

Ecological Services Field Office, Region 2, 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: March 18, 2013.

**Rachel Jacobson,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2013-07159 Filed 3-27-13; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R2-ES-2013-0018; 4500030113]

RIN 1018-AZ46

#### Endangered and Threatened Wildlife and Plants; Listing as Endangered and Designation of Critical Habitat for the Gierisch Mallow

**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 public comment period on the August 17, 2012, proposal to add the Gierisch mallow to the list of endangered species under the Endangered Species Act of 1973, as amended (Act). We also announce the reopening of comment on the August 17, 2012, proposal to designate critical habitat for the Gierisch mallow and the availability of a draft economic analysis and draft environmental assessment of the proposed critical habitat designation and amended required determinations for the proposed rule. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the proposals, the associated draft economic and environmental analyses, and the amended required determinations. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final rule.

**DATES:** *Written comments:* We will consider comments received or postmarked on or before April 29, 2013. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** section, below) must be received by 11:59 p.m. Eastern Time on the closing date.

#### ADDRESSES:

*Document availability:* You may obtain a copy of the proposed listing rule on the internet at <http://www.regulations.gov> at Docket No. FWS-R2-ES-2012-0049 or by mail from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain a copy of the proposed critical habitat rule and associated draft economic and environmental analyses at Docket No. FWS-R2-ES-2013-0018.

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

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Submit comments on the listing proposal to Docket No. FWS-R2-ES-2012-0049, and submit comments on the critical habitat proposal and associated draft analyses to Docket No. FWS-R2-ES-2013-0018. See **SUPPLEMENTARY INFORMATION** for an explanation of the two dockets.

(2) *By hard copy:* Submit comment on the listing proposal by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R2-ES-2012-0049; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203. Submit comments on the critical habitat proposal and draft economic and environmental analyses by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R2-ES-2013-0018; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We request that you send comments only by the methods described above. 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:** Steve Spangle, Field Supervisor, Arizona Ecological Services Field Office, 2123 West Royal Palm Road, Suite 103, Phoenix, AZ 85021; by telephone (602)-242-0210; or by facsimile (602)-242-2513. 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 are reopening the comment period for our proposed listing determination and proposed critical habitat

designation for *Sphaeralcea gierischii* (Gierisch mallow) that was published in the **Federal Register** on August 17, 2012 (77 FR 49894). We are specifically seeking comments on the draft economic and environmental analyses, which are now available, for the proposed critical habitat designation; see **ADDRESSES** for information on where to send your comments.

We are also notifying the public that we will publish two separate rules for the final listing determination and the final critical habitat determination for Gierisch mallow. The final listing rule will publish under the existing docket number, FWS-R2-ES-2012-0049, and the final critical habitat designation will publish under docket number FWS-R2-ES-2013-0018.

We request that you provide comments specifically on our listing determination under the existing docket number FWS-R2-ES-2012-0049. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and regulations that may be addressing those threats.

(2) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(3) Any information on the biological or ecological requirements of the species, and ongoing conservation measures for the species and its habitat.

(4) Current or planned activities in the areas occupied by the species and possible impacts of these activities on this species.

We request that you provide comments specifically on the critical habitat determination and draft economic and environmental analyses under docket number FWS-R2-ES-2013-0018. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(5) The reasons why we should or should not designate land as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including whether there are threats to the species from human activity, the degree of which can be expected to increase due to the designation, and whether that increase in threat outweighs the benefit of designation such that the designation of critical habitat may not be prudent.

(6) Specific information on:

(a) The amount and distribution of habitat for Gierisch mallow;

(b) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why;

(c) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including management for the potential effects of climate change; and

(d) What areas not occupied at the time of listing are essential for the conservation of the species and why.

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

(8) Information on the projected and reasonably likely impacts of climate change on Gierisch mallow and proposed critical habitat.

(9) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, we seek information on any impacts on small entities or families, and the benefits of including or excluding areas that exhibit these impacts.

(10) Information on the extent to which the description of economic impacts in the draft economic analysis is complete and accurate, and the description of the environmental impacts in the draft environmental analysis is complete and accurate.

(11) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(12) 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 comments.

If you submitted comments or information on the proposed rule (77 FR 49894; August 17, 2012) during the initial comment period from August 17, 2012, to October 16, 2012, please do not resubmit them. We have incorporated them into the public record, and we will fully consider them in the preparation of our final rules. On the basis of public comments and other relevant information, we may, during the development of our final determination on the proposed critical habitat

designation, 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 draft economic and environmental analyses 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, will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS-R2-ES-2012-0049 (for the proposed listing) and Docket No. FWS-R2-ES-2013-0018 (for the proposed critical habitat designation, draft economic analysis, and draft environmental assessment), or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule on the Internet at <http://www.regulations.gov> at Docket Number FWS-R2-ES-2012-0049 and the draft economic and environmental analyses at Docket No. FWS-R2-ES-2013-0018, or by mail from the Arizona Ecological Services Field 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 Gierisch mallow in the remainder of this document. For more information on the species, the species' habitat, and previous Federal actions concerning the Gierisch mallow, refer to the proposed listing rule and designation of critical habitat, published in the **Federal Register** on August 17, 2012 (77 FR 49894). The proposed rule is available online at <http://www.regulations.gov> (at Docket Number FWS-R2-ES-2012-0049) or from the Arizona Ecological

Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

### Previous Federal Actions

On August 17, 2012, we published a proposed rule to list as endangered and to designate critical habitat for the Gierisch mallow (77 FR 49894). In total, we proposed approximately 5,189 hectares (ha) (12,822 acres (ac)) for designation as critical habitat in two units located in Mohave County, Arizona, and Washington County, Utah. That proposal had a 60-day comment period, ending October 16, 2012. We received a request for a public hearing; however, the request for the public hearing was withdrawn by the requestor on February 21, 2013. Therefore, we will not hold a public hearing. We will publish in the **Federal Register** a final listing determination and critical habitat designation for Gierisch mallow on or before August 17, 2013.

### 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 critical habitat designation 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. 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, which is available for review and comment (see **ADDRESSES**).

#### Draft Economic Analysis

The draft economic analysis describes the economic impacts of all potential conservation efforts for the Gierisch mallow; 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. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species.

Most courts have held that the Service only needs to consider the incremental impacts imposed by the critical habitat designation over and above those impacts imposed as a result of listing the species. For example, the Ninth

Circuit Court of Appeals reached this conclusion twice within the last few years, and the U.S. Supreme Court declined to hear any further appeal from those rulings. *Arizona Cattle Growers’ Assoc. v. Salazar*, 606 F.3d 116, (9th Cir. June 4, 2010) cert. denied, 179 L. Ed. 2d 300, 2011 U.S. LEXIS 1362, 79 U.S.L.W. 3475 (2011); *Home Builders Association of Northern California v. United States Fish & Wildlife Service*, 616 F. 3rd 983 (9th Cir. 2010) cert. denied, 179 L. Ed. 2d 300, 2011 U.S. LEXIS 1362, 79 U.S.L.W. 3475 (2011).

However, the prevailing court decisions in the Tenth Circuit Court of Appeals do not allow the incremental analysis approach. Instead, the Tenth Circuit requires that the Service consider both the baseline economic impacts imposed due to listing the species and the additional incremental economic impacts imposed by designating critical habitat. *New Mexico Cattle Growers Ass’n v. FWS*, 248 F.3d 1277 (10th Cir. May 11, 2001). As a consequence, an economic analysis for critical habitat that is being proposed for designation within States that fall within the jurisdiction of the Tenth Circuit (as this designation does) should include a coextensive cost evaluation which addresses, and quantifies to the extent feasible, all of the conservation-related impacts associated with the regulatory baseline (those resulting under the jeopardy standard under section 7 of the Act, and under sections 9 and 10 of the Act). In other words, the allocation of impacts should show those that are part of the regulatory baseline and those that are unique to the critical habitat designation.

Conservation measures implemented under the baseline (without critical habitat) scenario are described qualitatively within the draft economic analysis, 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 draft economic analysis.

The draft economic analysis provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for Gierisch mallow over the next 20 years, which was determined to be the appropriate period for analysis because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe. It 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.

The draft economic analysis quantifies economic impacts of Gierisch mallow conservation efforts associated with the following categories of activity: (1) Gypsum mining; (2) livestock grazing; and (3) transportation projects. Chapter 4 of the draft economic analysis provides the quantification of economic impacts of Gierisch mallow conservation efforts.

We do not anticipate recommending incremental conservation measures to avoid adverse modification of critical habitat over and above those recommended to avoid jeopardy of the species, and, as such, the economic analysis forecasts few incremental economic impacts as a result of the designation of critical habitat for this species. A number of factors limit the extent to which the proposed critical habitat designation will result in incremental costs, including the fact that all proposed habitat is occupied by the species and the species’ survival is closely linked to the quality of the habitat.

The total projected incremental costs of administrative efforts resulting from section 7 consultations on Gierisch mallow are approximately \$51,000 over 20 years (\$3,300 on an annualized basis), assuming a 7 percent discount rate. The analysis estimates potential future administrative impacts based on the historical rate of consultations on listed species in areas proposed for critical habitat, as discussed in Chapter 2 of the draft economic analysis.

As stated earlier, we are soliciting data and comments from the public on the draft economic analysis, 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 this species.

#### Draft Environmental Assessment

The purpose of the draft environmental assessment, prepared pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), is to identify and disclose the environmental consequences resulting from the proposed action of designating critical habitat for the Gierisch mallow.

In the draft environmental assessment, three alternatives are evaluated: Alternative A, the no action alternative; Alternative B, the proposed rule without exclusion areas; and Alternative C, the proposed rule with exclusion areas. The no action alternative is required by NEPA for comparison to the other alternatives analyzed in the draft environmental assessment. The no action alternative is equivalent to no designation of critical habitat for Gierisch mallow. Under Alternative B, critical habitat would be designated, as proposed, with no exclusions. Under Alternative C, critical habitat would be designated; however, the Black Rock Gypsum Mine and the Georgia-Pacific Gypsum Mine would be excluded from critical habitat designation. Our preliminary determination is that designation of critical habitat for Gierisch mallow will not have direct impacts on the environment. However, we will further evaluate this issue as we complete our final environmental assessment.

As we stated earlier, we are soliciting data and comments from the public on the draft environmental assessment, as well as all aspects of the proposed rule. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the comment period on the environmental consequences resulting from our designation of critical habitat.

#### Required Determinations—Amended

In our August 17, 2012, proposed rule (77 FR 49894), 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 draft economic analysis. We have now made use of the draft economic analysis data to make these determinations. In this document, we affirm the information in our proposed rule concerning Executive Orders (E.O.s) 12866 and 13563 (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.*), 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 draft economic analysis data, we are amending our required determinations concerning the

Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*),

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), 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 effects 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 the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. Based on our draft economic analysis 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). 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 Gierisch mallow would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as mining, livestock grazing, and transportation. In order to determine whether it is appropriate for our agency to certify that the proposed 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 the proposed listing for the species, in areas where the Gierisch mallow is present, Federal agencies will be 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 draft economic analysis, 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 Gierisch mallow. The designation of critical habitat for Gierisch mallow will not affect any small entities. Approximately 89 percent of land in the designation is federally owned. Anticipated incremental impacts in proposed critical habitat are primarily related to consultations on livestock management and mining activity. The forecast consultations either do not include third parties (programmatic consultations and consultations with another Federal agency) or the third parties are not considered small entities (consultations with the Arizona Department of Transportation and Western Mining Minerals Inc.). One of the gypsum mine operating companies, Western Mining Minerals, Inc., is a subsidiary of Saint-Gobain. The small business threshold for the NAICS code corresponding to gypsum mining (212399, All Other Nonmetallic Mineral Mining) is 500 employees. Saint-Gobain employs multiple thousands of people, and

therefore is not considered small. The other mining operation is owned by Georgia-Pacific; however, the company operates on Arizona State Land Department managed land where no Federal nexus exists, and all potential impacts resulting from mallow conservation are considered to be baseline impacts. The remaining forecast impacts are anticipated to be conducted for road and highway maintenance projects. Little to no impact to third parties is expected associated with these activities. For this reason, there would be little to no impacts to small entities as a result of critical habitat designation for Gierisch mallow. Please refer to Appendix A of the draft economic analysis of the proposed critical habitat designation for a more detailed discussion of potential economic impacts.

The Service's current understanding of recent case law is that Federal agencies are only required to evaluate the potential impacts of rulemaking on those entities directly regulated by the rulemaking; therefore, they are not required to evaluate the potential impacts to those entities not directly regulated. The designation of critical habitat for an endangered or threatened species only has a regulatory effect where a Federal action agency is involved in a particular action that may affect the designated critical habitat. Under these circumstances, only the Federal action agency is directly regulated by the designation, and, therefore, consistent with the Service's current interpretation of RFA and recent case law, the Service may limit its evaluation of the potential impacts to those identified for Federal action agencies. Under this interpretation, there is no requirement under the RFA to evaluate potential impacts to entities not directly regulated, such as small businesses. However, Executive Orders 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consequently, it is the current practice of the Service to assess to the extent practicable these potential impacts, if sufficient data are available, whether or not this analysis is believed by the Service to be strictly required by the RFA. In other words, while the effects analysis required under the RFA is limited to entities directly regulated by the rulemaking, the effects analysis under the Act, consistent with the E.O. regulatory analysis requirements, can take into consideration impacts to both directly and indirectly impacted

entities, where practicable and reasonable.

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. We conclude that future consultations are unlikely to involve a third party. For the above reasons and based on currently available information, we certify that, if promulgated, the proposed critical habitat 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.

*National Environmental Policy Act (42 U.S.C. 4321 et seq.)*

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses as defined by NEPA (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, when the range of the species includes States within the Tenth Circuit, such as that of the Gierisch mallow, under the Tenth Circuit ruling in *Catron County Board of Commissioners v. U.S. Fish and Wildlife Service*, 75 F.3d 1429 (10th Cir. 1996), we will undertake a NEPA analysis for critical habitat designation. In accordance with the Tenth Circuit, we have completed a draft environmental assessment to identify and disclose the environmental consequences resulting from the proposed designation of critical habitat for the Gierisch mallow. Our preliminary determination is that the designation of critical habitat for the Gierisch mallow would not have direct impacts on the environment. However, we will further evaluate this issue as we complete our final environmental assessment.

#### Authors

The primary authors of this notice are the staff members of the Arizona Ecological Services Field Office, Southwest 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: March 18, 2013.

**Rachel Jacobson,**

*Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2013-07122 Filed 3-27-13; 8:45 am]

**BILLING CODE 4310-55-P**

---

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 120416018-3159-01]

RIN 0648-BC05

#### Fisheries of the Northeastern United States; Tilefish Fishery Management Plan; Regulatory Amendment, Corrections, and Clarifications

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

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

**SUMMARY:** The Tilefish Individual Fishing Quota Program was implemented at the start of the 2010 fishing year (November 1, 2009). After 3 years of operation, it has become apparent that some of the implementing regulations need to be clarified, corrected, or modified to better reflect the intent of Tilefish Amendment 1 and clarify certain regulatory text that may cause confusion or otherwise appear inconsistent with the Magnuson-Stevens Fishery Conservation and Management Act (MSA). This action would make corrections, clarifications, and regulatory modifications to the regulations that implemented the Tilefish Individual Fishing Quota Program. These changes would not affect the fishing operation of any vessel.

**DATES:** Written comments must be received no later than 5 p.m. eastern standard time, on April 29, 2013.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2012-0247, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to [www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2012-0247](http://www.regulations.gov/#/docketDetail;D=NOAA-NMFS-2012-0247), click the "Comment Now!" icon,