

**Regulation Identification Number**

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**List of Subjects in 23 CFR Part 650**

Bridges, Grant programs—transportation, Highways and roads, Reporting and recordkeeping requirements.

**Authority:** 23 U.S.C. 151 and 315; 49 CFR 1.48.

Issued on: September 19, 2001.

**Vincent F. Schimmoller,**

*Deputy Executive Director.*

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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; Notice of a Public Hearing and Extension of Comment Period for Proposed Endangered Status for the Sacramento Mountains Checkerspot Butterfly and Proposed Designation of Critical Habitat**

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

**ACTION:** Proposed rule; notice of public hearing and extension of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), give notice that we are holding a public hearing for the proposed rule to list the Sacramento Mountains checkerspot butterfly (*Euphydryas anicia cloudcrofti*) as endangered with critical habitat under the authority of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). We also give notice of the extension of the comment period for the proposed rule for the Sacramento Mountains checkerspot butterfly. The extension of the comment period will be for 30 additional days (until December 5, 2001). We invite all interested parties to submit comments on this proposal. The extension of the comment period will allow all interested parties to submit written comments on the proposal. Comments already submitted

on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

**DATES:** We will hold a public hearing at the Alamogordo Civic Center, 800 East First Street, Alamogordo, New Mexico, from 6 to 8 p.m. on Thursday, October 18, 2001, to solicit comments on the proposed rule to list the Sacramento Mountains checkerspot butterfly as endangered with critical habitat. The comment period for this proposal now closes on December 5, 2001. Comments must be received by the closing date. We will consider all comments received at the public hearing or those submitted in writing by December 5, 2001, the closing date of the comment period on this proposal.

**ADDRESSES:** You may submit written comments and materials concerning the proposal at the hearing or send them directly to Joy Nicholopoulos, Field Supervisor, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, New Mexico, 87113. Written comments may also be sent by facsimile to (505) 346-2542 or through the Internet to [R2FWE\\_AL@fws.gov](mailto:R2FWE_AL@fws.gov). All comments, including names and addresses, will become part of the administrative record and may be released. You may also hand-deliver written comments to our New Mexico Ecological Services Field Office, at the above address. Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours from 8:00 a.m. to 4:30 p.m., at the above address. You may obtain copies of the proposed rule from the above address, by calling 505/346-2525, ext. 135, or from our website at <http://ifw2es.fws.gov/Library/>.

**FOR FURTHER INFORMATION CONTACT:** Eric Hein, Endangered Species Biologist, New Mexico Ecological Services Field Office, at the above address (telephone 505/346-2525, ext. 135; facsimile 505/346-2542) or visit our website at <http://ifw2es.fws.gov/>.

**SUPPLEMENTARY INFORMATION:****Background**

On December 27, 1999, we published a substantial 90-day finding indicating that listing the Sacramento Mountains checkerspot butterfly may be warranted and initiated a status review for the required 12-month finding (64 FR 72300). On September 6, 2001, we published a proposed rule to list the butterfly as endangered with critical habitat under the Endangered Species

Act of 1973, as amended (Act) (66 FR 46575). The proposed rule constitutes our 12-month administrative finding. The 60-day public comment period on the proposed rule is extended and now closes on December 5, 2001. In the proposed rule, we determined that much of the remaining suitable habitat, and the long term persistence of the subspecies, is threatened by the direct and indirect effects, or some combination thereof, of commercial and private development, Forest Service projects (*e.g.*, campground reconstruction, powerline construction, road maintenance), fire suppression activities, highway reconstruction, off-highway vehicle use, trampling, and overgrazed range conditions (66 FR 46575). The butterfly is also threatened by encroachment of conifers and non-native vegetation into non-forested openings, over collection, and, due to its limited range, vulnerability to local extirpations from extreme weather events or catastrophic wildfire. We concluded that the extent of known localities and the non-forested suitable habitat, and the quality of the remaining suitable habitat are threatened. We expect the significant amount of habitat conversion from commercial and private development, which has occurred over the last several decades, will increase and continue to further degrade or eliminate the quality and quantity of Sacramento Mountains checkerspot butterfly habitat, placing the animal in danger of extinction throughout all or a significant portion of its range. The butterfly is vulnerable because of its limited range, over collection, and habitat degradation.

If the proposed rule is finalized, section 7(a)(2) of the Act would require that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to result in the "destruction or adverse modification" of critical habitat. Section 4 of the Act requires us to consider economic and other relevant impacts that could arise from specifying any particular area as critical habitat. We request data and comments from the public and all interested parties on all aspects of the proposal, including data on economic and other impacts of the proposed designation.

We stated in the proposed rule that should a public hearing be requested, then we would announce the date, time, and place for the hearing in the **Federal Register** and local newspapers at least 15 days prior to the hearing. This notice provides information regarding that hearing and extends the comment period an additional 30 days.

Public hearings are designed to gather relevant information that the public may

have that we should consider in our rule-making. During the hearing, we will present information about the proposed action. We invite the public to submit information and comments either at the hearings or in writing. This notice and public hearing will allow all interested parties to submit comments on the proposed rule and proposed designation. We are seeking comments or suggestions from the public, other concerned governmental agencies, tribes, the scientific community, industry, or any other interested parties concerning the proposal.

We may have to limit the time allotted for oral statements, if the number of people who wish to comment necessitates such a limitation. We encourage persons wishing to comment at the hearings to provide a written copy of their statement at the start of the hearing. There is no limit on the length of written comments. Persons may send written comments to our office (see **ADDRESSES** section) at any time during the open comment period, which is extended and now closes on December 5, 2001. We will give equal consideration to oral and written comments. We are publishing legal notices announcing the date, time, and location of the hearing in newspapers, concurrently with this **Federal Register** notice.

#### **National Environmental Policy Act**

It is our position that, outside the Tenth Circuit, we do not need to

prepare environmental analyses as defined by the National Environmental Policy Act (NEPA) in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of the Sacramento Mountains checkerspot butterfly, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners v. U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for the critical habitat designation. We will notify the public of the availability of the draft NEPA document for this proposal so that interested and affected parties may participate and contribute to a final decision. The draft NEPA document will be sent out for a minimum 45-day public comment period, during which comments will be solicited.

In addition, we will conduct a robust economic analysis on the effects of the proposed critical habitat designation prior to a final determination. We will conduct an analysis that complies with the ruling by the Tenth Circuit Court of

Appeals in *New Mexico Cattle Growers Association, et. al. v. U.S. Fish and Wildlife Service*. When the draft economic analysis is completed, we will announce its availability with a notice in the **Federal Register**, and we will reopen the comment period at that time to accept comments on the draft economic analysis, draft NEPA document, or further comment on the proposed rule. We will also transmit the draft documents to all who commented on the proposed rule, and send the documents to anyone who requests a copy. We are particularly interested in comments or suggestions on reasons why any particular area should or should not be designated as critical habitat, information on the distribution and quality of habitat for the Sacramento Mountains checkerspot butterfly, land use practices and current or planned activities in areas that may be affected by a designation of critical habitat, and any other pertinent issues of concern.

Author: The primary author of this notice is Eric Hein (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 17, 2001.

**Nancy M. Kaufman,**

*Regional Director, Region 2.*

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