

will accept information submitted after that date, that information should be submitted directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT**). Please note that while we will make every effort to address or incorporate information in our status review that we receive after March 15, 2010, in order for us to make a timely finding we request submittal of information and comments as soon as possible.

**ADDRESSES:** You may submit information by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: **FWS-R4-ES-2009-0029**; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information we receive on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us. If your hardcopy submission includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so.

Information and materials we receive, as well as supporting documentation we used in preparing this finding, will be available for public inspection on <http://www.regulations.gov>, or by appointment during normal business hours, at the Jacksonville Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

**FOR FURTHER INFORMATION CONTACT:** Micheal Jennings, U.S. Fish and Wildlife Service, Attn: Gopher Tortoise Review, 7915 Baymeadows Way, Suite 200, Jacksonville, Florida 32256; by telephone (904 731-3336); by facsimile (904 731-3045); or by e-mail: [northflorida@fws.gov](mailto:northflorida@fws.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Request for Information**

We, the U.S. Fish and Wildlife Service, published a 90-day finding on a petition to list the eastern population of the gopher tortoise (*Gopherus polyphemus*) as threatened in the **Federal Register** on September 9, 2009 (74 FR 46401). In that finding, we found that the petition presented substantial scientific or commercial information indicating that listing the eastern

population of the gopher tortoise may be warranted. We also initiated a status review to determine if listing the species is warranted, and asked the public to submit information to assist us in our status review. We asked the public to submit information by November 9, 2009, in order for us sufficient time to consider the information in the status review.

Since that time, several interested parties have notified us that they wish to submit additional information relevant to the listing of the eastern population of the gopher tortoise. They have indicated that the information could not be submitted before November 9, 2009, but could be submitted prior to the anticipated completion of the status review in 2010. We have advised these parties individually that we would continue to accept such information after November 9, 2009. However, to ensure that all interested parties have the same opportunity to provide relevant data, this notice clarifies that information to assist us in our review of the status of the gopher tortoise may be submitted to the *Federal eRulemaking Portal* through the date specified in **DATES**, and directly to the Field Office thereafter (see **DATES** and **ADDRESSES** above). This notice also corrects errors in contact information in the September 9, 2009, notice.

We are continuing to request information on the status of the gopher tortoise throughout its range. We request information from the public, other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning the status of the eastern portion of the gopher tortoise's range. We are seeking information regarding:

- (1) The species' historical and current status and distribution, its biology and ecology, and ongoing conservation measures for the species and its habitat;
- (2) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Act, which are:

- a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

- b) Overutilization for commercial, recreational, scientific, or educational purposes;

- c) Disease or predation;

- d) The inadequacy of existing regulatory mechanisms; or

- e) Other natural or manmade factors affecting its continued existence and threats to the species or its habitat; and

- (3) Information related to the genetics, status, distribution, and threats to the

gopher tortoise in the eastern portion of its range.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is a threatened or endangered species must be made "solely on the basis of the best scientific and commercial data available." Based on our status review, we will issue a 12-month finding on the petition as provided in section 4(b)(3)(B) of the Act.

#### **Authority**

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 28, 2009.

**Robyn Thorson,**

*Acting Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2010-311 Filed 1-11-10; 8:45 am]

**BILLING CODE 4310-55-S**

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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 17**

[RIN 1018-AW21]

[Docket No. FWS-R1-ES-2009-0046]

[MO 92210-0-0009-B4]

#### **Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Limnanthes floccosa* ssp. *grandiflora* (Large-Flowered Woolly Meadowfoam) and *Lomatium cookii* (Cook's Lomatium)**

