 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 all comment periods. On the basis of public comments, we may, during the development of our final determination, find that some 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, the DEA, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection at <http://www.regulations.gov>.

[www.regulations.gov](http://www.regulations.gov) at Docket No. FWS-R8-ES-2009-0062, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

### Background

It is our intent to discuss in this document only those topics directly relevant to the designation of revised critical habitat for the shrew. For more information on previous Federal actions concerning the shrew, refer to the proposed designation of critical habitat published in the **Federal Register** on October 21, 2009 (74 FR 53999). Additional relevant information may be found in the final rule to designate critical habitat for the Buena Vista Lake shrew published on January 24, 2005 (70 FR 3437). For more information on the shrew or its habitat, refer to the final listing rule published in the **Federal Register** on March 6, 2002 (67 FR 10101), which is available online at <http://www.regulations.gov> at Docket No. FWS-R8-ES-2009-0062, or by mail from the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

### Previous Federal Actions

On August 19, 2004, we proposed critical habitat for the shrew on approximately 4,649 acres (ac) (1,881 hectares (ha)) in Kern County, California (69 FR 51417). On January 24, 2005, we published in the **Federal Register** a final rule (70 FR 3437) designating 84 ac (34 ha) of critical habitat for the shrew in Kern County, California. The decrease in acreage between the proposed rule and final rule resulted from exclusions under section 4(b)(2) of the Act and, to a small degree, refinements in our mapping of critical habitat boundaries.

On October 2, 2008, the Center for Biological Diversity filed a complaint, challenging the Service's designation of critical habitat for the shrew, in the U.S. District Court for the Eastern District of California (*Center for Biological Diversity v. United States Fish and Wildlife, et al.*, Case No. 08-CV-01490-AWI-GSA). On July 9, 2009, the Court approved a stipulated settlement agreement in which the Service agreed to submit a new proposed rule to the **Federal Register** within 90 days of the signed agreement. The new proposed rule was to encompass the same geographic area as the August 19, 2004 (69 FR 51417), proposed critical habitat designation.

In accordance with the settlement agreement, on October 21, 2009, we published a new proposed rule to

designate critical habitat for the Buena Vista Lake shrew (74 FR 53999) encompassing the same geographic area as our August 19, 2004 (69 FR 51417), proposed designation. On April 28, 2011 (76 FR 23781), we announced the availability of a draft economic analysis (DEA) showing the economic impacts of the proposed critical habitat designation. In that document we invited comments on the DEA and amended required determinations, and we reopened the comment period for the proposed critical habitat designation. The document also announced a public hearing, which was held in Bakersfield, California, on June 8, 2011.

On March 6, 2012, the Service was granted an extension by the Court to consider additional information on the shrew that was identified during the 5-year review process (*Center for Biological Diversity v. Kempthorne et al.*, Case 1:08-cv-01490-AWI-GSA, filed March 7, 2012). The extension provided for submission of a revised proposed rule to the **Federal Register** on or before June 29, 2012, with submission of a final rule on or before June 29, 2013. The revised proposed rule was published in the **Federal Register** on July 10, 2012 (77 FR 40706), with a 60-day comment period ending September 10, 2012. We will submit for publication in the **Federal Register** a final critical habitat designation for the Buena Vista Lake shrew on or before June 29, 2013.

### Correction to Maps

In the revised proposed rule to designate critical habitat for the Buena Vista Lake shrew (77 FR 40706; July 10, 2012), we inadvertently mislabeled the unit names on the maps for units 4–7; the labels for Units 4 and 5 were inadvertently reversed in the revised proposal, as were the labels for Units 6 and 7. The correct index and unit maps are included in the Proposed Regulation Promulgation section of this notice. The correct unit names and unit numbers include: Unit 1, Kern National Wildlife Refuge (Subunits 1A, 1B, and 1C); Unit 2, Goose Lake; Unit 3, Kern Fan Recharge; Unit 4, Coles Levee; Unit 5, Kern Lake; Unit 6, Semitropic; and Unit 7, Lemoore. Please see the July 10, 2012, **Federal Register** notice on the revised proposed designation of critical habitat for the Buena Vista Lake shrew (77 FR 40706) for additional information on the units proposed as critical habitat. The changes set forth in the rule portion of this document are basically administrative and do not add or subtract any proposed critical habitat.

### 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 July 10, 2012, revised proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of the designated 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. The Secretary may exclude an area from critical habitat if he determines 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 shrew, the benefits of critical habitat include public awareness of the presence of the shrew and the importance of habitat protection, and,

where a Federal nexus exists, increased habitat protection for the shrew due to protection from adverse modification or destruction of critical habitat.

As discussed in the revised proposed rule, we have not proposed to exclude any areas from critical habitat designation, although we are considering whether to exclude the Kern Fan Water Discharge (Unit 3) (2,687 ac (1,088 ha)). We also have received comments from several entities requesting to exclude other areas based on economic or other concerns. We will evaluate these additional exclusion requests during our development of a final designation. 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 various comment periods and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis (DEA) concerning the revised proposed critical habitat designation, which is available for review and comment at <http://www.regulations.gov> at Docket No. FWS-R8-ES-2009-0062 (see **ADDRESSES** section). A previous DEA analyzing the economic impacts of the 2009 proposed critical habitat designation (74 FR 53999) is also available at that site. The new DEA analyzes economic impacts from the revised proposed critical habitat designation, published in the **Federal Register** July 10, 2012 (77 FR 40706).

