

to the third element in the process, which is to evaluate the population segment's conservation status in relation to the Act's standards for listing as an endangered or threatened species. The DPS evaluation in this finding concerns the Amargosa toad that we were petitioned to list as threatened or endangered.

#### *Discreteness*

Under the DPS Policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation. (2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

#### *Markedly Separated From Other Populations of the Taxon*

As described previously (see Species Information above), the Amargosa toad is characterized by metapopulations across its range. Individual Amargosa toads move among these metapopulations, and there is no indication that physical, physiological, ecological, or behavioral barriers exist that would render any portions of the species' range markedly separate from other portions. Furthermore, we have no quantitative data such as genetic information to suggest any portions of the species to be markedly separate from others. Therefore, we conclude there are no portions of the species' range that meet the discreteness criterion of the Service's DPS policy. Since both discreteness and significance are required to satisfy the DPS policy, we have determined that there are no populations of the Amargosa toad that qualify as a DPS under our policy. As a result, no further analysis under the DPS policy is necessary.

#### **Significant Portion of the Range**

Having determined that the Amargosa toad does not meet the definition of a threatened or endangered species, we must next consider whether there are any significant portions of the range where the Amargosa toad is in danger of extinction or is likely to become endangered in the foreseeable future.

We considered whether any portions of the Amargosa toad's range warrant

further consideration. We found that there is no area within the range of the Amargosa toad where the potential threat of development or groundwater withdrawal is significantly concentrated or may be substantially greater than in other portions of the range. Some sites including Crystal and Lower Indian Springs may become overgrown with vegetation and cause the site to become unsuitable and require rehabilitation. Cattle and feral burros may provide the necessary disturbance to improve and maintain Amargosa toad habitat but may cause short-term overuse of some sites. Use by OHVs may cause localized impacts but we do not anticipate these effects to result in population declines. Although nonnative toad predators such as crayfish, bullfrogs, and mosquito fish occur throughout much of the range of the toad and likely impact the toad to some extent, we have found that toads have, and will continue to coexist with these predators. There is no indication that stochastic events, climate change, or environmental contaminants differentially affect any given site.

On the basis of our review, we found no areas within the species' range where threats are geographically concentrated. The species is characterized by metapopulations across its range which allows for an individual site to be extirpated and become repopulated from neighboring populations. The factors affecting the species are essentially uniform throughout its range, indicating that no portion of the Amargosa toad's range warrants further consideration of possible threatened or endangered status.

We do not find that the Amargosa toad is in danger of extinction now, nor is it likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Therefore, listing the Amargosa toad as threatened or endangered under the Act is not warranted throughout all or a significant portion of its range at this time.

We request that you submit any new information concerning the status of, or threats to, the Amargosa toad to our Nevada Fish and Wildlife Office (see **ADDRESSES** section) whenever it becomes available. New information will help us monitor the Amargosa toad and encourage its conservation. If an emergency situation develops for the Amargosa toad, we will act to provide immediate protection.

#### **References Cited**

A complete list of references cited is available on the Internet at <http://www.regulations.gov> and upon request

from the Nevada Fish and Wildlife Office (see **ADDRESSES** section).

#### **Author(s)**

The primary authors of this notice are staff with the Nevada Fish and Wildlife Office, Las Vegas.

#### **Authority**

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

Dated: July 9, 2010

**Wendi Weber,**

*Acting Director, Fish and Wildlife Service.*

[FR Doc. 2010-17647 Filed 7-19-10; 8:45 am]

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## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

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

[Docket No. FWS-R8-ES-2009-0073]  
[92210-1117-0000-B4]

RIN 1018-AW54

#### **Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for *Brodiaea filifolia* (Thread-leaved Brodiaea)**

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

**ACTION:** Proposed rule; reopening of comment period.

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**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our December 8, 2009, proposed revised designation of critical habitat for *Brodiaea filifolia* (thread-leaved brodiaea) under the Endangered Species Act of 1973, as amended. We also announce the availability of a draft economic analysis (DEA) and an amended required determinations section of the proposal. We are reopening the comment period for an additional 30 days to allow all interested parties an opportunity to comment on all of the above. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in our final determination.

**DATES:** We will consider public comments received on or before August 19, 2010. Any comments that we receive after the closing date may not be considered in the final decision on this action.

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

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments on Docket No. FWS-R8-ES-2009-0073.

*U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS-R8-ES-2009-0073; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011; telephone (760) 431-9440; facsimile (760) 431-5901. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877-8339.

