

species with a lower priority if they threats as the species with the high  
overlap geographically or have the same priority.

#### ACTIONS ANTICIPATED TO BE FUNDED IN FY 2008 THAT HAVE YET TO BE COMPLETED

| Species                                                    | Action                              |
|------------------------------------------------------------|-------------------------------------|
| <b>Actions Subject to Court Order/Settlement Agreement</b> |                                     |
| Bonneville cutthroat trout .....                           | 12-month petition finding (remand). |
| <b>Actions With Statutory Deadlines</b>                    |                                     |
| Polar bear .....                                           | Final listing determination.        |
| 3 Southeastern aquatic species .....                       | Final listing.                      |
| <i>Phyllostegia hispida</i> .....                          | Final listing.                      |
| Yellow-billed loon .....                                   | 12-month petition finding.          |
| Black-footed albatross .....                               | 12-month petition finding.          |
| Mount Charleston blue butterfly .....                      | 12-month petition finding.          |
| Goose Creek milk-vetch .....                               | 12-month petition finding.          |
| White-tailed prairie dog .....                             | 12-month petition finding.          |
| Mono Basin sage grouse (vol. remand) .....                 | 90-day petition finding.            |
| Ashy storm petrel .....                                    | 90-day petition finding.            |
| Longfin smelt—San Fran. Bay population .....               | 90-day petition finding.            |
| Black-tailed prairie dog .....                             | 90-day petition finding.            |
| Lynx (include New Mexico in listing) .....                 | 90-day petition finding.            |
| Wyoming pocket gopher .....                                | 90-day petition finding.            |
| Llanero coqui .....                                        | 90-day petition finding.            |
| Least chub .....                                           | 90-day petition finding.            |
| American pika .....                                        | 90-day petition finding.            |
| Dusky tree vole .....                                      | 90-day petition finding.            |
| Sacramento Mts. checkerspot butterfly .....                | 90-day petition finding.            |
| Kokanee—Lake Sammamish population .....                    | 90-day petition finding.            |
| 206 species .....                                          | 90-day petition finding.            |
| 475 Southwestern species .....                             | 90-day petition finding.            |
| <b>High Priority Listing Actions</b>                       |                                     |
| 31 Kauai species <sup>1</sup> .....                        | Proposed listing.                   |
| 8 packages of high-priority candidate species .....        | Proposed listing.                   |

<sup>1</sup> Funds used for this listing action were also provided in FY 2007.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

#### Conclusion

We will add the montane portion of the Gunnison's prairie dog to the list of candidate species. We intend any listing action for the species to be as accurate as possible by reflecting the best available information. Therefore, we will continue to accept additional information and comments on the status of and threats to this species from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding. If an emergency situation develops that warrants an emergency

listing of this species, we will act immediately to provide additional protection.

#### References

A complete list of all references cited herein is available upon request from the Western Colorado Field Office (see **ADDRESSES**).

#### Author

The primary authors of this document are staff located at the Colorado Field Office (see **ADDRESSES**).

#### Authority

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

Dated: January 29, 2008.

#### H. Dale Hall,

Director, U.S. Fish and Wildlife Service.  
[FR Doc. 08-493 Filed 2-4-08; 8:45 am]

**BILLING CODE 4310-55-P**

#### DEPARTMENT OF THE INTERIOR

#### Fish and Wildlife Service

#### 50 CFR Part 17

[FWS-R8-ES-2008-0014; 92210-1117-0000-B4]

RIN 1018-AV05

#### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Sierra Nevada Bighorn Sheep (*Ovis canadensis californiana*) and Proposed Taxonomic Revision

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

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

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on the proposed designation of critical habitat for the Sierra Nevada bighorn sheep (*Ovis canadensis californiana*) and proposed taxonomic revision under

the Endangered Species Act of 1973, as amended (Act). We also announce the availability of the draft economic analysis (DEA) of the proposed critical habitat designation, and an amended required determinations section of the proposal. The DEA provides information about the pre-designation costs and forecasts post-designation costs associated with conservation efforts for Sierra Nevada bighorn sheep. The DEA estimates potential future costs due to conservation efforts (baseline costs) to be approximately \$26.7 million and costs associated solely with the designation of critical habitat (incremental costs) to be approximately \$135,000 in undiscounted dollars over a 20-year period in areas proposed as critical habitat. The amended required determinations section provides our determination concerning compliance with applicable statutes and Executive Orders that we have deferred until the information from the DEA of the proposal was available. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated DEA, and the amended required determinations section. Comments submitted during the initial comment period from July 25 to September 24, 2007, on the proposed rule (72 FR 40956), or from October 9 to November 23, 2007, during the reopened comment period on the proposed rule (72 FR 57276) have been incorporated into the supporting for this rulemaking and need not be resubmitted. We will incorporate all comments into the supporting record as part of this comment period, and we will fully consider them when preparing our final determination.

