

retained with a copy of the DEA Form 222 first executed. A copy of the statement must be attached to a copy of the second DEA Form 222 sent to the supplier. If the first DEA Form 222 is subsequently received by the supplier to whom it was directed, the supplier must mark upon the face "Not accepted" and return it ("the original") to the purchaser, who must attach it to the statement.

\* \* \* \* \*

8. Section 1305.17 is amended by revising paragraphs (a), (b), and (c) to read as follows:

**§ 1305.17 Preservation of DEA Forms 222.**

(a)(1) The purchaser must retain Copy 3 of each executed triplicate DEA Form 222 and all copies of unaccepted or defective forms with each statement attached.

(2) The purchaser must retain a copy of each executed single-sheet DEA Form 222 and all copies of unaccepted or defective forms with each statement attached.

(b)(1) The supplier must retain Copy 1 of each triplicate DEA Form 222 that it has filled.

(2) The supplier must retain the original of each single-sheet DEA Form 222 that it has filled.

(c)(1) Triplicate DEA Forms 222 must be maintained separately from all other records of the registrant. DEA Forms 222 are required to be kept available for inspection for a period of two years. If a purchaser has several registered locations, the purchaser must retain Copy 3 of the executed triplicate DEA Form 222 and any attached statements or other related documents (not including unexecuted DEA Forms 222, which may be kept elsewhere under § 1305.12 (e)), at the registered location printed on the DEA Form 222.

(2) Single-sheet DEA Forms 222 must be maintained separately from all other records of the registrant. DEA Forms 222 are required to be kept available for inspection for a period of two years. If a purchaser has several registered locations, the purchaser must retain a copy of the executed single-sheet DEA Form 222 and any attached statements or other related documents (not including unexecuted DEA Forms 222, which may be kept elsewhere under § 1305.12 (e)), at the registered location printed on the DEA Form 222.

\* \* \* \* \*

9. Section 1305.19 is revised to read as follows:

**§ 1305.19 Cancellation and voiding of DEA Forms 222.**

(a)(1) A purchaser may cancel part or all of an order on a triplicate DEA Form

222 by notifying the supplier in writing of the cancellation. The supplier must indicate the cancellation on Copies 1 and 2 of the triplicate DEA Form 222 by drawing a line through the canceled items and printing "canceled" in the space provided for the number of items shipped.

(2) A purchaser may cancel part or all of an order on a single-sheet DEA Form 222 by notifying the supplier in writing of the cancellation. The supplier must indicate the cancellation on the original copy of the DEA Form 222 sent by the purchaser to the supplier by drawing a line through the canceled items and printing "canceled" in the space provided for the number of items shipped.

(b)(1) A supplier may void part or all of an order on a triplicate DEA Form 222 by notifying the purchaser in writing of the voiding. The supplier must indicate the voiding in the manner prescribed for cancellation in paragraph (a)(1) of this section.

(2) A supplier may void part or all of an order on a single-sheet DEA Form 222 by notifying the purchaser in writing of the voiding. The supplier must indicate the voiding in the manner prescribed for cancellation in paragraph (a)(2) of this section.

Dated: November 17, 2007.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control.*

[FR Doc. E7-22984 Filed 11-26-07; 8:45 am]

**BILLING CODE 4410-09-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 167**

[USCG-2007-0057]

**Port Access Route Study of Potential Vessel Routing Measures To Reduce Vessel Strikes of North Atlantic Right Whales; Correction**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of study; request for comments; correction.

**SUMMARY:** The Coast Guard is correcting a notice of study and request for comments that appeared in the **Federal Register** on November 19, 2007 (72 FR 64968). That notice informed the public the Coast Guard is conducting a Port Access Route Study (PARS) on the area east and south of Cape Cod, Massachusetts, to include the northern right whale critical habitat, mandatory

ship reporting system area, and the Great South Channel including Georges Bank out to the exclusive economic zone (EEZ) boundary. The purpose of the PARS is to analyze potential vessel routing measures that might help reduce ship strikes with the highly endangered North Atlantic right whale while minimizing any adverse effects on vessel operations. The recommendations of the study will inform the Coast Guard and may lead to appropriate international actions.

