



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS-R2-ES-2013-0064]

[4500030114]

RIN 1018-AZ68

Endangered and Threatened Wildlife and Plants; Critical Habitat Map for the Fountain Darter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are correcting the critical habitat map for the fountain darter (*Etheostoma fonticola*) in our regulations. We are taking this action to ensure regulated entities and the general public have an accurate critical habitat map for the species. This action does not change the designated critical habitat for the fountain darter.

DATES: This rule is effective [INSERT DATE OF FEDERAL REGISTER PUBLICATION].

ADDRESSES: This final rule is available on the Internet at <http://www.regulations.gov> under Docket No. FWS-R2-ES-2013-0064.

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758; telephone 512-490-0057; or 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.

SUPPLEMENTARY INFORMATION: Section 17.95 of the regulations in title 50 of the Code of Federal Regulations (CFR) provides critical habitat information, including maps and textual descriptions, for endangered and threatened wildlife.

On July 14, 1980, we published a final rule (45 FR 47355) designating critical habitat for the fountain darter; that critical habitat entry provided both a correct map and correct textual description. However, starting with the 1986 publication, and continuing in the 1989 publication through the current edition, of the CFR, the critical habitat entry for the fountain darter includes an incorrect critical habitat map for that species. Instead of showing the correct map, the fountain darter's entry shows the critical habitat map for the San Marcos gambusia (*Gambusia georgei*). The textual description of the designated critical habitat for the fountain darter has remained correct since its 1980 publication, and the incorrect map does not match the correct textual description of critical habitat.

This final rule removes the incorrect critical habitat map, and adds in its place the correct critical habitat map, for the fountain darter. It does not change the designated critical habitat for the fountain darter, as, according to 50 CFR 17.94(b)(2), for critical habitat designations published and effective on or prior to May 31, 2012, the map provided by the Secretary of the Interior is for reference purposes to guide Federal Agencies and other interested parties in locating the general boundaries of the critical habitat. In such cases, the map does not, unless otherwise indicated, constitute the definition of the boundaries of a critical habitat.

This action is administrative in nature. We are providing regulated entities and the general public with an accurate critical habitat map, which is for reference purposes only, for the fountain darter. This is a final rule. In accordance with 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, we may make this rule effective in less than 30 days if we have “good cause” to do so. The rule provides an accurate map, and this action will benefit regulated entities and the general public. Therefore, we find that we have “good cause” to make this rule effective immediately.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

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 (Pub. L. 104-121), 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 (that is, 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.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and have determined that this action will not have a significant economic impact on a substantial number of small entities. This rule corrects the map, which is for reference purposes only, in the critical habitat entry for the fountain darter. We are taking this action to ensure that regulated entities and the general public have an accurate critical habitat map for this species. This rule will not result in any costs or benefits to any entities, large or small.

Therefore, we certify that, because this rule will not have a significant economic effect on a substantial number of small entities, a regulatory flexibility analysis is not required.

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). It will not have a significant economic impact on a substantial number of small entities.

a. This rule does not have an annual effect on the economy of \$100 million or more.

There are no costs to any entities resulting from this correction to the regulations.

b. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This action does not affect costs or prices in any sector of the economy.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule will not “significantly or uniquely” affect small governments in a negative way. A small government agency plan is not required.

b. This rule will not produce a Federal mandate of \$100 million or greater in any year. It is not a “significant regulatory action” under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule does not contain a provision for taking of private property.

Federalism

This rule does not have sufficient Federalism effects to warrant preparation of a federalism impact summary statement under E.O. 13132.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This rule does not contain any information collection that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We evaluated the environmental impacts of the changes to the regulations, and determined that this rule does not have any environmental impacts.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian

Tribes and have determined that this rule will not interfere with Tribes' ability to manage themselves or their funds. This rule offers Tribes and the general public an accurate critical habitat map for the fountain darter.

Energy Supply, Distribution, or Use

E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is administrative, it is not a significant regulatory action under E.O. 12866, and it will not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17 of subchapter B, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 1531-1544; and 4201-4245, unless otherwise noted.

2. In §17.95(e), the entry for “Fountain Darter (*Etheostoma fonticola*),” is amended by removing the map and by adding the following map in its place.