**DATES:** We will accept public comments until March 6, 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: FWS-R8-ES-2008-0014, 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).

**FOR FURTHER INFORMATION CONTACT:** Robert D. Williams, Field Supervisor,

U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Blvd., Suite 234, Reno, NV 89502-7147; telephone 775-861-6300; or facsimile 775-861-6301. 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 critical habitat designation for the Sierra Nevada bighorn sheep and proposed taxonomic revision published in the **Federal Register** on July 25, 2007 (72 FR 40956), our draft economic analysis (DEA) of the proposed designation, 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 habitat as critical habitat under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefits of designation would outweigh threats to the species caused by the designation, such that the designation of critical habitat is prudent.

(2) Specific information on:

- The amount and distribution of Sierra Nevada bighorn sheep habitat,
- What areas occupied at the time of listing that contain features essential to the conservation of the species we should include in the designation and why, and
- What areas not occupied at the time of listing are essential for the conservation of the species and why.

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

(4) Information on the extent to which any State and local environmental protection measures we reference in the DEA may have been adopted largely as a result of the listing of the Sierra Nevada bighorn sheep.

(5) Information on whether the DEA identifies all State and local costs and benefits attributable to the proposed critical habitat designation, and information on any costs or benefits that we have overlooked.

(6) Information on whether the DEA makes appropriate assumptions regarding current practices and any regulatory changes likely if we designate critical habitat.

(7) Information on whether the DEA identifies all costs that could result from

the designation and whether you agree with the analysis.

(8) Information on whether the DEA correctly assesses the effect on regional costs associated with any land use controls that may result from the critical habitat designation.

(9) Information on areas that the critical habitat designation could potentially impact to a disproportionate degree.

(10) Economic data on the incremental costs of designating any particular area as critical habitat.

(11) Information on any quantifiable economic benefits of the designation of critical habitat.

(12) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts.

(13) Whether the benefit of excluding any particular area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(14) 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.

Comments submitted during the initial comment period from July 25 to September 24, 2007, on the proposed rule (72 FR 40956), or from October 9 to November 23, 2007, during the reopened comment period on the proposed rule (72 FR 57276) have been incorporated into the supporting for this rulemaking and need not be resubmitted. We will incorporate them into the supporting record as part of this comment period, and we will fully consider them in preparation of our final determination. If you wish to comment, you may send your comments and materials concerning our proposed rule, DEA, or amended required determinations by one of the methods listed in the **ADDRESSES** section. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during the 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 this proposed rule by one of the methods listed in the **ADDRESSES** section. We will no longer

accept comments you send by e-mail or fax. Please note that we will consider comments we 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 preparation of the proposal to designate critical habitat, will be available for public inspection on <http://www.regulations.gov>, or by appointment during normal business hours, at the Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502-7147; telephone 775-861-6300. You may obtain copies of the proposed critical habitat rule and the DEA by mail from the Nevada Fish and Wildlife Office or by visiting our Web site at <http://www.fws.gov/nevada>.

## Background

On December 8, 2005, the Center for Biological Diversity filed a complaint based on the Service's failure to designate critical habitat for this subspecies within the time mandated under the Act (*Center for Biological Diversity v. U.S. Fish and Wildlife Service*, et al. Case No. 2:05-CB-02492-DFL-KJM). On June 6, 2006, the Service entered into a settlement agreement with the Center for Biological Diversity to submit a proposed critical habitat designation for this subspecies for publication in the **Federal Register** by July 17, 2007, and to submit a final determination on the proposed critical habitat designation for publication by July 17, 2008. On July 25, 2007, we published a proposed rule to designate critical habitat for the Sierra Nevada bighorn sheep (72 FR 40956), identifying a total of approximately 417,577 acres (168,992 hectares) of land in Tuolumne, Mono, Fresno, Inyo, and Tulare counties, California. In that proposal, we also proposed a taxonomic revision of the listed entity from a distinct population segment to a subspecies (*Ovis Canadensis sierrae*) based on recent published information.

