

**FEDERAL COMMUNICATIONS  
COMMISSION**
**47 CFR Part 73**

[MB Docket No. 11–159, RM–11644; DA 11–1690]

**Television Broadcasting Services;  
Cleveland, OH**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission has before it a petition for rulemaking filed by Community Television of Ohio License, LLC (“Community Television”), the licensee of station WJW (TV), channel 8, Cleveland, Ohio, requesting the substitution of channel 31 for channel 8 at Cleveland. Community Television is seeking the channel substitution because a sizeable number of the station’s viewers in areas southwest of the station’s transmitter were not able to receive the station’s over-the-air signal after it terminated analog service on June 12, 2009, and commenced post-transition digital service on its VHF channel. Many viewers reporting difficulty receiving WJW (TV)’s signal report they have no difficulty receiving the UHF stations in the area. Channel 31 was selected because this was Community Television’s pre-transition digital channel and it has retained much of the channel 31 transmission equipment.

**DATES:** Comments must be filed on or before November 25, 2011, and reply comments on or before December 12, 2011.

**ADDRESSES:** Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Scott S. Patrick, Esq., Dow Lohnes PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036–6802.

**FOR FURTHER INFORMATION CONTACT:** Joyce L. Bernstein, [joyce.bernstein@fcc.gov](mailto:joyce.bernstein@fcc.gov), Media Bureau, (202) 418–1647.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission’s Notice of Proposed Rule Making, MB Docket No. 11–159, adopted October 7, 2011, and released October 11, 2011. The full text of this document is available for public inspection and copying during normal business hours in the FCC’s Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document

will also be available via ECFS (<http://www.fcc.gov/cgb/ecfs/>). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail [www.BCPIWEB.com](mailto:www.BCPIWEB.com). To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Commission’s Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts (other than *ex parte* presentations exempt under 47 CFR 1.1204(a)) are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1208 for rules governing restricted proceedings.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Television, Television broadcasting.  
Federal Communications Commission.  
**Barbara A. Kreisman,**  
*Chief, Video Division, Media Bureau.*

**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

**PART 73—RADIO BROADCAST  
SERVICES**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336, and 339.

**§ 73.622 [Amended]**

2. Section 73.622(i), the Post-Transition Table of DTV Allotments under Ohio is amended by removing channel 8 and adding channel 31 at Cleveland.

[FR Doc. 2011–27592 Filed 10–25–11; 8:45 am]

**BILLING CODE** 6712–01–P

**DEPARTMENT OF THE INTERIOR**
**Fish and Wildlife Service**
**50 CFR Part 17**

[FWS–R1–ES–2010–0071; MO 92210–0009]

**RIN 1018–AX16**

**Endangered and Threatened Wildlife  
and Plants; Designation of Critical  
Habitat for *Lepidium papilliferum*  
(Slickspot Peppergrass)**

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

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on our May 10, 2011, proposal to designate critical habitat for *Lepidium papilliferum* (slickspot peppergrass) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) of the proposed designation and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated DEA, and the amended required determinations section. Comments previously submitted on this rulemaking do not need to be resubmitted, as they will be fully considered in preparation of the final rule.

**DATES:** We will consider comments received on or before December 12, 2011. Comments must be received by 11:59 p.m. Eastern Time on the closing date. Any comments that we receive after the closing date may not be considered in the final decision on this action.

**ADDRESSES:**

*Document availability:* You may obtain a copy of the DEA via <http://www.regulations.gov> at Docket No. FWS–R1–ES–2010–0071 or by contacting the office listed under **FOR FURTHER INFORMATION CONTACT.**

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

(1) *Electronically:* Go to the Federal eRulemaking Portal at <http://www.regulations.gov>. In the box that reads "Enter Keyword or ID," enter the docket number for this proposed rule, which is FWS-R1-ES-2010-0071, and then click the Search button. You should then see an icon that reads "Submit a Comment." Please ensure that you have found the correct rulemaking before submitting your comment.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R1-ES-2010-0071; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; 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:** Brian T. Kelly, State Supervisor, Idaho Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709, by telephone (208-378-5243), or by facsimile (208-378-5262). 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 our proposed critical habitat for *Lepidium papilliferum* that was published in the **Federal Register** on May 10, 2011 (76 FR 27184), our DEA of the proposed designation, 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 habitat as "critical habitat" under section 4 of the Act, including whether there are threats to the species from human activity, the degree to which threats from human activity can be expected to increase due to the designation, and whether that increase in threats outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(2) Specific information on:

(a) The amount and distribution of *Lepidium papilliferum* habitat;

(b) What areas occupied at the time of listing and that contain features essential to the conservation of *Lepidium papilliferum* should be included in the designation and why;

(c) The habitat components (primary constituent elements) essential to the conservation of the species, such as specific soil characteristics, plant associations, or pollinators, and the quantity and spatial arrangement of these features on the landscape needed to provide for the conservation of the species;

(d) What areas not occupied at the time of listing are essential for the conservation of the species, if any, and why; and

(e) Special management considerations or protections that the features essential to the conservation of *Lepidium papilliferum* may require, including managing for the potential effects of climate change.

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

(4) Any reasonably foreseeable economic, national security, or other relevant impacts that may result from designating any area that may be included in the final designation. We are particularly interested in any impacts on small entities, and the benefits of including or excluding areas from the proposed designation that are subject to these impacts.

(5) Information on whether the benefits of an exclusion of any particular area outweigh the benefits of inclusion under section 4(b)(2) of the Act, after considering both the potential impacts and benefits of the proposed critical habitat designation. Under section 4(b)(2) of the Act, we may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species. We are considering the possible exclusion of areas under private ownership, in particular, as we anticipate the benefits of exclusion may outweigh the benefits of inclusion in those areas. We therefore request specific information on:

(a) The benefits of including any specific areas in the final designation and supporting rationale,

(b) The benefits of excluding any specific areas from the final designation and supporting rationale, and

(c) Whether any specific exclusions may result in the extinction of the species and why (see "Consideration of

Impacts Under Section 4(b)(2) of the Act," below).

(6) The use of Public Land Survey System quarter-quarter sections to delineate the proposed critical habitat designation. We used quarter-quarter sections in this proposed rule because they are the most-commonly-used minimum size and method for delineating land ownership boundaries within the range of *Lepidium papilliferum*.

(7) The projected and reasonably likely impacts of climate change on *Lepidium papilliferum* and on the critical habitat areas we are proposing.

(8) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comment.

(9) Information on the extent to which the description of economic impacts in the DEA is reasonable and accurate.

(10) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the DEA, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

If you submitted comments or information on the proposed rule (76 FR 27184) during the initial or extended comment period (76 FR 39807) that was open from May 11 through September 9, 2011, please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in the preparation of our final determination. Our final determination concerning critical habitat will take into consideration all written comments and any additional information we receive during all comment periods. On the basis of public comments, 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.

You may submit your comments and materials concerning the proposed rule or DEA by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the Web site. 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.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule and DEA, will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS-R1-ES-2010-0071, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Idaho 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-R1-ES-2010-0071, or by mail from the Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

### Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for *Lepidium papilliferum* in this document. For more information on previous Federal actions concerning *L. papilliferum*, refer to the proposed designation of critical habitat published in the **Federal Register** on May 10, 2011 (76 FR 27184). For more information on *L. papilliferum* or its habitat, please refer to the final listing rule published in the **Federal Register** on October 8, 2009 (74 FR 52014), which is available online at <http://www.regulations.gov> at Docket No. FWS-R1-ES-2010-0071 or from the Idaho Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

### Previous Federal Actions

On May 10, 2011, we published a proposed rule to designate critical habitat for *Lepidium papilliferum* (76 FR 27184). We proposed to designate as critical habitat approximately 23,374 hectares (57,756 acres) in four units in Ada, Elmore, Payette, and Owyhee Counties in Idaho. We announced a 60-day comment period in that proposed rule, scheduled to close on July 11, 2011. On June 1, 2011, we received a request from the Governor of Idaho seeking a 60-day extension of the comment period so that the State of Idaho may coordinate comments between the State agencies that may be affected by critical habitat, and to allow adequate time for citizens to provide input on the proposed critical habitat designation. In response to this request, on July 7, 2011, we announced in the **Federal Register** an extension of the

comment period for an additional 60 days, until September 9, 2011 (76 FR 39807).

