

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) We do not believe that this rule will significantly or uniquely affect small governments. As discussed in the draft economic analysis, five small local governments, the City of Perris (population 36,189), Lake Elsinore (population 28,928), Lakeview (population 1,619), Nuevo (population 4,135), and Winchester (population 2,155), are located adjacent to habitat that has features essential to the conservation of this taxon. There is no record of consultations between the Service and these cities since *Atriplex coronata* var. *notatior* was listed in 1998. It is unlikely that these cities would be involved in a land development project involving a section 7 consultation, although a city may be involved in land use planning or permitting, and may play a role as an interested party in infrastructure projects (such as the City of Perris with the San Jacinto River Flood Control Project). Any cost associated with this activity/involvement is anticipated to be a very small portion of the city's budget. Consequently, we do not believe that critical habitat designation would significantly or uniquely affect small government entities. As such, Small Government Agency Plan is not required.

### 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 *Atriplex coronata* var. *notatior*. 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 *Atriplex coronata* var. *notatior* does not pose significant takings implications.

### Author

The primary authors of this notice are the staff of the Carlsbad 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: August 23, 2005.

### Paul Hoffman,

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 05-17451 Filed 8-29-05; 3:05 pm]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

**RIN 1018-AT86**

#### Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Navarretia fossalis* (spreading navarretia)

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

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

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the proposed designation of critical habitat for *Navarretia fossalis*, and the availability of a draft economic analysis of the proposed designation of critical habitat. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted on this proposed rule need not be resubmitted as they have already been incorporated into the public record and will be fully considered in our final determination.

**DATES:** We will accept public comments and information until September 14, 2005.

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

1. You may submit written comments and information to Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011;
2. You may hand-deliver written comments and information to our Carlsbad Fish and Wildlife Office at the above address, or fax your comments to 760/431-9624; or
3. You may send your comments by electronic mail (e-mail) to

*fw1cfwo\_naf0@fws.gov*. For directions on how to submit electronic comments, see the "Public Comments Solicited" section. In the event that our internet connection is not functional, please submit your comments by the alternate methods mentioned above.

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone 760/431-9440; facsimile 760/431-9624).

### SUPPLEMENTARY INFORMATION:

#### Public Comments Solicited

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation, published in the **Federal Register** on October 7, 2004 (69 FR 60110), and on our draft economic analysis of the proposed designation. We will consider information and recommendations from all interested parties. We are particularly interested in 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 Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), including whether the benefits of exclusion outweigh the benefits of specifying such area as part of the critical habitat;

(2) Specific information on the amount and distribution of *Navarretia fossalis* and its habitat, and which habitat features and geographic areas essential to the conservation of this species and why;

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

(4) Information on how many of the State and local environmental protection measures referenced in the draft economic analysis were adopted largely as a result of the listing of *Navarretia fossalis*, and how many were either already in place or enacted for other reasons;

(5) Any foreseeable economic, environmental, or other impacts resulting from the proposed designation or coextensively from the proposed listing;

(6) Whether the draft economic analysis identifies all State and local costs attributable to the proposed critical habitat designation, and information on any costs that have been inadvertently overlooked;

(7) Whether the draft economic analysis makes appropriate assumptions regarding current practices and likely

regulatory changes imposed as a result of the designation of critical habitat;

(8) Whether the draft economic analysis correctly assesses the effect on regional costs associated with land use controls that derive from the designation of critical habitat;

(9) Whether the economic analysis appropriately identifies all costs that could result from the designation, in particular, any impacts on small entities or families;

(10) Whether the designation would result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion under 4(b)(2) of the Act from the final designation;

(11) Whether it is appropriate that the analysis does not include the costs of project modification that are the result of informal consultation only;

(12) Whether there is information about areas that could be used as substitutes for the economic activities planned in critical habitat areas that would offset the costs and allow for the conservation of critical habitat areas; and

(13) How our approach to critical habitat designation could be improved or modified 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 on the proposed rule need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning the draft economic analysis and the proposed rule by any one of several methods (see **ADDRESSES** section). Our final determination regarding designation of critical habitat for *Navarretia fossalis* will take into consideration all comments and any additional information received during both comment periods. On the basis of public comment on this analysis and on the critical habitat proposal, and on the final economic analysis, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

Please submit electronic comments in an ASCII file and avoid the use of any special characters or any form of encryption. Also, please include "Attn: *Navarretia fossalis*" and your name and return address in your e-mail message regarding the *Navarretia fossalis* proposed rule or the draft economic analysis. If you do not receive a confirmation from the system that we

have received your e-mail message, please submit your comments in writing using one of the alternate methods described in the **ADDRESSES** section.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish 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 public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office at the address listed under **ADDRESSES**. Copies of the proposed critical habitat rule for *Navarretia fossalis* and the draft economic analysis are also available on the Internet at <http://www.fws.gov/pacific/carlsbad/NAFO.htm>. In the event that our internet connection is not functional, please obtain copies of documents directly from the Carlsbad Fish and Wildlife Office.