§ 17.95 Critical habitat---wildlife.

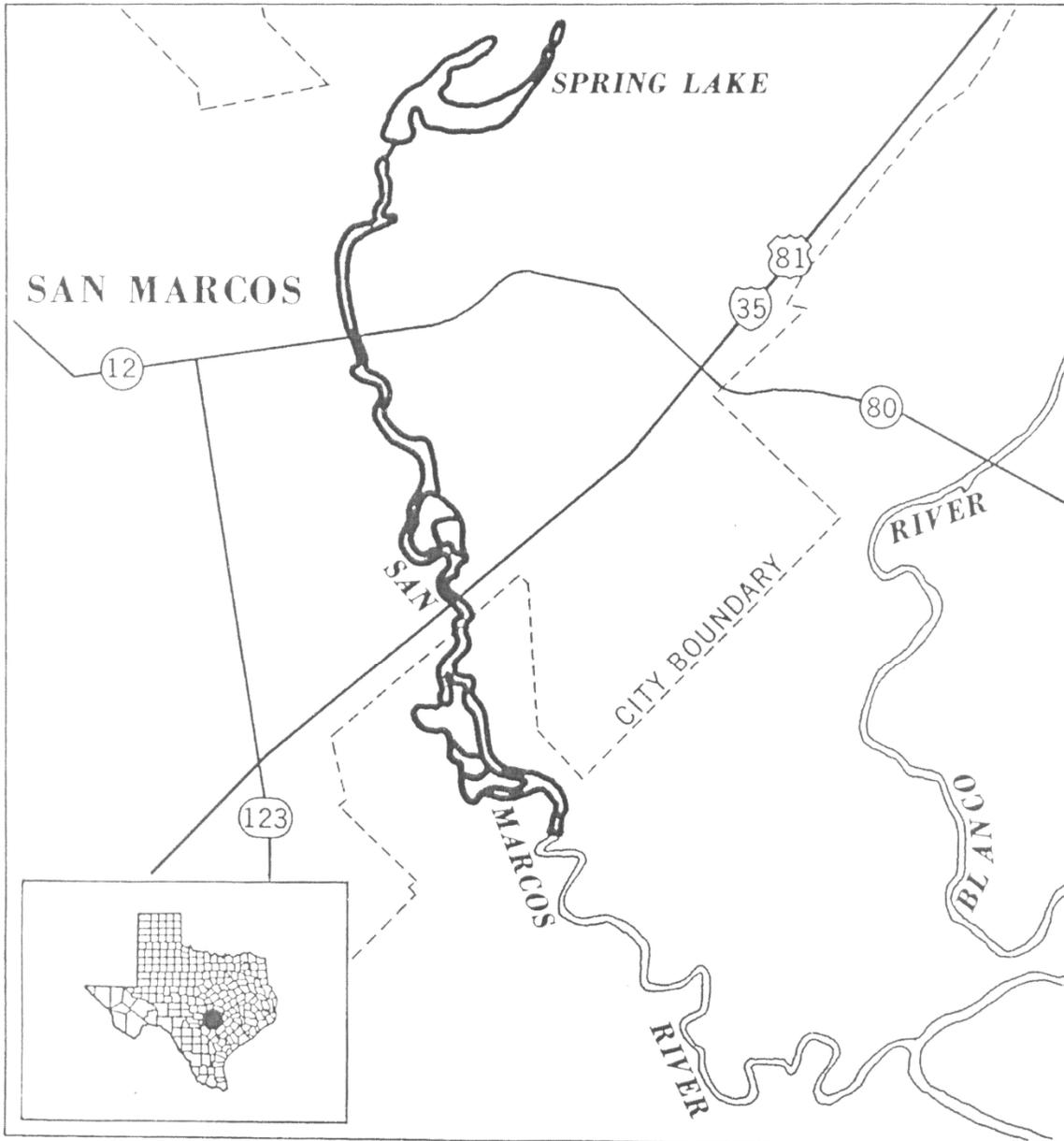
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(e) *Fishes.*

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FOUNTAIN DARTER

Hays County, TEXAS



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Dated: June 20, 2013

Signed: Rachel Jacobson

Principal Deputy Assistant Secretary Fish and Wildlife and Parks

[Billing Code 4310-55]

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