Wednesday,
December 12, 2007

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Salt Creek Tiger Beetle (Cicindela nevadica lincolnia); Proposed Rule
Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Salt Creek Tiger Beetle (Cicindela nevadica lincoliniana)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft economic analysis and draft environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Salt Creek tiger beetle (Cicindela nevadica lincoliniana) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 1,795 acres (ac) (727 hectares (ha)) fall within the boundaries of our proposed critical habitat designation. The proposed critical habitat is located in Lancaster and Saunders Counties, Nebraska. We also announce the availability of the draft economic analysis for our proposed designation of critical habitat for the Salt Creek tiger beetle. The draft economic analysis estimates that, over the 20-year period 2008 to 2027, post-designation costs for Salt Creek tiger beetle conservation-related activities would range between $21.4 and $25.5 million in undiscounted 2007 dollars. In discounted terms, we estimate potential post-designation economic costs to be $19.9 to $22.9 million (using a 3 percent discount rate) and $18.5 to $20.6 million (using a 7 percent discount rate). In annualized terms, potential impacts are expected to range from $1.3 to $1.5 million (annualized at three percent) and $1.7 to $1.9 million (annualized at seven percent). In addition, we announce the availability of a draft environmental assessment prepared in accordance with the National Environmental Policy Act (NEPA) of 1969.

DATES: We will accept comments from all interested parties until February 11, 2008. We must receive requests for public hearings, in writing, at the address shown in the ADDRESSES section by January 28, 2008.

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

• Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
• U.S. mail or hand-delivery: Public Comments Processing, Attn: RIN 1018–AT79; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. 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).


SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions on this proposed rule. We particularly seek 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. 1343, et seq.), including whether the benefit of designation would outweigh any threats to the subspecies caused by designation;
(2) Specific information on:
   • The amount and distribution of Salt Creek tiger beetle habitat;
   • What areas occupied at the time of listing and that contain features essential for the conservation of the subspecies we should include in the designation and why; and
   • What areas not occupied at the time of listing are essential to the conservation of the subspecies 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 whether the draft economic analysis identifies all State and local costs and benefits attributable to the proposed critical habitat designation, and information on any costs or benefits that have been inadvertently overlooked.

(5) 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.

(6) Information on whether the draft economic analysis correctly assesses the effect of other economic analyses, and potential regulatory changes that would be imposed as a result of the designation of critical habitat.

(7) Information on areas that could potentially be disproportionately impacted by the designation of critical habitat.

(8) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities;

(9) Economic data on the incremental costs that would result from designating any particular area as critical habitat, since it is our intent to include the incremental costs attributed to the revised critical habitat designation in the final economic analysis.

(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 public concerns and comments.

We will accept comments on the economic analysis in the proposed rule. You may submit your comments and materials concerning this proposal by one of the methods listed in the ADDRESSES section. We will not accept comments you send by e-mail or fax. Please note that we may not consider comments you receive after the date specified in the DATES section in our final determination.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that we will post your entire comment—including your personal identifying information—on http://www.regulations.gov. 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.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, draft economic analysis, and draft environmental assessment, will be available for public inspection on http://www.regulations.gov, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Nebraska Ecological Services Field Office, Federal Building, Second Floor, 203 West Second Street, Grand Island, NE 68801; telephone 308–382–6468.

Background

Our intent is to discuss only topics directly relevant to the designation of critical habitat for the Salt Creek tiger beetle in this proposed rule. For more information on the Salt Creek tiger
Salt Creek tiger beetle population counts from 2004, and the lowest count in the beetles were found, a 73 percent decline in 2005, only 153 adult Salt Creek tiger beetles declined by 25 percent from the number of adult Salt Creek tiger beetles. The proximity of developments has already occurred and where extensive urban growth and infrastructure, and agricultural developments resulted in degradation, loss, and fragmentation of saline wetland and stream habitats. These modifications have had a negative impact on the Salt Creek tiger beetle because it is adapted to these saline wetland and stream ecosystems. (Ratcliffe and Spomer 2002, p. 5).

As recently as 1994, six populations of Salt Creek tiger beetles were distributed along Oak, Little Salt, and Rock Creeks (Spomer et al. 2004, p. 1). Since 1994, half of these populations have been extirpated and the remaining three extant populations are all located along a single waterway, Little Salt Creek (Spomer et al. 2004, p. 2). The two largest populations along Little Salt Creek exist within 1 mile (mi) (1.6 kilometers (km)) of each other in an area on the north side of Lincoln, Nebraska, where extensive urban growth and development has already occurred and continues to do so. The proximity of these remaining populations to one another along the same stream greatly increases the threat of subspecies extinction because a single human or natural event could cause the loss of these remaining populations. In 2004, the number of adult Salt Creek tiger beetles declined by 25 percent from 2003 (Spomer et al. 2004, pp. 1–2). In 2005, only 153 adult Salt Creek tiger beetles were found, a 73 percent decline from the lowest count in the past 14 years of surveys (Spomer 2005).

Salt Creek tiger beetle population counts totaled 466 individuals in 2006 and 263 in 2007 (Cochnar 2007).

### Previous Federal Actions

The final rule to list the Salt Creek tiger beetle as endangered was published on October 6, 2005 (70 FR 58335). Critical habitat was not designated at the time of listing because we were in the process of identifying the physical and biological features essential to the conservation of the Salt Creek tiger beetle. We are proposing this critical habitat designation in accordance with section 4(b)(2) of the Act.

### Critical Habitat

Critical habitat is defined in section 3 of the Act as:

1. 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 (a) essential to the conservation of the species and (b) which may require special management considerations or protection; and
2. 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.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided under the Act are no longer necessary. Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7 of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands.

Section 7 of the Act is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

For inclusion in a critical habitat designation, habitat within the geographical area occupied by the species at the time it was listed must first have features that are essential to the conservation of the species. Critical habitat that is not certain to be the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b), laid out in an appropriate quantity and spatial arrangement to provide for conservation).

