

and format of item data reported to the SC for sale must be in conformance with standards developed by the FAS ESC.

(c) Provide all post-sale data and metrics to the FAS Planning Office in care of GSA MT using format and process developed by the FAS ESC no later than [date six months after publication of the final rule in the **Federal Register**].

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AI71 and RIN 1018-AI72

#### Endangered and Threatened Wildlife and Plants; Reopening of Public Comment Periods for the Proposed Designations of Critical Habitat for the Coastal California Gnatcatcher and the San Diego Fairy Shrimp

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

**ACTION:** Proposed rules; reopening of public comment periods.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service) announce the reopening of the public comment period on our April 24, 2003, proposed rule (68 FR 20228) to designate critical habitat for the coastal California gnatcatcher (*Poliophtila californica californica*) and our April 22, 2003, proposed rule (68 FR 19888) to designate critical habitat for the San Diego fairy shrimp (*Branchinecta sandiegonensis*). The comment period will provide the public and Federal, State, and local agencies and Tribes with an opportunity to submit in writing updated comments and information on these species and associated habitat, the proposed critical habitat designations, and respective draft economic analyses. Comments relevant to issues identified for consideration in the April 22 and April 24, 2003, proposed critical habitat rules and the April 8, 2004, notice of availability of the draft economic analyses for these species that were previously submitted during one of the prior public comment periods need not be resubmitted as they have already been incorporated into the public record and will be fully considered in any final decision. Comments relevant to issues identified in the April 8, 2004, **Federal Register** notice (69 FR 18515) reopening the comment period on the proposed determination of a Distinct Vertebrate Population Segment for the California

gnatcatcher also need not be resubmitted as that determination will be made separately from the critical habitat designations for the coastal California gnatcatcher and San Diego fairy shrimp.

**DATES:** We will accept comments and information until May 3, 2007. Any comments received after the closing date may not be considered in the final decisions on these proposals.

**ADDRESSES:** If you wish to comment, you may submit your comments and materials on these proposals to us by any one of the following methods:

1. You may submit written comments and information to Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA 92011.

2. You may hand-deliver written comments and information to the Carlsbad Fish and Wildlife Office at the above address.

3. You may send comments by facsimile to 760-431-5901.

4. You may send comments by electronic mail (e-mail) to [FW8cfwocomments@fws.gov](mailto:FW8cfwocomments@fws.gov). Please include "Attn: RIN 1018-AI71 and RIN 1018-AI72" in the subject line of your e-mail and your name and address in the body of your message. If you do not receive a confirmation from the system that we have received your message, contact us directly by telephone at 760-431-9440.

5. You may go to the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Comments and materials received, as well as supporting documentation used in the preparation of these proposed rules, will be available for public inspection, by appointment, during normal business hours at the Carlsbad Fish and Wildlife Office at the above address (telephone 760-431-9440).

Copies of the proposed rule and draft economic analysis for the coastal California gnatcatcher and San Diego fairy shrimp are available on the Internet at <http://www.fws.gov/Carlsbad>. You may also request copies of these documents by contacting the Carlsbad Fish and Wildlife Office at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Tannika Engelhard, Branch Chief, Listing, Carlsbad Fish and Wildlife Office (telephone 760-431-9440). Persons who use a telecommunications device for the hearing impaired (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

#### Public Comments Solicited

We are soliciting comments from the public, governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning events that have occurred since the April 2003 publications of the proposed designations of critical habitat for the coastal California gnatcatcher and San Diego fairy shrimp and the April 2004 publications of the draft economic analyses of the proposed designations for both species and any new information relevant to the status of the species and their essential habitats.

With regard to the proposed rule and draft economic analysis for the coastal California gnatcatcher, we particularly seek comments concerning:

(1) Land use designations and current or planned activities in the subject areas and their possible impacts on areas proposed as critical habitat for the coastal California gnatcatcher, including new information regarding areas proposed as critical habitat that may have lost coastal sage scrub as a result of development or other land use;

(2) Approval and issuance of an incidental take permit under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act), for the Orange County Southern Subregion Habitat Conservation Plan (HCP);

(3) Progress in the development and/or implementation of other regional HCPs, including the Natural Community Conservation Plan/HCP for the City of Rancho Palos Verdes in Los Angeles County, CA, and the Western Riverside County Multiple Species HCP;

(4) Effects of the large wildfires that occurred in October 2003 and more recently on the coastal sage scrub habitat in Ventura, Los Angeles, Riverside, San Bernardino, and San Diego counties; and

(5) Publication of new biological information regarding the effects of wildfires from 2003 to the present or other relevant biological publications addressing the status and recovery of sage scrub habitat and conservation of the coastal California gnatcatcher.

With regard to the proposed designation of critical habitat for the San Diego fairy shrimp, we particularly seek comments concerning:

(1) Land use designations and current or planned activities in the subject areas and their possible impacts on areas proposed as critical habitat for the San Diego fairy shrimp, including new information regarding areas proposed as critical habitat that may have lost vernal pool habitat as a result of development;

(2) Information regarding newly identified vernal pools that were not

previously known to support the San Diego fairy shrimp and whether these areas are essential to the conservation of the species, and why; and

(3) The October 13, 2006, ruling by the U.S. District Court for the Southern District of California that enjoined the incidental take permit for seven vernal pool species (including the San Diego fairy shrimp) issued to the City of San Diego under the City's Subarea Plan for the Southwestern San Diego County Multiple Species Conservation Program (MSCP), and how areas within the boundaries of the City of San Diego's Subarea Plan of the MSCP that have been proposed for exclusion from critical habitat for the San Diego fairy shrimp should be evaluated in light of the Court's decision.

With regard to the proposed designation of critical habitat for both the coastal California gnatcatcher and the San Diego fairy shrimp, we particularly seek comments concerning any new information regarding costs associated with the proposed designations of critical habitat for these species, and whether the 2004 draft economic analyses made appropriate assumptions regarding likely regulatory changes, indirect effects (e.g., property tax losses due to reduced home construction), opportunity costs, and regional costs associated with land use controls that could arise from the designation of critical habitat for the coastal California gnatcatcher and San Diego fairy shrimp.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

### Background

On October 24, 2000, we published a final rule designating approximately 513,650 ac (207,890 ha) of land in portions of Los Angeles, Orange, Riverside, San Bernardino, and San Diego counties as critical habitat for the coastal California gnatcatcher (65 FR 63680). A final rule designating approximately 4,025 ac (1,629 ha) of land in Orange and San Diego counties as critical habitat for the San Diego fairy shrimp was published in the **Federal Register** on October 23, 2000 (65 FR 63438). Following the publication of these final rules, several lawsuits were filed against the Service by multiple

parties, including the Natural Resources Defense Council (NRDC), Building Industry Association of Southern California, National Association of Home Builders, Foothill/Eastern Transportation Corridor, and Rancho Mission Viejo, L.L.C. (*NRDC v. U.S. Dept. of Interior*, CV-99-2496 (C.D.Cal., filed 12/20/00); *Building Industry Association of Southern California et al. v. Norton*, CV 01-7028 (D.C.C., filed 1/17/01), and *Rancho Mission Viejo L.L.C. v. Babbitt*, CV 01-8412 (D.D.C., filed 12/28/00)), challenging the critical habitat designations for the coastal California gnatcatcher and/or San Diego fairy shrimp. On June 11, 2002, the U.S. District Court for the Central District of California granted our request for a remand of the coastal California gnatcatcher and San Diego fairy shrimp critical habitat designations so that we could reconsider their associated economic analyses. For more information about the litigation history associated with these critical habitat designations, please see the Previous Federal Action sections of the April 24, 2003, proposed rule for the coastal California gnatcatcher (68 FR 20228) and the April 22, 2003 proposed rule for the San Diego fairy shrimp (68 FR 19890).

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 Service 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.

We accepted public comments on these two proposed rules until June 23, 2003. On April 8, 2004, we published a notice in the **Federal Register** announcing the availability of draft economic analyses for the proposed designations, reopening the public comment periods on our proposed rules, and announcing the scheduling of public hearings on our proposed critical habitat designations and draft economic analyses for the coastal California gnatcatcher and San Diego fairy shrimp. Public hearings were conducted on April 29, 2004, from 1 to 3 p.m. and from 6 to 8 p.m. in Carlsbad, California. The second public comment period closed on May 10, 2004. The public comment period for the coastal California gnatcatcher and San Diego

fairy shrimp proposed critical habitat rules is again reopened, and we will accept comments and information until May 3, 2007. Any comments received after the closing date may not be considered in the final decisions on these proposals.

The Service initiated work on the final critical habitat rules for the coastal California gnatcatcher and the San Diego fairy shrimp, but due to other priorities we did not finalize the designations. On February 8, 2007, a motion was filed by the Plaintiffs requesting the Court to direct us to finalize critical habitat designations for the coastal California gnatcatcher and San Diego fairy shrimp. We reached an agreement with the Plaintiffs whereby final designations would be completed on or before November 2, 2007. This settlement agreement has been submitted to the Court for approval.

Areas currently designated as critical habitat for the coastal California gnatcatcher and San Diego fairy shrimp will remain in place until such time as new final regulations for these species become effective.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the 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, national security, and any other relevant impacts of specifying any particular area as critical habitat. The draft economic analysis for the proposed rule to designate critical habitat for the coastal California gnatcatcher estimated 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. In the development of a final rule, we will evaluate these potential economic impacts and may exclude specific areas from the final designation on the basis of economics, conservation programs and partnerships, or other factors pursuant to section 4(b)(2) of the Act. Any such exclusion would result in a reduction of the potential economic impacts of this designation.

Section 318 of the National Defense Authorization Act for FY04 (Pub. L. 108-136), amended the Act by adding a new section 4(a)(3)(B) that prohibits the Service from designating as critical habitat any lands or other geographical areas owned or controlled by the

Department of Defense, or designated for its use, that are subject to an Integrated Natural Resources Management Plan prepared under section 101 of the Sikes Act Improvement Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is being proposed for designation. In the development of the final designation of critical habitat each species, the areas proposed will be reviewed to determine if the application of section 4(a)(3)(B) of the Act may be appropriate.

We 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, with a potential annualized impact of \$7.2 million.

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 and the draft economic analyses and to provide new information regarding the species and their essential habitats and events that have occurred since the publication of the proposed rules in April 2003 and release of the draft economic analyses in April 2004.

#### References Cited

A complete list of all references used in the development of the proposed

critical habitat designations for the coastal California gnatcatcher and San Diego fairy shrimp is 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 22, 2007.

**David M. Verhey,**

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

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