

Accomplishment Instructions of Airbus Service Bulletin A300–53–6037, dated March 21, 1995; or Revision 02, dated October 28, 2004. Such reinforcement constitutes terminating action for the repetitive inspections required by this AD.

(3) If any cracking is found that is outside the limits specified in the service bulletin: Prior to further flight, reinforce the structure at frames 28 and 29, and at frames 30 and 31, between stringers 29 and 30, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6037, dated March 21, 1995; or Revision 02, dated October 28, 2004. After the effective date of this AD, only Revision 02 may be used. Such reinforcement constitutes terminating action for the repetitive inspections required by this AD.

(g) Within 5 years after August 4, 1997: Reinforce the structure at frames 28 and 29,

and at frames 30 and 31, between stringers 29 and 30, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6037, dated March 21, 1995; or Revision 02, dated October 28, 2004. After the effective date of this AD, only Revision 02 may be used. Such reinforcement constitutes terminating action for the repetitive inspections required by this AD. After the effective date of this AD, the initial eddy current inspection and all applicable repairs required by paragraph (f) of this AD must be done before doing the reinforcement.

**New Requirements of This AD**

*Inspection and Corrective Action*

(h) For airplanes that meet the conditions of both paragraphs (h)(1) and (h)(2) of this AD: Within 2,400 flight cycles or 18 months after the effective date of this AD, whichever

occurs first, conduct an eddy current inspection to detect cracking of the fuselage outer skin at frames 28A and 30A above stringer 30, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–53–6045, Revision 03, dated October 28, 2004. If no cracking is found: No further action is required by this paragraph. If any cracking is found: Before further flight, repair the cracking using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l’Aviation Civile (DGAC) (or its delegated agent).

(1) Airplanes that were reinforced before the effective date of this AD in accordance with any service bulletin specified in Table 1 of this AD.

TABLE 1.—REINFORCEMENT SERVICE BULLETINS

Airbus Service Bulletin	Revision level	Date
A300–53–6037 .....	Original .... 01 ..... 02 .....	March 21, 1995. February 3, 1999. October 28, 2004.

(2) Airplanes that were not inspected and repaired in accordance with any service bulletin specified in Table 2 of this AD.

TABLE 2.—INSPECTION AND REPAIR SERVICE BULLETINS

Airbus Service Bulletin	Revision level	Date
A300–53–6045 .....	Original .... 01 ..... 02 ..... 03 .....	March 21, 1995. August 25, 1997. May 2, 1999. October 28, 2004.

**Alternative Methods of Compliance (AMOCs)**

(i)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) Before using any AMOC approved in accordance with § 39.19 on any airplane to which the AMOC applies, notify the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

**Related Information**

(j) French airworthiness directive F–2005–002, dated January 5, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on June 8, 2006.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AT91**

**Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Fender’s Blue Butterfly (*Icaricia icarioides fenderi*), *Lupinus sulphureus* ssp. *kincaidii* (Kincaid’s Lupine), and *Erigeron decumbens* var. *decumbens* (Willamette Daisy)**

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

**ACTION:** Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the reopening of the public comment period on the proposal to designate critical

habitat for the Fender’s blue butterfly (*Icaricia icarioides fenderi*, *Lupinus sulphureus* ssp. *kincaidii* (Kincaid’s lupine), and *Erigeron decumbens* var. *decumbens* (Willamette daisy) and the availability of the draft economic analysis of the proposed designation of critical habitat. The draft economic analysis has been completed and we are publishing a notice of availability in the **Federal Register** and requesting comments. The economic analysis for the prairie species concluded that the potential future costs associated with conservation activities for the species are estimated to range from \$25.3 to \$52.7 million over 20 years in undiscounted 2006 dollars. Costs are estimated to range from \$19.1 to \$40.3 million over 20 years, or \$1.3 to 2.7 million annually using a three percent discount rate. Costs are estimated to range from \$15.3 to \$32.6 million over 20 years, or \$1.4 to \$3.1 annually using a seven percent discount rate. The

activities affected by species conservation efforts may include development, management of public and conservancy lands ("conservation"), transportation operations, and the Benton County Habitat Conservation Plan (HCP). We are reopening the comment period to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this comment period, and will be fully considered in preparation of the final rule.

