

Telecommunications Act of 1996, this *Notice of Inquiry* is adopted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AI72

Endangered and Threatened Wildlife and Plants; Reopening of the Public Comment Period for the Determination of Distinct Vertebrate Population Segment for the California Gnatcatcher (*Polioptila californica*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period for the proposed determination of a distinct vertebrate population segment for the California gnatcatcher (*Polioptila californica*). The comment period will provide the public, and Federal, State, and local agencies and Tribes with an opportunity to submit written comments on the proposal. Comments previously submitted for this proposal 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 original comment period closed on June 23, 2003. The public comment period for this proposal is now reopened, and we will accept comments and information until 5 p.m. May 24, 2004. Any comments received after the closing date may not be considered in the final decisions on these actions.

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

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

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

Comments and materials received, as well as supporting documentation used

in preparation of the proposed determination of distinct vertebrate population segment for the California gnatcatcher, will be available for public inspection, by appointment, during normal business hours at the above address.

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

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We solicit comments or suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry, or any other interested parties concerning our proposed determination of distinct vertebrate population segment for the California gnatcatcher, and on the taxonomic status of the gnatcatcher.

With respect to our consideration of listing of the California gnatcatcher species north of the international border as a distinct vertebrate population segment (DPS), we are particularly soliciting comments on the following:

(1) Do the recent genetic findings referenced in this report justify a review of the taxonomy of the California gnatcatcher?

(2) Is there any other new information that we should consider in this context?

In our consideration of the U.S. population of the California gnatcatcher as a DPS, we have presented a proposed five factor analysis of the status of the U.S. population. With respect to this analysis, we are particularly soliciting information on the following:

(1) Existing populations of the California gnatcatcher, including the coastal California gnatcatcher subspecies, within its range in the United States;

(2) Existing populations of the California gnatcatcher, including the coastal California gnatcatcher subspecies, in Mexico;

(3) Information on the regulatory authorities available for the protection of the California gnatcatcher in Mexico;

(4) Information on the adequacy of regulatory authorities available to protect coastal California gnatcatcher habitat in California absent the application of the Act;

(5) Ways in which the California gnatcatcher exists in the U.S. or throughout the range of the coastal California gnatcatcher subspecies, in an ecological setting that is unusual or unique compared to the California gnatcatcher generally; and

(6) Any other information that we should consider in our review of the species' taxonomy.

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

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

Background

On April 24, 2003, we published a proposed rule in the **Federal Register** (68 FR 20228) to designate critical habitat for the coastal California gnatcatcher subspecies and propose our determination of a distinct vertebrate population segment for the California gnatcatcher. In today's **Federal Register**, we also reopened the comment period on the proposed designation of critical habitat. By this notice we are reopening the comment period on the proposed determination of the DPS for the California gnatcatcher. We intend to proceed to finalize these two rulemakings separately.

A recent scientific paper (Zink, R.M., G.F. Barrowclough, J. L. Atwood, and R.C. Blackwell-Rago. 2000. Genetics, taxonomy, and conservation of the threatened California gnatcatcher. *Conservation Biology* 14(5):1394-1405) presents results of genetic research on the California gnatcatcher and calls into question the status of the coastal California gnatcatcher as a separate subspecies. This paper presents a contradictory view to previously published taxonomic reviews of the species. However, Atwood's research supported the original listing of the gnatcatcher. Zink *et al.* (2000) analyzed the genetic structure of California gnatcatcher populations throughout the range by looking for variation in the mitochondrial DNA (mtDNA) control region and three mtDNA genes. Their analysis found genetic structuring

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

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

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

References Cited

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

Author

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

Authority

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

Dated: March 26, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04-7993 Filed 4-7-04; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AI71 and 1018-AI72

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

AGENCY: Fish and Wildlife Service, Interior.

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

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

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

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

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

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

Office, 6010 Hidden Valley Road, Carlsbad, California.

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

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

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

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

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

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

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

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

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

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