

# United States Department of the Interior

U.S. Fish and Wildlife Service

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In Reply Refer To:

AESO/SE

02-21-03-F-0298 R1

22410-2003-F-0298

March 1, 2007

Ms. Elaine J. Zieroth  
Forest Supervisor  
Apache-Sitgreaves National Forests  
P.O. Box 640  
Springerville, Arizona 85938-0640

RE: Voigt Grazing Allotment Biological Opinion

Dear Ms. Zieroth:

Thank you for your request for formal consultation with the U.S. Fish and Wildlife Service (FWS) pursuant to section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), as amended (Act). Your request was dated February 8, 2006, and received by us on February 13, 2006. At issue are impacts that may result from the proposed on-going grazing permit for the Voigt Allotment located in Apache County, Arizona. The proposed action may affect critical habitat for the endangered southwestern willow flycatcher (SWWF: *Empidonax traillii extimus*). The Forest has determined that there will be no effect on the species, and did not request consultation on effects to the species.

This biological opinion is based on information provided in the February 8, 2006, table of on-going actions for concurrence; the March 23, 1999, Decision Notice to Authorize Livestock Grazing and Rangeland Management Actions on the Rudd Creek Summer and Voigt allotments; the May 15, 1998, Environmental Assessment; the July 9, 1998, Biological Assessment; and other sources of information. Literature cited in this biological opinion is not a complete bibliography of all literature available on the species of concern, livestock grazing and its effects, or on other subjects considered in this opinion. A complete administrative record of this consultation is on file at this office.

## Consultation History

- February 8, 2006: The Forest requested concurrences on three ongoing Springerville Ranger District grazing allotments (including the Voigt Allotment) for southwestern willow flycatcher critical habitat. Consultation for the species was not requested. A phone call to the Forest Service confirmed that the Forest only wanted consultation on SWWF critical habitat.

- March 9, 2006: We provided a concurrence for ongoing grazing on the Greer Allotment and converted a conference opinion to a biological opinion for ongoing grazing on the Pool Corral Allotment. We indicated that we were unable to concur with the Forest Service's determination for ongoing livestock management on the Voigt Allotment. We initiated formal consultation as requested by the Forest in your February 8, 2006, letter.
- June 26, 2006: A draft biological opinion was sent to the Forest. The consultation period was extended until March 1, 2007, to allow for internal Forest Service consultation.
- February 1, 2007: The Forest responded to the draft biological opinion.

## **BIOLOGICAL OPINION**

### **DESCRIPTION OF THE PROPOSED ACTION**

Specifics of the proposed action for the Allotment as provided by the Forest Service are discussed below. Appendix A shows the location of the Voigt Allotment on the Apache-Sitgreaves National Forest and the pasture configuration of the Allotment.

The action area for this project is defined as all areas affected directly or indirectly by the Federal action. Thus, the action area is larger than the boundaries of the proposed project because impacts may be carried downstream with flows and may also affect upstream areas. Watersheds and subwatersheds are comprised of numerous interconnected upland and riparian areas that function together as an ecological unit. For the proposed project, the action area includes the Voigt Allotment on Apache-Sitgreaves land and associated Forest Service land of the watershed contained therein. Therefore, critical habitat within the watershed is included in the action area. The action area includes critical habitat in the East Fork Little Colorado River (EFLCR), the West Fork Little Colorado River (WFLCR), and the mainstem Little Colorado River (LCR).

The 10-year permit for the Voigt Allotment features a rest-rotation grazing system. The season of use is from July 1 to October 20 which is considered a summer-fall grazing strategy. The permitted number of livestock is 200 cow/calf pairs and 6 horses. The livestock operation consists of a single herd grazing the Voigt Allotment.

Under the permit, livestock are excluded from the Phelps or Lee Valley Pastures on the Voigt Allotment to protect the Arizona willow (*Salix arizonica*) and Apache trout (*Oncorhynchus apache*) management objectives. The Phelps Research Natural Area and Phelps Botanical Area Enclosure are not grazed by domestic livestock per direction in the Forest Land Management Plan.

Permittee-owned horses would be grazed between three small traps: Lee Valley, Cabin, and Little Horse on the Voigt Allotment.