### Critical Habitat

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 must consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

### Consideration of Impacts Under Section 4(b)(2) of the Act

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 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.

When considering the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive from the protection from adverse modification or destruction as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of mapping areas containing essential features that aid in the recovery of the listed species, and any benefits that may result from designation due to State or Federal laws that may apply to critical habitat.

When considering the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan.

In the case of *Lepidium papilliferum*, the benefits of critical habitat include

public awareness of the presence of the species and the importance of habitat protection, and, where a Federal nexus exists, increased habitat protection for *L. papilliferum* due to protection from adverse modification or destruction of critical habitat. In practice, situations with a Federal nexus exist primarily on Federal lands or for projects undertaken by, or with the authorization or permission of, Federal agencies. We are considering the possible exclusion of areas under private ownership from the designation of critical habitat for *L. papilliferum*, as we anticipate the benefits of exclusion may outweigh the benefits of inclusion in those areas.

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 (DEA) concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES** section).

### Draft Economic Analysis

The DEA identifies and analyzes the potential economic impacts associated with the proposed critical habitat designation for *Lepidium papilliferum*. The DEA describes the economic impacts of all potential conservation efforts for *L. papilliferum*; some of these costs will likely be incurred regardless of whether 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. In other words, these incremental impacts would not occur but for the designation.

These incremental impacts produce the costs that we 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 looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur if

we finalize the proposed critical habitat designation.

As described above, the DEA separates conservation measures into two distinct categories according to “without critical habitat” and “with critical habitat” scenarios. The “without critical habitat” scenario represents the baseline for the analysis, considering protections otherwise afforded to the species (e.g., under the Federal listing and other Federal, State, and local regulations). The “with critical habitat” scenario describes the incremental impacts specifically due to designation of critical habitat for the species. In other words, these incremental conservation measures and associated economic impacts would not occur but for the designation. Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the DEA, but economic impacts associated with these measures are not quantified. Economic impacts are only quantified for conservation measures implemented specifically due to the designation of critical habitat (i.e., incremental impacts). For a further description of the methodology of the analysis, see Chapter 2, “Framework for the Analysis,” of the DEA.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for *Lepidium papilliferum* over the next 20 years, from 2012 through 2031. We determined that this 20-year timeframe was the appropriate period for analysis because the availability of land-use planning information becomes very limited for most activities beyond that timeframe. The DEA identifies potential incremental costs as a result of the proposed critical habitat designation; these are those costs attributed to critical habitat over and above those baseline costs attributed to listing and other regulatory protections. The DEA quantifies economic impacts of *L. papilliferum* conservation efforts associated with the following categories of activity: (1) Wildfire and invasive nonnative species management; (2) commercial and residential development; (3) utility and transportation activities; and (4) livestock use. The most visible effect to *L. papilliferum* and its habitat from livestock use is through localized trampling impacts; however, as stated in the final listing rule, under current management conditions we do not consider this activity to represent a significant threat to the species. Although the final listing rule evaluated recreation as a possible minor threat to

the species, this does not appear to be a major factor impacting either *L. papilliferum* or its habitat. We therefore do not anticipate any measurable economic impact of critical habitat designation for this species on recreation, and this activity was not considered in the draft economic analysis.

Approximately 95 percent of the proposed critical habitat area is on public lands (roughly 86 percent is Federal land managed by the Bureau of Land Management (BLM)). Of this, 8 percent is State land, 2 percent is County land (Payette, Ada, Owyhee, and Elmore counties, Idaho), and the remaining 5 percent covers privately owned lands. Commercial and residential development could result in the loss of *Lepidium papilliferum* populations, as well as indirect losses through the development of infrastructure that allows greater access to the habitat (e.g., off-road vehicles, human-ignited wildfires) and habitat fragmentation. Although no development has taken place within the proposed critical habitat areas since publication of the proposed rule, portions of the critical habitat area are adjacent to urban and rural development, or within the Interstate 84 corridor, increasing the probability that the areas may be subject to future development.