Occupied habitat that contains the features essential to the conservation of the species meets the definition of critical habitat only if its essential features may require special management considerations or protection.

We can designate unoccupied areas as critical habitat. However, when the best available scientific data do not demonstrate that the conservation needs of the species require additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the Federal Register on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions represent the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be proposed as critical habitat, our primary source of information is generally the listing package for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that we may eventually determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that the designated area is unimportant or may not be required for recovery.
Any areas later found to support populations that are outside the critical habitat designation will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b) of the Act, we used the best scientific data available in determining areas occupied at the time of listing that contain the features essential to the conservation of the Salt Creek tiger beetle, and areas unoccupied at the time of listing that are essential to the conservation of the Salt Creek tiger beetle, or both. We propose to designate as critical habitat three areas occupied at the time of listing and one area that was last known to be occupied in 1998. Although Salt Creek tiger beetles may be able to colonize the unoccupied area over time through natural dispersal, we plan to reintroduce the beetle in the unoccupied area to establish an additional viable population in the relatively near future. This population will help reduce the extinction risk associated with having all populations associated with having all populations.

In determining which areas to propose as critical habitat, we reviewed available information pertaining to the presence and habitat requirements of the Salt Creek tiger beetle, such as research published in peer-reviewed articles, contracted surveys, agency reports and databases, Geographic Information System (GIS) analyses, and aerial photography. Information that has been reviewed includes, but is not limited to: Allgeier (2005); Carter (1989); Gersib and Steinauer (1991); Gilbert and Stutheit (1994); Hoback, et al. (1998); Hoback, et al. (2000); Rus, et al. (2003); Spomer and Higley (1993); Allgeier, et al. (2003); Allgeier, et al. (2004); and Spomer, et al. (2004).

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat within areas occupied by the species at the time of listing, we consider the physical and biological features that are essential to the conservation of the species to be the primary constituent elements laid out in the appropriate quantity and spatial arrangement for conservation of the species. These include, but are not limited to:

1. Space for individual and population growth and for normal behavior;
2. Food, water, air, light, minerals, or other nutritional or physiological requirements;
3. Cover or shelter;
4. Sites for breeding, reproduction, or rearing (or development) of offspring; and
5. Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derive the specific primary constituent elements (PCEs) required for the Salt Creek tiger beetle from its biological needs.

Moist, Barren Salt Flats

Salt Creek tiger beetles require moist, barren salt flats for thermoregulation, reproduction, and foraging. Tiger beetle species are generally habitat-specific because of oviposition (the act of laying eggs) and larval sensitivities to soil moisture, salinity (measured by electroconductivity), composition, and temperature (Pearson 1988, pp. 136–137; Pearson and Cassola 1992, p. 380). In field measurements, Salt Creek tiger beetles were found using areas with a mean soil electroconductivity of 2,504.1 mS/m (conductivity per meter), with a lower confidence limit of 2,016.0 mS/m and an upper confidence limit of 2,992.2 mS/m (Allgeier 2005, p. 72). Field measurements also demonstrate that Salt Creek tiger beetles prefer mean soil moisture of 47.6 percent, with a lower confidence limit of 43.5 percent and an upper confidence limit of 51.7 percent (Allgeier 2005, p. 72). The ability to occupy areas with specific soil salinities and moisture levels enables Salt Creek tiger beetles to partition habitat for themselves while existing among conspecific or congeneric tiger beetles.

These reported soil salinity and moisture preferences are available on saline wetland and stream habitats in the Salt Creek basin. The following discussion provides specific details about saline soils, evaporative processes, and recharge zones required to create and maintain moist, barren salt flats within saline wetlands and streams.

(a) Saline soils—Salmo and Saltillo soils and Lamo, Gibbon-Saltine, Obert, and Zoe soils with Salmo and Saltillo inclusions provide salt in sufficient content to result in the creation of salt barrens (U.S. Department of Agriculture 1980, p. 93). The Salt Creek tiger beetle is found in association with Salmo soils (Allgeier 2005, p. 18), and probably is also found in association with Saltillo soils when barren salt are present. Although Salmo and Saltillo soils are known to contain sufficient salt to result in the creation of salt barrens, Salmo soils tend to be better drained than Saltillo soils (http://ortho.fw.nrcs.usda.gov/cgi-bin/oso/soilname.cgi). However, for the purpose of this proposed rule, we will consider these classes of soils interchangeable, and response by the Salt Creek tiger beetle to Salmo or Saltillo soils identical. Stream channels in the Salt Creek basin often were not mapped as a soil unit. However, these streams can take on saline characteristics as they pass through areas with the saline soils described above, or through areas that may have historically contained saline soils (e.g., urban areas where the saline soils were covered over by fill materials and thus not mapped).

(b) Evaporation—Salmo and Saltillo soils and Lamo, Gibbon-Saltine, Obert, and Zoe soils with Salmo and Saltillo inclusions must have soil electroconductivity within the range used by the Salt Creek tiger beetle. In addition, the process of evaporation also must occur to create exposed salt on the soil surface, resulting in the formation of barren salt flats. Specifically, evaporation of groundwater (through differential hydraulic pressures) and surface water from the soils listed above results in the creation of a thin salt crust on the soil surface (Schainost 2005).

(c) Recharge Zone—Contiguous freshwater and saline wetlands function as a recharge zone for barren salt flats and stream banks by regulating surface water flows that are often charged with sediment and freshwater. Without recharge zones, barren salt flats and stream banks required by Salt Creek tiger beetles do not persist (LaGrange 2005; Stutheit 2005). A reduction in salinity concentration can result in the germination of aggressive invasive species such as cattail (Typha angustifolia) and reed canarygrass (Phalaris arundinacea) which are tolerant of a somewhat reduced salt content. These plant species shade...
previously open, sunny areas (i.e., barren salt flats and stream banks) required by Salt Creek tiger beetles for thermoregulating, foraging, and ovipositing (Fritz 2001). Hoback, et al. (2000, pp. 184–186) discovered that changes in salinity and hydrology may alter the abundance of prey and cause the loss of suitable larval habitat for saline wetland/stream-dependent tiger beetles, including the Salt Creek tiger beetle. Increased vegetative encroachment is the primary factor attributed to the extirpation of several populations of other Cicindela species (e.g., C. abdominals and C. debilis) (Knisley and Hill 1992, pp. 135–142), and is one of the main threats to the endangered Ohlone tiger beetle (C. ohlone) (66 FR 0340).

