

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.62 [Amended]

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Nebraska, is amended by adding DTV channel 16 and removing DTV channel 19 at Grand Island.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

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

RIN 1018–AV52

[FWS–R4–ES–2008–0047]

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Louisiana Black Bear

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 Louisiana black bear (*Ursus americanus luteolus*) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the revised proposed rule, the associated DEA, and the amended required determinations section. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the

public record and will fully consider them in preparation of the final rule.

DATES: We will consider comments received on or before December 12, 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–R4–ES–2008–0047; 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: Jim Boggs, Supervisor, U.S. Fish and Wildlife Service, Louisiana Field Office, 646 Cajundome Blvd., Suite 400, Lafayette, LA 70506; telephone: 337–291–3100; facsimile: 337–291–3139. 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**

We will accept written comments and information during this reopened comment period on our proposed designation of critical habitat for the Louisiana black bear that was published in the **Federal Register** on May 6, 2008 (73 FR 25354), our draft economic analysis 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.*).
- (2) Specific information on:
 - (a) The distribution of the Louisiana black bear;
 - (b) The amount and distribution of Louisiana black bear habitat; and
 - (c) Which habitat contains the features 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) Any foreseeable economic, national security, or other relevant

impacts that may result from the proposed designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts.

(5) 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;

(6) 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, and more specifically, whether U.S. Department of Agriculture (USDA) Wetland Reserve Program permanent easements on privately owned lands provide sufficient protection and management to justify their exclusion from critical habitat on that basis.

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

(8) 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.

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

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule and draft economic analysis, 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, Louisiana Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at [http://](http://www.regulations.gov)

www.regulations.gov at Docket Number FWS-R4-ES-2008-0047, or by mail from the Louisiana 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 more information on previous Federal actions concerning the Louisiana black bear, refer to the proposed designation of critical habitat published in the **Federal Register** on May 6, 2008 (73 FR 25354). On December 2, 1993, we proposed critical habitat for the Louisiana black bear (58 FR 63560). That proposal had a 90-day comment period, ending March 2, 1994. We then reopened the public comment period from March 7, 1994 (59 FR 10607) through April 4, 1994. During that reopened comment period, we held a public hearing in New Iberia, Louisiana, on March 23, 1994. On April 1, 1994, we extended the reopened comment period through May 25, 1994, and announced two more public hearings (May 10, 1994, in West Monroe, Louisiana, and May 11, 1994, in New Iberia, Louisiana) (59 FR 15366). We never published a final rule designating critical habitat.

On September 6, 2005, Mr. Harold Schoeffler and Louisiana Crawfish Producers Association-West filed suit in U.S. District Court for the Western District of Louisiana (Civil Action No. CV05-1573 (W.D. La.)) challenging the Service's failure to designate critical habitat for the Louisiana black bear. On June 26, 2007, the District Court ordered the Service to withdraw the December 2, 1993, proposed critical habitat rule and create a new proposed critical habitat designation by no later than 4 months from the date of the judgment and to publish a final designation by no later than 8 months from the date of the proposed or new rule. On September 5, 2007, following a settlement agreement, the Court revised its order to require the Service to: (1) Withdraw the December 2, 1993, proposed rule and submit a prudency determination and, if prudent, a new proposed critical habitat designation to the Office of the Federal Register by April 26, 2008; and (2) submit a final critical habitat determination, if applicable, to the Office of the Federal Register by February 26, 2009. On May 6, 2008, we published our proposed rule to designate critical habitat for the Louisiana black bear (73 FR 25394) in accordance with section 4(b)(2) of the Act. We concurrently withdrew the 1993 proposal and made a new prudency determination. In total, we proposed approximately 1,330,000 acres

(538,894 hectares (ha)) of critical habitat located in Avoyelles, East Carroll, Catahoula, Concordia, Franklin, Iberia, Iberville, Madison, Pointe Coupee, Richland, St. Martin, St. Mary, Tensas, West Carroll, and West Feliciana Parishes, Louisiana. For more information on the threatened Louisiana black bear or its habitat, refer to the final listing rule published in the **Federal Register** on January 7, 1992 (57 FR 588), and to our 1995 final recovery plan for the bear, which is available online at <http://www.regulations.gov> (at Docket Number FWS-R4-ES-2008-0047) or from the Louisiana Field Office (see **FOR FURTHER INFORMATION CONTACT**).

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 must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We have prepared a DEA of our May 6, 2008 (73 FR 25354), proposed rule to designate critical habitat for the Louisiana black bear.

The intent of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the Louisiana black bear. The DEA quantifies the economic impacts of all potential conservation efforts for the Louisiana black bear; some of these costs will likely be incurred regardless of whether we designate critical habitat. The economic impact of the proposed critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat"

scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur if we finalize the proposed critical habitat.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the bear over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects beyond a 20-year timeframe. It identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing. The DEA quantifies economic impacts of Louisiana black bear conservation efforts associated with the following categories of activity: (1) Oil and gas exploration and development; (2) species/habitat management; (3) recreational and residential development; (4) agriculture; (5) transportation; and (6) forestry. Due to uncertainty in the amount of oil and gas development over the next 20 years, cost estimates were calculated for a low scenario of oil and gas development (one-third of the historical rate) and a high scenario (continuation of the historical rate).

The pre-designation (1992 to 2008) impacts associated with species conservation activities for the Louisiana black bear in areas proposed as critical habitat are approximately \$68.4 to \$76.6 million applying a 3 percent discount rate, and \$84.9 to \$97.0 million applying a 7 percent discount rate. The post-designation (2009 to 2028) baseline impacts (those estimated to occur

regardless of the critical habitat designation) associated with species conservation were estimated to range from \$9.0 million to \$19.0 million applying a 3 percent discount rate, or \$6.7 million to \$14 million applying a 7 percent discount rate). Under a low oil and gas development scenario, over 50 percent of post-designation baseline economic impacts are related to species management and 28 percent are related to oil and gas development. Under the high scenario, oil and gas exploration and development accounted for 65 percent of post-designation baseline economic impacts and species management accounted for 25 percent. Development and agriculture related impacts comprise approximately 20 to 11 percent of the impacts, under the low and high scenarios, respectively.

All incremental impacts attributed to the proposed critical habitat designation are expected to be associated with oil and gas activities. The DEA estimates the post-designation incremental economic impacts for the next 20 years to range from \$1.5 million to 8.6 million, applying a 3 percent discount rate, or \$1.1 million to \$6.3 million applying a 7 percent discount rate. The range in values of incremental costs is a result of the uncertainty in forecasting the number of new wells that are likely to be drilled in the next 20 years. Incremental impacts are not anticipated for other activities (including areas considered for exclusion) potentially affected by the critical habitat designation.

Post-designation baseline impacts for areas proposed for exclusion were calculated separately from areas proposed as critical habitat. Those impacts are related to the purchase of Wetlands Reserve Program easements and associated habitat management practices by the USDA Natural Resources Conservation Service, and are estimated to be approximately \$98.7 million applying a 3 percent discount rate, and \$73.0 million, applying a 7 percent discount rate.

Only the incremental costs that may result from the designation of critical habitat, over and above the costs associated with species protection under the Act more generally, may be considered in designating critical habitat; therefore, the methodology for distinguishing these two categories of costs is important. In the absence of critical habitat, Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered species or threatened species—costs associated with such actions are considered baseline costs.

Once an area is designated as critical habitat, proposed actions that have a Federal nexus in this area also will require consultation and potential modification to ensure that the action does not result in the destruction or adverse modification of designated critical habitat—costs associated with these actions are considered incremental costs. Incremental consultation that takes place as a result of critical habitat designation may fall into one of three categories: (1) Additional effort to address adverse modification in a new consultation; (2) re-initiation of consultation to address effects to critical habitat; and (3) incremental consultation resulting entirely from critical habitat designation (i.e., where a proposed action may affect unoccupied critical habitat). However, because no unoccupied habitat is being proposed for designation, no consultations in category 3 are projected.

As 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 exclusions will not result in the extinction of this species.

Required Determinations—Amended

In our May 6, 2008, proposed rule (73 FR 25354), 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, 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 determination concerning the Regulatory Flexibility Act.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency 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 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 rule making.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under 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 Louisiana black bear would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as oil and gas

exploration and development, species management, residential development, forestry, agriculture, and transportation. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat affects activities conducted, funded, permitted, or authorized by Federal agencies.

If we finalize this 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 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 Louisiana black bear. Based on that analysis, only small business entities that rely on oil and gas exploration and development were identified as entities that could be affected by the incremental impacts from the proposed rule. Impacts described in Appendix A of the DEA are predominantly associated with crude petroleum and natural gas extraction; liquid natural gas exploration; and oil and gas well drilling activities in areas proposed for final critical habitat for the Louisiana black bear. These impacts would be expected to be borne by 45 small businesses that operate in the oil and gas exploration and development industry at the time of final critical habitat designation. The average cost to a small business over the next 20 years is estimated to range from \$25,000 to \$141,000, discounted at 7 percent. Please refer to our Draft Economic Analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

In summary, we have considered whether the proposed designation

would result in a significant economic impact on a substantial number of small entities. We have identified 45 small entities that may be impacted by the proposed critical habitat designation. For the above reasons 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 Louisiana Field Office, Southeast Region, U.S. Fish and Wildlife Service.

Authority

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

Dated: October 30, 2008.

Lyle Lavery,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8-26733 Filed 11-10-08; 8:45 am]

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