The most significant biological threats to the species are related to increased frequency of wildfire, combined with the invasion of nonnative annual grasses. The invasion of nonnative annual grasses provides a continuous source of fuel, which directly contributes to a dramatic increase in natural fire frequency. Conservation measures related to wildfire and nonnative species have been incorporated into a Conservation Agreement being implemented by the BLM, which applies to 86 percent of the proposed critical habitat area. Rights-of-way and pipeline activities, particularly those related to utilities and transportation activities, became subject to section 7 consultation in 2009, when the species was listed under the Act, and actions are already being reviewed to evaluate potential impacts to the species related to equipment operation or construction within areas occupied by the species. A review of our consultation records indicates that no project modifications have been required to date, either because the activities were not within *Lepidium papilliferum* habitat, or conservation measures were incorporated into project designs to avoid impacts to the species or its habitat.

The draft economic analysis concludes that critical habitat designation is not likely to affect levels of economic activity or conservation measures being implemented within the proposed critical habitat area. Unless changes occur to existing conservation measures or the management of land use activities, the incremental impacts of critical habitat designation would be limited to the additional administrative costs of section 7 consultations for Federal agencies, associated with considering the potential for adverse modification of critical habitat. These costs are estimated to be \$14,200 annually, or \$161,000 over a 20-year period, based on the present value discounted at seven percent.

Because approximately 86 percent of the proposed critical habitat area is Federal land managed by the BLM, the proposed critical habitat designation is unlikely to generate economic impacts beyond administrative costs of section 7 consultation. Additionally, a binding Conservation Agreement has been developed to address the conservation needs of this species on BLM land, and BLM already consults with us under section 7 of the Act to ensure their activities do not jeopardize the continued existence of the species. The BLM intends to continue to manage these lands for conservation of *Lepidium papilliferum*, by implementing the specific conservation measures identified in Chapter 3 of the draft economic analysis. In addition, project proponents and land managers are aware of the species' presence throughout its range, and the need to consult with the Service for projects that have a Federal nexus that may affect the species. We believe activities on private lands are unlikely to have a Federal nexus or be subject to section 7 consultation, based on a review of our consultation records to date. However, in the case that private lands may possibly be subject to a Federal permit or funding source in the future (e.g., U.S. Department of Agriculture, Natural Resources Conservation Service programs or Federal permitting of alternative energy projects), the DEA underestimates potential administrative costs due to critical habitat designation in the 5 percent of proposed critical habitat that overlaps the private lands. However, we have no information indicating that any such activity will occur on private lands in the foreseeable future.

In conclusion, the Service does not foresee a circumstance in which critical habitat designation will change the outcome of future section 7 consultations. Any conservation

measures implemented to minimize impacts to the species would very likely be sufficient to also minimize impacts to critical habitat. Therefore, we do not believe any additional conservation measures would be needed solely to minimize impacts to critical habitat. Based on this reasoning, we also do not anticipate critical habitat designation to result in any appreciable incremental economic benefits. Any economic benefits related to conservation activities would flow from the listing of the species, rather than the designation of critical habitat, and would fall within the economic baseline.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public 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, provided the exclusion will not result in the extinction of the species.

#### Required Determinations—Amended

In our May 10, 2011, proposed rule (76 FR 27184), 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 to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 12630 (Takings), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). However, based on the DEA data, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### Regulatory Flexibility Act

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (5

U.S.C. 802(2)), 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. 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 our 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). For example, 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 *Lepidium papilliferum* would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as commercial and residential development. 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. In areas where *L. papilliferum* is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing 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 *Lepidium papilliferum*. As estimated in Chapter 4 of the DEA, incremental impacts of the proposed designation are limited to additional incremental costs of time spent by the Service, Federal action agency, and any third parties in section 7 consultation over and above time spent on the jeopardy analysis component of the consultation. Small entities may participate in section 7 consultation as a third party (the primary consulting parties being the Service and the Federal action agency); therefore, it is possible that the small entities may spend additional time considering critical habitat during section 7 consultation for *L. papilliferum*. These incremental administrative impacts are the only potential incremental impacts of critical habitat designation that may be borne by small entities. Some of the forecast consultations for *L. papilliferum* may involve third parties, such as ranchers, energy companies (for pipeline projects), or developers. The maximum annualized incremental impact to such third parties is anticipated to total \$2,810 between 2012 and 2031; such costs are expected to be distributed between multiple third parties. While \$2,810 is expected to represent the maximum total cost annually, the potential third party cost for each individual consultation is anticipated to be significantly less, on the order of \$260 to \$1,750 depending on the consultation type. Small entities are consequently anticipated to bear a relatively low cost impact as a result of the designation of critical habitat for *L. papilliferum*. We do not believe this designation will have a significant impact on these small entities or affect a substantial number of them. Please