#### *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 shrew. 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 shrew (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 of the Analysis,” of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the Buena Vista Lake shrew over the next 20 years (2013 to 2032). This was determined to be an appropriate period for analysis because limited planning information is available for most economic activities in the area beyond a 20-year timeframe. It identifies potential incremental costs due to the proposed critical habitat designation; these are those costs attributed to critical habitat that are in addition to the baseline costs attributed to listing.

The DEA quantifies economic impacts of Buena Vista Lake shrew conservation efforts associated with the following categories of activity: (1) Water availability and delivery; (2) agricultural production; and (3) energy development. The DEA considers both economic efficiency and distributional effects that may result from efforts to protect the shrew and its habitat. Economic efficiency effects generally reflect the “opportunity costs” associated with the commitment of resources required to accomplish species and habitat conservation. The DEA also addresses how potential economic impacts are likely to be distributed.

The DEA concludes that incremental impacts resulting from the critical habitat designation are limited to additional administrative costs of section 7 consultation. There are two primary sources of uncertainty associated with the incremental effects analysis: (1) The actual rate of future consultation is unknown, and (2) future land use on private lands is uncertain. The analysis does not identify any future projects on private lands beyond those covered by existing baseline projections. Within critical habitat units, section 7 consultation on the shrew has not occurred on private lands that are not covered by conservation plans (Units 2 and 5). As a result, the analysis does not forecast incremental impacts due to conservation measures being implemented as a result of the designation of critical habitat. However, if zoning of these lands changes in the future (such as for urban residential or commercial development) and new projects are identified, conservation measures for the shrew may change.

The DEA estimates total potential incremental economic impacts in areas proposed as revised critical habitat over the next 20 years (2013 to 2032) to be approximately \$130,000 (rounded to two significant digits) (\$11,000 annualized) in present-value terms applying a 7 percent discount rate (Industrial Economics Inc. (IEc) 2013, p. 4–4). Administrative costs associated with section 7 consultations on a variety of activities (including pipeline construction and removal, delivery of water supplies under the Central Valley Project, pesticide applications for invasive species, and restoration activities) in proposed critical habitat Units 1, 2, and 3 are accounting for approximately 88 percent of the forecast incremental impacts (IEc 2012, p. 4–4). Pacific Gas and Electric (PG&E) has facilities in three of the proposed critical habitat units. Impacts associated with section 7 consultations on PG&E operations and maintenance activities represent approximately 31 percent of the total incremental costs and are expected to total \$40,000 over the next 20 years. Incremental impacts due to costs of internal consultations at the Kern National Wildlife Refuge are expected to total \$17,000 over the next 20 years, which represents approximately 13 percent of total incremental impacts. Incremental costs of section 7 consultations with the U.S. Army Corps of Engineers due to Clean Water Act (33 U.S.C. 1251 *et seq.*) permitting are estimated to total \$15,000, and represent approximately 12 percent of total incremental costs. Finally, the present-value incremental impact of reviewing an update to the City of Bakersfield’s management plan and one estimated formal section 7 consultation over the next 20 years for the shrew at Unit 3 is estimated at \$7,800, and represents approximately 6 percent of the overall incremental impacts. No incremental impacts are estimated to be incurred by Aera Energy LLC for their activities at the Coles Levee Ecosystem Preserve (IEc 2012, p. 4–9).

The incremental costs described above are further broken down by location of expected incremental costs within the seven proposed critical habitat units. The greatest incremental impacts are due to cost of section 7 consultations forecast to occur for activities within the Kern Fan Recharge area (proposed Unit 3) (\$79,000), and make up 61 percent of the overall incremental impacts. The second largest incremental impacts are predicted to occur within the Kern National Wildlife Refuge (proposed Unit 1) with present-

value impacts at \$22,000, comprising just over 17 percent of the overall incremental impacts. Incremental impacts associated with section 7 consultations for activities occurring on the Goose Lake Unit (proposed Unit 2), are forecast at \$14,000 of present-value impacts, and makes up 11 percent of the overall incremental impacts.

Incremental impacts due to section 7 consultations occurring on the Coles Levee Unit (proposed Unit 4) are estimated to be \$7,200 in present-value impacts, comprising 6 percent of total incremental impacts. No projected incremental impacts are forecast to occur on the Kern Lake Unit (proposed Unit 5). The consultations forecast for proposed critical habitat Units 2 and 5 are limited to those associated with occasional permitted pipeline, restoration, or water projects. The incremental impacts associated with section 7 consultations for activities occurring on the Semitropic unit (Unit 6) are forecast at \$5,900 of present-value impacts and make up 5 percent of the overall incremental impacts.

Incremental impacts due to section 7 consultations occurring on the Lemoore unit (Unit 7) are estimated to be \$1,100 in present-value impacts, comprising less than 1 percent of total incremental impacts.

As stated earlier, we are soliciting data and comments from the public on the DEA, as well as on 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 July 10, 2012, revised proposed rule (77 FR 40706), 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 rulemaking.

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 shrew 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 availability and delivery, agricultural production, or energy development. 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 shrew 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 shrew. The DEA did not identify any entities meeting the definition as small (IEc 2012, pp. A-2-A-3). However, we acknowledge that third-party proponents of an action subject to Federal permitting or funding may be indirectly affected by critical habitat designation. The DEA, therefore, includes a brief evaluation of the potential number of third-party small business entities likely to be affected if this critical habitat designation is finalized. In total, the DEA estimates \$26,000 in incremental impacts may be borne by third-party participants in section 7 consultation. As shown in Exhibit A-1 of the DEA, none of these third-party entities meets SBA's definition of a small government or

business (IEc 2012, pp. A-4—A-6). Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

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 estimate that no (roughly zero as identified in the DEA) small business will be affected annually by designation of this proposed critical habitat. However, based on comments we receive, we may revise this estimate as part of our final rulemaking. 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.