**DATES:** Comments and related material must reach the Docket Management Facility on or before January 18, 2008.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on the notice of study, call Mr. George Detweiler, Coast Guard Division of Navigation Systems, 202-372-1566, or send e-mail to [George.H.Detweiler@uscg.mil](mailto:George.H.Detweiler@uscg.mil). If you have questions on viewing or submitting material to the docket, call Ms. Renee K. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:** In **Federal Register** Volume 72, Number 222, appearing on page 64969 on Monday, November 19, 2007, the following correction is made:

1. On page 64969, in the third column, under "What are the timeline, study area, and processes of this PARS?", remove the words "and must be completed by December 2007."

Dated: November 20, 2007.

**Stefan G. Venckus,**

*Chief, Office of Regulations and Administrative Law, United States Coast Guard.*

[FR Doc. E7-23050 Filed 11-26-07; 8:45 am]

**BILLING CODE 4910-15-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

RIN 1018-AU86

**Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Acanthomintha ilicifolia* (San Diego Thornmint)**

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

**ACTION:** Proposed rule; reopening of comment period, corrections to proposed critical habitat, 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 comment period on the

proposed designation of critical habitat for *Acanthomintha ilicifolia* (San Diego thornmint) under the Endangered Species Act of 1973, as amended (Act). We also announce corrections to proposed critical habitat subunits 3C, 3D, 3F, 4A, 4B, and 4C as described in the preamble to the proposed rule published in the **Federal Register** on March 14, 2007 (72 FR 11946); announce the availability of the draft economic analysis for the proposed critical habitat designation; and announce amended Required Determinations for the proposal. The draft economic analysis provides information about the pre-designation costs and forecasts post-designation costs associated with conservation efforts for *Acanthomintha ilicifolia*. The draft economic analysis estimates potential future costs to be approximately \$0.6 to \$2.8 million in undiscounted dollars over a 20-year period in areas proposed as final critical habitat and approximately \$1.6 to \$5.1 million in undiscounted dollars over a 20-year period in areas proposed for exclusion from critical habitat under section 4(b)(2) of the Act. 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 draft economic analysis 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, corrections to the preamble of the proposed rule, the associated draft economic analysis, and the amended Required Determinations section. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this comment period and will be fully considered in preparation of the final rule.

**DATES:** We will accept public comments until December 27, 2007.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials by any one of several methods:

(1) *By mail or hand-delivery to:* Jim Bartel, Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011.

(2) *By electronic mail (e-mail) to:* [fw8cfwocomments@fws.gov](mailto:fw8cfwocomments@fws.gov). Please see the Public Comments Solicited section below for other information about electronic filing.

(3) *By fax to:* the attention of Jim Bartel at 760-431-5901.

(4) *Via the Federal eRulemaking Portal:* at <http://www.regulations.gov>. Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the address listed in the **ADDRESSES** section (telephone 760-431-9440; facsimile 760-431-5901). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Comments Solicited**

We will accept written comments and information during this reopened comment period on the proposed critical habitat designation for *Acanthomintha ilicifolia* published in the **Federal Register** on March 14, 2007 (72 FR 11946), the corrections to the proposed critical habitat described herein (see Corrections to Proposed Critical Habitat section), and our draft economic analysis of the proposed designation. 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 benefit 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 *Acanthomintha ilicifolia* habitat,
- What areas occupied at the time of listing and 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 to 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) Our proposed exclusion of 1,134 acres (ac) (459 hectares (ha)) of lands already conserved or targeted for conservation within subarea plans under the San Diego Multiple Species Conservation Program (MSCP) and the San Diego Multiple Habitat Conservation Program (MHCP) from the final designation of critical habitat for *Acanthomintha ilicifolia* under section 4(b)(2) of the Act (see Exclusions Under Section 4(b)(2) of the Act in the

proposed critical habitat rule for details of these habitat conservation plans (HCPs)). Please note that in the March 14, 2007, proposed rule (72 FR 11946), we sought comments on our proposed exclusion of 1,302 ac (527 ha) of non-Federal lands from the final designation. In this notice, we have made several corrections that have resulted in reductions in the areas being proposed as critical habitat and the area being proposed for exclusion (see Corrections to the Proposed Rule below for a detailed discussion of these corrections).

We are specifically seeking public comment on our proposed exclusion of lands covered under the City of Encinitas subarea plan of the MHCP (see Exclusions Under Section 4(b)(2) of the Act in the proposed critical habitat rule for details of this HCP). It is our understanding that little progress has been made by the City of Encinitas to finalize their subarea plan since the 2001 release of the draft plan. Based on information received during the public comment period, the Secretary may determine that sufficient progress has not been made and that lands within the City of Encinitas' subarea plan should not be excluded from the final designation. Specifically, useful information would include: whether essential lands within Encinitas are being managed, or are reasonably assured of being managed, to conserve *Acanthomintha ilicifolia*, and the outlook for completion of the draft subarea plan.