#### Background

On October 7, 2004, we published a proposed rule in the **Federal Register** (69 FR 60110) to designate critical habitat for *Navarretia fossalis* pursuant to the Act. We proposed to designate a total of approximately 4,301 acres (ac) (1,741 hectares (ha)) of critical habitat in San Diego and Los Angeles Counties, California. The first comment period for the *Navarretia fossalis* proposed critical habitat rule closed on December 6, 2004. For more information on this species, refer to the final rule listing this species as threatened, published in the **Federal Register** on October 13, 1998 (63 FR 54975), and the Recovery Plan for the Vernal Pools of Southern California (Recovery Plan) finalized on September 3, 1998 (Service 1998).

Critical habitat is defined in section 3 of the Act as the specific areas within the geographic 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 geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat on the basis of the best scientific and commercial data available, after taking into consideration the economic impact, impact to national security, and any other relevant impacts of specifying any particular area as critical habitat. We have prepared a draft economic analysis of the October 7, 2004 (69 FR 60110), proposed designation of critical habitat for *Navarretia fossalis*.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of *Navarretia fossalis*, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for *Navarretia fossalis* in habitat areas with features essential to the conservation of this taxon. The analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (e.g., lost economic opportunities associated with restrictions on land use). This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this analysis looks retrospectively at costs that have been incurred since the date the species was listed as an endangered

species and considers those costs that may occur in the 20 years following the designation of critical habitat.

This analysis determined that costs involving conservation measures for *Navarretia fossalis* would be incurred for activities involving residential, industrial, and commercial development; water supply; flood control; transportation; agriculture; the development of HCPs; and the management of military bases, other Federal lands, and other public or conservation lands.

Pre-designation costs include those *Navarretia fossalis*-related conservation activities associated with sections 4, 7, and 10 of the Act that have accrued since the time that *Navarretia fossalis* was listed as threatened (63 FR 54975; October 13, 1998), but prior to the final designation of critical habitat. The total pre-designation costs are estimated at \$7.9 million.

Post-designation effects would include likely future costs associated with *Navarretia fossalis* conservation efforts in the 20-year period following the final designation of critical habitat in October 2005 (effectively 2006 through 2025). If critical habitat is designated as proposed, total costs would be expected to range between \$13.9 and \$32.1 million over the next 20 years (an annualized cost of \$1.3 to \$3.0 million). However, if all habitat with features essential to the conservation of the taxon were designated critical habitat in a final rule, total costs would be expected to range between \$48.6 and \$129.0 million over the next 20 years (an annualized cost of \$4.6 to \$12.2 million).

#### Required Determinations—Amended

##### *Regulatory Planning and Review*

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues. However, because the draft economic analysis indicates the potential economic impact associated with a designation of all habitat with features essential to the conservation of this species would total no more than \$12.2 million per year, we do not anticipate that this rule would have an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the time line for publication in the **Federal Register**, the Office of Management and Budget (OMB) did not formally review 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 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. 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 *Navarretia fossalis* 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, industrial, and commercial development). 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. Our analysis determined that costs involving conservation measures for *Navarretia fossalis* would be incurred for activities involving residential, industrial, and commercial development; water supply; flood control; transportation; agriculture; the development of HCPs; and the management of military bases, other Federal lands, and other public or conservation lands.

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 this species and proposed designation of its critical habitat. Critical habitat designation is expected to result in additional costs to real estate development projects due to mitigation and other conservation costs that may be required. The affected land is located within Riverside, San Diego, and Los Angeles Counties (although the proposed designation is contained in only Los Angeles and San Diego Counties), and under private ownership by individuals who will either undertake a development project on their own or sell the land to developers for development. For businesses involved with land development, the relevant threshold for "small" is annual revenues of \$6 million or less. The North American Industry Classification System (NAICS) code 237210 is comprised of establishments primarily engaged in servicing land (*e.g.*, excavation, installing roads and utilities) and subdividing real property into lots for subsequent sale to builders. Land subdivision precedes actual construction, and typically includes residential properties, but may also include industrial and commercial properties.

It is likely that development companies, the entities directly impacted by the regulation, would not bear the additional cost of *Navarretia fossalis* conservation (approximately \$2.3 to \$6.7 million annualized) within the essential habitat, but pass these costs to the landowner through a lower land purchase price. Considering approximately 65 percent of the developable land within the essential habitat is classified as agriculture land, it is likely that farmers will bear some of the costs. The remaining 35 percent of the potentially developable land is privately owned and classified as vacant. To comply with the SBA recommendation that Federal agencies consider impacts to entities that may be indirectly affected by the proposed regulation, this screening level analysis presents information on land subdivision and farming businesses for Riverside, San Diego, and Los Angeles Counties as these are the businesses that would likely be impacted directly or indirectly by the regulation. The majority of the land subdivision and farming businesses within the counties are considered small businesses.