Water Availability and Hydrologic Regime

Salt Creek tiger beetles require water to prevent larval desiccation, to maintain moist conditions at larval burrows, and for foraging activities, and for drinking (Spomer and Higley 1993, p. 396). Adult Salt Creek tiger beetles are confined to moist, muddy areas within a few meters of wetlands and stream edges, and larval burrows are only found in association with hydrated salt flats located along saline stream edges and saline wetlands (Spomer 2005). A natural hydrologic regime resulting in annual high flows in saline streams in the early spring and summer is essential to maintain these areas, and to provide groundwater or surface water sources for the Salt Creek tiger beetle. Further, natural elevation changes in groundwater levels are important to hydrate saline wetlands located on the floodplain.

Larvae of the Salt Creek tiger beetle have adapted to elevated flows, inundation, and anaerobic conditions resulting from precipitation events that can occur during the summer (e.g., localized thunderstorms). This adaptation is thought to provide access to limited prey resources in areas where other predacious insects cannot compete; in addition, it may help the Salt Creek tiger beetle avoid parasites and other insect predators (e.g., robberflies) (Hoback 2005) after flows recede. Salt Creek tiger beetle larvae likely plug their burrows and switch from aerobic to anaerobic respiration to avoid short-duration inundation by floods (Spomer 2005). Although no studies have confirmed these hypotheses, Hoback, et al. (1998, p. 31) found that larvae of Cicindela togata, a tiger beetle closely associated with the Salt Creek tiger beetle, were able to survive without oxygen for an average of 6 days at 25 °C (77 °F). An adaptation to survive without oxygen during floods may allow the Salt Creek tiger beetle to persist along stream systems subject to regular flooding cycles. Brust, et al. (2005, pp. 11–16) concluded that C. hirticollicus is able to survive along river systems subject to regular flooding cycles because its larvae could survive several days of hypoxia, although extended inundation results in decline of the species.

Prey Availability

Salt Creek tiger beetles require an abundant and diverse prey base consisting of flying and non-flying invertebrates. Larochelle (1974, pp. 21–43) provided a list of insect families from many orders that tiger beetles have been observed to eat. Most common are prey belonging to the orders Coleoptera, Orthoptera, Hymenoptera, Odonata, Diptera, and Lepidoptera. Ants (Formicidae) are the most commonly observed prey of adult Salt Creek tiger beetles in the field (Allgeier 2005, p. 5). Although adults can prey on a greater diversity of available prey than larvae, both adults and larvae are predators of similar-sized insects. Adults can capture flying insects; larval prey consists only of insects and arthropods living on the soil surface that wander within striking distance of their burrows (Allgeier 2005, p. 5; Spomer 2005). Typical prey of larval tiger beetles includes dragonflies (Shelford 1908, pp. 157–184; McNamara 1922, pp. 241–246; Smith 1971, p. 80), millipedes (Labonte and Johnson 1988, pp. 53–54), and earthworms and amphipods (Larochelle and Lariviere 2001, pp. 41–122).

Space and Dispersal Requirements

Salt Creek tiger beetles require non-vegetated stream banks and mid-channel areas, located adjacent to and between saline stream edges and barren salt flats in saline and freshwater wetlands, to allow movement for thermoregulation, hunting, and dispersal. Salt Creek tiger beetle movement between habitats consisting of saline wetlands and streams (Allgeier, et al. 2003, pp. 6–7), but open salt flats must be separated by a reasonable dispersal distance for the subspecies (Gowan and Knisley 2005, p. 9). Two Salt Creek tiger beetle populations were documented moving distances of 1,509 and 1,198 feet (460 and 365 meters (m)), respectively, between a saline stream and saline wetland, through a small assemblage of salt banks (U.S. Fish and Wildlife Service 1993, p. 43). That analysis concluded that populations less important for long-term species survival (U.S. Fish and Wildlife Service 1994, p. 15). Although we have no data on long-range dispersal distances, the approximately 14-mile (mi) (22-kilometer (km)) separation between previously-occupied habitats on Oak and Rock Creeks suggests that the Salt Creek tiger beetle may be capable of some level of aerial dispersal. However, other possibilities may be equally plausible, such as that the subspecies existed in a large area that included several streams within Lancaster and Saunders Counties. No studies have been conducted to determine the long-range dispersal distance of Salt Creek tiger beetles.

Other tiger beetle species are capable of long-range dispersal. For example, mark-recapture studies completed for the Northeastern beach tiger beetle (Cicindela dorsalis) resulted in the recovery of marked tiger beetles 5 to 12 mi (8 to 19 km) from sites where they were marked (U.S. Fish and Wildlife Service 1994, p. 15). That study also supports the notion that tiger beetles are capable of aerial dispersal. In that analysis, the authors modeled beetle dispersal among subpopulations utilizing data from the Northeastern beach tiger beetle (C. dorsalis). That analysis concluded that populations less
than 4 mi (6 km) apart tended to exchange individuals, which decreases the risk of extinction by allowing extant subpopulations to repopulate nearby previously-extirpated areas (Gowan and Knisley 2005, p. 11).

We consider both short-range and long-range dispersal distances to be important to the continued existence of the Salt Creek tiger beetle. However, because specific data are not available to precisely define either short-range or long-range dispersal distances for the Salt Creek tiger beetle, we find that the best available science is Gowan and Knisley’s (2005, pp. 8–22) study results, which indicate that populations less than 4 mi (6 km) can exchange individuals. Therefore, we conclude that areas providing appropriate habitat, located on more than a single stream, and separated by a maximum of 4 mi (6 km), should be maintained for the species in order to decrease the risk of extinction by allowing extant subpopulations to exchange individuals and to repopulate nearby previously-extirpated areas.

