provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this proposed rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This proposed rule fits in paragraph (34)(g) because it is a regulated navigation area. A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision whether this rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 165.810 by adding paragraph (g) to read as follows:

§ 165.810 Mississippi River, LA-regulated navigation area.

* * * * *

(g) *Movement of vessels in the vicinity of Eighty-One Mile Point, Geary LA mm 167.5–187.9 LMR.* (1) Prior to proceeding upriver past MM 167.5, LMR, Sunshine Bridge, vessels shall contact Vessel Traffic Center (VTC) New Orleans on VHF Channel 63A to check-in. Vessels must provide name, destination, confirm proper operation of their automated identification system (AIS) if required under 33 CFR 164.46 and, if applicable, size of tow and number of loaded and empty barges. At MM 173.7, LMR, Bringier Point Light, ascending vessels shall contact VTC New Orleans and provide a follow-on position check. At both check-in and follow-on position check VTC New Orleans will advise the vessel on traffic approaching Eighty-One Mile Point.

(2) Prior to proceeding downriver past MM 187.9, LMR, COS–MAR Lights, vessels shall contact Vessel Traffic Center (VTC) New Orleans on VHF Channel 63A to check-in. Vessels must provide name, destination, confirm proper operation of their automated identification system (AIS) if required under 33 CFR 164.46 and, if applicable, size of tow and number of loaded and empty barges. At MM 183.9 LMR, Wyandotte Chemical Dock Lights, descending vessels shall contact VTC New Orleans and provide a follow-on position check. At both check-in and follow-on position check VTC New Orleans will advise the vessel on traffic approaching Eighty-One Mile Point.

(3) All vessels getting underway between miles 167.5 and 187.9 must check-in with VTC New Orleans on VHF Channel 63A immediately prior to getting underway and must comply with the respective ascending and descending check-in and follow-on points listed in paragraphs (g)(1) and (g)(2) above.

(4) Fleet vessels must check-in with VTC New Orleans if they leave their respective fleet or if they move into the main channel. Fleet vessels are not required to check-in if they are operating exclusively within their fleet.

Dated: 23 March 2007.

J. R. Whitehead,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. E7–6305 Filed 4–4–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU77

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Ceanothus ophiochilus* (Vail Lake ceanothus) and *Fremontodendron mexicanum* (Mexican flannelbush)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, notice of availability of draft economic analysis, and amended Required Determinations.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the proposed designation of critical habitat for two southern California plants: *Ceanothus ophiochilus* (Vail Lake ceanothus) and *Fremontodendron mexicanum* (Mexican flannelbush). We also announce the availability of the draft economic analysis for the proposed critical habitat designations and an amended Required Determinations section of the proposal. The draft economic analysis identifies potential costs will be $385,000 to $659,000 in undiscounted dollars over a 20-year period as a result of the proposed designation of critical habitat, including those costs coextensive with listing and recovery. Discounted future costs are estimated to be $325,000 to $559,000 ($22,000 to $38,000 annualized) at a 3 percent discount rate, or $272,000 to $471,000 ($26,000 to $44,000 annualized) at a 7 percent discount rate. The amended Required Determinations section provides our determination concerning compliance with applicable statutes and Executive Orders that we have deferred until the information from the draft economic analysis of this proposal was available. We are reopening the comment period to allow all interested parties to comment simultaneously on the proposed rule, the associated draft economic analysis, and the amended Required Determinations section.

DATES: We will accept public comments until May 7, 2007.

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

(1) *E-mail:* Please submit electronic comments to *fw8cfwocomments@fws.gov*. Include ''RIN 1018–AU77'' in the subject line.

Please see the Public Comments Solicited section under **SUPPLEMENTARY INFORMATION.**

(2) *Facsimile:* You may fax your comments to 760/431–5901.

(3) *U.S. mail or hand-delivery:* You may submit written comments and information to Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011.

