

Diego County's MHCOSP; and six water districts in San Diego County.

We intend that participating jurisdictions will be able to continue to apply the 4(d) special rule within designated critical habitat and to issue Habitat Loss Permits, with the joint concurrence of us and the California Department of Fish and Game (CDFG), provided the jurisdictions are actively working to complete their subarea plans and adhere to the Guidelines. To be consistent with the Guidelines, the jurisdictions must find, and we and CDFG must concur, that:

(1) The proposed habitat loss is consistent with the interim loss criteria in the Guidelines and with any subregional process if established by the subregion:

(a) the habitat loss does not cumulatively exceed the 5 percent guideline;

(b) the habitat loss will not preclude connectivity between areas of high habitat values;

(c) the habitat loss will not preclude or prevent the preparation of the subregional NCCP; and

(d) the habitat loss has been minimized and mitigated to the maximum extent practicable in accordance with section 4.3 of the Guidelines.

(2) The habitat loss will not appreciably reduce the likelihood of the survival and recovery of listed species in the wild.

(3) The habitat loss is incidental to otherwise lawful activities.

Because, in addition to avoiding jeopardy to the coastal California gnatcatcher, the Guidelines restrict interim habitat loss allowed under the 4(d) rule to areas with low long-term conservation potential that will not preclude development of adequate NCCP plans and that will not adversely impact connectivity between areas of high habitat value, we believe that allowing a small percentage of habitat loss that could potentially occur within designated critical habitat pursuant to the 4(d) rule is not likely to adversely modify or destroy critical habitat by appreciably reducing its value for both the survival and recovery of the species. When we make a final critical habitat determination, we will prepare a new biological opinion on the 4(d) rule to formally evaluate the effects of the rule on designated critical habitat.

Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Division of Endangered Species, 911 NE. 11th Ave., Portland,

OR 97232 (telephone 503-231-2063, facsimile 503-231-6143).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will complete an economic analysis for this proposal prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day comment period at that time.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final determination may differ from this proposal.

Public Hearings

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (see **ADDRESSES** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the notice? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: Exsec@ios.doi.gov.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). The Service is preparing a draft economic analysis of this proposed action. The Service will use this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat and excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of inclusion, unless failure to designate such area as critical habitat will lead to the extinction of the coastal California gnatcatcher. This analysis will be available for public comment before finalizing this designation. The availability of the draft economic analysis will be announced in the **Federal Register**.

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small