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#### *How Can I Be Sure That My Comments Were Received?*

If you submit your comments by mail and wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

#### *How Do I Submit Confidential Business Information?*

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation.<sup>36</sup> In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the Docket by one of the methods set forth above.

#### *Will the Agency Consider Late Comments?*

We will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date.

#### *How Can I Read the Comments Submitted by Other People?*

You may read the materials placed in the docket for this document (e.g., the comments submitted in response to this document by other interested persons) at any time by going to <http://www.regulations.gov>. Follow the online instructions for accessing the dockets. You may also read the materials at the Docket Management Facility by going to the street address given above under **ADDRESSES**. The Docket Management Facility is open between 9 am and 5 pm Eastern Time, Monday through Friday, except Federal holidays.

Please note that even after the comment closing date, we will continue to file relevant information on the

docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the docket for new material.

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

Issued on: June 24, 2010.

**Nathaniel Beuse,**

*Director, Office of Crash Avoidance Standards.*

[FR Doc. 2010-15773 Filed 6-28-10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R4-ES-2009-0079]  
[MO92210-0-0009-B4]

RIN 1018-AW52

#### Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Vermilion Darter

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

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

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the availability of the draft economic analysis (DEA) for the proposed designation of critical habitat for the vermilion darter (*Etheostoma chermocki*) under the Endangered Species Act of 1973, as amended. We also announce the reopening of the comment period and an amended required determinations section of the proposal. The comment period is reopened for an additional 30 days to allow interested parties an opportunity to comment simultaneously on the proposed critical habitat designation, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule.

**DATES:** *Written Comments:* We will consider public comments received or postmarked on or before July 29, 2010. Please note that if you are using the *Federal eRulemaking Portal* (see **ADDRESSES** section, below) the deadline for submitting an electronic comment is 11:59 p.m. Eastern Daylight Savings Time on this date.

**ADDRESSES:** *Written Comments:* You may submit comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. **FWS-R4-ES-2009-0079**.

- *U.S. mail or hand-delivery:* Public Comments Processing, **Attn: FWS-R4-ES-2009-0079**; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

#### **FOR FURTHER INFORMATION CONTACT:**

Stephen Ricks, Field Supervisor, Mississippi Fish and Wildlife Office, 6578 Dogwood View Parkway, Jackson, MS 39213; by telephone (601-321-1122); or by facsimile (601-965-4340). 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 Comments**

We will accept written comments and information during this reopened comment period on the proposed designation of critical habitat for the vermilion darter that was published in the **Federal Register** on December 3, 2009 (74 FR 63366), the draft economic analysis (DEA) of the proposed designation of critical habitat for the vermilion darter, and the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

- (1) The reasons why we should or should not designate areas as "critical habitat" under section 4 of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*), including whether there are threats to the vermilion darter from human activity, the degree of which can be expected to increase due to the designation, and whether the benefit of designation would outweigh threats to the species caused by the designation, such that the designation of critical habitat is prudent.

- (2) Specific information on:

- The amount and distribution of vermilion darter habitat;
- What areas containing physical and biological features essential to the conservation of the species should be included in the designation and why;

<sup>36</sup> See 49 CFR 512.

- Special management considerations or protections for the physical and biological features essential to vermilion darter conservation that have been identified in the proposed rule that may be needed, including managing for the potential effects of climate change; and

- What areas not currently occupied by the species are essential to the conservation of the species and why.

(3) Specific information on the vermilion darter and the physical and biological features essential to the conservation of the species.

(4) Any information on the biological or ecological requirements of the species.

(5) Land-use designations and current or planned activities in areas occupied by the species, and their possible impacts on the species and the proposed critical habitat.

(6) 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 are subject to these impacts.

(7) Whether the benefits of excluding any particular area from critical habitat outweigh the benefits of including that area as critical habitat under section 4(b)(2) of the Act, after considering the potential impacts and benefits of the proposed critical habitat designation.

(8) 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.

You may submit your comments and materials concerning this proposed rule or DEA by one of the methods listed in the **ADDRESSES** section.

If you submitted comments or information on the proposed critical habitat rule for the vermilion darter, previously published on December 3, 2009 (74 FR 63366), you do not have to resubmit them. These comments are included in the public record for this rulemaking, and we will fully consider them in the preparation of our final determination.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including your personal identifying information—will be posted on the website. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review.

