requirements specifically set forth in law.'' (See Section 201). Section 202 of the Act further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement * * *'' detailing the effect on State, local and tribal governments and the private sector. This response to the petitions for reconsideration of the final rule will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' *See* 66 FR 28355; May 22, 2001. Under the Executive Order a ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this response to the petitions for reconsideration of the final rule in accordance with Executive Order 13211. FRA has determined that this regulatory action is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of the Executive Order.

Privacy Act

Anyone is able to search the electronic form of all public submissions to any of our dockets by the name of the individual making the submission (or signing the submission, if made on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or by visiting http://dms.dot.gov.

List of Subjects in 49 CFR Part 214

Bridges, Occupational safety and health, Penalties, Railroad safety, Reporting and record keeping requirements.

The Final Rule

■ In consideration of the foregoing, chapter II, subtitle B of title 49, Code of Federal Regulations is amended as follows:

PART 214—[AMENDED]

■ 1. The authority citation for part 214 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107 and 49 CFR 1.49.

■ 2. Section 214.507 is amended by revising paragraph (a)(4) to read as follows:

§ 214.507 Required safety equipment for new on-track roadway maintenance machines.

(a) * * *

(4) A windshield with safety glass, or other material with similar properties, if the machine is designed with a windshield. Each new on-track roadway maintenance machine designed with a windshield shall also have power windshield wipers or suitable alternatives that provide the machine operator an equivalent level of vision if windshield wipers are incompatible with the windshield material;

* * * * *

■ 3. Section 214.513 is amended by revising paragraph (a) to read as follows:

§ 214.513 Retrofitting of existing on-track roadway maintenance machines; general.

(a) Each existing on-track roadway maintenance machine shall have a safe and secure position with handholds, handrails, or a secure seat or bench position for each roadway worker transported on the machine. Each position shall be protected from moving parts of the machine.

* * * * *

■ 4. Section 214.517 is amended by revising paragraph (b) as follows and removing paragraph (g):

§ 214.517 Retrofitting of existing on-track roadway maintenance machines manufactured on or after January 1, 1991.

* * * * *

(b) An operative heater, when the machine is operated at an ambient temperature less than 50 degrees Fahrenheit and is equipped with, or has been equipped with, a heater installed by the manufacturer or the railroad.

* * * * *

■ 5. Section 214.518 is amended by revising it to read as follows:

§ 214.518 Safe and secure positions for riders.

On or after March 1, 2004, a roadway worker, other than the machine operator, is prohibited from riding on any on-track roadway maintenance machine unless a safe and secure position for each roadway worker on the machine is clearly identified by stenciling, marking, or other written notice.

■ 6. Section 214.521 is amended by revising it to read as follows:

§ 214.521 Flagging equipment for on-track roadway maintenance machines and hi-rail vehicles.

Each on-track roadway maintenance machine and hi-rail vehicle shall have on board a flagging kit that complies with the operating rules of the railroad if:

(a) The equipment is operated over trackage subject to a railroad operating rule requiring flagging; and

(b)(1) The equipment is not part of a roadway work group; or

(2) The equipment is the lead or trailing piece of equipment in a roadway work group operating under the same occupancy authority.

■ 7. Appendix A to part 214 is amended by removing the entry for section 214.517(g).

Issued in Washington, DC on February 9, 2004.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 04–4251 Filed 2–25–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT57

Endangered and Threatened Wildlife and Plants; Final Rule To Designate Critical Habitat for the Santa Ana Sucker (*Catostomus santaanae*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Santa Ana sucker (*Catostomus santaanae*) pursuant to the

Endangered Species Act of 1973, as amended (Act). This threatened species is now restricted to three noncontiguous populations in three different stream systems in southern California: The lower and middle Santa Ana River in San Bernardino, Riverside, and Orange counties; the East, West, and North Forks of the San Gabriel River in Los Angeles County; and lower Big Tujunga Creek in Los Angeles County (Moyle *et al.* 1995, Swift *et al.* 1993).

DATES: This rule becomes effective on February 26, 2004.

ADDRESSES: The supporting information used in this rulemaking is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, California 92009.

FOR FURTHER INFORMATION CONTACT: Jim Bartel at the address listed above (telephone 760/431–9440 or facsimile 760/431–9618).

SUPPLEMENTARY INFORMATION:

Background

The Santa Ana sucker inhabits streams that are generally small and shallow, with currents ranging from swift (in canyons) to slow (in the bottomlands). All the streams are subject to periodic severe flooding (Moyle 1976). Santa Ana suckers appear to be most abundant where the water is cool (less than 22 °Celsius [C]) (72 °Fahrenheit), unpolluted and clear, although they can tolerate and survive in seasonally turbid water (Moyle 1976, Moyle and Yoshiyama 1992, Saiki 2000). Santa Ana suckers feed mostly on algae, which they scrape off of rocks and other hard substrates, with aquatic insects making up a very small component of their diet. Larger fish generally feed more on insects than do smaller fish (Greenfield *et al.* 1970, Moyle 1976).

Santa Ana suckers generally live no more than 3 years (Greenfield *et al.* 1970). Spawning generally occurs from early April to early July. A peak in spawning activity occurs in late May and June (Greenfield *et al.* 1970, Moyle 1976). However, the spawning period may be variable and protracted. Recent field surveys on the East Fork of the San Gabriel River found evidence of an extended spawning period. These surveys found small juveniles (less than 30 millimeters [mm] standard length (1.2 inch [in]) in December 1998, and March of 1999 at the San Gabriel River site (Saiki 2000). These data indicate that spawning may be very protracted in this stream, and begin as early as November. Fecundity appears to be exceptionally high for a small sucker species (Moyle 1976). Total fecundity of six females varying in size from 78 mm (3.1 in) to 158 mm (6.2 in) ranged from 4,423 to 16,151 eggs, respectively (Greenfield *et al.* 1970). The combination of early sexual maturity, protracted spawning period, and high fecundity should allow the Santa Ana sucker to quickly repopulate streams following periodic flood events that can decimate populations (Moyle 1976).

The Santa Ana sucker appears to be native to the larger streams of the Los Angeles Basin; the Los Angeles, San Gabriel, and Santa Ana River drainage systems in Los Angeles, Orange, Riverside, and San Bernardino counties (Smith 1966). Although historic records are scarce, Santa Ana suckers presumably ranged from near the Pacific Ocean to the uplands of the Los Angeles and San Gabriel river systems, and to at least Pump House #1 (near the San Bernardino National Forest boundary) in the Santa Ana River (Swift *et al.* 1993). The species has experienced declines throughout most of its range (Moyle *et al.* 1995; Swift *et al.* 1993), and is now restricted to three noncontiguous populations: (1) Lower and middle Santa Ana River; (2) East, West, and North Forks of the San Gabriel River; and (3) lower Big Tujunga Creek.

Reasons for Dispensing With Notice and Comment Procedures and Making the Rule Immediately Effective

The Administrative Procedure Act (APA) generally requires that an agency provide public notice of and an opportunity for public comment on all proposed rulemakings (5 U.S.C. 553). However, section 553(b)(B) recognizes an exception to those requirements when for good cause an agency finds (and incorporates the finding and a brief statement of the reasons therefore into the rule) that notice and public procedure thereon are ''impracticable, unnecessary or contrary to the public interest.'' Similarly, section 553(d) of the APA allows publication of a final rule to take effect immediately upon publication if the agency for good cause so provides in the final rule. The Service finds good cause exists with regard to this final rule designating critical habitat for the Santa Ana sucker to forgo the standard notice and comment procedure provided by the APA because compliance with that procedure would be impracticable and contrary to the public interest within the meaning of 5 U.S.C. 553(b)(B). The Service further finds good cause under 5 U.S.C. 553(d) to make this final rule effective immediately upon publication in the **Federal Register**. The bases for our ''good cause'' findings are summarized below.

The Service is required by court order to designate critical habitat for the Santa Ana sucker by February 21, 2004. We have determined that we do not have sufficient time or budgetary resources to promulgate this rule under the standard notice-and-comment procedures mandated by the APA at 5 U.S.C. 533 and still meet the court's deadline. On February 26, 2003, the United States District Court for the Northern District of California held that the Service had failed to designate critical habitat for the listed populations of Santa Ana sucker within the statutory timeframe and ordered the Service to complete a final critical habitat designation for the Santa Ana sucker by February 21, 2004 (*California Trout* v. *DOI*, No. 97–3779 (N.D.Cal.)). However, due to lack of funding, the Service was unable to begin work on the critical habitat designation in Fiscal Year (FY) 2003. Complying with numerous court orders and court-approved settlement agreements caused the Service to exhaust essentially its entire FY 2003 budget for critical habitat designations by the end of July, well before the end of the fiscal year. Anticipating this result, the Service suspended work on a number of designations that were required by court orders or settlement agreements until additional funding became available. This included the designation of critical habitat for the Santa Ana sucker.

The Service initiated work on the proposed designation for the Santa Ana sucker on October 1, 2003, the beginning of FY 2004, even though we had not yet received a final appropriation for this fiscal year. As soon as we received a final appropriation, we requested more time from the district court to complete a proposed and final designation. In our request we documented for the court the numerous steps that must be completed in order to promulgate a final critical habitat rule and time required to complete those steps and produce a legally defensible rule. We projected that a period of 24 months beginning on October 1, 2003, would be required to comply with applicable statutory requirements, including the mandated public review process. However, the court declined to grant our motion for additional time in her January 30, 2004, ruling from the bench, thereby keeping in effect the order that the Service complete a final critical habitat designation by February 21, 2004. Compliance with the APA-required notice-and-public comment procedure in promulgating a final critical habitat

designation for the Santa Ana sucker is impracticable given the Service's inability to work on the rule in FY 2003 due to inadequate budgetary resources and the inadequate 4.5-month time period available in FY 2004 to publish a proposed rule, allow for public comment, complete an economic analysis of the proposed designation, respond to public comment, and finalize the critical habitat designation. Therefore, we find good cause for and invoke the exception under section 553(b)(B) of the APA to publish this final rule without following the standard public notice and comment procedure.

In its 2003 order, the court also enjoined the Service from consulting under section 7(a)(2) of the Act until we publish a final rule designating critical habitat for the Santa Ana sucker. Under section 7, each Federal agency is required to consult with us to ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any listed species or result in the adverse modification of the designated critical habitat, if any, of the species. Consultation ensures that impacts to listed species are fully considered by the Federal action agency before it proceeds with the proposed action; consultation also ensures that the action does not go forward if it is likely to jeopardize the continued existence of the species. In addition, where we conclude that the proposed Federal action is not likely to jeopardize the species, section 7 requires us to prescribe reasonable and prudent measures, and specific terms and conditions to implement those measures, which the action agency, and its applicant, if any, must carry out to minimize the impacts of any take of a listed animal species likely to result from the proposed Federal action (16 U.S.C. 1536(b)(4)).