refer to Appendix A of the DEA of the proposed critical habitat designation for a more detailed discussion of potential economic 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 above reasons 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.

#### Authors

The primary authors of this notice are the staff members of the Idaho Fish and Wildlife Office, Pacific Region, 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: October 17, 2011.

Eileen Sobeck,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2011-27727 Filed 10-25-11; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R8-ES-2011-0066; 92220-1113-0000; ABC Code: C5]

#### Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition to Delist the Coastal California Gnatcatcher as Threatened

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

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on a petition to remove the coastal California gnatcatcher (*Polioptila californica californica*) as a threatened species under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petition does not present substantial scientific or commercial information to indicate that delisting the coastal California gnatcatcher may be

warranted. Therefore, we are not initiating a status review in response to this petition. We also conclude that the coastal California gnatcatcher constitutes a valid subspecies and are no longer considering whether to propose its reclassification to a distinct population segment (DPS) under the Act. We ask the public to submit to us any new information that becomes available concerning the status of, or threats to, the coastal California gnatcatcher or its habitat at any time.

**DATES:** The finding announced in this document was made on October 26, 2011.

**ADDRESSES:** This finding is available on the Internet at <http://www.regulations.gov> at Docket Number FWS-R8-ES-2011-0066. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011. Please submit any new information, materials, comments, or questions concerning this finding to the above address.

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Suite 101, Carlsbad, CA 92011, by telephone at 760-431-9440, or by facsimile to 760-431-9624. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4(b)(3)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition, and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is “that amount of information that would lead a reasonable person to believe that

the measure proposed in the petition may be warranted” (50 CFR 424.14(b)(1)). If we find that substantial scientific or commercial information was presented, we are required to promptly conduct a species status review, which we subsequently summarize in our 12-month finding.

#### Petition History

We received a petition, dated April 9, 2010, from the Pacific Legal Foundation (PLF), representing the Coalition of Labor Agriculture, and Business (COLAB), Property Owners Association of Riverside County, and M. Lou Marsh, M.D., on April 12, 2010, to remove the coastal California gnatcatcher from the Federal List of Endangered and Threatened Wildlife (List) under the Act (PLF 2010, pp. 1-9). The petition clearly identifies itself as such and included the requisite identification information for the petitioner(s), as required in 50 CFR 424.14(a). This finding addresses the petition.

#### Previous Federal Actions

The coastal California gnatcatcher has been the subject of numerous **Federal Register** publications since its inclusion as a category two candidate species in 1982 (47 FR 58454, December 30, 1982; Service 2010, p. 3) (see <http://ecos.fws.gov/speciesProfile/profile/speciesProfile.action?spcode=B08X>). On March 22, 1991, the Service published a 90-day finding addressing seven petitions to list five species as threatened or endangered, including three petitions pertaining to the coastal California gnatcatcher (56 FR 12146), and concluded that substantial information was presented to indicate that listing might be warranted. This finding led to the September 17, 1991, publication of a proposed rule to list the coastal California gnatcatcher as endangered; the public comment period for this proposed rule lasted 6 months, until March 16, 1992 (56 FR 47053). The proposed rule also constituted our 12-month finding, which the proposed rule referred to as the “final finding”, on the petition.

On September 22, 1992, the Service reopened the public comment period on the proposed rule to list the coastal California gnatcatcher as endangered for an additional 30 days, from September 22, 1992, until October 22, 1992, and notified the public that we needed extra time to obtain and review the information regarding the taxonomy of the coastal California gnatcatcher (57 FR 43686). On March 30, 1993, the Service published a final rule to list the coastal California gnatcatcher as a threatened species (58 FR 16742). In that rule, we