The following provides details on the use and acreage of the Voigt Allotment:

Forest: Apache-Sitgreaves

Ranger District: Springerville

4<sup>th</sup> Code Basin: Little Colorado and Gila

5<sup>th</sup> Code Sub-Watershed: Little Colorado and Upper Black

Period of Proposed Action: Time remaining on a 10 year permit issued in 1998 or until National Environmental Policy Act (NEPA) for a new Allotment Management Plan (AMP) is completed. Current permit was issued on July 16, 2001, expires on December 31, 2011.

Season of Use: July 1 to October 20

Allotment Acres:

- Total acres = 9,438

Projected Stocking Density:

- Animal Unit Months = 769

Proposed Use:

- 200 cow/calf pairs
- 6 horses

Type of Grazing System:

- Rest-Rotation Grazing

## **SOUTHWESTERN WILLOW FLYCATCHER CRITICAL HABITAT**

The southwestern willow flycatcher was listed as endangered, without critical habitat, on February 27, 1995 (USFWS 1995). Section 4(a)(1) of the Act lists five factors that must be considered when determining if a species should be designated as threatened or endangered. The southwestern willow flycatcher was determined to be endangered by numerous threats causing extensive loss of habitat, lack of adequate protective regulations, and other natural or manmade factors including brood parasitism by the brown-headed cowbird (USFWS 1995). Critical habitat was later designated on July 22, 1997, (USFWS 1997) but subsequently set aside as a result of a court finding. On October 19, 2005, the Fish and Wildlife Service re-designated critical habitat for the southwestern willow flycatcher (USFWS 2005).

A final Recovery Plan for the southwestern willow flycatcher was signed by the U.S. Fish and Wildlife Service's Region 2 Director on August 30, 2002 (USFWS 2002). The Plan describes the reasons for endangerment, discusses the current status of the flycatcher, addresses important recovery actions, includes detailed issue papers on management, and provides recovery goals.

### Critical Habitat

Stream segments within 21 Management Units found in five Recovery Units were designated as critical habitat. Stream segments occur in southern California, southern Nevada, southwestern Utah, Arizona, New Mexico, and south-central Colorado. In Arizona there are critical habitat segments in Apache, Cochise, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Pima, Pinal, and Yavapai counties. These areas of critical habitat are expected to provide sufficient riparian habitat for breeding, non-breeding, dispersing, and migrating southwestern willow flycatchers

and to sustain southwestern willow flycatchers across their range. The primary constituent elements essential to the conservation of the southwestern willow flycatcher as described in the rule are:

1. Riparian habitat in a dynamic successional riverine environment (for nesting, foraging, migration, dispersal, and shelter) that comprises:
  - a. Trees and shrubs that include Goodings willow (*Salix gooddingii*), coyote willow (*Salix exigua*), Geyers willow (*Salix geyerana*), arroyo willow (*Salix lasiolepis*), red willow (*Salix laevigata*), yewleaf willow (*Salix taxifolia*), pacific willow (*Salix lasiandra*), boxelder (*Acer negundo*), tamarisk (*Tamarix ramosissima*), and Russian olive (*Eleagnus angustifolia*). Other plant species used for nesting have been buttonbush (*Cephalanthus occidentalis*), cottonwood (*Populus deltoids*), stinging nettle (*Urtica dioica*), alder (*Alnus rhombifolia*, *Alnus oblongifolia*, *Alnus tenuifolia*), velvet ash (*Fraxinus velutina*), poison hemlock (*Conium maculatum*), blackberry (*Rubus ursinus*), seep willow (*Baccharis salicifolia*, *Baccharis glutinosa*), oak (*Quercus agrifolia*, *Quercus chrysolepis*), rose (*Rosa californica*, *Rosa arizonica*, *Rosa multiflora*), sycamore (*Platanus wrightii*), giant reed (*Arundo donax*), false indigo (*Amorpha californica*), Pacific poison ivy (*Toxicodendron diversilobum*), grape (*Vitis arizonica*), Virginia creeper (*Parthenocissus quinquefolia*), Siberian elm (*Ulmus pumila*), and walnut (*Juglans hindsii*)
  - b. Dense riparian vegetation with thickets of trees and shrubs ranging in height from 6 to 98 feet. Lower-stature thickets (6 to 13 ft tall) are found at higher-elevation riparian forests and tall-stature thickets are found at middle- and lower-elevation riparian forests;
  - c. Areas of dense riparian foliage at least from the ground level up to approximately 13 ft above ground or dense foliage only at the shrub level, or as a low, dense tree canopy;
  - d. Sites for nesting that contain a dense tree and/or shrub canopy (the amount of cover provided by tree and shrub branches measured from the ground) (*i.e.*, a tree or shrub canopy with densities ranging from 50 percent to 100 percent);
  - e. Dense patches of riparian forests that are interspersed with small opening of open water or marsh, or shorter/sparser vegetation that creates a mosaic that is not uniformly dense. Patch size may be as small as 0.25 acre or as large as 175 acres; and
2. A variety of insect prey populations found within or adjacent to riparian floodplains or moist environments, including: flying ants, wasps, and bees (Hymenoptera); dragonflies (Odonata); flies (Diptera); true bugs (Hemiptera); beetles (Coleoptera); butterflies/moths and caterpillars (Lepidoptera); and spittlebugs (Homoptera).

