

	Effective date	Termination date
Britax Handle with Care 191 .....	1/17/2002	9/1/2009
Evenflo First Choice 204 .....	1/17/2002	*
Graco Infant 8457 .....	1/17/2002	*
Century Assura 4553 .....	1/17/2002	9/1/2009
Century Smart Fit 4543 .....	1/17/2002	*
Cosco Arriva 02727 .....	1/17/2002	*
Evenflo Discovery Adjust Right 212 .....	1/17/2002	*
Peg Perego Primo Viaggio IMCC00US .....	9/1/2009	*
Graco Snugride .....	9/1/2009	*

\* Until further notice, any vehicle manufactured after the effective date specified is still subject to testing with this child restraint system.

C. Any of the following forward-facing child restraint systems, and forward-facing child restraint systems that also convert to rear-facing, manufactured on or after December 1, 1999, may be used by the National Highway Traffic Safety

Administration to test the suppression or LRD system of a vehicle that is manufactured on or after the effective date and prior to the termination date specified in the table below and that has been certified as being in compliance with 49 CFR 571.208 S19, or S21.

(Note: Any child restraint listed in this subpart that does not have manufacturer instructions for using it in a rear-facing position is excluded from use in testing in a belted rear-facing configuration under S20.2.1.1(a) and S20.4.2):

	Effective date	Termination date
Century Encore 4612 .....	1/17/2002	9/1/2009
Cosco Olympian 02803 .....	1/17/2002	9/1/2009
Britax Roundabout 161 .....	1/17/2002	*
Century STE 1000 4416 .....	1/17/2002	*
Cosco Touriva 02519 .....	1/17/2002	*
Evenflo Horizon V 425 .....	1/17/2002	*
Evenflo Medallion 254 .....	1/17/2002	*
Safety 1st Comfort Ride 22-400 .....	9/1/2008	9/1/2009
Cosco Summit Deluxe 22-260 .....	9/1/2009	*
Evenflo Generations 352 .....	9/1/2009	*
Graco SafeSeat (Step 2) .....	9/1/2009	*

\* Until further notice, any vehicle manufactured after the effective date specified is still subject to testing with this child restraint system.

D. Any of the following forward-facing child restraint systems and belt-positioning seats, manufactured on or after December 1, 1999, may be used by the National Highway

Traffic Safety Administration as test devices to test the suppression system of a vehicle that is manufactured on or after the effective date and prior to the termination date

specified in the table below and that has been certified as being in compliance with 49 CFR 571.208 S21 or S23:

	Effective date	Termination date
Britax Roadster 9004 .....	1/17/2002	*
Century Next Step 4920 .....	1/17/2002	*
Cosco High Back Booster 02-442 .....	1/17/2002	*
Evenflo Right Fit 245 .....	1/17/2002	*

\* Until further notice, any vehicle manufactured after the effective date specified is still subject to testing with this child restraint system.

\* \* \* \* \*

Issued on September 14, 2007.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E7-18716 Filed 9-24-07; 8:45 am]

BILLING CODE 4910-59-P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AU81**

**Endangered and Threatened Wildlife and Plants; Revised Critical Habitat for the Tidewater Goby (*Eucyclogobius newberryi*)**

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

**ACTION:** Proposed rule; reopening of comment period, notice of availability

of draft economic analysis, and amended Required Determinations.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the proposed revised designation of critical habitat for the tidewater goby (*Eucyclogobius newberryi*) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of the draft economic analysis of the proposed revised critical habitat designation and an amended Required Determinations section of the proposal.

The draft economic analysis estimates post-designation costs associated with

conservation efforts for the tidewater goby to be approximately \$25 million (undiscounted) over the next 20 years (2007 to 2026) as a result of the proposed designation of critical habitat. Discounted future costs are estimated to be approximately \$22 million (\$1.5 million annualized) at a 3 percent discount rate or approximately \$20 million (\$1.8 million annualized) at a 7 percent discount rate. Potential cost savings in Unit VEN-2 associated with tidewater goby conservation efforts range from approximately \$35 million to \$90 million (undiscounted dollars). By combining these savings with the estimated costs of conservation efforts, an overall net cost savings of approximately \$10 million to \$65 million (undiscounted) could be realized over the next 20 years. In present value terms, net cost savings range from approximately \$9.8 million to \$60 million (assuming a 3 percent discount rate) or approximately \$9.1 million to \$54.0 million (assuming a 7 percent discount rate).