As a consequence of the injunction on consulting on any proposed Federal action that may affect the Santa Ana sucker, Federal action agencies and the Service are unable to meet our respective responsibilities pursuant to section 7(a)(2) of the Act. In the case of emergencies involving imminent risks to human health and safety (*e.g.*, replacement of bridges threatened by floods), Federal agencies may be forced to undertake the projects absent consultation with us and thus without benefit of our determination regarding potential jeopardy and identification of reasonable and prudent alternatives to the proposed action that would avoid jeopardy. In addition, where such projects are not likely to result in jeopardy, the proscription on consultation eliminates our ability to identify reasonable and prudent measures to minimize the impacts of take on the sucker resulting from the proposed project. We are currently precluded from consulting with agencies even after the emergency has passed to evaluate the impacts of the emergency actions on the Santa Ana sucker and provide measures to the agencies to minimize the effects of any take on the species. Our current inability to complete section 7 consultations constitutes an emergency posing a significant risk to the well-being of Santa Ana sucker because of our inability to evaluate and minimize or eliminate threats to the species from proposed Federal actions that are also necessary to protect public health and safety.

In addition, the injunction has had the immediate effect of significantly delaying the orderly, expeditious, and timely completion of projects that are currently being planned and are needed to protect human life and safety. Examples of projects that would affect the sucker that have been delayed as a result of the Court's injunction include the replacement of the Van Buren Boulevard Bridge to meet seismic safety standards and the replacement of the River Road Bridge due to flooding.

The Van Buren Boulevard bridge replacement project in Riverside County would replace the existing bridge with a new longer span that would have no support pilings within the stream channel and increase the width of the bridge from two lanes to four lanes. The bridge is being replaced because of the need to meet updated seismic safety requirements. This bridge provides the only crossing of the Santa Ana River for a 9-mile radius. In the next 40 years, there is an 80 percent chance for an earthquake to occur that can damage or destroy the existing bridge. This bridge provides for local traffic between City of Riverside and the communities of Pedley, Glen Avon, Mira Loma, and Jurupa. Average daily traffic at this Santa Ana River bridge crossing in 2001 was 54,300 vehicles. The 2005 traffic projection at this location is 57,500 average daily vehicles. An earthquake of this magnitude would eliminate an important bridge crossing of the Santa Ana River for local use and emergency vehicles. The driving distance would increase by as much as nine miles for emergency response vehicles. The Federal Highway Administration requested initiation of formal consultation on this project with the Service on November 14, 2002, to address effects of project implementation on the Santa Ana sucker and least Bell's vireo. The biological opinion was due to be issued on March 29, 2003.

The replacement of the River Road bridge is necessary because the existing bridge is at high risk of being damaged by high flows in the Santa Ana River. The River Road bridge is particularly sensitive to high flows because of its low clearance above the existing riverbed. During high flows, large amounts of sediment and debris are deposited adjacent to the bridge causing floodwaters to overtop the bridge. Under these flood conditions, the high flows will eventually push the bridge off its pilings and cause a catastrophic loss of the bridge. Riverside County estimates that if two or more 2-year storm events were to occur consecutively, the bridge may be shifted off its pilings and portions of the bridge could be destroyed. In the last 10 years, the existing bridge and approach roadways were closed to traffic four times because the bridge had been shifted off its pilings as a result of floodwaters. Although a sand mining operation has been implemented as a temporary measure to provide additional freeboard for flood flows, this measure will not be sufficient to protect the River Road bridge if multiple and consecutive storms affect this watershed. Therefore, the replacement of the existing River Road bridge with a new bridge that provides a greater clearance above the existing riverbed is needed. Replacement of the River Road bridge had been anticipated to be completed in 2006 and requires funding from the Federal Highway Administration. Because replacement of the bridge ''may affect'' the Santa Ana sucker, a section 7 consultation with Federal Highway Administration will be required. In addition to providing traffic circulation to residents, the existing River Road bridge is the only emergency vehicle access route across the Santa Ana River within a 7-mile radius for the cities of Norco and Corona and unincorporated Riverside County. If the River Road bridge is damaged by storms and cannot be used, then driving distance for emergency response vehicles will be increased by at least seven miles.

As described by the above examples, the injunction has resulted in delays for projects that are needed to protect human life and safety. The injunction and ensuing delays may very well be the root cause of future emergencies that involve imminent risks to human health and safety because the Federal action agency was unable to complete their projects in an orderly, expeditious, and timely manner. For example, the delay

in completing the bridge replacement projects significantly increases the risk of catastrophic losses of these bridges from seismic and flooding events and significant delays in providing emergency response services.

As is the nature of rivers and weather, flood events can happen swiftly and unpredictably with dire consequences to human health and safety and loss of property. Structures and property along the Santa Ana River are at risk from emergency flood events. Apart from the specific projects identified above, other emergency conditions along the Santa Ana River may be avoided by the orderly, expeditious, and timely completion of the draft Programmatic Consultation on the Santa Ana Sucker Conservation Program and Associated Maintenance and Operation Activities of Existing Water Facilities on the Santa Ana River (SAS Programmatic Consultation). For example, Riverside County Flood Control and Water Conservation District (RCFCD) could receive authorization from the U.S. Army Corps of Engineers to maintain the structural integrity of levees and groins that protect industrial, commercial, and residential property along the Santa Ana River as a result of the SAS Programmatic Consultation. The RCFCD has predicted that the loss of the levee could result in the introduction of pollutants from residential, commercial, and industrial properties into the Santa Ana River as well as the loss of up to 3,000 acres of developed floodplain. The introduction of pollutants would significantly degrade the water quality and habitat of the Santa Ana River, as well as result in mortality of suckers. In addition, the loss of the levees could result in a loss of life and property. On September 23, 2003, the RCFCD notified the Service and the Corps that a portion of the northwestern levee along the Santa Ana River was being undermined by the low-flow channel. The RCFCD proposed to divert the low-flow channel away from the levee to prevent the destruction of the levee. The Corps declared the proposed diversion an emergency action, and requested that the Service provide them with avoidance and minimization measures for the Santa Ana sucker. Because of the injunction we were unable to complete an emergency section 7 consultation with the Corps, but we did recommend measures to avoid and minimize impacts to the sucker. The Corps issued an emergency Regional General Permit No. 63 permit that incorporated our recommended measures and RCFCD completed the diversion and repair of the levees. The diversion of the low-flow channel away from the levees was an action that was anticipated to be addressed in the SAS Programmatic Consultation. If this action had been addressed as part of a completed consultation, the need for an emergency permit would have been eliminated and the risk to human life and property would have been significantly reduced.

The injunction against section 7 consultations is also preventing the Service from completing consultations on major habitat restoration projects in the Santa Ana River designed to improve the status of the sucker and its habitat; this also constitutes an emergency posing a significant risk to the well-being of the Santa Ana sucker. The SAS Conservation Program is a multi-agency partnership of Federal and local government agencies and the private sector that encourages a river-wide approach to conservation of the Santa Ana sucker within the Santa Ana River and its tributaries; increases the knowledge base to implement recovery strategies for the sucker in the Santa Ana River; ensures that each participating agency minimizes, to the extent possible, effects of routine activities on the sucker; and develops habitat restoration and enhancement techniques for degraded habitat. The SAS Conservation Program has already benefited the Santa Ana sucker by improving our recommended avoidance and minimization measures for ongoing activities. For example, research funded by the SAS Conservation Program has resulted in a detailed description of spawning and nursery habitat. In addition, appropriate habitat restoration techniques are being developed that will be essential to maintain the sucker population in the Santa Ana River.

Finally, the current injunction has prevented the Service from completing internal consultation on the Western Riverside Multiple Species Habitat Conservation Plan (MSHCP) because the Santa Ana sucker is included as a ''covered species adequately conserved'' in the proposed plan and will otherwise be affected by the plan. The Western Riverside MSHCP will conserve over 94 percent of the modeled habitat within western Riverside County and all of the known and potential refugia and spawning areas within the MSHCP conservation area. In addition, the Western Riverside MSHCP will assess and implement measures to improve water quality, remove nonnative competitor and predator species, and eliminate barriers to fish passage within the Santa Ana River. The removal of nonnative predatory species should improve and secure the survival of the sucker in the Santa Ana River. The removal of barriers to fish passage should return the population to a contiguous breeding population. In addition, the maintenance and improvement of water quality standards are essential to a species that inhabits the highly urbanized Santa Ana River watershed, and depends on tertiary-treated wastewater for much of its spawning habitat.

Until a final critical habitat rule is published for the Santa Ana sucker, the injunction will remain in place and prevent completion of section 7 consultations on important projects necessary to protect public health and safety while also protecting the sucker, or on projects specifically designed to benefit the sucker. We therefore find that good cause exists under 5 U.S.C. 553(b)(B) to exempt this final rule from APA notice and comment procedures. In the unusual circumstances presented here, compliance with those procedures would be contrary to the public interest.

We also find that good cause exists under 5 U.S.C. 553(d) to make this final rule effective immediately for the reasons stated above with regard to section 553(b)(B). The immediate designation of critical habitat is necessary for the following reasons: (1) To comply with the district court's order; (2) to conduct section 7 consultations and prepare written concurrences regarding projects funded, permitted, or carried out by Federal agencies that may affect the Santa Ana sucker or its essential habitat; (3) to ensure those activities will not jeopardize the continued existence of the species; and (4) to ensure Federal agencies can comply with the requirements of the Act, including section 9.

Previous Federal Action

Please see the final listing rule for the Santa Ana sucker for a description of Federal actions through April 2000 (65 FR 19686; April 12, 2000). On July 9, 2001, California Trout, Inc., the California-Nevada Chapter of the American Fisheries Society, the Center for Biological Diversity, and the Friends of the River (plaintiffs) filed a 60-day notice of intent to sue over our failure to designate critical habitat for the Santa Ana sucker. The plaintiffs filed a second amended complaint for declaratory judgment and injunctive relief on March 19, 2002, with the U.S. District Court for the Northern District of California. On February 26, 2003, the district court ordered the Service to designate a final critical habitat for the Santa Ana sucker by no later than February 21, 2004, and enjoined the Service from issuing any

section 7 concurrence or biological opinion on a proposed Federal action that ''may affect'' the Santa Ana sucker until such time as the final critical habitat for the Santa Ana sucker is designated.

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as the specific areas within the geographical area occupied by the species at the time it is listed on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection and those specific areas outside the geographic area occupied by the species at the time it is listed upon a determination by the Service that such areas are essential for the conservation of the species. Under section 4(a)(3) and (b)(2) of the Act we are required to designate critical habitat to the maximum extent prudent and determinable on the basis of the best scientific data available and after taking into account the economic impact of specifying any particular area as critical habitat.

In the final listing rule (65 FR 19686), we indicated that designation of critical habitat was not determinable because the ''knowledge and understanding of the biological needs and environmental limitations of the Santa Ana sucker and the primary constituent elements of its habitat are insufficient to determine critical habitat for the fish.'' We also indicated that the Orange County Water District, County of Orange, Los Angeles County Department of Public Works, National Fish and Wildlife Foundation, and the Biological Resources Division of the U.S. Geological Survey were funding and implementing research on the environmental limitations of the Santa Ana sucker. This research has been completed and a final report has been published (Saiki 2000). Based on the available information on the biology of the Santa Ana sucker, we now believe that critical habitat for the Santa Ana sucker is determinable. We also find that there is no basis for a not prudent finding because we do not believe that the designation of critical habitat will result in an increase in the degree of threat from activities prohibited under section 9 of the Act. We are not aware of any apparent habitat destruction that has occurred since the listing of the Santa Ana sucker. Therefore, we find that designation of critical habitat for the Santa Ana sucker is prudent and determinable.

