C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 28 and 52

Government procurement.

Dated: March 7, 2007

Ralph De Stefano
Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 28 and 52 as set forth below:

1. The authority citation for 48 CFR parts 28 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 28—BONDS AND INSURANCE

2. Amend section 28.203-3 by revising paragraphs (a)(1) and paragraph (d) introductory text to read as follows:

28.203–3 Acceptance of real property.

(a) * * *

(1) Evidence of title that is consistent with the requirements of Section 2 of the United States Department of Justice Title Standard 2001 at http://www.fws.gov/realty/doj_2001.pdf. Depending on the value of the property, contracting officers should consider requesting assistance from the agency-designated legal counsel to determine if the evidence of title is adequate.

* * * * *

(d) The following format, or any document substantially the same, shall be signed by all owners of the property and used by the surety and recorded in the local recorder’s office when a surety pledges real estate on Standard Form 28, Affidavit of Individual Surety.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 52.228-11 by revising the date of the clause and the first sentence in paragraph (b)(2)(i) of the clause to read as follows:

52.228–11 Pledges of Assets.

* * * * *

PLEDGES OF ASSETS (DATE)

* * * * *

(b) * * *

(2) * * *

(i) Evidence of title that is consistent with the requirements of Section 2 of the United States Department of Justice Title Standard 2001 at http://www.fws.gov/realty/doj_2001.pdf. *

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[FR Doc. 07–1182 Filed 3–15–07; 8:45 am]
subsurface vegetation (e.g., roots); (8) Information on the extent of documented Comal Springs riffle beetles occurrences in Spring Lake; (9) Whether there are data supporting the premise that any or all of the invertebrates are detritivores (detritus-feeding animals) in spring-influenced riparian zones; (10) Whether there are any data documenting the need of any subsurface areas for breeding, feeding, or sheltering, or documenting the presence of any or all of the invertebrates in the subsurface areas; (11) Whether the economic analysis adequately addresses the likely effects and resulting costs arising from State laws as a result of the proposed critical habitat designation; (12) Whether the economic analysis correctly assesses the effect on regional costs associated with land-use controls that could arise from the designation of critical habitat for these species; (13) Whether the designation of critical habitat will result in disproportionate economic or other impacts to specific areas that should be evaluated for possible exclusion from the final designation; (14) Whether the economic analysis appropriately identifies all costs that could result from the designation of critical habitat for these species; and (15) Whether the benefits of exclusion in any particular area outweigh the benefits of inclusion under section 4(b)(2) of the Act. Our final designation of critical habitat will take into consideration all comments and any additional information received, including all previous comments and information submitted during the initial comment period. Please include ‘RIN 1018–AU75’ and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact us directly (see ADDRESSES section). Please note that the e-mail address FW2Comal@fws.gov will be unavailable after the public comment period terminates. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their names and home addresses, but if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present a reasonable basis for withholding this information. The rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Background

We proposed to designate critical habitat for the Peck’s cave amphipod, Comal Springs dryopid beetle, and Comal Springs riffle beetle on July 17, 2006 (71 FR 40588). The proposed critical habitat totaled about 38.5 acres (ac) (15.6 hectares (ha)) for the Peck’s cave amphipod in Comal County, Texas; 39.5 ac (16.0 ha) for the Comal Springs dryopid beetle in Comal and Hays Counties, Texas; and 30.3 ac (12.3 ha) for the Comal Springs riffle beetle in Comal and Hays Counties, Texas. Pursuant to the terms of a settlement agreement, we will submit for publication to the Federal Register a final critical habitat designation for the Peck’s cave amphipod, Comal Springs dryopid beetle, and Comal Springs riffle beetle by June 29, 2007.

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 or any other relevant impacts of specifying any particular area as critical habitat. Based on the July 17, 2006, proposed rule to designate critical habitat for the Peck’s cave amphipod, Comal Springs dryopid beetle, and Comal Springs riffle beetle (71 FR 40588), we have prepared a draft economic analysis (EA) of the proposed critical habitat designation for the Peck’s cave amphipod, Comal Springs dryopid beetle, and Comal Springs riffle beetle.

Our draft EA addresses the potential impacts of conservation efforts for the Peck’s cave amphipod, Comal Springs dryopid beetle, and Comal Springs riffle beetle on activities occurring on lands proposed for or that may be affected by the proposed designation. The EA measures lost potential economic efficiency associated with water use activities, construction development, water quality, aquatic restoration, and administrative costs. The draft EA considers the potential economic effects of actions relating to the conservation of the Peck’s cave amphipod, Comal Springs dryopid beetle, and Comal Springs riffle beetle, including costs associated with sections 4, 7, and 10 of the Act and 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 Comal Springs invertebrates in the areas proposed as critical habitat. The 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 EA also analyzes whether a particular group or economic sector bears an undue proportion of the impacts, with specific analysis of the impacts to small entities and potential impacts on energy availability. Finally, the draft EA estimates economic impacts to activities from 2006 to 2026 (20 years after the year of proposed designation of critical habitat). Forecasts of economic conditions and other factors beyond the next 20 years would be speculative.

