

inconsistent with that of a geographically distinct subspecies. The authors presented their data as evidence that the species is expanding its range from a southern Baja California, Mexico, refugium northward into the southern coastal regions of California. The authors argue that morphological variations previously described in taxonomic treatments were not genetically based, and therefore, subspecific divisions of the species are not supported by the genetic studies conducted by the researchers.

Zink *et al.* (2000) present important new information concerning genetic variability within the California gnatcatcher. Given the uncertainty regarding California gnatcatcher taxonomy that this paper introduces, we have initiated an evaluation to determine whether populations of the California gnatcatcher (*Poliophtila californica*) species in the United States meet the definition of a DPS pursuant to our 1996 joint U.S. Fish and Wildlife Service and National Marine Fisheries Service Policy Regarding the Recognition of Distinct Vertebrate Populations (61 FR 4722).

We are reopening the comment period to allow all interested parties to comment on these issues.

#### References Cited

A complete list of all references cited herein, as well as others used in the development of the proposed DPS, are available upon request from the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

#### Author

The primary authors of this notice are the staff of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

#### Authority

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

Dated: March 26, 2004.

#### Craig Manson,

*Assistant Secretary for Fish and Wildlife and Parks.*

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

**RIN 1018-AI71 and 1018-AI72**

#### **Endangered and Threatened Wildlife and Plants; Notice of the Availability of Draft Economic Analyses, and of a Public Hearing for the Proposed Designations of Critical Habitat for the Coastal California Gnatcatcher (*Poliophtila californica californica*) and the San Diego Fairy Shrimp (*Branchinecta sandiegonensis*)**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rules; notice of availability of draft economic analyses, reopening of public comment periods, and notice of public hearings.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service) announce the availability of a draft economic analysis of the proposed designation of critical habitat for the coastal California gnatcatcher (*Poliophtila californica californica*), the availability of a draft economic analysis of the proposed critical habitat designation for the San Diego fairy shrimp, and the reopening of the public comment periods on the proposed rules to designate critical habitat for the coastal California gnatcatcher and the San Diego fairy shrimp. The comment period will provide the public, Federal, State, and local agencies, and Tribes with an opportunity to submit written comments on these two proposals and their respective draft economic analyses. Comments previously submitted for these proposed rules need not be resubmitted as they have already been incorporated into the public record and will be fully considered in any final decision.

We are also announcing that public hearings will be held on both proposed rules and their respective draft economic analyses.

**DATES:** The public comment period for these two proposed rules is now reopened, and we will accept comments and information until 5 p.m. May 10, 2004. Any comments received after the closing date may not be considered in the final decisions on these actions.

The public hearings will take place on April 29, 2004, from 1 p.m. to 3 p.m. and from 6 p.m. to 8 p.m. in Carlsbad, California. Both public hearings will address both proposed rules.

**ADDRESSES:** The public hearings will be held at the Carlsbad Fish and Wildlife

Office, 6010 Hidden Valley Road, Carlsbad, California.

Written comments and materials may be submitted to us by any one of the following methods:

1. You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92009.

2. You may hand-deliver written comments and information to our Carlsbad Fish and Wildlife Office at the above address, or fax your comments to 760/431-9618.

Comments and materials received, as well as supporting documentation used in preparation of the proposed critical habitat rules for the coastal California gnatcatcher and San Diego fairy shrimp, will be available for public inspection, by appointment, during normal business hours at the above address. You may obtain copies of the draft economic analyses for the coastal California gnatcatcher and San Diego fairy shrimp by contacting the Carlsbad Fish and Wildlife Office at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone 760/431-9440; facsimile 760/431-9618).

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Comments Solicited**

We solicit comments or suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning our proposed designation of critical habitat and/or the draft economic analysis of the proposed designation of critical habitat for both the coastal California gnatcatcher and San Diego fairy shrimp. With regard to the proposed rules and draft economic analyses for the coastal California gnatcatcher and San Diego fairy shrimp, we particularly seek comments concerning:

(1) Specific information on the amount and distribution of the gnatcatcher and its habitat, and which habitat is essential to the conservation of this species and why; and

(2) Whether habitat currently preserved in various conservation areas within the range of the coastal California gnatcatcher is sufficient for the conservation of the species;

(3) The reasons why any habitat should or should not be determined to be critical habitat for the coastal California gnatcatcher or the San Diego fairy shrimp as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats

to these species resulting from designation;

(4) Land use designations and current or planned activities in the subject areas and their possible impacts on areas proposed as critical habitat for these two species;

(5) Any foreseeable economic, national security, or other impacts resulting from the proposed designation of critical habitat for the coastal California gnatcatcher or San Diego fairy shrimp, in particular, any impacts on small entities or families;

(6) Do both economic analyses adequately address the likely effects and resulting costs arising from the California Environmental Quality Act and other State laws as a result of the proposed critical habitat designations;