**DATES:** We will accept public comments until June 30, 2006.

**ADDRESSES:** Written comments and materials may be submitted to us by any one of the following methods:

(1) Mail: You may submit written comments and information to Kemper McMaster, Field Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266.

(2) Delivery: You may hand-deliver written comments to our Oregon Fish and Wildlife Office, at the above address.

(3) Fax: You may fax your comments to 503/231-6195.

(4) E-mail: You may send comments by electronic mail (e-mail) to [fw1willamettech@fws.gov](mailto:fw1willamettech@fws.gov). Please see the Public Comments Solicited section below for file format and other information about electronic filing.

(5) Federal eRulemaking portal: <http://www.regulations.gov>. Follow the instructions found there for submitting comments.

**FOR FURTHER INFORMATION CONTACT:**

Kemper McMaster, Field Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266 (telephone 503/231-6179; facsimile 503/231-6195).

**SUPPLEMENTARY INFORMATION:**

**Public Comments Solicited**

We are soliciting comments on the original proposed critical habitat designation that was published in the **Federal Register** on November 2, 2005 (70 FR 66492) and on our draft economic analysis of the proposed designation. Copies of the proposed rule to designate critical habitat and the draft economic analysis are available on the Internet at: <http://www.fws.gov/oregonfwo/Species/ESA-Actions/WillValleyPage.asp> or from our Oregon Fish and Wildlife Office at the address and contact numbers above. We are

particularly interested in comments concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et al.*), including whether it is prudent to designate critical habitat.

(2) Specific information on the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* and their habitat, and which habitat or habitat components (i.e., physical and biological features) are essential to their conservation, such as soil moisture gradient, microsite preferences, and light requirements;

(3) Specific information on: the amount and distribution of the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* habitat; what areas should be included in the designations that were occupied at the time of listing and contain the features that are essential to the conservation of the species and why; what areas were not occupied at the time of listing but are essential to the conservation of the species and why;

(4) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat; we specifically solicit information including:

(a) The benefits provided by a management plan; specifically describe how the plan addresses each primary constituent element (PCE) in the absence of designated critical habitat; describe conservation benefits to Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, or *Erigeron decumbens* var. *decumbens*; include citations that point to the certainty of implementation of those aspects of the management plans;

(b) The benefits of excluding from the critical habitat designation the areas covered by the management plan; we are especially interested in knowing how partnerships may be positively or negatively affected by a designation, or through exclusion from critical habitat, and costs associated with designation; and

(c) With specific reference to section 4(a)(3) of the Act, we request information from the Department of Defense to assist the Secretary of the Interior in making a determination as to whether any proposed critical habitat overlaps with lands, administered by or under the control of the Department of Defense, covered by an Integrated Natural Resources Management Plan (INRMP) that benefits the conservation of the species;

(5) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities;

(6) 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;

(7) Whether the economic analysis adequately addresses the likely effects and resulting costs arising from State laws as a result of the proposed critical habitat designation;

(8) Whether the analysis adequately addresses the indirect effects;

(9) Whether the analysis accurately defines and captures opportunity costs;

(10) Whether the economic analysis correctly assesses the effect on regional costs (e.g., housing costs) associated with land use controls that could arise from the designation of critical habitat for these three species;

(11) Whether the designation of critical habitat will result in disproportionate economic or other impacts to specific areas that should be evaluated for possible exclusion from the final designation;

(12) Whether the economic analysis is consistent with the Service's listing regulations because this analysis should identify all costs related to the designation of critical habitat for these three species; and,

(13) Whether the benefits of exclusion in any particular area outweigh the benefits of inclusion under Section 4(b)(2) of the Act.

All previous comments and information submitted during the initial comment period need not be resubmitted. Our final determination on the proposed critical habitat will take into consideration all comments and any additional information received. However, we will not consider anonymous comments.

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. Please also include "RIN 1018-AT91" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, please contact us directly (see **ADDRESSES** section). Please note that the Internet address [fw1willamettech@fws.gov](mailto:fw1willamettech@fws.gov) will be unavailable at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review

during regular business hours. We will not consider anonymous comments and we will make all comments available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours in the U.S. Fish and Wildlife Service Office at the above address.

