DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB56

Endangered and Threatened Wildlife and Plants; Proposed Rule to List the Coastal California Gnatcatcher as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the nominate subspecies of the California gnatcatcher (*Polioptila californica californica*) as an endangered species throughout its historic range in southern California and northwestern Baja California, Mexico pursuant to the Endangered Species Act of 1973, as amended (Act). Critical habitat is not being proposed. This small, insectivorous songbird is an obligate resident of several distinctive subassociations of the coastal sage scrub plant community in southern California and northwestern Baja California, Mexico. This subspecies is threatened by habitat loss and fragmentation occurring in conjunction with urban and agricultural development. Additional data and information, which may assist the Service in making a final decision on this proposed action, is solicited on the status of this species.

DATES: Comments from all interested parties must be received by March 16, 1992. Public hearing requests must be received by November 1, 1991.

ADDRESSES: Comments and materials concerning this proposal should be submitted to the Field Supervisor, U.S. Fish and Wildlife Service, Southern California Field Station, 24000 Avila Road, Laguna Niguel, California 92656. Comments and materials received will be available for public inspection by appointment during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Jeffrey Opdycke, Field Supervisor, at the address listed above (Telephone: 714/643-4270 or FTS 796-4270).

SUPPLEMENTARY INFORMATION:

Background

The California gnatcatcher is a small (length 11 cm; weight 6 g), long-tailed member of the thrush family Muscicapidae. Its plumage color is dark blue-gray above and grayish-white below. The tail is mostly black above and below. The male has a distinctive black cap which is absent during the winter. Both sexes have distinctive white eye-ring. Vocalizations include a call consisting of rising and falling series of three kittenlike mew notes (National Geographic Society 1983).

Although originally described as a distinct species by Brewster (1881) based on specimens collected by F. Stephens in 1878, the California gnatcatcher was only recently elevated to species status. Based on rigorous examination of vocalization, morphological, and phenotypic data, Atwood (1988) concluded that *Polioptila californica* was specifically distinct from *P. melanura*, the black-tailed gnatcatcher. This finding was subsequently adopted by the American Ornithologists' Union Committee on Classification and Nomenclature (American Ornithologists Union 1989). A comprehensive overview of the nomenclatural history of the California gnatcatcher is provided by Atwood (1988, 1990).

The taxon proposed for listing, *Polioptila californica californica* (hereafter referred to as the coastal California gnatcatcher), is restricted to coastal southern California and northwestern Baja California, Mexico, from Los Angeles County (formerly Ventura and San Bernardino Counties) south to El Rosario at about 30° north latitude. Two other subspecies of the California gnatcatcher (*P. c. pontilis* and *P. c. margaritae*) occur in the central and southern portions of the Baja peninsula, respectively (American Ornithologists' Union 1957, Atwood 1988, 1990).

A gross examination of the historic range of the coastal California gnatcatcher indicates that about 41 percent of its latitudinal distribution is within the United States (Atwood 1990). A more detailed analysis, based on elevational limits associated with gnatcatcher locality records, reveals that a significant portion (60 to 65 percent) of the coastal California gnatcatcher's historic range was located in southern California rather than Baja California (Atwood 1990).

The coastal California gnatcatcher is an obligate resident of the coastal sage scrub plant community. The southern limit of its range coincides with the distributional boundary of this distinctive vegetation type. Coastal sage scrub vegetation is composed of relatively low-growing, drought-deciduous, and succulent plant species. Characteristic plant species of this community include coastal sagebrush (*Artemisia californica*), various species

of sage (*Salvia spp.*), California buckwheat (*Eriogonum fasciculatum*), lemonadeberry (*Rhus integrifolia*), California encelia (*Encelia californica*), prickly pear and cholla (*Opuntia spp.*), and various species of *Haplopappus* (Munz 1974, Kirkpatrick and Hutchison 1977, Mooney 1988, O'Leary 1990). The coastal California gnatcatcher exhibits a strong affinity to coastal sage scrub vegetation dominated by coastal sagebrush (Atwood 1980, 1990; Mock and Jones 1990).

A comprehensive overview of the life history and ecology of the coastal California gnatcatcher is provided by Atwood (1990) and is the basis for much of the discussion presented below. The coastal California gnatcatcher is non-migratory and defends breeding territories ranging in size from 2–14 acres. Mock and Jones (1990) reported home ranges varying in size from 13–39 acres for this species. The breeding season of the coastal California gnatcatcher extends from late February through July with the peak of nest initiations occurring from mid-March through mid-May. Nests are composed of grasses, bark strips, small leaves, spider webs, down, and other materials and are often placed in coastal sagebrush about three feet above the ground. Nests are constructed over a 4–10 day period. Clutch size averages four eggs. The incubation and nestling periods encompass about 14 days and 16 days, respectively. Juveniles are depended upon, or remain closely associated with, their parents for up to several months following departure from the nest. Both sexes participate in all phases of the nesting cycle. Although the coastal California gnatcatcher may occasionally produce two broods in one nesting season, the frequency of this behavior is not known.

Coastal California gnatcatchers were considered locally common in the mid-1940's although a decline in the extent of its habitat was noted (Grinnell and Miller 1944). By the 1960's, this species had apparently experienced a significant population decline in the United States that has been attributed to widespread destruction of its habitat. Pyle and Small (1961) reported that "the California subspecies is very rare, and lack of recent records of this race compared with older records may indicate a drastic reduction in population." McCaskie and Pugh (1964) commented that the coastal California gnatcatcher "had been driven from most of its former range along the coast of the region." Atwood (1980) estimated that no more than 1,000 to 1,500 pairs remain in the United States. He also noted that remnant portions of its habitat were highly fragmented with nearly all being bordered on at least one side by rapidly expanding urban centers. Subsequent reviews of coastal California gnatcatcher status by Garrett and Dunn (1981) and Unitt (1984) paralleled the findings of Atwood (1980).

Atwood (1990) estimated that approximately 1,819 to 2,262 pairs of coastal California gnatcatchers presently occur in southern California. Of these, 54–67 pairs are estimated to occur in Los Angeles County, 240–298 in Orange County, 755–939 in Riverside County, and 770–958 pairs are estimated to occur in San Diego County. However, Atwood (1990) cautioned that "the true population size of [coastal] California gnatcatchers in the United States is almost certainly less than 2,000 pairs, and possibly less than 1,200 pairs." This conclusion was made on the basis of very liberal assumptions (associated with population densities and extent of habitat) use by Atwood to calculate the estimate of gnatcatcher population size. No population estimate is available for the Mexican portion of the gnatcatcher's range.

Most subpopulations of the coastal California gnatcatcher in the U.S. occur on private lands. A recent analysis of coastal sage scrub ownership in San Diego County (excluding Camp Pendleton Marine Corps Base) found that 78 percent was privately owned (P. Fromer, Regional Environmental Consultants, San Diego, CA, pers. comm.). Major private landholdings containing known or suspected populations of the coastal California gnatcatcher include properties owned by the Irvine Company, Rancho Santa Margarita Company, and the Mission Viejo Company in Orange County, the Baldwin Company, Fieldstone, Home Capital, Los Montanas, the McMillin Company, San Miguel Partners, and Southeast Diversified in San Diego County, and Domenigoni Brothers Ranch, Ranpac Engineering Corporation, and the S.I.C. Corporation in Riverside County. Major public landowners with gnatcatcher subpopulations include the California Department of Parks and Recreation, Camp Pendleton Marine Corps Base, El Toro Marine Corps Air Station, the Fallbrook Naval Annex, Miramar Naval Air Station, the City of San Diego, the City of Lake Elsinore, the Metropolitan Water District, and the counties of Orange, Riverside, and San Diego.

In 1982, the Service designated the coastal black-tailed gnatcatcher (*Polioptila melanura californica*) as a category 2 candidate for addition to the List of Endangered and Threatened Wildlife and solicited status information (47 FR 58454). In subsequent **Federal Register** Notices of Review, the coastal black-tailed gnatcatcher was retained in category 2 (50 FR 37958, 54 FR 554). This taxon and two other subspecies of the black-tailed gnatcatcher were subsequently found to be specifically distinct (Atwood 1988, American Ornithologists' Union 1989) Although *P. m. californica* is now formally recognized as the nominate subspecies of the California gnatcatcher (*P. californica*), the geographic range of the taxon proposed for listing remains unchanged from 1982.

Catgegory 2 comprises taxa for which information in possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support a proposed rule. Essentially, no data were submitted in response to Service solicitations (published in **Federal Register** Notices of Review in 1982 and 1985) for gnatcatcher status information. To resolve the issue of whether conclusive data on biological vulnerability and threat are available, the Service conducted a status review for what is now the nominate subspecies of the California gnatcatcher. This status review has now been completed (Salata 1991).

On September 21, 1990, the Service received two petitions to list the nominate subspecies of the California gnatcatcher as an endangered species. A third petition for the same action was received on December 17, 1990. This petition also requested the Service to exercise its discretionary authority to issue an emergency regulation to list the subspecies under the Act because the normal listing process was considered to be inadequate to protect the gnatcatcher and its habitat from imminent destruction by clearing and development activities. In accordance with section 4(b)(3)(A) of the Act, on January 24, 1991, the Service found that substantial information had been presented indicating that the petitioned action may be warranted. Although the Service's status review did not uncover sufficient evidence to warrant the publication of an emergency regulation pursuant to section 4(b)(7) of the Act, it does indicate that proposing the coastal California gnatcatcher for listing under the normal procedures of section 4 is warranted. This proposed rule constitutes the final finding for the petitioned action, that listing of the nominate subspecies of the California

gnatcatcher throughout its historic range in southern California and northwestern Baja California, Mexico, is warranted.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the coastal California gnatcatcher (*Polioptila californica californica*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The habitat and range of the coastal California gnatcatcher have been greatly reduced. Published estimates indicate that 85 to 90 percent of coastal sage scrub vegetation in California has been lost as a result of urban and agricultural development (Westman 1981 a,b). This represents a reduction from 2.5 million acres to 250,000–375,000 acres, based on an estimate of the historical extent of the coastal sage scrub community by Barbour and Major (1977). A recent quantitative analysis of coastal sage scrub status in Riverside County revealed an 81 percent loss (from 410,000 acres to 79,000 acres) associated with urban and agricultural development over the 60-year period from 1930 to 1990 (P. Fromer, pers. comm.). The historical distribution of coastal sage scrub encompasses most of southern Los Angeles and northwestern Orange Counties (Kuchler 1977). These areas are almost completely urbanized as of 1991. In the late 1970's, it was estimated that 70 percent of the historic acreage of coastal sage scrub in San Diego County had been lost as a result of urban and agricultural development (Oberbauer 1979). Between 1980 and 1990, the population of San Diego County increased by more than 600,000 people. Most of this increase occurred on or near the coast at sites historically occupied, in part, by coastal sage scrub vegetation. About 125,000 acres of coastal sage scrub remain in San Diego County.

All of the published literature on the status of coastal sage scrub vegetation in California supports the conclusion that this plant community is one of the most depleted habitat types in the United States (Kirkpatrick and Hutchinson 1977, Axelrod 1978, Klopatek et al. 1979, Westman 1981a,b,1987, Mooney 1988, O'Leary 1990). Symptomatic of this condition is the fact that 35 taxa of plants and animals associated with the coastal sage scrub community in southern California are under consideration by the Service for listing as endangered or threatened species (Salata 1991). Of these, 10 (29 percent) are category 1 candidates, including 2 taxa which are possibly extinct. Category 1 comprises taxa for which the Service currently has substantial information to support the biological appropriateness of proposing to list as endangered or threatened. Proposed rules have not yet been issued because they have been precluded at present by other listing activity. One coastal sage scrub-associated species, the Stephens' kangaroo rat (*Dipodomys stephensi*), is federally listed as endangered.

Considering that only 3 of 11 subassociations of coastal sage scrub described by Kirkpatrick and Hutchinson (1977) conform to coastal California gnatcatcher habitat, the extent of gnatcatcher habitat loss may exceed the 85 to 90 percent estimate cited above. The *Artemisia californica*-dominated stands of coastal sage scrub preferred by the coastal California gnatcatcher tend to occur on the plateaus and lower slopes of the coast ranges that have been, for the most part, converted to agricultural and urban habitats throughout Los Angeles, Orange, western Riverside, and western San Diego Counties. Based on estimates of gnatcatcher population and home range size by Atwood (1990) and Mock and Jones (1990), respectively, the Service concludes that only about 54,000 acres of coastal sage scrub vegetation are currently occupied by the coastal California gnatcatcher within its United States range. This represents 14–22 percent of the coastal sage scrub vegetation estimated to remain in California and about 3 percent of the pre-colonial acreage of this plant community in southern California.

Concomitant with the extensive loss of coastal sage scrub vegetation has been an increasing degree of habitat fragmentation which reduces habitat quality and promotes increased levels of nest predation, brood parasitism, and interspecific competition (Wilcove 1985, Small and Hunter 1988, Pease and Gingerich 1989). Although the historic distribution of coastal sage scrub in general and gnatcatcher habitat in particular was undoubtedly patchy to some degree, this condition has been greatly exacerbated by urban and agricultural development. A comparison between Kuchler's map of the "Natural Vegetation of California" (Barbour and Major 1977), a map presented by Kirkpatrick and Hutchinson (1980) depicting the distribution of coastal sage scrub in California in 1945, and the results of recent efforts to map coastal sage scrub vegetation or generalized land use in Orange, Riverside, and San Diego Counties (Oberbauer 1979, San Diego Association of Governments 1985, Regional Environmental Consultants 1990a,b, Roberts 1990, County of Orange 1991) serve to illustrate this point. In San Diego County, the pattern of development has created disjunct subpopulations of the coastal California gnatcatcher in the Sweetwater River-Otay Mesa area; between Poway, Tierrasanta, and Santee; in the Carlsbad-San Marcos-Rancho Penasquitos area; and on Camp Pendleton Marine Corps Base. In Orange County, gnatcatcher subpopulations appear to be concentrated in only two areas: the coastal foothills between Corona Del Mar and Laguna Beach, and northwest of Ortega Highway. The once extensive range of the coastal California gnatcatcher in Los Angeles County is now restricted to a small portion of the Palos Verdes Peninsula. In Riverside County, isolated subpopulations of the gnatcatcher occur in the Perris-Lake Mathews-Lake Elsinore area, in the Domenigoni Valley, in the Temecula-Rancho California area, and near the "badlands" from Box Springs Mountain to Pigeon Pass Road. Even within these subpopulation areas, a high degree of habitat fragmentation exists. Recent work by Soulé et al. (1988) strongly suggests that small islands of vegetation may not support viable populations of small passerine bird species like the coastal California gnatcatcher.

Another consequence of urbanization that is contributing to the loss, degradation, and fragmentation of coastal sage scrub vegetation is an increase in wildfires due to anthropogenic ignitions. For example, one of the largest areas of coastal sage scrub vegetation remaining within San Diego County occurs on Camp Pendleton Marine Corps Base. Approximately 20,000 acres of coastal sage scrub vegetation occur on the base (D. Lawson, U.S. Marine Corps, pers. comm.). During the last two years alone, over 15,000 acres of native vegetation, much of it coastal sage scrub, have burned in fires started incidental to military training activities. Two recent fires consumed over 6,500 acres of coastal sage scrub vegetation occupied, in part, by the coastal California gnatcatcher (D. Lawson, pers. comm.). High fire frequencies and the lag period

associated with recovery of the vegetation (which may be prolonged under drought conditions such as those currently existing in southern California) may significantly reduce the viability of affected subpopulations.

Atwood (1990) presents an in-depth discussion of gnatcatcher (and indirectly coastal sage scrub) status in southern California by subregion. The synopsis provided by Atwood (1990) further establishes the magnitude of threat to coastal sage scrub vegetation in general and the coastal California gnatcatcher in particular.

Coastal California gnatcatchers have been extirpated from at least 42 sites occupied prior to 1960 (Atwood 1980, 1990). Of 56 sites that supported coastal sage scrub and coastal California gnatcatchers in 1980, 18 (32 percent) had been destroyed and 15 (27 percent) were partially impacted by development in 1990 (Atwood 1990). The coastal California gnatcatcher is now extirpated from Ventura and San Bernardino Counties. The species' once extensive range in Los Angeles County is now restricted to a small portion of the Palos Verdes Peninsula. Over 96 percent of the total low elevation acreage in Los Angeles County that might have historically supported populations of the coastal California gnatcatcher has been largely or entirely developed (Atwood 1990). As noted above, the pattern of development has created disjunct subpopulations within the remaining portion of the gnatcatcher's United States range. Even within these subpopulation areas, a high degree of habitat fragmentation exists. The trend of habitat loss and fragmentation is expected to continue as southern California continues to grow at a rapid rate. At the present time, about 15 million people reside in the United States range of the coastal California gnatcatcher. By 1995, the population of Orange, Riverside, and San Diego Counties is predicted to increase by more than 460,000 people. Over 90 development projects encompassing in excess of 150,000 acres (including over 28,000 acres of coastal sage scrub vegetation) have recently been proposed, approved, or initiated within the current range of the coastal California gnatcatcher in the United States. The actual extent of coastal sage scrub vegetation within these project areas is probably much higher. In many cases, the amount of coastal sage scrub vegetation and gnatcatcher status within a project area were not quantified in environmental review documents. Atwood (1990) presents additional information on future land use activities within the current United States range of the coastal California gnatcatcher. Considering the limited extent and high degree of fragmentation of currently occupied gnatcatcher habitat in the United States, further losses can be expected to have a significant influence on the viability of extant subpopulations.

Although the status of the coastal California gnatcatcher and its habitat in Baja California, Mexico, are not well documented, the Service acknowledges that substantially more potential habitat may remain there than in the historically more extensive United States portion of its range. However, the same factors (urban and agricultural development) that have affected its status in the United States are also clearly having an impact south of the border.

The population of Baja California Norte (2.5 million people in 1990) exceeds that of San Diego County, the second most populous county in California. Urban development along both sides of the border has probably isolated the Mexican and United States subpopulations of the coastal California gnatcatcher given its sedentary nature and the wide hiatus in suitable habitat at this locality.

Bowler (Restoration and Management Notes, in press) reported that stands of coastal sage scrub vegetation in northern Baja California "are being grazed, burned to increase grass production, and graded for beach house/urban development construction, and converted to agricultural farmland." Rea and Weaver (1990) noted that coastal sage scrub vegetation inhabited by cactus wrens (*Campylorhynchus brunneicapillus*) near Tecate "has been seriously degraded by burning, grazing, and conversion to vineyards during the past two decades (Marcos Camacho, pers. comm.)." Extensive tracts of coastal sage scrub vegetation on the marine terraces between Colonet and San Quintin have been converted to tomato fields (R. Minnich, Univ. of California, Riverside, Dept. of Earth Sciences, pers. comm.). The San Quintin kangaroo rat (*Dipodomys gravipes*), a coastal lowland-associated species endemic to Baja California from San Telmo to El Rosario, is nearly extinct as a result of this change in land use (Best 1983). Only one population, consisting of about 60 individuals, is currently known to exist (T. Best, Auburn Univ., Dept. of Zoology and Wildlife Science, pers. comm.).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not known to be applicable.

C. *Disease or predation.* Several species have been reported as potential predators of coastal California gnatcatcher eggs or nestlings. These include the scrub jay (*Aphelocoma coerulescens*), common crow (*Corvus brachyrhynchos*, commen raven (*Corvus corax*), opossum (*Didelphis marsupialis*), raccoon (*Procyon lotor*), gray fox (*Urocyon cinereoargenteus*), coachwhip (*Masticophis flagellum*), striped racer (*Masticophis lateralis*), gopher snake (*Pituophis melanoleucus*), rosy boa (*Lichanura trivirgata*), common kingsnake (*Lampropeltis getulus*), southern alligator lizard (*Gerrhonotus multicarinatus*), domestic or feral cat (*Felis domestica*), wood rat (*Neotoma* spp.), deer mouse (*Preomyscus maniculatus*), house mouse (*Mus musculus*), and black rat (*Rattus rattus*). As noted above, habitat fragmentation promotes higher levels of nest predation as well as brood parasitism by the brown-headed cowbird (*Molothrus ater*) and interspecific competition. Soulé et al. (1988) speculated that as coyotes (*Canis latrans*) disappear from small, isolated patches of chaparral (including coastal sage scrub) in urbanized areas, the absence of these large predators allows greater population levels of smaller "bird predators" such as foxes, opossums, or domestic cats. These authors suggested that increased predation pressures resulting from the absence of coyotes may significantly contribute to local extinctions of bird species, like the coastal California gnatcatcher, from small, fragmented patches of vegetation.

Disease is not known to be a factor affecting this species at this time.

D. *The inadequacy of existing regulatory mechanisms.* No regulatory mechanisms are currently in effect that adequately protect the coastal California gnatcatcher and its habitat. A clear and effective policy with respect to conserving this species has yet to emerge at the local, county, State, or Federal level. The population and habitat status information outlined above clearly reflects this condition. The coastal California gnatcatcher is not listed under the California Endangered Species Act and most populations occur on private lands. Local and county zoning designations are subject to change and do not incorporate the principles of conservation biology in the establishment and configuration of open space areas. What few resource protection ordinances exist are subject to interpretation and in cases where findings of overriding social and economic considerations are made, compliance is not required. In many

cases, land-use planning decisions are made on the basis of environmental review documents, prepared in accordance with the California Environmental Quality Act or the National Environmental Policy Act, that do not adequately address potential impacts to the coastal California gnatcatcher and its habitat, if considered at all. One indication of the lack of existing regulatory mechanisms to protect the gnatcatcher and its habitat is provided by a recent study in San Diego County. The City of San Diego (1990) evaluated the magnitude of impact associated with development to native plant communities within its jurisdiction for the period 1985 to 1990. This study revealed a 97 percent loss of coastal sage scrub (384 of 395 acres) in conjunction with 15 projects. This study also evaluated eight cases where no distinction was made between chaparral and coastal sage scrub vegetation. A 95 percent loss of chaparral/coastal sage scrub (1,308 of 1,371 acres) was documented for these projects.

Several land-use planning efforts that address, in part, the issue of conserving the coastal California gnatcatcher have recently been initiated at the State, county and local level. The County of Riverside is developing a multi-species conservation plan that includes the coastal California gnatcatcher. Orange County and the San Diego Association of Governments (SANDAG) are utilizing geographic information system computer technology to define, in part, the status of sensitive resources (including coastal sage scrub and the coastal California gnatcatcher) within their respective areas of jurisdiction in the context of regional open space planning. SANDAG has also established a technical advisory committee to guide the development of a regional (San Diego County) open space plan. The City of Carlsbad (San Diego County) has adopted a resolution approving a work program and establishing an ad hoc advisory committee for the development of a coastal sage scrub resource management plan. The City of Poway (San Diego County) has retained a consultant to prepare a report quantifying existing biological resources within the City and its adopted sphere of influence. The report will also include recommendations for protecting and preserving the most significant of these resources during the course of future development and the results of a focused coastal California gnatcatcher resource study. Several large landowners in Orange and San Diego Counties (the Baldwin Company, Fieldstone, Home Capital, and the Irvine Company) have expressed an interest in an have met with the Service to discuss the development of habitat conservation plans for the coastal California gnatcatcher. The Irvine Company is funding The Nature Conservancy (Conservancy) to prepare an open space plan for 16,000 acres of its land in Orange County which includes large tracts of coastal sage scrub vegetation and an unknown number of gnatcatchers. Camp Pendleton Marine Corps Base in northern San Diego County intends to prepare a management plan for the coastal California gnatcatcher. The State of California has recently initiated a natural community conservation planning program in southern California. The initial objective of this effort is to develop conservation strategies for the effective, long-term protection of the coastal sage scrub community.

In August 1991, the California Fish and Game Commission rejected a recommendation from their Department of Fish and Game to add the California gnatcatcher to the State list of candidate species. Adding the bird to the State list would have provided immediate protection under the California Endangered Species Act. The Commissioners cited voluntary efforts called for in the natural community conservation planning program being more effective than mandatory State protection as the reason for their decision.

With the exception of the Conservancy study, the Service is participating in all of these efforts and strongly supports their resource conservation objectives. However, all of these planning efforts are in the early stages of development. It is likely to be years before final plans are completed, funded, and implemented. In the interim, the loss and fragmentation of gnatcatcher habitat is occurring and is expected to continue especially in light of the large projected population growth within the United States range of the coastal California gnatcatcher and the failure of existing regulatory mechanisms to adequately address this issue. Considering the limited extent and high degree of fragmentation of occupied gnatcatcher habitat remaining in the United States, further losses can be expected to have a significant influence on the viability of extant subpopulations. A comprehensive regional conservation strategy for the coastal California gnatcatcher is clearly needed. The initial effort by the Service to develop such a plan (based on coordination with numerous agencies, organizations, and individuals) during 1990 was unsuccessful.

Another indication of the ineffectiveness of existing regulatory mechanisms to protect the coastal California gnatcatcher is provided by seven recent cases involving the destruction of about 850 acres of coastal sage scrub vegetation occupied, in part, by gnatcatchers in Orange and San Diego Counties. These actions occurred prior to regulatory agency review or issuance of grading permits. In two of these cases, gnatcatcher habitat was destroyed shortly after submittal of a letter from the Service to a local regulatory agency advising the agency that a draft environmental review document for a proposed housing development failed to disclose the presence of gnatcatchers onsite. Overall, about 1,500 acres of land was cleared in conjunction with agricultural, weed abatement, and fire protection activities or to preclude nesting activities by migratory birds.

Although existing grading ordinances regulate some or all of these activities, they have not proven to be effective deterrents to destruction of gnatcatcher habitat. In a related matter, several hundred acres of high quality coastal sage scrub vegetation occupied by the coastal California gnatcatcher were recently destroyed near Lake Elsinore in Riverside County (L. Hays, U.S. Fish and Wildlife Service, and S. Myers, Tierra Madre Consultants, Riverside, California, pers. comm.). This activity was authorized under a grading permit issued by the City of Lake Elsinore in conjunction with an approved reclamation plan for a previously mined site bordering the stand of coastal sage scrub. The entire area lies within an approved but not yet constructed golf course-residential community. Some jurisdictions (e.g., the Cities of Chula Vista and Poway in San Diego county) do not regulate grubbing of vegetation. Individuals or entities who grade property for agricultural purposes within the counties of Orange and Riverside are not required to obtain a grading permit or any other approval in order to grade.

In adopting an ordinance imposing interim regulations for grading and clearing, the County of San Diego Board of Supervisors (1988) noted several characteristics associated with these types of activities that appear to apply throughout the United States range of the coastal California gnatcatcher: "* * * Clearing and illegal grading have been used to destroy environmental resources prior to application for a land development permit, during the permit

process, after project approval but prior to the application of protecting open space easements, and after dedication of open space * * * Grading violations, when reported, result in relatively minimal fines and, because of the difficulty in obtaining convictions, are not a serious deterrent to illegal grading. A fine often will not prevent a violation of this ordinance because a fine may be considered simply as an additional development cost * * *. Clearing for legitimate reasons (geotechnical exploration and access for percolation tests and wells, and clearing for fire protection) is frequently done well in excess of the minimum necessary to accomplish the purpose."

In some recent cases, habitat restoration requirements have been imposed as a penalty for violation of grading ordinances. However, this may not resolve the problem in a biologically-meaningful way. The feasibility of artificially creating a viable coastal sage scrub plant community suitable for the coastal California gnatcatcher has yet to be demonstrated. Although the results of a recent effort by the California Department of Parks and Recreation to restore a small area of coastal sage scrub in Crystal Cove State Park (Orange County) are encouraging, they are not conclusive.

The Service is not aware of any existing regulatory mechanisms in Baja California, Mexico, that protect the gnatcatcher and its habitat. The recent decline (to the brink of extinction) of the San Quintin kangaroo rat as a result of extensive habitat loss in conjunction with agricultural development very dramatically reflects the absence of effective regulatory protection in the Mexican portion of the coastal California gnatcatchers' range.

E. *Other natural or man-made factors affecting its continued existence.* Grazing and air pollution are also adversely affecting the coastal sage scrub plant community upon which the gnatcatcher depends (Westman 1987, O'Leary and Westman 1988). The deterioration of habitat quality due to the current drought conditions (which are also conducive to destructive wildfires) may also be adversely influencing the viability of gnatcatcher subpopulations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the Service finds that the coastal California gnatcatcher is in danger of extinction throughout all or a significant portion of its range due to habitat loss and fragmentation and the inadequacy of existing regulatory mechanisms. Therefore, the preferred action is to list this taxon as endangered. Threatened status would not accurately reflect the population decline of and imminent threats to this species. The current status of the coastal California gnatcatcher reflects the cumulative effects of incremental losses of habitat that have occurred and are continuing to occur over the past several decades in conjunction with urban and agricultural development. For this reason, the Service finds that an imminent threat does not currently exist that would warrant an emergency listing. However, the decision to propose this species for listing as endangered is based on an estimated 85–90 percent loss of habitat within its United States range and on a predictable future rate of habitat loss due to on-going urban and agricultural development. The Service is concerned about the possibility that destruction of habitat may accelerate during the period following the publication of this proposed rule, and will continue to closely monitor the status of the coastal California gnatcatcher during this period. If the conditions on which the Service's decision to list the gnatcatcher as endangered through the normal rule-making process change as a result of an acceleration of habitat destruction, and this change poses a significant risk to the well-being of the species, the Service may exercise its emergency authority to list the species, in accordance with section 4(b)(7) of the Act. Critical habitat is not being proposed for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires critical habitat to be designated to the maximum extent prudent and determinable at the time a species is listed as endangered or threatened. The Service has concluded that designation of critical habitat is not prudent for the coastal California gnatcatcher at this time. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

In the case of the California gnatcatcher, both criteria are met. As discussed under factor "D" in the "Summary of Factors Affecting the Species," some landowners or project developers have brushed or graded sites occupied by gnatcatchers prior to regulatory agency review or the issuance of a grading permit. In two instances, gnatcatcher habitat was destroyed shortly after the Service notified a local regulatory agency that a draft environmental review document for a proposed housing development failed to disclose the presence of gnatcatchers on-site. On the basis of these kinds of activities, the Service finds that publication of critical habitat descriptions and maps would likely make the species more vulnerable to activities prohibited under section 9 of the Act.

Most subpopulations of the coastal California gnatcatcher in the U.S. are found on private lands where Federal involvement in land-use activities does not generally occur. Additional protection resulting from critical habitat designation is achieved through the section 7 consultation process. Since section 7 would not apply to the majority of land-use activities occurring within critical habitat, its designation would not appreciably benefit the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2)

requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal agencies that may be involved through activities they authorize, fund, or carry out that may affect the coastal California gnatcatcher or its habitat include the Federal Highway Administration, the Federal Housing Administration, and the Department of the Navy (including Camp Pendleton Marine Corps Base, Fallbrook Naval Annex, and Miramar Naval Air Station).

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for economic hardship, zoological exhibition, educational purposes, special purposes consistent with the Act, and/or for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor at the Laguna Niguel Field Station address referred to in the **ADDRESSES** section.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section (4)(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation.

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 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.

2. It is proposed to amend § 17.11(h) by adding the following in alphabetical order under "Birds," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

SPECIES		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
• •	• •	• •	•	•	•	•	
BIRDS							
• •	• •	• •	•	•	•	•	
Gnatcatcher, coastal California	*Polioptila californica californica*	U.S.A. (CA), Mexico	Entire	E		NA	NA
• •	• •	• •	•	•	•	•	

Dated: September 5, 1991.

Richard N. Smith,

Director, U.S. Fish and Wildlife Service.

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