Please provide information concerning whether the benefit of excluding any of these specific areas from the critical habitat designation outweighs the benefit of including these areas in the designation under section 4(b)(2). If the Secretary determines that the benefits of including these lands outweigh the benefits of excluding them, they will not be excluded from final critical habitat.

(5) Our corrections to proposed critical habitat subunits 3C, 3D, 3F, 4A, 4B, and 4C as described in this notice (see Corrections to Proposed Critical Habitat section below).

(6) Information on whether, and, if so, the extent to which any State and local environmental protection measures referenced in the draft economic analysis were adopted largely as a result of the listing of *Acanthomintha ilicifolia*, and which were either already in place at the time of listing or enacted for other reasons.

(7) Information on whether the draft economic analysis identifies all State and local costs and benefits attributable to the proposed critical habitat

designation, and information on any costs or benefits that have been inadvertently overlooked.

(8) Information on whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat.

(9) Information on whether the draft economic analysis correctly assesses the effect on regional costs associated with any land use controls that may derive from the designation of critical habitat.

(10) Information on areas that could potentially be disproportionately impacted by designation of critical habitat for *Acanthomintha ilicifolia*.

(11) 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; the reasons why our conclusion that the proposed designation of critical habitat will not result in a disproportionate impact on small businesses should or should not warrant further consideration; and other information that would indicate that the designation of critical habitat would or would not have any impacts on small entities.

(12) Information on whether the draft economic analysis appropriately identifies all costs that could result from the designation.

(13) Information on whether there are any quantifiable economic benefits that could result from the designation of critical habitat.

(14) Whether the benefit of excluding any particular area from the critical habitat designation under section 4(b)(2) of the Act outweighs the benefit of including the area in the designation.

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

(16) 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.

The Secretary shall designate critical habitat on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. Pursuant to section 4(b)(2) of the Act, an

area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of including the area as critical habitat, unless the failure to designate such 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.

Comments and information submitted during the initial comment period from March 14, 2007, to May 14, 2007, on the proposed rule (72 FR 11946) need not be resubmitted as they will be incorporated into the public record as part of this comment period and will be fully considered in preparation of the final rule. If you wish to comment, you may submit your comments and materials concerning the draft economic analysis and the proposed rule by any one of several methods (see **ADDRESSES**). Our final designation of critical habitat will take into consideration all comments and any additional information we have received during both comment periods. On the basis of public comment on the draft economic analysis, the critical habitat proposal, and the final economic analysis, 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.

If you use e-mail to submit your comments, please include “*Attn: San Diego thornmint*” in your e-mail subject header, preferably with your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your e-mail, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. 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 received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for public inspection, by appointment during normal business hours, at the Carlsbad Fish and Wildlife Office (see **ADDRESSES**). You may obtain copies of the proposed critical habitat rule and the draft economic analysis by

mail from the Carlsbad Fish and Wildlife Office (see **ADDRESSES**) or by visiting our Web site at <http://www.fws.gov/carlsbad>.

## Background

On August 10, 2004, the Center for Biological Diversity and California Native Plant Society challenged our failure to designate critical habitat for this species as well as four other plant species (*Center for Biological Diversity, et al. v. Norton*, C-04-3240 JL (N. D. Cal.)). In settlement of the lawsuit, the Service agreed to submit to the **Federal Register** a proposed rule to designate critical habitat, if prudent, on or before February 28, 2007, and a final designation by February 28, 2008. On March 14, 2007, we published a proposed rule to designate critical habitat for *Acanthomintha ilicifolia* (72 FR 11946), identifying a total of approximately 1,936 ac (783 ha) of land in San Diego County, California. Of the total area proposed, we proposed to exclude from the final critical habitat designation 1,302 ac (527 ha) of land under section 4(b)(2) of the Act.

Critical habitat is defined in section 3 of the Act 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.

## Corrections to Proposed Critical Habitat

By this notice, we are advising the public of corrections in area, land ownership, and San Diego MSCP boundary associations within six of the subunits described in the March 14, 2007, proposed rule (72 FR 11946): Subunit 3C (Viejas Mountain), Subunit 3D (Viejas Mountain), Subunit 3F (Poser Mountain), Subunit 4A (McGinty Mountain), Subunit 4B (McGinty Mountain), and Subunit 4C (McGinty Mountain).