Methods

We mapped critical habitat based on the known distribution and habitat requirements of the Santa Ana sucker using published literature and available reports. We delineated essential habitat on aerial and satellite imagery on a GIS system along each stream reach. Essential habitat is the stream and the associated riparian habitat.

Primary Constituent Elements

In accordance with sections 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas are critical habitat, we are required to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to: Space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements for the Santa Ana sucker were determined by reviewing studies that examined the habitat requirements and ecology of the sucker in the Santa Ana River (Allen 2003; Baskin and Haglund 2001; Haglund *et al.* 2003; Saiki 2000; Swift 2001), the San Gabriel River (Saiki 2000; Haglund and Baskin 2002), and the Santa Clara River (Greenfield *et al.* 1970). Primary constituent elements essential for the conservation of the sucker are found in an ecosystem that includes a functioning hydrological system that experiences peaks and ebbs in water volume and maintains a sand, gravel, and cobble substrate in a mosaic of sandy stream margins, deep water pools, riffles (*i.e.*, well-oxygenated, shallow water over rough substrate), and runs (*i.e.*, shallow water over generally smooth substrate); sufficient water volume and quality; and complex, native floral and faunal associations.

The Santa Ana sucker evolved in a typical southern Californian hydrological regime that included periodic flooding (Greenfield *et al.* 1970). Life history characteristics, such as prolonged breeding periods and short hatching times, have allowed the sucker to survive in dynamic hydrological systems. Periodic floods may also remove exotic predators and competitors (Swift 2001). Therefore, a functioning hydrological system should experience peaks and ebbs in the water volume throughout the year. The hydrological regime should also maintain a mosaic of sand, gravel, cobble, and boulder substrates in a series of sandy stream margins, riffles, runs, and pools. Adult suckers spawn in gravel beds while larvae and juveniles are generally associated with shallow, sandy margins during their development (Haglund *et al.* 2003). Gravel and cobble substrate, often associated with riffles, provide habitat for algae and macroinvertebrates, the primary prey of adult suckers. Pools provide food for adult suckers and refuge from warm water (Allen 2003).

Sufficient water volume, described in velocity and depth, is an important element of habitat essential for the conservation of the Santa Ana sucker. Water volume may vary between seasons, but enough water should be present during the spawning season (March 1–June 30) to support reproduction and larval development. For the remainder of the year, water volume must be sufficient to support prey of the sucker and the development and growth of the sucker. In the San Gabriel River, Haglund and Baskin (2002) found that adult and juvenile suckers were present in bottom velocities between 0.17 and 0.68 feet per second, while mid-column velocities reached 1.95 feet per second. Haglund *et al.* (2003) reported spawning in bottom velocities of 0.65 and 0.77 feet per second.

Depth is also an important descriptor of water volume. Saiki (2000) showed that suckers were fairly equally distributed among depths of 1 to 39 cm in the Santa Ana River and among depths of 1 to 69 cm in the San Gabriel River. In the Santa Ana River, Swift (2001) reported detecting suckers in depths as great as 150 cm. Suckers were present in pools as deep as 200 to 300 cm (Brandt Allen, University of California at Davis, pers. comm. 2004). Suckers likely prefer various water depths depending on their life history stage and activity. Larval and early juvenile suckers prefer shallow margins of 5 to 10 cm in depth (Haglund *et al.* 2003) while adult suckers prefer deep pools of 40 cm or greater (Haglund and Baskin 2002). Adult suckers prefer deep pools for feeding and refuge, riffles of varying depths for spawning, and riffles and runs of varying depths for movement between pools.

Water quality must support sucker reproduction, diet, and development. Saiki (2000) reported sucker abundance was negatively correlated with turbidity. Saiki (2000) found that suckers were

more abundant at a site in the San Gabriel River, where turbidity averaged 5.5 Nephelometric turbidity units (NTUs) and ranged from 0.1 to 165.0 NTUs than at a site in the Santa Ana River, where turbidity averaged 21.7 NTUs and ranged from 0.6 to 405.0 NTUs. Suckers were not detected at a different site in the Santa Ana River, where turbidity averaged 57.4 NTUs and ranged from 1.9 to 214.0 NTUs (Saiki 2000). However, in 2000, Baskin and Haglund (2001) captured 10 suckers immediately upstream of this site in water that was between 85 and 112 NTUs. Therefore, a high turbidity level does not necessarily eliminate suckers from using habitat. Saiki (2000) determined that suckers likely avoid continuously turbid conditions but could survive in seasonally turbid conditions. In addition to turbidity, temperature appears to be a limiting factor in sucker distribution. Suckers were found in waters between 15 and 28 °C in the Santa Ana River and suckers likely avoid water over 30 °C (Swift 2001). Similarly, Greenfield *et al.* (1970) reported suckers from the Santa Clara River in water that was 10 to 26 °C.

Suitable sucker habitat must contain algae, aquatic emergent vegetation, macroinvertebrates, and riparian vegetation. Suckers feed by scraping algae, insects, and detritus from gravel and cobble substrate (Greenfield *et al.* 1970; Saiki 2000). In addition, riparian vegetation and emergent aquatic vegetation moderate stream temperature (Allen 2003), and provide additional sources of detritus and insects (Diana 1995). Riparian and aquatic emergent vegetation can also provide refuge from predators. Therefore, complex native floral and faunal associations are required for sucker survival.

The primary constituent elements for the sucker are the following:

(1) A functioning hydrological system that experiences peaks and ebbs in the water volume throughout the year;

(2) A mosaic of sand, gravel, cobble, and boulder substrates in a series of riffles, runs, pools and shallow sandy stream margins;

(3) Water depths greater than 3 cm and water bottom velocities greater than 0.03 meters per second;

(4) Non-turbid conditions or only seasonally turbid conditions;

(5) Water temperatures less than 30 °C; and

(6) Stream habitat that includes algae, aquatic emergent vegetation, macroinvertebrates, and riparian vegetation.

Critical Habitat Designation

The designated critical habitat encompasses Santa Ana sucker habitat throughout the range of the listed species in the United States (Los Angeles and San Bernardino Counties, California). Essential habitat for the Santa Ana sucker in San Bernardino, Riverside County and Orange County has been excluded under section 4(b)(2) of the Act. Areas designated as critical habitat are under Federal and private ownership. The approximate area of designated critical habitat by county and land ownership is shown in Table 1.

TABLE 1.—APPROXIMATE DESIGNATED CRITICAL HABITAT AREA (AC (HA)) BY COUNTY AND LAND OWNERSHIP

[Estimates reflect the total area within critical habitat unit boundaries.]

County	Federal*	Local/State	Private	Total
Los Angeles	6,483 ac (2,624 ha)	0 ac	2,937 ac (1,189 ha)	9,420 ac (3,812 ha)
San Bernardino	3,582 ac (1,450 ha)	0 ac	8,127 ac (3,289 ha)	11,709 ac (4,738 ha)
Total	10,065 ac (4,074 ha)	0 ac	11,064 ac (4,478 ha)	21,129 ac (8,551 ha)

*Federal lands include National Forest lands.

We have designated three critical habitat units based on the geographical location of the three existing, listed populations of Santa Ana sucker. Major tributaries that are important for their role in contributing water, sediment, and improved water quality (components of the primary constituent elements) for the species are included. Each of these few remaining disjunct populations is essential to maintain genetic diversity, decrease the likelihood of the species becoming extinct due to small numbers, and decrease the likelihood of species extinction due to stochastic events (*e.g.*, floods) (Lande 1988, Saccheri *et al.* 1998). The fragmented and disjunct distribution of the species prevents any possibility that an extirpated population would recover. The areas being designated are either within the geographical area occupied by one of the three populations of Santa Ana sucker, contain those physical and biological features essential for the conservation of that population and may require special management considerations or protection, or are outside of the geographic area occupied by the species but are nevertheless essential for the conservation of the sucker. Descriptions of each unit and the reasons for designating them as critical habitat are presented below.

Map Unit 1: Santa Ana River Critical Habitat Unit (Unit 1A, Northern Prado Basin and Unit 1B, Santa Ana Wash), San Bernardino County, California (11,709 ac (4,738 ha))

The Santa Ana River Unit consists of Unit 1A, Northern Prado Basin and Unit 1B, Santa Ana Wash and the essential habitat along portions of the mainstem of the Santa Ana River and the following tributaries: City Creek, Mill Creek, Chino Creek, and Cucamonga Creek. The occupied essential habitat adjacent to Unit 1A (Northern Prado Basin) and the occupied essential habitat downstream from Unit 1B (Santa Ana Wash) has been excluded under section 4(b)(2). The Santa Ana River supports one of three listed populations of the Santa Ana sucker. Approximately 60 percent of the total remaining range of the listed Santa Ana sucker is in the Santa Ana River (65 FR 19686).

Our designation excludes essential occupied habitat along portions of the Santa Ana River that are within the draft Western Riverside Multiple Species Habitat Conservation Plan (Riverside County) or the SAS Conservation Program (Orange, Riverside, and San Bernardino counties). The bases for those exclusions are summarized below under ''Section 4(b)(2) Exclusions.''

We are designating Northern Prado Basin (Unit 1A) and Santa Ana Wash (Unit 1B) because these essential habitat areas are not covered by the draft Western Riverside County Multiple Species Habitat Conservation Plan or

the SAS Conservation Program. While Units 1A and 1B are not known to be occupied, they are essential for the conservation of the Santa Ana sucker because they provide and transport sediment necessary to maintain the preferred substrates utilized by this fish (Dr. Thomas Haglund, pers. comm. 2004; Dr. Jonathan Baskin, Professor Emeritus, California State Polytechnic University, Pomona, pers. comm. 2004; NOAA 2003); convey stream flows and flood waters necessary to maintain habitat conditions for the Santa Ana sucker; and support riparian habitats that protect water quality in the downstream portions of the Santa Ana River occupied by the sucker. Moreover, the Northern Prado Basin Unit is contiguous with occupied habitat and may support the Santa Ana sucker. City Creek, a tributary of the Santa Ana River, was documented as containing Santa Ana suckers as recently as 1982, but has not been recently surveyed. Protection of these unoccupied areas is essential to provide the downstream habitat conditions necessary to maintain the Santa Ana River population of the sucker (Dr. Thomas Haglund, pers. comm. 2004; Dr. Jonathan Baskin, Professor Emeritus, California State Polytechnic University, Pomona, pers. comm. 2004).

Unit 1B is essential because it provides the source for preferred spawning and feeding substrate of the Santa Ana sucker. Although portions of Unit 1B (Santa Ana Wash) are generally dry during the summer, this portion of the river has a higher gradient and a greater percentage of gravel and cobble substrate than the occupied areas that are downstream (Dr. Jonathan Baskin, Professor Emeritus, California State Polytechnic University, Pomona, pers. comm. 2004). Suckers spawn over gravel substrates where their eggs can adhere to gravel before hatching into larvae. Winter flows from upstream areas annually replenish this substrate and clean sand from it (Dr. Jonathan Baskin, Professor Emeritus, California State Polytechnic University, Pomona, pers. comm. 2004; Dr. Thomas Haglund, pers. comm. 2004; NOAA 2003). In addition, suckers feed by scraping algae, insects, and detritus from gravel and cobble. Therefore, the upstream source of spawning and feeding substrates (gravel and cobble) are essential to the reproductive ability and development of the sucker in the downstream occupied reaches (Dr. Jonathan Baskin, Professor Emeritus, California State Polytechnic University, Pomona, pers. comm. 2004; Dr. Thomas Haglund, pers. comm. 2004).

