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Dated: March 6, 2003.

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-AI26

Endangered and Threatened Wildlife and Plants; 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 the comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period for the proposed rule and economic analysis to designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for four vernal pool crustaceans and eleven vernal pool plants in 36 counties in California and one county in Oregon. We are reopening the comment period for the proposed rule and the draft economic analysis to allow interested parties additional time to submit comments and information to us for our consideration in making the final determination of critical habitat for the 15 vernal pool species. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this reopening of the comment period, and will be fully considered in the final rule.

DATES: We will accept comments on the proposed critical habitat designation and the economic analysis until March 28, 2003.

ADDRESSES: Written comments and information should be submitted to Wayne White, Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage, Room W-2605, Sacramento, CA 95825. Written comments may also be sent by fax to 916/414-6710 or hand-delivered to our Sacramento Fish and Wildlife Office at the above address. You may also send comments by electronic mail (e-mail) to fw1_vernalpool@fws.gov.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, by appointment, during normal business hours in the U.S. Fish and Wildlife Service's Sacramento Fish and Wildlife Office at the above address. You may obtain copies of the proposed rule and the draft economic analysis from the above address, by calling (916) 414-6600, or from our Web site at <http://sacramento.fws.gov/>.

FOR FURTHER INFORMATION CONTACT: Arnold Roessler or Susan Moore, at the Sacramento Fish and Wildlife Office 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 four vernal pool crustaceans and eleven 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 eleven vernal pool plant species are Butte County meadowfoam (*Limnanthes floccosa* ssp. *californica*), Contra Costa goldfields (*Lasthenia conjugens*), Hoover's spurge (*Chamaesyce hooveri*), succulent (or fleshy) 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 species, totaling approximately 672,920 hectares (ha) (1,662,762 acres (ac)) in 36 counties in California and one county in Oregon. 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 which help make the vernal pool ecosystems of California and southern Oregon unique. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regards to actions carried out, funded, or authorized by a Federal agency. 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 of specifying any particular area as critical habitat.

The public comment period for the September 24, 2002, proposal originally closed on November 25, 2002, and was extended by the November 21, 2002, notice of availability of the draft economic analysis to close on December 23, 2002. The draft economic analysis estimates the foreseeable economic impacts of the critical habitat designation on government agencies and private businesses and individuals. The Service will not make any final decisions about exclusions based on economic impact, until it has obtained public comment on the economic analysis and produced an addendum to the economic analysis containing its final conclusions. The Service is interested in comments from the public on the economic analysis, on whether any of the areas identified in the economic analysis as having economic effects should be excluded for economic reasons, and whether those or any other areas should be excluded for other reasons.

For further information regarding background biological information on the 15 vernal pool species, please refer to our proposed rule published in the **Federal Register** on September 24, 2002, (67 FR 59884).

Public Comments Solicited

We solicit additional information and comments that may assist us in making a final decision on the proposed rule to designate critical habitat for the four vernal pool crustaceans and eleven vernal pool plants. We intend that any final action resulting from our proposal will be as accurate and effective as possible. Therefore, we are reopening the comment period to solicit additional information from the general public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. 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 due to designation and whether areas under consideration require additional special management;

(2) Specific information on the amount and distribution of any of the vernal pool crustaceans or vernal pool plants and what habitat is essential to the conservation of these species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat; in particular, in Oregon, we seek information related to potential of selected parcels to contribute to the species recovery, considering their zoning, adjacent land uses, watershed integrity, and potential for edge effects (related to shape of parcel);

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

(5) Economic and other values associated with designating critical habitat for vernal pool crustaceans and vernal pool plants such as those derived from non-consumptive uses (*e.g.*, hiking, camping, bird-watching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs);

(6) Whether any areas should be excluded pursuant to section 4(b)(2);

(7) Whether our approach to 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 concern and comments; and

(8) Assumptions reflected in the economic analysis regarding land use practices and current, planned, or reasonably foreseeable activities in the subject areas, including comments or information relating to the potential effects that the designation could have on private landowners as a result of actual or foreseeable State and local government responses due to the California Environmental Quality Act.

If you wish to comment on this proposed rule, you may submit your comments and materials by any one of several methods (*see ADDRESSES*). Please submit electronic mail comments as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: Vernal Pool Critical Habitat" and your name and return address in your electronic message. Please note that the electronic address *fw1_vernalpool@fws.gov* will be closed out at the termination of the public comment period. If you do not receive a confirmation from the system that we have received your electronic message, contact us directly by calling our Sacramento Fish and Wildlife Office at phone number (916) 414-6600.

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 from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, 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. To the extent consistent with applicable law, 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 made available for public inspection, by appointment, during normal business hours at the above address.

The comment period, which originally closed on December 23, 2002 (67 FR 70202), will now close on the date specified above in the **DATES** section.

Author

The primary author of this notice is Susan Moore, (*see ADDRESSES* section).

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

Dated: March 7, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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