However, we cannot guarantee that we will be able to do so. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation used in preparing the proposed rule and DEA, will be available for public inspection on <http://www.regulations.gov>, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service's Mississippi Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at <http://www.regulations.gov> at Docket Number **FWS-R4-ES-2009-0079** or by mail from the Mississippi Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

### Background

The vermilion darter (*Etheostoma chermocki*) was listed as endangered under the Act on November 28, 2001 (66 FR 59367). At the time of listing, the Service found that designation of critical habitat was prudent. However, due to budgetary constraints, we did not designate critical habitat at that time. On November 27, 2007, the Center for Biological Diversity filed a lawsuit against the Secretary of the Interior alleging that the Service failed to timely designate critical habitat for the vermilion darter (*Center for Biological Diversity v. Kempthorne* (07-CV-2928)). In settlement agreement approved by the court on April 25, 2008, the Service agreed to submit to the **Federal Register** a new prudency determination, and if designation was found to be prudent, a proposed designation of critical habitat, by November 30, 2009, and a final designation by November 30, 2010. The Service determined that critical habitat was prudent for the vermilion darter and published a proposed critical habitat designation on December 3, 2009 (74 FR 63366).

The vermilion darter is a narrowly endemic fish species, occurring in sparse, fragmented, and isolated populations. The species is only known in parts of the upper mainstem reach of Turkey Creek and four tributaries in Pinson, Jefferson County, Alabama (Boschung and Mayden 2004, p. 520). Suitable streams have pools of moderate current alternating with riffles of moderately swift current, and low water turbidity.

The primary threats to the species and its habitat are degradation of water quality and substrate components due to sedimentation and other pollutants, and

altered flow regimes from activities such as construction and maintenance activities; impoundments (five within the Turkey Creek and Dry Creek system); instream gravel extractions; off-road vehicle usage; road, culvert, bridge, gas, and water easement construction; and stormwater management (Drennen personal observation 1999-2009; Blanco and Mayden 1999, pp. 18-20). These activities lead to water quality degradation and the production of pollutants (sediments, nutrients from sewage, pesticides, fertilizers, and industrial and stormwater effluents), stream channel instability, fragmentation, and reduced connectivity of the habitat by altering the stream banks and bottoms; degrading the riffles, runs, and pools; and producing changes in the water quantity and flow that are necessary for spawning, feeding, resting, and other life history functions of the species.

We propose to designate approximately 21 kilometers (13 miles) of streams in 5 units as critical habitat for the vermilion darter. The proposed critical habitat is located within the Turkey Creek watershed in Jefferson County, Alabama.

Section 3 of the Act defines critical habitat 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. 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 critical habitat are required to consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

### Possible Exclusions from Critical Habitat and Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. 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. We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation (DEA), which is available for review and comment (see **ADDRESSES** section).

The intent of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the vermilion darter that we published in the **Federal Register** on December 3, 2009 (74 FR 63366). The DEA describes the economic impacts of all potential conservation efforts for the vermilion darter, some of which will likely be incurred whether or not we designate critical habitat. The economic impact of the proposed critical habitat designation is analyzed by comparing scenarios both “with critical habitat” and “without critical habitat.” The “without critical habitat” scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat when evaluating the benefits of excluding particular areas under section 4(b)(2) of the Act. The analysis forecasts both baseline and incremental impacts likely to occur if we finalize the proposed designation of critical habitat.

The DEA describes economic impacts of vermilion darter conservation efforts associated with the following categories of activity: (1) Costs associated with economic activities, including future development, road construction, wastewater treatment, stream alteration, and water withdrawal; and (2) costs associated with conservation activities,

including actions associated with the Vermilion Darter Recovery Plan and activities that aid in preservation of the vermilion darter and the Turkey Creek watershed (e.g., preservation of the Turkey Creek Nature Preserve and the establishment of undeveloped greenways buffering the critical habitat and upstream tributaries). The DEA estimates the baseline costs associated with potential future economic activities and conservation activities for the vermilion darter to be \$283,209 annually over the next 25 years, assuming a 7 percent discount rate. The proposed critical habitat designation for the vermilion darter will result in minimal incremental costs because any adverse modification decision would likely be coincident to a jeopardy determination for the same action due to the species’ narrow range. Therefore, the only incremental costs are those resulting from the additional administrative costs by the Service and action agency to include an adverse modification finding within the Biological Opinion and Biological Assessment as part of a formal consultation. As a result, the total incremental costs associated with this rule are estimated to be \$39.24 annually over the next 25 years, assuming a 7 percent discount rate.