Unit 1A and Unit 1B are essential to the conservation of the sucker because they maintain a relatively natural hydrograph. The Santa Ana sucker evolved in the naturally dynamic hydrological systems of southern California. Therefore, as a larger intact river system has greater potential to provide a more natural hydrograph, Unit 1A and Unit 1B are essential to maintain the natural hydrograph of the Santa Ana River and ensure the continued existence of the sucker in the Santa Ana River (Dr. Thomas Haglund, pers. comm. 2004). The importance of a natural hydrograph for native fishes has been demonstrated for many systems (Moyle and Light 1996). For example, nonnative fishes can more easily invade systems where the natural hydrograph has been disrupted by dams and reservoirs and these nonnative fishes can contribute to the decline of native fishes through predation and competition (Moyle *et al.* 1986).

Unit 1A and Unit 1B are also essential because they maintain habitat for the southernmost extent of the existing distribution of the Santa Ana sucker. Consequently, these units enhance the long-term sustainability of the sucker by maintaining its genetic adaptive potential and a well-distributed geographical range to buffer the sucker's particular vulnerability to environmental fluctuations and catastrophes because of its limited number of populations.

Map Unit 2: San Gabriel River Critical Habitat Unit, Los Angeles County, California (5,765 ac (2,333 ha))

The San Gabriel River Unit consists of the West, North, and East Forks of the San Gabriel River and the following tributaries: Cattle Canyon Creek, Bear Creek, and Big Mermaids Canyon Creek. The San Gabriel River portion of the unit extends from the Cogswell Dam on the West Fork to the Bridge-of-No Return on the East Fork, and portions of the North Fork. Santa Ana sucker occupies the West, North, and East Forks of the San Gabriel River. Suckers occupy the West Fork from the Cogswell Dam to the San Gabriel Reservoir. The North Fork and East Fork are occupied by suckers upstream from the San Gabriel Reservoir. Suckers also occupy the following tributaries: Cattle Canyon Creek, Bear Creek, and Big Mermaids Canyon Creek.

Approximately 15 percent of the total remaining range of the listed Santa Ana sucker is in the San Gabriel River (65 FR 19686). Approximately 15 percent of its distribution in the San Gabriel River Basin occurs on private lands, and the remaining 85 percent occurs in the Angeles National Forest (65 FR 19686). This river has the least developed watershed of the three critical habitat units. Data gathered during sampling indicated that the San Gabriel River may contain the largest population of Santa Ana suckers (R. Ally, *in litt.* 1996; Mike Gusiti, CDFG, *in litt.* 1996; M. Wickman, *in litt.,* 1996; Juan Hernandez, CDFG, *in litt.* 1997; M. Saiki, pers. comm. 1999).

The San Gabriel River Unit is essential to the conservation of the sucker because the San Gabriel River drainage system supports one of only three extant populations of this listed species which has a highly fragmented and limited distribution. In addition, the San Gabriel River Unit provides the best remaining habitat capable of sustaining the Santa Ana sucker. Moyle and Yoshiyama (1992) consider the population of suckers in the San Gabriel River drainage to be the only viable population of the Santa Ana sucker within the species' native range (65 FR 19686). This population is found in the relatively undisturbed watershed of the Angeles National Forest, unlike the population within the Santa Ana River which is within a highly urbanized watershed that receives urban and agricultural run-off and other environmental contaminants. Thus, this unit supports a population that occurs within a relatively intact watershed that provides good water quality and thereby, ensures the conservation of the only extant population of listed suckers that will likely avoid the potential for chronic exposure to water quality degraded by urban run-off or tertiary-treated wastewater discharges.

Map Unit 3: Big Tujunga Creek Critical Habitat Unit, Los Angeles County, California (3,655 ac (1,479 ha))

The Big Tujunga Creek Unit consists of the stretch of Big Tujunga Creek between the Big Tujunga Dam and Hansen Dam and the following tributaries: Stone Canyon Creek, Delta Canyon Creek, Gold Canyon Creek, and Little Tujunga Creek. The Santa Ana sucker occupies the Big Tujunga Creek between Big Tujunga Dam and Hansen Dam.

Approximately 25 percent of the total remaining range of the Santa Ana sucker is within the Big Tujunga Creek (65 FR 19686). In the Big Tujunga Creek, approximately 60 percent of the current range of the Santa Ana sucker occurs on private lands. The remaining 40 percent of the range occurs on Angeles National Forest lands managed by the U.S. Forest Service.

The Big Tujunga Creek Unit is essential to the conservation of the sucker because this stream segment

supports one of only three extant populations of this listed species which has a highly fragmented and limited distribution. In addition, the upstream portion of this population is largely contained within the Angeles National Forest and therefore is not exposed to the effects of urban run-off and tertiary treated wastewater discharge. This unit is also essential because it maintains habitat for the northernmost extent of the existing distribution of the Santa Ana sucker. Consequently, the unit enhances the long-term sustainability of the sucker by maintaining its genetic adaptive potential and a well-distributed geographical range to buffer the sucker's particular vulnerability to environmental fluctuations and catastrophes.

The tributaries to the Big Tujunga Creek that are within the unit (Stone Canyon Creek, Delta Canyon Creek, Gold Canyon Creek, and Little Tujunga Creek) are not known to be occupied, but are essential to the conservation of the sucker because they provide and transport sediment necessary to maintain the preferred substrates utilized by this fish; convey stream flows and flood waters necessary to maintain habitat conditions for the Santa Ana sucker; and support riparian habitats that protect water quality in the occupied portions of the Big Tujunga Creek. Similar to the Santa Ana River, these tributaries are essential to the Big Tujunga Creek sucker population because it they provide renewal of spawning and feeding substrates and peaks and ebbs in water volumes. These tributaries are particularly essential to the conservation of the sucker since the Big Tujunga Dam has reduced the transfer of sediment downstream and altered the natural flow in the upper Big Tujunga Creek. The sucker has been able to maintain its population in the Big Tujunga Creek despite the fragmented habitat and presence of nonnative species. Most likely, the sucker population has survived because of the presence of the relatively undisturbed condition of the tributaries to Big Tujunga Creek.

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act allows the Secretary to exclude any area from critical habitat if she determines the benefits of such exclusion outweigh the benefits of specifying such area as part of critical habitat, unless, based on the best scientific and commercial data available, she determines that failure to designate the area as critical habitat will result in the extinction of the species. We have determined that the benefits of excluding essential habitat within the boundaries of the Western Riverside MSHCP and essential habitat within the area covered by SAS Conservation Program outweigh the benefits of including these areas as critical habitat. Exclusion of these areas will not result in the extinction of the sucker.

Exclusion of Critical Habitat Within the Draft Western Riverside Multiple Species Habitat Conservation Plan and the SAS Conservation Program

Draft Western Riverside Multiple Species Habitat Conservation Plan

The Western Riverside MSHCP has been in development for several years. Participants in the Western Riverside MSHCP include 14 cities; the County of Riverside (including the Riverside County Flood Control and Water Conservation District, Riverside County Transportation Commission, Riverside County Parks and Open Space District, and Riverside County Waste Department); the California Department of Parks and Recreation; and the California Department of Transportation. The Western Riverside MSHCP is also being proposed as a subregional plan under the State's Natural Community Conservation Program (NCCP) and is being developed in cooperation with the California Department of Fish and Game. Within the 1.26 million-acre (510,000 ha) planning area of the Western Riverside MSHCP, approximately 153,000 ac (62,000 ha) of diverse habitats are proposed for conservation. The proposed conservation of 153,000 ac (62,000 ha) will complement other, existing natural and open space areas that are already conserved through other means (*e.g.*, State Parks, Forest Service, and county park lands).

The County of Riverside and the participating jurisdictions have signaled their sustained support for the Western Riverside MSHCP as evidenced by the November 5, 2002, passage of a local bond measure to fund the acquisition of land in support of the MSHCP. On November 14, 2002, a notice of availability of a draft environmental impact report (EIS/EIR) and receipt of and application for an incidental take permit was accepted and published in the **Federal Register**. We accepted public comment on these documents until January 14, 2003. Subsequently, on June 17, 2003, the County of Riverside Board of Supervisors voted unanimously to support the completion of the Western Riverside MSHCP.

The Western Riverside MSHCP incorporates conservation actions within the planning area, such as implementing a nonnative species removal program, maintaining or improving water quality standards, and removing or modifying barriers to fish passage within the Santa Ana River to address the long-term conservation of the Santa Ana sucker. Although the Western Riverside MSHCP is not yet approved by the Service, significant progress has been achieved in the development of this HCP, including the preparation of the EIS/EIR, the solicitation of public review and comment, and the initiation of a consultation with us on the issuance of incidental take permits for those species identified for coverage in the draft plan.

Santa Ana Sucker Conservation Program and Associated Maintenance and Operation Activities of Existing Water Facilities on the Santa Ana River

The Santa Ana Sucker (SAS) Conservation Program is a multi-agency partnership of Federal, and local government agencies and the private sector that encourages a river-wide approach to conservation of the Santa Ana sucker within the Santa Ana River and its tributaries. This partnership also increases the knowledge base to implement recovery strategies for the sucker in the Santa Ana River; ensures that each participating agency minimizes, to the extent possible, effects from routine activities to the sucker; and develops restoration techniques for degraded habitat. Partners in the SAS Conservation Program include the Santa Ana Watershed Project Authority, the Army Corps of Engineers (Corps), the Fish and Wildlife Service, and the following participating agencies: Orange County Water District, Orange County Resources and Development Department, Riverside County Flood Control and Water Conservation District, Riverside County Transportation Department, City of Riverside Regional Water Quality Control Plant, San Bernardino County Flood Control District, and the City of San Bernardino Municipal Water Department Rapid Infiltration and Extraction Facility.

The partnership was initially formed in the spring of 1999, when an informal group of concerned local, regional, State, and Federal agencies formed the Ad-Hoc Santa Ana Sucker Discussion Team (Discussion Team) to assist in reconciling economic activities with the conservation of the sucker and to identify and implement conservation measures that would contribute to the survival and recovery of the sucker, primarily within the Santa Ana River watershed. Research priorities and funding sources were identified, and a three-phase, coordinated effort was

initiated and completed during 1999 and 2000. These initial scientific studies concentrated on physiochemical variables, migration patterns, predatory fish relationships, and tributary analysis. As an outgrowth of these studies, the Discussion Team proposed the SAS Conservation Program, for an initial term of 5 years.

The purpose of the draft Programmatic Consultation on the SAS Conservation Program is to promote the conservation (*i.e.*, survival and recovery) of the sucker, while providing the necessary authorization, pursuant to the ESA, to allow for the incidental take of a limited number of suckers that is anticipated to occur when the participating agencies implement their covered activities. Covered activities include operation, maintenance, repair, and reconstruction of (*e.g.*, rebuilding existing levees for water conservation, constructed wetlands, and flood control) existing projects and facilities and the continuation of existing programs for flood control, water conservation, water treatment and discharge, protection of transportation routes, and wildlife conservation. Impact minimization measures for the Santa Ana sucker are integral to the SAS Conservation Program and are identified for each of the agencies' covered activities.