**Primary Constituent Elements for the Salt Creek Tiger Beetle**

Under the Act and its implementing regulations, we are required to identify the physical and biological features (PCEs) within the geographical area known to be occupied, which may require special management considerations or protection.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the Salt Creek tiger beetle, we have determined that the Salt Creek tiger beetle’s PCEs are:

1. Moist, barren salt flats with:
   - (a) Salmo and Saltillo soils or Lamo, Gibbon-Saltine, Obert, and Zoe soils with Salmo and Saltillo inclusions;
   - (b) Soil electroconductivity ranging from 2,016.0 mS/m to 2,992.2 mS/m;
   - (c) Soil moisture ranging from 43.5 percent to 51.7 percent; and
   - (d) Differential hydraulic pressures that create evaporation and result in exposed salt on soil surfaces;
2. A natural hydrologic regime resulting in annual high flows in saline streams in the early spring and summer, and natural elevation changes in groundwater levels to hydrate saline wetlands located on the floodplain;
3. Non-vegetated streambanks and mid-channel areas, located adjacent to and between saline stream edges and barren salt flats in saline and freshwater wetlands, in assemblages that are within 4 mi (6 km) of one another; and
4. Presence of abundant and diverse flying and non-flying invertebrate prey species belonging to the orders Coleoptera, Orthoptera, Hemiptera, Hymenoptera, Odonata, Diptera, or Lepidoptera.

We have designed this proposed designation for the conservation of PCEs necessary to support the life history functions that were the basis for our proposal and the areas containing those PCEs. Because not all life history functions require all the PCEs, not all proposed critical habitat units will contain all the PCEs.

We propose units for designation based on sufficient PCEs being present to support at least one of the species’ life history functions. Some units contain all PCEs and support multiple life processes, while some units contain only a portion of the PCEs necessary to support the species’ particular use of that habitat.

**Special Management Considerations or Protection**

When designating critical habitat, we assess whether the occupied areas contain the features that are essential to the conservation of the subspecies and may require special management considerations or protection. Special management is required in these areas to reduce threats. Threats common to all four critical habitat units being proposed for the Salt Creek tiger beetle include: (a) Stream channelization and bank armoring; (b) wetland draining and filling (including excessive sedimentation); (c) excessive freshwater input; and (d) overgrazing.

Stream channelization and bank armoring projects in the area of all four proposed critical habitat units have resulted in headcutting (a sharp break in the profile of a stream which forms an in-channel scar called a headcut) and entrenchment (lowering of the stream bed into a restricted channel) of Little Salt and Rock Creeks. These impacts have the effect of lowering the water table in the local area, resulting in the drainage of adjacent saline and freshwater wetlands. The ultimate effect has been the gradual lowering of the water table and subsequent loss of evaporation processes essential for the development of moist, barren salt flats. Stream entrenchment, a direct consequence of stream channelization and bank armoring projects, has resulted in bank sloughing along saline streams. Bank sloughing, in turn, smothers saline seeps and salt flats used by Salt Creek tiger beetles. Bank armoring projects in all four proposed units have resulted in smothered barren salt flats and seeps along saline streams. Stream channelization and bank armoring continue to be significant threats to Salt Creek tiger beetles in all four proposed critical habitat units.

We are proposing to designate critical habitat in four areas—three areas occupied by the subspecies at the time of listing in 2005 and currently occupied which contain features essential to the conservation of the taxon, and one area not occupied at the time of listing (but known to be occupied as recently as 1998) that is considered to be essential to the conservation of the subspecies. The Salt Creek tiger beetle has one of the most restricted ranges of any insect in the United States (Spomer and Higley 1993; Spomer et al. 2004a), and the habitat currently occupied by the subspecies is highly limited and isolated. Surveys conducted over a 15-year period establish that the Salt Creek...
tiger beetle is extremely rare, numbering only in the low hundreds and confined to three small populations along a single drainage in eastern Nebraska, Little Salt Creek (see the final listing rule for more information on population status of the salt creek tiger beetle (70 FR 58335, October 6, 2005)). Because of low populations numbers and the limited number of populations, both of which place the subspecies at a high risk of extinction and highly susceptible to stochastic events, we are proposing to designate critical habitat associated with all three extant populations. However, the three currently occupied areas are within 1 mi (1.6 km) of each other on Little Salt Creek. The risk of extinction of the species due to a single human or natural event is greatly increased by this close proximity. Therefore, we have determined that an additional area in a different watershed than the three currently occupied units is essential to the conservation of the subspecies, and we propose to designate a unit of critical habitat in that area. Specifically, we have identified a currently unoccupied area on Rock Creek (associated with the Jack Sinn Wildlife Management Area of the Nebraska Game and Parks Commission (NGPC)) that was known to be occupied as recently as 1998 and contains all the PCEs. The Jack Sinn–Rock Creek proposed unit is a location where the subspecies can be reintroduced and where it would not be susceptible to human or natural events that occur on Little Salt Creek. We are proposing to include this one unoccupied unit per section 3(5)(A)(ii) of the Act, which states that critical habitat means “specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species.”

In determining boundaries of critical habitat units, we applied the following deductive rule set to identify four specific complexes of saline wetlands and streams that provide the PCEs required by the Salt Creek tiger beetle: 1. As a first step, we utilized the boundaries of the Resource Categorization Study (RCS), depicted as a GIS data layer by Gilbert and Stutheit (1994, pp. 1–24), to identify saline wetland complexes within the Salt Creek tiger beetle’s historic range. The boundaries of the RCS encompass the Eastern Nebraska Saline Wetland Complex, which is the beetle’s historic range.

2. Within the RCS boundaries, we then identified existing saline wetlands containing the PCEs required by the Salt Creek tiger beetle.

