

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 28 and 52

Government procurement.

Dated: March 7, 2007

Ralph De Stefano

Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 28 and 52 as set forth below:

1. The authority citation for 48 CFR parts 28 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 28—BONDS AND INSURANCE

2. Amend section 28.203-3 by revising paragraphs (a)(1) and paragraph (d) introductory text to read as follows:

28.203-3 Acceptance of real property.

(a) * * *

(1) Evidence of title that is consistent with the requirements of Section 2 of the United States Department of Justice Title Standard 2001 at http://www.fws.gov/realty/doj_2001.pdf. Depending on the value of the property, contracting officers should consider requesting assistance from the agency-designated legal counsel to determine if the evidence of title is adequate.

* * * * *

(d) The following format, or any document substantially the same, shall be signed by all owners of the property and used by the surety and recorded in the local recorder's office when a surety pledges real estate on Standard Form 28, Affidavit of Individual Surety.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 52.228-11 by revising the date of the clause and the first sentence in paragraph (b)(2)(i) of the clause to read as follows:

52.228-11 Pledges of Assets.

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PLEDGES OF ASSETS (DATE)

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(b) * * *

(2) * * *

(i) Evidence of title that is consistent with the requirements of Section 2 of the United States Department of Justice Title Standard

2001 at http://www.fws.gov/realty/doj_2001.pdf * * *

[FR Doc. 07-1182 Filed 3-15-07; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AU75

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Peck's Cave Amphipod, Comal Springs Dryopid Beetle, and Comal Springs Riffle Beetle

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 (Service), announce the reopening of the comment period on the proposed designation of critical habitat for the Peck's cave amphipod (*Stygobromus pecki*), Comal Springs dryopid beetle (*Stygoparnus comalensis*), and Comal Springs riffle beetle (*Heterelmis comalensis*) (Comal springs invertebrates, or CSI) under the Endangered Species Act of 1973, as amended (Act), and the availability of the draft economic analysis of the proposed designation of critical habitat. The draft economic analysis forecasts future impacts associated with conservation efforts in areas proposed as critical habitat to be \$23.3 million over the next 20 years under scenario 1 (scenario description described in Background), or \$152 million under scenario 2 in undiscounted dollars (annualized dollars are estimated at \$1.2 million under scenario 1 and \$7.6 million under scenario 2). Future economic impacts associated with conservation efforts in areas proposed as critical habitat at a 3 percent discount rate are estimated to be \$17.1 million over the next 20 years under Scenario 1, or \$111.3 million under scenario 2 (annualized dollars are estimated at \$1.2 million under scenario 1 and \$7.5 million under scenario 2). Future economic impacts associated with conservation efforts in areas proposed as critical habitat at a 7 percent discount rate are estimated to be \$11.9 million over the next 20 years under scenario 1, or \$77.3 million under scenario 2 (annualized dollars are estimated at \$1.2 million under scenario 1 and \$7.4 million under scenario 2). It should be

noted that the majority of economic impacts quantified in this draft EA are jointly caused by eight endangered species, including the three CSI. Because all of these species reside in the same habitat, separating future impacts of CSI from those of the other listed species in the aquifer is not possible.

DATES: We will accept public comments until April 16, 2007.

ADDRESSES: If you wish to comment on the proposed rule or draft economic analysis, you may submit your comments and materials identified by RIN 1018-AU75, by any of the following methods:

1. *Mail or hand delivery/courier:* You may submit written comments and information to Robert T. Pine, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758.

2. *Fax:* You may fax your comments to (512) 490-0974.

3. *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the directions for submitting comments. In the event that our Internet connection is not functional, please submit your comments by one of the alternate methods mentioned above.

4. *E-mail:* Please submit electronic comments in an ASCII file format to FW2Comal@fws.gov and avoid the use of special characters and encryption. Please include "Attn: RIN 1018-AU75" 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 by calling our Austin Ecological Services Field Office at (512) 490-0057.

FOR FURTHER INFORMATION CONTACT: Robert T. Pine, Supervisor, Austin Ecological Services Field Office, at the address listed in **ADDRESSES** (telephone: (512) 490-0057; facsimile: (512) 490-0974). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877-8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments on the original proposed critical habitat designation (71 FR 40588; July 17, 2006) and on our draft economic analysis of the proposed designation. Copies of the draft economic analysis and the proposed rule for critical habitat designation are available on the internet at <http://www.fws.gov/southwest/es/>

Library/ or from the Austin Ecological Services Field Office at the address above. You may review comments and materials received and review supporting documentation used in preparation of this proposed rule by appointment during normal business hours, at the Austin Ecological Services Field Office (see **ADDRESSES**). We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why 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 seq.*), including whether it is prudent to designate critical habitat;