The SAS Conservation Program has funded research efforts to define habitat affinities for various life history stages of the sucker, investigate reproductive patterns of the sucker, develop a population trend database, examine aspects of sucker migration in the Santa Ana River, and examine effects on the sucker of temporary shutdowns of tertiary-treated wastewater discharge water to the Santa Ana River. Planned research projects of the SAS Conservation Program in 2004 include the development of habitat restoration methods, characterize the movement and diet of various life history stages of suckers, and investigate the effects of non-native adult fish on larval and juvenile suckers. Again, funding for all of these research efforts will be provided by the participating agencies.

We are excluding from critical habitat designation areas along the Santa Ana River because they are either within the planning area boundary for the draft Western Riverside MSHCP or the SAS Conservation Program. Our justification for excluding these areas is outlined below.

(1) Benefits of Inclusion

The benefits of designating critical habitat on lands within the boundaries of HCPs that cover the species for which critical habitat is being designated are small. HCPs generally include management measures and protections designed to protect, restore, monitor, manage, and enhance the habitat to benefit the conservation of the species. The draft Western Riverside MSHCP seeks to accomplish these goals for the Santa Ana sucker through the implementation of specific conservation measures. The principal benefit of designating critical habitat is that federally authorized or funded activities that may affect a species' critical habitat would require consultation with us under section 7 of the Act. Under section 7, proposed actions that would adversely modify or destroy designated critical habitat cannot go forward, unless they are altered to eliminate the adverse modification or destruction of critical habitat.

An important objective of the Western Riverside MSHCP is to implement measures, including monitoring and management, necessary to conserve important habitat for the Santa Ana sucker within the plan's boundaries. Thus, the purposes of the Western Riverside MSHCP are consistent with the purpose served by undergoing consultation under section 7 which is to ensure that critical habitat of the sucker is not adversely modified by a proposed Federal action. Because issuance of an incidental take permit (ITP) under section 10 is a Federal action, prior to approving the Western Riverside MSHCP we must complete an internal section 7 consultation for every species, including the Santa Ana sucker, proposed to be covered under the proposed plan and permit. The consultation will require us to analyze the impacts of the proposed ITP and HCP on the Santa Ana sucker and its essential habitat within the plan boundaries, whether or not that habitat has been officially designated as critical habitat. Therefore, including that portion of the Santa Ana River basin that is within the boundaries of the proposed Western Riverside MSHCP as critical habitat would provide little benefit to the Santa Ana sucker because the potential impacts to the species' essential habitat within the MSHCP area are already addressed under the plan and will be analyzed in our internal section 7 consultation on the proposed ITP.

The SAS Conservation Program includes measures to restore, monitor, and enhance habitat for the Santa Ana sucker in the Santa Ana River. Similar to the Western Riverside MSHCP, the SAS Conservation Program is specifically designed to benefit the sucker and its essential habitat within the Santa Ana River. The SAS Conservation Program is a comprehensive conservation program for the sucker that includes measures to minimize the impacts of routine water management activities on the sucker and restore degraded river habitat to improve the species' prospects for survival and recovery. Because the SAS Conservation Program is specifically designed to benefit the sucker and its essential habitat within the Santa Ana River habitat and the Programmatic Consultation on the SAS Conservation Program will analyze the effects of the SAS Conservation Program on the sucker and its habitat, the designation of critical habitat within the boundaries of the SAS Conservation Program would provide little or no additional benefits to this species.

(2) Benefits of Exclusion

Excluding from critical habitat lands within the Western Riverside MSHCP or within the area covered by the SAS Conservation Program will provide several benefits. Exclusion of the lands from the final designation will allow us to continue working with the participants in a spirit of cooperation and partnership. In the past, HCP applicants and participants in voluntary conservation programs have generally viewed the designation of critical habitat as having a potential negative regulatory effect that discourages voluntary, cooperative and proactive efforts to conserve listed species and their habitats by non-Federal parties. They generally view designation of critical habitat as an indication by the Federal government that their proactive actions to protect the species and its habitat are inadequate. Excluding these areas from the perceived negative consequences of critical habitat, will likely encourage other jurisdictions, private landowners, and other entities to work cooperatively with us to develop HCPs and conservation plans, which will provide the basis for future opportunities to conserve species and their essential habitat.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated the nearly finished draft Western Riverside MSHCP and SAS Conservation Program and find that the benefits of exclusion outweigh the benefits of designating the areas covered by the MSHCP and SAS Conservation Program as critical habitat.

The exclusion of these areas from critical habitat will help preserve the partnerships that we have developed with the local jurisdictions and agencies in the development of the draft Western Riverside MSHCP and SAS

Conservation Program. The only potential benefit of designating critical habitat within these areas would be educational: informing the public of areas that are essential for the long-term survival and conservation of the species. However, this information has already largely been provided to the public through the material provided on our Web site and through the ample opportunity for public participation provided throughout the development of the Western Riverside MSHCP. The Corps of Engineers is also likely to issue a public notice and solicit public comment on the issuance of a permit for activities related to the maintenance and operation of existing water facilities on the Santa Ana River in association with the SAS Conservation Program further increasing the public's knowledge of the importance of the Santa Ana River to the sucker. For these reasons, we believe that designating critical habitat has little benefit in areas covered by the draft Western Riverside MSHCP and SAS Conservation Program. Exclusion of these areas will not result in the extinction of the species because the Western Riverside MSHCP and SAS Conservation Program are designed to ensure that activities authorized within these areas include measures to protect the Santa Ana Sucker and its habitat.

Based on our evaluation of our past consultation history on the Santa Ana Sucker and the analysis conducted for those consultations, the Western Riverside MSHCP, and the SAS Conservation Program, we believe that we have a general understanding of potential impacts, including those related to economics, of this designation. We have considered these potential impacts in the development of this designation and do not believe, at this time, that additional exclusion, including those based on economics, pursuant to section 4(b)(2) of the Act are warranted.

Santa Clara River

We listed as threatened only those Santa Ana sucker populations thought to occur within the native range of the species. The native range of the Santa Ana sucker is considered to be the streams of the Los Angeles, San Gabriel, and Santa Ana River basins. The Santa Clara River population is presumed to be an introduced population, although this presumption is based entirely on negative data, and not on a documented record of introduction (Hubbs *et al.* 1943, Miller 1968, Moyle 1976, Bell 1978). The Santa Clara population was not listed; thus critical habitat cannot be designated for this population. As we stated in the final listing rule, we will further evaluate the role of the Santa Clara River population in the recovery of the species. If the Santa Clara River population is determined to be crucial to the recovery of the species, we may re-evaluate the status of this population, threats to its conservation, and the status of the population under the Act.

Effects of Critical Habitat Designation

Section 7 Consultation

The regulatory effects of a critical habitat designation under the Act are triggered through the provisions of section 7, which applies only to activities conducted, authorized, or funded by a Federal agency (Federal actions). Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Individuals, organizations, States, local governments, and other non-Federal entities are not affected by the designation of critical habitat unless their actions occur on Federal lands, require Federal authorization, or involve Federal funding.

Section 7(a)(2) of the Act requires Federal agencies, including us, to ensure that their actions are not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. This requirement is met through section 7 consultation under the Act. Our regulations define ''jeopardize the continued existence'' as to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species (50 CFR 402.02). ''Destruction or adverse modification of designated critical habitat'' is defined as a direct or indirect alteration that appreciably diminishes the value of the critical habitat for both the survival and recovery of the species (50 CFR 402.02). Such alterations include, but are not limited to, adverse changes to the physical or biological features, *i.e.*, the primary constituent elements, that were the basis for determining the habitat to be critical. However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.,* 245 F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we would also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Service's Regional Director believes would avoid the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and

the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the Santa Ana sucker and designated critical habitat will require consultation under section 7. On private, State, or county lands, or lands under local jurisdictions, activities requiring a permit from a Federal agency, such as Federal Highway Administration or Federal Emergency Management Act funding, or a permit from the Corps under section 404 of the Clean Water Act, will continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on non-Federal lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency may affect or destroy or adversely modify critical habitat for Santa Ana sucker include, but are not limited to:

(1) Any activity, including the regulation of activities by the Corps of Engineers under section 404 of the Clean Water Act or activities carried out by or licensed by the Environmental Protection Agency (EPA), that could alter the watershed, water quality, and natural hydrologic function to an extent that water quality and/or water quantity becomes unsuitable to support the Santa Ana sucker within designated critical habitat;

(2) Roads, highways, and rights-of-way construction and maintenance or any activity funded or carried out by the Department of Transportation or other Federal agencies that results in discharge of dredged or fill material or excavation within designated critical habitat; or

(3) Activities regulated by the Corps, EPA, or Natural Resources Conservation Service under the Clean Water Act and other acts or regulations, including but not limited to, discharge of fill into waters of the United States and promulgation of water quality standards within designated critical habitat;

(4) Sale or exchange of Federal lands by a Federal agency to a non-Federal entity within designated critical habitat;

(5) Construction, licensing, re-licensing, and operation of dams or other water impoundments by the Bureau of Reclamation (BOR), Corps, or Federal Energy Regulatory Commission (FERC) within designated critical habitat;

(6) Licensing of construction of communication sites by the Federal Communications Commission;

(7) Funding of construction or development activities by the U.S. Department of Housing and Urban Development; and

(8) Promulgation and implementation of a land use plan by a Federal agency such as the U.S. Forest Service that may alter management practices for critical habitat.

If you have questions regarding whether specific activities may constitute adverse modification of critical habitat in California, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section). Requests for copies of the regulations on listed plants and wildlife, and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 NE. 11th Ave, Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

Required Determinations

Regulatory Planning and Review

The Office of Management and Budget (OMB) has not reviewed this final critical habitat designation in accordance with Executive Order 12866. In order to comply with the critical habitat designation deadline established by the district court, there was insufficient time for OMB to formally review this proposal.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

The Service is not required to comply with the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) when promulgating a final rule under the good cause exemption of the Administrative Procedure Act (APA). RFA section 3 requires the preparation of an initial regulatory flexibility analysis (IRFA) ''whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule * * *'' (5 U.S.C. 603(a)). RFA section 4 requires agencies to conduct a final regulatory flexibility analysis (FRFA) with each final rule, but only when ''an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking * * *'' (5 U.S.C. 604(a)). Therefore, for a critical habitat final rulemaking conducted under the APA's 553(b)(B) good cause exemption, the RFA does not require the Service to create an IFRA or a FRFA and contains no other provisions requiring compliance in such situations. The certification procedures in RFA section 5 are not relevant because they are only triggered if an IRFA or FRFA is otherwise required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.)

