

for approval of a method modification or alternate test procedure, and a reporting or compliance limit. Several commenters stated that EPA, permit holders, and laboratories would be better served if detection and quantitation were determined through approaches quite different from those proposed.

Some commenters encouraged EPA to allow use of alternative procedures for determining detection and quantitation levels. Some commenters suggested that, like EPA's MDL and ML, other available concepts fall short of providing optimal procedures. For example, comments submitted by some laboratories indicated that the proposal submitted by the Inter-industry Analytical Group, which was discussed in the preamble to the March 2003 proposed rule, would be useful only during initial phases of method development, but not as a routine laboratory tool to assess lab performance. Other commenters noted that the IDE and IQE procedures published by ASTM's D19 committee, which were discussed in the 2003 assessment of detection and quantitation approaches, also are intended only for interlaboratory use and are not appropriate for use in a single laboratory.

Other commenters recommended that EPA contact the editorial committees of voluntary consensus standards bodies to begin a process of developing detection and quantitation procedures. Several commenters requested that EPA reconsider the proposal and work with stakeholders to devise an approach that meets the Agency's needs, rather than proceeding with the proposed revisions to the MDL.

In response to these comments, EPA has decided to withdraw the proposed rule and has initiated a process to work with stakeholders on revisions to MDL and ML procedures. See Potential Stakeholder Process for Detection and Quantitation Procedures, 69 FR 55547, September 15, 2004.

VI. Decision To Withdraw Proposal

In today's action, EPA is withdrawing the March 12, 2003, proposal to revise the MDL definition and procedure and to add a definition and procedure for determining the ML. EPA has decided to withdraw these proposed revisions because the Agency has concluded that approaches other than those set forth in the 2003 proposal have the potential for addressing concerns regarding development and use of detection and quantitation limits, and that those approaches warrant further consideration and refinement. The

Agency generally sees merit in comments suggesting that EPA should continue to work collaboratively with stakeholders on these issues. EPA also notes that the comments generally disfavored the proposed revisions, and that there is no agreement among critics of the existing MDL and ML procedures about what changes should be adopted by the Agency for use in CWA programs.

VII. Effect of Today's Action on Existing MDL Procedure

EPA plans to explore alternative concepts and approaches submitted in response to the two March 2003 **Federal Register** documents. These comments included sometimes detailed alternative approaches or other revisions to current EPA detection and quantitation procedures. EPA intends to further evaluate issues and detection and quantitation approaches suggested by commenters, and to solicit additional stakeholder input through consultations. The Agency believes that the body of public comment on the proposed rule provides a strong starting point for a continued collaborative consultation with stakeholders representing constituencies such as citizens, environmental organizations, permit writers, regulators and regulated industries. In a **Federal Register** notice published on September 15, 2004 (69 FR 55547), EPA announced that a neutral party is seeking a broad group of stakeholders willing to work together to define and address concerns about the way detection and quantitation values are calculated and used to support CWA programs. Such a process, if feasible, could begin as early as December 2004.

The existing MDL procedure has been in place since 1984. Individual MDLs and MLs are included in many EPA-approved methods at 40 CFR part 136, and have provided laboratories and data users with limits for evaluating results of analytical measurements or analytical method selection. Although several commenters expressed concern with a number of technical and applicability issues regarding EPA's current MDL and ML procedures (and EPA finds merit in this concern), other commenters supported their continued use because, in their experience, the MDL and ML values published in many of the approved EPA methods have served acceptably as default detection and quantitation levels for permits. By today's action, EPA leaves the existing MDL procedure unchanged while it further considers the concerns raised by commenters.

VIII. Statutory and Executive Order Reviews

Today's action does not constitute a rule under section 551 of the Administrative Procedure Act, 5 U.S.C. 551. Hence, requirements of other regulatory statutes and Executive Orders that generally apply to rulemakings (e.g., the Unfunded Mandate Reform Act) do not apply to this action.

Dated: November 1, 2004.

Michael O. Leavitt,
Administrator.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AH40

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Sacramento Mountains Checkerspot Butterfly and Proposed Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

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

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis and draft environmental assessment for the proposal to designate critical habitat for the Sacramento Mountains checkerspot butterfly (*Euphydryas anicia cloudcrofti*) (butterfly) under the Endangered Species Act of 1973, as amended (Act). We are reopening the public comment period for the proposal to list this species as endangered with critical habitat to allow all interested parties to comment on the proposed listing and critical habitat designation, as well as the associated draft economic analysis and draft environmental assessment. Comments previously submitted on the September 6, 2001 (66 FR 46575), proposed rule to list the butterfly as endangered with critical habitat need not be resubmitted as they have been incorporated into the public record and will be fully considered in preparation of the final listing and critical habitat determination. We invite all interested parties to submit comments on this proposal.

DATES: Comments must be submitted directly to the Service (see **ADDRESSES**

section) on or before November 29, 2004.

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, New Mexico Ecological Services Field Office, 2105 Osuna Road NE., Albuquerque, New Mexico 87113.

2. You may hand-deliver written comments and information to our New Mexico Ecological Services Field Office, at the above address, or fax your comments to 505-346-2542.

3. You may send your comments by electronic mail (e-mail) to R2FWE_AL@fws.gov. For directions on how to submit electronic filing of comments, see the "Public Comments Solicited" section below.

You may obtain copies of the draft economic analysis and draft environmental assessment by mail, review comments and materials received, and review supporting documentation used in preparation of this proposed rule, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Susan MacMullin, Field Supervisor, New Mexico Ecological Services Field Office (telephone 505-761-4706, facsimile 505-346-2542).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this 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 this proposed rule, the draft economic analysis, and the draft environmental assessment. On the basis of public comment, during the development of our 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 final determination. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species resulting from designation;

(2) Specific information on the distribution of the butterfly, the amount and distribution of the species' habitat,

and which habitat is essential to the conservation of the species, and why;

(3) Land use designations and current or planned activities in the subject area and their possible impacts on the species or proposed critical habitat;

(4) Whether our approach to listing or critical habitat designation 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;

(5) Any foreseeable economic, environmental, or other impacts resulting from the proposed designation of critical habitat or coextensively from the proposed listing, and in particular, any impacts on small entities or families;

(6) Whether the economic analysis identifies all State and local costs. If not, what other costs should be included;

(7) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the listing of the species or the designation of critical habitat;

(8) Whether the economic analysis correctly assesses the effect on regional costs associated with land use controls that derive from the designation;

(9) Whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation; and

(10) Whether the economic analysis appropriately identifies all costs that could result from the designation or coextensively from the listing.

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-AH40" 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 New Mexico Ecological Services Field Office at (505) 346-2525.

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.

Background

The butterfly is restricted to meadows within the mixed-conifer forest at approximate elevations between 2,450 and 2,750 meters (m) (8,000 and 9,000 feet (ft)) in the vicinity of the Village of Cloudcroft, Otero County, New Mexico. Our proposed critical habitat designation includes the area found within an approximate 140 square km (54 square mi) polygon centered around the Village of Cloudcroft, Otero County, New Mexico, south of the Mescalero Apache Nation boundary. In the proposed rule, we determined that the butterfly was in danger of extinction throughout all or a significant portion of its range because much of the remaining suitable habitat and the long term persistence of the butterfly were threatened. At that time, the known threats included: commercial and private development, Forest Service (FS) projects, fire suppression activities, highway reconstruction, off-highway vehicle use, and overgrazed range conditions. Additional background information is available in the September 6, 2001, proposed rule (66 FR 46575).

On September 8, 2003, the Center for Biological Diversity (Center) filed a complaint pursuant to the Act, challenging the failure of the Service to publish a final listing rule for the butterfly within the 1-year statutory deadline set by section 4 of the Act. The Service and the Center reached settlement in this case that was adopted as an order by the District Court for the District of New Mexico on June 3, 2004. The terms of the settlement agreement require us to submit a final listing and critical habitat determination for the butterfly to the **Federal Register** on or before December 15, 2004.

Section 4 of the Act requires that we consider economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We have developed a draft

economic analysis and draft environmental assessment for the proposal to designate certain areas as critical habitat for the butterfly. We solicit data and comments from the public on these draft documents, as well as on all aspects of the proposal (*see* "Public Comments Solicited" section above).

Our draft economic analysis suggests that the present value of future conservation measures associated with the butterfly is expected to range from \$5.6 million to \$8.6 million over 20 years, or \$533,000 to \$816,000 annually. Approximately 55 percent of these costs result from anticipated project modifications primarily associated with utility projects, agriculture and

ranching, and U.S. Forest Service land management. The remaining costs are generally administrative in nature.

The Service, Otero County, New Mexico, Village of Cloudcroft, New Mexico, FS, and other stakeholders have completed a conservation plan for the butterfly. A notice of availability of this draft document published in the **Federal Register** on October 7, 2004 (69 FR 60178). The goal of this strategy is to establish conservation measures needed for the conservation of the butterfly. Section 4 of the Act (16 U.S.C. 1533) and implementing regulations at 50 CFR part 424 set forth procedures for adding species to the Federal List of Endangered and Threatened Wildlife. A species may be determined to be

endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. Our final listing determination will analyze these factors and their application to the butterfly to evaluate whether the species meets the definition of an endangered or threatened species.

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

Dated: November 2, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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