(4) *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, at the address listed in the **ADDRESSES** section (telephone: 760/431–9440). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation for *Ceanothus ophiochilus* and *Fremontodendron mexicanum* published in the **Federal Register** on October 3, 2006 (71 FR 58340), 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 any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether it is prudent to designate critical habitat;

(2) Specific information on the amount and distribution of *Ceanothus ophiochilus or Fremontodendron mexicanum* habitat, what areas should be included in the designations that were occupied at the time of listing that contain the features that are essential for the conservation of the species, and what areas that were not occupied at the time of listing that are essential to the conservation of the species and why;

(3) Information concerning pollinator species for *Ceanothus ophiochilus* or *Fremontodendron mexicanum* and whether sufficient information exists to determine if such a biological feature should be considered a primary constituent element for either of these species (please see ''Primary Constituent Elements'' section of this proposed rule for a detailed discussion);

(4) Whether any areas not currently known to be occupied by either species, but essential to the conservation of either species, should be included in the proposed designation;

(5) Land use designations and current or planned activities in the mapped critical habitat subunits and their possible effects on proposed critical habitat;

(6) The appropriateness of excluding non-Federal lands that contain *Ceanothus ophiochilus* occurrences within areas targeted for conservation within the Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP) from the final designation of critical habitat under section 4(b)(2) of the Act (see *Exclusions Under Section 4(b)(2) of the Act* for details on the Western Riverside County MSHCP). Please provide information concerning whether the benefits of exclusion of any of these specific areas outweigh the benefits of their inclusion under section 4(b)(2) of the Act. If the Secretary determines the benefits of including these lands outweigh the benefits of excluding them, they will not be excluded from critical habitat;

(7) The appropriateness of excluding lands that contain *Fremontodendron mexicanum* occurrences within areas of the San Diego Multiple Species Conservation Program (MSCP) and areas of the Otay Mountain Wilderness managed by the Bureau of Land Management (BLM) covered by the 1994 multiple agency Memorandum of Understanding (MOU 1994) from the final designation of critical habitat. *F. mexicanum* is not covered by the MSCP; however, other species that co-occur with *F. mexicanum* are covered by the MSCP. Please provide comments on whether the protection and management of the habitat for these co-occurring species are adequate to justify the exclusion of these lands under section 4(b)(2) of the Act. Also, we are seeking any information on the benefits of including or excluding these lands from the critical habitat designation;

(8) The appropriateness of including lands in the Agua Tibia Mountains owned by the USFS and managed under its Land Management Plans for the Four Southern California National Forests from the final designation of critical habitat for *Ceanothus ophiochilus*. Please provide comments on how implementation of the management plan(s) in the Agua Tibia Mountains will or will not provide for conservation for *C. ophiochilus*. Also provide information on any minimization measures or monitoring plans for *C. ophiochilus* that will help insure that the occurrences of *C. ophiochilus* remain healthy and viable in the Cleveland National Forest. Finally, provide comments on the benefits of including or excluding these lands from the critical habitat designation;

(9) Whether the benefits of exclusion of any particular area outweigh the benefits of inclusion under section 4(b)(2) of the Act;

(10) Information on the extent to which any State and local environmental protection measures referred to in the draft economic analysis may have been adopted largely as a result of the listing of *Ceanothus ophiochilus* or *Fremontodendron mexicanum*;

(11) Information on 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;

(12) Information on 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;

(13) Information on whether the draft economic analysis correctly assesses the effect on regional costs associated with any land use controls that may derive from the designation of critical habitat;

(14) Information on areas that could potentially be disproportionately impacted by designation of critical habitat for *Ceanothus ophiochilus* or *Fremontodendron mexicanum*;

(15) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation of critical habitat, and in particular, any impacts on small entities or families; the reasons why our conclusion that the proposed designation of critical habitat will not result in a disproportionate effect to small businesses should or should not warrant further consideration; and other information that would indicate that the designation of critical habitat would or would not have any impacts on small entities or families;

(16) Information on whether the draft economic analysis appropriately identifies all costs that could result from the designation; and

(17) Information on 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.

Pursuant to section 4(b)(2) of the Act, an area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of including a particular area as critical habitat, unless the failure to

designate such area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact.