(2) Specific data on those specific areas that should be included in the designations that were identified as occupied at the time of listing that contain the features essential for the conservation of the species; and those specific areas that were not occupied by the species at the time it was listed but which have subsequently been identified as occupied and those unoccupied areas that are essential to the conservation of the species and should be included in the designations and why such areas are essential;

(3) Land-use designations and current or planned activities in, or adjacent to, the subject areas and their possible impacts on these species or proposed 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 in accommodating public concerns and comments;

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

(6) Any foreseeable environmental impacts directly or indirectly resulting from the proposed designation of critical habitat;

(7) Data supporting the need for subsurface vegetation (*e.g.*, roots that can penetrate into the aquifer) for sheltering, breeding, or feeding habitat for any or all of the listed invertebrates. If providing such data, please explain if the 50-foot (ft) distance appropriately defines the lateral extent of critical habitat to provide for the primary constituent elements (PCEs) related to the surface vegetation that produces the subsurface vegetation (*e.g.*, roots);

(8) Information on the extent of documented Comal Springs riffle beetles occurrences in Spring Lake;

(9) Whether there are data supporting the premise that any or all of the invertebrates are detritivores (detritus-feeding animals) in spring-influenced riparian zones;

(10) Whether there are any data documenting the need of any subsurface areas for breeding, feeding, or sheltering, or documenting the presence of any or all of the invertebrates in the subsurface areas;

(11) 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;

(12) Whether the economic analysis correctly assesses the effect on regional costs associated with land-use controls that could arise from the designation of critical habitat for these species;

(13) 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;

(14) Whether the economic analysis appropriately identifies all costs that could result from the designation of critical habitat for these species; and

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

Our final designation of critical habitat will take into consideration all comments and any additional information received, including all previous comments and information submitted during the initial comment period.

Please include "RIN 1018-AU75" 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 e-mail address FW2Comal@fws.gov will be unavailable after the public comment period terminates.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their names and home addresses, but if you wish us to consider withholding this information, you must state this prominently at the beginning of your comments. In addition, you must present rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted

invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. We will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives of or officials of organizations or businesses, available for public inspection in their entirety.

Background

We proposed to designate critical habitat for the Peck's cave amphipod, Comal Springs dryopid beetle, and Comal Springs riffle beetle on July 17, 2006 (71 FR 40588). The proposed critical habitat totaled about 38.5 acres (ac) (15.6 hectares (ha)) for the Peck's cave amphipod in Comal County, Texas; 39.5 ac (16.0 ha) for the Comal Springs dryopid beetle in Comal and Hays Counties, Texas; and 30.3 ac (12.3 ha) for the Comal Springs riffle beetle in Comal and Hays Counties, Texas. Pursuant to the terms of a settlement agreement, we will submit for publication to the **Federal Register** a final critical habitat designation for the Peck's cave amphipod, Comal Springs dryopid beetle, and Comal Springs riffle beetle by June 29, 2007.

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 impacts of specifying any particular area as critical habitat. Based on the July 17, 2006, proposed rule to designate critical habitat for the Peck's cave amphipod, Comal Springs dryopid beetle, and Comal Springs riffle beetle (71 FR 40588), we have prepared a draft economic analysis (EA) of the proposed critical habitat designation for the Peck's cave amphipod, Comal Springs dryopid beetle, and Comal Springs riffle beetle.

Our draft EA addresses the potential impacts of conservation efforts for the Peck's cave amphipod, Comal Springs dryopid beetle, and Comal Springs riffle beetle on activities occurring on lands proposed for or that may be affected by the proposed designation. The EA measures lost potential economic efficiency associated with water use activities, construction development, water quality, aquatic restoration, and administrative costs.

The draft EA considers the potential economic effects of actions relating to the conservation of the Peck's cave amphipod, Comal Springs dryopid beetle, and Comal Springs riffle beetle, including costs associated with sections 4, 7, and 10 of the Act and 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 Comal Springs invertebrates in the areas proposed as critical habitat. 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 draft EA 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, the draft EA estimates economic impacts to activities from 2006 to 2026 (20 years after the year of proposed 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 EA, as well as on all aspects of our proposal to designate critical habitat. We may revise the proposal, or its supporting documents, to incorporate or address new information received during this comment period. In particular, we may exclude an area from the final designation of critical habitat if the Secretary determines 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.

Under scenarios 1 and 2 in our draft EA, impacts associated with water use changes comprise the vast majority, or between 94 and 98 percent, of the total quantified impacts in the areas we have proposed for designation. Total permitted withdrawals from the Edwards Aquifer are to be reduced from approximately 549,000 acre-feet to 450,000 acre-feet, following a 1993 lawsuit concerning five endangered species in the Edwards Aquifer that share habitat with CSI. As soon as 2008, total permitted water withdrawals in the Edwards Aquifer may be further limited from the present 549,000 acre-feet per year to 400,000 acre-feet per year (scenario 1). It is also possible that, in dry years, additional restrictions may be imposed that will further limit aquifer withdrawals to 340,000 acre-feet (scenario 2). This draft EA examines social welfare and regional economic impacts that could result from these limits to water withdrawals in the

aquifer. It should be noted that the majority of economic impacts quantified in this draft EA are jointly caused by eight endangered species, including the three CSI. Because all of these species reside in the same habitat, separating future impacts of CSI from those of the other listed species in the aquifer is not possible.