#### SUPPLEMENTARY INFORMATION:

#### Public Comments

We intend that any final action resulting from the proposed rule is based on the best scientific data available and will be accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or any other interested parties during this reopened comment period on our proposed rule to revise critical habitat for *Brodiaea filifolia*, which we published in the **Federal Register** on December 8, 2009 (74 FR 64930), the DEA of the proposed designation, and the amended required determinations provided in this document. We are particularly interested in comments concerning:

(1) The reasons why we should or should not revise the critical habitat under section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether there are threats to *Brodiaea filifolia* from human activity, the type of human activity causing these threats, the degree of which can be expected to increase due to the designation, and whether that increase in threats outweighs the benefit of designation, such that the designation of critical habitat is not prudent.

(2) Specific information on:

- Areas that provide habitat for *Brodiaea filifolia* that we did not discuss in our proposed revised critical habitat rule (December 8, 2009; 74 FR 64930).
- Areas containing the physical and biological features essential to the

conservation of *B. filifolia* that we should include in the final critical habitat designation and why. Include information on the distribution of these essential features and what special management considerations or protections may be required to maintain or enhance them.

- Areas we proposed as revised critical habitat that do not contain the physical and biological features essential to the conservation of the species and that should therefore not be designated as critical habitat.

- Areas not occupied at the time of listing that are essential for the conservation of the species and why.

(3) Land use designations and current or planned activities in the areas occupied by the species, and their possible impacts on proposed revised critical habitat.

(4) How the proposed revised critical habitat boundaries could be refined to more closely circumscribe landscapes identified as containing the physical and biological features essential to the conservation of the species.

(5) Any foreseeable economic, national security, or other relevant impacts that may result from designating particular areas as critical habitat, and, in particular, any impacts to small entities (e.g., small businesses or small governments), and the benefits of including or excluding areas from the proposed revised designation that exhibit these impacts.

(6) Whether any specific subunits being proposed as revised critical habitat should be excluded under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any particular area outweigh the benefits of including that area in critical habitat.

(7) The likelihood of adverse social reactions to the designation of critical habitat, and how the consequences of such reactions, if they occur, would relate to the conservation of the species and regulatory benefits of the proposed revised critical habitat designation.

(8) Information on the extent to which the description of potential economic impacts in the DEA is complete and accurate, and specifically:

- Whether there are incremental costs of critical habitat designation (e.g., costs attributable solely to the designation of critical habitat for *Brodiaea filifolia*) that have not been appropriately identified or considered in our economic analysis, including costs associated with future administrative costs or project modifications that may be required by Federal agencies related to section 7 consultation under the Act; and
- Whether there are incremental economic benefits of critical habitat

designation that are not appropriately identified or considered in our economic analysis.

(9) The potential effects of climate change on this species and its habitat and whether the critical habitat may adequately account for these potential effects.

(10) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate concerns and comments.

If you submitted comments or information on the proposed revised rule (74 FR 64930) during the initial comment period from December 8, 2009, to February 8, 2010, please do not resubmit them. These comments are included in the public record for this rulemaking, and we will fully consider them in the preparation of our final determination. Our final determination concerning the revised critical habitat for *Brodiaea filifolia* will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas within the proposed revised critical habitat designation do not meet the definition of critical habitat, that some modifications to the described boundaries are appropriate, or that areas may or may not be appropriate for exclusion under section 4(b)(2) of the Act.

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

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

Comments and materials we receive, as well as supporting documentation used to prepare this notice, will be available for public inspection at <http://www.regulations.gov>, or by appointment, during normal business

hours, at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed revision of critical habitat (74 FR 64930) and the DEA on the Internet at <http://www.regulations.gov> at Docket No. FWS-R8-ES-2009-0073, or by mail from the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

### Background

It is our intent to discuss only those topics directly relevant to the proposed revised designation of critical habitat for *Brodiaea filifolia* in this notice. For more information on previous Federal actions concerning *B. filifolia*, see the 2005 designation of critical habitat published in the **Federal Register** on December 13, 2005 (70 FR 73820), see the proposed revised designation of critical habitat published in the **Federal Register** on December 8, 2009 (74 FR 64930), or contact the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

The Center for Biological Diversity filed a complaint in the U.S. District Court for the Southern District of California on December 19, 2007, challenging our designation of critical habitat for *Brodiaea filifolia* and *Navarretia fossalis* (*Center for Biological Diversity v. United States Fish and Wildlife Service et al.*, Case No. 07-CV-2379-W-NLS). This lawsuit challenged the validity of the information and reasoning we used to exclude areas from the 2005 critical habitat designation for *B. filifolia*. We reached a settlement agreement on July 25, 2008, in which we agreed to reconsider critical habitat designation for *B. filifolia*. The settlement stipulated that we submit a proposed revised critical habitat designation for *B. filifolia* to the **Federal Register** for publication by December 1, 2009, and submit a final critical habitat designation to the **Federal Register** for publication by December 1, 2010. We published the proposed revised critical habitat designation in the **Federal Register** on December 8, 2009 (74 FR 64930).

