

1745; sections 32101(d) and 34934, Pub. L. 112–141, 126 Stat. 405, 778, 830; and 49 CFR 1.87.

■ 4. Amend § 390.5 by revising the definition of “gross combination weight rating” to read as follows:

§ 390.5 Definitions.

* * * * *

Gross combination weight rating (GCWR) is the greater of:

(1) A value specified by the manufacturer of the power unit if displayed on the Federal Motor Vehicle Safety Standard (FMVSS) certification label required by the National Highway Traffic Safety Administration; or

(2) The sum of the gross vehicle weight ratings (GVWRs) or the gross vehicle weights (GVWs) of the power unit and the towed unit(s), or any combination thereof, that produces the highest value.

* * * * *

Issued under the authority of delegation in 49 CFR 1.87 on: April 19, 2013.

Anne S. Ferro,
Administrator.

[FR Doc. 2013–10735 Filed 5–6–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R3–ES–2012–0065; FWS–R3–ES–2013–0016; 4500030113]

RIN 1018–AY16; 1018–AZ41

Endangered and Threatened Wildlife and Plants; Listing and Designation of Critical Habitat for the Grotto Sculpin

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 September 27, 2012, proposed endangered status and designation of critical habitat for the grotto sculpin 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 of critical habitat for the grotto sculpin and an amended required determinations section of the proposal. In addition, we announce our intention to recognize the grotto sculpin as *Cottus specus*. 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 need not be resubmitted, as they will be fully considered in preparation of the final rule.

DATES: We will consider comments received or postmarked on or before June 6, 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 copies of the proposed rule on the Internet at <http://www.regulations.gov> at Docket No. FWS–R3–ES–2012–0065 and copies of the draft economic analysis at Docket No. FWS–R3–ES–2013–0016, or by mail from the Missouri Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

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–R3–ES–2012–0065, and submit comments on the critical habitat proposal and associated draft economic analysis to Docket No. FWS–R3–ES–2013–0016. See **SUPPLEMENTARY INFORMATION** for an explanation of the two dockets.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R3–ES–2012–0065 (for the listing proposal) or FWS–R3–ES–2013–0016 (for the critical habitat proposal and associated draft economic analysis); 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:

Amy Salveter, Field Supervisor, U.S. Fish and Wildlife Service, Missouri Ecological Services Field Office, 101 Park De Ville Drive, Suite A, Columbia, MO 65203; by telephone 573–234–2132; or by facsimile 573–234–2181. 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 designation of critical habitat for the grotto sculpin that was published in the **Federal Register** on September 27, 2012 (77 FR 59488), 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 also notifying the public that we will publish two separate rules for the final listing determination and the final critical habitat determination for the grotto sculpin. The final listing rule will publish under the existing Docket No. FWS–R3–ES–2012–0065 and the final critical habitat designation will publish under Docket No. FWS–R3–ES–2013–0016.

We request that you specifically provide comments on our listing determination under Docket No. FWS–R3–ES–2012–0065. We are particularly interested in comments concerning:

- (1) The species' biology, range, and population trends, including:
 - (a) Habitat requirements for feeding, breeding, and sheltering;
 - (b) Genetics and taxonomy;
 - (c) Historical and current range, including distribution patterns;
 - (d) Historical and current population levels, and current and projected trends; and
 - (e) Past and ongoing conservation measures for the species, its habitat or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

- (a) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (b) Overutilization for commercial, recreational, scientific, or educational purposes;
- (c) Disease or predation;
- (d) The inadequacy of existing regulatory mechanisms; or
- (e) Other natural or manmade factors affecting its continued existence.

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

(4) 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.

We request that you provide comments specifically on the critical habitat designation and related draft economic analysis under Docket No. FWS-R3-ES-2013-0016. We are particularly interested in comments concerning:

(5) The reasons why we should or should not designate habitat 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 threats outweighs the benefit of designation such that the designation of critical habitat is not prudent.

(6) Specific information on:

(a) The amount and distribution of grotto sculpin and its habitat;

(b) What may constitute “physical or biological features essential to the conservation of the species,” within the geographical range currently occupied by the species;

(c) Where these features are currently found;

(d) Whether any of these features may require special management considerations or protection;

(e) 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; and

(f) 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 areas occupied by the species or proposed to be designated as critical habitat, and possible impacts of these activities on this species and proposed critical habitat.