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. As previously discussed, we have excluded critical habitat from private lands within the draft Western Riverside MSHCP and the SAS Conservation Program under section 4(b)(2) of the Act. The exclusion of these private lands and the activities associated with the draft Western Riverside MSHCP and SAS Conservation Program eliminates the potential for critical habitat in these excluded areas to have any effect on the increase in cost or prices for consumers or any significant adverse effects on competition, employment, investment, productivity, innovation or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Moreover, approximately 48 percent of the designated critical habitat is on Forest Service lands that are not intensively used for commercial or business purposes and we anticipate that the designation will have little to no effect on cost or prices for consumers or any other significant commercial or business related activities. The remaining 52 percent of designated critical habitat that occurs on private lands is constrained by other existing conditions, such as being within wetlands regulated by the U.S. Army Corps of Engineers, floodplains identified by FEMA, or by the presence of listed species or other designated critical habitat. Therefore, we believe that this critical habitat designation will not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and 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.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under Executive Order 12866, and is not expected to significantly affect energy production supply and distribution facilities because no energy production, supply, and distribution facilities are included within designated critical habitat. Further, we do not believe the designation of critical habitat for the Santa Ana sucker will affect future energy production. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

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

(a) This rule will not produce a Federal mandate on State or local governments or the private sector of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no direct obligations on State or local governments.

(b) This rule will not ''significantly or uniquely'' affect small governments so a Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the Santa Ana sucker in a takings implications assessment. The takings implications assessment concludes that this final designation of critical habitat for the Santa Ana sucker does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this final rule does not have federalism implications or impose substantial direct compliance costs on State and local governments. This designation requires Federal agencies to ensure that their actions do not adversely modify critical habitat; it does not impose direct obligations on State or local governments. A federalism assessment is not required.

The designations may have some benefit to the State of California and local government, in that the areas essential to the conservation of the Santa Ana sucker are more clearly defined, and the primary constituent elements of the habitat necessary to their survival are specifically identified. While this definition and identification do not alter where and what federally sponsored activities may occur, they may assist these local governments in long-range planning, rather than causing them to wait for case-by-case section 7 consultation to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the Santa Ana sucker.

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, E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we have evaluated the potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An 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 do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This rule does not constitute a major Federal action significantly affecting the quality of the human environment.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this document is the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

■ For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

■ 2. Amend § 17.11(h), by revising the entry for ''Sucker, Santa Ana'' under ''FISHES'' to read as follows:

17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
FISHES							
*	*	*	*	*	*	*	
Sucker, Santa Ana	(*Catostomus santaanae*).	U.S.A. (CA)	Los Angeles River basin, San Gabriel River basin, Santa Ana River basin.	T	694	17.95(e)	N/A
*	*	*	*	*	*	*	

■ 3. Amend § 17.95(e) by adding critical habitat for the Santa Ana sucker (*Catostomus santaanae*) in the same alphabetical order as this species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) Fishes. * * *

Santa Ana Sucker (*Catostomus santaanae*)

(1) Critical habitat units are depicted for Los Angeles and San Bernardino Counties, California, on the maps and as described below.

(2) Primary constituent elements essential for the conservation of the Santa Ana sucker are found in an ecosystem that includes a functioning hydrological system that experiences peaks and ebbs in water volume and maintains a sand, gravel, and cobble substrate in a mosaic of sandy stream margins, deep water pools, riffles (*i.e.*, well-oxygenated, shallow water over rough substrate), and runs (*i.e.*, shallow water over generally smooth substrate); sufficient water volume and quality; and complex, native floral and faunal associations. The primary constituent elements for the sucker are the following:

(i) A functioning hydrological system that experiences peaks and ebbs in the water volume throughout the year;

(ii) A mosaic of sand, gravel, cobble, and boulder substrates in a series of riffles, runs, pools and shallow sandy stream margins;

(iii) Water depths greater than 3 cm and bottom water velocities greater than 0.03 meter per second;

(iv) Non-turbid conditions or only seasonally turbid conditions;

(v) Water temperatures less than 30 °C; and

(vi) Stream habitat that includes algae, aquatic emergent vegetation, macroinvertebrates, and riparian vegetation.

(3) The textual unit descriptions below are the definitive source for determining critical habitat boundaries. General location maps by unit are provided at the end of each unit description and are provided for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(4) *Unit 1:* Santa Ana River system in San Bernardino County, California

(i) Unit 1 includes two subunits: Unit 1A, Northern Prado Basin and Unit 1B, Santa Ana Wash. Unit 1A, Northern Prado Basin includes Chino Creek and Cucamonga Creek. Unit 1B, Santa Ana Wash includes portions of the mainstem of the Santa Ana River from La Cadena Avenue Bridge to the downstream edge of Seven Oaks Dam and the tributaries of City Creek and Mill Creek. The lateral extent of Unit 1 is defined by the UTM coordinates described in the legal description.

Unit 1: Santa Ana River, San Bernardino County, California.

Unit 1A: Northern Prado Basin. From USGS 1:24,000 quadrangle maps Corona North and Prado Dam, California, land bounded by the following UTM 11 NAD 27 coordinates (E, N): 436200, 3759600; 436300, 3759600; 436300, 3759500; 436400, 3759500; 436400, 3759400; 436500, 3759400; 436500, 3759300; 436600, 3759300; 436600, 3759200; 436700, 3759200; 436700, 3759100; 436800, 3759100; 436800, 3759000; 436900, 3759000; 436900, 3758800; 437000, 3758800; 437000, 3758700; 437100, 3758700; 437100, 3758600; 437200, 3758600; 437200, 3758400; 437300, 3758400; 437300, 3758300; 437600, 3758300; 437600, 3758200; 437700, 3758200; 437700, 3758000; 437800, 3758000; 437800, 3757900; 437900, 3757900; 437900, 3757700; 438400, 3757700; 438400, 3757500; 438300, 3757500; 438300, 3757400; 438200, 3757400; 438200, 3757300; 438300, 3757300; 438300, 3757200; 438200, 3757200; 438200, 3757000; 438300, 3757000; 438300, 3756900; 438400, 3756900; 438400, 3756800; 438500, 3756800; 438500, 3756700; 438600, 3756700; 438600, 3756600; 438700, 3756600; 438700, 3756500; 438600, 3756500; 438600, 3756400; 438700, 3756400; 438700, 3756300; 439000, 3756300; 439000, 3756200; 439100, 3756200; 439100, 3756100; 439200, 3756100; 439200, 3756200; 439600, 3756200; 439600, 3755800; 439700, 3755800; 439700, 3756100; 439800, 3756100; 439800, 3756200; 440000, 3756200; 440000, 3756400; 440100, 3756400; 440100, 3756500; 440300, 3756500; 440300, 3756400; 440200, 3756400; 440200, 3756200; 440300, 3756200; 440300, 3755900; 440400, 3755900; 440400, 3756100; 440600, 3756100; 440600, 3756000; 440700, 3756000; 440700, 3755900; 440800, 3755900; 440800, 3755600; 440700, 3755600; 440700, 3755500; 440800, 3755500; 440800, 3755400; 441000, 3755400; 441000, 3755500; 441500, 3755500; 441500, 3755800; 442500, 3755800; 442500, 3755900; 442700, 3755900; 442700, 3756200; 442900, 3756200; 442900, 3756300; 443000, 3756300; 443000, 3756400; 443500, 3756400; 443500, 3756500; thence east to the San Bernardino/Riverside County boundary at y-coordinate 3756500; thence south along the San Bernardino/Riverside County boundary to y-coordinate 3756200; thence west following coordinates: 443500, 3756200; 443500, 3756100; 443300, 3756100; 443300, 3756000; 443200, 3756000; 443200, 3755800; 443100, 3755800; 443100, 3755700; 443000, 3755700; 443000, 3755600; 442900, 3755600; 442900, 3755500;

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Unit 1B: Santa Ana Wash. From USGS 1:24,000 quadrangle maps Forest Falls, Harrison Mountain, Redlands, San Bernardino South, and Yucaipa, California, land bounded by the following UTM 11 NAD 27 coordinates (E, N): 482700, 3783600; 482700, 3783500; 482900, 3783500; 482900, 3783400; 483100, 3783400; 483100, 3783300; 483300, 3783300; 483300, 3783200; 483400, 3783200; 483400, 3782700; 483100, 3782700; 483100, 3782600; 483200, 3782600; 483200, 3782500; 483100, 3782500; 483100, 3782100; 483200, 3782100; 483200, 3782000; 483600, 3782000; 483600, 3781800; 483400, 3781800; 483400, 3781200; 483500, 3781200; 483500, 3781000; 483600, 3781000; 483600, 3780900; 483500, 3780900; 483500, 3780600; 483400, 3780600; 483400, 3780500; 483500, 3780500; 483500, 3780200; 483400, 3780200; 483400, 3780000; 483300, 3780000; 483300, 3779800; 483400, 3779800; 483400, 3779600; 483300, 3779600; 483300, 3779000; 483100, 3779000; 483100, 3778900; 483000, 3778900; 483000, 3778700; 482900, 3778700; 482900, 3778000; 482800, 3778000; 482800, 3777800; 482900, 3777800; 482900, 3777600; 482800, 3777600; 482800, 3777400; 482700, 3777400; 482700, 3777000; 482600, 3777000; 482600, 3776500; 482700, 3776500; 482700, 3775500; 482600, 3775500; 482600, 3775300; 482500, 3775300; 482500, 3774800; 482600, 3774800; 482600, 3774600; 482700, 3774600; 482700, 3774500; 482800, 3774500; 482800, 3774300; 482900, 3774300; 482900, 3774200; 483000, 3774200; 483000, 3774100; 483100, 3774100; 483100, 3773900; 483200, 3773900; 483200, 3773800; 484700, 3773800; 484700, 3774200; 486300, 3774200; 486300, 3774300; 486600, 3774300; 486600, 3774400; 486800, 3774400; 486800, 3774500; 487100, 3774500; 487100, 3774600; 487200, 3774600; 487200, 3774400; 487100, 3774400; 487100, 3774000; 487200, 3774000; 487200, 3773900; 487300, 3773900; 487300, 3772700; 488100, 3772700; 488100, 3772600; 488200, 3772600; 488200, 3772700; 488500, 3772700; 488500, 3772500; 489000, 3772500; 489000, 3772700; 489100, 3772700; 489100, 3772800; 489200, 3772800; 489200, 3773000; 489400, 3773000; 489400, 3773100; 489800, 3773100; 489800, 3773200; 490400, 3773200; 490400, 3773000; 490300, 3773000; 490300, 3772800; 490200, 3772800; 490200, 3772700; 490100, 3772700; 490100, 3772500; 490000, 3772500; 490000, 3772300; 489900, 3772300; 489900, 3772200; 489800, 3772200; 489800, 3772000; 489700, 3772000; 489700, 3771600; 489800, 3771600; 489800, 3771500; 489900, 3771500; 489900, 3771400; 490000, 3771400; 490000, 3771300; 490200, 3771300; 490200, 3771200; 490300, 3771200; 490300, 3771100; 490500, 3771100; 490500, 3771000; 490700, 3771000; 490700, 3770900; 490900, 3770900; 490900, 3770800; 491000, 3770800; 491000, 3770700; 491100, 3770700; 491100, 3770600; 493200, 3770600; 493200, 3770700; 493400, 3770700; 493400, 3770800; 493500, 3770800; 493500, 3770900; 493800, 3770900; 493800, 3771000; 494200, 3771000; 494200, 3771100; 494500, 3771100; 494500, 3771200; 494600, 3771200; 494600, 3771300; 494700, 3771300; 494700, 3771400; 494900, 3771400; 494900, 3771500; 495000, 3771500; 495000, 3771600; 495200, 3771600; 495200, 3771700; 495500, 3771700; 495500, 3771800; 495800, 3771800; 495800, 3771900; 496200, 3771900; 496200, 3772000; 496400, 3772000; 496400, 3772100; 496700, 3772100; 496700, 3772200; 496800, 3772200; 496800, 3772300; 496900, 3772300; 496900, 3772500; 497000, 3772500; 497000, 3772600; 497100, 3772600; 497100, 3772700; 497400, 3772700; 497400, 3772800; 497500, 3772800; 497500, 3773000; 497600, 3773000; 497600, 3773100; 497700, 3773100; 497700, 3773200; 497900, 3773200; 497900, 3773300; 498200, 3773300; 498200, 3773400; 498400, 3773400; 498400, 3773500; 498700, 3773500; 498700, 3773600; 498800, 3773600; 498800, 3773500; 499300, 3773500; 499300, 3773300; 499500, 3773300; 499500, 3773200; 499900, 3773200; 499900, 3773100; 500200, 3773100; 500200, 3773000; 501000, 3773000; 501000, 3773100; 501200, 3773100; 501200, 3773000; 501600, 3773000; 501600, 3772900; 502400, 3772900; 502400, 3772800; 503100, 3772800; 503100, 3772700; 503700, 3772700; 503700, 3772600; 504100, 3772600; 504100, 3772700; 504600, 3772700; 504600, 3772600; 505100, 3772600; 505100, 3772500; 505400, 3772500; 505400, 3772400; 505500, 3772400; 505500, 3772300; 505700, 3772300; 505700, 3772200; 505800, 3772200; 505800, 3772100; 505900, 3772100; 505900, 3771900; 505500, 3771900; 505500, 3772000; 505300, 3772000; 505300, 3772100; 505100, 3772100; 505100, 3772200; 504800, 3772200; 504800, 3772300; 504000, 3772300; 504000, 3772400; 503800, 3772400; 503800, 3772300; 503700, 3772300; 503700, 3772400; 503500, 3772400; 503500,

