Place: The Marriot Inn and Conference Center UMUC, 3501 University Boulevard E., Hyattsville, MD 20783.

FOR FURTHER INFORMATION CONTACT: Jonathan V. Szalajda, NIOSH, National Personal Protective Technology Laboratory (NPPTL), Post Office Box 18070, 626 Cochrans Mill Road, Pittsburgh, Pennsylvania 15236, telephone (412) 386–5200, facsimile (412) 386–4089, e-mail *zfx1@cdc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Health and Human Services published a proposed rule on the Total Inward Leakage Requirements for Respirators on Friday, October 30, 2009 (74 FR 56141).

NIOSH held a public meeting on the proposed rule on December 3, 2009, at which time commenters asked for an extension of the comment period in order to evaluate the feasibility and cost associated with the proposed rule. NIOSH subsequently published an extension of the comment period to March 30, 2010 in the **Federal Register** on December 17, 2009 (74 FR 66935).

During the comment period, several commenters requested a further extension of the comment period in order to conduct tests and prepare responses. On April 20, 2010, NIOSH responded by reopening the docket for comments until September 30, 2010 (75 FR 20546).

II. Public Meeting

NIOSH will hold a second public meeting on the proposed rule, on the date and time listed above to allow commenters to present their findings and ongoing activities.

Requests to make presentations at the public meeting should be mailed to the NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226. Requests may also be submitted by telephone (513) 533–8611, facsimile (513) 533–8285, or e-mailed to *niocindocket@cdc.gov.* All requests to present should contain the name, address, telephone number and relevant business affiliations of the presenter, and the approximate time requested for the presentation. Oral presentations should be limited to 15 minutes.

After reviewing the requests for presentations, NIOSH will notify the presenter that his/her presentation is scheduled. If a participant is not in attendance when his/her presentation is scheduled to begin, the remaining participants will be heard in order. After the last scheduled speaker is heard, participants who missed their assigned times may be allowed to speak, limited by time available. Attendees who wish to speak but did not submit a request for the opportunity to make a presentation may be given this opportunity after the scheduled speakers are heard, at the discretion of the presiding officer and limited by time available.

This meeting will also be using Audio/LiveMeeting Conferencing, remote access capabilities where interested parties may listen in and review the presentations over the Internet simultaneously. Parties remotely accessing the meeting will have the opportunity to comment during the open comment period. To register to use this capability, please contact the National Personal Protective Technology Laboratory (NPPTL), Policy and Standards Development Branch, Post Office Box 18070, 626 Cochrans Mill Road, Pittsburgh, PA 15236, telephone (412) 386–5200, facsimile (412) 386–4089. This option will be available to participants on a first come, first served basis and is limited to the first 50 participants.

Dated: May 20, 2010.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2010–12744 Filed 5–26–10; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2009–0013]
[92210–1117–000–B4]

RIN 1018–AV45

Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Preble's Meadow Jumping Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the proposed revised designation of critical habitat for the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) under the Endangered Species Act of 1973, as amended. We also announce the availability of a draft economic analysis, a draft environmental assessment, and an amended required determinations section of the proposal. We are reopening the comment period for the proposal to allow all interested parties an opportunity to comment simultaneously on the revised proposed rule, the associated draft economic analysis and draft environmental assessment, and the amended required determinations section. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in preparation of the final rule.

DATES: We will consider public comments received on or before June 28, 2010.

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

- *Federal eRulemaking Portal*: *http://www.regulations.gov.* Search for docket FWS-R6-ES-2009-0013 and then follow the instructions for submitting comments.
- *U.S. mail or hand-delivery*: Public Comments Processing, Attn: FWS-R6-ES-2009-0013; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

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

FOR FURTHER INFORMATION CONTACT: Susan Linner, Field Supervisor, U.S. Fish and Wildlife Service, Colorado Ecological Services Office, P.O. Box 25486, DFC (MS 65412), Denver, CO 80225; by telephone (303-236-4773); or by facsimile (303-236-4005). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our proposed revision of critical habitat for the Preble's Meadow jumping mouse (PMJM) that was published in the **Federal Register** on October 8, 2009 (74 FR 52066), our draft economic analysis (DEA) of the proposed revised designation, our draft environmental assessment, and our amendment of required determinations provided in this document. 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 Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh any threats to the species due to designation, such that the designation of critical habitat is prudent.

