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Dated: January 4, 2012.

**Eileen Sobek,**

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

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R4-ES-2010-0024; 4500030114]

RIN 1018-AW89

#### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Mississippi Gopher Frog

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

**ACTION:** Revised proposed rule; reopening of comment period and announcement of public hearing.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on our September 27, 2011, revised proposed rule to designate critical habitat for the Mississippi gopher frog (*Rana sevosa*) [= *Rana capito sevosa*] under the Endangered Species Act of 1973, as amended (Act). We are reopening the comment period to announce changes in methodology from the revised proposed rule and to allow all interested parties another opportunity to comment on the revised proposed rule. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule. We will also hold a public informational session and hearing (see **DATES** and **ADDRESSES** sections).

**DATES:** *Written Comments:* We will consider comments received on or before March 2, 2012. Comments must be received by 11:59 p.m. Eastern Time on the closing date.

*Public informational session and public hearing:* We will hold a public informational session from 6 p.m. to 7 p.m., followed by a public hearing from 7 p.m. to 9 p.m., on January 31, 2012, in Gulfport, Mississippi.

**ADDRESSES:** *Written Comments:* You may submit comments 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 proposed rule,

which is FWS-R4-ES-2010-0024. Then, click on the search button. Please ensure that you have found the correct rulemaking before submitting your comment.

- *U.S. mail or hand delivery:* Public Comments Processing, Attn: Docket No. FWS-R4-ES-2010-0024; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

#### Public Informational Session and Public Hearing

The public informational session and hearing will be held at Gulfport High School (auditorium), 100 Perry Street, Gulfport, Mississippi 39507.

People needing reasonable accommodations in order to attend and participate in the public hearing should contact Stephen Ricks, Mississippi Ecological Services Field Office, at (601) 321-1122, as soon as possible (see **FOR FURTHER INFORMATION CONTACT**). In order to allow sufficient time to process requests, please call no later than one week before the hearing date (see **DATES**).

**FOR FURTHER INFORMATION CONTACT:** Stephen Ricks, Field Supervisor, U.S. Fish and Wildlife Service, Mississippi Ecological Services Field Office, 6578 Dogwood View Parkway, Jackson, MS 39213; by telephone (601) 321-1122; facsimile (505) 346-2542. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Background

It is our intent to discuss only those topics directly relevant to the revised proposed rule to designate critical habitat for the Mississippi gopher frog in this document.

On September 27, 2011, we published a revised proposed rule (76 FR 59774) to designate critical habitat for the Mississippi gopher frog, and announced the availability of the draft economic analysis (DEA) for the revised proposed critical habitat designation. For a description of previous Federal actions concerning the Mississippi gopher frog, please refer to the revised proposed rule. In response to comments we received during the public comment period that opened on September 27, 2011 and closed on November 28, 2011, we have decided to allow the public more time to submit comments and to hold an informational session and public hearing (as described above), and

to modify the revised proposed rule as described below.

#### Changes From the Revised Proposed Rule

As the starting point for delineating Mississippi gopher frog critical habitat in our revised proposed rule (76 FR 59774), we used the median value of all data available to us on maximum distance movements of gopher frogs between their breeding ponds and upland habitats. However, in that revised proposed rule, we stated we used the mean value instead of the median. Of the two peer reviewers that commented during the comment period that closed on November 28, 2011, on whether the median or the mean of the maximum movement distances is most appropriate to use in the critical habitat delineation, one reviewer preferred the median and the other preferred the mean.

Determining the optimum value to use in calculating the amount of habitat necessary for Mississippi gopher frog conservation is difficult, in part because the data were collected from different States, in studies with different objectives, and in habitat of differing quality. The maximum distance gopher frogs moved varied considerably among studies. At the low end of the range is a value of 240 meters (m) (787 feet (ft)) from one Mississippi gopher frog study, and at the upper end of the range is 3,500 m (11,483 ft) for a gopher frog study in North Carolina.

At the suggestion of one peer reviewer, we amended our methodology by combining all movement data from different studies conducted at the same site (Richter *et al.* 2001 and Tupy and Pechmann 2011, combined; Roznik 2007, Roznik and Johnson 2009a, and Roznik *et al.* 2009, combined) and discarding one field observation (Carr 1940) that did not provide specific data on breeding pond or upland habitat use. Based on the peer review comments we received and our further review of available data, we have determined the maximum movement distance values to be those provided in the table below. We continue to believe that the median, rather than the mean, is a more appropriate value to use in the delineation of critical habitat due to the skewed distribution of the data, and accordingly identified the median of the values in the table.