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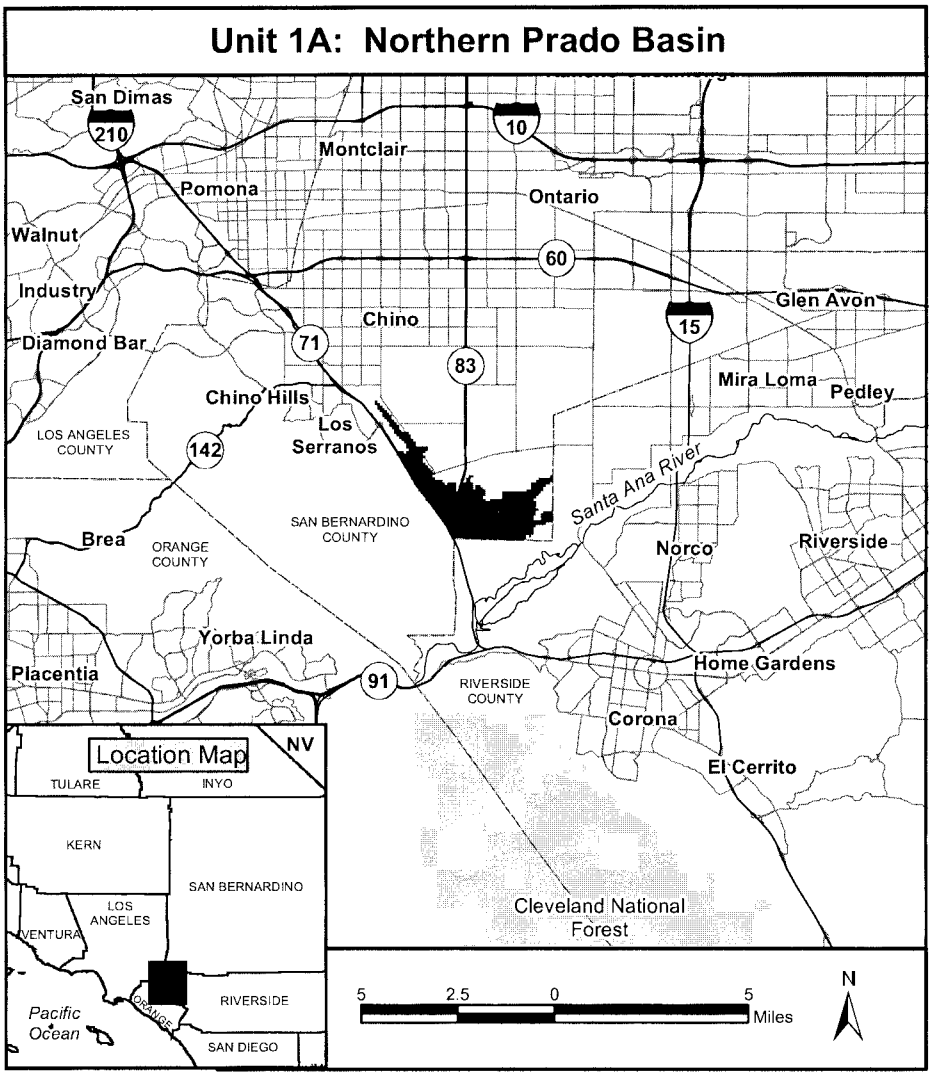
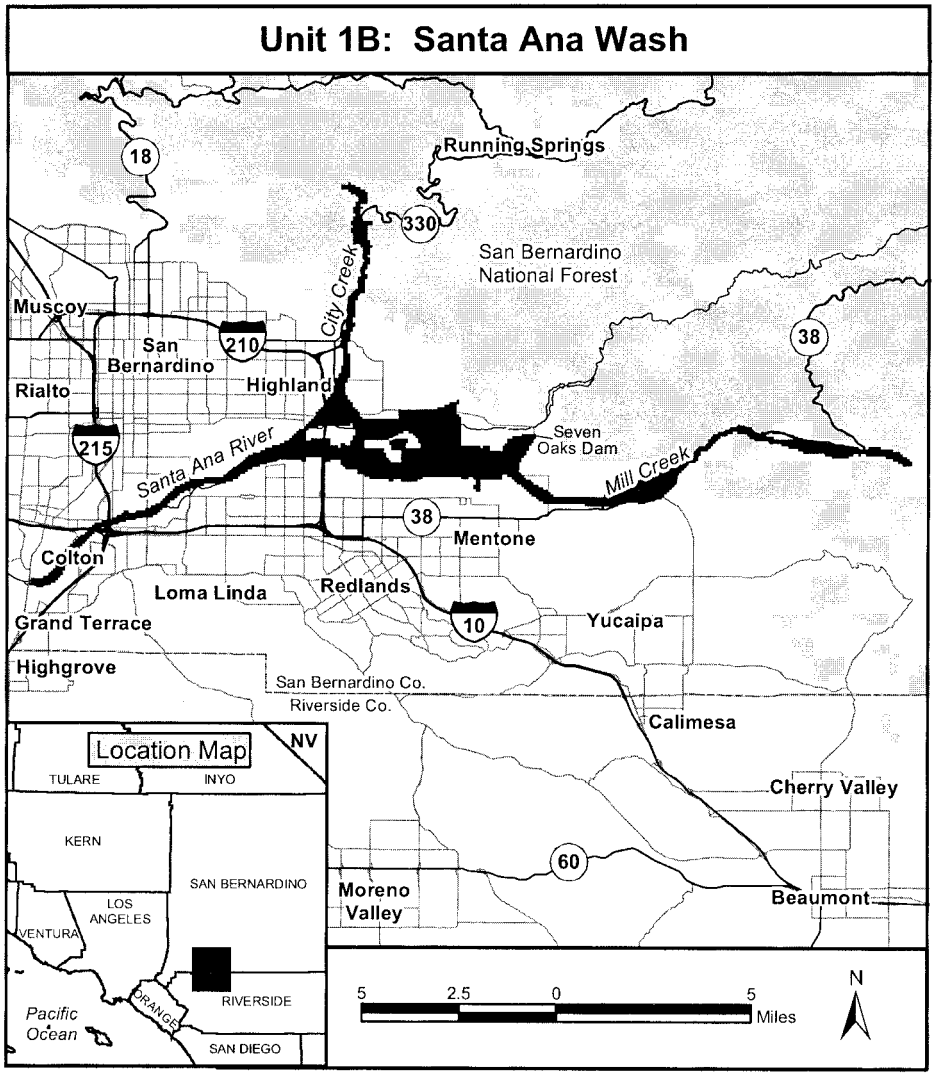
BILLING CODE 4310–55–P

(ii) Maps of Unit 1 follow:





BILLING CODE 4310–55–C

(5) *Unit 2:* San Gabriel River system in Los Angeles County, California.

(i) Unit 2 includes the West, North and East Forks of the San Gabriel River and the following tributaries from source to confluence: Cattle Canyon Creek, Bear Creek, and Big Mermaids Canyon Creek. The San Gabriel River portion of the unit extends from the Cogswell Dam on the West Fork to the Bridge-of-No Return on the East Fork, and portions of the North Fork. The lateral extent of Unit 2 is defined by the UTM coordinates described in the legal description.

Unit 2: San Gabriel River. Los Angeles County, California. From USGS 1:24,000 quadrangle maps Azusa, Crystal Lake, Glendora, Mount Baldy, Mount San Antonio, and Waterman Mountain, California, land bounded by the following UTM 11 NAD 27 coordinates (E, N): 422700, 3795100; 423300, 3795100; 423300, 3795000; 423400, 3795000; 423400, 3794400; 423300, 3794400; 423300, 3794300; 423200, 3794300; 423200, 3794200; 423100, 3794200; 423100, 3794000; 423000, 3794000; 423000, 3793400; 422900, 3793400; 422900, 3793300; 422800, 3793300; 422800, 3793200; 422700, 3793200; 422700, 3793100; 422600, 3793100; 422600, 3792900; 422500, 3792900; 422500, 3792800; 422400, 3792800; 422400, 3792100; 422500, 3792100; 422500, 3791800; 422700, 3791800; 422700, 3791900; 422900, 3791900; 422900, 3792000; 423100, 3792000; 423100, 3792100; 423800, 3792100; 423800, 3792200; 424500, 3792200; 424500, 3791900; 424300, 3791900; 424300, 3791800; 424000, 3791800; 424000, 3791700; 423900, 3791700; 423900, 3791600; 423400, 3791600; 423400, 3791700; 423200, 3791700; 423200, 3791600; 423000, 3791600; 423000, 3791500; 422900, 3791500; 422900, 3791400; 422700, 3791400; 422700, 3791300; 422600, 3791300; 422600, 3791200; 422500, 3791200; 422500, 3791100; 422400, 3791100; 422400, 3791000; 421700, 3791000; 421700, 3790900; 421600, 3790900; 421600, 3790800; 421500, 3790800; 421500, 3790700; 421400, 3790700; 421400, 3790600; 421300, 3790600; 421300, 3790200; 421200, 3790200; 421200, 3790100; 421100, 3790100; 421100, 3789900; 420800, 3789900; 420800, 3789800; 420700, 3789800; 420700, 3789700; 420600, 3789700; 420600, 3789600; 420500, 3789600; 420500, 3789500; 420700, 3789500; 420700, 3789400; 420800, 3789400; 420800, 3789000; 420900, 3789000; 420900, 3789100; 421100, 3789100; 421100, 3789200; 421200, 3789200; 421200, 3789300; 421700, 3789300; 421700, 3789200; 421800, 3789200; 421800, 3789100; 421900, 3789100; 421900, 3788900; 422000, 3788900; 422000, 3788800; 422200, 3788800; 422200, 3788700; 422400, 3788700; 422400, 3788500; 422500, 3788500; 422500, 3788600; 422600, 3788600; 422600, 3788700; 422500, 3788700; 422500, 3789400; 422600,

