

authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(3) Before using any AMOC approved in accordance with 14 CFR 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Issued in Renton, Washington, on September 28, 2005.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05-20077 Filed 10-5-05; 8:45 am]

**BILLING CODE 4910-13-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[R01-OAR-2005-MA-0002; FRL-7981-6]

#### Approval and Promulgation of State Plans for Designated Facilities and Pollutants: Massachusetts; Negative Declaration

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve the Sections 111(d) and 129 negative declaration submitted by the Massachusetts Department of Environmental Protection (MADEP) on August 23, 2005. This negative declaration adequately certifies that there are no existing hospital/medical/infectious waste incinerators (HMIWIs) located within the boundaries of the Commonwealth of Massachusetts.

**DATES:** EPA must receive comments in writing by November 7, 2005.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID Number R01-OAR-2005-MA-0002 by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. Agency Web site: <http://docket.epa.gov/rmepub/> Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: [brown.dan@epa.gov](mailto:brown.dan@epa.gov).

4. Fax: (617) 918-0048.

5. Mail: "RME ID Number R01-OAR-2005-MA-0002", Daniel Brown, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114-2023.

6. Hand Delivery or Courier. Deliver your comments to: Daniel Brown, Chief, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, U.S. EPA, One Congress Street, Suite 1100 (CAP), Boston, Massachusetts 02114-2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Please see the direct final rule which is located in the Rules Section of this **Federal Register** for detailed instructions on how to submit comments.

Copies of documents relating to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Air Permits, Toxics & Indoor Programs Unit, Office of Ecosystem Protection, Suite 1100 (CAP), One Congress Street, Boston, Massachusetts 02114-2023.

Massachusetts Department of Environmental Protection, Business Compliance Division, One Winter Street, Boston, Massachusetts 04333-0017, (617) 292-5500.

**FOR FURTHER INFORMATION CONTACT:** John Courcier, Office of Ecosystem Protection (CAP), EPA-New England, Region 1, Boston, Massachusetts 02203, telephone number (617) 918-1659, fax number (617) 918-0659, e-mail [courcier.john@epa.gov](mailto:courcier.john@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the Final Rules section of this **Federal Register**, EPA is approving the Massachusetts Negative Declaration submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule

based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: September 20, 2005.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

[FR Doc. 05-20107 Filed 10-5-05; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AT75

#### Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Brodiaea filifolia* (Thread-Leaved Brodiaea)

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

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

**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 *Brodiaea filifolia*, and the availability of a draft economic analysis of the proposed designation of critical habitat. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted on this proposed rule need not be resubmitted as they have already been incorporated into the public record and will be fully considered in our final determination.

**DATES:** We will accept public comments and information until October 20, 2005.

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

1. You may submit written comments and information to Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011;

2. You may hand-deliver written comments and information to our Carlsbad Fish and Wildlife Office at the above address, or fax your comments to 760/431-9624; or

3. You may send your comments by electronic mail (e-mail) to [fw1cfwo\\_brfi@fws.gov](mailto:fw1cfwo_brfi@fws.gov). For directions on how to submit electronic comments, see the "Public Comments Solicited" section. In the event that our Internet connection is not functional, please submit your comments by the alternate methods mentioned above.

You may obtain copies of the proposed rule and draft economic analysis by mail or by visiting our Web site at <http://carlsbad.fws.gov>. You may review comments and materials received and review supporting documentation used in preparation of this proposed rule by appointment, during normal business hours, at the Carlsbad Fish and Wildlife Field Office (address provided above).

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone 760/431-9440; facsimile 760/431-9624).

