

References Cited

A complete list of all references cited in this proposed rule is available on the Internet at <http://www.regulations.gov> or upon request from the Field Supervisor, New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

Authors

The primary authors of this proposed rule are the staff members of the New Mexico Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

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:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding an entry for “Lizard, dunes sagebrush” in an alphabetical order under REPTILES to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * * * *							
REPTILES							
* * * * *							
Lizard, dunes sagebrush.	<i>Sceloporus arenicolus</i> .	U.S.A. (NM, TX)	Phrynosomatidae	E	NA	NA
* * * * *							

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Dated: December 1, 2010.

Rowan W. Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2010–31140 Filed 12–13–10; 8:45 am]

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DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

[Docket No. FWS–R4–ES–2010–0024; MO 92210–0–0009–B4]

RIN 1018–AW89

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

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, availability of draft economic analysis, and amended required determinations.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis (DEA) for the June 3, 2010, proposed designation of critical habitat for the Mississippi gopher frog (*Rana sevosia*) [= *Rana capito sevosia*] under the Endangered Species Act of 1973, as amended (Act). We also announce the reopening of the comment period and

an amended required determinations section of the proposal. We are reopening the comment period for an additional 30 days to allow all interested parties an opportunity to comment simultaneously on the proposed critical habitat designation, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule.

DATES: We will consider public comments received on or before January 13, 2011. Comments must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

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

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS–R4–ES–2010–0024.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: FWS–R4–ES–2010–0024; 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:

Stephen Ricks, Field Supervisor, Mississippi Fish and Wildlife Office, 6578 Dogwood View Parkway, Jackson, MS 39213; by telephone (601–321–1122); or by facsimile (601–965–4340). 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 designation of critical habitat for the Mississippi gopher frog that was published in the **Federal Register** on June 3, 2010 (75 FR 31387), the DEA of the proposed designation of critical habitat for the Mississippi gopher frog, and the amended 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 areas as “critical habitat” under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to the Mississippi gopher frog from human activity, the degree of which can be expected to

increase due to the designation, and whether that increase in threat outweighs the benefit of designation, such that the designation of critical habitat is prudent.

(2) Specific information on:

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

(b) What areas occupied by the species at the time of listing that contain features essential for the conservation of the species we should include in the designation and why;

(c) Special management considerations or protection for the physical and biological features essential to Mississippi gopher frog conservation that have been identified in the proposed rule that may be needed, including managing for the potential effects of climate change; and

(d) What areas not occupied by the species at the time of listing are essential to the conservation of the species and why.

(3) Specific information on the Mississippi gopher frog and the physical and biological features essential to the conservation of the species.

(4) Any information on the biological or ecological requirements of the species.

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

(6) Any foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(7) Whether the benefits of excluding any particular area from critical habitat outweigh the benefits of including that area as critical habitat under section 4(b)(2) of the Act, after considering the potential impacts and benefits of the proposed critical habitat designation.

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

(9) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

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

(11) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you submitted comments or information on the proposed rule (75 FR 31387) during the initial comment period from June 3, 2010, to August 2, 2010, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning revised critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not 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. We will post all hard copy comments on <http://www.regulations.gov> as well. If you submit a hard copy 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. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation used in preparing the proposed rule and DEA, 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, Mississippi Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at <http://www.regulations.gov> at Docket Number FWS-R4-ES-2010-0024 or by mail from the Mississippi

Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for Mississippi gopher frog in this document. For more information on previous Federal actions concerning the Mississippi gopher frog, refer to the proposed designation of critical habitat published in the **Federal Register** on June 3, 2010 (75 FR 31387). For more information on the Mississippi gopher frog or its habitat, refer to the final listing rule published in the **Federal Register** on December 4, 2001 (66 FR 62993), which is available online at <http://www.regulations.gov> (at Docket Number FWS-R4-ES-2010-0024) or from the Mississippi Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

On June 3, 2010, we published a proposed rule to designate critical habitat for the Mississippi gopher frog (75 FR 31387). We proposed to designate as critical habitat a total of 792 hectares (1,957 acres) in 11 units within Forrest, Harrison, Jackson, and Perry Counties, Mississippi. That proposal had a 30-day comment period, ending August 2, 2010. We will submit for publication in the **Federal Register** a final critical habitat designation on or before May 30, 2011.

