

1995, and prevented the Service from making a final decision on these proposals by the August 1995 administrative deadline. The moratorium was lifted on April 26, 1996, when the appropriation for the Department of the Interior for the remainder of fiscal year 1996 was enacted into law. In a Federal Register document published on May 16, 1996 (61 FR 24722), the Service outlined in detail the history of the moratorium and indicated the priorities it would follow in eliminating the listing program backlog resulting from the moratorium. Preparation of final rules for these proposed species is considered a Tier 2 priority—processing final decisions on proposed listings. For more information on the moratorium and the priority for backlogged listing actions, refer to the May 15, 1996, Federal Register notice.

The Service hereby announces another reopening of the comment period until July 26, 1996. Reopening of the comment period will allow the Service to accept information on scientific studies conducted since the comment period last closed on May 5, 1995. Any other comments from the interested public will also be solicited concerning these proposals.

#### Author

The primary author of this notice is Robert S. Butler, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216 (904/232-2580 or fax 904/232-2404).

Authority: The authority for this action is the Endangered Species Act (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).

Dated: July 1, 1996.

Noreen K. Clough,

Regional Director, Southeast Region, Fish and Wildlife Service.

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#### 50 CFR Part 17

#### Endangered and Threatened Wildlife and Plants: 90-day Finding on a Petition to List the Santa Ana Speckled Dace, Santa Ana Sucker, and the Shay Creek Threespine Stickleback as Endangered

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

**ACTION:** Notice of 90-day petition finding.

**SUMMARY:** The U. S. Fish and Wildlife Service (Service) announces a 90-day

finding on a petition to list three fish as endangered, pursuant to the Endangered Species Act of 1973, as amended. The Service finds that the petition did not present substantial scientific or commercial information indicating the petitioned action may be warranted for two of the three species because it does not substantiate that the Santa Ana speckled dace and Shay Creek threespine stickleback are described subspecies or distinct vertebrate population segments as described in the Service's vertebrate population policy. Furthermore, the Service presently regards the Shay Creek threespine stickleback as a population of the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*), a species that is already listed as endangered. Regarding the third fish species, the Service finds that substantial information exists to support a decision that listing may be warranted for the Santa Ana sucker.

**DATES:** The finding announced in this notice was made on June 28, 1996. Comments and materials may be submitted until further notice.

**ADDRESSES:** Data, information, comments, or questions concerning the finding should be submitted to the Field Supervisor, Carlsbad Field Office, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Barrett (see **ADDRESSES** above), telephone (619) 431-9440.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*) requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the Federal Register. This finding is based on information contained in the petition, supporting information submitted with the petition, and otherwise available to the Service at the time the finding is made. If the Service determines that the petitioned action may be warranted, the Service will commence a review of the status of the involved species. Status reviews will be

commenced in accordance with priorities established by the Service pursuant to the May 16, 1996, Final Listing Priority Guidance (61 Fed Reg 24722).

On September 6, 1994, the Service received a petition dated September 2, 1994, to list the Santa Ana speckled dace (*Rhinichthys osculus* ssp.), Santa Ana sucker (*Catostomus santaanae*), and the Shay Creek threespine stickleback (*Gasterosteus aculeatus* ssp.) as endangered species. The petition was submitted by the Sierra Club Legal Defense Fund, Inc., on behalf of seven groups. The seven groups are the California-Nevada Chapter of the American Fisheries Society, The Nature School, The California Sportfishing Protection Alliance, Friends of the River, Izaak Walton League of America, California Trout, and Trout Unlimited. The letter clearly identified itself as a petition and contained the names, signatures, and addresses of the petitioners. Accompanying the petition was supporting information relating to taxonomy, ecology, and past and present distribution of all three species.