**SUPPLEMENTARY INFORMATION:** Public Comments Solicited

We will accept written comments and information during this reopened comment period. We solicit comments on the original proposed critical habitat designation, published in the **Federal Register** on December 8, 2004 (69 FR 71284), and on 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 any habitat should or should not be determined to be critical habitat as provided by section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), including whether the benefits of exclusion outweigh the benefits of specifying such area as part of the critical habitat;

(2) Specific information on the amount and distribution of *Brodiaea filifolia* and its habitat, and which habitat features and geographic areas are essential to the conservation of this species and why;

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

(4) Information on how many of the State and local environmental protection measures referenced in the draft economic analysis were adopted largely as a result of the listing of

*Brodiaea filifolia*, and how many were either already in place or enacted for other reasons;

(5) Any foreseeable economic, environmental, or other impacts resulting from the proposed designation or coextensively from other related factors;

(6) Any foreseeable economic, environmental, or other benefits resulting from the proposed designation, or coextensive from other related factors;

(7) Whether the draft economic analysis identifies all State and local costs attributable to the proposed critical habitat designation, and information on any costs that have been inadvertently overlooked;

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

(10) Whether the economic analysis appropriately identifies all costs that could result from the designation, in particular, any impacts on small entities or families;

(11) Whether the designation would result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion under 4(b)(2) of the Act from the final designation;

(12) Whether it is appropriate that the analysis does not include the costs of project modification that are the result of informal consultation only;

(13) Whether there is information about areas that could be used as substitutes for the economic activities planned in critical habitat areas that would offset the costs and allow for the conservation of critical habitat areas;

(14) How our approach to critical habitat designation could be improved or modified to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments; and

(15) Whether we should consider the exclusion of critical habitat within the municipalities that have a disproportionate number of small entities that could potentially be impacted, such as San Dimas, San Juan Capistrano, or San Bernardino.

All previous comments and information submitted during the initial comment period on the proposed rule need not be resubmitted. 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** section). Our final determination regarding designation of critical habitat for *Brodiaea filifolia* will take into consideration all comments and any additional information received during both comment periods. On the basis of public comment on this analysis and on the critical habitat proposal, and on 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.

Please submit electronic comments in an ASCII file and avoid the use of any special characters or any form of encryption. Also, please include "Attn: *Brodiaea filifolia*" and your name and return address in your e-mail message regarding the *Brodiaea filifolia* proposed rule or the draft economic analysis. If you do not receive a confirmation from the system that we have received your e-mail message, please submit your comments in writing using one of the alternate methods described in the **ADDRESSES** section.

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 address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold 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 comments. 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, 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 at the address listed under **ADDRESSES**. Copies of the proposed critical habitat rule for *Brodiaea filifolia* and the draft economic analysis are also available on the Internet at <http://www.fws.gov/pacific/carlsbad/BRFL.htm>. In the event that our internet connection is not functional, please obtain copies of documents directly

from the Carlsbad Fish and Wildlife Office.

### Background

On December 8, 2004, we published a proposed rule in the **Federal Register** (69 FR 71284) to designate critical habitat for *Brodiaea filifolia* pursuant to the Act. We proposed to designate a total of approximately 4,690 acres (ac) (1,898 hectares (ha)) of critical habitat in Los Angeles, San Bernardino, Orange, and San Diego counties, California. The first comment period for the *Brodiaea filifolia* proposed critical habitat rule closed on February 7, 2005. For more information on this species, refer to the final rule listing this species as threatened, published in the **Federal Register** on October 13, 1998 (63 FR 54975).

Critical habitat is defined in section 3 of the Act as the specific areas within the geographic 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 geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential to 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, pursuant to section 7(a)(2) of the Act.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat on the basis of the best scientific and commercial data available, after taking into consideration the economic impact, impact to national security, and any other relevant impacts of specifying any particular area as critical habitat. We have prepared a draft economic analysis of the December 8, 2004 (69 FR 71284), proposed designation of critical habitat for *Brodiaea filifolia*.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of *Brodiaea filifolia*, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating 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 *Brodiaea*

*filifolia* in habitat areas with features essential to the conservation of this taxon. The 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 (e.g., 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, this analysis looks retrospectively at costs that have been incurred since the date the species was listed as an endangered species and considers those costs that may occur in the 20 years following the designation of critical habitat.

This analysis determined that costs involving conservation measures for *Brodiaea filifolia* would be incurred for activities involving residential, industrial, and commercial development; water supply; flood control; transportation; agriculture; the development of HCPs; and the management of military bases, other Federal lands, and other public or conservation lands.