All previous comments and information submitted during the initial comment period from October 3, 2006, to December 4, 2006, for the proposed rule (71 FR 58340) need not be resubmitted, as they are currently part of our record and will be considered in the development of the final rule. 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 designation of critical habitat will take into consideration all comments and any additional information we have received during both comment periods. On the basis of public comment on this analysis, the critical habitat proposal, and 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.

If submitting comments electronically, please also include ''Attn: RIN 1018–AU77'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

You may obtain copies of the proposed rule and draft economic analysis by mail from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section) or by visiting our Web site at *http://www.fws.gov/carlsbad/*.

Background

On August 10, 2004, the Center for Biological Diversity and California Native Plant Society challenged our failure to designate critical habitat for these two species as well as three other plant species (*Center for Biological Diversity et al.* v. *Gale Norton, Secretary of the Department of the Interior et al.*, C–04–3240 JL, N. D. Cal.). The Service agreed to withdraw our previous not prudent findings and submit for publication in the **Federal Register** a proposed designation of critical habitat, if prudent, on or before September 20, 2006, and a final critical habitat designation for these plants on or before September 20, 2007. In compliance with the court-approved settlement agreement, we published a proposed rule to designate critical habitat for *Ceanothus ophiochilus* and *Fremontodendron mexicanum* on October 3, 2006 (71 FR 58340). This rule identified a total of 644 acres (ac) (262 hectares (ha)) as critical habitat for these two species. Approximately 283 ac (115 ha) of land in Riverside County, California, were proposed as critical habitat for *C. ophiochilus*, and approximately 361 ac (147 ha) of land in San Diego County, California, were proposed as critical habitat for *F. mexicanum*.

Critical habitat is defined in section 3 of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the 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.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. Based on the October 3, 2006, proposed rule to designate critical habitat for *Ceanothus ophiochilus* and *Fremontodendron mexicanum* (71 FR 58340), we have prepared a draft economic analysis of the proposed critical habitat designation.

The current draft economic analysis estimates the foreseeable potential economic impacts of the proposed critical habitat designation and other conservation-related actions for these species on government agencies and private businesses and individuals. The draft economic analysis identifies potential costs will be $385,000 to $659,000 in undiscounted dollars over a 20-year period as a result of the proposed designation of critical habitat, including those costs coextensive with listing and recovery. Discounted future costs are estimated to be $325,000 to $559,000 ($22,000 to $38,000 annualized) at a 3 percent discount rate, or $272,000 to $471,000 ($26,000 to $44,000 annualized) at a 7 percent discount rate.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of *Ceanothus ophiochilus* and *Fremontodendron mexicanum*, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to the designation of 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 *C. ophiochilus* and *F. mexicanum* in areas containing features essential to the conservation of the species. The draft 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 (such as 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 draft analysis looks retrospectively at costs that have been incurred since the date *Ceanothus ophiochilus* and *Fremontodendron mexicanum* were listed as endangered and threatened, respectively (October 13, 1998; 63 FR 54956), and considers those costs that may occur in the 20 years following a designation of critical habitat.

As stated earlier, we solicit data and comments from the public on this draft economic analysis, as well as on all aspects of the proposal. We may revise the proposal or its supporting

documents to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

Required Determinations—Amended

In our October 3, 2006, proposed rule (71 FR 58340), we indicated that we would be deferring our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders was available in the draft economic analysis. Those data are now available for our use in making these determinations. In this notice we are affirming the information contained in the proposed rule concerning Executive Order (E.O.) 13132; E.O. 12988, the Paperwork Reduction Act; and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). Based on the information made available to us in the draft economic analysis, we are amending our Required Determinations, as provided below, concerning E.O. 12866 and the Regulatory Flexibility Act, E.O. 13211, E.O. 12630, and the Unfunded Mandates Reform Act.