The primary constituent elements described above are results of the dynamic river environment

that germinates, develops, maintains, and regenerates the riparian forest and provides food for breeding, non-breeding, dispersing, territorial, and migrating southwestern willow flycatchers.

Placed in the context of the subspecies' wide geographic distribution, the disjunct nature of the populations, the dynamic aspects of its habitat, its endangered status, and its recovery goals, each stream segment identified within the Management Units is essential for the conservation of the southwestern willow flycatcher (USFWS 2002). Segments are distributed throughout a large portion of the subspecies' range in order to help avoid catastrophic losses and to provide metapopulation stability, gene flow, and connectivity. Each segment is essential because it contains one or more of the primary constituent elements and, as a result, provides flycatcher habitat for breeding, feeding, sheltering, and migration. Each segment contributes to the conservation role of critical habitat by providing for the numerical and habitat-related goals identified in the Recovery Plan (USFWS 2002). Each segment was identified in the Recovery Plan as an area that sustains flycatcher habitat. The distribution and abundance of territories and habitat within each segment are expected to shift over time as a result of natural disturbance events, such as flooding, that reshape floodplains, river channels, and riparian habitat. The factors affecting critical habitat within all Management Units are similar to the listing factors described above.

#### Past consultations

Since critical habitat was finalized in October 2005, one formal biological opinion has been issued for southwestern willow flycatcher critical habitat in Arizona. Additionally, on June 10, 2005, the FWS issued a revised biological opinion on the Forest Service's continued implementation of the Land and Resource Management Plans (LRMPs) for 11 National Forests and National Grasslands of the Southwest Region, and their effects to 36 federally-listed species. This consultation covered a conference opinion on southwestern willow flycatcher critical habitat. Many opinions were issued for the previous critical habitat designation, however, the stream reaches and primary constituent elements have changed.

#### Livestock Grazing and Southwestern Willow Flycatcher Critical Habitat

In the final rule listing the flycatcher as endangered, the FWS described activities that could potentially harm the flycatcher and result in take of the subspecies. The activities listed that involve livestock grazing are: 1) livestock grazing that results in direct or indirect destruction of riparian habitat; and 2) activities such as continued presence of livestock and fragmentation of flycatcher habitat that facilitate brood parasitism by the brown headed cowbird (USFWS 1995). On National Forest lands, the main cause of decline in flycatcher habitat can be attributed to the disturbance, modification, and in some cases fragmentation of flycatcher habitat.

Improper livestock grazing in riparian areas directly affects flycatcher habitat. If given the opportunity, livestock can first overuse the herbaceous component and, if they are not removed or redirected, they will begin feeding on riparian shrubs and young trees. This results in changes in plant structure and reduction of plant diversity and density (Bock *et al.* 1992). Year-round or summer livestock grazing appear to be particularly damaging to riparian habitats (Bock *et al.* 1992). During these periods, regeneration of critical tree species such as willow, boxelder, and cottonwood may be curtailed (USFWS 1995). In addition to direct herbivory of woody species, livestock can impact riparian areas by trampling and trailing through it. These effects can be significant if livestock concentrate in areas and the plants are small.

Other impacts that improper livestock grazing has on riparian areas include compaction of surface soil that reduces infiltration and increases surface runoff, reduction of bank stability which leads to accelerated erosion and increased sedimentation, and removal of organic material due to reduction in plant vigor and density (Verde Natural Resources Conservation District 1993). These impacts result in increased susceptibility during heavy flow events. Livestock grazing during the sprouting and regeneration of the cottonwood/willow community after these flood events has led to increased fragmentation, reduced or eliminated recruitment, and a loss of natural functions. As native plant species try to compete with non-natives, livestock's preference for native plants favors establishment of non-natives. Changes in riparian areas as a result of improper livestock grazing are often linked to more widespread changes in watershed hydrology.

Poor watershed conditions in the uplands can have adverse indirect effects on flycatcher habitat. Livestock grazing (as well as other activities such as timber harvesting, road and trail construction, off-road-vehicle use, heavy recreational use in concentrated areas, large-scale fires, resource extraction, and other ground-disturbing activities) can contribute to poor watershed conditions. Such activities result in the removal of organic material on the soil surface. Removal of vegetation cover can lead to compaction and decreased water infiltration of the soil, which results in increased silt loads, increased turbidity, decreased water quality, increased scouring during high flows, and altered pH levels (USFWS 2002). All of these impacts can have an indirect adverse effect to riparian areas, including flycatcher habitat.

## **ENVIRONMENTAL BASELINE**

The environmental baseline includes past and present impacts of all Federal, State, or private actions in the action area, the anticipated impacts of all proposed Federal actions in the action area that have undergone formal or early section 7 consultation, and the impact of State and private actions which are contemporaneous with the consultation process. The environmental baseline defines the current status of the species and its habitat in the action area to provide a platform to assess the effects of the action now under consultation.

### **A. Status of critical habitat within the action area**

The action area is within the Little Colorado Management Unit of southwestern willow flycatcher critical habitat. Three miles of the East Fork Little Colorado River (EFLCR) is designated SWWF critical habitat within the Allotment. None of the designated critical habitat is suitable breeding habitat at this time, but has potential to develop into breeding, foraging, and/or migration habitat. Only scattered individual willows at low frequencies are present along most sections of the EFLCR. Therefore, the area contains components of the constituent element 1a and 2 (trees and shrubs including willows and variety of insect prey). The area lacks the dense riparian vegetation described in constituent elements 1b-1e.

Additionally, within the action area is critical habitat in the West Fork Little Colorado River. This section of critical habitat is located on the Greer Allotment. No cattle grazing occurs within designated critical habitat on the Greer Allotment.

Dominant vegetation types include montane grasslands, wet meadows, stream-associated riparian, spruce-fir, mixed conifer, and ponderosa pine. On the Voigt Allotment, condition and trend studies show that the herbaceous vegetation on full-capacity acres is mostly in fair with some good condition and in either a static or upward trend (U.S. Forest Service 1998a and 1998b).

The EFLCR is the primary riparian area on the Voigt Allotment. In upper Voigt (Phelps and Lee Valley pastures) and in Little Horse Pasture there has been no livestock grazing since 1991. Here the EFLCR is characterized by either wet meadow stretches or live streams with intermittent patches of willows. The willow component is primarily Geyer's willow, Booth willow, and in some areas Arizona willow. These species are mentioned as vegetation components of the constituent elements in the critical habitat rule. Monitoring has shown that willows receive moderate to heavy grazing by elk, primarily in the spring. Banks are well-vegetated with sedges that receive little use and provide extensive residual material for bank stabilization (U.S. Forest Service 1998a and 1998b).

The remaining portion of the EFLCR on the Allotment (below Little Horse pasture) is currently grazed by livestock. Overall woody riparian vegetation is absent along much of this length of the EFLCR. Cutbanks are common and some downcutting has occurred primarily in Home pasture. Monitoring has shown bank trampling to be common. The livestock rate has been reduced to 45 percent since 1992 to correct these problems and the trends are upward (U.S. Forest Service 1998a and 1998b).

The EFLCR on and downstream of the Allotment is SWWF critical habitat. The EFLCR had General Aquatic and Wildlife Surveys (GAWS) completed in 1987 and 1993, with six reaches located on this Allotment. In the most recent GAWS survey none of the reaches surveyed were above the 60 percent minimum habitat condition index set by the Forest. While overall habitat conditions have declined, both ungulate damage and embeddedness rating showed improvement in the most recent survey (U.S. Forest Service 1998a and 1998b). A number of spring sites comprise the remaining riparian areas on Voigt. Most are heavily impacted, showing soil compaction and, in some sites, loss of Bebb's willow (*Salix bebbiana*) (U.S. Forest Service 1998a and 1998b).

The EFLCR downstream of Colter Creek dam (in the Home Pasture) is rated in proper functioning condition although improvement in plant diversity and density is desired (U.S. Forest Service 1998a and 1998b).

The majority of the Allotment falls within 5<sup>th</sup> code watershed (15020001098) Little Colorado which is rated satisfactory.

## **B. Factors affecting the species' environment and critical habitat within the action area**

While livestock and elk grazing are causative factors in the current riparian conditions, the principle effects to the riparian and hydrologic function of the EFLCR are associated with the dams and reservoirs contained within the Voigt Allotment. Lee Valley Reservoir, Colter Reservoir (non-functioning), and an unnamed, breached reservoir on the upper EFLCR in the Mt. Baldy Wilderness Area have all highly modified the hydrograph and hydraulic function of the

watershed. Water is no longer impounded at the Wilderness site and Colter Reservoir dam has a leak and only temporarily impounds water in a small area behind the dam. Lee Valley Reservoir is managed as a sport fishery by AGFD. Additionally, State Road 273 crosses Lee Valley Creek and the EFLCR, altering stream function (U.S. Forest Service 1998a and 1998b).

On the Voigt Allotment, the 1998 environmental assessment notes that permitted livestock use exceeded proper utilization of the forage. In addition, riparian areas were not in satisfactory condition. Since that time changes have been made to the grazing management to try to improve some of these conditions (US Forest Service 1998b). Conversely, the 2003 Addendum to the BAE for the Voigt Allotment notes that in 1997, overall watershed and riparian conditions on the Allotment were satisfactory. Watershed conditions on the Allotment were also noted as satisfactory (US Forest Service 2003).

The Recovery Plan concludes that excessive grazing is harmful to riparian habitat needed by the flycatcher. The Recovery Plan further concludes that evidence and field examples indicate that, with respect to livestock grazing, southwestern willow flycatcher recovery would be most assured, and in the shortest time, with total exclusion of livestock grazing from those riparian areas deemed necessary to recover the flycatcher and where grazing has been identified as a principal stressor. The plan also provides recommendations to Federal land managers on conservation planning for the flycatcher. The focus of these recommendations is on identifying riparian areas that pose the best opportunities for recovering flycatcher habitat (within the context of economic and other constraints) and excluding them from grazing (see Appendix G of the Recovery Plan). Both the East and the West forks of the Little Colorado River are mentioned as areas in which to focus recovery efforts. Additionally, Recovery Plan recommendations for both of these areas is for no grazing during any season (USFWS 2002). High-elevation habitat develops more slowly than lower-elevation habitat; the Recovery Plan therefore recommends a different grazing strategy than lower elevation habitat.

## EFFECTS OF THE ACTION

Effects of the action refer to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated and interdependent with that action, that will be added to the environmental baseline. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration. Indirect effects are those that are caused by the proposed action and are later in time, but are still reasonably certain to occur.

Critical habitat on the Allotment occurs in the East Fork Little Colorado River and downstream of the Allotment in the West Fork Little Colorado River and the Little Colorado River. Livestock grazing will be permitted within the East Fork of the Little Colorado River as part of the proposed action; therefore, cattle will be permitted to graze in designated critical habitat. Additionally, cattle will be permitted to graze other riparian portions of the Allotment during both the dormant and growing seasons. Critical habitat in the action area downstream of the Allotment will be indirectly affected due to watershed effects caused by grazing in the uplands. Such effects may include changes in surface-runoff quantity and intensity, sediment transport, and infiltration and water-holding capabilities of the watershed. These effects could influence riparian vegetation which is a primary constituent element of critical habitat.

The overuse of riparian areas by livestock has been a major factor in degradation and decline of willow flycatcher habitat (Tibbitts *et al.* 1994). Grazing in the riparian area during the growing season of willows and cottonwoods will likely preclude their regeneration. These trees, particularly willows, are favored by flycatchers. The length of the growing season can vary depending on a site's elevation, climate, and amount of yearly precipitation received. Livestock grazing during the growing season in riparian areas is expected to reduce the diversity and density of riparian plant species, especially cottonwoods and willows. Livestock will likely reduce the suitability of riparian areas by reducing canopy cover, especially at the lower levels preferred by flycatchers. On the Voigt Allotment there are no fences or natural features to prevent cattle from congregating in riparian areas. The management of the Allotment will continue cattle pressure in sensitive riparian areas, including during the growing season. It can be expected that cattle will congregate in these riparian areas. If livestock grazing is reduced or eliminated this area could improve in quality for breeding, foraging, and/or migration habitat.

According to the rule for critical habitat designation and the Recovery Plan, the East and West forks of the Little Colorado have the potential to support breeding southwestern willow flycatchers. We believe that, due in part to proposed utilization levels, the proposed grazing strategy will delay improvement of the primary constituent elements and conservation contribution for flycatchers. Cows will graze in the Home, Forbes, New, Bull, and Little Horse pastures in both the dormant and growing season at a proposed utilization rate of 25 percent on poor-condition range, 35 percent on fair-condition range, and 40 percent on good-condition range on full-capacity rangelands. These utilization standards are much higher than the recommendation in the Recovery Plan for restorable or regenerating high-elevation habitat. The Recovery Plan recommends no grazing in these types of habitats.

Continued grazing of critical habitat will limit development of willow species, slow development of dense riparian vegetation, and limit nesting habitat. This action will adversely affect the loss of this breeding, feeding, and nesting habitat through impacts to the constituent elements of critical habitat. These constituent elements (elements 1b-1e) will be precluded by cattle eating the vegetation. Components of the constituent elements will also fail to develop because of livestock grazing within critical habitat.

Grazing within the uplands of the Allotment will also indirectly affect critical habitat within the watershed. The Recovery Plan mentions that excessive livestock grazing activities in the uplands contribute to changes in surface runoff quantity and intensity, sediment transport, soil chemistry, and infiltration and water-holding capabilities of the watershed; flood flows may

increase in volume while decreasing in duration, and low flows may decrease in volume and increase in duration (Brown *et al.* 1974, Gifford and Hawkins 1978, Johnson 1992). Some literature suggests that, to generate and maintain riparian habitat, a healthy watershed (uplands, tributaries, ranges, etc.) is a key component (Elmore and Kauffman 1994). Elmore and Kauffman (1994) note that simply excluding the riparian area (from grazing), does not address the needs of upland vegetation or the overall condition of the watershed. Unless a landscape-level approach is taken, important ecological linkages between the uplands and aquatic systems cannot be restored and riparian recovery will be limited. Continuing to graze in the uplands where the soil conditions and riparian habitat in upland tributaries are unsatisfactory will continue to delay recovery and result in unnatural flooding. Unnatural flooding subsequently topples existing trees, and shallow-rooted saplings and poles, and continues to erode rivers. The proposed grazing strategy will maintain current conditions and delay improvement on and downstream of the Allotment. As a result, the proposed strategy of grazing in uplands will continue to adversely affect southwestern willow flycatcher critical habitat. Therefore, we would expect delayed improvements in downstream sections of critical habitat due to continued grazing in the uplands of the Allotment.

In the programmatic LRMP biological opinion, the FWS analyzed the Standards and Guidelines (S&Gs) for each program. Within the Rangeland Management Program, no S&Gs were ranked as having a negative effect to flycatchers on the Apache-Sitgreaves NF. The Apache-Sitgreaves NF's LRMP allows the Forest to provide a program of range management that emphasizes high-quality range and forage improvements. Standard and Guideline 162 ensures that there is no effect caused by livestock grazing on the unique willow stands. This S&G was ranked as overall positive to the flycatcher. Thus, the FWS's overall assessment was that there should be no adverse affects from livestock grazing on the Apache-Sitgreaves NF. Further, all constituent elements for flycatcher critical habitat should benefit. Thus, the affects to critical habitat from on-going grazing on the Voigt Allotment appears to fall outside the range of effects analyzed in the programmatic biological opinion.

The status of critical habitat and the effects of the proposed grazing action can be summarized in the following points:

1. Potential southwestern willow flycatcher breeding habitat exists as critical habitat within the action area on portions of the East Fork of the Little Colorado River, West Fork Little Colorado River, and mainstem Little Colorado River.
2. The degraded riparian forest currently can provide migratory habitat for southwestern willow flycatchers.
3. The environmental baseline for southwestern willow flycatchers throughout the action area is in part degraded, with grazing being a significant contributor to riparian conditions.
4. Riparian habitat is, at least in part, unsatisfactory within the action area and is not expected to improve under the current proposed action. The conservation role of this critical habitat segment will be limited.

## CUMULATIVE EFFECTS

Cumulative effects include the effects of future State, tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act. Since the entire project area is within the Apache-Sitgreaves National Forests, all legal actions likely to occur are considered Federal actions.

## CONCLUSION

This biological opinion does not rely on the regulatory definition of “destruction or adverse modification” of critical habitat at 50 CFR 402.02. Instead, we have relied upon the statutory provisions of the Act to complete the following analysis with respect to critical habitat.

After reviewing the status of the southwestern willow flycatcher critical habitat, the environmental baseline for the action area, the cumulative effects, and the anticipated effects of on-going grazing on the Voigt Allotment, it is our biological opinion that the proposed action is not likely to result in the destruction or adverse modification of critical habitat. The conclusions of this biological opinion are based on full implementation of the project as described in the Description of the Proposed Action section of this document, including any Conservation Measures that were incorporated into the project design. We present this conclusion for the following reasons:

1. Approximately three miles of critical habitat on EFLCR will be directly affected by the proposed action. This is a small section of designated critical habitat in the Little Colorado Management Unit (approximately 13 percent) and an even smaller portion of critical habitat as a whole (0.4 percent).
2. The effects of the action on the primary constituent elements will not permanently destroy the conservation value of critical habitat.

## INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulations pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. “Take” is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct. “Harm” is defined (50 CFR 17.3) to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. “Harass” is defined (50 CFR 17.3) as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. “Incidental take” is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this Incidental Take

Statement.

## **AMOUNT OR EXTENT OF TAKE**

This consultation addresses effects only to SWWF critical habitat, and analysis of any incidental take of the species is not addressed.

## **CONSERVATION RECOMMENDATIONS**

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

1. Implement Forest-specific actions of the Southwestern Willow Flycatcher Recovery Plan, including recommendations for grazing management.
2. Implement a monitoring plan to better determine when the actual growing season occurs in the action area to help alleviate overuse of riparian areas by livestock in the project area.

In order for the FWS to be kept informed of actions minimizing or avoiding adverse effects or benefiting listed species or their habitats, the FWS requests notification of the implementation of any conservation recommendations.

## **REINITIATION NOTICE**

This concludes formal consultation on the effects of on-grazing permit for the Voigt Allotment as outlined in the Forest Service's February 8, 2006, letter on the southwestern willow flycatcher. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

We appreciate the Forest Service's efforts to identify and minimize effects to listed species from this project. For further information please contact Jennifer Graves (x232) or Debra Bills (x239).

Please refer to the consultation number, 02-21-03-F-0298, in future correspondence concerning this project.

Sincerely,

/s/ Steven L. Spangle  
Field Supervisor

cc: Forest Supervisor, Apache-Sitgreaves National Forests, Springerville, AZ  
(Attn: Cathy Taylor)  
Greg Beatty, US Fish and Wildlife Service, Phoenix, AZ

Bob Broscheid, Arizona Game and Fish Department, Phoenix, AZ

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Appendix A:

