

Division (6PD), 1445 Ross Avenue, Dallas, TX 75202-2733, telephone (214) 665-8544; fax number 214-665-7263; or electronic mail at [loesel.matthew@epa.gov](mailto:loesel.matthew@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of this **Federal Register**, EPA is approving the Louisiana State Plan.

The EPA is taking direct final action without prior proposal because EPA views this as a non-controversial action and anticipates no adverse comments. A detailed rationale for this is set forth in the preamble to 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 If EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule.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 on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comments 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 subject of an adverse comment. For additional information, see the direct final rule which is published in the Rules section of this **Federal Register**.

**Authority:** This action is issued under the authority of section 111 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: August 8, 2007.

**Lawrence Starfield,**

*Acting Regional Administrator, Region 6.*

[FR Doc. E7-16170 Filed 8-16-07; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[FRL-8455-7]

#### New Mexico: Final Authorization of State Hazardous Waste Management Program Revisions

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

**ACTION:** Proposed rule.

**SUMMARY:** The State of New Mexico has applied to EPA for Final Authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant Final Authorization to the State of New Mexico. In the "Rules and Regulations"

section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

**DATES:** Send your written comments by September 17, 2007.

**ADDRESSES:** Send written comments to Alima Patterson, Region 6, Regional Authorization Coordinator (6PD-O), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of New Mexico during normal business hours at the following locations: New Mexico Environment Department, 2905 Rodeo Park Drive East, Building 1, Santa Fe, New Mexico 87505-6303, phone number (505) 476-6035 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, phone number (214) 665-8533, comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the immediate final rule which is located in the Rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:**

Alima Patterson, (214) 665-8533.

**SUPPLEMENTARY INFORMATION:** For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: July 25, 2007.

**Lawrence E. Starfield,**

*Acting Regional Administrator, Region 6.*

[FR Doc. E7-16243 Filed 8-16-07; 8:45 am]

**BILLING CODE 6560-50-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AU79

#### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Cape Sable Seaside Sparrow

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

**ACTION:** Proposed rule; reopening of comment period, availability of draft economic analysis, announcement of public hearing, and amended required determinations.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are reopening the comment period on our October 31, 2006, proposed revision of critical habitat for the Cape Sable seaside sparrow (*Ammodramus maritimus mirabilis*) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of the draft economic analysis for the proposed critical habitat revision and provide amended required determinations for the proposal. The draft economic analysis estimated potential future impacts associated with conservation efforts for the sparrow in areas proposed for designation to be \$32.2 million over the next 20 years (undiscounted). The present value of these impacts is \$26.9 million, using a discount rate of 3 percent, or \$22.2 million, using a discount rate of 7 percent. The annualized value of these impacts is \$1.8 million, using a discount rate of 3 percent, or \$2.1 million, using a discount rate of 7 percent. Finally, we announce a public hearing during the reopening of the comment period. We are taking these actions to allow all interested parties an opportunity to comment simultaneously on the original proposal rule and the newly available associated draft economic analysis. Previously submitted comments need not be resubmitted; they are already part of the public record that we will consider in preparing our final rule determination.

**DATES:** We will accept public comments until September 17, 2007. We will hold one public hearing on August 29, 2007, on the proposed critical habitat designation and the draft economic analysis. See "Public Hearing" under **SUPPLEMENTARY INFORMATION** for details.

**ADDRESSES:** Written comments: If you wish to comment, you may submit your comments and information concerning

this proposal by any one of the following methods:

1. Mail or hand-deliver written comments and information to Tylan Dean, U.S. Fish and Wildlife Service, South Florida Ecological Services Office, 1339 20th Street, Vero Beach, FL 32960-3559.

2. E-mail your comments to [Tylan\\_Dean@fws.gov](mailto:Tylan_Dean@fws.gov). Please see the "Public Comments Solicited" under **SUPPLEMENTARY INFORMATION** for additional information about this method.

3. Fax your comments to 772-562-4288.

4. Submit comments via the Federal Rulemaking portal at <http://www.regulations.gov>. Follow the instructions on the site.

Please see the "Public Comments Solicited" section below for more information about submitting comments or viewing our received materials.

**Public Hearing:** We will hold a public hearing on August 29, 2007 at the John D. Campbell Agricultural Center, 18710 S.W. 288th Street, Miami, FL. An information session will be held between 5 p.m. and 6:30 p.m. and the meeting will be held between 6:30 and 8:30 p.m. You may provide oral or written comments at the public hearing.

**FOR FURTHER INFORMATION CONTACT:** Tylan Dean, South Florida Ecological Services office (see **ADDRESSES**); telephone 772-562-3909; facsimile 772-562-4288. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Hearing**

On August 29, 2007, we will hold a public hearing on the proposed critical habitat designation and the draft economic analysis. An information session will be held from 5 p.m. to 6:30 p.m. and will precede the hearing. The public hearing will run from 6:30 p.m. to 8:30 p.m. See the **ADDRESSES** section for the location of the public hearing. Persons needing reasonable accommodations to attend and participate in the public hearing should contact the person listed in **FOR FURTHER INFORMATION CONTACT** as soon as possible. To allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding the proposal is available in alternative formats upon request.

##### **Public Comments Solicited**

We intend that any final action resulting from the proposal be as

accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be designated as critical habitat as provided by section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether designation of critical habitat is prudent in that (a) the degree of any threat to the species due to the designation of critical habitat is not increased by identification of critical habitat; and (b) designation would benefit the species;

(2) Specific information on the amount and distribution of Cape Sable seaside sparrow habitat, including areas occupied by Cape Sable seaside sparrows, areas containing features essential to the conservation of the species, and areas that are essential to the conservation of the species;

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

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts;

(5) Whether the draft economic analysis identifies all State and local costs attributable to the proposed revised critical habitat designation, and information on any costs that we could have inadvertently 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 any land use controls that may derive from the revised designation of critical habitat;

(8) Any foreseeable economic or other impacts resulting from the proposed designation of revised critical habitat, and in particular, any impacts on small entities or families; and other information that would indicate that the revision of critical habitat would or would not have any impacts on small entities or families;

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

(10) Whether the benefits of exclusion of any particular area from critical

habitat would outweigh the benefits of inclusion under section 4(b)(2) of the Act;

(11) Economic data on the incremental effects that would result from designating any particular area as revised critical habitat, since it is our intent to include the incremental costs attributed to the revised critical habitat designation in the final economic analysis; and

(12) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). Please submit comments electronically to [Tylan\\_Dean@fws.gov](mailto:Tylan_Dean@fws.gov). Please also include "Attn: Cape Sable seaside sparrow critical habitat" in your e-mail subject header and your name and return address in the body of your message.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Copies of the draft economic analysis and the proposed rule for critical habitat designation are available on the Internet at <http://www.fws.gov/verobeach/> or from the South Florida Ecological Services Office (see **ADDRESSES**).

Our final designation of critical habitat will take into consideration all comments and any additional information we received during both comment periods, including those provided at the public hearing. If you submit previous comments and information during the initial comment period on the October 31, 2006, proposed rule (71 FR 63980), you need to resubmit them, because they are currently part of our record and we will consider them in developing our final rule determination. On the basis of public comment on this analysis, the critical habitat proposal, and 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. We may

exclude an area from critical habitat if we determined that the benefits of such exclusion outweigh the benefits of including a particular area as critical habitat, unless the failure to designate such area as critical habitat would 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.

### Background

We originally designated critical habitat for the Cape Sable seaside sparrow on August 11, 1977 (42 FR 40685) and published a correction on September 22, 1977 (42 FR 47840). For a description of the sparrow, its habitat, and Federal Actions that occurred prior to our October 31, 2006, proposed rule to revise critical habitat (71 FR 63980), please refer to the original proposed rule published on July 14, 1976 (41 FR 28978); the August 11, 1977, final rule (42 FR 40685); and the September 22, 1977, correction (42 FR 47840). On October 31, 2006, we published a proposed rule to revise the critical habitat designated for the sparrow in Miami-Dade and Monroe Counties, Florida (71 FR 63980). The proposed revision identifies seven units that encompass a total area of approximately 156,350 acres (52,291 hectares), which represents a reduction in the acreage of designated critical habitat by approximately 40,910 acres (13,682 hectares). In accordance with a settlement agreement, we will submit for publication in the **Federal Register** a final critical habitat designation for the Cape Sable seaside sparrow on or before October 24, 2007.

Critical habitat is defined in section 2 of the Act as the specific areas within the geographical 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 geographical 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. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

### Summary of Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration

the economic or any other relevant impact of specifying any particular area as critical habitat. We will continue to review any conservation or management plans that address the species within the areas we have proposed for revised designation, under to section 4(b)(2) and based on the definition of critical habitat provided in section 3(5)(A) of the Act.

Based on the October 31, 2006, proposed rule (71 FR 63980), we prepared a draft economic analysis of the proposed revised critical habitat designation (see "Public Comments Solicited" for how to obtain a copy). The draft economic analysis considers the potential economic effects of actions relating to the conservation of the sparrow, including costs associated with sections 4, 7, and 10 of the Act, which would include costs 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 sparrow in critical habitat areas. The draft analysis considers both economic efficiency and distributional effects. Economic efficiency effects generally reflect "opportunity costs" associated with the commitment of resources required to accomplish species and habitat conservation and comply with habitat protection measures (such as 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. Decision-makers can use this information to assess whether the effects of the revised designation might unduly burden a particular group or economic sector. The anticipated economic effects associated with the proposed revision of critical habitat are estimated based on activities that are "reasonably foreseeable," including, but not limited to, activities that are currently authorized, permitted, or funded, or for which proposed plans are currently available to the public. The analysis summarizes costs associated with past species conservation efforts for the sparrow and then forecasts projected future impacts for the 20-year period from 2007 (the year of the species' final critical habitat designation) to 2026. Forecasts of economic conditions and other factors beyond the next 20 years would be speculative.

