

Designation of Critical Habitat for California Salmon and Steelhead Could Impact Your Water Supplies

February 9, 2005

Endangered species listings and associated Critical Habitat designations can have dramatic impacts on property rights. Fish species that obtain Endangered Species Act protection obviously impact access to and use of water and water rights.

Activities within and affecting those geographic areas designated as Critical Habitat receive special scrutiny under the Endangered Species Act.

Critical Habitat is important because it defines those areas that the federal government considers essential to the conservation of protected species. Activities within and affecting those geographic areas designated as Critical Habitat receive special scrutiny under the Endangered Species Act.

Chinook salmon and steelhead trout are listed as threatened or endangered species under the federal Endangered Species Act throughout much of California. Because of recent litigation, the National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NOAA Fisheries) is being forced to revise all Critical Habitat designations for these two protected species in California.

In designating Critical Habitat, NOAA Fisheries must consider the economic impact of the designation. In its prior designations of Critical Habitat, a court concluded that NOAA Fisheries failed to correctly conduct its economic analysis. The recently proposed designations are designed to correct that flaw. However, we encourage all potentially impacted water users to conduct their own review of the proposed designations and the associated economic analysis.

Our initial review of the methodology suggests that NOAA Fisheries has dramatically understated the economic impacts of the Critical Habitat designation.

NOAA Fisheries has conducted public hearings throughout California regarding the proposed Critical Habitat. Some materials are available on NOAA Fisheries' website at: <http://swr.nmfs.noaa.gov/salmon.htm>. Written comments on the proposed Critical Habitat designations must be submitted to NOAA Fisheries by March 14, 2005.

In designating Critical Habitat, National Oceanic and Atmospheric Administration fisheries must consider the economic impact of the designation.

We would be pleased to provide you with additional information about the proposed Critical Habitat designations, NOAA Fisheries' legal obligations, or to assist you in responding to the proposed designations.

Please contact Brad Herrema at (805) 882-1493 or via email at BHerrema@HatchParent.com, or contact Stephanie Hastings at (805) 882-1415 or via email at SHastings@HatchParent.com for more information.