The DEA also discusses the potential benefits associated with the designation of critical habitat. The primary intended benefit of critical habitat is to support the conservation of endangered and threatened species, such as the vermilion darter; however, these efforts preserve ecosystems that provide valuable services to the public and may lead to additional social welfare or market-based benefits. Depending on the nature of the effect, benefits are represented within the DEA either qualitatively, quantitatively, or as a monetary value.

#### **Required Determinations—Amended**

In our December 3, 2009, proposed rule (74 FR 63366), we indicated that we would defer 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 became available in the DEA. We have now made use of the DEA data in making this determination. In this document, we affirm the information in our proposed rule concerning: E.O. 12866 (*Regulatory Planning and Review*), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), E.O. 12630 (Takings), Executive Order (E.O.) 13132 (Federalism), E.O. 12988 (Civil Justice

Reform), the Paperwork Reduction Act, the National Environmental Policy Act, the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), and E.O. 13211 (Energy Supply, Distribution, and Use). However, based on the DEA data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### *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), as described below. 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. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of a final rulemaking.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and 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 critical habitat for the vermilion darter 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, road construction, wastewater treatment, stream alteration, and water withdrawal. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies.

If we finalize this proposed critical habitat designation, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. In areas where the vermilion darter is present, Federal agencies are already required to consult with us under section 7 of the Act, due to the endangered status of the species. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the same consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the vermilion darter. Since the Service and action agency are the only entity with direct compliance costs associated with the proposed critical habitat designation, this rule will not result in a significant impact on small entities. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential impacts.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the reasons discussed above, and based on currently available information, we certify that if promulgated, the proposed designation would not have a significant economic

impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

#### Author

The primary author of this document is the staff of the Mississippi Fish and Wildlife Office (see **ADDRESSES** section).

#### Authority

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

Dated: June 8, 2010

**Thomas L. Strickland,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2010-15452 Filed 6-28-10; 8:45 am]

**BILLING CODE 4310-55-S**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

**[Docket No. FWS-R6-ES-2010-0038]  
[MO 92210-0-0008-B2]**

**RIN 1018-AX26**

#### **Endangered and Threatened Wildlife and Plants; Listing the Mountain Plover as Threatened**

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

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

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), notify the public that we are reinstating that portion of our December 5, 2002, proposed rule that concerns the listing of the mountain plover (*Charadrius montanus*) as threatened under the Endangered Species Act of 1973, as amended (Act). We are not reinstating the portion of that proposed rule that concerned a proposed special rule under section 4(d) of the Act. We invite public comments on the proposed listing and announce the availability of new information relevant to our consideration of the status of the mountain plover. We encourage those who may have commented previously to submit additional comments, if appropriate, in light of this new information.

**DATES:** To ensure that we are able to consider your comments and information, we request that we receive them no later than August 30, 2010. Please note that we may not be able to address or incorporate information that we receive after the above requested

date. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by August 13, 2010.

**ADDRESSES:** You may submit comments by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Search for Docket No. **FWS-R6-ES-2010-0038** and then follow the instructions for submitting comments.

- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: **FWS-R6-ES-2010-0038**; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all information on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more details).

#### **FOR FURTHER INFORMATION CONTACT:**

Susan Linner, Field Supervisor, Colorado Ecological Services Office; mailing address: P.O. Box 25486, DFC (MS 65412), Denver, CO 80225; telephone: 303-236-4773; office location: 134 Union Boulevard, Suite 670, Lakewood, CO 80228. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Previous Federal Actions**

For a detailed description of Federal actions concerning the mountain plover, please refer to the February 16, 1999, proposed rule to list the species (64 FR 7587); the December 5, 2002, proposed rule to list the species with a special rule under section 4(d) of the Act (16 U.S.C. 1531 *et seq.*) (67 FR 72396); and the September 9, 2003, withdrawal of the proposed rule to list the species (68 FR 53083).

The document we published on September 9, 2003 (68 FR 53083), withdrew the entire proposed rule we published on December 5, 2002 (67 FR 72396), including our proposal to list the species as a threatened species and our proposed special 4(d) rule. The September 9, 2003, document also addressed comments we received on both the 1999 and 2002 proposals to list the mountain plover and summarized threat factors affecting the species. The withdrawal of the proposed rule was based on our conclusion that the threats to the mountain plover identified in the proposed rule were not as significant as previously believed and that currently available data did not indicate that threats to the species and its habitat, as