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

**ACTION:** Proposed rule; reopening of comment period, availability of draft economic analysis, amended required determinations, and announcement of public hearing.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the proposed designation of critical habitat for two plants, *Limnanthes floccosa* ssp. *grandiflora* (large-flowered woolly meadowfoam) and *Lomatium cookii* (Cook's lomatium, also known as Cook's desert parsley), under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) and an amended required determinations

section of the proposal. We are reopening the comment period for an additional 30 days to allow all interested parties an opportunity to comment simultaneously on the proposed designation of critical habitat for *L.f. ssp. grandiflora* and *Lomatium cookii*, the associated DEA, and the amended required determinations section. If you submitted comments previously, you do not need to resubmit them because we have already incorporated previously submitted comments into the public record and will fully consider them in preparation of the final rule. We also announce a public hearing; the public is invited to review and comment on any of the above actions associated with the proposed critical habitat designation at the public hearing or in writing.

**DATES: Written Comments:** We will consider public comments received or postmarked on or before February 11, 2010. Please note that if you are using the *Federal eRulemaking Portal* (see “ADDRESSES” section, below), the deadline for submitting an electronic comment is Eastern Standard Time on this date.

**Public Hearing:** We will hold a public hearing on February 2, 2010, from 5:30 p.m. to 7:30 p.m. Pacific Time in Medford, Oregon. An informational meeting will be held earlier that day from 3:30 p.m. to 5:00 p.m.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. In the box that reads “Enter Keyword or ID,” enter the docket number for this proposed rule, which is FWS-R1-ES-2009-0046. Check the box that reads “Open for Comment/ Submission,” and then click the Search button. You should then see an icon that reads “Submit a Comment.” Please ensure that you have found the correct rulemaking before submitting your comment.

- *U.S. mail or hand-delivery:* Public Comments Processing, **Attn: FWS-R1-ES-2009-0046**; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

**Public Hearing:** We will hold the public hearing at the Jackson County Library Services Medford Library Branch Conference Room, 205 South Central Avenue, Medford, OR 97501.

**Availability of Comments:** We will post all comments and the public hearing transcript 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:** Paul Henson, State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266; by telephone (503-231-6179); or by facsimile (503-231-6195). 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 the proposed designation of critical habitat for *Limnanthes floccosa ssp. grandiflora* and *Lomatium cookii* that was published in the **Federal Register** on July 28, 2009 (74 FR 37314), the DEA of the proposed designation of critical habitat for *Limnanthes floccosa ssp. grandiflora* and *Lomatium cookii*, and the amended required determinations provided in this rule. Verbal testimony or written comments may also be presented during the public hearing (see the **Public Hearing** section below for more information). 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 areas as “critical habitat” under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to *Limnanthes floccosa ssp. grandiflora* and *Lomatium cookii* from human activity, the degree of which could be expected to increase due to a designation, and whether the benefit of designation would outweigh threats to the species caused by a designation, such that the designation of critical habitat would be prudent.

- 2) Specific information on:

- The amount and distribution of *L.f. ssp. grandiflora* and *Lomatium cookii* habitat;
- What areas occupied at the time of listing that contain features essential to the conservation of the species should be included in the designation and why;
- Special management considerations or protections that the features essential to *L.f. ssp. grandiflora* and *Lomatium cookii* conservation that have been identified in the proposed rule, including managing for the potential effects of climate change; and
- What areas not occupied at the time of listing are essential to the conservation of the species and why.

- 3) Specific information on *L.f. ssp. grandiflora* and *Lomatium cookii* and the habitat components (physical and biological features) essential to the conservation of these species, such as soil moisture gradient, microsite preferences, and light requirements.

- 4) Any information on the biological or ecological requirements of these species.

- 5) Land-use designations and current or planned activities in areas occupied by the species, and their impacts on the species and the proposed critical habitat.

- 6) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities and the benefits of including or excluding areas that are subject to these impacts.

- 7) Whether the benefits of excluding any particular area from critical habitat would outweigh the benefits of including that area as critical habitat under section 4(b)(2) of the Act.

- 8) 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.

You may submit your comments and materials concerning our proposed rule, the associated DEA, and our amended required determinations by one of the methods listed in the **ADDRESSES** section.