3. We also identified saline stream segments flowing through the saline wetlands, as represented by National Hydrography Data and further refined with aerial photography.

4. We then identified areas currently or recently occupied by the Salt Creek tiger beetle within saline wetland and stream complexes.

When determining proposed critical habitat boundaries within this proposed rule, we made every effort to avoid including developed areas such as buildings, paved areas, and other structures that lack PCEs for the Salt Creek tiger beetle. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed areas. Any such structures and the land under them inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they may affect the species or primary constituent elements in adjacent critical habitat.

Proposed Critical Habitat Designation

We are proposing four units as critical habitat for the Salt Creek tiger beetle. The critical habitat areas we describe below constitute our current and best assessment of areas that meet the definition of critical habitat for the Salt Creek tiger beetle. The four areas proposed for designation as critical habitat are: (1) Upper Little Salt Creek North, (2) Little Salt Creek—Arbor Lake, (3) Little Salt Creek—Roper, and (4) Jack Sinn—Rock Creek. Table 1 provides approximate areas (ac/ha), land ownership, and occupancy status of these units determined to meet the definition of critical habitat for the Salt Creek tiger beetle.

**Table 1.—Critical Habitat Units Proposed for the Salt Creek Tiger Beetle**

<table>
<thead>
<tr>
<th>Critical habitat unit</th>
<th>State ownership (ac/ha)</th>
<th>Private ownership (ac/ha)</th>
<th>Total (ac/ha)</th>
<th>Current population status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Upper Little Salt Creek North</td>
<td>32/12.9</td>
<td>275/111.2</td>
<td>307/124.1</td>
<td>Occupied at time of listing and currently occupied.</td>
</tr>
<tr>
<td>2. Little Salt Creek—Arbor Lake</td>
<td>0/0</td>
<td>171/69.2</td>
<td>171/69.2</td>
<td>Occupied at time of listing and currently occupied.</td>
</tr>
<tr>
<td>3. Little Salt Creek—Roper</td>
<td>9/3.6</td>
<td>280/114.1</td>
<td>289/117.7</td>
<td>Occupied at time of listing and currently occupied.</td>
</tr>
<tr>
<td>4. Jack Sinn—Rock Creek</td>
<td>498/201.5</td>
<td>530/214.5</td>
<td>1,028/416</td>
<td>Unoccupied at time of listing and currently unoccupied.</td>
</tr>
<tr>
<td>Total</td>
<td>539/218.0</td>
<td>1,256/509.0</td>
<td>1,795/727</td>
<td></td>
</tr>
</tbody>
</table>

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Salt Creek tiger beetle, below.

**Unit 1—Upper Little Salt Creek North, Lancaster County, Nebraska**

Unit 1 consists of 307 ac (124.1 ha) of occupied Salt Creek tiger beetle habitat located approximately 5.5 mi (8.8 km) north of the Interstate 80 and North 27th Street interchange in Lincoln, Nebraska. It is 4.5 mi (7.2 km)—upstream from Unit 2 (Little Salt Creek—Arbor Lake). The unit includes 3.06 mi (4.9 km) of Little Salt Creek, and consists of a saline stream and wetland complex extending along the floodplain of Little Salt Creek. The unit has all the PCEs required by the Salt Creek tiger beetle, and provides habitat for the third largest existing population of the subspecies. This unit was occupied at the time of listing. It contains features that are essential to the conservation of the species. The area is located away from commercial and residential developments associated
with the City of Lincoln, Nebraska. Recently, a large parcel of land was acquired in this area by the Nebraska Game and Parks Commission (NGPC). Other large parcels of land within this unit consist of saline wetland and stream complex habitats, located along Little Salt Creek, and owned by The Nature Conservancy. Special management is required to address impacts from livestock overgrazing, stream entrenchment resulting from downstream channelization of Little Salt Creek, and ditching used to drain adjacent saline wetlands. Bank sloughing in response to stream entrenchment has likely covered over saline habitats located along the banks of Little Salt Creek.

**Unit 2—Little Salt Creek—Arbor Lake, Lancaster County, Nebraska**

Unit 2 consists of 171 ac (69.2 ha) of occupied Salt Creek tiger beetle habitat located approximately 1 mi (2 km) north of the Interstate 80 and North 27th Street intersection in the northern city limits of Lincoln, Nebraska. The unit includes 1.53 mi (2.5 km) of Little Salt Creek, and has a large, relatively intact saline wetland and stream complex located within the Little Salt Creek floodplain. This unit provides habitat for the largest population of Salt Creek tiger beetles and contains all of the PCEs. It was occupied at the time of listing. The abundance of Salt Creek tiger beetles in this Unit is supported by the large saline wetland and stream complex within the Little Salt Creek floodplain. As such, this unit contains features that are essential to the conservation of the species. Special management is required to reduce surface runoff and sedimentation from adjacent development activities, to reduce bank sloughing, and to address severe channel entrenchment of Little Salt Creek in adjacent saline wetlands. Excess freshwater and sediment has smothered saline habitats to the detriment of the Salt Creek tiger beetle. Other threats to the Little Salt Creek—Arbor Lake Unit include livestock trampling and crop agriculture. Little Salt Creek is severely entrenched in this area resulting in the loss of several saline wetlands located along the floodplain.

**Unit 3—Little Salt Creek—Roper, Lancaster County, Nebraska**

Unit 3 consists of 289 ac (117.7 ha) of occupied Salt Creek tiger beetle habitat located immediately south of the Interstate 80 and North 27th Street intersection on the north side of the confluence of Little Salt and Salt Creeks, and approximately 1 mi (2 km) downstream of Unit 2 (Little Salt Creek—Arbor Lake). The unit includes 2.8 mi (4.5 km) of Little Salt Creek, and consists of a saline stream and wetland complex along the floodplain of Little Salt Creek. Unit 3 contains all of the PCEs, and supports the second largest population of Salt Creek tiger beetles. As such, this unit contains features that are essential to the conservation of the species. It was occupied at the time of listing. Special management is required to reduce surface water runoff and sediment transport from adjacent development activities, and to reduce channelization, stream entrenchment, and bank sloughing.

