for controls) and benefits (*e.g.*, dollar estimates for medical savings from a reduction in the number or severity of ionizing radiation-related illnesses).

48. What changes, if any, in market conditions would reasonably be expected to result by revising the Ionizing Radiation standard? Please describe any changes in market structure or concentration and any effects on domestic or international shipments of ionizing radiation-related products or services that would reasonably be expected.

49. How many and what kinds of small entities are in your industry? What percentage of the industry do they comprise?

50. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that OSHA assess the impact of proposed and final rules on small entities. OSHA requests that members of the small business community and others familiar with small business concerns address any special circumstances small entities face in controlling occupational exposure to ionizing radiation. How and to what extent would small entities in your industry be affected by revising the Ionizing Radiation standard? Are there special circumstances that make the control of ionizing radiation more difficult or more costly in small entities? Please describe those circumstances and explain and discuss any alternatives that might serve to minimize these impacts.

51. Are there reasons why the benefits of revising the Ionizing Radiation standard to further reduce employee exposure might be different for small entities than for larger establishments?

K. Environmental Effects

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) regulations (40 CFR part 1500), and the Department of Labor NEPA Compliance Regulations (29 CFR part 11), require that OSHA give appropriate consideration to environmental issues and the impacts of proposed actions significantly affecting the quality of the human environment. OSHA is currently collecting written information and data on possible environmental impacts that could occur outside of the workplace (*e.g.*, exposure to the community through contaminated air/water, contaminated waste sites) if the Agency were to issue guidance or revise the existing standard for occupational exposure to ionizing radiation. Such information should include both negative and positive environmental effects that could be expected to result from guidance or a revised standard. Specifically, OSHA requests comments and information on the following:

52. What is the potential direct or indirect environmental impact (for example, the effect on air and water quality, energy usage, solid waste disposal, and land use) from further reducing employee exposure to ionizing radiation or from using new substitutes for ionizing radiation?

53. Are there any situations in which reducing ionizing radiation exposures to employees would be inconsistent with meeting environmental regulations?

L. Duplication/Overlapping/Conflicting Rules

54. Are there any State or Federal regulations that might duplicate, overlap or conflict with OSHA issuing guidance or a revised standard concerning ionizing radiation? If so, identify which ones and explain how they would duplicate, overlap or conflict.

55. Are there any Federal programs in areas such as defense, energy or homeland security that might be impacted by guidance or a revised standard concerning ionizing radiation? If so, identify which ones and explain how they would be impacted.

IV. Public Participation

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web page or the Federal Rulemaking Portal. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and courier service.

All comments and submissions are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.osha.gov*. OSHA cautions you about submitting personal information such as social security numbers and birth dates. Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance in using the web page to locate docket submissions.

Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Web page.

V. Authority and Signature

This document was prepared under the direction of Jonathan L. Snare, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), 29 CFR part 1911, and Secretary's Order 5–2002 (67 FR 65008).

Issued at Washington, DC, this 26th day of April 2005.

Jonathan L. Snare,

Acting Assistant Secretary of Labor.

[FR Doc. 05–8805 Filed 5–2–05; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ12

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River Populations of Bull Trout

AGENCY: Fish and Wildlife Service, Interior.

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

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on the proposal to designate critical habitat for the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River populations of bull trout (*Salvelinus confluentus*), and the availability of the draft economic analysis of the proposed designation of critical habitat. We are reopening the comment period to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this comment period, and will be fully considered in preparation of the final rule. Copies of the draft economic analysis and the proposed rule for critical habitat designation are available on the Internet at *http://pacific.fws.gov/bulltrout* or from the Portland Regional Office at the address and contact numbers below.

DATES: We will accept public comments until June 2, 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 John Young, Bull Trout Coordinator, U.S. Fish and Wildlife Service, Ecological Services, 911 NE 11th Avenue, Portland, OR 97232;

2. You may hand-deliver written comments and information to our office, at the above address, or fax your comments to 503/231–6243; or

3. You may also send comments by electronic mail (e-mail) to: *R1BullTroutCH@r1.fws.gov*. For directions on how to submit electronic filing of 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.

FOR FURTHER INFORMATION CONTACT: John Young, at the address above (telephone 503/231–6194; facsimile 503/231–6243).

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 (June 25, 2004, 69 FR 35768) and on our draft economic analysis of the proposed designation. 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 (Act) (16 U.S.C. 1531 *et seq.*), including whether the benefits of exclusion outweigh the benefits of specifying such area as part of critical habitat;

(2) Specific information on the amount and distribution of bull trout habitat, and what habitat is essential to the conservation of this species and why;

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

(4) We request 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 the bull trout, and how many were either already in place or enacted for other reasons, such as those enacted for the conservation of federally-listed salmon;

(5) Whether the draft economic analysis identifies all State and local costs attributable to the proposed critical habitat designation. If not, what costs are overlooked;

(6) 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;

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

(8) Our small business screening analysis indicated potentially disproportionate impacts to two economic sectors: sand and gravel mining on the Olympic Peninsula and real estate development in Skagit, Snohomish, and Whatcom Counties. Further investigation showed that these impacts are likely to be more narrowly concentrated. Impacts to the sand and gravel industry appear to be highest within the Wynoochee river watershed, while impacts to Skagit county real estate developers appear to occur disproportionately higher in the western portion of the county, within the Samish river and Lower Skagit river watersheds. Real estate costs also appear disproportionately higher in the western portions of Snohomish (Snohomish River watershed) and Whatcom (Bellingham Bay, Birch Bay, and Nooksack River watersheds) Counties. Based on this information, we are considering excluding these areas from the final designation per our discretion under section 4(b)(2) of the Act. We are specifically seeking comment along with additional information concerning our final determination for these three areas.

(9) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families. Does our conclusion that the proposed designation of critical habitat will not result in a disproportionate effect to small businesses warrant further consideration, and is there other information that would indicate that the designation of critical habitat would or would not have any impacts on small entities or families (in particular sand and gravel mining on the Olympic Peninsula and real estate development in Skagit, Snohomish, and Whatcom Counties)?;

(10) Whether the draft economic analysis appropriately identifies all costs that could result from the designation;

(11) 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.

(12) There are no cost estimates associated with bull trout conservation that relate to changes in hydroelectric dam operation, such as water diversion activities that divert water over dams, as compared to sending water through turbines. Because we have not estimated these potential costs, we are soliciting information from the public for specific case studies where there have been changes in the operation of hydroelectric dams that was due to conservation activities for bull trout.

(13) We are requesting comment on excluding dams and water projects that are impacted by the proposed designation of critical habitat for the bull trout. The draft economic analysis identified economic impacts to dams and water projects for the Coastal-Puget Sound population of bull trout in section 3.4 of the document, and the Saint Mary-Belly population of bull trout in section 5.3 of the document. We are also requesting comment on excluding these facilities from the final designation.

(14) The proposed critical habitat designation for the Jarbidge River population of bull trout spans two counties, Owyhee County in Idaho and Elko County in Nevada. As discussed in our draft economic analysis, we have determined that the per capita income for Owyhee County is $17,251, somewhat less than Idaho State's figure of $24,506, and had a poverty rate of 17 percent, greater than the 11.2 percent rate of the State. Total employment in Owyhee County is 3,886, and a large portion of this employment is related to agricultural production. Over 1,000 jobs, or nearly 28 percent of total county employment, are in agricultural production, and mainly connected with irrigated agriculture and cattle ranching. In Owyhee County, 38 percent of the earnings are from jobs directly related to agricultural production. Based on this information from the draft economic analysis, we are specifically requesting comment on excluding Owyhee County, Idaho from the final designation of critical habitat.

(15) We are considering excluding and are requesting comment on the benefits of excluding or including the following areas or programs within the Puget Sound Coastal bull trout population final critical habitat designation: The areas that form the Washington Department of Natural Resources Habitat Conservation Plan; the area covered by the Simpson Timber Company Habitat Conservation Plan; the area covered by the City of Seattle

Habitat Conservation Plan; the area covered by the Tacoma Water Habitat Conservation Plan; the area regulated by the Forest and Fish Report rules under the Washington State Forest Practices Rules and Regulations; National Forest Lands subject to the Northwest Forest Plan; and areas comprising individual tribal reservations located within proposed critical habitat areas within the Puget Sound Coastal, Jarbidge, and Saint Mary Belly populations of bull trout. An area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact. We are requesting comment on such impacts and the benefits of including or excluding each of the enumerated areas.

All previous comments and information submitted during the initial comment period need not be resubmitted. Refer to the **ADDRESSES** section for information on how to submit written comments and information. Our final determination on the proposed critical habitat will take into consideration all comments and any additional information received.

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: RIN 1018–AJ12'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact the Bull Trout Coordinator (see **ADDRESSES** section and **FOR FURTHER INFORMATION CONTACT**).

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. In some circumstances, we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for 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 inspection, by appointment, during normal business hours, in the U.S. Fish and Wildlife Service Office at the above address.

Copies of the draft economic analysis are available on the Internet at: *http://pacific.fws.gov/bulltrout* or from the Bull Trout Coordinator at the address and contact numbers above. You may obtain copies of the proposed rule from the above address, by calling 503/231–6194, or from our Web site at: *http://pacific.fws.gov/bulltrout.*

Background

We published a proposed rule to designate critical habitat for the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River populations of bull trout on June 25, 2004 (69 FR 35768). The proposed critical habitat for the Jarbidge River population designation includes approximately 131 miles (mi) (211 kilometers (km)) of streams in Idaho and Nevada. For the Coastal-Puget Sound population, the proposed critical habitat designation totals approximately 2,290 mi (3,685 km) of streams, 52,540 acres (ac) (21,262 hectares (ha)) of lakes, and marine areas adjacent to 985 mi (1,585 km) of shoreline in Washington. For the Saint Mary-Belly River population, the proposed critical habitat designation totals approximately 88 mi (142 km) of streams and 6,295 ac (2,548 ha) of lakes in Montana. Under the terms of a court-approved settlement agreement, we are required to submit the final rule designating critical habitat to the **Federal Register** no later than June 15, 2005.

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 for 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 based upon the best scientific and commercial data available, after taking into consideration the economic or any other relevant impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for the Jarbidge River, Coastal-Puget Sound, and Saint Mary-Belly River populations of bull trout, we have prepared a draft economic analysis of the proposed critical habitat designation.

The draft economic analysis addresses the impacts of bull trout conservation efforts on activities occurring on lands proposed for designation as well as those proposed for exclusion. The analysis measures lost economic efficiency associated with residential and commercial development; hydroelectric projects; non-hydroelectric projects; Federal land management; Federal and State agencies; grazing; mining; recreation; agriculture; private non-Habitat Conservation Plan forestry; road maintenance and transportation; commercial and recreation mining; utilities; dredging and instream activities; culverts; National Pollution Discharge Elimination System (NPDES) permitted activities; and administrative consultation costs.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of the bull trout, 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 the bull trout in essential habitat areas. 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 a threatened species and considers those costs that may occur in the 19 years following the designation of critical habitat.

We solicit data and comments from the public on these draft documents, as well as on all aspects of the proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

Costs related to conservation activities for the proposed bull trout critical habitat pursuant to sections 4, 7, and 10 of the Act are estimated to be approximately $656.6 million from 2005 to 2024 assuming a 7 percent discount rate. Overall, the residential and commercial industry is calculated to experience the highest of estimated costs, followed by administrative consultations and Federal land management. Of the three populations that are part of this current proposal, more than 99 percent of the costs occur in Coastal-Puget Sound population area. Annualized impacts of costs attributable to the designation of critical habitat are projected to be approximately $61.8 million.

Required Determinations—Amended

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. However, it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule.

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 effect 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 an 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 the bull trout 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 and commercial development, mining, sand and gravel, and agriculture). 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.

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. We determined from our analysis that the small business entities that may be affected are land development, and sand and gravel businesses in the Coastal-Puget Sound region, and irrigated farming in the Milk River Basin of the Saint Mary-Belly region. There are no anticipated effects on small business entities in the Jarbidge region.