If you submit a comment via <http://www.regulations.gov>, your entire submission? including any personal identifying information? will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on <http://www.regulations.gov>. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation used to prepare this notice, will be available for public inspection at <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section). You may obtain copies of the proposed rule and DEA on the Internet

at <http://www.regulations.gov> at Docket Number FWS-R1-ES-2009-0046, from our Web site at <http://www.fws.gov/oregonfwo/>, or by mail from the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

### Public Hearing

We are holding a public hearing on the date listed in the **DATES** section at the address listed in the **ADDRESSES** section. We are holding this public hearing to provide interested parties an opportunity to provide verbal testimony (formal, oral comments) or written comments regarding the proposed critical habitat designation, the associated DEA, and the amended required determinations section. An informational session will be held on the day of the hearing from 3:30 p.m. to 5:00 p.m. Pacific Time. During this session, Service biologists will be available to provide information and address questions on the proposed rule in advance of the formal hearing.

People needing reasonable accommodations in order to attend and participate in the public hearings should contact Paul Henson, Oregon Fish and Wildlife Office, at 503-231-6179, as soon as possible (see **FOR FURTHER INFORMATION CONTACT** section). In order to allow sufficient time to process requests, please call no later than one week before the hearing date.

### Background

It is our intent to discuss only those topics directly relevant to the proposed designation of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* in this notice. For more information on previous Federal actions concerning *L.f.* ssp. *grandiflora* and *Lomatium cookii*, refer to the proposed designation of critical habitat published in the **Federal Register** on July 28, 2009 (74 FR 37314). For more information on *L.f.* ssp. *grandiflora* and *Lomatium cookii* or their habitat, please refer to the final listing rule published in the **Federal Register** on November 7, 2002 (67 FR 68004), or contact the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

On December 19, 2007, the Center for Biological Diversity filed a complaint against the Service (*Center for Biological Diversity v. Kempthorne, et al.*, 07-CV-2378 IEG, (S.D. CA)) for failure to designate critical habitat for four plant species, including *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*. In a settlement agreement reached on April 11, 2008, we agreed to complete a critical habitat determination for *L.f.* ssp. *grandiflora* and *Lomatium cookii* in

a single rulemaking because they share similar habitats. We also addressed the other two species in this settlement agreement; however, further work on these species will be completed in separate rules. We agreed to submit a proposed critical habitat rule for both *L.f.* ssp. *grandiflora* and *Lomatium cookii* to the **Federal Register** by July 15, 2009, and a final rule by July 15, 2010. The proposed rule for these two species was signed on July 13, 2009, and subsequently published in the **Federal Register** on July 28, 2009 (74 FR 37314).

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection, and specific areas outside the geographical area occupied by the 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 that affect critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Under section 4(b)(2) of the Act, we may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species. In making a decision to exclude areas, we consider the economic impact, impact on national security, or any other relevant impact of the designation.

### Draft Economic Analysis

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 have prepared a Draft Economic Analysis (DEA), which identifies and analyzes the potential economic impacts associated with the proposed designation of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* that we published

in the **Federal Register** on July 28, 2009 (74 FR 37314). The DEA quantifies the economic impacts of all potential conservation efforts for *L.f.* ssp. *grandiflora* and *Lomatium cookii*; some of these costs will likely be incurred regardless of whether or not we designate critical habitat. The economic impact of the proposed critical habitat designation is analyzed by comparing scenarios both “with critical habitat” and “without critical habitat.” The “without critical habitat” scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed critical habitat designation.