The petition, supporting documentation, and other information available in the Service files has been reviewed to determine if substantial information is available to indicate that the requested actions may be warranted. On the basis of the best scientific and commercial information available, the Service finds the petitioned action may be warranted for the Santa Ana sucker because of the threats to low population numbers, and is not warranted for the Santa Ana speckled dace based on taxonomic uncertainty. While the petitioners failed to present substantial information indicating that the Shay Creek threespine stickleback should be listed as a subspecies or distinct vertebrate population segment, the Shay Creek threespine stickleback is presently regarded as a population of the unarmored threespine stickleback and already receives the protections of the Act. A status review will be commenced in accordance with the Final Listing Priority Guidance for the Santa Ana sucker.

##### *Santa Ana Sucker*

The Santa Ana sucker (*Catostomus santaanae*) is a member of the sucker family (Catostomidae). The Santa Ana sucker was originally described as *Pantosteus santa-anae* by Snyder (1908, as in Moyle 1976). The genus *Pantosteus* was reduced to a subgenus of *Catostomus* and the hyphen omitted from the specific name in a subsequent revision of the nomenclature (Smith 1966). The American Fisheries Society

recognizes the Santa Ana sucker as the full species, *C. santaanae* (Robins et al. 1991).

The Santa Ana sucker's historical range includes the Los Angeles, San Gabriel, and Santa Ana River drainage systems located in southern California (Smith 1966). An introduced population also occurs in the Santa Clara River drainage system in southern California (Moyle 1976). Moyle and Yoshiyama (1992) state that only the San Gabriel River population can be considered relatively viable and self-sustaining within the native range.

Although the Santa Ana sucker was described as common in the 1970s (Moyle 1976), the species has experienced dramatic declines throughout most of its range (Moyle and Yoshiyama 1992). Santa Ana suckers have adaptations such as short generation time, high fecundity and a relatively prolonged spawning period that presumably allows them to rapidly repopulate streams after severe flooding events (Greenfield et al. 1970). Nevertheless, they are intolerant of polluted or highly modified streams (Moyle and Yoshiyama 1992).

This apparent, overall decline is of concern given this species' high fecundity and apparent broad habitat tolerances. Urbanization, water diversions, dams, pollution, heavy recreational use, gold mining wastes, gravel extraction, and introduced competitors and predators have probably contributed in the decline of the species (Moyle and Yoshiyama 1992, Swift et al. 1993).

Swift (in Moyle and Yoshiyama 1992) summarized the status and threats facing each of the populations in their native range.

- Los Angeles River (Big Tujunga Creek below Big Tujunga Dam)—Extreme fluctuations in water quality pose problems for all fishes in this reach. The Santa Ana sucker is very rare and may already be lost here.

- San Gabriel River (contiguous West, North, and East forks about 40 km below Cogswell Dam)—The West Fork is threatened by accidental high flows from Cogswell Reservoir that have devastated this reach in the past. The Cattle Canyon tributary of the East Fork is impacted by increased gold mining (suction dredging) and the population has been much reduced or may be absent in Cattle Canyon.

- Santa Ana River—Several hundred fish were observed below Prado Dam in 1986 and 1987, although sampling above the dam in 1987 yielded only five Santa Ana suckers. Water quality is threatened by many and various local inputs, such as runoffs from light

industry and surrounding farmed lands (T. Haglund, personal communication).

Subsequent to the receipt of the petition, a general fish survey of the Santa Ana River below Prado Dam yielded only 5 suckers from a total of approximately 150 fishes captured (Mike Guisti, California Game and Fish Department, pers. comm.). A survey of the East Fork of the San Gabriel River above the confluence with Cattle Canyon found the sucker to be relatively common, 125 of 382 fish captured (Paul Barrett, pers. obs., Fish and Wildlife Service files). The Santa Ana sucker's present status in the Los Angeles River is unknown.

The Service finds that the petitioners provided substantial evidence that the petitioned action may be warranted for the Santa Ana sucker.