The draft economic analysis is intended to quantify the economic

impacts of all potential conservation efforts for the Cape Sable seaside sparrow. All dollar amounts include those costs coextensive with listing; some of these costs will likely be incurred under the existing critical habitat designation and other existing regulatory mechanisms regardless of whether critical habitat is revised. The analysis estimates potential future impacts associated with conservation efforts for the sparrow in areas proposed for designation to be \$32.2 million over the next 20 years (undiscounted). However, because it is uncertain whether incremental conservation measures implemented for sparrow conservation will represent a constraint on overall water management activities due to future actions for the Everglades Restoration program, costs from this proposal associated with water management activities are calculated for only the next 5 years.

The present value of these impacts is \$26.9 million, using a discount rate of 3 percent, or \$22.2 million, using a discount rate of 7 percent. The annualized value of these impacts is \$1.8 million, using a discount rate of 3 percent, or \$2.1 million, using a discount rate of 7 percent. The majority (58 percent) of the total potential impacts estimated in this report are associated with potential species management efforts (such as surveying, monitoring, research, and exotic vegetation control). The remaining impacts are associated with potential water management changes to conserve the sparrow (33 percent), fire management (7 percent) and administrative costs of consultation (2 percent).

As stated earlier, we solicit data and comments from the public on this draft economic analysis, as well as on all aspects of our proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information we receive during this comment period.

### Required Determinations—Amended

In our October 31, 2006, proposed rule (71 FR 63980), we indicated that we would be deferring our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders was available in the draft economic analysis. Those data are now available for our use in making these determinations. We now affirm the information contained in original proposed rule concerning Executive Order (E.O.) 13132 (Federalism); E.O. 12988 (Civil Justice

Reform) E.O. 13211 (Energy Supply, Distribution, or Use); the Paperwork Reduction Act; the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Based on the information made available to us in the draft economic analysis, we are amending our Required Determinations, as provided below, concerning E.O. 12866 and the Regulatory Flexibility Act, E.O. 12630 (Takings), and the Unfunded Mandates Reform Act.

#### *Regulatory Planning and Review*

In accordance with E.O. 12866, this document is a significant rule, because it may raise novel legal and policy issues. However, we do not anticipate that it will 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) did not formally review the proposed rule.

Further, E.O. 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (OMB, Circular A-4, September 17, 2003). Pursuant to Circular A-4, if the agency determines that a Federal regulatory action is appropriate, the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Act, 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 outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. 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*

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 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 (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. In our proposal 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 revised 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 the proposed designation of revised critical habitat for the Cape Sable seaside sparrow would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (such as residential 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 revised 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.

In our draft economic analysis of the proposed critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the proposed revision of Cape Sable seaside sparrow critical habitat. The economic impacts of conservation efforts for the sparrow are expected to be borne primarily by State and Federal agencies, including the Service, U.S. Army Corps of Engineers, National Park Service, South Florida Water Management District, and Florida Fish and Wildlife Conservation Commission. None of these agencies is defined as a small entity by the Small Business Administration (SBA). Consequently, the designation of revised critical habitat for the sparrow is not expected to impact small entities. Based on currently available information, the Service certifies that this action would not have a significant economic impact on a substantial number of small entities.

#### *Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), we make the following findings:

(a) This rule would 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, or permits, or that 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 onto State governments.

(b) As discussed in the draft economic analysis of the proposed designation of revised critical habitat for the Cape Sable seaside sparrow, we expect the impacts on nonprofits and small governments to be primarily those impacts related to changes in environmental and ecological conditions. It is likely that small governments involved with developments and infrastructure projects would be interested parties or involved with projects involving section 7 consultations for the Cape Sable seaside sparrow within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a local government's budget. Consequently, we do not believe that the designation of revised critical habitat for the Cape Sable seaside sparrow would significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

### *Takings*

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of proposing revised critical habitat for the Cape Sable seaside sparrow in a takings implications assessment. The takings implications assessment concludes that this proposed revised designation of critical habitat for the Cape Sable seaside sparrow does not pose significant takings implications.

### **Author**

The primary author of this notice is the South Florida Ecological Services Office of the U.S. Fish and Wildlife Service.

### **Authority**

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

Dated: August 10, 2007.

**David M. Verhey,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 07-4030 Filed 8-14-07; 12:45 pm]

**BILLING CODE 4310-55-M**