It is important to note that the identity and number of land subdivision and farming businesses potentially impacted by the critical habitat designation is not known. In addition, the identity and number of affected businesses classified as "small" is also not known. Nevertheless, the county-level information is the smallest region for which data relevant to this analysis exist (see Table A-1 in the draft economic analysis). This clearly over-represents the potential number of small businesses impacted by development-related *Navarretia fossalis* conservation efforts as the privately owned developable land within the essential habitat (approximately 15,084 ac (6,104.5 ha)) comprises less than two-tenths of one percent of the land area in the counties (9,908,520 ac (4,009,978 ha)), and only 2,969 ac (1,201.6 ha) of this private land is forecasted to be developed between 2006 and 2025. The effects on small businesses in the land development sector would be concentrated in San Diego County, where more than 65 percent of the development is expected to take place. Within the proposed critical habitat designation, the effects on small businesses in the land development sector would be concentrated in Ramona, where approximately 30 percent of the development in the proposed critical habitat designation is forecast to take place (Unit 4E).

While the identity and number of land subdivision and farming business

impacted by the critical habitat designation is not known, this analysis relates the economic impacts to real estate prices in the three counties that encompass the essential habitat (see Table A-2 in the draft economic analysis). *Navarretia fossalis*-related conservation efforts are expected to cost between \$390 and \$11,300 per residential dwelling unit developed, \$0.81 to \$5.90 per square foot of commercial property developed, and \$0.53 to \$3.82 per square foot of industrial property developed, depending on residential dwelling unit density, lot coverage (*i.e.*, the percent of the lot developed), and conservation and mitigation activities required. The median sales price for single family residences in the counties ranged from \$315,000 to \$460,000 in 2004, and the weighted average sales price of commercial and industrial properties in 2004 ranged from \$130 to \$293 and \$50 to \$180 per square foot, respectively. Thus, the economic impacts of *Navarretia fossalis* conservation to the development industry are equal to 0.1 percent to 2.9 percent of the 2004 median price of a single family residence, 0.4 percent to 4.5 percent of the 2004 weighted average sales price of commercial property, and 0.4 percent to 5.4 percent of the 2004 weighted average sales price of industrial property. These costs may be borne by the developer or passed on to the landowner through a lower land purchase price.

Based on these data, we have determined that this proposed designation would not result in a significant economic impact on a substantial number of small entities, in particular to land developers or farmers in Los Angeles, Riverside, or San Diego Counties. We may also exclude areas from the final designation if it is determined that these localized areas have an impact to a substantial number of businesses and a significant proportion of their annual revenues. As such, we are certifying that this proposed designation of critical habitat would not result in a significant economic impact on a substantial number of small entities. Please refer to Appendix A of our draft economic analysis of this designation for a more detailed discussion of potential economic impacts to small business entities.

#### *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, but it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action, and no Statement of Energy Effects is required. Please refer to Appendix A of our draft economic analysis of this proposed designation for a more detailed discussion of potential effects on energy supply.

#### *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, 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; AFDC 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 *Navarretia fossalis*, there are 12 city governments are either adjacent to or bisect the essential habitat: Moreno Valley (population 142,381), Perris (population 36,189), Lakeview (population 1,619), Nuevo (population 4,135), Winchester (population 2,155), Hemet (population

58,812), Temecula (population 57,716), San Marcos (population 54,977), Carlsbad (population 78,247), Ramona (population 15,691), San Diego (population 1,223,400), and Chula Vista (population 173,556). Moreno Valley, Hemet, Temecula, San Marcos, Carlsbad, San Diego, and Chula Vista exceed the criteria (service population of 50,000 or less) for small entity. However, there is no record of consultation between the Service and the five remaining "small" governments, the City of Perris, Lakeview, Nuevo, Winchester, and Ramona, since the *Navarretia fossalis* was listed in 1998. Indeed, it is not likely that these cities would be involved in a land development project involving a section 7 consultation, although a city may be involved in land use planning or permitting, and may play a role as an interested party in infrastructure projects (such as the City of Perris with the San Jacinto River Flood Control Project). Any cost associated with this activity/ involvement is anticipated to be a very small portion of the city's budget. Consequently, we do not believe that the designation of critical habitat for *Navarretia fossalis* will significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

## 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 *Navarretia fossalis*. 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 *Navarretia fossalis* does not pose significant takings implications.

## Author

The primary authors of this notice are the staff of the Carlsbad 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: August 23, 2005.

**Paul Hoffman,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 05-17452 Filed 8-29-05; 3:05 pm]

**BILLING CODE 4310-55-P**