We are reopening the comment period for the proposed rule to allow all interested parties an opportunity to comment simultaneously on the proposed rule, the associated draft economic analysis, and the amended Required Determinations section. 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 designation.

**DATES:** We will accept public comments until October 10, 2007.

**ADDRESSES:** You may submit comments and materials to us by any one of the following methods:

(1) You may mail or hand-deliver written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

(2) You may fax your comments to 805/644-3958.

(3) You may send comments by electronic mail (e-mail) to: [fw8gobydea@fws.gov](mailto:fw8gobydea@fws.gov). For instructions on how to file comments electronically, see the "Public Comments Solicited" section below. In the event that our Internet connection is not functional, please submit your comments by one of the alternate methods listed in this section.

(4) You may submit your comments via the Federal eRulemaking Portal at <http://www.regulations.gov>. Follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Chris Dellith, Biologist, or Michael

McCrary, Listing and Recovery Coordinator, Ventura Fish and Wildlife Office, at the street address listed in **ADDRESSES** (telephone 805/644-1766; facsimile 805/644-3958). 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 Solicited**

During this reopened comment period, we solicit comments on the proposed revised critical habitat designation (71 FR 68914; November 28, 2006), our draft economic analysis of the proposed revised designation, and the amended Required Determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the designation can be expected to result in an increase in threats to the species from human activity that outweighs the benefit of designation to the species such that the designation of critical habitat is not prudent.

(2) Specific information on the amount and distribution of tidewater goby habitat; what habitat or habitat features are essential to the conservation of this species and why, which areas occupied at the time of listing containing these features should be included in the critical habitat designation and why, and which areas not occupied at the time of listing are essential to the conservation of the species and should be included in the designation and why.

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

(4) 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.

(5) Whether our general approach to determine which localities to include in proposed revised critical habitat (44 of the 106 localities that are currently occupied by tidewater gobies) could be improved or modified.

(6) Specifically with reference to those State Park lands under the jurisdiction of the California Department of Parks and Recreation (CDPR) that are proposed for

designation, information on any areas covered by conservation or management plans that we should consider for exclusion from the designation under section 4(b)(2) of the Act.

(7) Any additional proposed critical habitat areas covered by conservation or management plans that we should consider for exclusion from the designation under section 4(b)(2) of the Act. We specifically request any information on any operative or draft habitat conservation plans for the tidewater goby that have been prepared under section 10(a)(1)(B) of the Act, or any other management or other conservation plan or agreement that benefits the goby or its primary constituent elements.

(8) Any information concerning Tribal lands or trust resources that may be impacted by this proposed revision to critical habitat.

(9) Information on whether the draft economic analysis should include the voluntary cost of land acquisition by The Nature Conservancy and Trust for Public Lands in Ventura County. These organizations have and will continue to acquire lands in Ventura County to prevent structured flood control (e.g., channelization), which may threaten many species, including the tidewater goby.

(10) Information on whether the draft economic analysis identifies all State and local costs and benefits attributable to the proposed revised critical habitat designation, and information on any costs or benefits that have been inadvertently overlooked.

(11) Information on whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes that would be imposed as a result of the revised designation of critical habitat.

(12) Information on whether the draft economic analysis correctly assesses the effect on regional costs associated with any land use controls that may derive from the revised designation of critical habitat.

(13) Information on areas that could potentially be disproportionately impacted by the revised designation of tidewater goby critical habitat. The draft economic analysis indicates the potential economic effects of undertaking conservation efforts for this species in California. Based on this information, we may consider excluding portions of these areas from the final revised designation per our discretion under section 4(b)(2) of the Act.