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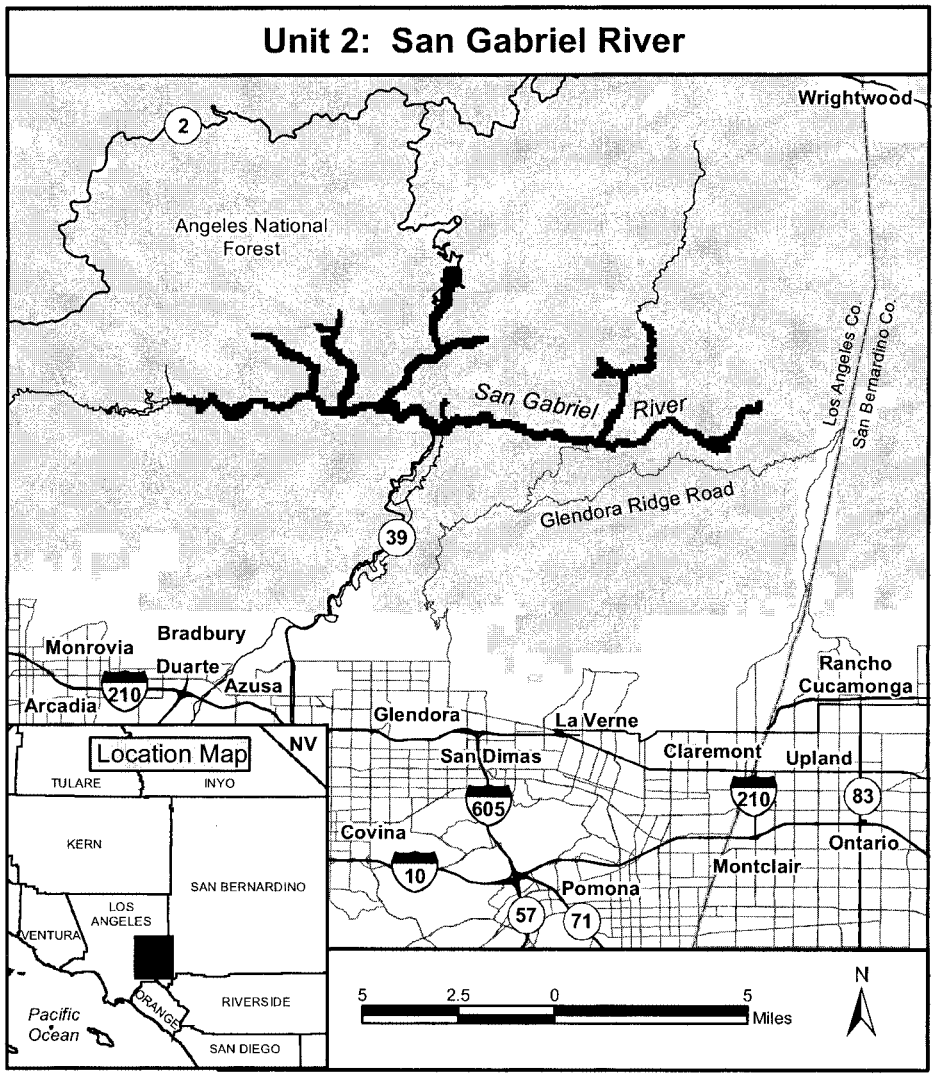
BILLING CODE 4310–55–P

(ii) The map of Unit 2 follows:



BILLING CODE 4310–55–C

(6) *Unit 3:* Big Tujunga Creek system in Los Angeles County, California

(i) Unit 3 includes the stretch of Big Tujunga Creek between the Big Tujunga Dam and Hansen Dam and the following tributaries: Stone Canyon Creek, Delta Canyon Creek, Gold Canyon Creek, and Little Tujunga Creek. The lateral extent of Unit 3 is defined by the UTM coordinates described in the legal description.

Unit 3: Big Tujunga Creek. Los Angeles County, California. From USGS 1:24,000 quagrangle maps Condor Peak, San Fernando, and Sunland, California, land bounded by the following UTM 11 NAD 27 coordinates (E, N): 381800, 3797700; 382100, 3797700; 382100, 3797600; 382300, 3797600; 382300, 3797500; 382400, 3797500; 382400, 3797400; 382700, 3797400; 382700, 3797300; 382800, 3797300; 382800, 3797200; 383000, 3797200; 383000, 3797100; 383100, 3797100; 383100, 3797000; 383300, 3797000; 383300, 3796500; 383400, 3796500; 383400, 3796300; 383300, 3796300; 383300, 3796200; 383200, 3796200; 383200, 3796100; 383600, 3796100; 383600, 3796300; 383700, 3796300; 383700, 3796500; 384300, 3796500; 384300, 3796400; 384400, 3796400; 384400, 3796300; 384600, 3796300; 384600, 3796200; 384900, 3796200; 384900, 3796100; 385000, 3796100; 385000, 3796000; 385100, 3796000; 385100, 3795900; 385200, 3795900; 385200, 3795800; 385300, 3795800; 385300, 3795700; 385900, 3795700; 385900, 3795600; 386100, 3795600; 386100, 3795500; 386200, 3795500; 386200, 3795400; 386300, 3795400; 386300, 3795300; 386500, 3795300; 386500, 3795200; 386600, 3795200; 386600, 3795100; 386700, 3795100; 386700, 3794900; 386800, 3794900; 386800, 3794800; 386900, 3794800; 386900, 3794700; 387000, 3794700; 387000, 3794600; 387100, 3794600; 387100, 3794500; 387200, 3794500; 387200, 3794400; 387600, 3794400; 387600, 3794300; 387700, 3794300; 387700, 3794200; 387800, 3794200; 387800, 3793800; 387900, 3793800; 387900, 3793900; 388000, 3793900; 388000, 3793800; 388100, 3793800; 388100, 3793600; 388600, 3793600; 388600, 3793700; 388800, 3793700; 388800, 3793800; 389100, 3793800; 389100, 3793700; 389300, 3793700; 389300, 3793800; 389400, 3793800; 389400, 3793900; 389600, 3793900; 389600, 3794000; 389700, 3794000; 389700, 3794100; 389800, 3794100; 389800, 3794200; 389900, 3794200; 389900, 3794300; 390000, 3794300; 390000, 3794700; 390100, 3794700; 390100, 3794900; 390200, 3794900; 390200, 3795000; 390400, 3795000; 390400,

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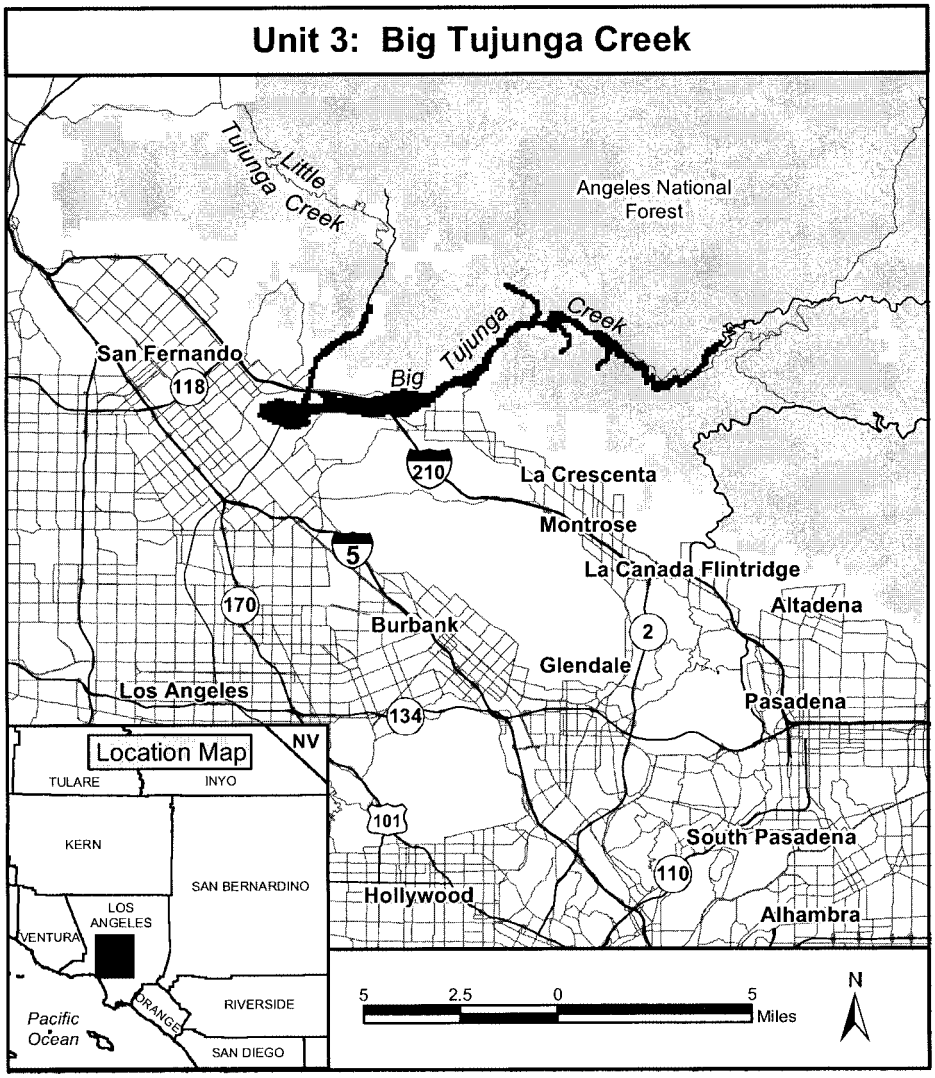
(ii) The map of Unit 3 follows:

BILLING CODE 4310–55–P



(7) Lands located within the exterior boundaries of the critical habitat designation that are not considered critical habitat and are therefore excluded by definition include: existing paved roads; bridges; parking lots; railroad tracks; railroad trestles; and residential, commercial, and industrial developments.

* * * * *

Dated: February 20, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–4225 Filed 2–25–04; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 030821210–4052–02; I.D.081103A]

RIN 0648–AR36

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 16–1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 16–1 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 16–1 sets a process for and standards by which the Council will specify rebuilding plans for groundfish stocks declared overfished by the Secretary of Commerce. Amendment 16–1 is intended to ensure that Pacific Coast groundfish overfished species rebuilding plans meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), in particular national standard 1 on overfishing which addresses rebuilding overfished