

understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Joanne Petrie at (202) 366-9315.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

Federalism

We have analyzed this proposed rule under E.O. 12612 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

This rulemaking is not a major Federal action significantly affecting the quality of the human environment

under the National Environmental Policy Act and, therefore, an environmental impact statement is not required.

Consultation and Coordination with Indian Tribal Governments

E.O. 13175 provides that government agencies consult with tribes on issues that impact the Indian community. The Department has consulted with the Standing Rock Sioux and will continue to do so as this rulemaking progresses.

List of Subjects in 49 CFR Part 71

Time zones.

For the reasons discussed above, the Office of the Secretary proposes to revise Title 49 part 71 to read as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 would continue to read:

Authority: Secs. 1-4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2-7, 80 Stat. 107, as amended; 100 Stat. 764; Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97-449, 15 U.S.C. 260-267; Pub. L. 99-359; 49 CFR 159(a), unless otherwise noted.

2. Paragraph (a) of § 71.7, Boundary line between central and mountain zones, would be revised to read as follows:

§ 71.7 Boundary line between central and mountain zones.

(a) *Montana-North Dakota.* Beginning at the junction of the Montana-North Dakota boundary with the boundary of the United States and Canada southerly along the Montana-North Dakota boundary to the Missouri River; thence southerly and easterly along the middle of that river to the midpoint of the confluence of the Missouri and Yellowstone Rivers; thence southerly and easterly along the middle of the Yellowstone River to the north boundary of T. 150 N., R. 104 W.; thence east to the northwest corner of T. 150 N., R. 102 W.; thence south to the southwest corner of T. 149 N., R. 102 W.; thence east to the northwest corner of T. 148 N., R. 102 W.; thence south to the northwest corner of 147 N., R. 102 W.; thence east to the southwest corner of T. 148 N., R. 101 W., thence south to the middle of the Little Missouri; thence easterly and northerly along the middle of that river to the midpoint of its confluence with the Missouri River; thence southerly and easterly along the middle of the Missouri River to the midpoint of its confluence with the northern land boundary of Oliver County; thence west along the northern county line to the northwest boundary; thence south along the western county

line to the southwest boundary; thence east along the southern county line to the northwest corner of T. 140 N., R. 83 W.; thence south to the southwest corner of T. 140 N., R. 82 W.; thence east to the southeast corner of T. 140 N., R. 83 W.; thence south to the middle of the Heart River; thence easterly and northerly along the middle of that river to the southern boundary of T. 139 N., R. 82 W.; thence east to the middle of the Heart River; thence southerly and easterly along the middle of that river to the northeast boundary of Sioux County; thence west and south along the northern boundary of Sioux County to the center of State Highway 31; thence south along the center of State Highway 31 to the state border with South Dakota; thence east along the southern boundary of Sioux County to the middle of the Missouri Rivers.

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Issued in Washington, DC, on September 12, 2002.

Kirk K. Van Tine,
General Counsel.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Unarmored Threespine Stickleback

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Finding that the designation of critical habitat should not be made.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), find that the proposed designation of critical habitat for the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) pursuant to the Endangered Species Act of 1973, as amended, (Act) should not be made final. On November 17, 1980, we proposed designating approximately 51 kilometers (31.7 miles) of streams in Los Angeles and Santa Barbara Counties, California, as critical habitat for this species (45 FR 76012).

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Listing, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203 (telephone 703/358-2105).

SUPPLEMENTARY INFORMATION:

Background

The unarmored threespine stickleback is a small fish that we listed as endangered on October 13, 1970 (35 FR 16047), under the authority of the Endangered Species Conservation Act of 1969 (Pub. L. 91–135, 83 Stat. 275 (1969)). The Endangered Species Conservation Act of 1969 had no requirement to designate critical habitat and accordingly, at the time of its listing, critical habitat was not proposed for the unarmored threespine stickleback.

The Endangered Species Act of 1973 referred to the concept of critical habitat, requiring that Federal agency actions not modify or destroy habitat determined to be critical. However, the 1973 Act did not define critical habitat or specify a procedure for its designation (Pub. L. 93–205, 87 Stat. 884 (1973), codified at 16 U.S.C. 1536).

Amendments to the Act, enacted on November 10, 1978, defined “critical habitat” and provided that critical habitat “may be established” for species listed prior to the date of enactment of the 1978 amendments, but did not make designation mandatory nor set a certain timeframe for designation (Pub. L. 95–632, section 2(2), 92 Stat. 3751 (1978)). In 1982, amendments to the Act established the requirement to designate critical habitat at the time of listing to the extent such designation was prudent and determinable, but excluded from that requirement any species listed prior to November 10, 1978 (Pub. L. 97–304, sections 2(a), 2(b)(4), 96 Stat. 1411 (1982)). Therefore, for species listed prior to the 1978 amendments, such as the unarmored threespine stickleback, we are not required to designate critical habitat.

At our discretion, on November 17, 1980, we published a proposal (45 FR 76012) to designate a total of approximately 51 kilometers (31.7 miles) of streams in Los Angeles and Santa Barbara Counties, CA, as critical habitat for the unarmored threespine stickleback. We have not made a final designation of critical habitat for this species. The Endangered Species Act amendments of 1982 specified that, for any proposed designation of critical habitat pending at the time of enactment of the 1982 amendments, the procedures for revisions to critical habitat would apply (Pub. L. 97–304, section 2(b)(2)). Consequently, our 1980 proposal to designate critical habitat for the unarmored threespine stickleback is subject to the procedures for revisions to critical habitat.

