

call is illegitimate. A registration requirement, if adopted, might require VRS and IP Relay providers to register each user so that the provider would have identifying information of the person making the call, and might require the provider or user to update this information as necessary. The rules, if adopted, might also require the providers to keep records of calls that are terminated.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, alternatives, specific to small businesses, that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.” 5 U.S.C. 603(c)(1)—(4).

The Commission considers the proposed rule changes in the *IP Relay Fraud FNPRM* as a possible means of achieving the competing public policy goals of ensuring that TRS works as a transparent conduit for the calling and called parties and preventing the misuse of IP Relay and VRS services. The *IP Relay Fraud FNPRM* invites comment on a number of alternative means by which IP Relay and VRS providers might undertake to curtail illegitimate calls. For example, the *IP Relay Fraud FNPRM* asks if the Commission should amend TRS rules to allow providers the discretion to refuse or terminate illegitimate IP Relay and VRS calls.

The *IP Relay Fraud FNPRM* also seeks comment on other means by which the Commission might curtail the misuse of IP Relay and VRS, including by adopting a registration requirement. The Commission also asks if there may be alternatives to requiring registration or imposing new obligations on providers, such as waiving certain TRS calls. These alternatives could mitigate any burden the proposed registration requirement might have on small businesses.

The Commission notes that by promulgating the rules in allowing the provider and the CA the discretion to terminate apparent illegitimate calls, it would lessen an adverse economic impact on small businesses. The

proposed rule change would save many small businesses that may be affected by these illegitimate calls. For instance, small businesses are more vulnerable with illegitimate calls involving fraudulent credit card purchases because they often are not equipped to verify the credit card numbers. The proposed rule change that calls for granting the provider and the CA the discretion to terminate apparent illegitimate calls would not create an additional financial burden on any provider, including small businesses.

The *IP Relay Fraud FNPRM* contemplates requiring the providers to maintain records of terminated calls, and seeks comment on what these records should include. The *IP Relay Fraud FNPRM* notes, however, that such a requirement might conflict with the Commission’s rules, and also seeks comment on this issue. The *IP Relay Fraud FNPRM* therefore contemplates that it may not be possible to require providers to maintain any records.

Further, the *IP Relay Fraud FNPRM* also invites comment on whether any proposed rule change and/or requirement should be permanent or temporary. To the extent the adopted measure requiring the providers to maintain records is temporary, any burden on small businesses would be lessened.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

Pursuant to Sections 1, 4(i) and (o), 225, 303(r), 403, 624(g), and 706 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and (o), 225, 303(r), 403, 554(g), and 606, this *Further Notice of Proposed Rulemaking is adopted*.

The Commission’s Consumer & Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT92

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Monardella linoides* ssp. *viminea* (willow monardella)

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 *Monardella linoides* ssp. *viminea* (willow monardella) 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 the November 9, 2005, proposed critical habitat 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: Comments must be submitted directly to the Service (see **ADDRESSES** section) on or before July 3, 2006.

ADDRESSES: If you wish to comment on the proposed rule or draft economic analysis, you may submit your comments and materials identified by RIN 1018–AT92, by any of the following methods:

(1) E-mail: fw8cfwomolivi@fws.gov.

Include “RIN 1018–AT92” in the subject line.

(2) Fax: 760/431–9624.

(3) Mail: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011.

(4) Hand Delivery/Courier: You may hand-deliver written documents to our office (see **ADDRESSES**).

(5) Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 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 intend that any final action resulting from our critical habitat proposal be as accurate and effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested party concerning the proposed rule and/or the associated draft economic analysis. On the basis of public comment on the proposed rule and the draft economic analysis, and the conclusions of the final economic analysis, we may find during the development of our final determination that some areas do not contain the necessary features essential to the conservation of the species, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion. We particularly seek comments concerning:

(1) The reasons 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 (Act) (16 U.S.C. 1531 *et al.*), including whether it is prudent to designate critical habitat;

(2) Specific information on the amount and distribution of willow monardella habitat, and what habitat contains the necessary features essential to the conservation of the species and why;

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

(4) The proposed exclusion of habitat on Federal and non-Federal lands within the San Diego Multiple Species Habitat Conservation Program (MSCP) and the Memorandum of Understanding (MOU) established between the Bureau of Land Management, the Service, the County of San Diego, the City of San Diego, and California Department of Fish and Game, in cooperation with the San Diego Association of Governments under section 4(b)(2) of the Act (please see Application of Sections 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act for details on the MSCP and MOU section of the proposed rule (70 FR 67956; November 9, 2005)). Please provide information demonstrating the benefits of including or excluding these lands from the critical habitat designation. If the Secretary determines the benefits of including the lands outweigh the benefits of excluding them, they will not be excluded from critical habitat;

(5) Any foreseeable economic, national security, or other potential impacts resulting from the proposed

designation and, in particular, any impacts on small entities;

(6) 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.

(7) Whether the economic analysis identifies all State and local costs. If not, what other costs should be included;

(8) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the listing of the species or the designation of critical habitat;

(9) Whether the economic analysis correctly assesses the effect on regional costs associated with land and water use controls that derive from the designation;

(10) Whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from any final designation;

(11) Whether the economic analysis appropriately identifies all costs that could result from the designation or coextensively from the listing;

(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) Whether the benefit of exclusion in any particular area outweigh the benefits of inclusion under Section 4(b)(2) of the Act.

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**). Our final determination concerning designation of critical habitat for willow monardella will take into consideration all comments and any additional information received during the previous comment period and this reopened comment period (70 FR 67956). On the basis of public comment on the critical habitat proposal, the draft economic analysis, and the final economic analysis, we may during the development of our final determination find that areas proposed do not contain the necessary features essential to the conservation of the species, are appropriate for exclusion under section

4(b)(2) of the Act, or are not appropriate for exclusion.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. We will not consider anonymous comments and we will make all comments 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 (see **ADDRESSES**). Copies of the proposed critical habitat rule for willow monardella and the draft economic analysis are also available on the Internet at <http://www.fws.gov/carlsbad>. In the event that our Internet connection is not functional, please obtain copies of documents directly from the Carlsbad Fish and Wildlife Office (see **ADDRESSES**).

Background

On November 9, 2005, we published a proposed rule in the **Federal Register** (70 FR 67956) to designate critical habitat for willow monardella under the Act. We identified approximately 2,539 acres (ac) (1,028 hectares (ha)) of habitat occupied at the time of listing and containing the necessary features essential to the conservation of the species. We proposed to designate approximately 115 ac (47 ha) of critical habitat in one unit in San Diego County, California. Approximately 1,863 ac (754 ha) of the 2,539 ac (1,028 ha) of habitat are covered under an Integrated Natural Resource Management Plan (INRMP) for Marine Corps Air Station Miramar; therefore, this area is exempted from critical habitat under section 4(a)(3) of the Act. Approximately 560 ac (227 ha) is proposed for exclusion from critical habitat under section 4(b)(2) of the Act because this area is covered under the Multiple Species Conservation Program for southwestern San Diego County or conserved as open space (Otay Mountain Wilderness). The first public comment period for the willow monardella proposed critical habitat rule closed on January 9, 2006. For more information on this species, refer to the final rule listing this species as endangered, published in the **Federal Register** on October 13, 1998 (63 FR 54938).

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 November 9, 2005 (70 FR 67956), proposed designation of critical habitat for willow monardella.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of willow monardella, 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 willow monardella in proposed critical habitat areas and areas proposed for exclusion. 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 considered those costs that may occur in the 20 years following the final designation of critical habitat.

The draft economic analysis estimates that, because all of the proposed critical habitat is conserved or will be conserved under the Multi Species Conservation Program and there are no effects to future development, and there are no potential economic impacts anticipated from the critical designation as proposed. There are some costs associated with plant monitoring and management on preserve lands; however, these costs are minimal. Additionally, the Otay Mountain wilderness area, if designated as critical habitat, would also presumably result in small administrative costs resulting from the inclusion of critical habitat analyses in future Section 7 consultations involving the plant. Give the wilderness status of the lands, the number of future consultations would likely be very low and likely conservation measures minimal. But there would likely be some small cost. We will evaluate any potential costs associated with the Otay Mountain wilderness area in the final rulemaking.

Of the approximately 2,539 acres (ac) (1,028 hectares (ha)) identified as proposed critical habitat for this species, approximately 560 ac (227 ha) are covered under the MSCP or conserved as open space (Otay Mountain Wilderness) and are proposed for exclusion from critical habitat under section 4(b)(2) of the Act. Furthermore, since the MSCP was approved in 1997 before the 1998 listing of willow monardella there are no coextensive costs associated with the listing of the species as endangered since conservation measures benefiting the species were incorporated into the Multi Species Conservation Program prior to its listing. Also, the analysis estimates that there will be no future development costs for the 115 ac (47 ha) of proposed critical habitat not proposed for exclusion under 4(b)(2) of the Act. Please refer to Section III.3.2 of the draft economic analysis and the "Application of Section 4(a)(3) and Possible Exclusions Under Section 4(b)(2) of the Act" section of the proposed rule (70 FR 67956) for a more detailed discussion of the Multi Species Conservation Program.

Required Determinations

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 that the potential economic impacts associated with the proposed designation of critical habitat are

negligent, we do not anticipate that this final rule 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) 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 (e.g., 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

willow monardella 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 potential costs involving conservation measures for willow monardella incurred for activities involving non-Federal agencies (residential, commercial, and industrial development) would be negligible due to the fact that there are minimal economic effects of the proposed critical habitat. These minimal costs are associated with plant monitoring and management on preserve lands.

Based on this 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 San Diego County since private lands proposed for critical habitat are part of a designated open space preserve with no plans for farming or development as stated earlier in the Background section. 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 Section V.2 of our draft economic analysis of this proposed 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. On the basis of our draft economic analysis, the proposed critical habitat designation 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 Section V.1 of our draft economic analysis of the 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 onto State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments. As discussed in the draft economic analysis, all proposed critical habitat areas are already identified and/or conserved as open space or covered by a habitat conservation plan. 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 willow monardella. 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 willow monardella 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**).

Authority

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

Dated: May 19, 2006.

Matt Hogan,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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