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

(9) Any 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.

(10) 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.

(11) The development and implementation of a conservation strategy by citizens, landowners, business entities, and government of Perry County, Missouri, for the grotto sculpin.

(12) 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.

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

(14) Information indicating that the potential impact to small business entities under our analysis of the Regulatory Flexibility Act in the DEA is complete and accurate.

If you submitted comments or information on the proposed rule (77 FR 59488) during the initial comment period from September 27, 2012, to November 26, 2012, 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 both 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 the **ADDRESSES** section. We request that you send comments only by the methods described in the **ADDRESSES** section.

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, supporting documentation we used in

preparing the proposed rule and DEA, the proposed rule, and the DEA will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS-R3-ES-2012-0065 or Docket No. FWS-R3-ES-2012-0065, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Missouri 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 the grotto sculpin in this document. For more information on the grotto sculpin, its habitat, or previous Federal actions for the species, refer to the proposed rule published in the **Federal Register** on September 27, 2012 (77 FR 59488), which is available online at <http://www.regulations.gov> (at Docket Number FWS-R3-ES-2012-0065) or from the Missouri Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Previous Federal Actions

On September 27, 2012, we published a proposed rule to list as endangered and to designate critical habitat for the grotto sculpin (77 FR 59488). We proposed to designate as critical habitat underground aquatic habitat underlying approximately 94 square kilometers (km²) (36 square miles (mi²)) plus 31 kilometers (km) (19.2 miles (mi)) of surface stream in 4 units located in Perry County, Missouri. That proposal had a 60-day comment period, ending November 26, 2012. We held one public meeting on the proposal on October 30, 2012. We will submit for publication in the **Federal Register** a final critical habitat designation for the grotto sculpin on or before September 27, 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 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.

Changes From the Proposed Rule

Prior to 2013, the grotto sculpin had been recognized as *Cottus* sp. nov. Adams *et al.* (2013) recently described the grotto sculpin as a new species and gave it the name *Cottus specus*. This taxonomic revision is accepted as the best available commercial or scientific data and will be used in all future documentation of the species. *Cottus specus* represents the first description of a cave species within the genus. This taxonomic revision is reflected in the revised proposed listing entry and the revised title of the proposed critical habitat designation for this species in the Proposed Regulation Promulgation section of this document.

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 the grotto sculpin, the benefits of critical habitat include public awareness of the presence of the grotto sculpin and the importance of habitat protection, and, where a Federal nexus exists, increased habitat

protection for the grotto sculpin 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 Federal agencies.

In the Service's September 27, 2012 proposal, we did not propose 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, as well as the implementation of conservation and management actions that address threats to the species. Accordingly, we have prepared a draft economic analysis (DEA) concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES**).

Perry County is developing a conservation strategy to address threats to the grotto sculpin. The Service will be considering the plan in our final listing determination and our final decision as to whether there are areas that should be excluded from critical habitat. The Perry County Community Conservation Plan is available for public review and comment at <http://www.regulations.gov> under Docket No. FWS-R3-ES-2013-0016, and on the Service's Midwest Endangered Species Web page (<http://www.fws.gov/midwest/endangered/>).

Draft Economic Analysis

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the grotto sculpin. Economic impacts are considered for critical habitat designations, but not species listings. 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 grotto sculpin (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 (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 the grotto sculpin over the next 18 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 an 18-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 DEA quantifies economic impacts of grotto sculpin conservation efforts associated with the following categories of activity: (1) Development, (2) agricultural and grazing, (3) transportation, (4) habitat and species management, and (5) sand mining. Economic impacts are estimated for development, agricultural and grazing, transportation, and habitat and species management activities. No impacts are forecast for sand mining activities because no projects with a Federal nexus were identified within the study area. Due to uncertainty in the amount of habitat and species management costs (through development and implementation of the Perry County land and resource management plan) attributable to critical habitat as opposed to the listing, cost estimates were calculated for a low-end scenario (all costs attributed to listing) and a high-end scenario (all costs attributed to critical habitat).