In our March 14, 2007, proposed rule (72 FR 11946) we proposed to exclude a total of 95 ac (38 ha) of private lands in subunits 3C, 3D, and 3F from the final critical habitat designation under section 4(b)(2) of the Act. We believed that these lands were within the planning boundary for the San Diego MSCP (see “Relationship of Critical Habitat to Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act” section of the proposed rule (72 FR 11946, March 14, 2007) for a detailed discussion of this proposed exclusion). However, the private lands in subunits 3C, 3D, and 3F are not within the planning boundary for the San Diego MSCP, and we are no longer proposing to exclude these lands from the final designation under section 4(b)(2) of the Act. The draft economic analysis reflects that we are no longer proposing to exclude these 95 ac (38 ha) of lands.

In this notice, we are also correcting errors within subunits 4A and 4B. The maps and boundary descriptions of subunits 4A and 4B were delineated correctly in the March 14, 2007, proposed rule (72 FR 11946); however, the area estimates in the preamble were incorrect. The correct area for subunit 4A is 20 ac (8 ha) rather than 18 ac (7 ha), and the correct area for subunit 4B is 148 ac (60 ha) rather than 220 ac (89 ha). The draft economic analysis reflects these corrections to area estimates.

Furthermore, the March 14, 2007, proposed rule (72 FR 11946), did not identify that subunit 4A contains 2 ac (1 ha) of federally owned land and subunit 4C contains 1 ac (less than 1/2 ha) of federally owned land. Both of these subunits overlap slightly with the Service’s San Diego National Wildlife Refuge. We proposed to exclude all private and State/local lands in subunits 4A and 4C from the final designation based on the benefits provided to *Acanthomintha ilicifolia* by the MSCP (see “Relationship of Critical Habitat to Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act” section of the proposed rule (72 FR 11946, March 14, 2007) for a detailed discussion of this proposed exclusion). While we are continuing to propose to exclude all private and State/local lands covered by the MSCP, we are clarifying that this proposed exclusion does not include Federal lands, and, therefore, we overestimated the proposed exclusion by 3 acres (1 ha). The draft economic analysis does not reflect this change; however, the final economic analysis will be revised to address the incorporation of 3 ac (1 ha) of the San Diego National Wildlife Refuge into the proposed designation.

As a result of these corrections, the total identified critical habitat area has been reduced from 1,936 ac (783 ha) to 1,867 ac (756 ha). The total area being proposed for exclusion from the final designation has been reduced from 1,302 ac (527 ha) to 1,134 ac (459 ha). The draft economic analysis states that we are proposing to exclude 1,137 ac (460 ha) of critical habitat; however, that figure erroneously includes 3 ac (1 ha) of federally owned lands in subunits 4A and 4C. Other than these corrections, the proposed rule of March 14, 2007, remains intact.

#### 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 March 14, 2007, proposed rule to designate critical habitat for *Acanthomintha ilicifolia*, (72 FR 11946), we have prepared a draft economic analysis of the proposed critical habitat designation.

The draft economic analysis is intended to quantify the economic impacts of all potential conservation efforts for *Acanthomintha ilicifolia*; some of these costs will likely be incurred regardless of whether critical habitat is designated. The draft economic analysis provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation and other conservation-related actions 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 (63 FR 54938, October 13, 1998), until the year the proposed critical habitat rule was published (72 FR 11946, March 14, 2007).

Activities associated with the conservation of *Acanthomintha ilicifolia* are likely to primarily impact future land development, recreation management, and exotic plant species management. Pre-designation (1998–2007) impacts associated with species conservation activities in areas proposed for final designation are estimated at \$53,000 in 2007 dollars. The draft economic analysis forecasts post-designation impacts in the areas proposed for final designation at \$0.6 to \$2.8 million (undiscounted dollars) over the next 20 years. The present value of these impacts, applying a 3 percent discount rate, is \$0.4 to \$2.1 million (\$25,000 to \$137,000 annualized); or \$0.3 to \$1.5 million (\$25,000 to

\$136,000 annualized) using a 7 percent discount rate. Total undiscounted future impacts in areas proposed for exclusion according to section 4(b)(2) of the Act are forecast at approximately \$1.6 to \$5.1 million over the next 20 years. The present value of these impacts applying a 3 percent discount rate is approximately \$1.2 to \$3.7 million or approximately \$0.8 to \$2.6 million applying a 7 percent discount rate. In annualized terms, potential impacts are expected to range from \$77,000 to \$253,000 (annualized at 3 percent) and \$72,000 to \$248,000 (annualized at 7 percent) in areas proposed for exclusion. The cost estimates are based on the proposed designation of critical habitat published in the **Federal Register** on March 14, 2007 (72 FR 11946) as well as the corrections we have identified above in subunits 3C, 3D, 3F, 4A, and 4B. The cost estimates assume that we are proposing to exclude 3 ac (1 ha) of federally owned lands in subunits 4A and 4C; we are not proposing to exclude any federally owned lands from this designation. We will address the costs associated with this last correction in more detail in the final economic analysis.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of *Acanthomintha ilicifolia*, including costs associated with sections 4, 7, and 10 of the Act, and including those 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 *Acanthomintha ilicifolia* in areas containing features essential to the conservation of the species. The draft economic analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the “opportunity costs” associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use).

This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the draft analysis looks retrospectively at costs that have been incurred since the date *Acanthomintha*

*ilicifolia* was listed as threatened (63 FR 54938; October 13, 1998) 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 draft economic analysis, as well as on all aspects of the proposal. We may revise the proposal or its supporting documents to incorporate or address new information received during the 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 such exclusion will not result in the extinction of the species.

#### Required Determinations—Amended

In our March 14, 2007 proposed rule (72 FR 11946), 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 (E.O.) 13132; E.O. 12988; the Paperwork Reduction 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 E.O. 12866 and the Regulatory Flexibility Act, E.O. 13211, E.O. 12630, and the Unfunded Mandates Reform Act.

#### Regulatory Planning and Review

In accordance with E.O. 12866, this document is a significant rule because it may raise novel legal and policy issues. Based on our draft economic analysis of the proposed designation of critical habitat for *Acanthomintha ilicifolia*, post-designation impacts are estimated to be approximately \$0.6 to \$2.8 million (undiscounted dollars) over the next 20 years in the areas proposed as final critical habitat and approximately \$1.6 to \$5.1 million (undiscounted dollars) over the next 20 years in areas proposed for exclusion from the final critical habitat designation. These impacts would occur only if the area proposed for exclusion is instead designated as

critical habitat. The cost estimates are based on the proposed designation of critical habitat published in the **Federal Register** on March 14, 2007 (72 FR 11946), as well as the corrections we have identified above in subunits 3C, 3D, 3F, 4A, and 4B. The cost estimates assume that we are proposing to exclude 3 ac (1 ha) of federally owned lands in subunits 4A and 4C; we are not proposing to exclude any federally owned lands from this designation. We will address the costs associated with this last correction in more detail in the final economic analysis.

Discounted future costs in areas proposed as final critical habitat are estimated to be approximately \$0.4 to \$2.1 million (\$25,000 to \$137,000 annualized) at a 3 percent discount rate or approximately \$0.3 to \$1.5 million (\$25,000 to \$136,000 annualized) at a 7 percent discount rate. In areas proposed for exclusion from the final critical habitat designation, the discounted future costs are estimated to be approximately \$1.2 to \$3.7 million (\$77,000 to \$253,000 annualized) at a 3 percent discount rate or approximately \$0.8 to \$2.6 million (\$72,000 to \$248,000 annualized) over the next 20 years.

Therefore, based on our draft economic analysis, we have determined that the proposed designation of critical habitat for *Acanthomintha ilicifolia* would not result in 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 or accompanying draft economic analysis.

Further, E.O. 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 determined that the Federal regulatory action is appropriate, the agency will then need to consider alternative regulatory approaches. Since the designation of critical habitat is a statutory requirement pursuant to the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to 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 providing 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 thereof, in a 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 (5 U.S.C. 802(2)) (SBREFA), 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 an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based upon our draft economic analysis 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 received, this determination is subject to revision as part of the 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 *Acanthomintha ilicifolia* 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 development and dispersed recreational activities). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and thus will not be affected by the designation of critical habitat. Designation of critical habitat affects only activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, 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 draft economic analysis of the proposed critical habitat designation (including those areas proposed for exclusion), we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of *Acanthomintha ilicifolia* 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 Appendices A, B, C, and F of the analysis and evaluates the potential for economic impacts related to three categories: development and HCP implementation; recreation management; and invasive, nonnative plant management.