(2) Specific information on:

• The amount and distribution of PMJM habitat in Colorado;

• What areas occupied at the time of listing that contain the physical and biological features essential to the conservation of the species we should include in the revised designation and why;

• What areas not occupied at the time of listing are essential to the conservation of the species and why; and

• What special management consideration and protection the physical and biological features may require and why.

(3) Information identifying or clarifying the physical and biological features essential to the conservation of the species.

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

(5) How the proposed boundaries of the revised critical habitat could be refined to more accurately identify the riparian and adjacent upland habitats occupied by the PMJM.

(6) Whether our proposed revised designation should be altered in any way to account for the potential effects of climate change and why.

(7) Whether any specific areas being proposed as revised critical habitat should be excluded under section 4(b)(2) of the Act from the final designation, and whether the benefits of potentially excluding any particular area outweigh the benefits of including that area under section 4(b)(2) of the Act. We are specifically seeking comments from the public on the following:

• Lands covered by the Douglas County Habitat Conservation Plan (HCP) (Service 2006a) and the potential modification of outward boundaries of proposed critical habitat to conform to Douglas County's Riparian Conservation Zones (streams, adjacent floodplains, and nearby uplands likely to be used as habitat by the PMJM) as mapped for the Douglas County HCP;

• Lands within the Livermore Area HCP (Service 2006), the Larimer County's Eagle's Nest Open Space HCP (Service 2004), the Denver Water HCP (Service 2003a), the Struther's Ranch HCP (Service 2003b), and other HCPs;

• Lands within El Paso County (because the county is currently developing a countywide HCP);

• Lands within the proposed Seaman Reservoir expansion footprint; and

• Lands within the Rocky Flats National Wildlife Refuge (NWR).

(8) Any foreseeable economic, national security, or other relevant impacts that may result from the proposed revised designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas from the proposed redesignation that exhibit these impacts.

(9) Information on the extent to which the description of potential economic impacts in the DEA is complete and accurate.

(10) Whether the DEA makes appropriate assumptions regarding current practices and any regulatory changes that will likely occur if we designate revised critical habitat.

(11) Whether the DEA correctly assesses the effect of regional costs associated with land use controls that may result from the revised designation of critical habitat.

(12) Whether the DEA identifies all Federal, State, and local costs and benefits attributable to the proposed revision of critical habitat, and information on any costs that have been inadvertently overlooked.

(13) Whether the draft environmental assessment adequately presents the purpose of and need for the proposed action, the proposed action and alternatives, and the evaluation of the direct, indirect, and cumulative effects of the alternatives.

(14) Whether our approach to designating revised critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

You may submit your comments and materials concerning our proposed rule or the associated DEA and draft environmental assessment by one of the methods listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov*, your entire comment—including your personal identifying information— will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov*.

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, Colorado Ecological Services Office (see the **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed revision of critical habitat, the DEA, and the draft EA on the Internet at *http://www.regulations.gov* at docket number FWS–R6–ES–2009–0013, or at *http://www.fws.gov/mountain-prairie/species/mammals/preble/*, or by mail from the Colorado Ecological Services Office (see the **FOR FURTHER INFORMATION CONTACT**).

Background

Previous Federal Actions

It is our intent to discuss only those topics directly relevant to the proposed designation of critical habitat for the PMJM. For more information on previous Federal actions concerning the PMJM, refer to the proposed designation of revised critical habitat published in the **Federal Register** on October 8, 2009 (74 FR 52066). We proposed to designate approximately 418 mi (669 km) of rivers and streams and 39,142 ac (15, 840 ha) of lands in 11 units located in Boulder, Broomfield, Douglas, El Paso, Jefferson, Larimer, and Teller Counties in Colorado, as critical habitat. That proposal had a 60–day public comment period, ending December 7, 2009. We will submit for publication in the **Federal Register** a final critical habitat designation for the PMJM on or before September 30, 2010.

For additional information on the biology of this subspecies, see the May 13, 1998, final rule to list the PMJM as threatened (63 FR 26517); the June 23, 2003, final rule designating critical habitat for the PMJM (68 FR 37275); and the July 10, 2008, final rule to amend the listing for the PMJM to specify over what portion of its range the subspecies is threatened (73 FR 39789).

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection; and specific areas outside the geographical area occupied by the

species at the time it is listed upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions that affect critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We have prepared a DEA of our October 8, 2009 (74 FR 52066), proposed rule to designate revised critical habitat for the Preble's Meadow jumping mouse.

The intent of the DEA is to identify and analyze the potential economic impacts associated with the proposed revised critical habitat designation for the PMJM. The DEA quantifies the economic impacts of all potential conservation efforts for the PMJM. Some of these costs will likely be incurred regardless of whether or not we designate revised critical habitat. The economic impact of the proposed revised critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). Therefore, the baseline represents the costs incurred regardless of whether revised critical habitat is designated. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of revised critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed revised critical habitat designation.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed revised critical habitat designation for the PMJM over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to reasonably forecast activity levels for projects beyond a 20–year timeframe. The DEA identifies potential incremental costs as a result of the proposed revised critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing. The DEA quantifies economic impacts of conservation efforts for the PMJM associated with the following categories of activity: (1) Residential and commercial development; (2) roads/bridges, utilities, and bank stabilization projects; (3) water supply development; (4) U.S. Forest Service land management; (5) Rocky Flats NWR land management; and (6) gravel mining.

The DEA estimates that total potential incremental economic impacts in areas proposed as revised critical habitat over the next 20 years will be $21.4 million to $52.9 million (approximately $2.02 million to $4.99 million on an annualized basis), assuming a 7-percent discount rate. Approximately 95 percent of the incremental impacts attributed to the proposed designation of revised critical habitat are expected to be related to section 7 consultations with Federal agencies for residential and commercial development.

Activities in proposed revised critical habitat units 9 and 10, West Plum Creek and Upper South Platte River, are projected to bear the largest incremental impacts attributable to the proposed rule, representing about 38 and 34 percent of total incremental impacts, respectively.

As stated earlier, we are seeking data and comments from the public on the DEA and the draft environmental assessment, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from revised critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of the species.

Draft Environmental Assessment; National Environmental Policy Act

When the range of a species includes States within the Tenth Circuit, 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), we will complete an analysis under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA), on critical habitat designations. The range of the PMJM includes the State of Colorado, which is within the Tenth Circuit.

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 under the requirements of NEPA as implemented by the Council on Environmental Quality regulations (43 CFR 61292, *et seq.*) and according to the Department of the Interior's NEPA procedures.

The draft environmental assessment will be used by the Service to decide whether or not critical habitat will be designated as proposed; if the Proposed Action requires refinement, or if another alternative is appropriate; or if further analyses are needed through preparation of an environmental impact statement. If the Proposed Action is selected as described (or is changed minimally) and no further environmental analyses are needed, then a Finding of No Significant Impact (FONSI) would be the appropriate conclusion of this process. A FONSI would then be prepared for the environmental assessment.

Required Determinations—Amended

In our October 8, 2009, proposed rule (74 FR 52066), we indicated that we would defer our determination of compliance with several statutes and Executive Orders (EOs) until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data in making these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (*Regulatory Planning and Review*), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Paperwork Reduction Act, E.O. 12866 and E.O. 12988 (Clarity of the Rule), and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). However,

based on the DEA data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 13211 (Energy Supply, Distribution, or Use), and the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency 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 (i.e., 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. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of our final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under the 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 revised critical habitat for the PMJM would 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). In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat affects activities conducted, funded, permitted, or authorized by Federal agencies.

Under the Act, designation of critical habitat only affects activities carried out, funded, or permitted by Federal agencies. If we finalize the proposed revised critical habitat designation, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

Some kinds of activities are unlikely to have any Federal involvement and so would not result in any additional effects under the Act. However, there are some State laws that limit activities in designated critical habitat even where there is no Federal nexus. If there is a Federal nexus, Federal agencies will be required to consult with us under section 7 of the Act on activities they fund, permit, or carry out that may affect critical habitat. If we conclude, in a biological opinion, that a proposed action is likely to destroy or adversely modify critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid destroying or adversely modifying critical habitat.

Within the proposed revised critical habitat designation, the types of actions or authorized activities that we have identified as potential concerns and that may be subject to consultation under section 7 if there is a Federal nexus are: Residential and commercial development; roads/bridges, utilities, and bank stabilization projects; water supply development; U.S. Forest Service land management practices; Rocky Flats NWR management practices; and gravel mining. As discussed in Appendix A of the DEA, of the activities addressed in the analysis, only residential and commercial development, and construction and maintenance of roads/bridges, utilities, and bank stabilization projects are expected to experience incremental, administrative consultation costs that may be borne by small businesses.

Any existing and planned projects, land uses, and activities that could affect the proposed revised critical habitat but have no Federal involvement would not require section 7 consultation with the Service, so they are not restricted by the requirements of the Act. Federal agencies may need to reinitiate a previous consultation if discretionary involvement or control over the Federal action has been retained or is authorized by law and the activities may affect critical habitat.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the PMJM. Please refer to our draft economic analysis of the proposed revised critical habitat designation for a more detailed discussion of potential economic impacts; we will summarize key points of the analysis below.

The DEA, and its associated initial regulatory flexibility analysis, estimate that total potential incremental economic impacts in areas proposed as revised critical habitat over the next 20 years will be $2.02 million to $4.99 million annually, assuming a 7-percent discount rate. Approximately 95 percent of the incremental impacts attributed to the proposed designation of critical habitat are expected to be related to section 7 consultations with Federal agencies for residential and commercial development. Expected impacts to residential and commercial development include added costs primarily due to administrative consultations and required modifications to development project scope or design, including mitigation (or setting aside conservation lands), habitat restoration and enhancement, and project delays. Small entities represent 97 percent of all entities in the residential and commercial development industry that may be affected. Incremental costs also are expected related to road/bridge, utility, and bank stabilization construction and maintenance activities throughout proposed revised critical habitat. Small entities represent 90 percent of all entities in the road/bridge, utility, and

bank stabilization construction and maintenance industries that may be affected. The Small Business Size Standard for the industry sectors that could potentially be affected by the proposed revised critical habitat designation are as follows:

- New Housing Operative Builders—$33.5 million in annual receipts.
- Land Subdivision—$7 million in annual receipts
- Natural Gas Distribution—500 employees.
- Water Supply and Irrigation Systems—$7 million annual receipts.
- Pipeline Transportation of Natural Gas—$7 million annual receipts.

In addition, government entities in the area may be affected. Of these, 70 percent are small government jurisdictions (i.e., cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000).

Of principal interest is residential and commercial development, and associated land subdivision, since an estimated 95 percent of potential incremental impacts may affect that industry sector. The small businesses in this industry sector may bear a total of $19.6 to $49.9 million (at a 7-percent discount rate) in incremental impacts related to section 7 consultations over the next 20 years (through 2029). However, when expressed as a percentage of a small developer's annual sales revenue, assuming that one small developer is required for each of the development projects, these monetary incremental impacts are likely to be small. The incremental impact due to critical habitat designation is estimated to range from $115,000 to $292,000 per project. An average of nine projects is anticipated to occur in critical habitat per year. For new home builders, estimated annual sales in 2007 per developer in Colorado were $6.51 million. Therefore, in years where a developer has a project in critical habitat, the estimated incremental impact represents 1.8 to 4.5 percent of that developer's annual sales in this industry. However, we expect these costs to be incurred over a period of more than one year, since most developments will take longer than one year to complete (i.e., if a project takes two or more years to complete, the impact as a proportion of revenue in any one year will be substantially less).