Total present value impacts anticipated to result from the designation of all areas proposed as grotto sculpin critical habitat are approximately \$140,000 for the low-end scenario and \$13 million for the high-end scenario, over 18 years. In the low-end scenario, all incremental costs are administrative in nature and result from the consideration of adverse modification in section 7 consultations. In the high-end scenario, we also consider potential indirect incremental costs associated with development and implementation of the Perry County land and resource management plan.

Proposed Unit 1 is likely to experience the greatest incremental

impacts under both the low-end and high-end scenarios. Impacts in proposed Unit 1 are estimated at \$130,000 in present value terms (91 percent of total present value impacts) under the low-end scenario, and result from approximately two formal consultations annually for development projects within the City of Perryville, a portion of two programmatic consultations regarding agricultural and grazing operations, and four formal consultations for transportation projects. In the high-end scenario, impacts also include costs associated with development and implementation of the Perry County land and resource management plan. This plan would recommend, among other things, that vegetated buffers be installed around sinkholes, potentially reducing the amount of land that could be used for crop production. Under the high-end scenario, impacts in proposed Unit 1 are estimated at \$6.6 million in present value terms (49 percent of total present value impacts). In the high-end scenario, similar impacts are anticipated in proposed Unit 2 (\$6.4 million in present value terms, or 48 percent of total present value impacts), due to costs associated with development and implementation of the Perry County land and resource management plan. Overall, in the low-end scenario, consultations associated with development activities account for approximately 76 percent of the incremental impacts in this analysis; in the high-end scenario, approximately 98.9 percent of the incremental impacts in this analysis are associated with habitat and species management through development and implementation of the Perry County land and resource management plan.

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. To incorporate or address information we receive during the public comment period, the final rule or supporting documents may differ from the proposed rule. 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.

Required Determinations—Amended

In our September 27, 2012, proposed rule (77 FR 59488), 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 Orders (E.O.s) 12866 and 13563 (Regulatory Planning and Review), E.O. 13132 (Federalism), E.O. 12988 (Civil Justice Reform), 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 determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 12630 (Takings), and E.O. 13211 (Energy, Supply, Distribution, and Use).

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 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). 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 grotto sculpin would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as development, agriculture and grazing, transportation, and habitat and species management. In order to determine whether it is appropriate for our agency to certify that this 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. In areas where the grotto sculpin is present, Federal agencies 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 the 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 the grotto sculpin. Small entities may participate as third parties in section 7 consultations with the Service on development and transportation projects. We estimate that fewer than two small, development-related entities

and one small government (the City of Perryville) would be affected in a single year. It is estimated in the DEA that impacts represent less than 1 percent of annual revenues on a per-entity basis. Indirect impacts resulting from the implementation of the proposed Perry County land and resource management plan are not considered in the analysis. Please refer to the DEA 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; data and rationale for our determination is provided in the DEA.

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.

E.O. 12630 (Takings)

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for grotto sculpin in a takings implications assessment. As discussed above, the designation of critical habitat affects only Federal actions. Although private parties that receive Federal funding, assistance, or require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. The DEA found that no significant economic impacts are likely to result from the designation of critical habitat for grotto sculpin. Because the Act's critical habitat protection requirements apply only to Federal agency actions, few conflicts between critical habitat and private property rights should result from this designation. Based on information contained in the DEA and described within this document, it is not likely that economic impacts to a property owner would be of a sufficient magnitude to support a takings action. Therefore, the takings implications assessment concludes that this designation of critical habitat for grotto sculpin does not pose significant takings implications for lands within or affected by the designation.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. We do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use. Currently, there are no active sand mining operations within the proposed designation. However, one mine site, the Brewer Quarry, is located adjacent to proposed Unit 1. This site received a permit from the Missouri Department of Natural Resources Land Reclamation

Program in 2008. Expansion of this mine site could affect the proposed designation. However, communication with the Missouri Department of Natural Resources indicates that sand mining is not expected to expand into the area proposed as critical habitat for the sculpin. As a result, we do not expect any incremental impacts associated with sand mining activities over the analysis period of 18 years. If mining activities expand into the proposed designation, these activities will result in section 7 consultation only if the operation requires a Corps permit, or otherwise has a Federal nexus. No other activities associated with energy supply, distribution, or use are anticipated within the proposed critical habitat. We do not expect the designation of this proposed critical habitat to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Authors

The primary authors of this package are the staff members of the Missouri Ecological Services Field Office, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, which we proposed to amend at 77 FR 59488 on September 27, 2012, as set forth below:

PART 17—[AMENDED]

- 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

§ 17.11 [Amended]

- 2. Amend § 17.11(h), the proposed listing entry for “Sculpin, grotto”, by removing the words “*Cottus* sp. nov.” from the Scientific name column for that species and by adding in their place the words “*Cottus specus*”.

§ 17.95 [Amended]

- 3. In § 17.95(e), amend the title of the proposed critical habitat entry for the grotto sculpin by removing the words “(*Cottus* sp. nov.)” and by adding in their place the words “(*Cottus specus*)”.

Dated: April 26, 2013.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013-10705 Filed 5-6-13; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 120820371-3366-01]

RIN 0648-BC46

Taking and Importing Marine Mammals; Precision Strike Weapon and Air-to-Surface Gunnery Training and Testing Operations at Eglin Air Force Base, FL

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received an application from the U.S. Department of the Air Force, Headquarters 96th Air Base Wing (U.S. Air Force), Eglin Air Force Base (Eglin AFB) for authorization to take marine mammals, by harassment, incidental to testing and training activities associated with Precision Strike Weapon (PSW) and Air-to-Surface (AS) gunnery missions, both of which are military readiness activities, at Eglin AFB, FL from approximately June 2013, to June 2018. Pursuant to Marine Mammal Protection Act (MMPA) and its implementing regulations, NMFS proposes regulations to govern that take. In order to implement the final rule and issue a Letter of Authorization (LOA), NMFS must determine, among other things, that the total taking will have a negligible impact on the affected species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of the species for subsistence use. NMFS' proposed regulations would set forth the permissible methods of take and other means of effecting the least practicable adverse impact on the affected species or stocks of marine mammals and their habitat. NMFS invites comments on the application and the proposed regulations.

DATES: Comments and information must be received no later than June 6, 2013.

ADDRESSES: You may submit comments, identified by 0648-BC46, by either of the following methods:

- **Electronic submissions:** submit all electronic public comments via the Federal eRulemaking Portal <http://www.regulations.gov>.

- Hand delivery of mailing of paper, disk, or CD-ROM comments should be addressed to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3225.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Brian D. Hopper, Office of Protected Resources, NMFS, 301-427-8401.

SUPPLEMENTARY INFORMATION:

Availability

An electronic copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental.htm>.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

Background

In the case of military readiness activities (as defined by section 315(f) of Pub. L. 107-314; 16 U.S.C. 703 note), sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued, or if the taking is limited to harassment an

Incidental Harassment Authorization (IHA) is issued. Upon making a finding that an application for incidental take is adequate and complete, NMFS commences the incidental take authorization process by publishing in the **Federal Register** a notice of a receipt of an application for the implementation of regulations or a proposed IHA.

An authorization for the incidental takings may be granted if NMFS finds that the total taking during the relevant period will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth to achieve the least practicable adverse impact.

NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

With respect to military readiness activities, the MMPA defines "harassment" as: (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or behavioral patterns are abandoned or significantly altered (Level B harassment).

Summary of Request

On December 30, 2011, NMFS received an application from the U.S. Air Force requesting an authorization for the take of marine mammals incidental to PSW and AS gunnery testing and training operations within the Eglin Gulf Test and Training Range (EGTTR). On June 28, 2012, pursuant to 50 CFR 216.104(b)(1)(ii), NMFS began the public review process by publishing its determination that the application was adequate and complete by publishing a Notice of Receipt in the **Federal Register** (77 FR 38595). The requested regulations would establish a framework for authorizing incidental take in future Letters of Authorization (LOAs). These LOAs, if approved, would authorize the take, by Level A (physiological) and Level B (behavioral) harassment, of Atlantic bottlenose dolphin (*Tursiops truncatus*) and