

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste Description
*	*	<p>(A) If, anytime after disposal of the delisted waste, Shell Oil Company possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.</p> <p>(B) If the annual testing of the waste does not meet the delisting requirements in Paragraph 1, Shell Oil Company must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data.</p> <p>(C) If Shell Oil Company fails to submit the information described in Paragraphs (5),(6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.</p> <p>(D) If the Division Director determines that the reported information does require action, EPA's Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed action by EPA is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information.</p> <p>(E) Following the receipt of information from the facility described in Paragraph (6)(D) or (if no information is presented under Paragraph (6)(D)) the initial receipt of information described in Paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing EPA's actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise.</p> <p>(7) <i>Notification Requirements:</i> Shell Oil Company must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision.</p> <p>(A) Provide a one-time written notification to any state Regulatory Agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities.</p> <p>(B) Update the one-time written notification if it ships the delisted waste into a different disposal facility.</p> <p>(C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.</p>
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AU06

Endangered and Threatened Wildlife and Plants; Proposed Critical Habitat Designation for Four Vernal Pool Crustaceans and Eleven Vernal Pool Plants in California and Southern Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce that we are soliciting additional comments on certain areas included in

our September 24, 2002, proposed rule (hereinafter referred to as the September 2002 proposal) to designate critical habitat for 4 vernal pool crustaceans and 11 vernal pool plants in California and southern Oregon (67 FR 59884). We issued a final rule based on the September 2002 proposal on August 6, 2003 (68 FR 46684). In the final rule we excluded certain specific lands that had been included in the September 2002 proposal. We excluded these lands pursuant to section 4(b)(2) of the Act based on either policy or economic reasons. On October 28, 2004, a court remanded the final designation to the Service in part, ordering the Service to make a new determination as to whether to designate the excluded areas (*Butte Environmental Council v. Norton*, NO. CIV. S-04-0096 (E.D. Cal. Oct. 28, 2004)). The August 6, 2003, final rule is still in effect while we reconsider the exclusions from the proposed rule and make a new final determination. Pursuant to the court order, we will

evaluate the exclusions made to our proposal in two separate actions: (1) A re-evaluation of exclusions based on policy or non-economic reasons addressed herein; and (2) a re-evaluation of exclusions based on economic concerns in a subsequent **Federal Register** notice. Comments previously submitted on the September 2002 proposal need not be resubmitted because we will incorporate them into the public record as part of this reopening of the comment period and will fully consider them in development of a new final rule.

DATES: We will accept public comments on the policy (non-economic) exclusions to our September 2002 proposal and any new information concerning the 15 vernal pool species addressed in this critical habitat designation until January 27, 2005.

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

1. You may submit written comments and information to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W-2605, Sacramento, California 95825.

2. You may hand-deliver written comments and information to our Sacramento Fish and Wildlife Office, at the above address, or fax your comments to 916/414-6710.

3. You may send your comments by electronic mail (e-mail) to fw1_vernalpool@fws.gov. For directions on how to submit electronic filing of comments, see the "Public Comments Solicited" section below.

Comments and materials received, as well as supporting documentation used in preparation of the previous designation of critical habitat and economic analysis will be available for inspection, by appointment, during normal business hours at our office listed in the **ADDRESSES** section. Copies of the proposed and final designation of critical habitat for these 15 species as well as our economic analysis are also available on the Internet at <http://sacramento.fws.gov/> or by writing or calling Arnold Roessler, at the address or telephone number listed above.

FOR FURTHER INFORMATION CONTACT: Arnold Roessler, at the address above (telephone 916/414-6600; facsimile 916/414-6710).

SUPPLEMENTARY INFORMATION:

Background

On September 24, 2002, we published a proposed rule to designate critical habitat, pursuant to the Endangered Species Act of 1973, as amended (Act) for 4 vernal pool crustaceans and 11 vernal pool plants (67 FR 59884). The four vernal pool crustaceans involved in this critical habitat designation are the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool fairy shrimp (*Branchinecta lynchi*), and vernal pool tadpole shrimp (*Lepidurus packardii*). The 11 vernal pool plant species are Butte County meadowfoam (*Limnanthes floccosa* ssp. *californica*), Contra Costa goldfields (*Lasthenia conjugens*), Hoover's spurge (*Chamaesyce hooveri*), fleshy (or succulent) owl's-clover (*Castilleja campestris* ssp. *succulenta*), Colusa grass (*Neostapfia colusana*), Greene's tuctoria (*Tuctoria greenei*), hairy Orcutt grass (*Orcuttia pilosa*), Sacramento Orcutt grass (*Orcuttia viscida*), San Joaquin Valley Orcutt grass (*Orcuttia inaequalis*), slender Orcutt grass (*Orcuttia tenuis*), and Solano grass (*Tuctoria mucronata*). We proposed a

total of 128 units of critical habitat for these 15 vernal pool species, totaling approximately 672,920 hectares (ha) (1,662,762 acres (ac)) in 36 counties in California and one county in Oregon. In accordance with our regulations at 50 CFR 424.16(c)(2), we opened a 60-day comment period on this proposal, which closed on November 25, 2002.

All the species listed above live in vernal pools (shallow depressions that hold water seasonally), swales (shallow drainages that carry water seasonally), and ephemeral freshwater habitats. None are known to occur in riverine waters, marine waters, or other permanent bodies of water. The vernal pool habitats of these species have a discontinuous distribution west of the Sierra Nevada that extends from southern Oregon through California into northern Baja California, Mexico. The species have all adapted to the generally mild climate and seasonal periods of inundation and drying that help make the vernal pool ecosystems of California and southern Oregon unique.

Section 4(b)(2) of the Act requires that the Secretary of the Interior shall designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact to national security, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if she determines that the benefit of such exclusion outweighs the benefits of specifying such area as part of the critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species concerned. Thus, to fulfill our requirement to consider the potential economic impacts of the proposed designation of critical habitat for the 15 vernal pool species, we conducted an analysis of the potential economic impacts on the proposed designation and published a notice on November 21, 2002 (67 FR 70201), announcing the availability of our draft economic analysis. The notice opened a 30-day public comment period on the draft economic analysis, and extended the comment period on the proposed critical habitat designation.

During the development of the final designation, we reviewed the lands proposed as critical habitat based on public comments and any new information that may have become available and refined the boundaries of the proposal to remove lands determined not to be essential to the conservation of the 15 vernal pool species. We then took into consideration the potential economic impacts of the

designation, impacts on national security, and other relevant factors such as partnerships and on-going management actions benefiting the species covered by the designation. Next, we determined that the benefits of excluding certain lands from the final designation of critical habitat for the 15 vernal pool species outweighed the benefit of including them in the designation, and the specific exclusions would not result in the extinction of any of the species involved. Lands excluded from the final designation based on policy and management plans or programs that provide a benefit to the species included: lands within specific National Wildlife Refuges and Fish Hatcheries; Department of Defense lands; Tribal lands; State Wildlife Areas and Ecological Reserves; and lands covered by habitat conservation plans or other management plans that provide a benefit for the species. We also excluded lands proposed as critical habitat in Butte, Madera, Merced, Sacramento, and Solano counties based on potential economic impacts. Thus, on July 15, 2003, we made a final determination of critical habitat for the 15 vernal pool species; the final rule was published in the **Federal Register** on August 6, 2003 (68 FR 46684). A total of approximately 1,184,513 ac (417,989 ha) of land falls within the boundaries of designated critical habitat (the area estimate does not reflect the exclusion of lands based on potential economic impacts from the five California counties).

In January 2004, Butte Environmental Council, and several other organizations, filed a complaint alleging that we: (1) Violated the Act, and the Administrative Procedure Act (APA), by excluding over 1 million acres from the final designation of critical habitat for the 15 vernal pool species; (2) violated mandatory notice-and-comment requirements under the Act and APA; and (3) have engaged in an unlawful pattern, practice, and policy by failing to properly consider the economic impacts of designating critical habitat. On October 28, 2004, the court signed a Memorandum and Order in that case. The Memorandum and Order remanded the final designation to the Service in part. In particular, the court ordered us to: (1) Reconsider the exclusions from the final designation of critical habitat for the 15 vernal pool species, with the exception of those lands within the 5 California counties that were excluded based on potential economic impacts, and publish a new final determination as to those lands within 120 days; and (2) reconsider the exclusion of the five

California counties based on potential economic impacts and publish a new final determination no later than July 31, 2005. The court also made it clear that the partial remand would not affect the areas included in the August 6, 2003, final designation. This notice addresses the first requirement of the remand—the reconsideration of the exclusions from the final designation of critical habitat for the 15 vernal pool

species, with the exception of those lands within the 5 California counties that were excluded based on potential economic impacts, and reopens the public comment period. The second requirement of the order, concerning the economic exclusions, will be addressed through a future **Federal Register** notice.

We are hereby reopening the public comment period on our September 2002

proposal for 30 days to solicit comments and any new information concerning the non-economic exclusions that were made during the development of the final designation of critical habitat for the 15 vernal pool species. To facilitate this process, Table 1 lists each specific area that was excluded from the proposed designation of critical habitat for the 15 vernal pool species based on policy by category and size.

TABLE 1.—APPROXIMATE AREAS OF CRITICAL HABITAT EXCLUSIONS FOR THE VERNAL POOL CRUSTACEANS AND PLANTS IN CALIFORNIA AND OREGON

Exclusion Area	Acres	Hectares
National Wildlife Refuges (NWR) and Fish Hatchery Exclusions		
Sacramento NWR Complex	19,363	7,836
San Francisco Bay NWR	617	250
San Luis NWR Complex	18,014	7,290
Kern NWR Complex	4,894	1,980
Coleman Nat. Fish Hatchery	13	5
Total	42,914	17,367
Department of Defense Exclusions		
Beale Air Force Base	10,033	4,060
Travis Air Force Base	9,651	3,906
Fort Hunter Liggett	16,583	6,711
Camp Roberts	33,937	13,734
Total	70,204	28,410
Tribal Land Exclusions		
Mechoopda Tribe	644	261
Total	644	261
State Wildlife Areas (WA) and Ecological Reserve (ER) Exclusions		
Allensworth ER	1,141	462
Battle Creek WA	637	258
Big Sandy WA	478	194
Boggs Lake ER	50	20
Butte Creek Canyon ER	0.4	0.16
Calhoun Cut ER	3,021	1,223
Carrizo Plains ER	455	184
Dales Lake ER	754	305
Fagen Marsh ER	420	170
Grizzly Island WA	10	4
Hill Slough WA	1,559	631
North Grasslands WA	5	2
Oroville WA	39	16
Phoenix Field ER	7	3
San Joaquin River ER	278	113
Stone Corral ER	3,074	1,244
Thomes Creek ER	447	181
Total	12,373	5,007
Habitat Conservation Plans (HCP) and Cooperatively Managed Land Exclusions		
Skunk Hollow HCP	239	97
Western Riverside Multiple Species HCP	5,730	2,319
Santa Rosa Plateau Ecological Reserve	4,246	1,718
San Joaquin County Multiple Species HCP	10	4
Total	10,224	4,138
Grand Total	136,358	55,182

Public Comment Solicited

We intend that any final action resulting from our September 2002 proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the portion of the proposed rule subject to the court's remand order. On the basis of public comment, during the development of our new, partial final determination we may find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2), or not appropriate for exclusion; in all of these cases, this information would be incorporated into our new final determination with respect to those areas. We particularly seek comments concerning:

(1) Specific information on the amount and distribution of habitat for the 15 vernal pool species, and what habitat is essential to the conservation of the species and why;

(2) The reasons why any areas should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Information related to the benefits of designating any of these areas as critical habitat for the 15 vernal pool species;

(4) Information related to the benefits of excluding any of these areas as critical habitat for the 15 vernal pool species;

(5) Land use designations and current or planned activities in or adjacent to the areas proposed, and their possible impacts on proposed critical habitat;

(6) Land use designations and current or planned activities in or adjacent to the areas proposed, and the possible impacts on those uses and activities from a critical habitat designation;

(7) Any foreseeable economic or other potential impacts resulting from the proposed designation, including any impacts on small entities; and

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

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit electronic comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also

include "Attn: RIN 1018-AUO6" in your e-mail subject header and 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 Internet message, contact us directly by calling our Sacramento Fish and Wildlife Office at telephone number 916/414-6600, during normal business hours.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Authority

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

Dated: December 17, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17****RIN 1018-AJ09**

Endangered and Threatened Wildlife and Plants; Notice of Availability of Draft Economic Analysis and Reopening of the Public Comment Period for the Proposed Designation of Critical Habitat for *Astragalus lentiginosus* var. *piscinensis* (Fish Slough Milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of draft economic analysis and reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft economic analysis for the proposed designation of critical habitat for the federally threatened *Astragalus lentiginosus* var. *piscinensis* (Fish Slough milk-vetch), and the reopening of the public comment period on the proposed rule to designate critical habitat for this taxon. The comment period will provide the public, Federal, State, and local agencies, and Tribes with an opportunity to submit written comments on this proposal and its respective draft economic analysis. Comments previously submitted on the proposed rule need not be resubmitted as they have been incorporated into the public record as a part of this reopening of the comment period, and will be fully considered in preparation of the final rule.

DATES: We will accept all comments and information until 5 p.m. on or before January 27, 2005. Any comments that we receive after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: Written comments and materials may be submitted to us by one of the following methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003.

(2) You may hand-deliver written comments and information to our Ventura Fish and Wildlife Office, at the above address, or fax your comments to 805/644-3958.

(3) You may send comments by electronic mail (e-mail) to: fw1fsmv_pch@r1.fws.gov. Please see the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received, as well as supporting documentation used in preparation of the proposed critical habitat rule for *Astragalus lentiginosus* var. *piscinensis* (69 FR 31552), will be available for public inspection, by appointment, during normal business hours at the above address. You may obtain copies of the draft economic analysis for this taxon by contacting the Ventura Fish and Wildlife Office at the above address. The draft economic analysis and the proposed rule for critical habitat designation also are available on the Internet at <http://>