(14) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any

impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts; the reasons why our conclusion that the proposed designation of critical habitat would not result in a disproportionate effect on small businesses should or should not warrant further consideration; and other information that would indicate that the designation of critical habitat would or would not have any impacts on small entities.

(15) Information on whether the draft economic analysis appropriately identifies all costs that could result from the revised designation.

(16) Information on whether there are any additional quantifiable economic benefits that could result from the revised designation;

(17) Whether the benefit of excluding any particular area from the critical habitat designation under section 4(b)(2) of the Act outweighs the benefit of including the area in the designation.

(18) Economic data on the incremental effects that would result from designating any particular area as revised critical habitat, since it is our intent to include the incremental costs attributed to the revised critical habitat designation in the final economic analysis.

The Secretary shall designate critical habitat on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. Under section 4(b)(2) of the Act, an area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of including a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact.

Comments and information submitted during the initial comment period on the November 28, 2006, proposed rule (71 FR 68914) need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning the proposed rule, draft economic analysis, or the amended Required Determinations provided in this document by any one of several methods (see **ADDRESSES**). Our final designation of critical habitat will take into consideration all comments and any additional information we receive during both comment periods. On the basis of information provided during the public comment periods on the revised

critical habitat proposal and the draft economic analysis, and on the basis of the final economic analysis, 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 material concerning the above actions by any one of several methods (see **ADDRESSES**). If you use e-mail to submit your comments, please include "Attn: RIN 1018-AU81" in your e-mail subject header, preferably with your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your e-mail, contact us directly by calling our Ventura Fish and Wildlife Office at 805-644-1766.

Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public view your personal identifying information, we cannot guarantee that we will be able to do so. Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate revised critical habitat, will be available for public inspection, by appointment during normal business hours, at the Ventura Fish and Wildlife Office at the street address listed under **ADDRESSES**.

You may obtain copies of the proposed rule and draft economic analysis by mail from the Ventura Fish and Wildlife Office (see **ADDRESSES**), or by calling 805-644-1766 extension 301, or by visiting our Web site at <http://www.fws.gov/ventura/>.

### Background

Under the terms of a December 21, 2004, settlement agreement, we agreed to submit for publication in the **Federal Register** a proposed revised critical habitat designation for the tidewater goby by November 15, 2006. We published a proposed rule to revise critical habitat for the tidewater goby on November 28, 2006 (71 FR 68914). The proposed revised critical habitat includes approximately 10,003 acres (ac) (4,050 hectares (ha)) for the tidewater goby in Del Norte, Humboldt, Mendocino, Sonoma, Marin, San Mateo, Santa Cruz, Monterey, San Luis Obispo, Santa Barbara, Ventura, and Los Angeles Counties, California.

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

### Draft Economic Analysis

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 impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. Based on the November 28, 2006, proposed rule to designate revised critical habitat for the tidewater goby (71 FR 68914), we have prepared a draft economic analysis of the proposed revised critical habitat designation for the tidewater goby.

The draft economic analysis is intended to quantify the economic impacts of all potential conservation efforts for the tidewater goby; some of these costs will likely be incurred regardless of whether critical habitat is designated. The draft economic analysis considers past costs associated with the conservation of the species from the time it was listed (February 4, 1994; 59 FR 5494), as well as costs of conservation-related measures that are likely to be associated with future economic activities that may adversely affect the habitat within the proposed boundaries over a 20-year period. For a further description of the methodology of the analysis, see section 1.3 (Approach to Estimating Economic Impacts) of the draft economic analysis.

The draft economic analysis describes economic impacts of tidewater goby conservation efforts associated with 5 categories of activities: (1) Water management; (2) grazing; (3) transportation; (4) natural resource management; and (5) oil and gas pipeline construction and maintenance.

The draft economic analysis estimates pre-designation costs associated with the conservation of the species to be approximately \$11.3 million (undiscounted). Discounted costs are estimated to be approximately \$13.1 million at a 3 percent discount rate or approximately \$16.3 million at a 7 percent discount rate. The draft economic analysis estimates post-designation costs associated with conservation efforts for the tidewater goby to be approximately \$25 million (undiscounted) over the next 20 years (2007 to 2026). Discounted future costs are estimated to be approximately \$22 million (\$1.5 million annualized) at a 3 percent discount rate or approximately \$20 million (\$1.8 million annualized) at a 7 percent discount rate.