The DEA estimates impacts based on activities that are reasonably foreseeable, including, but not limited to, activities that are currently authorized, permitted, or funded, or for which proposed plans are currently available to the public. The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* over the next 20 years, which we determined to be the appropriate period for analysis because limited planning information was available for most activities to reasonably forecast activity levels for projects beyond a 20-year timeframe. The DEA 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 conservation efforts for *L.f.* ssp. *grandiflora* and *Lomatium cookii* associated with the following categories

of activity: (1) residential, urban, and commercial development; (2) transportation; and (3) species conservation and management activities. A number of economic activities considered in the economic analysis are not forecast to incur baseline or incremental impacts. Therefore, the DEA considers potential impacts to agriculture, grazing, timber harvest, fire management, recreation, and mining activities, but does not quantify potential costs because these activities are either not forecast to occur within the proposed critical habitat, or are not subject to a Federal nexus requiring consultation with the Service.

Total forecast baseline impacts over the 20 years following the designation of critical habitat (2010–2029) are estimated to be \$7.83 million to \$157 million using a 7 percent discount rate. Baseline impacts are those anticipated regardless of a critical habitat designation. The majority of the total future baseline impacts are associated with development projects (\$6.4 million to \$156 million). The broad range in baseline impacts is due to the range of impacts estimated for future development activities. Under the low-forecast development scenario, the analysis assumes that future development will occur only in units where it has occurred in the past, at its past rate. Under the high-forecast development scenario, this analysis assumes full build-out over the next 20 years of developable areas within units where development has occurred in the past, or within units where the proposed rule identifies development as a potential threat to the two plant species and their habitat. Baseline impacts to transportation and species management activities are the same under both the low-and high-impact scenarios. Under the low-impact scenario, subunit RV9B (Medford Airport) has the highest levels of impacts (\$2.2 million), stemming primarily from conservation actions applied to comply with section 404 of the Clean Water Act as part of a future airport runway expansion project. Under the high-impact scenario, subunit RV6A (White City) has the highest levels of impacts (\$32.8 million), stemming primarily from conservation actions applied to comply with section 404 of the Clean Water Act during future development projects.

The DEA estimates that total potential incremental economic impacts in areas proposed as critical habitat over the next 20 years will be \$95,200 to \$403,000 applying a 7 percent discount rate. Development activities would be the primary economic sector affected;

transportation activities and species habitat and conservation management activities would see some minor incremental impacts. All incremental impacts attributed to the designation of critical habitat are administrative costs associated with addressing adverse modification in future section 7 consultations. . As described above for baseline impacts, the range in total incremental impacts is due to the range in development forecasts.

The lack of incremental impacts stemming from sources other than administrative costs is due to the fact that critical habitat designation for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* is not expected to change the level, design, or regulation of forecast economic activities. That is, the designation of critical habitat is not expected to result in a decrease in economic activities or additional project modification above and beyond those that would be undertaken as part of the baseline (e.g., to comply with Clean Water Act requirements or to avoid jeopardy to the species).

As stated earlier, we are seeking 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, including information received during or in response to the public hearing. 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 the species.

#### Required Determinations—Amended

In our July 28, 2009, proposed rule (74 FR 37314), 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 in making these determinations. In this document, we affirm the information in our proposed rule concerning: Executive Order (E.O.) 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Paperwork Reduction Act, the National Environmental Policy Act, 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 determinations concerning E.O. 12866 (*Regulatory Planning and Review*), the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 13211 (Energy Supply, Distribution, and Use), E.O. 12630 (Takings), and the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

#### *Regulatory Planning and Review (E.O. 12866)*

The Office of Management and Budget (OMB) has determined that this proposed rule is not significant and has not reviewed this proposed rule under E.O. 12866. The OMB based its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of \$100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

#### *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 effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions), as described below. However, no regulatory flexibility analysis is required if the head of an agency certifies 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 a 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 *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as residential and commercial development. In order to determine whether it is appropriate for our agency to certify that this 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.

If we finalize this proposed critical habitat designation, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. In areas where *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* are present, Federal agencies are already required to consult with us under section 7 of the Act, due to the current endangered status of the species. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

Appendix A.1 of the DEA evaluates the potential economic effects of the proposed designation on small entities, based on the estimated incremental impacts associated with the critical

habitat. Based on the quantification of incremental impacts of the proposed designation of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* as detailed in Chapters 3, 4, and 5 of the DEA, we considered whether any small entities may bear the incremental impacts of this proposed rulemaking. The DEA does not forecast any incremental impacts beyond additional administrative costs associated with considering adverse modification during future Federal section 7 consultations. Small entities may participate in consultation under section 7 of the Act regarding *L.f.* ssp. *grandiflora* and *Lomatium cookii* as a third party applicant (the primary consulting parties being the Service and the Federal action agency) and may spend additional time and effort considering potential critical habitat issues. These incremental administrative costs of consultation borne by third parties were the subject of the analysis for potential impacts of the proposed rulemaking on small entities.

The DEA forecasts section 7 consultations associated with Federal involvement in development, transportation, and species conservation and management activities. The potential incremental costs associated with these activities are analyzed in Chapters 3, 4, and 5 of the DEA, and are summarized as follows.

- **Development.** Chapter 3 of the DEA anticipates that any future consultations on development will be triggered by the need for a section 404 permit pursuant to the Clean Water Act, which requires section 7 consultation if a project may affect a listed species. The U.S. Army Corps of Engineers (USACE) is the consulting Federal agency on consultations for section 404 permits. Future consultations for 404 permits would also include third parties, such as private developers or county agencies. Private developers may be considered small entities if their annual income is less than \$7.0 million. The DEA assumes that consultation costs will be borne by developers as an additional project expense, rather than by landowners who would experience consultation costs as an effect on land values.

- **Transportation.** As described in Chapter 4 of the DEA, all incremental impacts are forecast to be incurred by the Service and the Oregon Department of Transportation, which, as a State agency, is not considered small.

- **Species management conservation.** Chapter 5 describes that all incremental impacts are forecast to be borne by the U.S. Bureau of Land Management, a

Federal agency, and the Service. As a result, no incremental impacts are expected to be borne by small entities.

As incremental impacts to development activities are the only incremental impacts that may be borne by small entities, the remainder of this analysis focuses on development. Based on the forecast low scenario for future development activity (as described in Chapter 3 of the DEA), approximately 1.13 development projects are expected to occur annually within the study area. Based on the forecast high scenario for future development activity, approximately 6.55 development projects are expected to occur annually within the study area. This analysis assumes that all future development projects within the study area will require formal section 7 consultation triggered by the need for a section 404 permit pursuant to the Clean Water Act. Thus, 1.13 formal consultations are forecast to occur annually under the low scenario, while 6.55 formal consultations are forecast to occur annually under the high scenario. Applying the third party costs of addressing adverse modification during formal section 7 consultation (estimated at \$875) to the number of forecast consultations annually, the DEA estimates that the present value of incremental third party costs is equal to \$11,200 for all small entities combined under the low-impact scenario and \$65,000 under the high-impact scenario over 20 years. In terms of annualized impacts, these present values translate to \$1,050 for all small entities under the low-impact scenario and \$6,140 under the high-impact scenario (applying a 7 percent discount rate).

Third parties involved in past development consultations include Jackson County and private developers. The population of Jackson County was approximately 201,000 in 2008; thus, Jackson County exceeds the small governmental jurisdiction population threshold of 50,000 people. Forecast consultations on development projects are expected to include Jackson County agencies, local private developers, and relatively large commercial entities as contained in the consultation history. To the extent that forecast consultations include Jackson County agencies or large commercial entities, incremental administrative costs will not be borne by small entities.

However, a large portion of forecast consultations for development activities are expected to include local private developers, which may be small entities depending on their annual revenues. In the past, development projects within the study area have included site

preparation such as leveling of land, filling of wetlands, and excavation, in addition to building construction. Therefore, land subdivision, which includes excavating land and preparing it for future residential, commercial, and industrial construction, is identified as the most-applicable industry to capture local private developers that may bear incremental administrative costs due to the designation of critical habitat.

Absent information on the specific third parties that may be involved in future development consultations, the DEA conservatively assumes that all of the entities involved in future consultation efforts are small land subdivision companies. Expected annual impacts to the land subdivision industry (\$1,050 under the low-impact scenario and \$6,140 under the high-impact scenario) are significantly less than the maximum annual revenues that could be generated by a single small land subdivision entity (\$7.0 million). Annual revenues of small development companies within the study area are expected to be roughly \$910,000. While 95 land subdivision companies operate within the counties containing proposed critical habitat, the number of these that may be involved in development projects subject to consultation for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* is unknown. The estimated annualized impact may be borne by one company or distributed across many. If all impacts were borne by a single small development company, the estimated annualized impact would represent less than 1 percent of total annual revenues under both the low-and high-impact scenarios (assuming average annual revenues for a small development company of \$910,000).

In summary, we have considered whether the proposed critical habitat designation would result in a significant economic impact on a substantial number of small entities. As the only anticipated incremental cost of the designation are administrative costs associated with section 7 consultations, the vast majority of incremental costs associated with the proposed designation will be borne by Federal agencies. The only incremental costs identified for small entities are potential costs associated with development activities. Based on the DEA, even if all incremental costs associated with development activities were to be borne by a single development company, which we consider unlikely, the estimated annualized impact would be less than 1 percent of total annual revenues under both the low-and high-impact scenarios considered in the DEA.

For these reasons, we certify that, if promulgated, the proposed designation of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

#### *Executive Order 13211—Energy Supply, Distribution, and Use*

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions that may affect the supply, distribution, and use of energy. The OMB's guidance for implementing this Executive Order outlines nine outcomes that may constitute "a significant adverse effect" when compared to no regulatory action. As discussed in Appendix A.2, the DEA finds none of these criteria are relevant to this analysis. The DEA concludes that energy-related impacts associated with conservation actions within the potential critical habitat are not expected. All forecast impacts are expected to occur associated with the listing of *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*, regardless of the designation of critical habitat. Therefore, designation of critical habitat is not expected to lead to any adverse outcomes (such as a reduction in electricity production or an increase in the cost of energy production or distribution). A Statement of Energy Effects is not required.

#### *Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act, the Service makes the following findings:

a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or Tribal governments," with two exceptions. First, it excludes "a condition of federal assistance." Second, it excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and Tribal governments under

entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or Tribal governments "lack authority" to adjust accordingly. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

Critical habitat designation does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must consult with the Service to ensure that their actions do not destroy or adversely modify critical habitat under section 7. Designation of critical habitat may indirectly impact non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

b) As discussed in the DEA section of the proposed designation of critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*, we do not believe that this rule would significantly or uniquely affect small governments because it would not produce a Federal mandate of \$100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The DEA concludes that any incremental impacts are limited to the administrative costs of section 7 consultations; however, these are not expected to affect small governments. Consequently, a critical habitat designation would not significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

#### *Executive Order 12630—Takings*

In accordance with E.O. 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of

proposing critical habitat for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* in a takings implications assessment. Our taking implications assessment concludes that critical habitat for *L.f. grandiflora* and *Lomatium cookii* would not pose significant takings implications.

#### 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 Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

#### Authors

The primary authors of this rulemaking are the staff members of the Oregon Fish and Wildlife Office.

#### Authority

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

Dated: December 30, 2009.

#### Eileen Sobeck,

Acting Assistant Secretary of Fish Wildlife and Parks.

