

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

[Docket No. FWS-R6-ES-2013-0068;  
4500030114]

RIN 1018-AY56

**Endangered and Threatened Wildlife and Plants; Revision of Critical Habitat for the Salt Creek Tiger Beetle**

**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 June 4, 2013, proposed revised designation of critical habitat for the Salt Creek tiger beetle (*Cicindela nevadica lincoliniana*) 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 Salt Creek tiger beetle, a draft environmental assessment (EA), 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 revised proposed rule, the associated DEA, the draft EA, 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 March 28, 2014. 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 and the associated documents of the draft economic analysis and draft environmental assessment on the internet at <http://www.regulations.gov> at Docket No. FWS-R6-ES-2013-0068, at <http://www.fws.gov/mountain-prairie/species/invertebrates/saltcreektiger/>, or by mail from the Nebraska Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

*Comment submission:* 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 critical habitat proposal and associated draft economic analysis and draft environmental assessment by searching for FWS-R6-ES-2013-0068, which is the docket number for this rulemaking.

(2) *By hard copy:* Submit comments on the critical habitat proposal and associated draft economic analysis and draft environmental assessment by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS-R6-ES-2013-0068; 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:** Eliza Hines, Acting Field Supervisor, U.S. Fish and Wildlife Service, Nebraska Ecological Services Field Office, 203 West Second Street, Grand Island, NE 68801; by telephone (308-382-6468), or by facsimile (308-384-8835). 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 revised designation of critical habitat for the Salt Creek tiger beetle that was published in the **Federal Register** on June 4, 2013 (78 FR 33282), our DEA of the proposed designation, our draft environmental assessment, 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 (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 is not prudent.

(2) Specific information on:

(a) The distribution of the Salt Creek tiger beetle;

(b) The amount and distribution of Salt Creek tiger beetle habitat; and

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

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

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

(f) The amount of habitat needed to be occupied by Salt Creek tiger beetles in order to recover the species.

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

(4) Information on the projected and reasonably likely impacts of climate change on the Salt Creek tiger beetle and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation; in particular, the benefits of including or excluding areas that exhibit these impacts.

(6) Information on the extent to which the description of economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts and the description of the environmental impacts in the draft environmental assessment is complete and accurate.

(7) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the associated documents of the draft economic analysis, 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.

(8) Whether any 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.

(9) 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 (78 FR

33282) during the initial comment period from June 4, 2013, to August 5, 2013, 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 revised 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, DEA, or draft EA 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, as well as supporting documentation we used in preparing the proposed rule, DEA, and draft EA, will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS-R6-ES-2013-0068, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Nebraska Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the proposed rule, the DEA, and the draft EA on the Internet at <http://www.regulations.gov> at Docket Number FWS-R6-ES-2013-0068, at <http://www.fws.gov/mountain-prairie/species/invertebrates/saltcreektiger/>, or by mail from the Nebraska Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

## Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat for the Salt Creek tiger beetle in this document. For more information on previous Federal actions concerning the Salt

Creek tiger beetle, refer to the proposed revised designation of critical habitat published in the **Federal Register** on June 4, 2013 (FR 78 33282). For more information on the Salt Creek tiger beetle or its habitat, refer to the final listing rule published in the **Federal Register** on October 6, 2005 (70 FR 58335), which is available online at <http://www.fws.gov/mountain-prairie/species/invertebrates/saltcreektiger/> or from the Nebraska Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

## Previous Federal Actions

We published a proposed rule to designate critical habitat for the Salt Creek tiger beetle on December 12, 2007 (72 FR 70716). On April 28, 2009, we published a revised proposed rule to designate critical habitat (74 FR 19167). A final rule designating approximately 1,933 acres (ac) (783 hectares (ha)) of critical habitat was published on April 6, 2010 (75 FR 17466). The Center for Native Ecosystems, the Center for Biological Diversity, and the Xerces Society (plaintiffs) filed a complaint on February 23, 2011, regarding designation of critical habitat for the species. A settlement agreement between the plaintiffs and the Service was reached on June 7, 2011, in which we agreed to reevaluate our designation of critical habitat.

