

denial letter was not long enough to allow requesters to respond and that this limited timeframe served to discourage people from appealing denial decisions. The petitioners requested that the timeframe be extended to 35 calendar days to match the timeframe NARA allows to appeal denials for access to records made under the provisions of the Freedom of Information Act (FOIA) (*see* 36 CFR 1250.72 (a)) and the Privacy Act (*see* 36 CFR 1202.56 (a)).

To conform to the requirements under the FOIA, the proposed change also requires that NARA *must receive* the written appeal within 35 calendar days of the date of NARA's denial letter, instead of the *requester filing* an appeal no later than 10 working days after receiving NARA's denial. The proposed change is more equitable, as the time in which a requester may receive NARA's denial may fluctuate. We agree with the petitioners that the change from 10 working days to 35 calendar days, corresponding with the length of time to make appeals under the FOIA, will be a service to researchers.

We also propose to change the appeal official to the appropriate Presidential library director and to have the director respond to the appeal within 30 working days.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB). As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities because this rule applies to individual researchers. This proposed rule does not have any federalism implications.

#### List of Subjects in 36 CFR Part 1270

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend part 1270 of title 36, Code of Federal Regulations, as follows:

#### PART 1270—PRESIDENTIAL RECORDS

1. The authority citation for part 1270 is revised to read as follows:

**Authority:** 44 U.S.C. 2201–2207.

2. Amend § 1270.42 by revising paragraphs (a), (b), and (d) to read as follows:

#### Subpart D—Access to Presidential Records

##### § 1270.42 Denial of access to public; right to appeal.

(a) Any person denied access to a Presidential record (hereinafter *the requester*) because of a determination that the record or a reasonable segregable portion of the record was (1) properly restricted under 44 U.S.C. 2204(a), and (2) not placed in the public domain by the former President or his agent, may file an administrative appeal with the appropriate Presidential library director at the address cited in part 1253 of this chapter.

(b) All appeals must be received by NARA within 35 calendar days of the date of NARA's denial letter.

(d) Upon receipt of an appeal, the appropriate Presidential library director has 30 working days from the date an appeal is received to consider the appeal and respond in writing to the requester. The director's response must state whether or not the Presidential records requested are to be released and the basis for this determination. The director's decision to withhold release of Presidential records is final and not subject to judicial review.

Dated: September 27, 2004.

**John W. Carlin,**

*Archivist of the United States.*

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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; Notice of Availability of the Draft Economic Analysis on the Proposed Designation of Critical Habitat for the Santa Ana Sucker

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

**ACTION:** Proposed rule; notice of availability of draft economic analysis and reopening of the public comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft economic analysis on the proposed designation of critical habitat for the Santa Ana sucker (*Catostomus santaanae*), and the reopening of the public comment period on the proposed rule to designate

critical habitat for the Santa Ana sucker. The comment period will provide the public, Federal, State, and local agencies, and Tribes with an opportunity to submit written comments on this proposal and its respective draft economic analysis. Comments previously submitted for this proposed rule 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 October 12, 2004. We will accept comments and information until 5 p.m. PST 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 [fw1sasu@r1.fws.gov](mailto:fw1sasu@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 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 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, we were unable to open a public comment period, hold a public hearing, or complete an economic analysis of the final rule. Please refer 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 for a public hearing, and to enable the Service 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. 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** announcing the reopening of a 30-day comment period on the proposed rule and the holding of a public hearing on September 9, 2004, in Pasadena, California (69 FR 51416). The comment period was open until 5 p.m. PST on September 20, 2004.

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 have 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). 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: September 27, 2004.

#### Julie MacDonald,

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

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