The relevant procedures for revisions to critical habitat are set out under

section 4 of the Act. Section 4(a)(3)(B) provides that the Service “may” make revisions to critical habitat “from time-to-time * * * as appropriate” (16 U.S.C. 1533(a)(3)(B)). Section 4(b)(6)(A)(i) of the Act requires that within one year of publishing a proposed revision to critical habitat, the Service must publish in the **Federal Register** one of four possible actions: (1) A final rule to implement the revision; (2) a notice that the one-year period is being extended for up to six months for purposes of soliciting additional data due to substantial disagreement regarding the sufficiency or accuracy of the available data; (3) a notice that the proposed revision is being withdrawn, because there is insufficient evidence to justify the action; or (4) a finding that the revision should not be made. As explained below, we are taking the fourth of these possible actions.

Finding

This notice presents our finding that the November 17, 1980, proposed designation of critical habitat, which is subject to the procedures for revisions to critical habitat in accordance with the 1982 amendments to the Act, should not be made. In making this finding, we are exercising our discretion, provided under the 1978 and 1982 amendments to the Act, not to designate critical habitat for this species. The basis for this finding is described below.

Under the 1978 and 1982 amendments to the Act, the Service is not required to designate critical habitat for the unarmored threespine stickleback, but may do so at our discretion. Since the Service decided in 1980 to exercise its discretion and propose the designation of critical habitat for the species, section 4(b)(6)(A)(i) of the Act requires the Service to take one of four actions: implement the proposed designation, extend the time for taking action on the proposed designation, withdraw the proposed designation, or make a finding that the designation should not be made. After considering all of the relevant factors, we have determined that taking any of the first three actions is not justified, and have concluded that the critical habitat designation should not be made.

We cannot justify exercising our discretion to issue a final rule to implement the proposed critical habitat designation, because the 1980 proposal clearly does not satisfy the Act’s requirement that the designation or revision of critical habitat shall be made on the basis of the best scientific data available and after taking into consideration the economic impact of

specifying any particular area as critical habitat (16 U.S.C. 1533(b)(2)). The degree of specificity and scientific rigor that the Service now uses for designating critical habitat has evolved considerably since 1980. Moreover, it is likely that considerable new information regarding changes in habitat or other conditions has become available since 1980, and would need to be assessed to determine if the proposal needs to be revised. The economic information associated with the 1980 proposal is also out of date, and would need to be completely replaced with a new economic analysis.

We also cannot justify formally extending the proposed action for six months to solicit additional data to address concerns regarding the sufficiency or accuracy of the data in the proposal. Considerable time and effort would be needed to update the information and conduct new analyses to bring the 1980 proposal to the point at which it would meet current standards, and to complete other procedural steps that would be associated with completing this discretionary action. Such an effort would come at the expense of critical habitat designations that the Service is required to make for other species. At the present time, we have a backlog of actions involving non-discretionary designations of critical habitat for approximately 475 species. These include actions that are mandated by court orders and court-approved settlement agreements, as well as actions necessary to implement the requirements of the Act pertaining to critical habitat designations. It will take us several years to clear this backlog, and during that time we also will need to meet non-discretionary requirements to designate critical habitat as additional species are listed. Meeting these requirements, for which we have no discretion, is a higher priority than taking discretionary actions.

Finally, we cannot justify withdrawing the proposed regulation. To withdraw the proposed regulation, we must have made a judicially reviewable finding that “there is not sufficient evidence to justify the action proposed by the regulation” (16 U.S.C. 1533(b)(6)(B)(ii)). We have not made such a finding and would need to compile and analyze all the existing available information in order to determine whether such a finding could be made. Such an effort would come at the expense of critical habitat designations that the Service is required to make for other species. As discussed above, we currently have a large backlog of non-discretionary critical habitat

designations, and meeting those requirements is a higher priority than taking discretionary actions.

Due to the discretion we have regarding the designation of critical habitat for species listed prior to the 1978 amendments to the Act, the staleness of the proposed rule, and our need to give priority to funding the large number of outstanding non-discretionary designations and to address new designations that will be required as additional species are listed, we find that the proposed designation of critical habitat for the unarmored threespine stickleback should not be made.

This finding means that Federal agencies no longer are required to confer with us, under section 7(a)(4) of the Act,

regarding any agency action that is likely to result in the destruction or adverse modification of the areas that were proposed for designation as critical habitat. The fact that we are making this finding and exercising our discretion not to designate critical habitat for the unarmored threespine stickleback does not, however, alter the protection this species and its habitat will continue to receive under the Act. Specifically, it does not alter the requirement of section 7(a)(2) of the Act that all Federal agencies must insure that actions they authorize, fund, or carry out are not likely to "jeopardize the continued existence" of a listed species. Further, the section 9 prohibition of take of the species, which applies to all land

ownerships, is independent of whether critical habitat is designated and is unchanged by this finding.

Authority

The authority for this action is section 4(b)(6)(A)(i)(II) of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1533(b)(6)(A)(i)(II)), Pub. L. 95-632, at 2(2), 92 Stat. 3751 (November 10, 1978), and Pub. L. 97-304, at 2(b)(2), 2(b)(4), 96 Stat. 1411, 1416 (October 13, 1982).

Dated: September, 11, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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