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• *Mail:* Mr. Robert D. Sachs, Environmental Protection Agency, Mail code 1807T, 1200 Pennsylvania Avenue, Washington, DC 20460 telephone number 202-566-2884; fax number 202-566-0966; e-mail address: [sachs.robert@epa.gov](mailto:sachs.robert@epa.gov).

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**FOR FURTHER INFORMATION CONTACT:** Mr. Robert D. Sachs, Performance Incentives Division, Office of Business and Community Innovation, Office of Policy, Economics and Innovation, Office of Administrator, Mail Code 1807T, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460 telephone number 202-566-2884; fax number 202-566-0966; e-mail address: [sachs.robert@epa.gov](mailto:sachs.robert@epa.gov).

**SUPPLEMENTARY INFORMATION:** This document concerns revisions to the Resource Conservation and Recovery Act to address an inconsistency between the preamble and regulatory language at 67 FR 52674 and 69 FR 21737, and to correct three inadvertently omitted applicable regulatory provisions at 69 FR 21737. The revisions proposed here are identical to those contained in the Direct Final Rule located in the "Rules and Regulations" section of this **Federal Register** publication. Please refer to the preamble and regulatory text of the direct final action for further information and the actual text of the revisions. Additionally, all information regarding Statutory and Executive Orders for this proposed rule can be found in the Statutory and Executive Order Review section of the direct final action.

Dated: October 19, 2004.

**Michael O. Leavitt**,  
Administrator.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AT57

#### Endangered and Threatened Wildlife and Plants; Reopening of the Public Comment Period for the Draft Economic Analysis and Proposed Designation of Critical Habitat for the Santa Ana Sucker

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

**ACTION:** Proposed rule; reopening of the public comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period for the draft economic analysis on the proposed designation of critical habitat for the Santa Ana sucker (*Catostomus santaanae*) and on the proposed designation itself. The comment period will provide the public, Federal, State, and local agencies, and tribes with an additional opportunity to submit written comments on this proposal and its respective draft economic analysis. Comments previously submitted for this proposed rule and draft economic analysis need not be resubmitted as they have already been incorporated into the public record and will be fully considered in any final decision.

**DATES:** The public comment period on the proposed designation and draft economic analysis is now reopened until November 24, 2004. We will accept comments and information until 5 p.m. p.s.t. on that date.

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

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

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

3. You may send comments by electronic mail (e-mail) to [fw1sasau@r1.fws.gov](mailto:fw1sasau@r1.fws.gov). Please see the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received, as well as supporting documentation used in preparation of the proposed critical habitat rule for the Santa Ana sucker and the draft economic analysis on the

proposed designation, will be available for public inspection, by appointment, during normal business hours at the above address. Any comments received after the closing date may not be considered in the final decisions on this action. You may obtain copies of the proposed critical habitat designation by contacting the Carlsbad Fish and Wildlife Office at the above address.

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

**SUPPLEMENTARY INFORMATION:**

**Public Comments Solicited**

We solicit comments or suggestions from the public, other concerned governmental agencies, tribes, the scientific community, industry, or any other interested parties concerning our proposed designation of critical habitat for the Santa Ana sucker and our draft economic analysis for the proposed critical habitat designation. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefit of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of Santa Ana sucker habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic, national security or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities or families;

(5) Whether the economic analysis adequately addresses the likely effects and resulting costs arising from the California Environmental Quality Act and other State laws as a result of the proposed critical habitat designation;

(6) Whether the economic analysis makes appropriate assumptions, and is consistent with the Service's listing regulations regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat for the Santa Ana sucker;

(7) The benefits of including or excluding lands covered by a Natural Community Conservation Plan or Habitat Conservation Plan or any other lands covered by an adequate management plan;

(8) Whether the analysis adequately addresses the indirect effects, e.g.,

property tax losses due to reduced home construction, losses to local business due to reduced construction activity;

(9) Whether the economic analysis appropriately identifies land and water use regulatory controls that could result from the proposed critical habitat designation for this species;

(10) Whether the analysis accurately defines and captures opportunity costs;

(11) Whether the economic analysis correctly assesses the effect on regional costs (e.g., housing costs) associated with land use controls that could arise from the designation of critical habitat for this species;

(12) Whether the designation of critical habitat for the sucker will result in disproportionate economic or other impacts to specific areas that should be evaluated for possible exclusion from the final designation;

(13) Whether the economic analysis is consistent with the Service's listing regulations because this analysis should identify all costs related to the designation of critical habitat for the Santa Ana sucker and this designation was intended to take place at the time this species was listed; and

(14) The draft economic analysis includes an appendix which provides an assessment of the potential benefits that may accrue to homeowners resulting from the amenity associated from living in the vicinity of a protected riparian corridor.

a. Please comment on the appropriateness of including the analysis of amenities as identified in the appendix as a potential benefit associated with critical habitat designation without doing a complete analysis of that class of economic effect (such as stigma effects) in general and the Santa Ana sucker designation in particular.

b. Please comment on the method employed to estimate this effect which relies on the combined results of two studies that measure the premium to homes located near protected or restored urban streams (Colby and Wishart 2002, Streiner and Loomis 1995).

c. Please comment on the appropriateness of the application itself, which applied the benefits to all areas of the designation.