For land subdividers, the DEA assumes that annual sales per establishment are limited to the small business threshold of $7 million annually. The estimated annual incremental impact therefore represents 1.6 to 4.2 percent of a subdivider's annual sales. As discussed above, the incremental impact associated with each project is expected to be incurred over a period of more than one year. Thus, this analysis overstates the actual annual impact on a small entity.

There are additional factors that may cause this analysis to overstate the actual impact on small residential and commercial developers, and on land subdividers. First, it is likely that a portion of the impact will be realized by landowners in the form of higher housing prices. The proportion of the total impact borne by landowners is unknown. We believe the analysis gives a high estimate of possible development and that it is likely the actual amount of development will be less. The analysis likely overstates the amount of development activity and, therefore, the total incremental impact, associated with residential and commercial development. Lastly, anecdotal evidence and existing county building restrictions suggest that fewer properties in critical habitat are being developed than are quantified by the DEA. This will likely further reduce the annual incremental impact borne per small entity.

For road/bridge, utility, and bank stabilization construction and maintenance, the DEA estimates that incremental impacts will range from $392,000 to $818,000 over 20 years, or $37,000 to $77,200 annually. Given an estimated average of four projects impacting critical habitat and requiring section 7 consultation each year, and assuming one small entity (municipality, wastewater district, etc.) conducts each activity, the impact to each small government entity involved would be $9,250 to $19,300. We expect this to be a very small percentage of the annual budgets for the small governments that may be affected; however, we invite comments or information specific to these potential economic impacts to the small governments which may be affected by the proposed revised critical habitat designation.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Given the analysis above, the expected annual impacts to small businesses in the affected industries are significantly less than the annual revenues that could be garnered by a single small operator in those industries, and as such, impacts are low relative to potential revenues. However, we are seeking public comments regarding the estimated incremental impacts of this proposed revised critical habitat designation on small entities. Specifically, we are interested in evidence suggesting that the incremental economic impact of section 7(a)(2) consultations in areas proposed as PMJM critical habitat is expected to be larger or smaller than estimated in this analysis.

Executive Order 13211—Energy Supply, Distribution, and 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. The Office of Management and Budget's guidance for implementing this Executive Order outlines nine outcomes that may constitute "a significant adverse effect" when compared to no regulatory action. The only criterion that may be relevant to this analysis is increases in the cost of energy distribution in excess of one percent. As described in the DEA, constructing and maintaining electrical and natural gas distribution and transmission systems is a type of utility project potentially occurring in the proposed revised critical habitat. The DEA concludes that incremental impacts may be incurred; however, they are unlikely to reach the threshold of one percent. Therefore, designation of revised critical habitat is not expected to lead to any adverse outcomes (such as a reduction in electricity production or an increase in the cost of energy production or distribution), and a Statement of Energy Effects is not required.

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

In accordance with the Unfunded Mandates Reform Act (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. First, it excludes "a condition of federal assistance." Second, it excludes "a duty arising from participation in a voluntary

Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. 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) As discussed in the DEA of the proposed designation of revised critical habitat for the PMJM, we do not believe that the rule would significantly or uniquely affect small governments because it would not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The DEA concludes that incremental impacts may occur due to project modifications that may need to be made for development activities; however, these are not expected to affect small governments to the extent described above. Consequently, we do not believe that the proposed revised critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

References Cited

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

Authors

The primary authors of this document are the staff members of the Colorado Ecological Services Office.

Authority

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

Dated: May 18, 2010

Thomas L. Strickland,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010–12775 Filed 5–26–10; 8:45 am]

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