

Please note that even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, the agency recommends that you periodically check the Docket for new material.

**Privacy Act:** Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 571 as follows:

#### List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

#### PART 571—[AMENDED]

1. The authority citation for Part 571 would continue to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. S5.4.1 of § 571.213 would be amended by redesignating paragraphs (a) through (c) as paragraphs (b) through (d), adding a new paragraph (a), and revising the re-designated paragraphs (b) and (c) to read as follows:

#### § 571.213 Standard No. 213; child restraint systems.

\* \* \* \* \*

S5.4.1 *Performance requirements.* The webbing of belts provided with a child restraint system and used to attach the system to the vehicle or to restrain the child within the system shall—

(a) Have a minimum breaking strength for new webbing of not less than 15,000 N in the case of webbing used to secure a child restraint system to the tether and lower anchorages of a child restraint anchorage system, and not less than 11,000 N in the case of the webbing used to secure a child to a child restraint system. "New webbing" means webbing that has not been exposed to abrasion, light or micro-organisms as specified elsewhere in this section.

(b)(1) After being subjected to abrasion as specified in S5.1(d) or S5.3(c) of FMVSS 209 (§ 571.209), have a breaking strength of not less than 11,200 N for webbing used to secure a child restraint system to the tether and lower anchorages of a child restraint

anchorage system and 8,200 N for webbing used to secure a child to a child restraint system, when tested in accordance with S5.1(b) of FMVSS 209.

(2) A mass of  $2.35 \pm .05$  kg shall be used in the test procedure in S5.1(d) of FMVSS 209 for webbing used to secure a child restraint system to the tether and lower anchorages of a child restraint anchorage system. The mass is shown as (B) in Figure 2 of FMVSS 209.

(c)(1) After exposure to the light of a carbon arc and tested by the procedure specified in S5.1(e) of FMVSS 209 (§ 571.209), have a breaking strength of not less than 9,000 N for webbing used to secure a child restraint system to the tether and lower anchorages of a child restraint anchorage system and 6,600 N for webbing used to secure a child to a child restraint system, and shall have a color retention not less than No. 2 on the Geometric Gray Scale published by the American Association of Textile Chemists and Colorists, Post Office Box 886, Durham, NC.

(2) After being subjected to micro-organisms and tested by the procedures specified in S5.1(f) of FMVSS 209 (§ 571.209), shall have a breaking strength not less than 12,700 N for webbing used to secure a child restraint system to the tether and lower anchorages of a child restraint anchorage system and 9,300 N for webbing used to secure a child to a child restraint system.

\* \* \* \* \*

Issued: June 23, 2005.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

**RIN 1018-AU06**

#### Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants in California and Southern Oregon

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

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

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as

amended (Act), announce the reopening of the comment period on the proposal to designate critical habitat for four vernal pool crustaceans and eleven vernal pool plants in California and Southern Oregon, and the availability of the draft economic analysis of the proposed designation of critical habitat. The economic analysis identifies potential costs of approximately \$992 million over or 20-year period or \$87.5 million per year as a result of the designation of critical habitat, including those costs coextensive with listing. We are reopening the comment period for the proposal to designate critical habitat for these species to allow all interested parties an opportunity to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this comment period, and will be fully considered in the preparation of the final rule.

**DATES:** We will accept public comments until July 20, 2005.

**ADDRESSES:** Written comments and information may be submitted to us by any one of the following methods:

1. You may submit written comments and information to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W-2605, Sacramento, CA 95825;

2. You may hand-deliver written comments and information to our office, at the above address during normal business hours;

3. You may fax your comments to (916) 414-6710; or

4. You may also send comments by electronic mail (e-mail) to [fw1\\_vernalpool@fws.gov](mailto:fw1_vernalpool@fws.gov). Please see the "Public Comments Solicited" section below for file format and other information about electronic filing. In the event that our internet connection is not functional, please submit your comments by the alternate methods mentioned above.

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

#### SUPPLEMENTARY INFORMATION:

##### Public Comment Solicited

The final economic analysis concerning the designation of critical habitat for four vernal pool crustaceans and eleven vernal pool plants in California and Southern Oregon will consider information and recommendations from all interested

parties. We particularly seek comments concerning:

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

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

(3) Land use practices and current, planned, or foreseeable activities in the subject areas and their possible impacts on proposed critical habitats;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of these critical habitats, including impacts that may not have been addressed in the draft economic analysis and, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for these species;

(6) The draft economic analysis notes that approximately 80 percent of the total costs are represented by 25 percent of the critical habitat. We are considering excluding those areas, which can be identified in Table IV-4 of the draft economic analysis as the 20 highest cost areas based on FIPS. Please comment as to whether the Secretary should exclude these areas based on the benefits associated with exclusion or inclusion of these areas in the final critical habitat which have not already been identified. The basis of the proposed exclusion that is being considered is purely economic;

(7) Should the Secretary exclude the 35 highest cost areas based on the figures in Table IV-4 of the draft economic analysis? What are the benefits of exclusion or inclusion of these areas?