### Background

On November 2, 2005, we published a proposed rule in the **Federal Register** (70 FR 66492) to designate approximately 3,089 acres (1,250 hectares (ha)) as critical habitat for Fender's blue butterfly, 724 acres (293 ha) as critical habitat for *Lupinus sulphureus* ssp. *kincaidii*, and 718 acres (291 ha) as critical habitat for *Erigeron decumbens* var. *decumbens*. The proposed critical habitat is located in Polk, Benton, Yamhill, Lane, Marion, Linn, and Douglas Counties, Oregon, and Lewis County, Washington. The original comment period on the proposed critical habitat rule closed on January 3, 2006. On April 21, 2006, we published a notice in the **Federal Register** (71 FR 20636) to reopen the comment period and provide notice of a public hearing; the comment period closed on May 19, 2006.

Critical habitat is defined in section 3 of the Act as the specific areas within the geographic 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 geographic 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 areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic or any other relevant impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron*

*decumbens* var. *decumbens*, we have prepared a draft economic analysis of the proposed critical habitat designation.

The draft economic analysis addresses the impacts of conservation efforts for these three species on activities occurring on lands proposed for designation as well as those proposed for exclusion. The analysis measures lost economic efficiency associated with land development activities, transportation operations, conservation-oriented land management on public and private lands, development of the Benton County Habitat Conservation Plan, and administrative costs related to the section 7 consultation process.

The draft economic analysis considers the potential economic effects of actions relating to the conservation of the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens*, including costs associated with sections 4, 7, and 10 of the Act, and including those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii* and *Erigeron decumbens* var. *decumbens* in essential habitat areas. The analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (e.g., lost economic opportunities associated with restrictions on land use). The study also analyzes whether a particular group or economic sector bears an undue proportion of the impacts, with specific analysis of the impacts to small entities and potential impacts on energy availability. Finally, this analysis estimates economic impacts to activities from 2000 (the year of the final listing for the species) to 2026 (20 years from the year of final designation of critical habitat). Forecasts of economic conditions and other factors beyond the next 20 years would be speculative.

We solicit data and comments from the public on the draft economic analysis, as well as on all aspects of the proposal to designate critical habitat. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the 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 as

critical habitat, provided such exclusion will not result in the extinction of the species.

Costs related to conservation activities for the proposed designation of critical habitat for Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* pursuant to sections 4, 7, and 10 of the Act are estimated to be approximately \$25.3 to \$52.7 million over 20 years in undiscounted 2006 dollars. Costs are estimated to range from \$19.1 to \$40.3 million over 20 years, or \$1.3 to 2.7 million annually using a three percent discount rate. Cost estimates using a seven percent discount rate range from \$15.3 to \$32.6 million over 20 years, or \$1.4 to \$3.1 annually.

### Required Determinations—Amended

#### Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal and policy issues. On the basis of our draft economic analysis, the designation of critical habitat for these species is not anticipated to have an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A-4, September 17, 2003). Pursuant to Circular A-4, once it has been determined that the Federal regulatory action is appropriate, the agency will then need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Endangered Species Act of 1973, as amended, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination

thereof, in a designation constitutes our regulatory alternative analysis.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as 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 this proposed designation of critical habitat for Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* would affect a substantial number of small entities, we considered the number of small entities affected within particular

types of economic activities (e.g., residential and commercial development, forestry, and agriculture). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our economic analysis of this proposed designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of these three species and proposed designation of critical habitat. We determined from our analysis that the small business entities that may be affected are agriculture and forestry. Approximately 85 percent (i.e., 1,794 acres (726 ha)) of the estimated 2,120 acres (858 ha) of privately owned land within the proposed critical habitat designation is classified as agricultural land. The remaining 327 acres (132 ha) is classified as various types of forest land, most of which is white oak forest, which has no commercial value.

On the basis of our analysis of Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* conservation measures, we determined that approximately 195 small agriculture operations could be impacted by conservation measures for these three species. These agriculture operations represent approximately 1.2 percent of the number of small farms and ranches operating within the eight counties that encompass the proposed critical habitat designation. The percent of small agriculture operations impacted ranges from a low of approximately 0.1 percent in Marion and Lewis counties to a high of 4.6 percent in Benton County. The conservation measures for the three species are not expected to impact the profitability of these small agriculture operations, as the existing agricultural use of the privately owned lands that

encompass the proposed critical habitat designation is not likely to be impacted.