On the basis of our analysis of bull trout conservation measures, we determined that this proposed designation of critical habitat for the bull trout would result in potential economic effects to the land development sector in counties of the eastern Puget Sound. The percent of land development revenues attributable to small businesses ranges from 45 to 100 percent in these counties. The anticipated effect of the proposed designation as a percent of small business sales in these counties is approximately 2.3 percent. The highest percent effects occur in Skagit (8.4 percent), Snohomish (3.4 percent), and Whatcom (3.03 percent) Counties. However, these effects appear to be highly concentrated in these counties; in Skagit County, the Samish River and Lower Skagit River/Nookachamps Creek watersheds contain 98 percent of the real estate development impacts within the county, and therefore, impacts to small businesses likely occur in these areas. Similarly, in Snohomish County, the Snohomish River watershed contains approximately 78 percent of real estate impacts, and in Whatcom County, Bellingham Bay, Birch Bay, and Nooksack River watersheds contain 98 percent of real estate impacts. However, as part of our analysis we relied on one North American Industry Classification System code, which may place a burden on too few small businesses and the number of small businesses associated with land development in Skagit, Snohomish, and Whatcom Counties may be understated thereby driving the effect per small business up and resulting in the 3 to 8.4 percent impact

in these counties. Therefore, we believe that the proposed designation will not result in a disproportionate effect to these small business entities. However, we are seeking comment on potentially excluding these watersheds from the final designation if it is determined that there will be a substantial and significant impact to small real estate development businesses in these particular watersheds.

For the sand and gravel mining sector, we determined that the revenues in this sector attributable to small businesses were 76 percent of Snohomish County and 100 percent for Whatcom County, which are both located in the Puget Sound region, and 100 percent for Grays Harbor, which is located in the Olympic region. The anticipated annual effect to these small sand and gravel mining businesses was determined to be 0.6 to 1.5 percent in Puget Sound counties, and approximately 4.5 percent for Grays Harbor County in the Olympic region; however, these effects appear to be concentrated in the Wynoochee River watershed. Because there are few sand and gravel mining businesses located in this one watershed, we believe that the anticipated annual effect to small sand and gravel mining businesses will not be substantial. However, we are also seeking comment on potentially excluding the Wynoochee River watershed from the final designation if it is determined that there will be a substantial and significant impact to small sand and gravel mining businesses in this watershed.

We determined that this proposed designation of critical habitat for the bull trout would result in a potential economic effect to irrigated farming as part of the Milk River Project from allocation of instream flow in Swiftcurrent Creek, and subsequent reduction in water for irrigation. Since the Milk River Project is managed by the Bureau of Reclamation, we assumed that the costs would be equally shared for the benefit of all irrigators, which would result in an average share of revenue impact per farm of $33 to $115. When the total costs are compared to average sales per farm that represent small businesses, they would account for 0.06 to 0.20 percent of annual revenues.

Based on this 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 sand and gravel mining businesses in the Coastal-Puget Sound region, and irrigators farming as part of the Milk River Project located in the Saint Mary-Belly region. We may also exclude these watersheds 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 considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues, but it 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.

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, or 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; Aid to Families with Dependent Children 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) As discussed in the draft economic analysis of the proposed designation of critical habitat for the bull trout, there are some 140 small government entities located adjacent to the boundaries of the proposed designation. However, there is no record of consultations between the Service and any of these governments since the bull trout was listed in 1998. It is likely that small governments involved with developments and infrastructure projects will be interested parties or involved with projects involving section 7 consultations for the bull trout within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a city's budget. Consequently, we do not believe that the designation of critical habitat for the bull trout will significantly or uniquely affect these small governmental entities. 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 bull trout. 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 the bull trout does not pose significant takings implications.

Author

The primary author of this notice is the U.S. Fish and Wildlife Service.

Authority

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

Dated: April 26, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–8837 Filed 5–2–05; 8:45 am]

BILLING CODE 4310–55–P