**Unit 4—Jack Sinn-Rock Creek, Lancaster and Saunders Counties, Nebraska**

Unit 4 consists of 1,028 ac (416 ha) of unoccupied Salt Creek tiger beetle habitat located approximately 3 mi (5 km) southeast of the City of Ceresco, Nebraska, and east of Highway 77. It is 8.5 mi (13.7 km) upstream from the confluence of Rock and Salt Creeks. Unit 4 includes 10.62 mi (17.1 km) of Rock Creek, and consists of a saline stream and wetland complex along the floodplain of Rock Creek. Unit 4 contains all of the PCEs. Rock Creek has been channelized and is entrenched. Bank sloughing in response to the entrenchment of Rock Creek has smothered saline seeps to the detriment of the Salt Creek tiger beetle. Channel entrenchment of Rock Creek has resulted in the loss of adjacent floodplain saline wetlands.

Because proposed Units 1, 2, and 3 (currently occupied) are all on the same stream, and within close proximity of each other (Units 2 and 3 are separated by less than 1 mi), the threat of species extinction is greatly increased as a result of a natural or manmade event such as a chemical spill, drought, flood, or other event. Such an event could cause the loss of remaining populations and render the habitat unsuitable. Local extinctions caused by habitat deterioration and stochastic weather events are frequent for insects, such as the Salt Creek tiger beetle, whose life histories are characterized by short generation time, small body size, high rates of population increase, and high habitat specificity (Murphy, et al. 1990, pp. 41–51; Ruggerio, et al. 1994, pp. 364–372). When developing conservation strategies for such species, the scientific community has stressed that greater emphasis should be placed on the maintenance of multiple populations, rather than protecting single reservoir populations (Murphy, et al. 1990, pp. 41–51; Howe, et al. 1991, pp. 251–253). For example, the recovery plan for the Puritan tiger beetle (Cicindela puritana), a species with a life cycle similar to the Salt Creek tiger beetle, states that multiple metapopulations (consisting of several subpopulations) need to be protected to sustain the species (U.S. Fish and Wildlife Service 1993, p. 21).

In the case of the Salt Creek tiger beetle, we have determined that establishment of multiple populations on different stream systems would lower overall extinction risk by lowering the risk from catastrophic events on a single stream, and by enabling repopulation following localized extinctions, which is comparable to conservation strategies utilized for other listed invertebrate species (Murphy, et al. 1990, pp. 41–51). Our conclusion that populations should be distributed among separate stream systems addresses risks of adverse habitat impacts and weather events on a few populations located in close proximity to each other. Therefore, we have determined that an additional population located on a separate stream is essential to the conservation of the Salt Creek tiger beetle. We further conclude that the currently-unoccupied Jack Sinn-Rock Creek Unit is essential for the conservation of the Salt Creek tiger beetle, because it is the site where a reintroduced population would have the best opportunity to survive and grow. The unit is large and contains the PCEs. Furthermore, unlike other areas with extirpated Salt Creek tiger beetle populations, such as those in the Oak Creek drainage where residential and commercial development have made reintroduction of the Salt Creek tiger beetle unfeasible, this unit is located in an area of primarily agricultural activity and, therefore, faces fewer threats.

**Effects of Critical Habitat Designation**

**Section 7 Consultation**

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Court of Appeals have invalidated our definition of “destruction or adverse modification” (50 CFR 402.02) (see Gifford Pinchot Task Force v. U.S. Fish and Wildlife Service, 378 F.3d 1059 (9th Cir. 2004) and Sierra Club v. U.S. Fish and Wildlife Service et al., 245 F.3d 434, 442F (5th Cir. 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical
If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

1. A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or
2. A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define “Reasonable and prudent alternatives” at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency’s legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director’s opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to initiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency’s discretionary involvement or control is authorized by law). Consequently, some Federal agencies may request a reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the Salt Creek tiger beetle or its designated critical habitat require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251, et seq.) or a permit from us under section 10(a)(1)(B) of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are also subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or permitted, do not require section 7 consultations.

Application of the “Adverse Modification” Standard

For the reasons described in the Director’s December 9, 2004, memorandum, the key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the primary constituent elements to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that appreciably reduces the conservation value of critical habitat for the Salt Creek tiger beetle. Generally, the conservation role of Salt Creek tiger beetle critical habitat units is to support all populations and allow re-establishment of a population to lower overall extinction risk.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore should result in consultation for the Salt Creek tiger beetle include, but are not limited to:

1. Actions that would result in stream channelization and bank arming. Such activities could include, but would not be limited to, stream channelization and bank arming.
projects located in Little Salt and Rock Creeks and their associated tributaries. These activities could result in the loss of moist, barren salt flats through physical smothering, bank sloughing, or hydrological modification along Little Salt and Rock Creeks. Such activities could result in lowering of the water table and the gradual drainage of floodplain saline wetlands. Further, these types of activities could result in modification to the prey base for adult and larval forms of the Salt Creek tiger beetle and elimination of movement corridors necessary to complete life requirements and repopulation of previously extirpated areas.

(2) Actions that would result in input of excessive freshwater runoff and sediment into saline streams and wetlands. Such activities could include, but would not be limited to, adjacent commercial, industrial, and residential developments and associated infrastructure, and construction or upgrade of utilities, including storm sewers. Such activities could result in the transport of sediment and freshwater into saline habitats that are required by the Salt Creek tiger beetle. Excessive freshwater and sediment could smother moist, barren salt flats and encourage vegetation growth. Excessive freshwater runoff and sediment could result in the loss of larval habitat through physical scouring or flooding, smothering with sediment, and conversion to a vegetated state.

(3) Actions that would result in wetland drainage and filling. Such activities could include agricultural, commercial, industrial, and residential land uses and infrastructure to support them. The effects of wetland loss would include the loss of: (1) Moist, barren salt flats; (2) the prey base for larval and adults forms of the Salt Creek tiger beetle; (3) the recharge capacity of adjacent wetlands that function to meter surface flows and capture sediment and freshwater runoff; and (4) the ability of the Salt Creek tiger beetle to move among saline streams and wetlands to meet life history requirements.