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 areas designated as critical habitat must consult with us on the effects of their proposed actions, in accordance with section 7(a)(2) of the Act.

Under section 4(b)(2) of the Act, we may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact.

## 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. Based on the July 25, 2007, proposed rule to designate critical habitat for the Sierra Nevada bighorn sheep (72 FR 40956), we have prepared a DEA of the proposed critical habitat designation.

The intent of the DEA is to quantify the economic impacts of all potential conservation efforts for the Sierra Nevada bighorn sheep; some of these costs will likely be incurred regardless of whether we designate critical habitat. The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation (incremental impacts) and other conservation-related actions (baseline impacts) for this species over the next 20 years. It also considers past costs associated with conservation of the species from the time it was listed in 2000 (65 FR 20, January 3, 2000), until the year the proposed critical habitat rule was published (72 FR 40956, July 25, 2007).

Activities associated with the conservation of the Sierra Nevada bighorn sheep are likely to primarily

impact future domestic sheep grazing, recreation management, and habitat management. Pre-designation (2000 to 2007) impacts associated with species conservation activities in areas proposed for designation are estimated at \$11.1 million in 2007 dollars. The DEA forecasts baseline economic impacts in the areas proposed for designation to be approximately \$26.7 million (undiscounted dollars) over the next 20 years. The present value of these impacts, applying a 3 percent discount rate, is \$20.4 million (\$1,370,000 annualized), or \$15.1 million (\$1,430,000 annualized) using a 7 percent discount rate. The DEA forecasts incremental economic impacts to be approximately \$135,000 (undiscounted) over the next 20 years. The present value of these impacts, applying a 3 percent discount rate, is \$106,000 (\$7,090 annualized), or \$80,300 (\$7,580 annualized) using a 7 percent discount rate. The cost estimates are based on the proposed designation of critical habitat published in the **Federal Register** on July 25, 2007 (72 FR 40956).

The DEA considers the potential economic effects of actions relating to the conservation of the Sierra Nevada bighorn sheep, including costs associated with sections 4, 7, and 10 of the Act, as well as costs attributable to the designation of 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 Sierra Nevada bighorn sheep in areas containing features essential to the conservation of the species. The DEA 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 (such as lost economic opportunities associated with restrictions on land use).

The DEA 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 government agencies, private business, and individuals. The DEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the

designation might unduly burden a particular group or economic sector. Finally, the DEA looks retrospectively at costs that have been incurred since the date Sierra Nevada bighorn sheep was listed as endangered (65 FR 20, January 3, 2000) and considers those costs that may occur in the 20 years following the designation of critical habitat. Forecasts of economic conditions and other factors beyond this point would be speculative.

As stated earlier, we solicit data and comments from the public on the DEA, as well as on all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or its supporting documents to incorporate or address new information we receive during this 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 as critical habitat, provided the exclusion will not result in the extinction of the species.

#### Required Determinations—Amended

In our July 25, 2007, proposed rule (72 FR 40956), 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 was available in the DEA. We have now made use of the DEA to make these determinations. In this document we affirm the information in our proposed rule concerning Executive Order (E.O.) 13132; E.O. 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). However, based on the DEA data, we revise our required determinations concerning E.O. 12866; the Regulatory Flexibility Act, including the Small Business Regulatory Enforcement Fairness Act; E.O. 13211 (Energy, Supply, Distribution, and Use); E.O. 12630 (Takings); and the Unfunded Mandates Reform Act.

#### Regulatory Planning and Review

In accordance with Executive Order 12866 (E.O. 12866), we evaluate four parameters in determining whether a rule is significant. The four parameters that would result in a designation of significant under E.O. 12866 are:

(a) The rule would have an annual economic effect of \$100 million or more or adversely affect an economic sector,

productivity, jobs, the environment, or other units of the government.

(b) The rule would create inconsistencies with other Federal agencies' actions.

(c) The rule would materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) The rule would raise novel legal or policy issues.

If OMB requests to informally review a rule designating critical habitat for a species, we consider that rule to raise novel legal and policy issues. Because no other Federal agencies designate critical habitat, the designation of critical habitat will not create inconsistencies with other agencies' actions. We use the economic analysis of the critical habitat designation to evaluate the potential effects related to the other parameters of E.O. 12866 and to make a determination as to whether the regulation may be significant under parameter (a) or (c) listed above.