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

If you wish to comment, you may submit your comments and materials concerning this rule by any one of

several methods (see **ADDRESSES** section). Please submit Internet comments to [fw1sasu@r1.fws.gov](mailto:fw1sasu@r1.fws.gov) in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: Santa Ana Sucker Critical Habitat" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Carlsbad Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

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

**Background**

On February 26, 2004, we concurrently published in the **Federal Register** a final rule (69 FR 8839) and a proposed rule (69 FR 8911) to designate critical habitat for the Santa Ana sucker. In order to comply with the designation deadline established by the district court in *California Trout v. DOI*, No. 97-3779 (N.D. Cal.), we were unable to open a public comment period, hold a public hearing, or complete an economic analysis of the final rule. We refer the reader to the final rule (69 FR 8839) for a complete explanation of our reasons for dispensing with the notice and comment procedures generally required under the Administrative Procedure Act. To give the public an opportunity to comment on the critical habitat designation, including the opportunity to request and hold a public hearing, and to enable us to complete and circulate for public review an economic analysis of critical habitat designation, we published and solicited comment on a proposed rule (69 FR 8911) to designate critical habitat for the Santa Ana sucker on approximately 21,129 acres (ac) (8,550 hectares (ha)) of

land in Los Angeles and San Bernardino Counties, California. We indicated that, after taking public comment, we would issue a new final designation that would replace the designation put into place on February 26, 2004. The original comment period on the proposed rule closed on April 26, 2004.

On August 19, 2004, we published a notice in the **Federal Register** that announced the reopening of the comment period on the proposed designation of critical habitat for the Santa Ana sucker and the scheduling of a public hearing on September 9, 2004, in Pasadena, California (69 FR 58876). The comment period was open until 5 p.m. p.s.t on September 20, 2004.

In order to eliminate any confusion as to the current status of the February 26, 2004 final rule designating critical habitat, we reiterate our determination and supporting reasons presented in that rule; that rule will remain in effect during the short period of time necessary to allow this reopened comment period on the February 26, 2004 proposed critical habitat rule, and associated draft economic analysis, and to make a final determination on that rule.

#### *Economic Analysis*

Section 4(b)(2) of the Act requires that we designate or revise critical habitat on the basis of the best scientific and commercial data available, after taking into consideration economic and any other relevant impacts of specifying any particular area as critical habitat. Based upon the February 26, 2004, proposed rule to designate critical habitat for the

Santa Ana sucker, we prepared a draft economic analysis on the proposed critical habitat designation. Retrospective costs total \$4.2 million, with transportation comprising \$3.4 million of those costs. The remainder of retrospective costs was split among OHV recreation, flood control agencies, and Federal agencies. Total prospective costs are \$30.5 million assuming a three percent discount rate and \$21.8 million with a seven percent discount rate. Annual prospective costs are estimated to be \$2.0 million. Costs associated with transportation contribute 49 percent of the annual costs and overall prospective costs. Other leading activities include water supply, flood control agencies, and residential and commercial development. The draft economic analysis also includes an appendix which provides an assessment of the potential benefits that may accrue to homeowners resulting from the amenity associated from living in the vicinity of a protected riparian corridor. The method employed to estimate this effect relies on the combined results of two studies that measure the premium to homes located near protected or restored urban streams (Colby and Wishart 2002, Streiner and Loomis 1995).

On October 1, 2004, we published a notice in the **Federal Register** announcing the reopening of the comment period on the proposed designation of critical habitat for the Santa Ana sucker and on the draft economic analysis for the proposal (69 FR 51416). The comment period was

open until 5 p.m. p.s.t on October 12, 2004.

In order to give the public, Federal, State, and local agencies, and Tribes additional time to review and comment on the draft economic analysis, we are reopening the public comment period for another 30 days. We are now soliciting public comment on the draft economic analysis and appendix until the date specified above in **DATES**. We will also continue to accept comments concerning our proposed designation of critical habitat for the Santa Ana sucker during this period.

#### **References Cited**

Colby, Bonnie and Steve Wishart. 2002. Quantifying the Influence of Desert Riparian Areas on Residential Property Values, The Appraisal Journal, July.

Streiner, Carol and John B. Loomis. 1995. Estimating the Benefits of Urban Stream Restoration Using the Hedonic Price Method, Rivers 5(4).

#### **Author**

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

#### **Authority**

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

Dated: October 20, 2004.

#### **Paul Hoffman,**

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

[FR Doc. 04-23968 Filed 10-22-04; 8:45 am]

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