[FR Doc. 2010-323 Filed 1-11-10; 8:45 am]

BILLING CODE 4310-55-S

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R4-ES-2009-0066]  
[MO 92210-0-0009-B4]

#### Endangered and Threatened Wildlife and Plants; 12-month Finding on a Petition To Revise Critical Habitat for the Florida Manatee (*Trichechus manatus latirostris*)

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

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce our 12-month finding on a petition to revise critical habitat for the Florida manatee (*Trichechus manatus latirostris*) under the Endangered Species Act of 1973, as amended. After a thorough review of all available scientific and commercial information, we find that revisions to critical habitat for the Florida manatee are warranted. However, sufficient funds are not available due to higher priority actions such as court-ordered listing-related actions and judicially approved settlement agreements. We

intend to initiate rulemaking when we complete the higher priorities and have the necessary resources to do so.

**DATES:** The finding announced in this document was made on January 12, 2010.

**ADDRESSES:** This finding is available on the Internet at <http://www.regulations.gov> at Docket Number FWS-R4-ES-2009-0066. Supporting documentation we used to prepare this finding is available for public inspection, by appointment during normal business hours at the U.S. Fish and Wildlife Service, Jacksonville Ecological Services Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256-7517. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

**FOR FURTHER INFORMATION CONTACT:** U.S. Fish and Wildlife Service, Attn: Manatee CH Review, at the above address, by telephone at 904-731-3336, by facsimile at 904-731-3045, or by e-mail: [northflorida@fws.gov](mailto:northflorida@fws.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339. Please include "Florida manatee scientific information" in the subject line for faxes and emails.

**SUPPLEMENTARY INFORMATION:** Section 4(b)(3)(D)(ii) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that, for any petition that is found to present substantial scientific and commercial information indicating that the requested revisions to critical habitat may be warranted, we make a finding within 12 months of the date of receipt of the petition and publish a notice in the **Federal Register** indicating how we intend to proceed with the requested revision.

#### Background

##### Previous Federal Actions

We originally listed the Florida manatee (*Trichechus manatus latirostris*), a subspecies of the West Indian manatee (*Trichechus manatus*), as endangered in 1967 (32 FR 4001) under the Endangered Species Preservation Act of 1966 (Pub. L. 89-669; 80 Stat. 926). In 1970, Appendix A to 50 CFR Part 17 was amended to include additional names to the list of foreign endangered species (35 FR 18319). This listing incorporated West Indian manatees into the list under the Endangered Species Conservation Act of 1969 (Pub. L. 91-135; 83 Stat. 275) and encompassed the species' range in the Caribbean and northern South America,

thus including both Antillean (*T. m. manatus*) and Florida manatees in the listing. The West Indian manatee is currently listed as an endangered species under the Act and the population is further protected as a depleted stock under the Marine Mammal Protection Act (16 U.S.C. 1361-1407).

Critical habitat was designated for the Florida manatee on September 24, 1976 (41 FR 41914). This designation delineated specific waterways in Florida that were known to be important concentration areas for manatees at that time.

On December 19, 2008, we received a petition from Wildlife Advocacy Project, Save the Manatee Club, Center for Biological Diversity, and Defenders of Wildlife, requesting that critical habitat be revised for the Florida manatee (*Trichechus manatus latirostris*) under the Act and the Administrative Procedure Act. The petition clearly identified itself as a petition and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a).

In a January 17, 2009, letter to the petitioners, we responded that we had received the petition and would make a finding, to the maximum extent practicable within 90 days, as to whether or not the petition presents substantial information. We also stated that, if the initial finding concludes that the petition presents substantial information indicating that the requested action may be warranted, then we have 1 year from the date we received the petition to determine how we intend to proceed with the requested revision, and that we would promptly publish a notice of our intentions in the **Federal Register** at the end of this period.

We published our 90-day finding regarding the petition to revise critical habitat for the Florida manatee on September 29, 2009 (74 FR 49842). We determined that the petition presented substantial information indicating that revising critical habitat for the Florida manatee under the Act may be warranted, thus initiating this 12-month finding. Accordingly, we asked the public to submit information relevant to the finding by October 29, 2009. We have fully considered all information available and received in response to information requested in our 90-day finding.

This 12-month finding discusses only those topics directly relevant to the revision of existing critical habitat for the Florida manatee.