#### *Santa Ana Speckled Dace*

The Santa Ana speckled dace is found in the headwaters of the Santa Ana and San Gabriel river drainages, often in isolated stocks. The petitioners presented a variety of information suggesting that the Santa Ana speckled dace is an undescribed subspecies of *Rhinichthys osculus*, member of the Cyprinidae family. While the petitioners assert that the Santa Ana speckled dace is a valid subspecies, they did not provide a peer-reviewed paper supporting that conclusion, nor did they provide a draft manuscript that the Service could subject to peer review. In fact, citing Moyle (1976), the petitioners actually point out difficulties with speckled dace systematics, "Although systematists now seem to have little trouble placing the many forms into *Rhinichthys osculus* (Hubbs, Miller, and Hubbs, 1974), the status of the many described (and undescribed) subspecies can only be called chaotic." The primary support for subspecific status includes reference to a Master's thesis (Cornelius 1969) which was not included with the petition, and reference to unpublished genetic data. Other, anecdotal evidence supporting subspecific status includes a species account written by C.C. Swift that was included as pages 207–212 in a document entitled Fishes, Aquatic Diversity Management Areas, and Endangered Species: A Plan to Protect California's native Aquatic Biota, edited by Moyle and Yoshiyama (1992). This account cites a paper by Hubbs et al. (1979) that includes the Santa Ana speckled dace as an unnamed subspecies, but a copy of the paper was not provided and the literature cited section of the account did not include a citation that would allow the Service to identify the paper.

#### *Shay Creek Threespine Stickleback*

The petitioners indicated that the Shay Creek threespine stickleback is an undescribed form of the threespine stickleback (*Gasterosteus aculeatus*) that should be listed separately from the endangered unarmored threespine stickleback. The Service regards the Shay Creek threespine stickleback as a population of the Federally listed unarmored threespine stickleback and the petitioners failed to present substantiated scientific information indicating that the petitioned action may be warranted. Specifically, the petitioners did not present peer-reviewed information supporting their claim that the Shay Creek threespine stickleback is a separate subspecies or distinct vertebrate population. In light of this decision and until the Service is presented with substantiated information to the contrary, the Shay Creek threespine stickleback remains a population of the Federally endangered unarmored threespine stickleback.

It is Service policy to issue not-substantial 90-day findings on petitions for species or subspecies if that designation has not passed scientific peer review either as part of acceptance for publication or through some other equivalent review. The Santa Ana speckled dace and Shay Creek threespine stickleback are not so named. Should the Santa Ana speckled dace or Shay Creek threespine stickleback be determined to be a valid subspecies as evidenced by a description in a peer-reviewed scientific journal, or a distinct population segment in accord with the February 7, 1996, "Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act" (61 FR 4722), the Service may consider a proposal to list this species in accordance with the Service's listing priority guidance. In addition to taxonomic information, any new petition should clearly identify threats to the taxa, including estimates of the probability of catastrophic events to the populations.

The Service will continue to seek information regarding the Santa Ana speckled dace. As additional data becomes available in the future, the Service may reassess the need for preparing a proposal to list this species, in accordance with the final Listing Priority Guidance.

#### Conformance with Listing Priority Guidance

On May 16, 1996 the Service published a description of how it will prioritize the various listing actions for the remainder of fiscal year 1996 (61 FR

24722–24728). Based on the listing priority guidance, the subject finding would characteristically have been assigned to tier 3 and processing would have been delayed until a later date. Despite requests for deference to the listing priority guidance, however, the Service has received no relief and is compelled by court order to issue this finding.

#### References Cited

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- Swift, C. C., T. R. Haglund, M. Ruiz, and R. N. Fisher. 1993. The status and distribution of the freshwater fishes of southern California. *Bulletin of the Southern California Academy of Sciences*, 92:1–67.

#### Author

This notice was prepared by Paul J. Barrett, Carlsbad Field Office (see ADDRESSES section above).

#### Authority

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

Dated: June 28, 1996.

John G. Rogers,

*Acting Director, Fish and Wildlife Service.*

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