We estimate costs related to conservation activities for the area proposed for designation of critical habitat for the Comal Springs invertebrates under sections 4, 7, and 10 of the Act to be approximately \$23.3 million over the next 20 years under scenario 1, or \$152 million under scenario 2 in undiscounted dollars (annualized dollars are estimated to be \$1.2 million under scenario 1 and \$7.6 million under scenario 2). Future economic impacts associated with conservation efforts in areas proposed as critical habitat at a 3 percent discount rate are estimated to be \$17.1 million over the next 20 years under scenario 1, or \$111.3 million under scenario 2 (annualized dollars are estimated to be \$1.2 million under scenario 1 and \$7.5 million under scenario 2). Future economic impacts associated with conservation efforts in areas proposed as critical habitat at a 7 percent discount rate are estimated to be \$11.9 million over the next 20 years under scenario 1, or \$77.3 million under scenario 2 (annualized dollars are estimated to be \$1.2 million under scenario 1 and \$7.4 million under scenario 2).

Required Determinations—Amended

In our July 17, 2006, proposed rule (71 FR 40588), 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 13132 and Executive Order 12988; the Paperwork Reduction Act; the National Environmental Policy 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 Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 13211, Executive Order 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. However, on the basis of our draft EA, we do not anticipate that the designation of critical habitat for these species would 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 proposed designation of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts under 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 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(s) thereof, in a designation constitutes our alternative regulatory 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 must 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 the Comal Springs invertebrates would affect a substantial number of small entities, we evaluated the entities potentially impacted within particular types of economic activities (e.g., aquatic restoration, changes in water use, and construction and development activities). We considered each industry or category individually to determine the impacts. 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.

In Chapters 2 and 3 of our draft EA, we focus on small entities that may bear the regulatory costs. Of the three

affected activities discussed in the economic analysis, (1) Aquatic restoration, (2) changes in water use, and (3) construction and development activities, the analysis determines that only impacts to construction and development activities are forecast to be borne in part by small entities.

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.

Construction and Development Activities. The draft EA concludes that the most likely location for development activities within the proposed critical habitat designation is on two parcels in the Comal Springs unit. The analysis assumes that the private owners of developable lands in the proposed critical habitat designation impacted by future conservation efforts for the Peck's cave amphipod, Comal Springs dryopid beetle, and Comal Springs riffle beetle will be developers. This analysis estimates that one developer (0.3 percent of small developers) is likely to develop the affected parcels. Since 98 percent of the developers in the region are considered small, this analysis assumes that the one affected developer will be small. The draft economic analysis estimates that two residential housing units could be built within proposed critical habitat by one small developer over the next 20 years. Impacts to the developer are estimated to include conservation efforts, such as reducing sedimentation, monitoring, appropriate equipment staging, and minimizing disturbance to the water body. Costs are estimated to be approximately 0.001 percent of annual sales (Draft Economic Analysis 2007, Appendix B, p. B8). From this analysis, we have determined that this proposed designation will not have an effect on a substantial number of small businesses that are part of residential and commercial development nor will it result in a significant effect to the annual sales of these small businesses impacted by this proposed designation, because only one developer (0.3 percent of small developers) may be affected and the approximate impacts to this one developer would be 0.001 percent of typical annual sales over the next 20 years.

Executive Order 13211—Energy Supply, Distribution, and Use

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 (Draft Economic Analysis 2007, p. B9). 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" and "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, or 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 draft economic analysis discusses potential impacts of critical habitat designation for the Peck's cave amphipod, Comal Springs dryopid beetle, and Comal Springs riffle beetle on water management activities, administration activities, residential and commercial development activities, and aquatic restoration activities. Impacts on small governments are not anticipated, or they are anticipated to be passed through to consumers (Draft Economic Analysis 2007, Appendix B). As such, a Small Government Agency Plan is not required.

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 proposing critical habitat for the Peck's cave amphipod, Comal Springs dryopid

beetle, and Comal Springs riffle beetle in a takings implications assessment. The takings implications assessment concludes that this proposed designation of critical habitat for these Comal Springs invertebrates does not pose significant takings implications.

Author

The primary author of this notice is the staff of the Austin Ecological Services Field Office.

Authority

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

Dated: March 8, 2007.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7-4802 Filed 3-15-07; 8:45 am]

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