Table 1. Movement of gopher frogs between wetland and upland sites\*. Distance data represent the maximum straight line distance between the middle (except where noted) of a breeding pond and upland burrow sites for each gopher frog study. The gopher

frog species in each study is *Rana capito* unless otherwise stated. Median value of distances = 571 m (1,873 ft).

| Distance                    | Citation                                                                                          | Number Frogs in study |
|-----------------------------|---------------------------------------------------------------------------------------------------|-----------------------|
| 1 299 m (981 ft) .....      | Richter <i>et al.</i> 2001 [ <i>Rana sevosa</i> ]; Tupy and Pechmann 2011 [ <i>Rana sevosa</i> ]. | 29                    |
| 2 300 m (984 ft) .....      | Phillips 1995/Rostal 1999 [distance from pond edge]** .....                                       | 7                     |
| 3 525 m (1,722 ft) .....    | Neufeldt and Birkhead 2001 .....                                                                  | 12                    |
| 4 571 m (1,873 ft) .....    | Blihovde 2006 .....                                                                               | 9                     |
| 5 862 m (2,828 ft) .....    | Roznik 2007 *(observation); Roznik and Johnson 2009a; Roznik <i>et al.</i> 2009.                  | 43                    |
| 6 2,000 m (6,562 ft) .....  | Franz <i>et al.</i> 1988* (observation)** [distance from pond edge] .....                         | 1                     |
| 7 3,500 m (11,483 ft) ..... | Humphries and Sisson 2010 .....                                                                   | 9                     |

\* Telemetry data unless otherwise noted.

\*\* Distance recorded from pond edge, rather than the middle of the pond.

As a result of the changes described above, we propose to amend the value used in constructing the area of critical habitat around a breeding pond from 600 m (1,969 ft) to 571 m (1,873 ft). As set forth in the revised proposed rule, this value would be increased by 50 m (164 ft) to provide a buffer to minimize the edge effects of the surrounding land use. Therefore, we are providing notice to the public that we are revising our proposed critical habitat delineation around the ponds by using a radius of 621 m (2,037 ft), rather than the 650 m (2,133 ft) used in our September 27, 2011, revised proposed rule (76 FR 59774). Given the limited amount of data available to us on the movements of gopher frogs, we are requesting submission of any additional data not already in our possession and are also requesting comments on our revised methodology as described above. Because the changes described above will result in very minor changes to the mapping of the units, we have not revised the maps for this document. However, the revised maps will be available for closer inspection at the field office, on <http://www.regulations.gov>, and at the upcoming public hearing.

If we finalize the rule using the methodology described above, we would designate approximately 2,646 hectares (ha) (6,538 acres (ac)) as critical habitat for the Mississippi gopher frog in 12 units, 3 of which are divided into 2 subunits each. This would be a reduction of 193 ha (477 ac) from the September 27, 2011, revised proposed rule (2,839 ha (7,015 ac)). The critical habitat would be located within St. Tammany Parish, Louisiana, and Forrest, Harrison, Jackson, and Perry Counties, Mississippi. The final decision on whether to designate the critical habitat, as proposed, will be based on the best scientific data available, including information

obtained during the comment period reopened by this document and at the upcoming public informational session and public hearing (see **DATES** and **ADDRESSES**).

#### Public Comments

We will accept written comments and information during this reopened comment period for the revised proposed rule to designate critical habitat for the Mississippi gopher frog that was published in the **Federal Register** on September 27, 2011 (76 FR 59774), as revised by this document. We intend that any final action resulting from this revised proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, the scientific community, industry, or other interested parties concerning this revised proposed rule. Verbal testimony or written comments may also be presented during the public hearing. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as “critical habitat” under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of Mississippi gopher frog habitat;

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the

species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for 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) Information on the projected and reasonably likely impacts of climate change on the Mississippi gopher frog and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area (especially Unit 1 in St. Tammany Parish, Louisiana) that may be included in the final designation; in particular, we seek information on any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(6) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

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

(8) The appropriateness of the taxonomic name change of the Mississippi gopher frog from *Rana capito sevosa* to *Rana sevosa*.

(9) The appropriateness of the methodology used for delineating the proposed critical habitat (including any

data that might help further refine these areas).

If you previously submitted comments or information on the revised proposed rule, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination will take into consideration all written comments and public testimony from the public hearing mentioned above.

You may submit your comments and materials concerning the revised proposed rule by one of the methods listed in the **ADDRESSES** section.

We will post your entire comment—including your personal identifying information—on <http://www.regulations.gov>. If you provide personal identifying information, such

as your street address, phone number, or email address, 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.

Comments and materials we receive, as well as supporting documentation we used in preparing the revised proposed rule, will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS-R4-ES-2010-0024, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the revised proposed rule on the Internet at <http://www.regulations.gov> at Docket Number

FWS-R4-ES-2010-0024, or by mail from the Mississippi Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

#### Author

The primary author of this notice is the Mississippi Ecological Services Field Office, Region 4, U.S. Fish and Wildlife Service.

#### Authority

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

Dated: January 9, 2012.

**Eileen Sobeck,**

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

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