Pre-designation costs include those *Brodiaea filifolia*-related conservation activities associated with sections 4, 7, and 10 of the Act that have accrued since the time that *Brodiaea filifolia* was listed as threatened (63 FR 54975; October 13, 1998), but prior to the final designation of critical habitat. The total pre-designation costs associated with critical habitat proposed for inclusion are estimated to be \$2.9 million to \$3.0 million on a present value basis and \$2.4 to \$2.5 million expressed in undiscounted dollars. Pre-designation costs associated with areas excluded from the proposed designation are estimated to be \$110,000 to \$180,000 on a present value basis and \$100,000 to \$150,000 expressed in undiscounted dollars.

Post-designation effects would include likely future costs associated with *Brodiaea filifolia* conservation efforts in the 20-year period following the final designation of critical habitat in December 2005 (effectively 2005 through 2024). If critical habitat is designated as proposed, total costs are estimated to be \$12.2 million to \$14.7

million on a present value basis and \$12.2 to \$16.9 million expressed in undiscounted dollars (an annualized cost of \$0.6 to \$0.8 million annually). However, if all habitat with features essential to the conservation of the taxon were designated critical habitat in a final rule, total costs would be expected to range between \$24.5 and \$43.6 million over the next 20 years (an annualized cost of \$1.2 to \$2.2 million).

### Required Determinations

#### Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues. However, because the draft economic analysis indicates the potential economic impact associated with a designation of all habitat with features essential to the conservation of this species would total no more than \$2.2 million per year, we do not anticipate that this rule would have an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the time line for publication in the **Federal Register**, the Office of Management and Budget (OMB) did not formally review the proposed rule.

Executive Order 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 been determined that the Federal regulatory action is appropriate, then the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), 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 outweighs 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 (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 effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), 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 this proposed designation of critical habitat for *Brodiaea filifolia* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, residential, industrial, and commercial development). 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 so will not be affected by the designation of critical habitat. Designation of critical habitat only affects 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 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. Our analysis determined that costs involving conservation measures for *Brodiaea filifolia* would be incurred for activities involving residential, industrial, and commercial development; water supply; flood control; transportation; agriculture; the development of HCPs; and the management of military bases, other Federal lands, and other public or conservation lands.

In our economic analysis of this proposed designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of this species and proposed designation of its critical habitat. Critical habitat designation is expected to result in additional costs to real estate development projects due to mitigation and other conservation costs that may be required. The affected land is located within Los Angeles, San Bernardino, Orange, Riverside, and San Diego counties and under private ownership by individuals who will either undertake a development project on their own or sell the land to developers for development. For businesses involved with land development, the relevant threshold for "small" is annual revenues of \$6 million or less. The North American Industry Classification System (NAICS) code 237210 is comprised of establishments primarily engaged in servicing land (*e.g.*, excavation, installing roads and utilities) and subdividing real property into lots for subsequent sale to builders. Land subdivision precedes actual construction, and typically includes residential properties, but may also include industrial and commercial properties.

The Draft Economic Analysis (See Section 3.2.1) estimates that 390 acres within proposed critical habitat are

projected to be developed over the next 20 years. The analysis assumes that as a result of *Brodiaea filifolia* conservation activities, 95 percent of the acres are conserved, and the plant is salvaged from the remaining five percent. As a result, landowners of 100 percent of these acres bear costs of *B. filifolia* conservation activities.

To estimate the number of landowners potentially impacted by *Brodiaea filifolia* conservation activities, the analysis estimates the average parcel size within essential habitat units in each county that contains essential habitat and compares it to the estimate of affected acres in these areas. At the aggregate county level, in units proposed for inclusion, one individual may be impacted in Los Angeles County, one individual may be impacted in San Bernardino County, 22 individuals may be impacted in Orange County, and 27 individuals may be impacted in San Diego County. Note that this estimate may be understated if habitat partially overlaps several parcels or overstated if one person owns more than one parcel with *B. filifolia*.

The loss in land value experienced by an individual landowner will depend on how much of a parcel is inhabited by *Brodiaea filifolia*, the extent to which development activities can be planned around sensitive areas, and the existence of alternative uses of the property that do not threaten the plant or its habitat. For example, if *B. filifolia* exists on only a small portion of the parcel that can be incorporated into existing open space requirements, then a small percentage of the land value is lost. However, if *B. filifolia* is found throughout the parcel, most or all of development value of that parcel may be lost. In such a circumstance, the parcel may continue to derive value from other, nondevelopment-oriented uses.