Section 3 of the Act defines critical habitat as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat are required to consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on

national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine 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.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan. In the case of Mississippi gopher frog, the benefits of critical habitat include public awareness of the presence of the Mississippi gopher frog and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for Mississippi gopher frog due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by Federal agencies.

We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation (DEA), which is available for review and comment (see **ADDRESSES** section).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the Mississippi gopher frog that we published in the **Federal Register** on June 3, 2010 (75 FR 31387). The DEA separates conservation measures into two distinct categories according to

“without critical habitat” and “with critical habitat” scenarios. The “without critical habitat” scenario represents the baseline for the analysis, considering protections otherwise afforded to the gopher frog (e.g., under the Federal listing and other Federal, State, and local regulations). The “with critical habitat” scenario describes the incremental impacts specifically due to designation of critical habitat for the species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts).

The DEA describes economic impacts associated with designation of critical habitat for the Mississippi gopher frog based on the following categories: (1) Costs associated with economic activities, including development and forestry; (2) costs associated with military activities; and (3) costs associated with active species management. The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the Mississippi gopher frog over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. These incremental costs are the costs we may consider in the final designation of critical habitat when evaluating the benefits of excluding particular areas under section 4(b)(2) of the Act. For a further description of the methodology of the analysis, see Chapter 2 (“Framework for the Analysis”) of the DEA.

The DEA estimates the incremental impacts of conservation activities for the Mississippi gopher frog to be \$102,000 over the next 20 years (\$9,610 in annualized impacts, assuming a 7 percent discount rate). All of these impacts stem from the administrative cost of addressing adverse modification of critical habitat during section 7 consultations. Parties involved in section 7 consultations include the Service, the action agency, and in some cases, a private entity involved in the project or land use activity. Incremental impacts stemming from additional

gopher frog conservation measures requested by the Service during section 7 consultation are not expected in occupied areas because project modifications that may be needed to minimize impacts to the species would coincidentally minimize impacts to critical habitat. In unoccupied areas, project modifications resulting from consultation would be considered incremental impacts of the critical habitat designation.

The DEA also discusses the potential economic benefits associated with the designation of critical habitat. However, because the Service believes that the direct benefits of the designation are best expressed in biological terms, this analysis does not quantify or monetize benefits; only a qualitative discussion of economic benefits is provided.

As we stated earlier, we are soliciting data and comments from the public on the DEA, 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 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 this species.

Required Determinations—Amended

In our June 3, 2010, proposed rule (75 FR 31387), we indicated that we would defer our determination of compliance with several statutes and executive orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA 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), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), 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.*).

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions), as described below. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed 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 a final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we

considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the Mississippi gopher frog would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as timber operations, and residential and commercial development along with the accompanying infrastructure associated with such projects including road, storm water drainage, bridge and culvert construction and maintenance. 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 only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where the Mississippi gopher frog is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species, due to the endangered status of the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

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 Mississippi gopher frog. As discussed in the DEA, the Service and any Federal action agency are the only entities with direct compliance costs associated with the proposed critical habitat designation. These Federal agencies are not considered small business entities under the Regulatory Flexibility Act. As a consequence, this rule will not result in a significant impact on small entities. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential impacts.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the reasons discussed above, and based on currently available information, we certify that if promulgated, the proposed designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Authors

The primary authors of this notice are the staff members of the Mississippi Fish and Wildlife Office, Southeast Region, U.S. Fish and Wildlife Service.

Authority

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

Dated: December 6, 2010.

Will Shafroth,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2010-31227 Filed 12-13-10; 8:45 am]

BILLING CODE 4310-55-P