In accordance with that agreement, on June 4, 2013, we published a proposed rule to revise our designation of critical habitat for the Salt Creek tiger beetle (78 FR 33282). We proposed to designate approximately 1,110 ac (449 ha) in four units located in Lancaster and Saunders counties in Nebraska as critical habitat. That proposal had a 60-day comment period, ending August 5, 2013. We will submit for publication in the **Federal Register** a final critical habitat designation for the Salt Creek tiger beetle on or before May 1, 2014.

## 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, among other factors, the additional regulatory benefits that an area would receive through the analysis under section 7 of the Act addressing the destruction or adverse modification of critical habitat as a result of actions with a Federal nexus (activities conducted, funded, permitted, or authorized by Federal agencies), the educational benefits of identifying areas containing essential features that aid in the recovery of the listed species, and any ancillary benefits triggered by existing local, State, or Federal laws as a result of the critical habitat designation.

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

We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation.

Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation (DEA), which is available for review and comment (see **ADDRESSES** section).

### Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios “with critical habitat” and “without critical habitat.”

The “without critical habitat” scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (e.g., under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (i.e., conservation of the species and its habitat 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 would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct an optional 4(b)(2) exclusion analysis.

For this particular designation, we developed an Incremental Effects Memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed

designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the Salt Creek tiger beetle (IEC 2014). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (i.e., absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The screening analysis also assesses whether units are unoccupied by the species and may require additional management or conservation efforts as a result of the critical habitat designation and may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM are what we consider our draft economic analysis of the proposed critical habitat designation for the Salt Creek tiger beetle, and this information is summarized in the narrative below.

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. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly impacted entities, where practicable and reasonable. We assess, to the extent practicable, the probable impacts, if sufficient data are available, to both directly and indirectly impacted entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation. In our

evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the Salt Creek tiger beetle, first we identified, in the IEM dated December 6, 2013, probable incremental economic impacts associated with the following categories of activities: (1) Agriculture and livestock grazing; (2) restoration and conservation; (3) residential and commercial development; (4) water management and supply; (5) transportation activities, including bridge construction; and (6) utility activities. We considered each industry or category individually. Additionally, we 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 Salt Creek tiger beetle is present, Federal agencies already are required to consult with the Service 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 our IEM, we attempted to clarify the distinction between the effects that will result from the species being listed and those attributable to the critical habitat designation (i.e., difference between the jeopardy and adverse modification standards) for the Salt Creek tiger beetle's critical habitat. Jeopardy is the standard that is used when conducting a section 7 consultation on a listed species; adverse modification is the standard used when conducting a consultation on critical habitat. The Salt Creek tiger beetle was listed in October 2005. Since that time, the jeopardy standard has been used for section 7 consultations for the species. Once critical habitat is designated, the adverse modification standard will also be used in addition to the jeopardy standard for section 7 consultations on the Salt Creek tiger beetle. Even though the Service recognizes differences in the standards between avoidance of destruction or adverse modification and jeopardy, the types of project modifications that would be recommended for the Salt Creek tiger beetle would remain the same given the extremely low numbers and small number of populations of the species. Thus, the DEA seeks to identify the

difference in jeopardy and adverse modification or the incremental difference in terms of the economic effects for this designation of critical habitat. This evaluation of the incremental effects has been used as the basis to evaluate the probable

incremental economic impacts of this proposed designation of critical habitat.

The proposed critical habitat designation for the Salt Creek tiger beetle includes the Rock Creek, Little Salt Creek, Oak Creek, and Haines Branch Creek units in Lancaster and

Saunders counties (Table 1). Of these units, one (Little Salt Creek) is currently occupied by the Salt Creek tiger beetle and three (the Rock Creek, Oak Creek, and Haines Branch units) are unoccupied.

TABLE 1—DESIGNATED CRITICAL HABITAT UNITS FOR SALT CREEK TIGER BEETLE

[Area estimates reflect all land within critical habitat unit boundaries]

Critical habitat unit	Land ownership by type	Estimated quantity of critical habitat	Percent of critical habitat unit
Little Salt Creek Unit .....	City of Lincoln .....	40 ac (16 ha)	14
	Lower Platte South Natural Resources District .....	19 ac (8 ha)	7
	Nebraska Game & Parks Commission .....	41 ac (17 ha)	14
	The Nature Conservancy .....	29 ac (12 ha)	10
	Pheasants Forever .....	11 ac (4 ha)	4
	Private* .....	144 ac (58 ha)	51
	Subtotal .....	284 ac (115 ha)	
Rock Creek Unit .....	Nebraska Game & Parks Commission .....	152 ac (62 ha)	29
	Private* .....	374 ac (152 ha)	71
	Subtotal .....	526 ac (213 ha)	
Oak Creek Unit .....	Nebraska Department of Roads .....	30 ac (12 ha)	14
	City of Lincoln .....	178 ac (72 ha)	86
	Subtotal .....	208 ac (84 ha)	
Haines Branch Unit .....	BNSF Railway .....	7 ac (3 ha)	8
	City of Lincoln/State of Nebraska .....	45 ac (18 ha)	49
	Private .....	40 ac (16 ha)	43
	Subtotal .....	92 ac (37 ha)	
Total .....	City of Lincoln .....	263 ac (106 ha)	24
	Lower Platte South Natural Resources District .....	19 ac (8 ha)	1.7
	Nebraska Game & Parks Commission .....	193 ac (78 ha)	17.4
	Nebraska Department of Roads .....	30 ac (12 ha)	2.7
	BNSF Railway .....	7 ac (3 ac)	0.6
	The Nature Conservancy .....	29 ac (12 ha)	2.6
	Pheasants Forever .....	11 ac (4 ha)	1.0
	Private* .....	558 ac (226 ha)	50.0
	Total .....	1,110 ac (449 ha)	

\* Several private tracts are protected by easements.

In occupied habitat (Little Salt Creek Unit), the economic cost of implementing the rule through section 7 of the Act will most likely be limited to additional administrative effort to consider adverse modification. This finding is based on the following factors:

- The presence of the species already results in significant baseline protection under the Act.
- Project modifications requested by the Service to avoid jeopardy to the species are also likely to avoid adverse modification of critical habitat. The proposed designation of critical habitat is unlikely to generate recommendations for additional or different project modifications.
- Critical habitat is unlikely to increase the number of consultations occurring in occupied habitat as a result of the existing awareness by Federal agencies of the need to consult due to the listing of the species.
- The proposed designation also receives baseline protection from the

presence of the State-listed endangered plant, saltwort (*Salicornia rubra*).

In unoccupied habitat (Rock Creek, Oak Creek, and Haines Branch Units), the proposed designation will generate the need for section 7 consultation on projects or activities that may affect critical habitat. The administrative costs of these consultations, and costs of any project modifications resulting from these consultations, reflect incremental costs of the critical habitat rule. In particular, we may request project modifications, including erosion control and biological monitoring for highway projects to avoid adverse modification in unoccupied critical habitat, and grazing restrictions for consultations related to potential conservation partnerships.

Based on the historical consultation rate and forecasts of projects and activities identified by land managers, the number of future consultations is likely to be fewer than 12 in a single year, all of which are expected to be conducted informally. The additional

administrative cost of addressing adverse modification during informal section 7 consultation is approximately \$2,400 per consultation, and the full cost of a new informal consultation is approximately \$7,100 per consultation. Incremental project modification costs may include \$360,000 for highway projects in the Oak Creek Unit, and up to \$110,000 if grazing exclosures are implemented through conservation partnerships in the Rock Creek Unit. Incremental costs are likely to be greatest in the Oak Creek Unit and are driven by project modifications for highway construction activities. Total forecast incremental costs of section 7 consultations, including administrative and project modification costs, are likely to be less than \$540,000 in a given year. Thus, in summary, the incremental costs resulting from the critical habitat designation are unlikely to reach \$100 million in a given year based on the number of anticipated consultations and per-consultation administrative and project modification costs.

We are aware of other types of costs associated with the proposed designation of critical habitat. For example, the designation of critical habitat may cause farmers and ranchers to perceive that private lands will be subject to land use restrictions, resulting in perceptual effects. Such costs, if they occur, are unlikely to reach \$100 million in a given year based on the number of acres most likely to be affected (1,110 ac (449 ha)) and the value of those acres. Additionally, the designation of critical habitat is unlikely to trigger additional requirements under State or local regulations. This conclusion is based on the likelihood that activities in wetland areas will require Federal permits and, therefore, section 7 consultation.

The proposed designation of critical habitat has the potential to convey other benefits to the public. Additional efforts to conserve the beetle are anticipated in unoccupied habitat. These project modifications may result in direct benefits to the species (e.g., increased potential for recovery) as well as broader improvements to environmental quality in these areas. Due to existing data limitations, we are unable to assess the likely magnitude of such benefits.

As we stated earlier, we are soliciting data and comments from the public on the DEA, the draft EA, 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.

#### Required Determinations—Amended

In our June 4, 2013, proposed rule (78 FR 33282), we indicated that we would defer our determination of compliance with several statutes and executive orders until we had evaluated the probable effects on landowners and stakeholders and the resulting probable economic impacts of the designation. Following our evaluation of the probable incremental economic impacts resulting from the proposed designation of critical habitat for the Salt Creek tiger beetle, we have amended or affirmed our determinations below. Specifically, we affirm the information in our proposed rule concerning Executive Order (E.O.) 12866 (Regulatory Planning and Review), 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 our evaluation of the probable incremental economic impacts of the proposed designation of critical habitat for the Salt Creek tiger beetle, we are amending our required determination concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), E.O. 12630 (Takings), 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.

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.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are required to evaluate the potential incremental impacts of rulemaking only on those entities directly regulated by the rulemaking itself and, therefore, are not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the Agency is not likely to adversely modify critical habitat. Therefore, under these circumstances only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Under these circumstances, it is our position that only Federal action agencies will be directly regulated by this designation. Federal agencies are not small entities, and, to this end, there is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. 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 the Salt Creek tiger beetle 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 economic analysis found that no significant economic impacts are likely to result from the designation of critical habitat for the Salt Creek tiger beetle. 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 economic analysis assessment 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 the Salt Creek tiger beetle does not pose significant takings implications for lands within or affected by the designation.

*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 pursuant to the National Environmental Policy Act (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, 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 are required to complete NEPA analysis when designating critical habitat under the Act within the boundaries of the Tenth Circuit. We prepared an environmental assessment for our 2010 final rule designating critical habitat for the Salt Creek tiger beetle, and made a finding of no significant impacts. Although the State of Nebraska is not part of the Tenth Circuit, and, therefore, NEPA analysis is not required, we have undertaken a NEPA analysis in this case since we conducted one previously for our 2010 final rule. Accordingly, we have prepared a draft environmental assessment to identify and disclose the environmental consequences resulting from the proposed designation of critical habitat for the Salt Creek tiger beetle.

The draft EA presents the purpose of and need for critical habitat designation, the proposed action and alternatives, and an evaluation of the direct, indirect, and cumulative effects of the alternatives under the requirements of NEPA as implemented by the Council on Environmental Quality regulations (40 CFR 1500 et seq.) and according to

the Department of the Interior's NEPA procedures.

The draft EA will be used by the Service to decide whether or not critical habitat will be designated as proposed; if the proposed action requires refinement, or if another alternative is appropriate; or if further analyses are needed through preparation of an environmental impact statement. If the proposed action is selected as described (or is changed minimally) and no further environmental analyses are needed, then a finding of no significant impact (FONSI) would be the appropriate conclusion of this process. A FONSI would then be prepared for the environmental assessment. We are seeking data and comments from the public on the draft EA, which is available at <http://www.regulations.gov> at Docket No. FWS-R6-ES-2013-0068 and at <http://www.fws.gov/mountain-prairie/species/invertebrates/saltcreektiger/>.

**Authors**

The primary authors of this notice are the staff members of the Nebraska Ecological Services Field Office, Region 6, 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 5, 2014.

**Rachel Jacobson,**

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

[FR Doc. 2014-05445 Filed 3-12-14; 8:45 am]

**BILLING CODE 4310-55-P**