(7) Whether both economic analyses make appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat for the coastal California gnatcatcher and the San Diego fairy shrimp;

(8) Any economic or other impacts associated with designating critical habitat on reserve, preserve, or other conservation lands within the boundaries of approved habitat conservation plans (HCP) that have been developed through cooperative, voluntary partnerships;

(9) The benefits of including or excluding military lands covered by an Integrated Natural Resource Management Plan and Tribal lands, NCCP lands, HCP lands, or any other lands covered by an adequate management plan;

(10) Do the analyses adequately address the indirect effects, *e.g.*, property tax losses due to reduced home construction, losses to local business due to reduced construction activity;

(11) Whether the economic analyses appropriately identify land and water use regulatory controls that could result from the proposed critical habitat designations for these species;

(12) Do the analyses accurately define and capture opportunity costs;

(13) Whether the economic analyses correctly assess the effect on regional costs (*e.g.*, housing costs) associated with land use controls that could arise from the designation of critical habitat for these species;

(14) Do the analyses adequately address the likelihood of "stigma effects" and costs associated with the proposed designations;

(15) Whether the designation of critical habitat for either the coastal California gnatcatcher or San Diego fairy shrimp will result in disproportionate economic or other impacts to specific

areas that should be evaluated for possible exclusion from the final designations;

(16) The economic analyses should identify all costs related to the designation of critical habitat for the coastal California gnatcatcher and San Diego fairy shrimp. Those designations were intended to take place at the time these species were listed. As a result, the assumptions in the economic analyses should be consistent with the Service's listing regulations. Do these analyses achieve that consistency? And

(17) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments.

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 home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments received will be available for public inspection, by appointment, during normal business hours at the above address.

#### Background

On April 24, 2003, we published a proposed rule in the **Federal Register** (68 FR 20228) to designate critical habitat for the coastal California gnatcatcher on approximately 495,795 acres (ac) (200,595 hectares (ha)) of land in Ventura, Los Angeles, Orange, Riverside, San Bernardino, and San Diego counties. The original comment period on the coastal California gnatcatcher proposed critical habitat rule closed on June 23, 2003.

We published a proposed rule in the April 22, 2003, edition of the **Federal Register** (68 FR 19888) to designate critical habitat for the San Diego fairy shrimp on approximately 6,098 ac (2,468 ha) of land in Orange and San Diego counties. The original comment period on the San Diego fairy shrimp

proposed critical habitat rule also closed on June 23, 2003.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Endangered Species Act of 1973, as amended (Act), with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that we designate or revise critical habitat on the basis of the best scientific and commercial data available, after taking into consideration economic and any other relevant impacts of specifying any particular area as critical habitat. Based upon the April 24, 2003, proposed rule to designate critical habitat for coastal California gnatcatcher, we have prepared a draft economic analysis of the proposed critical habitat designation. The economic analysis estimates that the proposed designation may result in a potential economic cost, resulting from section 7 of the Act, of approximately \$915 million through the year 2025, with an estimated annualized cost of \$114 million. Unit 10 of the proposed designation lies entirely within the proposed planning area of the Western Riverside County MSHCP. Based on very large projected growth estimates and other factors, the economic analysis suggests that approximately \$460 million of the total \$915 million estimated costs through 2025 occur in this unit.

We have also prepared a draft economic analysis of the April 22, 2003, proposed rule to designate critical habitat for the San Diego fairy shrimp. The draft analysis of this proposed designation estimates that potential economic costs associated with section 7 of the Act range up to \$54.6 million over the next 20 years.

Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to a request from the Natural Resources Defense Council, and a separate request from Citizens Against Recreational Eviction, we will conduct public hearings on the date and at the address described in the **DATES** and **ADDRESSES** sections above.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to us at the hearings. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits on the length of written comments submitted to us. If you have any

questions concerning the public hearings, please contact the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section). This notice is being published in the **Federal Register** to provide the public and interested parties with a minimum of 15 days notification about the public hearings.

Persons needing reasonable accommodations in order to attend and participate in the public hearings should contact Patti Carroll at 503/231-2080 as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing date. Information regarding this proposal is available in alternative formats upon requests.

We are reopening the comment period to allow all interested parties to comment simultaneously on the proposed rules for the coastal California gnatcatcher and San Diego fairy shrimp, potential exclusions and the draft economic analyses. The draft analyses are available by contacting the Carlsbad Fish and Wildlife Office as identified in the **ADDRESSES** section above.

#### References Cited

A complete list of all references cited herein, as well as others used in the development of the proposed critical habitat designations and the draft economic analyses of the proposed critical habitat designations for the coastal California gnatcatcher and San

Diego fairy shrimp, are available upon request from the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section).

#### Author

The primary authors of this notice are the staff of the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section).

#### Authority

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

Dated: March 30, 2004.

#### Paul Hoffman,

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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