Based on the economic analysis of the critical habitat designation, we have determined that the designation of critical habitat for the Sierra Nevada bighorn sheep will not result in an annual effect on the economy of \$100 million or more or affect the economy in a material way. Based on previous critical habitat designations and the economic analysis, we believe this rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. OMB has requested to informally review this rule, and thus this action may raise novel legal or policy issues. In accordance with the provisions of E.O. 12866, this rule is considered significant.

Further, E.O. 12866 directs Federal agencies issuing regulations to evaluate regulatory alternatives (OMB Circular A-4, September 17, 2003). Under Circular A-4, once an agency determines that a regulatory action is appropriate, the agency needs to consider alternative regulatory approaches. Since the designation of critical habitat is a statutory requirement under the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our critical habitat designations, we consider economic impacts, impacts to national security, and other relevant impacts under section 4(b)(2) of the Act. Based on the discretion section 4(b)(2) allows, we may exclude any particular area from the critical habitat designation as long

as the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat, and as long as the exclusion will not result in the species' extinction. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or a combination, in a critical habitat designation constitutes our regulatory alternative analysis.

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

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) (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). 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 (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; 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 Sierra Nevada bighorn sheep would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as residential and commercial development. 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, or authorized by Federal agencies.

If we finalize the proposed 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.

In our DEA of the proposed critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the Sierra Nevada bighorn sheep and the proposed designation of critical habitat. The analysis is based on the estimated impacts associated with the proposed rulemaking as described in Chapters 2 through 4 and Appendix A of the DEA and evaluates the potential for economic impacts related to three categories: Grazing, recreation management, and habitat management.

The DEA identified one domestic sheep grazing permittee operating in the Humboldt-Toiyabe National Forest, and two resorts and unidentified outdoor pack companies operating in the Humboldt-Toiyabe and the Inyo National Forests that qualify as small businesses that could be impacted due to their activities within areas proposed as critical habitat.

For the one grazing permittee, the DEA estimates a cost of \$13,000 associated with conservation activities for the Sierra Nevada bighorn sheep over the next 20 years at a 3 percent discounted rate (\$875 annualized). For the two resorts and unidentified outdoor pack companies, the DEA estimates a cost of \$2,730 associated with

conservation activities for the Sierra Nevada bighorn sheep over the next 20 years at a 3 percent discounted rate (\$183 annualized). Incremental impacts are expected only to occur in proposed critical habitat Units 1 and 2. This number of small business entities is not considered a substantial number.

The U.S. Forest Service (USFS) is expected to incur incremental costs as a result of this designation, but it is not considered a small entity by the SBA.

In summary, we have considered whether the proposed rule would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, the proposed rule will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

#### *Executive Order 13211—Energy Supply, Distribution, and Use*

On May 18, 2001, the President issued 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. OMB's guidance for implementing this Executive Order outlines nine outcomes that may constitute "a significant adverse effect" when compared to no regulatory action. The DEA finds none of these criteria relevant to this analysis. Thus, based on the information in the DEA, we do not expect Sierra Nevada bighorn sheep conservation activities within proposed critical habitat to lead to energy-related impacts. As such, we do not expect the proposed designation of critical habitat to significantly affect energy supplies, distribution, or use, 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 (UMRA) (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. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except as (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

Critical habitat designation 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. Designation of critical habitat may indirectly impact non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action. 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) We do not believe that this rule would significantly or uniquely affect small governments. As discussed in the DEA, approximately 99 percent of the lands proposed as critical habitat are comprised of lands managed by the Federal government (e.g., USFS, National Park Service (NPS), and Bureau of Land Management (BLM)), which does not qualify as a small government. The Federal government is not considered a small governmental jurisdiction or entity by the Small Business Administration because it services a population exceeding the criteria for a "small entity." Consequently, we do not believe that critical habitat designation would significantly or uniquely affect small

government entities. As such, a Small Government Agency Plan is not required.

*Executive Order 12630—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 Sierra Nevada bighorn sheep in a takings implications assessment. Our takings

implications assessment concludes that this proposed designation of critical habitat for the Sierra Nevada bighorn sheep does not pose significant takings implications.

**References Cited**

A complete list of all references cited in the proposed rule is available on <http://www.regulations.gov>.

**Author**

The primary author of this notice is the staff of the Nevada Fish and Wildlife

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

**Authority**

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

Dated: January 24, 2008.

**David M. Verhey,**

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

[FR Doc. E8–1805 Filed 2–4–08; 8:45 am]

**BILLING CODE 4310–55–P**