#### References Cited

A complete list of all references we cited in the proposed rule and in this

document is available on the Internet at <http://www.regulations.gov> or by contacting the Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Authors

The primary authors of this notice are the staff members of the Sacramento 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.*).

#### Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be revised at 77 FR 40706 (July 10, 2012), 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, 1531–1544, and 4201–4245, unless otherwise noted.

■ 2. In § 17.95, the critical habitat designation for “Buena Vista Lake Shrew (*Sorex ornatus relictus*)” is proposed to be amended by revising paragraphs (a)(4) through (15) to read as follows:

#### § 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

\* \* \* \* \*

Buena Vista Lake Shrew (*Sorex ornatus relictus*)

\* \* \* \* \*

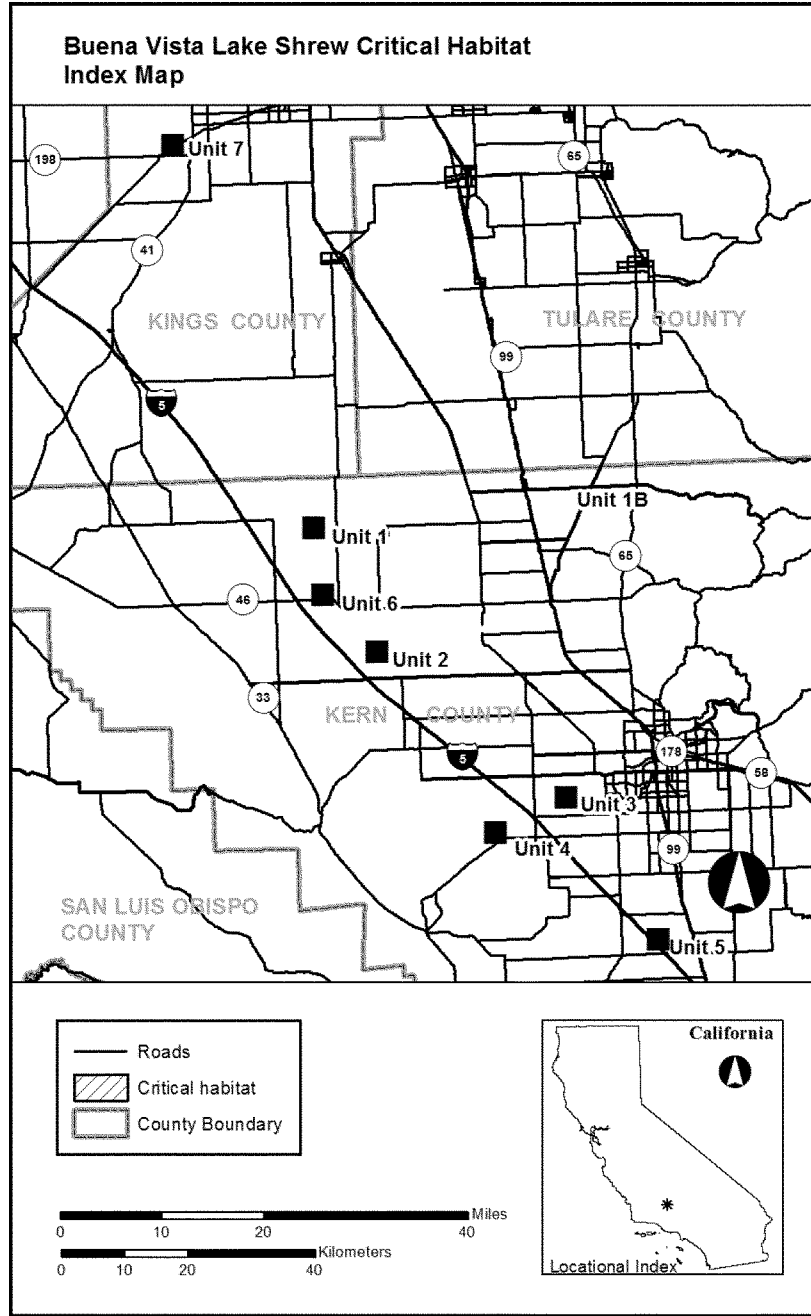
(4) *Critical habitat map units.* Data layers defining map units were created on a base of USGS digital ortho-photo quarter-quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) Zone 11 coordinates.

(5) The coordinates for these maps are available on the Internet at <http://www.regulations.gov> at Docket No. FWS–R8–ES–2009–0062, at <http://www.fws.gov/sacramento/>, or at the Sacramento Fish and Wildlife Office. Field office location information may be obtained at the Service regional offices, the addresses of which are at 50 CFR 2.2.