(8) Should the Secretary exclude the 50 highest cost areas based on the figures in Table IV-4 of the draft economic analysis? What are the benefits of exclusion or inclusion of these areas?

(9) Table IV-2 of the draft economic analysis details increases in the costs per home related to this critical habitat designation. In addition to any other exclusions, the Secretary is considering excluding any areas identified as experiencing a per-home increase in

excess of \$3,000 from the designation of critical habitat. Please identify and benefits related to the exclusion or inclusion of those areas;

(10) Are there any benefits or costs of the proposed designation that the draft economic analysis fails to capture?

Please provide as much information as possible related to any costs or benefits that were not identified; and

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

All previous comments and information submitted during the initial comment period need not be resubmitted. Our final determination on the proposed critical habitat will take into consideration all comments and any additional information received. Refer to the **ADDRESSES** section above for information on how to submit written comments and information.

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. If you do not receive a confirmation from the system that we have received your email message, contact us directly by calling our Sacramento Fish and Wildlife Office at telephone number (916) 414-6600, during normal business hours.

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

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours, in our Sacramento Fish and Wildlife Office at the above address. You may obtain copies of the proposed rule and draft economic analysis from

the above address, by calling (916) 414-6600, or from our Web site at <http://sacramento.fws.gov/>.

### Background

On September 24, 2002, we proposed a total of 128 units of critical habitat for these 15 vernal pool species (Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*), vernal pool tadpole shrimp (*Lepidurus packardii*), Butte County meadowfoam (*Limnanthes floccosa* ssp. *californica*), Contra Costa goldfields (*Lasthenia conjugens*), Hoover's spurge (*Chamaesyce hooveri*), fleshy (or succulent) owl's-clover (*Castilleja campestris* ssp. *succulenta*), Colusa grass (*Neostapfia colusana*), Greene's tuctoria (*Tuctoria greenei*), hairy Orcutt grass (*Orcuttia pilosa*), Sacramento Orcutt grass (*Orcuttia viscida*), San Joaquin Valley Orcutt grass (*Orcuttia inaequalis*), slender Orcutt grass (*Orcuttia tenuis*), and Solano grass (*Tuctoria mucronata*)), totaling approximately 1,662,762 acres (ac) (672,920 hectares (ha)) in 36 counties in California and 1 county in Oregon (67 FR 59884). In accordance with our regulations at 50 CFR 424.16(c)(2), we opened a 60-day comment period on this proposal, which closed on November 25, 2002, but was subsequently extended until December 23, 2002. An economic analysis was completed on the proposed designation and the Draft Economic Analysis (DEA) was released to the public for comment on November 21, 2002 (67 FR 70201). The public comment period was reopened on March 14, 2003, for an additional 14 days (68 FR 12336).

All the species listed above live in vernal pools (shallow depressions that hold water seasonally), swales (shallow drainages that carry water seasonally), and ephemeral freshwater habitats. None are known to occur in riverine waters, marine waters, or other permanent bodies of water. The vernal pool habitats of these species have a discontinuous distribution west of the Sierra Nevada that extends from southern Oregon through California into northern Baja California, Mexico. The species have all adapted to the generally mild climate and seasonal periods of inundation and drying that help make the vernal pool ecosystems of California and southern Oregon unique.

Section 4(b)(2) of the Act requires that the Secretary of the Interior shall designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact,

impact to national security, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if she determines that the benefit of such exclusion outweighs the benefits of specifying such area as part of the critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species concerned. During the development of the final designation, we reviewed the lands proposed as critical habitat based on public comments and any new information that may have become available and refined the boundaries of the proposal to remove lands determined not to be essential to the conservation of the 15 vernal pool species. We then took into consideration the potential economic impacts of the designation, impacts on national security, and other relevant factors such as partnerships and on-going management actions benefiting the species covered by the designation. Next, we determined that the benefits of excluding certain lands from the final designation of critical habitat for the 15 vernal pool species outweighed the benefit of including them in the designation, and the specific exclusions would not result in the extinction of any of the species involved. Lands excluded from the final designation based on policy and management plans or programs that provide a benefit to the species included: lands within specific National Wildlife Refuges and Fish Hatcheries; Department of Defense lands; Tribal lands; State Wildlife Areas and Ecological Reserves; and lands covered by habitat conservation plans or other management plans that provide a benefit for the species. We also excluded lands proposed as critical habitat in Butte, Madera, Merced, Sacramento, and Solano counties based on potential economic impacts.

On July 15, 2003, we made a final determination of critical habitat for the 15 vernal pool species. On August 6, 2003, the final rule to designate critical habitat for 4 vernal pool crustaceans and 11 vernal pool plants was published in the **Federal Register** (68 FR 46684). The final designation included approximately 1,184,513 acres (ac) (417,989 hectares (ha)) of land within California and Southern Oregon. However, the area estimate did not reflect the exclusion of lands within the following counties: Butte, Madera, Merced, Sacramento, and Solano from the final designation pursuant to section 4(b)(2) of the Act. The final critical habitat designation with the five

counties removed totaled approximately 739,105 ac (299,106 ha).

In January 2004, Butte Environmental Council, and several other organizations, filed a complaint alleging that we: (1) Violated the Act, and the Administrative Procedure Act (APA), by excluding over 1 million acres from the final designation of critical habitat for the 15 vernal pool species; (2) violated mandatory notice-and-comment requirements under the Act and APA; and (3) have engaged in an unlawful pattern, practice, and policy by failing to properly consider the economic impacts of designating critical habitat. On October 28, 2004, the Court signed a Memorandum and Order that remanded the final designation to the Service in part. In particular, the court ordered us to: (1) Reconsider the exclusions from the final designation of critical habitat for the 15 vernal pool species, with the exception of those lands within the 5 California counties that were excluded based on potential economic impacts, and publish a new final determination as to those lands within 120 days; and (2) reconsider the exclusion of the five California counties based on potential economic impacts and publish a new final determination no later than July 31, 2005. The court also made it clear that the partial remand would not affect the areas included in the August 6, 2003, final designation (68 FR 46684).

On December 28, 2004, we published a notice (69 FR 77700) that addressed the first requirement of the remand—the reconsideration of the non-economic exclusions from the final designation of critical habitat for the 15 vernal pool species, with the exception of those lands within the 5 California counties that were excluded based on potential economic impacts, and reopened the public comment period. The final non-economic exclusions were published in a **Federal Register** notice on March 8, 2005 (70 FR 11140). The second requirement of the order (economic exclusions) will be finalized by the July 31, 2005, court-ordered date.

The current draft economic analysis estimates the foreseeable economic impacts of the critical habitat designation on government agencies and private businesses and individuals. The economic analysis identifies potential costs of approximately \$992 million over or 20-year period or \$87.5 million per year as a result of the designation of critical habitat, including those costs coextensive with listing. At this time the Service has not identified any areas to exclude under section 4(b)(2) of the Act. The Service will consider excluding areas if the benefits of excluding them

from the critical habitat designation outweigh the benefits of including them. The economic analysis presents the Service's tentative conclusions with respect to the economic effects of the proposed critical habitat designation. The Service will not make any final decisions about exclusions, however, until it has obtained public comment on the economic analysis. The Service is interested in comments from the public on the economic analysis, on whether any of the areas identified in the economic analysis as having economic effects should be excluded for economic reasons, and whether those or any other areas should be excluded for other reasons. Reopening of the comment period will provide the public an opportunity to evaluate and comment on both the proposed rule and the draft economic analysis. Comments already submitted on the proposed designation of critical habitat for four vernal pool crustaceans and eleven vernal pool plants do not need to be resubmitted as they will be fully considered in the final determination.

#### **Required Determinations—Amended**

##### *Regulatory Planning and Review*

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. However, because the draft economic analysis suggests that the potential economic impacts of conservation activities related to this designation are anticipated to be \$87.5 million per year, we do not anticipate that this designation will have an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect 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 an agency certifies the rule will not have a significant economic impact on a substantial number of small

entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this 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 this proposed designation of critical habitat for the 15 vernal pool species would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, residential and commercial development, mining, sand and gravel, and agriculture). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of

critical habitat would be incorporated into the existing consultation process.

In our economic analysis of this proposed designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of these 15 vernal pool species and proposed designation of their critical habitat. We determined from our analysis that the small business entities that may be affected are firms in the new home construction sector. It appears that approximately three small businesses may be affected in Sacramento County, and one, or less than one, each in Butte, Solano, Stanislaus, Monterey, Contra Costa, Merced, and Tehama counties, for a total of approximately six firms. These firms may be affected by activities associated with the conservation of the 15 vernal pool species, inclusive of activities associated with listing, recovery, and critical habitat. In total, these small businesses account for approximately four percent of small businesses located in the potentially affected areas. In our previous final designation for these 15 vernal pool species 68 FR 46684; August 6, 2003), Butte, Madera, Merced, Sacramento, and Solano counties were excluded pursuant to section 4(b)(2) of the Act because we found that potentially disproportionate economic impacts from the designation in those counties outweighed the benefit of including those areas in the final designation. Approximately five of the six small business firms that may be affected by this designation occur in these counties. Thus, in the development of our final rule, we will explore potential alternatives to minimize impacts to these affected small business entities. These alternatives may include the exclusion of all or portions of critical habitat units in these counties. As such, we expect that the final designation of critical habitat for the 15 vernal pool species will not result in a significant impact on small business entities.

