

Fish and Wildlife Issues Clarification

Compiled By Staff

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Responding to federal court orders, the U.S. Fish and Wildlife Service has clarified the economic and non-economic exclusions in the 2005 final rule designating critical habitat for 15 vernal pool species.

The clarification did not result in any additions; deletions or other changes to the areas previously designated as critical habitat.

Published in the Federal Register, the clarification complies with two orders by the U. S. District Court for the Eastern District of California. The orders on Nov. 1, 2006, and clarified in an order on Jan. 24, 2007, were in response to several lawsuits challenging portions of the Service's Aug. 11, 2005 final rule designating 858,846 acres as critical habitat for 15 vernal pool species that are protected under the Endangered Species Act. The critical habitat occurs in one Oregon and 30 California counties.

Lawsuits challenging the 2005 rule by differing interests were consolidated into one action (Home Builders Association of Northern California et al v. U.S. Fish and Wildlife Service et al, Case No. CIV S-05-0629 WBS-GGH). The Home Builders Association of Northern California and the Butte Environmental Council filed the suits.

In the two orders, the Court upheld the rationale and methodology employed by the Service in writing its 2005 rule, and dismissed most causes of action by plaintiffs. The Court remanded the 2005 rule for consideration of the recovery benefits of critical habitat pursuant to the Gifford Pinchot decision. The Court provided a brief 120-day period for the Service to complete its reconsideration. The Court did not direct the Service to conduct a public hearing or to solicit additional information during that short period.

The clarification explains the Service's considerations in excluding proposed critical habitat units from the 2005 rule. The Service concludes that the exclusions will not hinder recovery of vernal pool species, and in some aspects will contribute to an improved climate for conservation measures.

The clarification also notes that, subsequent to the 2005 rule, the Service received four petitions to revise critical habitat. Under terms of the remand, the Service reanalyzed the information in those petitions and concluded that the petitions do not contain substantial new information that would warrant revision of critical habitat.