(6) The index map of critical habitat units for the Buena Vista Lake shrew

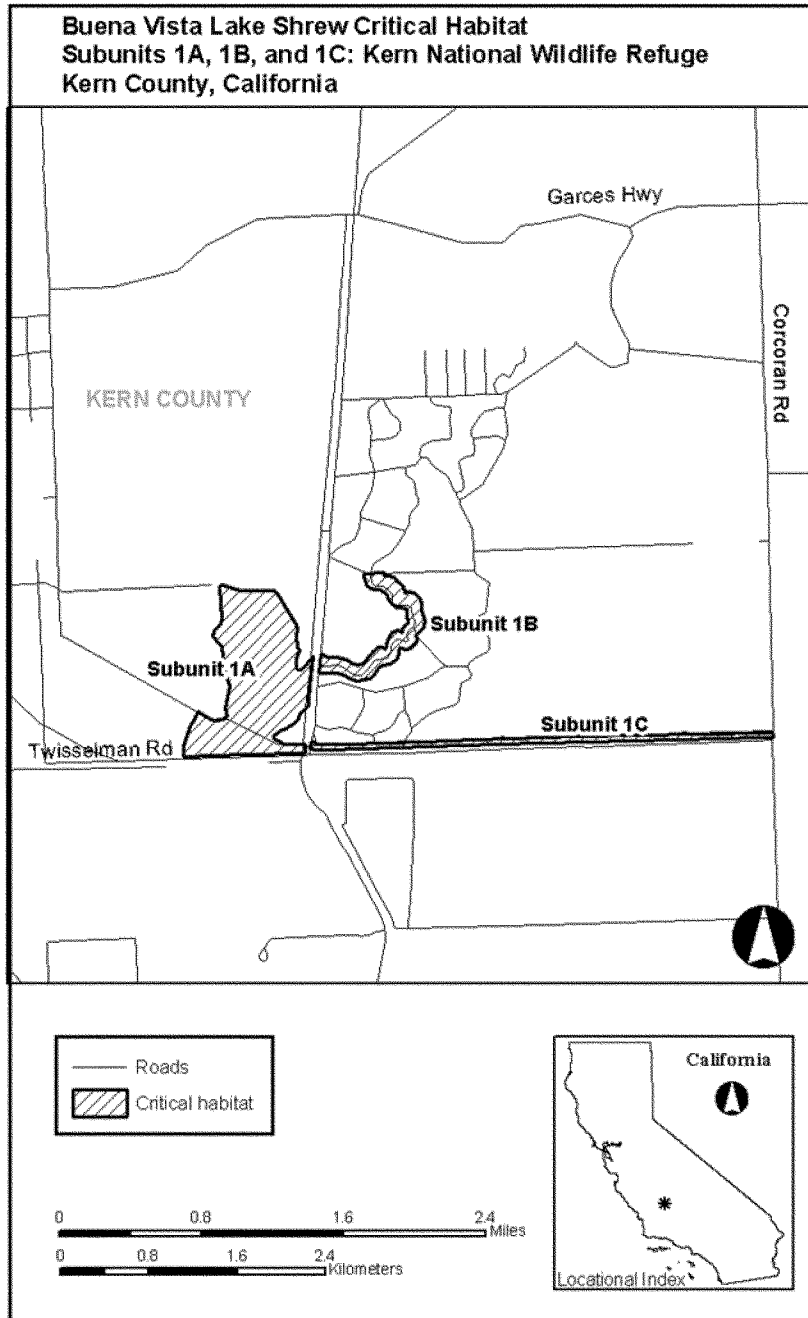
(*Sorex ornatus relictus*) in Kern and Kings Counties, California, follows:

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(7) Subunit 1A: Kern National Wildlife Refuge, Kern County,

California. Map of Subunits 1A, 1B, and 1C follows:

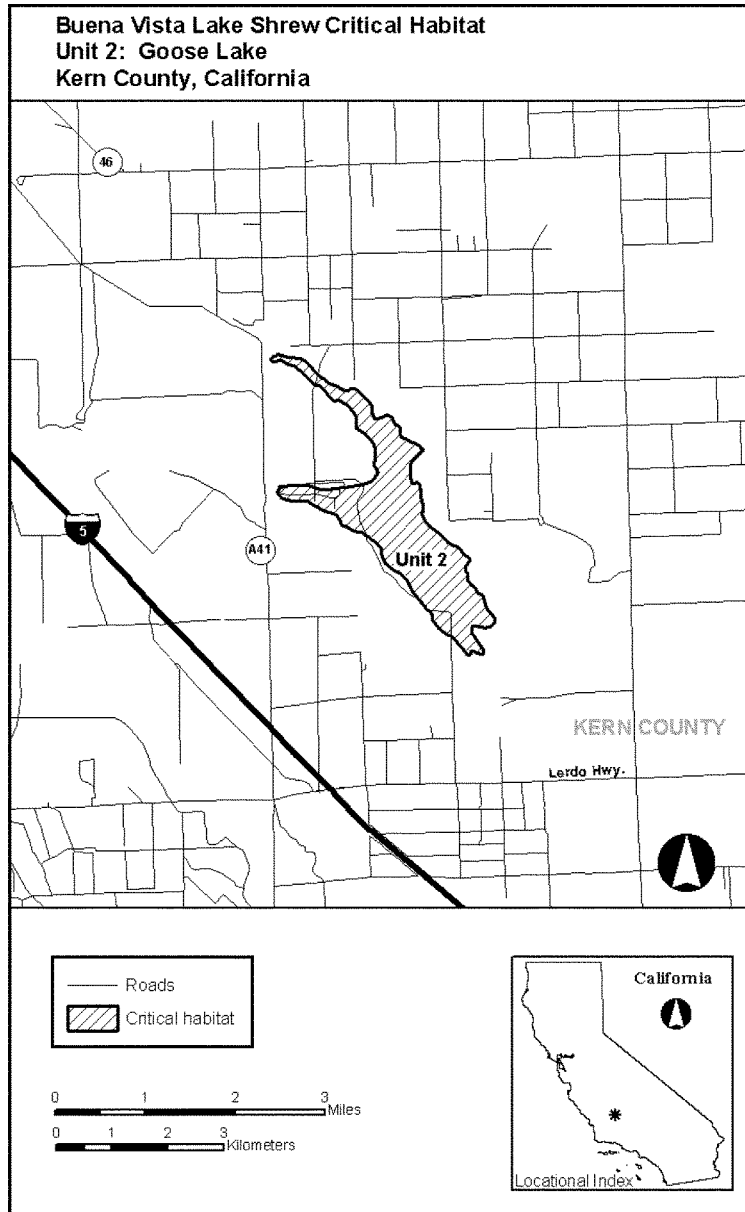




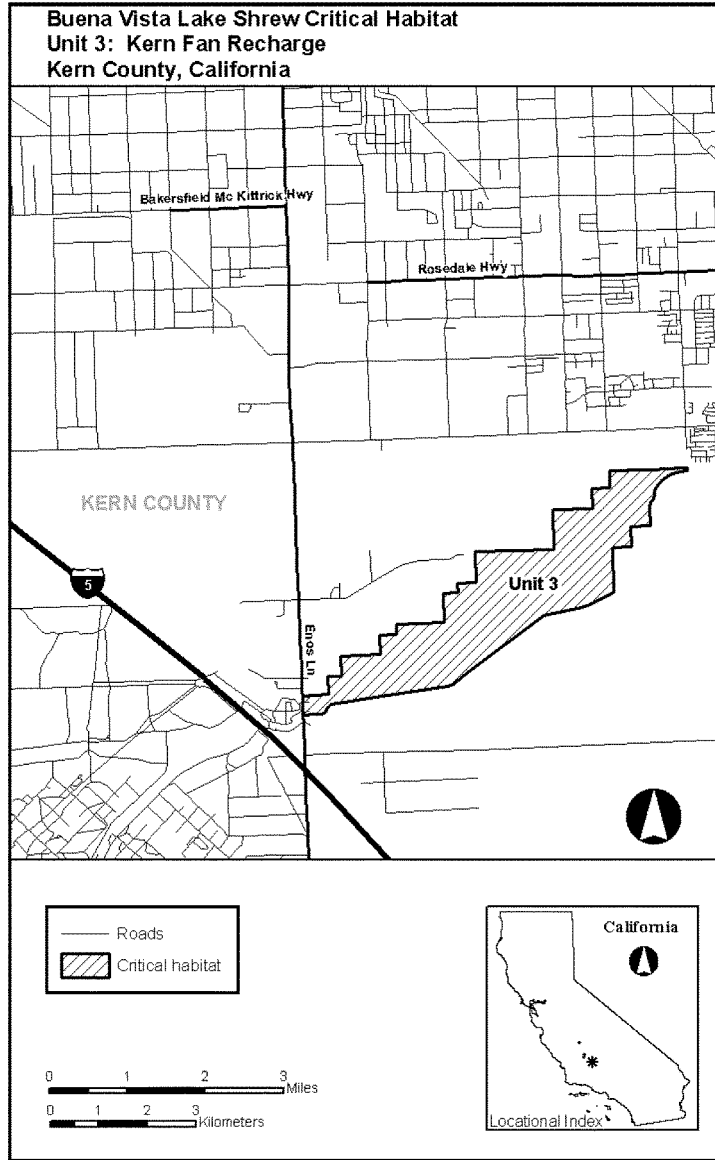
(8) Subunit 1B: Kern National Wildlife Refuge, Kern County, California. Map of Subunits 1A, 1B, and 1C is provided at paragraph (7) of this entry.

(9) Subunit 1C: Kern National Wildlife Refuge, Kern County, California. Map of Subunits 1A, 1B, and 1C is provided at paragraph (7) of this entry.

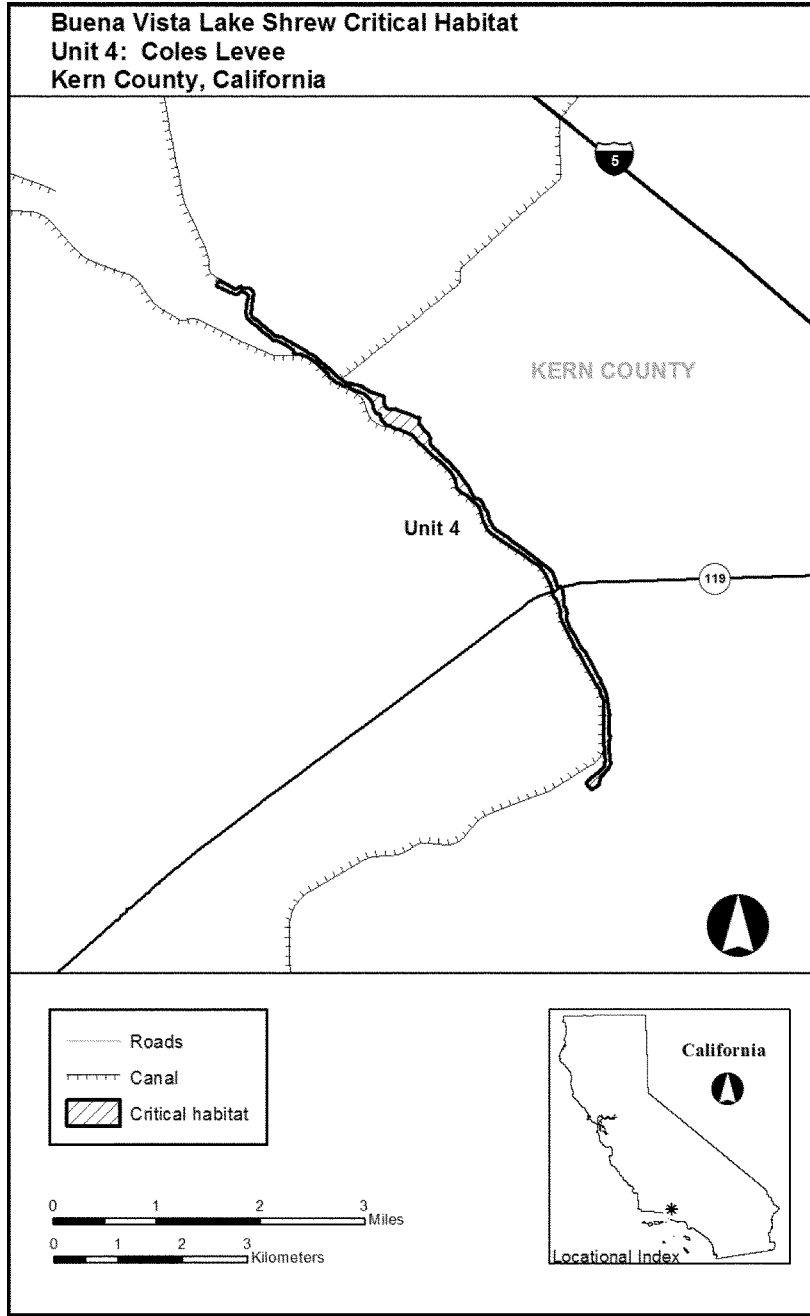
(10) Unit 2: Goose Lake, Kern County, California. Map follows:



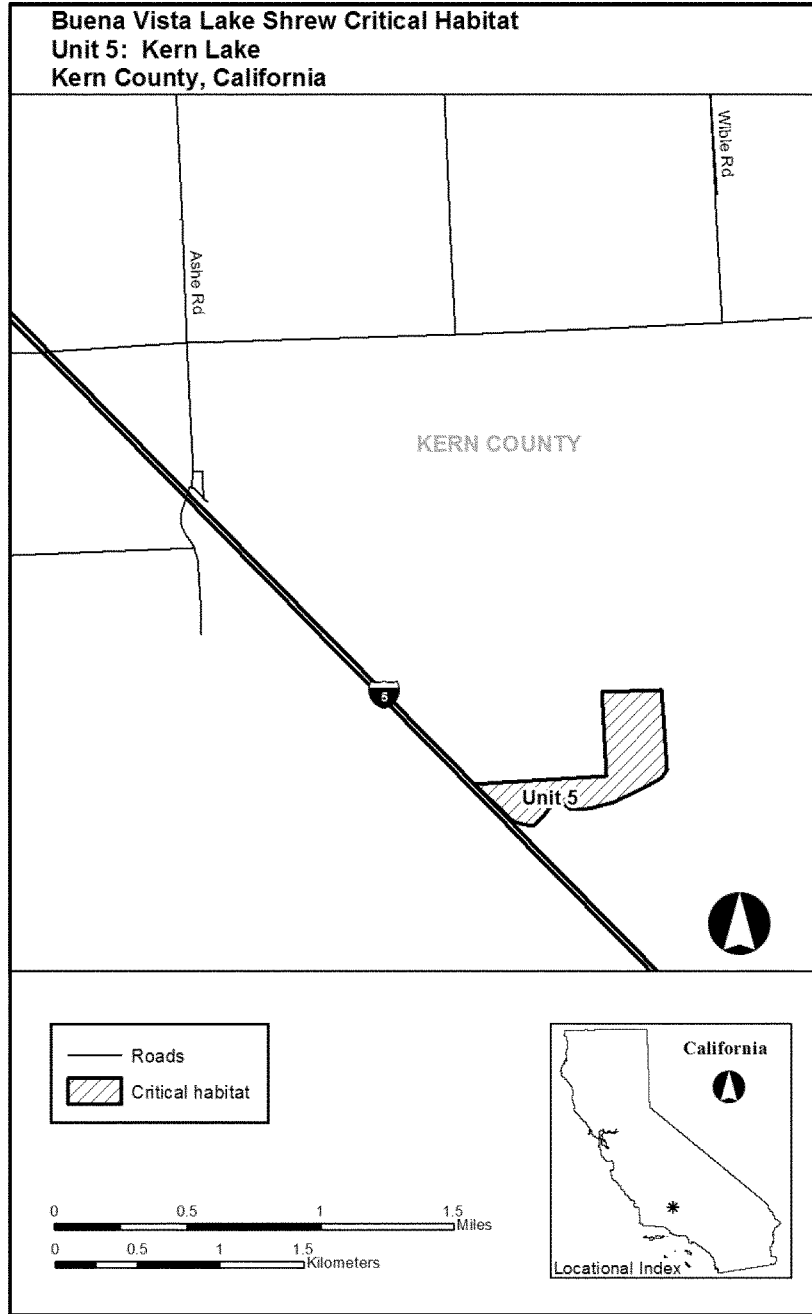
(11) Unit 3: Kern Fan Recharge, Kern County, California. Map follows:



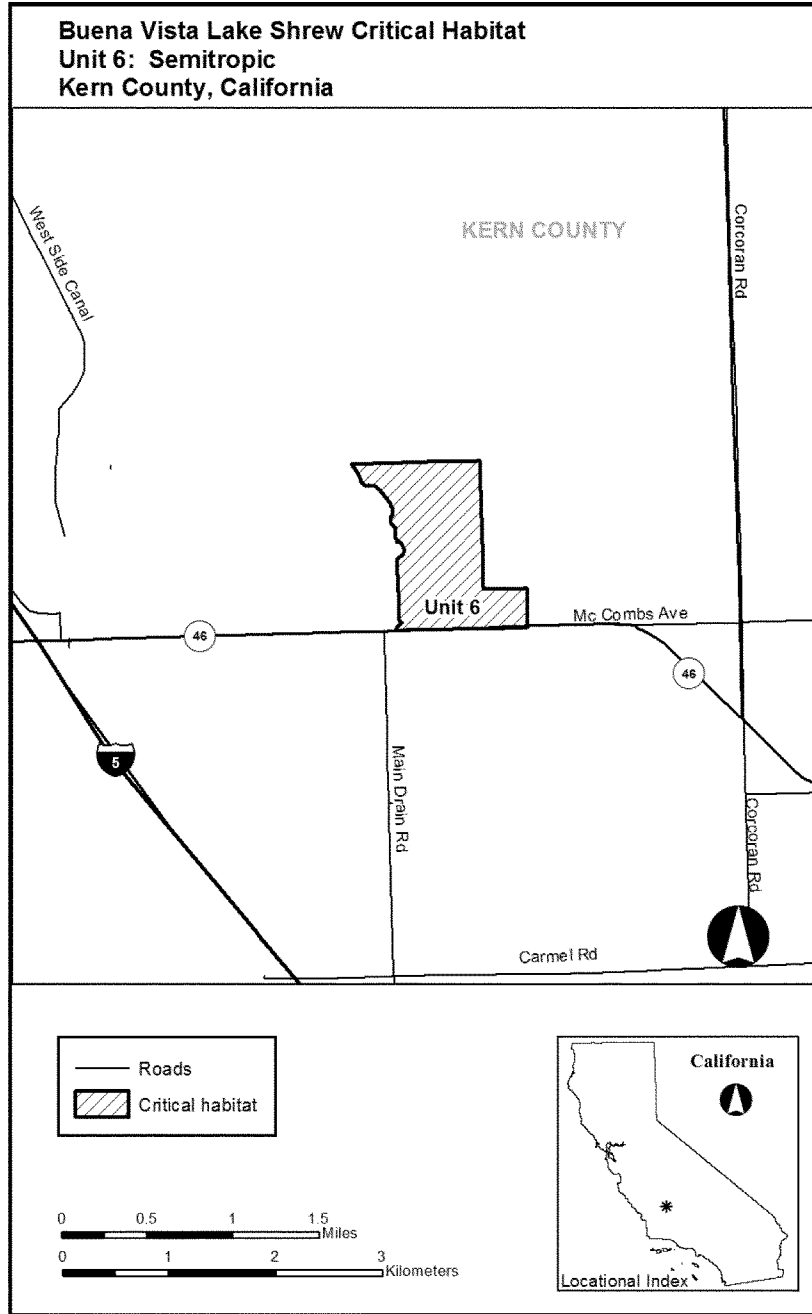
(12) Unit 4: Coles Levee, Kern County, California. Map follows:



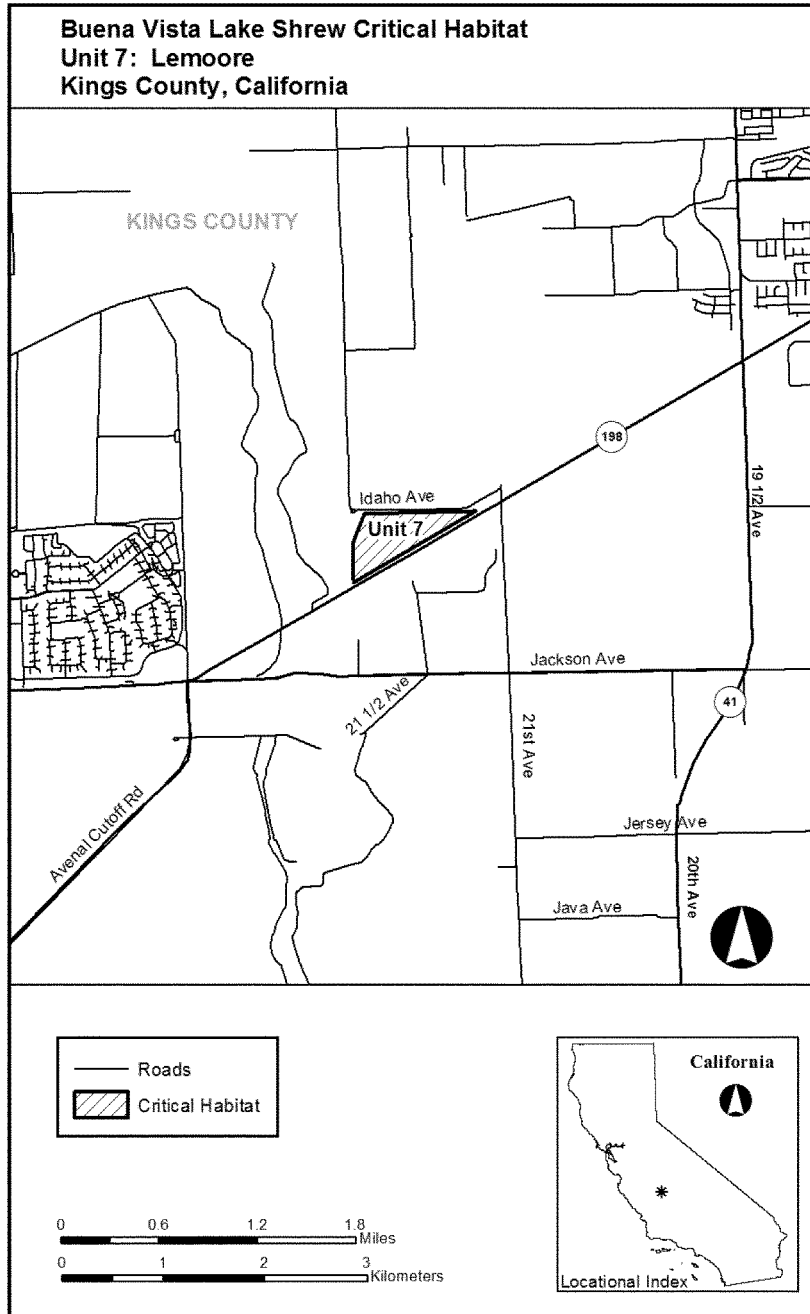
(13) Unit 5: Kern Lake, Kern County, California. Map follows:



(14) Unit 6: Semitropic, Kern County, California. Map follows:



(15) Unit 7: Lemoore, Kings County, California. Map follows:



\* \* \* \* \*

Dated: February 19, 2013.  
**Rachel Jacobsen,**  
*Principal Deputy Assistant Secretary for Fish  
and Wildlife and Parks.*  
[FR Doc. 2013-04785 Filed 3-4-13; 8:45 am]  
**BILLING CODE 4310-55-C**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 660

[Docket No. 130114034-3034-01]

RIN 0648-BC93

**Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Pacific Coast Groundfish Fishery; 2013 Tribal Fishery for Pacific Whiting**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule for the 2013 Pacific whiting fishery under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP), the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and the Pacific Whiting Act of 2006. This proposed rule would establish a formula, specifically [17.5 percent \* (U.S. Total Allowable Catch)] plus 16,000 metric tons (mt), for determining the Pacific whiting tribal allocation for 2013 for Pacific Coast Indian tribes that have a Treaty right to harvest groundfish.

**DATES:** Comments on this proposed rule must be received no later than April 4, 2013.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2013-0013 by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal eRulemaking Portal. Go to [www.regulations.gov](http://www.regulations.gov)#!/doCKETDetail;D=NOAA-NMFS-2013-0013; click the "Comment Now!" icon, complete the required fields, and enter or attach your comments.

- **Mail:** William W. Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115-0070, Attn: Kevin C. Duffy.

- **Fax:** 206-526-6736, Attn: Kevin C. Duffy.

**Instructions:** Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.),

confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:**

Kevin C. Duffy (Northwest Region, NMFS), phone: 206-526-4743, fax: 206-526-6736 and email: [kevin.duffy@noaa.gov](mailto:kevin.duffy@noaa.gov).

**SUPPLEMENTARY INFORMATION:****Electronic Access**

This proposed rule is accessible via the Internet at the Office of the Federal Register Web site at <https://www.federalregister.gov>. Background information and documents are available at the NMFS Northwest Region Web site at <http://www.nwr.noaa.gov/Groundfish/Groundfish-Fishery-Management/Whiting-Management> and at the Pacific Fishery Management Council's Web site at <http://www.pcouncil.org/>.

**Background**

The regulations at 50 CFR 660.50(d) establish the process by which the tribes with treaty fishing rights in the area covered by the FMP request new allocations or regulations specific to the tribes, in writing, during the biennial harvest specifications and management measures process. The regulations state that "the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus." The procedures NOAA employs in implementing tribal treaty rights under the FMP, in place since May 31, 1996, were designed to provide a framework process by which NOAA Fisheries can accommodate tribal treaty rights by setting aside appropriate amounts of fish in conjunction with the Pacific Fishery Management Council (Council) process for determining harvest specifications and management measures. The Council's groundfish fisheries require a high degree of coordination among the tribal, state, and federal co-managers in order to rebuild overfished species and prevent overfishing, while allowing fishermen opportunities to sustainably harvest over 90 species of groundfish managed under the FMP.

Since 1996, NMFS has been allocating a portion of the U.S. total allowable catch (TAC) (called Optimum Yield (OY) or Annual Catch Limit (ACL) prior

to 2012) of Pacific whiting to the tribal fishery, following the process established in 50 CFR 660.50(d). The tribal allocation is subtracted from the U.S. Pacific whiting TAC before allocation to the non-tribal sectors.

To date, only the Makah Tribe has prosecuted a tribal fishery for Pacific whiting. The Makah Tribe has annually harvested a whiting allocation every year since 1996 using midwater trawl gear. Since 1999, the tribal allocation has been made in consideration of their participation in the fishery. In 2008 the Quileute Tribe and Quinault Indian Nation expressed an interest in commencing participation in the whiting fishery. Tribal allocations for 2009-2012 were based on discussions with all three tribes regarding their intent for those fishing years. The table below provides a history of U.S. OYs/ACLs and the annual tribal allocation in metric tons (mt).

Year	U.S. OY	Tribal allocation
2000	232,000 mt	32,500 mt.
2001	190,400 mt	27,500 mt.
2002	129,600 mt	22,680 mt.
2003	148,200 mt	25,000 mt.
2004	250,000 mt	32,500 mt.
2005	269,069 mt	35,000 mt.
2006	269,069 mt	32,500 mt.
2007	242,591 mt	35,000 mt.
2008	269,545 mt	35,000 mt.
2009	135,939 mt	50,000 mt.
2010	193,935 mt	49,939 mt.
2011	290,903 mt	66,908 mt.
2012	186,037 mt TAC <sup>1</sup>	48,556 mt.

<sup>1</sup> Beginning in 2012, the United States started using the term Total Allowable Catch, based on the Agreement between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting.

In exchanges between NMFS and the tribes during December 2012, and again in January, 2013, the Makah and Quileute tribes indicated their intent to participate in the tribal whiting fishery in 2013. The Quinault Indian Nation indicated that they are not planning to participate in 2013, but reserved the right to participate if circumstances changed. The Hoh tribe has not expressed an interest in participating to date.

Since 2008, NMFS and the co-managers, including the States of Washington and Oregon, as well as the Treaty tribes, have been involved in a process designed to determine the long-term tribal allocation for Pacific whiting. At the September 2008 Council meeting, NOAA, the states and the Quinault, Quileute, and Makah tribes met and agreed on a process in which NOAA would provide to the tribes and states of Washington and Oregon a