



**OFFICE OF ADVOCACY
U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, DC 20416**

October 12, 2004

Via Facsimile and Electronic Mail

Mr. Jim Bartel
Field Supervisor
U.S. Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, CA 92009

Re: Notice of Availability of the Draft Economic Analysis on the Proposed Critical Habitat for the Santa Ana Sucker (69 Fed. Reg. 58,876, October 1, 2004).

Dear Mr. Bartel:

We are writing to comment on the U.S. Fish and Wildlife Service's (FWS) *Notice of Availability of the Economic Analysis on the Proposed Critical Habitat for the Santa Ana Sucker*.¹ The notice informs the public of the economic analysis for a designation of critical habitat under the Endangered Species Act (ESA), as well as containing the small business impact determinations required by the Regulatory Flexibility Act (RFA).

The Office of Advocacy (Advocacy)² believes that the FWS has not fulfilled its statutory duties with the above referenced notice. The notice allows for less than the sixty-day comment period provided for by FWS' regulations³ and less than the minimum thirty-day comment period the Administrative Procedure Act (APA) provides for every Federal agency rulemaking.⁴ Advocacy believes that the sixty-day and thirty-day comment periods are intended to benefit decisions made by the FWS. Publishing the economic analysis for eleven calendar days short changes the public's ability to engage in the FWS' decision making process.

¹ *Notice of Availability of the Economic Analysis on the Proposed Critical Habitat for the Santa Ana Sucker*, 69 Fed. Reg. 58876 (2004).

² Advocacy was established pursuant to Pub. L. 94-305 to represent the views of small business before Federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA), so the views expressed by Advocacy do not necessarily reflect the views of the SBA or the Administration.

³ 50 C.F.R. 424.16(c)(2).

⁴ 5 U.S.C. § 553. FWS has claimed a good cause exemption from the APA's notice and comment requirements. 69 Fed. Reg. 8839, 8840. However, Advocacy notes that FWS was ordered to complete a rulemaking in February of 2003 and had until February of 2004 to publish an economic analysis, yet the agency did not do so.

Of greater concern to Advocacy is the potential for critical habitat designations that rush small business impact analysis without adequate time for interested parties to comment. We trust that scientific information and other components of the FWS proposed critical habitat designation (with the exception of economic impact analysis) for the Santa Ana sucker were improved by comments received while the proposal was open for ninety-days of public comments. The Office of Advocacy will remain vigilant in our insistence that economic analysis, required by both the RFA and the ESA, maintain an equal footing with scientific information shared for public comment by FWS during critical habitat designations.

Thank you for your consideration and please do not hesitate to contact Michael See with any further questions at (202) 619-0312 or Michael.See@sba.gov.

Sincerely,

/s

Thomas M. Sullivan
Chief Counsel for Advocacy

/s

Michael R. See
Assistant Chief Counsel

Cc: The Honorable Craig Manson, Assistant Secretary of the Interior for Fish Wildlife and Parks, U.S. Department of the Interior
The Honorable John D. Graham, Administrator, Office of Information and Regulatory Affairs