Therefore, we believe that the designation of critical habitat for the 15 vernal pool species will not result in a disproportionate effect to these small business entities. However, we are seeking comment on potentially excluding these areas from the final designation if it is determined that there will be a substantial and significant impact to small real estate development businesses in these particular watersheds.

We determined that the critical habitat designation is expected to have the largest impacts on the market for developable land. Critical habitat for

vernal pools occurs in a number of rapidly growing communities. Regulatory requirements to avoid onsite impacts and mitigate offsite impacts affect the welfare of both producers and consumers. Two scenarios are considered. In the first scenario, avoidance requirements are assumed to reduce the stock of new housing. Given the importance of regulation of housing development even in the absence of critical habitat, this scenario is taken as the base case. In this scenario, critical habitat is expected to impose losses of approximately \$965 million relating to lost development opportunities over the 20-year study period, or approximately \$85.2 million annually. An alternative scenario is constructed in which all avoidance requirements are accommodated through densification. In this case, welfare losses from critical habitat are \$820.2 million over the 20-year study period.

These economic impacts of critical habitat designation vary widely among the 35 affected counties, and even within counties. The counties most impacted by the critical habitat designation include: Sacramento (\$374 million), Butte (\$145 million), Placer (\$120 million), Solano (\$87 million), Fresno (\$43 million), Madera (\$33 million), Monterey (\$29 million), Shasta (\$20 million), Tehama (\$19 million) and Merced (\$16 million). Further, economic impacts are unevenly distributed within counties. The analysis was conducted at the census tract level, resulting in a high degree of spatial precision.

Please refer to our draft economic analysis of this designation for a more detailed discussion of potential economic impacts.

#### *Executive Order 13211*

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues.

Seventeen energy production facilities are planned or under construction in the counties with critical habitat. A Geographic Information System (GIS) analysis was used to compute their proximity to the nearest critical habitat designation. Fifteen of those plants are at least 1 mile from proposed critical habitat and are judged to be at low risk of disruption. The projects for the other two energy production facilities have

been through the planning phases and are currently under construction. As such, the designation of critical habitat for these 15 vernal pool species is not expected to have additional impacts on these projects (please refer to the draft economic analysis for further discussion of these two facilities and our evaluation).

On the basis of the information from our draft economic analysis, the designation of critical habitat for the 15 vernal pools is not expected to significantly affect any of these 17 energy production facilities, and thus not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action and no Statement of Energy Effects is required.

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

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), 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. It excludes "a condition of federal assistance." It also 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. (At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) "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."

The designation of critical habitat 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 ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. 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 draft economic analysis of the proposed designation of critical habitat for the 15 vernal pool species, there are many small government entities located adjacent to the boundaries of the proposed designation. It is likely that small governments involved with developments and infrastructure projects will be interested parties or involved with projects involving section 7 consultations for the vernal pool species within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a city's budget. Consequently, we do not believe that the designation of critical habitat for the 15 vernal pool species will significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

The primary potential economic effects identified in the analysis identified the California Department of Transportation, energy production facilities, and the University of California as entities that may incur impacts. Please refer to the discussion above under Executive Order 13211 for our evaluation of potential effects on energy production facilities.

The California Department of Transportation is planning to undertake a number of projects to build, upgrade, and maintain the state's road network in areas of vernal pool critical habitat. Drawing on typical mitigation requirements for past transportation

projects, impacts of critical habitat on this type of activity are estimated to be \$16.9 million.

The University of California selected Merced County as its preferred location for its tenth campus. Over the last several years, a broad planning effort has been undertaken to determine the preferred location, size, design, and financing for both the core campus and the associated university community. Many variables for the project remain undetermined at this time. Possible sites for campus and community development will impact about 66.5 ac (26.9 ha) of wetted vernal pools, pools/swales, and seasonal wetlands. Preliminary estimates of mitigation costs for an early campus and community development prototype calculated the wetlands mitigation costs at about \$135,000 per wetted acre affected. At this unit cost, total mitigation costs associated with the current estimate of wetted vernal pool loss would be about \$10 million. These estimates were based on very approximate and preliminary assumptions. The actual mitigation and other costs associated with campus and community development will be determined over the next few years, as the Merced County Natural Community Conservation Plan/Habitat Conservation Plan is developed. At this time, the precise levels of conservation and mitigation associated with this project are not possible to predict until the Service has issued its Biological Opinion and the Army Corps of Engineers has approved a 404 permit for the project.

#### *Takings*

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for the 15 vernal pool species. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for the vernal pool species does not pose significant takings implications.

#### **Author**

The primary authors of this notice are staff from the Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

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

Dated: June 23, 2005.

**Craig Manson,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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