(4) Actions that would result in trampling and overgrazing by livestock. Such activities could occur as a result of agricultural land uses. Livestock trample moist, barren salt flats, resulting in the destruction of larvae and larval burrows.

Application of Section 4(b)(2) of the Act

Under section 4(b)(2) of the Act, we must consider all relevant impacts, including economic impacts. We consider a number of factors in a section 4(b)(2) analysis. For example, we consider whether there are lands owned by the Department of Defense (DOD) where a national security impact might exist. We also consider whether the landowners have developed any conservation plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any Tribal issues, and consider the government-to-government relationship of the United States with Tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for the Salt Creek tiger beetle are not owned or managed by the Department of Defense, and the proposed designation does not include any Tribal lands or trust resources. There are currently no Habitat Conservation Plans for the Salt Creek Tiger Beetle. In response to the ongoing development pressure, Nebraska Game and Parks Commission (NGPC), as the lead agency of a broad partnership of resource organizations, is in the process of developing the “Salt Creek Tiger Beetle and Eastern Saline Wetlands HCP” in Lancaster and Saunders Counties. This HCP would be an “umbrella” plan, intended to provide documentation of research on the habitat needs of the Salt Creek tiger beetle. In the future, specific landowners would be able to develop HCPs that tier to this umbrella HCP. The City of Lincoln and Lancaster County should continue to protect the saline wetlands and an associated 500-ft (152.4-m) buffer until the critical habitat designation is finalized and the HCP is completed in order to protect the Salt Creek tiger beetle and the eastern saline wetlands of Nebraska. The HCP would act as the guiding document that will be used by a wide range of Federal, state, and local agencies; conservation organizations; private landowners; and developers. Habitat conservation would be accomplished through a number of different strategies, including land acquisition, conservation easements, state and federal management incentives, and the development of city and county zoning regulations. The HCP would identify and prioritize areas for conservation activities. However, this HCP is in initial development stages, and currently has no guarantee of completion. If completed, the NGPC would be issued a permit, under section 10(a)(1)(B) of the Act, in conjunction with the HCP.

We anticipate no impact to national security, tribal lands, partnerships, or HCPs from this proposed critical habitat designation. Based on the best available information, including the draft economic analysis, we believe that all of these units contain features essential to the species (PCEs), or are otherwise essential for the conservation of the species. We have found no areas for which the benefits of exclusion outweigh the benefits of inclusion; therefore we have not proposed to exclude any areas from this proposed designation of critical habitat for the Salt Creek tiger beetle based on economic or other relevant impacts. As such, we have considered but not excluded any lands from this proposed designation. However, during the development of a final designation, we will be considering economic impacts and additional conservation plans, if available, such that areas may be excluded from the final critical habitat designation under section 4(b)(2).

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best available 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. In compliance with section 4(b)(2) of the Act, we have prepared a draft economic analysis of this proposed designation of critical habitat for the Salt Creek tiger beetle.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of the Salt Creek tiger beetle, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the Salt Creek tiger beetle in essential habitat areas. The draft economic analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the “opportunity costs” associated with the commitment of resources to comply with habitat protection measures (e.g., lost economic opportunities associated with restrictions on land use).

The draft economic 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.
comment period on this proposed rule. In accordance with our joint policy and the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

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; as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, whole 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 consider the types of activities that might trigger regulatory impacts under this rule, as well as the 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 the Salt Creek tiger beetle could significantly affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation. Typically, when proposed critical habitat designations are made final, Federal agencies must consult with us if their activities may affect that designated critical habitat.

Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process. The draft economic analysis for the Salt Creek tiger beetle evaluated the potential for economic impacts related to several activities, including (1) land development; (2) development of the Salt Creek tiger beetle HCP; (3) public and non-governmental organization conservation and restoration; (4) agriculture; and (5) transportation and public works projects (ENTRIX 2007).

Based on our analysis, only small agricultural entities are expected to be affected by conservation efforts for the Salt Creek tiger beetle. Land development, including conversion of cropland to pasture, is expected to be primarily carried out by private landowners. These landowners are likely to include small farmers. Therefore, the screening analysis focused on economic impacts resulting from loss of agriculture land values and modifications to farming activities. The small farmers expected to be affected are forecast to experience an impact equivalent to less than 0.08 percent of estimated annual sales (less than 0.1 of 1 percent) and, therefore, Salt Creek tiger beetle conservation activities are not expected to impact the annual profitability of small ranching and farming operations (ENTRIX 2007, pp. 63–69).

In summary, we have considered whether this proposed designation of critical habitat would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons and based on currently available information, that it is not likely to affect a substantial number of small entities. Therefore, 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 this designation for a more detailed discussion of potential economic impacts.

\*Unfunded Mandates Reform Act\*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, et seq.), we make 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; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, 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. The lands being proposed for critical habitat designation are owned by the State of Nebraska, nongovernment organizations, City of Lincoln, Lower Platte South Natural Resources District, and private individuals and organizations. None of these government entities fit the definition of “small governmental jurisdiction.” Therefore, a Small Government Agency Plan is not required. However, we will further evaluate this issue and conduct our economic analysis, and review and revise this assessment if appropriate.

**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 designating critical habitat for the Salt Creek tiger beetle in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for
the Salt Creek tiger beetle does not pose significant takings implications. However, we will further evaluate this issue as we conduct our economic analysis and review and revise this assessment as warranted.