In critical habitat Unit VEN-2, the City of Ventura's Water Reclamation Facility (VWRF) discharges effluent into the Santa Clara River, sustaining water levels in tidewater goby habitat. Existing water quality control regulations have the potential to require VWRF to cease discharge of effluent into the estuary, which would force the City of Ventura to build a new ocean outfall facility for the effluent. The Service has recommended that the discharge be continued to protect sensitive species, including tidewater goby, for the discharge simulates a more natural environment by maintaining water levels. Potential cost savings to VWRF of installing tertiary treatment and constructing new facilities, rather than moving to an ocean outfall, ranges from \$35 million to \$90 million (undiscounted).

The cost savings to VWRF are factored into the analysis of economic impacts associated with tidewater goby conservation. By combining these savings with the estimated post-designation costs of conservation efforts described above (\$25 million), an overall net cost savings of approximately \$10 million to \$65 million (undiscounted) could be realized over the next 20 years. In present value terms, potential net cost savings from the designation of critical habitat for the tidewater goby range from approximately \$9.8 million to \$60 million (assuming a 3 percent discount rate) or approximately \$9.1 million to \$54.0 million (assuming a 7 percent discount rate).

The draft economic analysis considers the potential economic effects of actions relating to the conservation of the tidewater goby, 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 tidewater goby in areas containing features essential to the conservation of the species. The draft 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 draft analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the draft analysis looks retrospectively at costs that have been incurred since the date the tidewater goby was listed as endangered (February 4, 1994; 59 FR 5494) and considers those costs that may occur in the 20 years following a designation of critical habitat. Forecasts of economic conditions and other factors beyond this point would be speculative.

As stated earlier, we solicit data and comments from the public on the draft economic analysis, as well as on all aspects of the proposal. 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 would not result in the extinction of the species.

#### **Required Determinations—Amended**

In our November 28, 2006, proposed rule (71 FR 68914), we indicated that we would be deferring 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 was available in the draft economic analysis. Those data are now available for our use in making these determinations. In this notice we are affirming the information contained in the proposed rule concerning Executive Order (E.O.) 13132; E.O. 12988; the Paperwork Reduction Act; and the President's memorandum of April 29, 1994,

"Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). Based on the information made available to us in the draft economic analysis, we are amending our Required Determinations, as provided below, concerning E.O. 12866 and the Regulatory Flexibility Act, E.O. 13211, E.O. 12630, and the Unfunded Mandates Reform Act.

#### *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. Based on our draft economic analysis of the proposed revised designation of critical habitat for the tidewater goby, post-designation costs associated with conservation efforts for the tidewater goby (as described above) are estimated to be approximately \$25 million (undiscounted) over the next 20 years (2007 to 2026). Discounted future costs are estimated to be approximately \$22 million (\$1.5 million annualized) at a 3 percent discount rate or approximately \$20 million (\$1.8 million annualized) at a 7 percent discount rate. In addition, potential cost savings in Unit VEN-2 associated with VWRF's continued maintenance of adequate water flows for the tidewater goby range from approximately \$35 million to \$90 million (undiscounted dollars). By combining these savings with the estimated post-designation costs of conservation efforts described above (\$25 million), an overall net cost savings of approximately \$10 million to \$65 million (undiscounted) could be realized over the next 20 years. In present value terms, net cost savings from the designation range from approximately \$9.8 million to \$60 million (assuming a 3 percent discount rate) or approximately \$9.1 million to \$54.0 million (assuming a 7 percent discount rate).

Therefore, based on our draft economic analysis, we have determined that the proposed revised designation of critical habitat for the tidewater goby will not result in 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) did not formally review 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 under the Act, we must 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 provided 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 (5 U.S.C. 802(2)) (SBREFA), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based upon our draft economic analysis of the proposed designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities. Based on comments received, this determination is subject to revision as part of the final rulemaking.