Based on the past and existing land use, it appears the agricultural value of these lands is as grassland/pasture, and livestock grazing, if not intensive, would not further degrade or destroy the prairie habitat. While farm profits are not expected to be affected by species conservation, impacted small agriculture businesses are expected to lose between \$383 (Douglas County) and \$118,785 (Yamhill County) in land value per farm due to species conservation. Considering that the average market value of a farm's assets (i.e., land, buildings, machinery, and equipment) in the affected counties ranges from approximately \$375,000 (Lewis County) to \$650,000 (Marion, Polk, Yamhill, and Linn counties), the economic impacts of species conservation to the small agriculture operator is expected to range from as little as 0.1 percent (Douglas and Linn counties) of the value of an operator's farm assets to as much as 18.2 percent (Yamhill County) of an operator's farm assets. The 16 small agriculture operators in Yamhill County are expected to bear the greatest impacts (1.5 to 18.2 percent of the value of farm assets) followed by the 28 operators in Polk County (1.0 to 17.1 percent of the value of farm assets), the 41 operators in Benton County (2.0 to 13.4 percent of the value of farm assets), the 87 operators in Lane County (1.2 to 6.8 percent of the value of farm assets), and then the 3 operators in Marion County (0.4 to 5.8 percent of the value of farm assets). Impacts to the remaining 20 small agriculture operators in Douglas, Linn, and Lewis counties are estimated at less than approximately 2 percent of the value of an operator's farm assets.

The economic effects to forestry operations of this proposed critical habitat designation are expected to be small. Although there are about 494 forestry and logging businesses that operate in the eight counties that encompass the proposed critical habitat designation, only one company has lands that fall within a proposed critical habitat unit. The estimated economic impact of species conservation activities to Starker Forests, Inc., a family-owned business that owns, grows, and manages about 60,000 acres of forest land in Benton, Lincoln, Lane, and Polk counties, Oregon, is about \$1,000 to \$3,000 annually.

Based on these data, we have determined that this proposed designation would not result in a significant economic impact on a substantial number of small entities, in particular to agricultural and forestry

interests. Please refer to Appendix A of our draft economic analysis of this designation for a more detailed discussion of potential economic impacts to small business entities.

#### *Executive Order 13211*

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 because it raises novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant action and no Statement of Energy Effects is required.

#### *Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments," with two exceptions. It excludes "a condition of federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support

Enforcement.) "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) The boundaries of five city governments encompass the proposed critical habitat designation: Eugene (estimated population in 2005 of 146,160), Corvallis (estimated population in 2005 of 53,165), Dallas (estimated population in 2005 of 14,040), Philomath (estimated population in 2005 of 4,400), and Sheridan (estimated population in 2005 of 5,740). Eugene and Corvallis exceed the criteria (service population of 50,000 or less) for small entity. Of the three small governments, Dallas is the only small government entity potentially impacted by Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* conservation activities. In fiscal year 2005–06, the City's annual budget is approximately \$36 million. The analysis estimates that potential future Fender's blue butterfly and *Lupinus sulphureus* ssp. *kincaidii* conservation activities (related to a planned collector street and the one-time application costs and annual deferred maintenance and personnel training costs associated with a Section 10(a)(1)(A) Recovery Permit) may cost the City between \$28,000 (low range assuming a seven percent discount rate) and \$197,000 (high range assuming a three percent discount rate) on an annualized basis. These costs represent approximately 0.08 percent to

0.5 percent of the City's annual expenditures.

Further, there is no record of consultation between the Service and any of these governments since the three species were listed in 2000. It is likely that small governments involved with developments and infrastructure projects will be interested parties or involved with projects involving section 7 consultations for Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a city's budget. Consequently, we do not believe that the designation of critical habitat for Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* will significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

#### *Takings*

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens*. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for Fender's blue butterfly, *Lupinus sulphureus* ssp. *kincaidii*, and *Erigeron decumbens* var. *decumbens* does not pose significant takings implications.

#### **Author**

The primary author of this package is Mikki Collins, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service.

#### **Authority**

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

Dated: June 6, 2006.

**David P. Smith,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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