We solicit data and comments from the public on the draft EA, as well as on all aspects of our proposal to designate critical habitat. We may revise the proposal, or its supporting documents, to incorporate or address new information received during this comment period. In particular, we may exclude an area from the final designation of critical habitat if the Secretary determines that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

Under scenarios 1 and 2 in our draft EA, impacts associated with water use changes comprise the vast majority, or between 94 and 98 percent, of the total quantified impacts in the areas we have proposed for designation. Total permitted withdrawals from the Edwards Aquifer are to be reduced from approximately 549,000 acre-feet to 450,000 acre-feet, following a 1993 lawsuit concerning five endangered species in the Edwards Aquifer that share habitat with CSI. As soon as 2008, total permitted water withdrawals in the Edwards Aquifer may be further limited from the present 549,000 acre-feet per year to 400,000 acre-feet per year (scenario 1). It is also possible that, in dry years, additional restrictions may be imposed that will further limit aquifer withdrawals to 340,000 acre-feet (scenario 2). This draft EA examines social welfare and regional economic impacts that could result from these limits to water withdrawals in the aquifer. It should be noted that the majority of economic impacts quantified in this draft EA are jointly caused by eight endangered species, including the three CSI. Because all of these species reside in the same habitat, separating future impacts of CSI from those of the other listed species in the aquifer is not possible.

We estimate costs related to conservation activities for the area proposed for designation of critical habitat for the Comal Springs invertebrates under sections 7, and 10 of the Act to be approximately $23.3 million over the next 20 years under scenario 1, or $152 million under scenario 2 in undiscounted dollars (annualized dollars are estimated to be $1.2 million under scenario 1 and $7.6 million under scenario 2). Future economic impacts associated with conservation efforts in areas proposed as critical habitat at a 3 percent discount rate are estimated to be $17.1 million over the next 20 years under scenario 1, or $111.3 million under scenario 2 (annualized dollars are estimated to be $1.2 million under scenario 1 and $7.5 million under scenario 2). Future economic impacts associated with conservation efforts in areas proposed as critical habitat at a 7 percent discount rate are estimated to be $11.9 million over the next 20 years under scenario 1, or $77.3 million under scenario 2 (annualized dollars are estimated to be $1.2 million under scenario 1 and $7.4 million under scenario 2).

**Required Determinations—Amended**

In our July 17, 2006, proposed rule (71 FR 40588), we indicated that we would be deferring our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders was available in the draft economic analysis. Those data are now available for our use in making these determinations. In this notice, we are affirming the information contained in the proposed rule concerning Executive Order 13132 and Executive Order 12988; the Paperwork Reduction Act; the National Environmental Policy Act; and the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951). Based on the information made available to us in the draft economic analysis, we are amending our Required Determinations, as provided below, concerning Executive Order 12663 and the Regulatory Flexibility Act, Executive Order 13211, Executive Order 12630, and the Unfunded Mandates Reform Act.

**Regulatory Planning and Review**

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. However, on the basis of our draft EA, we do not anticipate that the designation of critical habitat for these species would have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the Federal Register, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule.

Further, Executive Order 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A-4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, the agency will then need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Endangered Species Act of 1973, as amended, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

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

**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 effect of the rule on small entities (i.e., small businesses, small nonprofit organizations, and small government jurisdictions). However, no regulatory...
affected activities discussed in the economic analysis, (1) Aquatic restoration, (2) changes in water use, and (3) construction and development activities, the analysis determines that only impacts to construction and development activities are forecast to be borne in part by small entities.

If this proposed critical habitat designation is made final, Federal agencies must consult with us 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.

Construction and Development Activities. The draft EA concludes that the most likely location for development activities within the proposed critical habitat designation is on two parcels in the Comal Springs unit. The analysis assumes that the private owners of developable lands in the proposed critical habitat designation impacted by future conservation efforts for the Pec’s cave amphipod, Comal Springs dryfly beetle, and Comal Springs riffle beetle will be developers. This analysis estimates that one developer (0.3 percent of small developers) is likely to develop the affected parcels. Since 98 percent of the developers in the region are considered small, this analysis assumes that the one affected developer will be small. The draft economic analysis estimates that two residential housing units could be built within proposed critical habitat by one small developer over the next 20 years. Impacts to the developer are estimated to include conservation efforts, such as reducing sedimentation, monitoring, appropriate equipment staging, and minimizing disturbance to the water body. Costs are estimated to be approximately 0.001 percent of annual sales (Draft Economic Analysis 2007, Appendix B, p. B8). From this analysis, we have determined that this proposed designation will not have an effect on a substantial number of small businesses that are part of residential and commercial development, nor will it result in a significant effect to the annual sales of these small businesses impacted by this proposed designation, because only one developer (0.3 percent of small developers) may be affected and the approximate impacts to this one developer would be 0.001 percent of typical annual sales over the next 20 years.

Executive Order 13211—Energy Supply, Distribution, and Use

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use (Draft Economic Analysis 2007, p. B9). Therefore, this action is not a significant action and no Statement of Energy Effects is required.

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

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, 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” and “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, or tribal governments under entitlement authority,” if the provision would “increase the stringency of conditions of assistance” or “place caps upon, or otherwise decrease, the Federal Government’s responsibility to provide funding” and the State, local, or tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) A condition of Federal assistance; or (ii) A duty arising from participation in a voluntary Federal program.” The designation of critical habitat does not impose a legally binding duty
on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, or permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) The draft economic analysis discusses potential impacts of critical habitat designation for the Peck’s cave amphipod, Comal Springs dryopid beetle, and Comal Springs riffle beetle on water management activities, administration activities, residential and commercial development activities, and aquatic restoration activities. Impacts on small governments are not anticipated, or they are anticipated to be passed through to consumers (Draft Economic Analysis 2007, Appendix B). As such, a Small Government Agency Plan is not required.

Takings
In accordance with E.O. 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for the Peck’s cave amphipod, Comal Springs dryopid beetle, and Comal Springs riffle beetle in a takings implications assessment. The takings implications assessment concludes that this proposed designation of critical habitat for these Comal Springs invertebrates does not pose significant takings implications.

Author
The primary author of this notice is the staff of the Austin Ecological Services Field Office.

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


David M. Verhey,
Acting Assistant Secretary for Fish and Wildlife and Parks.