Section 3 of the Act defines critical habitat 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 which 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 critical habitat must consult with us on the effects of their proposed actions under 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 data available after taking into consideration the economic impact, impact on national security, and any other relevant impact of specifying any particular area as critical habitat.

We prepared a DEA (Industrial Economics, Incorporated (IEc) 2010) that identifies and analyzes the potential impacts associated with the proposed revised designation of critical habitat for *Brodiaea filifolia* that we published in the **Federal Register** on December 8, 2009 (74 FR 64930). The DEA looks retrospectively at costs incurred since the October 13, 1998 (63 FR 54975), listing of *B. filifolia* as threatened. The DEA quantifies the economic impacts of all potential conservation efforts for *B. filifolia*; some of these costs will likely be incurred regardless of whether or not we finalize the revised critical habitat rule. The economic impact of the proposed revised critical habitat designation is analyzed by comparing a “without critical habitat” scenario with a “with critical habitat” scenario. The “without critical habitat” scenario represents the baseline for the analysis, considering protections already in place for the species (for example, under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the critical habitat designation for *B. filifolia*. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat relative to areas that may be excluded under section 4(b)(2) of the Act. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and

incremental impacts likely to occur if we finalize the proposed revised critical habitat.

The 2010 DEA (made available with the publication of this notice and referred to as the DEA throughout this document unless otherwise noted) estimates the foreseeable economic impacts of the proposed revised critical habitat designation for *Brodiaea filifolia*. The economic analysis identifies potential incremental costs as a result of the proposed revised critical habitat designation, which are those costs attributed to critical habitat over and above those baseline costs coextensive with listing. It also discusses the benefits of critical habitat designation. These benefits are primarily presented in a qualitative manner. The DEA describes economic impacts of *B. filifolia* conservation efforts associated with the following categories of activity: (1) Residential and commercial development; (2) transportation, utility, and flood control projects; and (3) public and conservancy lands management.

Baseline economic costs are those that result from listing and other conservation efforts for *Brodiaea filifolia*. The baseline costs are assuming a 7 percent discount rate and are identified in Appendix E of the DEA (IEc 2010, Appendix E-1). Impacts associated with baseline protection for *B. filifolia* within the proposed revised critical habitat designation are estimated to be \$5.31 million to \$8.16 million (approximately \$486,000 to \$720,000 annualized) over the next 20 years (2011–2030). Baseline impacts to development are estimated to be \$4.60 million to \$7.46 million. This represents approximately 83 to 89 percent of the total baseline impacts. Baseline impacts to transportation, utility, and flood control activities are estimated to be \$657,000. This represents approximately 8 to 12 percent of the total baseline impacts. Baseline impacts to public and conservancy lands management are estimated to be \$49,500. This represents approximately 0.6 to 0.9 percent of the total baseline impacts.

Incremental impacts associated with the proposed revised critical habitat designation are estimated to be \$425,000 to \$529,000 (approximately \$37,500 to \$46,700 annualized), assuming a 7 percent discount rate, over the next 20 years (2011–2030). These impacts are due to a reduction in land value following the designation of critical habitat for *Brodiaea filifolia* and the cost of section 7 consultation for pipeline maintenance activities (IEc 2010, p. ES-9). Incremental impacts to development

are estimated to be \$207,000 to \$311,000. This represents approximately 49 to 59 percent of the total incremental impacts. No incremental costs related to public and conservancy lands management are expected from the designation (IEC 2010, p. ES–10).

The DEA 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). The DEA 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 government agencies, private businesses, and individuals. The DEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on transportation, utility, flood control projects, Federal lands, small entities, and the energy industry. Decisionmakers can use this information to assess whether the effects of the revised designation might unduly burden a particular group or economic sector.

#### Required Determinations—Amended

In our proposed rule published in the **Federal Register** on December 8, 2009 (74 FR 64930), we indicated that we would defer our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA to make these determinations.