#### **Effects on Homebuyers and Small Construction Firms**

The Draft Economic Analysis (DEA) (See Section 3.2.2) estimates a potential shift in the supply of housing resulting from increased land scarcity. Scenario Two assumes that as a result of on-site conservation requirements, less land is available for development, and therefore fewer new homes are built. Under this scenario, small construction firms may be indirectly affected. This analysis uses a methodology used by Charles River Associates (CRA) to estimate the potential impact to small construction firms. The analysis uses the following steps to estimate the number of firms potentially affected:

(1) The analysis estimates the number of new homes typically built by a small

construction firm in one year. Average annual revenues for a small construction firm are \$694,000. Using the average construction costs for a single family home of \$236,000 obtained from CRA's vernal pool analysis, a small firm is assumed to build on average three houses a year (\$694,000/\$236,000 = 2.9).

(2) Next, the analysis estimates the number of homes that would have been built by small businesses in the absence of *Brodiaea filifolia* conservation efforts. As described in Section 3.2.2 of the DEA, the analysis predicts 316 homes will not be built in cities with habitat proposed for designation (summarized in Exhibit A-2 of the DEA). In an analysis of building permits in Sacramento County conducted by CRA, researchers determined that 22 percent of permits for single family dwellings were requested by small businesses. This analysis assumes that a similar proportion of new home construction activity is conducted by small construction firms in the five Southern California counties included in this analysis. As shown in Exhibit A-2 of the DEA, multiplying 22 percent by the number of homes not built in each county provides an estimate of lost home construction for small firms.

(3) Next, using the number of homes not built by small firms, the analysis estimates the number of small businesses affected. Results of this calculation are presented in Exhibit A-2. At the high-end, assuming that each lost house would have been built by a separate firm, the number of firms potentially affected is equal to the number of lost homes. For a low-end estimate, the number of houses not built is divided by the average number of houses built per year by small firms (three houses). In summary, in a given municipality containing proposed critical habitat, between one and 18 small construction firms may be affected annually by *Brodiaea filifolia* conservation activities. In Hemet, Moreno Valley, and Perris, where habitat is excluded from proposed critical habitat, approximately nine to 82 small firms could be affected if habitat were designated. The impact to affected small businesses is estimated to be between one-third and all of their revenues for the year, depending on the estimate of the number of businesses affected. Note that the impact to small construction firms may be overstated. As discussed in Section 3 of the DEA, the analysis of lost housing units is partial equilibrium in nature (*e.g.*, does not consider substitution of displaced development to other nearby areas), which is consistent with the best

currently available empirical information. If, instead, homes not built in these municipalities are constructed in neighboring communities unaffected by *Brodiaea* conservation activities, the impact to small construction firms is likely to be less than presented in Exhibit A-2. As a result, impacts to these firms are more likely overstated than understated in this analysis.

Based on these data, we have determined that this proposed designation would not result in a significant economic impact on a substantial number of small entities, in particular to land developers or farmers in Los Angeles, San Bernardino, Orange, Riverside, and San Diego counties. We may also exclude areas from the final designation if it is determined that these localized areas have an impact to a substantial number of businesses and a significant proportion of their annual revenues. As such, we are certifying that this proposed designation of critical habitat would not result in a significant economic impact on a substantial number of small entities. Please refer to Appendix A of our draft economic analysis of this designation for a more detailed discussion of potential economic impacts to small business entities.

#### *Executive Order 13211*

On May 18, 2001, the President issued Executive Order (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 rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action, and no Statement of Energy Effects is required. Please refer to Appendix A of our draft economic analysis of this proposed designation for a more detailed discussion of potential effects on energy supply.