Federalism

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in Nebraska. The designation of critical habitat in areas currently occupied by the Salt Creek tiger beetle imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standards, property descriptions and identifies the primary constituent elements within the areas proposed for designation to assist the public in understanding the habitat needs of the Salt Creek tiger beetle.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501, et seq.). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA)

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA (42 U.S.C. 4321–4247) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the Federal Register on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (Douglas County v. Babbitt, 48 F.3d 1495 (9th Cir. 1995), cert. denied 116 S. Ct. 698 (1996)). However, because the Regional Office overseeing the preparation of this rule lies within the Tenth Circuit, we have undertaken a NEPA analysis for critical habitat designation and hereby notify the public of the availability, for review and comment, of the draft environmental assessment for this proposal pursuant to the Tenth Circuit ruling in Catron County Board of Commissioners v. U.S. Fish and Wildlife Service, 75 F.3d 1429 (10th Cir. 1996).

The draft environmental assessment is available on the Internet at http://www.fws.gov/mountain-prairie/species/invertebrates/saltcreektiger/index.htm, and at the Nebraska Ecological Services Field Office, Federal Building, Second Floor, 203 West Second Street, Grand Island, NE 68801 (see FOR FURTHER INFORMATION CONTACT).

The Draft Environmental Assessment presents the purpose of and need for critical habitat designation, the Proposed Action and alternatives, and an evaluation of the direct, indirect, and cumulative effects of the alternatives pursuant to the requirements of the NEPA of 1969 (42 U.S.C. 4321, et seq.) as implemented by the Council on Environmental Quality regulations (40 CFR 1500, et seq.) and according to the Department of the Interior’s NEPA procedures.

We will use the final economic analysis and public comments to determine whether critical habitat will be designated as proposed, if the Proposed Action in the environmental assessment requires refinement, or if further analyses are needed through preparation of an environmental impact statement. If the Proposed Action is selected as described, or with minimal changes, and no further environmental analyses are needed, then a Finding of No Significant Impact would be the appropriate conclusion of this NEPA process.

Government-to-Government Relationship With Tribes

In accordance with the President’s memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22905), E.O. 13175, and the Department of the Interior’s manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that there are no Tribal lands occupied at the time of listing that contain the features essential for the conservation, and no Tribal lands that are essential for the conservation, of the Salt Creek tiger beetle. Therefore, we have not proposed designation of critical habitat for the Salt Creek tiger beetle on Tribal lands.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued E.O. 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) 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. OMB provides guidance for implementing this E.O., outlining nine outcomes that may constitute a significant adverse effect on energy supply, distribution, and use. Based on our draft economic analysis, only one of the nine criteria is relevant—increase in the cost of energy distribution in excess of one percent.

Costs will be incurred as a result of routing a powerline to avoid saline wetlands in the Little Salt Creek—Arbor lake habitat. However, based on the electric utility’s standard accounting practices, the annual additional incremental cost of this additional expenditure is 0.12 percent, which is less than the one percent threshold suggested by OMB. Therefore, we conclude that this proposed designation of critical habitat will not have a significant adverse effect on energy supplies, distribution, or use. Therefore, this action is not a significant energy
action, and no Statement of Energy Effects is required. However, we will further evaluate this issue as we conduct our economic analysis, and review and revise this assessment as warranted.

Clarity of the Rule

We are required by E.O. 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;
(b) Use the active voice to address readers directly;
(c) Use clear language rather than jargon;
(d) Be divided into short sections and sentences; and
(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the Addresses section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Nebraska Ecological Services Field Office (see FOR FURTHER INFORMATION CONTACT).

Author(s)

The primary authors of this package are staff of the Nebraska Ecological Services Field Office, Grand Island, Nebraska.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:


2. In § 17.11(b), revise the entry for “Salt Creek tiger beetle” under “INSECTS” to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(i) Insects.

* * * * * *

Salt Creek Tiger Beetle (Cicindela nevadica lincolniana)

(1) Critical habitat units are generally depicted for Lancaster and Saunders Counties, Nebraska, on the maps below.

(2) The primary constituent elements of critical habitat for the Salt Creek tiger beetle are the following habitat components:

(i) Moist, barren salt flats with:
(A) Salmo and Saltillo soils or Lamo, Gibbon–Saltine, Obert, and Zoe soils with Salmo and Saltillo inclusions;
(B) soil electroconductivity ranging from 2,016.0 mS/m to 2,992.2 mS/m;
(C) soil moisture ranging from 43.5 percent to 51.7 percent; and
(D) differential hydraulic pressures that create evaporation and result in exposed salt on soil surfaces;
(ii) A natural hydrologic regime resulting in annual high flows in saline streams in the early spring and summer, and natural elevation changes in groundwater levels to hydrate saline wetlands located on the floodplain;
(iii) Non-vegetated streambanks and mid-channel areas, located adjacent to and between saline stream edges and barren salt flats in saline and freshwater wetlands, in assemblages that are within 4 mi (6 km) of one another; and
(iv) Presence of abundant and diverse flying and non-flying invertebrate prey species belonging to the orders Coleoptera, Orthoptera, Hemiptera, Hymenoptera, Odonata, Diptera, or Lepidoptera.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas) and the land on which they are located existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) Critical habitat map units. Critical habitat units were developed using GIS software. Critical habitat boundaries were defined as follows. We utilized the Resource Categorization Study (RCS; Gilbert and Stutheit 1994) to define boundaries of the Salt Creek tiger beetle’s historic range. Within the RCS boundaries, we then identified existing saline wetlands containing the PCEs required by the Salt Creek tiger beetle; we also identified saline stream segments flowing through the saline wetlands, as represented by National Hydrography Data and further refined with aerial photography. Coordinate points defining critical habitat unit boundaries were created through an automated GIS process using Universal Transverse Mercator as the reference coordinate system.

(5) Note: Map 1 (index map) follows:
(6) Unit 1: Upper Little Salt Creek North, Lancaster County, Nebraska.

(i) Tract 1a: 692489, 4536054; 692486, 4536053; 692479, 4536054; 692476,
(vii) Note: Map of Unit 1 (Map 2) follows:

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(7) Unit 2: Little Salt Creek—Arbor Lake, Lancaster County, Nebraska.

Mitchell Butler,
Acting Assistant Secretary for Fish and Wildlife and Parks.

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