According to the Small Business Administration (SBA), 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 revised critical habitat for the tidewater goby would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities. 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 revised critical habitat designation is made final, Federal agencies must consult with us under section 7(a)(2) of the Act 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 draft economic analysis of the proposed revised critical habitat designation, we evaluate the potential economic effects on small business entities resulting from conservation actions related to the listing of the tidewater goby and proposed designation of critical habitat. Small entities were evaluated within the following types of economic activities: Water management, grazing, transportation, natural resource management, and oil and gas pipeline construction and maintenance. Based on the results of the analysis, only small entities conducting water management activities and small entities holding cattle grazing permits have the potential to be affected.

The majority of water management activities are large-scale projects

involving entities that are not considered small. The primary water management impacts are for expected land purchases to allow flooding and for expected flood control activities. Future conservation enabling land purchases that allow flooding to occur unimpeded are expected from the California Department of Fish and Game (CDFG), The Nature Conservancy, the Trust for Public Land, and the California Coastal Conservancy. The California Coastal Conservancy and CDFG are public agencies, and part of the government of the State of California; they are therefore not considered to be small entities. Both the Trust for Public Land and the Nature Conservancy are national organizations that are dominant in their fields and are not considered small entities.

There are multiple planned flood control mitigation measures by the U.S. Army Corps of Engineers, various California State departments (e.g., Department of Fish and Game, California Coastal Commission), and by several California County governments. Del Norte County is the only County that contains proposed revised critical habitat that meets the definition of small (population less than 50,000); Del Norte County had a population of 27,507 in 2000. Expected water management impacts to Del Norte County are estimated to be \$4,000 per year. Del Norte County had annual gross revenues of \$51 million in 2004. Thus, impacts to Del Norte County resulting from tidewater goby conservation efforts are considered negligible (less than 0.01 percent of yearly gross revenues).

Impacts to grazing activities include costs associated with fence construction and the value of lost forage. The costs of constructing fences are expected to be borne by the public agencies that manage the lands. These agencies (primarily the CDFG) are not considered small entities. Lost forage value is expected to be borne by the private ranchers that hold permits for grazing on State lands in the study area. However, because the amount of State lands available for grazing within the study area is relatively small, the impacts of lost forage value are also relatively minor. The percentage impact per small grazing entity is expected to be negligible unless all impacts are borne by a single entity.

In summary, we have considered whether this proposed revised designation would result in a significant economic impact on a substantial number of small business entities. For the above reasons and based on currently available information, we certify that the rule will not, if promulgated, have a significant

economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required.

#### *Executive Order 13211*

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. According to the draft economic analysis, the estimated impacts of tidewater goby conservation efforts on Venoco, Inc. for planned oil and gas pipeline construction and maintenance are \$145,000 (undiscounted). The operating expenses for oil and natural gas production for Venoco, Inc. were \$87.5 million in 2006. Thus, the impacts of tidewater goby conservation efforts are only 0.2 percent of oil and gas production expenses for Venoco, Inc. These impacts are negligible when compared with the cost of energy production and distribution. Therefore, this action is not a significant energy 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 *et seq.*), we make the following findings:

(a) This rule would 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, 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; AFDC 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. While non-Federal entities who 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, 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) As discussed in the draft economic analysis of the proposed designation of critical habitat for the tidewater goby, the impacts on small governments is expected to be small. As stated above, expected water management impacts to Del Norte County are estimated to be \$4,000 per year. Del Norte County had

annual gross revenues of \$51 million in 2004. Therefore impacts to Del Norte County for water management are expected to be less than 0.01 percent of yearly gross revenues. Consequently, we do not believe that the designation of critical habitat for the tidewater goby would significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

#### *Executive Order 12630*

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 revised critical habitat for the tidewater goby in a takings implications assessment. 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. The takings implications assessment concludes that this proposed designation of revised critical habitat for the tidewater goby does not pose significant takings implications.

#### **References Cited**

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES**).

#### **Author**

The primary author of this notice is the staff of the Ventura Fish and Wildlife Office.

#### **Authority**

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

Dated: September 14, 2007.

#### **David M. Verhey,**

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

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