In this document, we affirm the information in our December 8, 2009, proposed rule (74 FR 64930) concerning Executive Order (E.O.) 12866 (*Regulatory Planning and Review*), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Paperwork Reduction Act, the National Environmental Policy Act, and the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951). However, based on the DEA data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 13211 (Energy Supply, Distribution, or Use),

E.O. 12630 (Takings), and the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions), as described below. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed revised designation, we provide the analysis for our determination whether or not the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of a final rulemaking.

According to the Small Business Administration (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 revised designation of critical habitat for *Brodiaea filifolia* would affect a substantial number of small entities, we considered the number of small entities

affected within particular types of economic activities, such as residential and commercial development. In order to determine whether it is appropriate for our agency to certify that the rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually.

If we finalize the proposed revised critical habitat designation, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. Incremental impacts to small entities may occur as a direct result of a required consultation under section 7 of the Act. Additionally, even in the absence of a Federal nexus, indirect incremental impacts may still result because, for example, a city may request project modifications due to the designation of critical habitat via its review under the California Environmental Quality Act (CEQA). Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process because *Brodiaea filifolia* is federally listed as a threatened species under the Act.

In the DEA, we evaluated the potential economic effects on small business entities resulting from implementation of conservation actions related to the proposed revision to critical habitat for *Brodiaea filifolia* (IEC 2010, Appendix A, pp. 1–7). The analysis was based on the estimated incremental impacts associated with the proposed rulemaking as described in sections 3 through 5 of the DEA. The SBREFA analysis evaluated the potential for economic impacts related to several categories, including: (1) Residential and commercial development; (2) transportation, utility, and flood control projects; and (3) management of public and conservation lands (IEC 2010, Appendix A, p. 4).

The DEA found there are no incremental impacts related to the management of public and conservation lands. Impacts to small entities are only anticipated due to residential and commercial development. No impacts are anticipated due to transportation, utility, and flood control because the incremental costs are associated with activities conducted by the Metropolitan Water District of Southern California, which is not a small business or government as defined by the Small Business Administration (IEC 2010, Appendix A, p. 4).

The DEA estimated that there will be approximately 23 landowners impacted over the next 20 years with an incremental impact estimated to be

\$311,000 assuming a 7 percent discount rate. This impact is related to the decrease in land value for areas designated as critical habitat and may be borne by the current landowner in the form of percent of average value lost. In a regional context, we looked at the number of homeowners in each county as a representation of the total number of property owners in Los Angeles, San Bernardino, Riverside, Orange, and San Diego Counties. There are approximately 443,000 to over 1.6 million homeowners in these counties (IEc 2010, Appendix A, p. 5). The 23 landowners that may be impacted represent approximately less than 1 percent of the total number of landowners in Los Angeles, San Bernardino, Riverside, Orange, and San Diego Counties. We do not believe that this represents a substantial number of landowners. Additionally, we evaluated the decrease in property value by looking at the average parcel value by county and the percent of the value lost. We found that the land value lost ranged from 0.02 to 17.3 percent of the total value (IEc 2010, Appendix A, pp. 5–6). To some individual property owners this may represent a significant impact, but on a regional scale we do not believe an incremental impact of \$311,000 in reduced land value represents a significant economic impact. As a result of this analysis, we find that the designation of critical habitat for *Brodiaea filifolia* will not have a significant economic impact on a substantial number of small entities.

In summary, we considered whether the proposed revised designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed revised critical habitat for *Brodiaea filifolia* will not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required.

*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. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The Office of Management and Budget's guidance for implementing this Executive Order outlines nine outcomes that may constitute "a significant adverse effect" when compared to no regulatory action. As discussed in Appendix A, the DEA

finds that none of these outcomes are possible in the context of this analysis (IEc 2010, Appendix A, pp. 7–8). The DEA concludes that no incremental impacts on the production, distribution, or use of energy are forecast associated specifically with this rulemaking (IEc 2010, Appendix A, p. 7). Therefore, designation of critical habitat is not expected to lead to any adverse outcomes (such as a reduction in electricity production or an increase in the cost of energy production or distribution), 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, the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or Tribal governments," with two exceptions. First, it excludes "a condition of federal assistance." Second, it 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. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