#### *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, 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; AFDC 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) The United States Forest Service manages Cleveland National Forest (units 5a and 5b); Orange County's Department of Harbors, Beaches and Parks manages Aliso-Wood Canyon Regional Park (unit 3) and Casper's Regional Park (unit 4); and the Glendora

Community Conservancy manages the Conservancy (unit 1a) of the same name. With the exception of the Glendora Community Conservancy, these entities exceed the threshold established for small governments (service population of 50,000 or less). Therefore, the Glendora Community Conservancy is the only land manager considered in this screening analysis.

The DEA (See Section 6) estimates potential costs to public and private land management entities. Of the entities analyzed, the Glendora Community Conservancy is the only small entity. This section estimates potential impacts of *Brodiaea filifolia* conservation activities to the Conservancy.

The Conservancy's overall annual budget ranges from \$15,000 to \$30,000 and includes such elements as insurance, discounted land taxes, weed abatement, and trail maintenance. The analysis estimates that potential future costs associated with *Brodiaea filifolia* conservation activities at the Conservancy may range from \$1,600 to \$2,600 on an annualized basis (assuming a seven percent discount rate). These costs represent approximately 11 percent to 17 percent of annual expenditures assuming the low-end estimate of the annual budget (\$15,000) and 5 percent to 9 percent assuming the high-end estimate (\$30,000). Considering that the Glendora Community Conservancy is in the business of conservation, this is not an unexpected expenditure for the Conservancy. Consequently, we do not believe that the designation of critical habitat for *B. filifolia* will significantly or uniquely affect any small governmental entity addressed in the DEA. As such, a Small Government Agency Plan is not required.

#### Takings

In accordance with Executive Order 12630 ("Government Actions and

Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for *Brodiaea filifolia*. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for *B. filifolia* does not pose significant takings implications.

#### Author

The primary authors of this notice are the staff of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

#### Authority

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

Dated: September 26, 2005.

#### Craig Manson,

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 05-20050 Filed 10-5-05; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 635

[Docket No. 050927248-5248-01; I.D. 090805C]

RIN 0648-AT74

### Atlantic Highly Migratory Species; Atlantic Commercial Shark Management Measures

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** This proposed rule would establish the 2006 first trimester season quotas for large coastal sharks (LCS) and small coastal sharks (SCS) based on over- and underharvests from the 2005 first trimester season. In addition, this rule proposes the opening and closing dates for the LCS fishery based on adjustments to the trimester quotas. The intended effect of these proposed actions is to provide advance notice of quotas and season dates for the Atlantic commercial shark fishery.

**DATES:** Written comments will be accepted until November 7, 2005.

**ADDRESSES:** Written comments on the proposed rule may be submitted to Chris Rilling, Highly Migratory Species Management Division via:

• E-mail: [SF1.090805C@noaa.gov](mailto:SF1.090805C@noaa.gov).

• Mail: 1315 East-West Highway, Silver Spring, MD 20910. Please mark the outside of the envelope "Comments on Proposed Rule for 1<sup>st</sup> Trimester Season Lengths and Quotas."

• Fax: 301-713-1917.

• Federal e-Rulemaking portal: <http://www.regulations.gov>. Include in the subject line the following identifier: I.D. 090805C.

#### FOR FURTHER INFORMATION CONTACT:

Chris Rilling or Karyl Brewster-Geisz by phone: 301-713-2347 or by fax: 301-713-1917.

#### SUPPLEMENTARY INFORMATION:

#### Proposed Opening and Closing Dates and Quotas

Proposed opening and closing dates and quotas for the 2006 first trimester season by region are provided in Table 1.

TABLE 1 — PROPOSED OPENING AND CLOSING DATES AND QUOTAS

Species Group	Region	Opening Date	Closing Date	Quota
Large Coastal Sharks	Gulf of Mexico	January 1, 2006	April 15, 2006 11:30 p.m. local time	222.8 mt dw (491,185 lb dw)
	South Atlantic		March 15, 2006 11:30 p.m. local time	141.3 mt dw (311,510 lb dw)
	North Atlantic		April 30, 2006 11:30 p.m. local time	5.3 mt dw (11,684 lb dw)
Small Coastal Sharks	Gulf of Mexico	January 1, 2006	To be determined, as necessary	14.8 mt dw (32,628 lb dw)
	South Atlantic			284.6 mt dw (627,429 lb dw)