Regulatory Planning and Review

In accordance with E.O. 12866, this document is a significant rule because it may raise novel legal and policy issues. Based on our draft economic analysis of the proposed designation of critical habitat for *Ceanothus ophiochilus* and *Fremontodendron mexicanum*, costs related to conservation activities for *C. ophiochilus* and *F. mexicanum* pursuant to sections 4, 7, and 10 of the Act are estimated to be approximately $385,000 to $659,000 in undiscounted dollars over a 20-year period as a result of the proposed designation of critical habitat, including those costs coextensive with listing and recovery. Discounted future costs are estimated to be $325,000 to $559,000 ($22,000 to $38,000 annualized) at a 3 percent discount rate, or $272,000 to $471,000, ($26,000 to $44,000 annualized) at a 7 percent discount rate. Therefore, based on our draft economic analysis, we have determined that the proposed designation of critical habitat for *C. ophiochilus* and *F. mexicanum* will not result in 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 or accompanying economic analysis.

Further, E.O. 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has determined that the Federal regulatory action is appropriate, the agency will then need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

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

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)) (SBREFA), 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. Based upon our draft economic analysis of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments received, this determination is subject to revision as part of the final rulemaking.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for *Ceanothus ophiochilus* or *Fremontodendron mexicanum* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (such as residential and commercial development). 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 thus 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 under section 7 of the Act 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 draft economic analysis of the proposed critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions

related to the listing of *Ceanothus ophiochilus* and *Fremontodendron mexicanum* and proposed designation of its critical habitat.

Impacts of conservation activities are not anticipated to affect small entities in the following categories: Development, fire management on Federal lands, alien plant species management on Federal lands, and other activities on Federal lands. Chapter 2 of the economic analysis concludes that no development is likely in proposed critical habitat. Rural, large lot development may occur in areas adjacent to proposed critical habitat; however, the likelihood of this type of development and whether it will pose a threat to the habitat is unknown. As described in Chapters 3 through 5 of the economic analysis, the modifications to activities on Federal lands, including fire management activities, alien plant species management, and surveying and monitoring activities, will be borne by the USFS and BLM. The Federal government is not considered to be a small entity by the SBA. Accordingly, the small business analysis contained in Appendix A of the economic analysis focuses on the economic impacts of fire management and alien plant species management activities on private lands.

Two private landowners in Riverside County are included in areas proposed as critical habitat. The total economic impact for these two landowners over the next 20 years is estimated to be $3,000 to $4,000 per year for fire management activities, and $1,000 to $2,000 per year for alien plant species management. Whether these two landowners qualify as a small business is unknown. However, since no more than two potential small businesses are estimated to occur within the area proposed as critical habitat, we certify that this proposed regulation will not result in a significant economic impact on a substantial number of small business entities. Please refer to our draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

Executive Order 13211—Energy Supply, Distribution, and Use

On May 18, 2001, the President issued 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 designation of critical habitat for *Ceanothus ophiochilus* and *Fremontodendron mexicanum* is considered a significant regulatory action under E.O. 12866 due to its potentially raising novel legal and policy issues. OMB has provided guidance for implementing this Executive Order that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared without the regulatory action under consideration. The draft economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on the information in the draft economic analysis, energy-related impacts associated with *C. ophiochilus* and *F. mexicanum* conservation activities within proposed critical habitat are not expected. As such, the proposed designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use and a Statement of Energy Effects is not required.

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

In accordance with the Unfunded Mandates Reform Act (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) We do not believe that this rule will significantly or uniquely affect small governments. As discussed in the draft economic analysis, the majority (75 percent) of the lands proposed as critical habitat are either on Federal lands or on private lands covered by the Western Riverside County MSHCP. The remaining 25 percent is privately-owned land. Consequently, since small governments do not appear to be effected by the proposed critical habitat designation, we do not believe that critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Executive Order 12630—Takings

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for *Ceanothus ophiochilus* and *Fremontodendron mexicanum* in a takings implications assessment. The takings implications assessment concludes that this proposed designation of critical habitat for *C. ophiochilus* and *F. mexicanum* does not pose significant takings implications.

Author

The primary authors of this notice are the staff of the Carlsbad Fish and Wildlife Office.

Authority

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

Dated: March 26, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7–6186 Filed 4–4–07; 8:45 am]

BILLING CODE 4310–55–P