The U.S. Forest Service (USFS), the California Department of Fish and Game (CDFG), and the U.S. Fish and Wildlife Service are not considered small entities by the Small Business Administration. Two nonprofit organizations, The Nature Conservancy (TNC) and the Center for Natural Lands Management (CNLM), are involved with conservation activities for *Acanthomintha ilicifolia*; however, the primary mission of both of these organizations is to preserve, restore, and protect natural resources. Therefore, impacts from species conservation on these organizations is

not considered in the small business impacts analysis.

Additionally, the boundaries of four city governments encompass portions of the proposed critical habitat—Carlsbad, Encinitas, San Diego, and Poway—with the remainder of the proposed critical habitat located within unincorporated San Diego County. All four cities and the County exceed the criteria to be considered a “small entity” under the RFA.

The draft analysis identified 18 privately owned, undeveloped parcels within areas proposed as critical habitat. The 18 parcels are owned by 9 individual landowners. For the nine individual landowners that may be affected by the proposed designation of critical habitat, the DEA could not determine if any of these landowners qualify as small businesses. However, for the purposes of estimating potential costs associated with the proposed designation of critical habitat, the DEA determine that two landowners own four parcels that are in proposed subunits 3D, 3E, and 3F, and the remaining seven landowners own parcels in subunits we are proposing to exclude from the final designation.

For the two landowners of proposed subunits 3D, 3E, and 3F, the DEA estimates annualized impacts associated with conservation activities for *Acanthomintha ilicifolia* could range from a low of \$700 to \$35,700, with an average range of annualized impact of \$5,300 to \$42,300 per landowner over the next 20 years. The remaining seven landowners of the 14 parcels in subunits we are proposing to exclude from the final designation, annualized impacts are estimated to range from a low of \$300 in subunit 4D up to \$18,700 in subunit 2C, with an average annualized impact ranging from \$17,000 to \$84,000.

With only nine private landowners, it is not considered a substantial number. However, even if the landowners were to represent small development businesses, any developer directly impacted by the proposed designation of critical habitat would not be expected to bear the additional cost of conservation measures for *Acanthomintha ilicifolia*. We anticipate that additional costs that could arise from the designation would be passed on to individual homebuyers if the parcels were to be developed. Please refer to our DEA of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

In summary, we have considered whether this proposed designation of critical habitat would result in a significant economic impact on a

substantial number of small entities. We have determined, and therefore, certify that, for the above reasons and based on currently available information, the proposed designation will not have a significant economic impact on a substantial number of small business entities.

#### *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. This proposed designation of critical habitat for *Acanthomintha ilicifolia* is considered a significant regulatory action under E.O. 12866 due to its potentially raising novel legal and policy issues. OMB has provided guidance for implementing E.O. 13211 that outlines nine outcomes that may constitute “a significant adverse effect” when compared without the regulatory action under consideration. The draft economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on the information in the draft economic analysis, energy-related impacts associated with *Acanthomintha ilicifolia* conservation activities within proposed critical habitat are not expected. As such, the proposed designation of critical habitat is not expected 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 (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, or the private sector, and includes both “Federal intergovernmental mandates” and “Federal private sector mandates.” These terms are defined in 2 U.S.C. 658(5)–(7). “Federal intergovernmental mandate” includes a regulation that “would impose an enforceable duty upon State, local, or tribal governments,” with two exceptions. It excludes “a condition of federal assistance.” It also excludes “a duty arising from participation in a voluntary Federal program,” unless the regulation “relates to a then-existing Federal

program under which \$500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; 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, 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) We do not believe that this rule will significantly or uniquely affect small governments. As discussed in the DEA, approximately 59 percent of the lands proposed as critical habitat are owned or managed by Federal, State, or local governments, none of which qualify as a small government. 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 *Acanthomintha ilicifolia* in a takings implications assessment. The takings implications assessment concludes that this proposed designation of critical habitat for *Acanthomintha ilicifolia* does not pose significant takings implications.

#### **Author**

The primary author of this notice is staff of the Carlsbad Fish and Wildlife Office.

#### **Authority**

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

Dated: November 15, 2007.

#### **Todd Willens,**

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

[FR Doc. E7-22971 Filed 11-26-07; 8:45 am]

**BILLING CODE 4310-55-P**