Critical habitat designation does not impose a legally binding duty on non-Federal government entities or private parties. The only regulatory effect is that under section 7 of the Act, which requires that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat. Designation of critical habitat may indirectly impact non-Federal entities

that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action that 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) As discussed in the DEA of the proposed revised designation of critical habitat for *Brodiaea filifolia*, we do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of \$100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The DEA concludes that incremental impacts may occur due to conservation costs associated with residential and commercial development, and with transportation, utility, and flood control projects; however, these are not expected to affect small governments (IEc 2010, Appendix A, p. 4). Incremental impacts associated with these activities are expected to be borne by the Transportation Corridor Agencies and San Diego Gas and Electric, which are not considered small governments. Consequently, we do not believe that the proposed revised 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 analyzed the potential takings implications of proposing revised critical habitat for *Brodiaea filifolia* in a takings implications assessment. 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. The proposed revised critical habitat for *B. filifolia* does not pose significant takings implications for the above reasons.

## References Cited

A complete list of all references we cited in the proposed rule and in this document is available on the Internet at <http://www.regulations.gov> or by contacting the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

## Authors

The primary authors of this notice are staff members of the Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

## Authority

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

Dated: July 7, 2010

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010-17708 Filed 7-19-10; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R1-ES-2010-0023]  
[MO 92210-0-0008-B2]

### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To List the Giant Palouse Earthworm (*Driloleirus americanus*) as Threatened or Endangered

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

**ACTION:** Notice of petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to list the giant Palouse earthworm (*Driloleirus americanus*) as threatened or endangered under the Endangered Species Act of 1973, as amended, (Act) and to designate critical habitat. Based on our review, we find that the petition presents substantial scientific or commercial information indicating that listing the giant Palouse earthworm as threatened or endangered may be warranted. Therefore, with the publication of this notice, we are initiating a review of the status of the species to determine if listing the giant Palouse earthworm is warranted. To ensure that this status review is comprehensive, we are requesting scientific and commercial data and other information regarding this species.

Based on the status review, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

**DATES:** To allow us adequate time to conduct this review, we request that we receive information on or before September 20, 2010. Please note that if you are using the *Federal eRulemaking Portal* (see **ADDRESSES** section, below), the deadline for submitting an electronic comment is Eastern Time on this date.

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

- Federal eRulemaking Portal: <http://www.regulations.gov>. In the box that reads "Enter Keyword or ID," enter the docket number for this notice, which is **docket number FWS-R1-ES-2010-0023**. Check the box that reads "Open for Comment/Submission," and then click the Search button. You should then see an icon that reads "Submit a Comment." Please ensure that you have found the correct rulemaking before submitting your comment.

- U.S. mail or hand-delivery: Public Comments Processing, Attn: **FWS-R1-ES-2010-0023**; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Information Solicited** section below for more details).

After the date specified in **DATES**, you must submit information directly to the Field Office (see **FOR FURTHER INFORMATION CONTACT** section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

**FOR FURTHER INFORMATION CONTACT:** Ken Berg, Manager, Washington Fish and Wildlife Office, 510 Desmond Dr. SE, Suite 102, Lacey, WA 98503; by telephone (360-753-9440); or by facsimile (360-753-9405). If you use a telecommunications device for the deaf (TDD) please call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### **SUPPLEMENTARY INFORMATION:**

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

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly review the status of the species (status review). For the

status review to be complete and based on the best available scientific and commercial information, we request information on the giant Palouse earthworm (GPE) from governmental agencies, Native American Tribes, the scientific community, industry, and any other interested parties. We seek information on:

- (1) The species' biology, range, and population trends, including:
  - (a) Habitat requirements for feeding, breeding, and sheltering;
  - (b) Genetics and taxonomy;
  - (c) Historical and current range including distribution patterns;
  - (d) Historical and current population levels, and current and projected trends; and
  - (e) Past and ongoing conservation measures for the species and/or its habitat.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), which are:

- (a) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (b) Overutilization for commercial, recreational, scientific, or educational purposes;
- (c) Disease or predation;
- (d) The inadequacy of existing regulatory mechanisms; or
- (e) Other natural or manmade factors affecting its continued existence.

(3) Information on grassland or other natural habitats within the range of the species including distribution of known or potential habitats; information on ongoing or future activities in potential GPE habitat; information on life history of the GPE and evidence supporting its endogeic (earthworms that live in mineral soil and consume organic matter within the soil or at the soil-litter interface) or anecic (earthworms that inhabit deep vertical burrows and emerge at night to consume relatively fresh plant detritus on the surface) life-history mode; and information on other native or nonnative earthworm distributions in the range of the species.

If, after the status review, we determine that listing the GPE is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act), under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, within the geographical range currently occupied by the GPE, we request data and information on: