

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status and Critical Habitat Designation for the Inyo Brown Towhee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Inyo brown towhee (*Pipilo fuscus eremophilus*) to be a threatened species. This action is being taken because the entire population of this bird is confined to a very limited habitat that has already been altered to some extent and could be further adversely impacted by future changes in land use. The Inyo brown towhee occurs in the Argus Mountains, Inyo County, California. Critical habitat is included in this rule. This action implements the protection of the Endangered Species Act, as amended, for this species. The Service also announces in this same separate part of today's **Federal Register** the opening of a 60-day comment period on a proposed rule as to whether additional areas should be added to the designated critical habitat of this species.

DATE: The effective date of this rule is September 2, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:**Background**

The Inyo brown Towhee (*Pipilo fuscus eremophilus*) is a medium-sized (7-7.5 inches, 17-19 centimeters) sparrow-like songbird, one of several recognized subspecies of the brown towhee (*Pipilo fuscus*). This subspecies was described in 1935 from specimens taken in the Argus Mountains, Inyo County, California. It is particularly significant because it is completely isolated from the other subspecies and has become adapted to a rigorous desert riparian environment not fully duplicated elsewhere within the range of the species. It is a yearlong resident of its limited habitat, all of which is

included within the confines of a circle approximately 11 miles in diameter. Nesting occurs in dense vegetation at springs and along water courses, and the birds forage for seeds and insects in open areas adjacent to the riparian scrub. Limited, if any, competition with several other species does not appear to limit the numbers or distribution of this towhee.

The population is estimated to include less than 200 individuals. It is not known if the population level is changing, but the species is vulnerable to changes in its habitat that could occur from overgrazing, export of water, mining, or recreational activities. Recent studies of the Inyo brown towhee were done by Bart Cord and Joseph R. Jehl, Jr. (1979) under contract to the Bureau of Land Management. Mills *et al.* (1982) and WESTEC (1983) provide more recent data on the towhee. LaBerteaux (1984) estimates the present number at 117 to 200 adult towhees.

The Inyo brown towhee was included on the December 30, 1982, Vertebrate Notice of Review (47 FR 58452) in category 1. Category 1 includes those taxa for which the Service has substantial information on hand to support the appropriateness of proposing to list the species as endangered or threatened. After evaluating the information available on the status of this species, the Service published a proposed rule on November 23, 1984 (49 FR 46174), to designate the Inyo brown towhee as a threatened species with critical habitat. Additional areas may be added to the critical habitat of the Inyo brown towhee, pending an additional comment period.

Summary of Comments and Recommendations

In the November 23, 1984, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. The Commander of China Lakes Naval Weapons Center requested an extension of the first comment period that closed January 22, 1985. The comment period was reopened, as announced in the **Federal Register** on February 11, 1985 (50 FR 5647), to close March 11, 1985. Subsequently the Service extended the comment period on March 7, 1985 (50 FR 9300), and accepted comments until April 11, 1985. Newspaper notices regarding the proposal and reopening of the comment periods were published in

The Daily Independent, the Bakersfield *Californian*, Trona *Argonaut*, the *Valley Inquirer*, and the *Enterprise*, all of which invited general public comment. Seven comments were received and are discussed below. No request was received for a public hearing, and none was held.

Of the seven comments, three supported the proposal, one recommended against listing, two did not state their position, and one was non-substantive.

The California Department of Fish and Game (CDFG), responding for the Governor of California, supported the proposal. Having recognized the Inyo brown towhee as endangered by action of the California Fish and Game Commission in 1980, the State is concerned that towhee numbers are low. CDFG presented data from a recently prepared report (LaBerteaux 1984) that towhee numbers are probably between 117 and 200. Should numbers drop to less than 100, CDFG suggested the towhee be reclassified as endangered. Substantial additions to critical habitat were recommended by CDFG. These included adding a newly discovered site, expanding virtually all proposed critical habitat, and using a ¼ mile strip on both sides of the respective washes and a ¼ mile radius around each spring to serve as the critical habitat boundaries. CDFG asked to have LaMotte Canyon and Crow Canyon added as critical habitat because they contain apparently suitable habitat, although no towhees have been located there.

Service response: The status of the Inyo brown towhee will be monitored. Should threats to the towhee increase or should new threats develop, the Service will reevaluate the condition of the taxon and may propose reclassifying it to endangered status. After evaluating the LaBerteaux (1984) findings, a study that CDFG had funded, the Service believes that recommendations to expand critical habitat where towhees presently are, and to include the new site, may be warranted. Such a sizable increase in the critical habitat necessitates publication of another proposed rulemaking to augment the critical habitat that is the subject of this final rule. The Service has responded to the comment regarding augmenting critical habitat by proposing additional areas in this same part of today's **Federal Register**. A determination of whether these additional areas will be added to the critical habitat designated herein will be made following the closing of that comment period.

The Service has adopted a consistent ¼-mile figure rather than the ¼-mile

"upslope" distance that CDFG requested as the boundary on either side of the washes and around springs for critical habitat. "Upslope" measurements over such a large number of narrow to wide canyons pose great difficulties to local land managers and owners. The use of "airline" distances from the streambeds and springs greatly assists these land managers and owners in determining the critical habitat zones over such a topographically variable landscape. The Service believes that the 1/2-mile distance provides sufficient buffer for the habitats, is more easily determined on standard maps of the area, and meets all the essential conservation needs of the birds. The 1/2-mile distance on either side of the streambeds (or as a radius) should contain those physical and biological features that are essential to the conservation of the towhee and that may require special management consideration or protection.

The Service did not accept CDFG's suggestion to add LaMotte and Crow Canyons, because towhees are not known to occupy either of these canyons (see Critical Habitat and Regulations Promulgation sections for details) and these areas do not appear to be essential to the conservation of the towhee. The Service has accepted the State's suggestions for some additional areas, as indicated in the "Critical Habitat" section of this rule, which towhees are known to occupy.

Defenders of Wildlife strongly supported the proposal, but provided no additional information. The International Council for Bird Preservation supported the proposal.

The Department of the Navy, China Lake Naval Weapons Center (CLNWC), commented that the threats to the towhee on the Center's land have been essentially eliminated by suspension of cattle grazing in 1981 and removal of approximately 8,000 wild burros and horses, which were reducing the quality of the towhee's habitat through grazing and trampling of the vegetation. CLNWC stated that the Center has been withdrawn from all commercial and private mining since 1943, and that the majority of current range facilities and activities, which alter or disturb native habitat, occur on lower elevations where there are no towhees. The Navy believes that existing legal environmental safeguards and base policies, and the fact that it is cooperating with the California Department of Fish and Game to fund a study on the towhee and to manage the bird, protect the bird sufficiently. In addition, it indicated that towhee numbers have increased. Lastly,

CLNWC stated that it is its understanding that non-biological factors are considered in determining whether a species is to be listed. Because of its tight time schedules for testing weapons systems and the sometimes classified nature of the tests that it conducts, CLNWC stated it would rarely be able to meet its legal obligations under the Endangered Species Act, as amended, to consult with the Fish and Wildlife Service should the towhee be listed. Because of the potential difficulties entailed in consulting with the Fish and Wildlife Service, and because it believes the threats to the bird on the base have been eliminated, the Navy stated it does not believe the towhee warrants listing.

Service response: CLNWC has done a commendable job of improving desert ecosystem conditions (including riparian habitat of the towhee) by suspending livestock grazing and removing the majority of wild burros and horses. The cooperative efforts of the California Department of Fish and Game and CLNWC are also duly noted. However, the Service is evaluating the total range of this bird and all actions that may affect it regarding the degree of threats. The Service agrees that most of the base's activities and facilities associated with development, testing, and evaluation of air weapons and air warfare systems are not within the range of the towhee. However, some activities associated with the operation of the base, such as the maintenance and use of Mountain Springs Canyon Road, do have the potential to adversely affect the Inyo brown towhee and its habitat.

In addition, no biological evidence was submitted to substantiate the claim that towhee population numbers have significantly increased. In fact, it appears that numbers are approximately the same as in 1978. Sampling of towhee populations to obtain census information is not an easy undertaking. Yearly variations in bird numbers are a common phenomenon, and it is not unexpected that towhee numbers in such censuses change from year to year. A minimum of several years' worth of data are necessary before any preliminary statements regarding a change in population numbers and status can be made.

The Service believes that, although certain threats to the towhee have been reduced, the threats to the bird on the base as well as within its entire range have not been eliminated. Further, the existing regulatory mechanisms (e.g., State listing of the Inyo brown towhee as endangered, National Environmental

Policy Act) are inadequate to fully obviate the threats to the Inyo brown towhee and thereby preclude listing. In addition, in reference to the Navy's statement that non-biological factors can be considered, the Service notes that section 4(b)(1)(A) of the Act requires that listing decisions be made "solely on the basis of the best scientific and commercial data available..." (emphasis added).

The argument that the Inyo brown towhee should not be listed because the consultation process with the Service under section 7(a)(2) of the Act would be difficult and inconvenient for the Center is not relevant to the listing criteria in section 4(a)(1), which are the only criteria the Service may consider in making its final decision on the appropriate classification for the towhee. The Service does not anticipate consultations for individual weapons system's tests, but rather a more generic one may be needed to cover a host of activities that are likely to affect the towhee. The consultation process under section 7(a)(2) is not inflexible, and the Service has a good track record in working with Federal action agencies through consultations.

The Bureau of Land Management (BLM) recommended that the boundary of critical habitat areas be standardized by using a 400-yard radius from single reference points and 400 yards on either side of streambeds. BLM further suggested that certain other areas near known towhee habitat be evaluated for possible inclusion as critical habitat, but provided no data to support towhee use of these areas. Further, BLM indicated that because the majority of wild burros in the vicinity have been removed, thus reducing the threats to the towhee, the need to list the towhee should be reassessed.

Service response: As previously indicated in the response to CDFG's letter, the Service has adopted a standard distance measurement for critical habitat zones. As to adding new sites for critical habitat, once data are available to indicate that such areas are essential to the conservation of the towhee, the Service will evaluate the necessity to propose additional areas as critical habitat. Such an addition would be the subject of another Federal Register proposal. Regarding the burros removal, the Service supports efforts to remove or at least exclude wild burros from these areas; however, degradation of habitat by the burros is only one of a number of actual or potential threats facing the Inyo brown towhee. Even if wild burros were totally eliminated, the Service believes that other threats to the

towhee are sufficient to warrant listing as a threatened species.

The Inyo County Planning Department indicated that listing may impose a hardship on individuals using spring water for domestic and industrial purposes at Bainter, Benko, and Indian Joe Springs, and an unnamed spring, and that some of these springs are privately owned. The Planning Department expressed concern that use of these springs would be denied and suggested that mitigation measures be developed. According to the County, the main management concern for towhees should be that they have access to water.

Service response: Available information indicates that of the springs included as designated critical habitat, only Indian Joe is in private ownership. The other springs are in public ownership. Before the Federal agency having jurisdiction over these springs could approve increased water removal, an assessment of the impacts of such an action on the Inyo brown towhee and its critical habitat would be required by that agency. If an effect on the towhee or its critical habitat is anticipated, then the Federal agency would be required to consult with the Service. During the consultation process, possible avenues to alleviate adverse effects of such actions would be evaluated. In addition, water is essential to maintain the riparian habitat required by the towhee. It is not merely a case of supplying the towhee with surface drinking water.

Summary of Factors Affecting the Species

After a thorough review and consideration of all scientific and commercial information available, the Service has determined that the Inyo brown towhee (*Pipilo fuscus eremophilus*) should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Pipilo fuscus eremophilus* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Up to 200 adult Inyo towhees are scattered over a very small area in the Argus Mountains. The towhee is restricted within its range to the proximity of dense riparian vegetation (particularly arroyo willow, *Salix lasiolepis*). Such vegetation is

limited in extent naturally in the arid Mohave Desert, but can be further restricted by decreases in water supply needed to support the vegetation, or by events that destroy or degrade the existing vegetation.

Animal grazing (particularly by wild burros), mining, water exporting, and recreational activities could be the cause of these changes in habitat conditions. Destruction of some portions of the habitat has been documented in the past and is continuing at the present time. Wild burros have already had some impact at some springs by grazing and trampling of the vegetation. Over 2,000 wild burros and wild horses have been removed from the range of the Inyo brown towhee by BLM and CLNWC. The goal is total exclusion of the burros and maintenance of a horse herd with less than 30 animals. Livestock grazing has been suspended on the Center since 1981 and is not occurring on BLM habitat within the range of the towhee. It is anticipated that the quality of the riparian habitat used by the towhee will improve if the burros are eventually eliminated and cattle grazing does not resume.

A major portion (approximately 75%) of Inyo brown towhee habitat occurs within the CLNWC. The mission of the Center is to serve as a major development, testing, and evaluation laboratory for air weapons and air warfare systems. Although most of these functions and associated activities are conducted outside the range of the towhee, it is certainly conceivable that actions conducted near or within the range of the bird could adversely affect it or its habitat.

A portion (approximately 640 acres, 260 hectares) of the critical habitat lies within the BLM's Great Fall Basin-Argus Mountains Area of Critical Environmental Concern (ACEC) and was established primarily to benefit the towhee; the draft management plan for this ACEC has just been developed. Hiking, camping, hunting, and off-road vehicle use occur in this area. Water rights have been appropriated on most of the springs situated on BLM administered lands for such activities as livestock grazing and mining. Numerous mining claims occur in the area and are often associated with the springs. Working the mines often involves exportation of water. At the present time no mineral production is underway within the range of the towhee, but there is some exploratory activity. Use of spring water may occur also on CLNWC such as for dust abatement during road construction or maintenance. Water withdrawal can reduce the amount of

water available to maintain riparian habitat.

The total available habitat is on the order of 5,600 acres (2,250 hectares). The effective population size for this bird has not been determined, but for most avian species it is thought to be about 100. Any lower population level of this isolated bird would invite genetic and other problems, including possible extinction. The limited range of the towhee and the fragility of its ecosystem make it susceptible to extinction rather quickly if current land uses were to change.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* No threat from overutilization of this species is known to exist at this time.

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms.* Most of the habitat is administered by the Bureau of Land Management (BLM) and U.S. Navy, and these agencies can control the use of lands under their jurisdiction. Designating the species as threatened will invoke the authorities and prohibitions of the Endangered Species Act, a necessary supportive measure that will open up additional options for protection and management. The towhee is protected under the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*) and is listed as endangered by the California Fish and Game Commission. However, no Federal or State laws or regulations can protect the habitat of this bird from Federal activities, except for the Endangered Species Act. A small portion of the critical habitat (190 acres, 77 hectares) is in private ownership and not subject to public management.

E. *Other natural or manmade factors affecting its continued existence.* None known.

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 make this rule final. Based on this evaluation, the preferred action is to list the Inyo brown towhee as threatened. Localized destruction of habitat by wild burros and, to a lesser extent, by wild horses and cattle grazing, have occurred. There is also the long-term potential loss of the very limited habitats that the towhee requires by actions such as water withdrawal, mining, recreational activities, and actions and activities associated with the testing and evaluation of air warfare systems.

Therefore, the Service finds that the Inyo brown towhee "is likely to become

an endangered species within the foreseeable future throughout all or a significant portion of its range." Section 3(20) of the Act. The available data do not support a finding that the towhee is presently in danger of extinction throughout all or a significant portion of its range. Critical habitat is also designated for this bird (see following section).

Critical Habitat

Critical habitat, as defined by section 3(5) of the Act, means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated, to the maximum extent prudent and determinable, concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated or proposed for the Inyo brown towhee to include approximately 5,600 acres (2,250 hectares) of desert riparian scrub habitat near springs and streambeds in, and adjacent to, the northeast corner of China Lake Naval Weapons Center, Argus Mountains, Inyo County, California.

Critical habitat lies in the vicinity of the following: Margaret Ann Springs, Snooky Spring, Ruby Spring, Quail Spring, Benko Spring, Bainter Spring, Indian Joe Spring, Great Falls Basin, Mountain Springs Canyon, and a number of unnamed springs and canyons in this area. The areas proposed as critical habitat in today's **Federal Register** and those determined as critical habitat in this rule are known to be occupied by towhees and satisfy all known criteria for the ecological, behavioral, and physiological requirements of the conservation of this species. The desert riparian scrub habitat, which is encompassed by this rule and the proposal following, provides sufficient cover for nesting, roosting, and escaping from predators, and also provides a source of food and water.

Subsection 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may

adversely modify such habitat or may be affected by such designation. Actions that could adversely affect critical habitat for this species are removal, thinning, or destruction of riparian vegetation; a lowering of the present water tables would also directly affect the vegetation, which would then affect the towhee. Specific activities that could cause the above are: (1) Water diversion or substantially increased water use for mining or other purposes; (2) grazing by domestic livestock, wild horses, or wild burros; (3) mechanical brush clearing for any purpose; or (4) damage to vegetation from recreational vehicles.

Any of these actions occurring on land under Federal jurisdiction will require section 7 consultation if there is a potential impact on the Inyo brown towhee or its critical habitat. In addition, any actions on non-federal lands that are subject to Federal approval, funding, or other action will also require Section 7 consultations between the Federal agency and the Service, if the proposed activities may affect a listed species or its critical habitat.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service has considered the critical habitat designation in light of the most current information available. H.D. Carper, Director, California Department of Fish and Game (CDFG), requested that additional areas in which towhees are now known to occur and two canyons that may support towhees be added as critical habitat. His request was based on a report of the 1984 field season (LaBerteaux 1984). These recommendations by the CDFG are the subject of a separate rulemaking proposal found following in this part of today's **Federal Register**. Because of the request of the State to delete or add areas, the Service has reviewed all the zones contained in the original 1984 proposal. As a result of that review, several small springs or other patches of proposed critical habitat were found to lack any observations of towhees. These few areas have been removed in this rule as critical habitat. Activities that may be affected by the designation of critical habitat are discussed in the Available Conservation Measures section of this rule.

Below is a list of the additional tracts that would supplement the zones determined in this rule. In the document that follows in this part of today's **Federal Register** are the proposed revised descriptions of all critical habitats. In the first eight areas below, the areas are adjoining the eleven areas

determined in this rule as critical habitat. If finalized as proposed, the critical habitats will be described with all tracts combined where they form single contiguous units of area. The last area listed below (item 9) is separate and apart from all other areas in this rule. All of these newly proposed areas are described here to provide a complete administrative record.

Proposed Critical Habitat To Be Added

1. Approximately 1.5 miles of streambed and $\frac{1}{8}$ mile on either side of the wash commencing at a point along the streambed $\frac{1}{8}$ mile south of the spring in T23S R42E, W $\frac{1}{2}$ NE $\frac{1}{4}$ Section 8 and continuing along the streambed to Margaret Ann Spring, and approximately 0.3 miles of streambed and $\frac{1}{8}$ mile on either side from the western boundary of Section 2 downstream in Water Canyon to longitude 117°25' W. The above adds portions of Sections 2, 4, 5, 8, and 11, T23S R42E.

2. Approximately 1.3 miles of streambed and $\frac{1}{8}$ mile on either side of the wash commencing at the western boundary of NE $\frac{1}{4}$ of Section 21 (at the point nearest to the NW corner of SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 21), T23S R42E, and proceeding downstream to Ruby Spring, Section 22. The above adds portions of Sections 21 and 22, T23S R42E.

3. Approximately 2.3 additional miles of streambed and $\frac{1}{8}$ mile on either side of the larger wash within Homewood Canyon, commencing at the western boundary (at the point nearest to its midpoint) of Section 28, T23S R42E, and extending past Quail Spring (already included in this rule as critical habitat) downstream to a point along the streambed $\frac{1}{8}$ mile southeast of Benko Spring, T23S R42E, Sections 34 and 35 (also already included); approximately 1.2 miles of streambed and $\frac{1}{8}$ mile on either side of the wash commencing at the western boundary of E $\frac{1}{2}$ NE $\frac{1}{4}$ of Section 33 (at the point nearest to the SW corner of NE $\frac{1}{4}$ NE $\frac{1}{4}$ Section 33) and extending easterly past Parson's Spring to Homewood Canyon; approximately 0.8 mile of streambed and $\frac{1}{8}$ mile on either side of the wash commencing at the northern boundary of Section 28 (at the point nearest to its midpoint) and extending southeasterly and downstream to Homewood Canyon; and approximately 0.5 mile of streambed and $\frac{1}{8}$ mile on either side of the wash commencing at the western boundary of Section 27 (at the point nearest to the SW corner of NW $\frac{1}{4}$ SW $\frac{1}{4}$ Section 27), and proceeding easterly to Homewood Canyon. The

above adds portions of Sections 21, 27, 28, 33, 34, and 35, T23S R42E.

4. In T23S R42E, E½ SE¼ Section 31 and W½ SW¼ Section 32, and in T24S R42E, NE¼, W½ SE¼, and E½ SW¼ Section 6; and W½ NW¼ Section 5. (This includes the area around Bench Mark 5485 that is being designated as critical habitat in this rule.)

5. Approximately 0.7 mile of streambed and ½ mile on either side of Great Falls Basin Wash commencing at the western boundary of Section 11 (at the point nearest to and south of the NW corner of Section 11), T24S R42E, and proceeding southwesterly and downstream to the western boundary of E½ Section 11, T24S R42E; and approximately 0.8 mile of streambed and ½ mile on either side of the unnamed wash commencing at a point ½ mile upstream of Deep Canyon Spring (near the SE corner of Section 10) and proceeding eastward along the streambed to Great Falls Basin Wash. The above adds portions of Sections 10, 11, and 15, T24S R42E.

6. In Section 18, T24S R43E, approximately 0.4 mile of streambed from a point ½ mile downstream of Bainter Spring and continuing downstream to longitude 117°22'20" W, including ½ mile on either side of this wash.

7. Approximately 1.0 mile of streambed and ½ mile on either side of Indian Joe Canyon commencing ½ mile downstream of Indian Joe Spring in Section 24, T24S R42E, and proceeding southeasterly to the southern boundary of Section 24. The above adds portions of Sections 24 and 25, T24S R42E.

8. Approximately 0.7 mile of Mountain Springs Canyon main streambed and ½ mile on either side commencing at the southern boundary of Section 8, T23S R41E, and proceeding westerly along the streambed to the western boundary of NE¼ Section 18; approximately 0.8 mile of streambed and ½ mile on either side of the wash commencing at the southern boundary of the SW¼ Section 4 and continuing southerly through Sections 9 and 8 to the intersection with the main wash in Mountain Springs Canyon; approximately 0.5 mile of streambed and ½ mile on either side of the wash commencing at the southern boundary of NE¼ NE¼ Section 10 (at the point nearest the upper Mammoth Mine) and continuing downstream to the main wash; approximately 0.8 mile of streambed and ½ mile on either side of the wash commencing at the eastern boundary of Section 15 at a point just south of the midpoint of that boundary, and proceeding north along the streambed to Mountain Springs Canyon; and approximately 0.5 mile of

streambed and ½ mile on either side of the wash commencing at the southern boundary of N½ Section 14 (at the point nearest to the midpoint of Section 14) and proceeding north along the streambed to the main wash. The above adds portions of Sections 4, 5, 8, 9, 10, 11, 14, 15, 17, and 18, T23S R41E.

9. Approximately 4.2 miles of streambed and ½ mile on either side of the wash commencing at the southern boundary of N½ Section 23 (at the point nearest to the midpoint of Section 23), T23S R41E, and proceeding southerly along the streambed to a point ½ mile downstream from the spring in SW¼ SW¼ Section 3, T24S R41E. The above adds portions of Sections 3 and 4, T24S R41E; and Sections 23, 26, 27, 34, and 35, T23S R41E.

The Service has prepared an economic analysis of all areas proposed to be designated as critical habitat. No significant economic or other impacts are expected to result from the critical habitat designation, including the proposed additional areas. This conclusion is based on the following: (1) CLNWC's current management of its testing operations and other activities on its land within or in the vicinity of the critical habitat is not likely to be significantly affected by the designations; (2) it is estimated that the annual economic impacts on the national economy that may result from CLNWC's plans to develop a management plan for a comprehensive consultation and other potential restrictions associated with possible road projects and water withdrawals due to critical habitat considerations on CLNWC administered land will be substantially less than \$100 million; (3) potential economic impacts will be less than .06 percent of CLNWC FY 1986 budget; (4) current management of mineral leasing, hunting, ORV and other activities on BLM administered land within or in the vicinity of the critical habitat is not likely to be significantly affected by the designations; (5) the ongoing CLNWC-BLM wild burro and horse removal and control efforts will help preserve the critical habitats; (6) the absence of any known livestock grazing, vegetation removal, mining, or other activities that may affect or be affected by the critical habitat designation; and (7) no known involvement of Federal funds or permits for the private land or the State of California's acquisition of the private land that contains critical habitat. In addition, no significant impact on the economy or present economic status of Inyo County, California, is expected as a result of the critical habitat designation.

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 practices. 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. Such actions are initiated by the Service following listing. The protection required by 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. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. 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 a listed 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. Almost all of the land within the critical habitat of the Inyo brown towhee is in Federal ownership and is under the jurisdiction of either BLM or the U.S. Navy.

These two agencies are planning a cooperative program to preserve and manage Inyo brown towhee habitat within their areas of jurisdiction. Programs that may be authorized in the future that might impact critical habitat would be livestock grazing, water exporting, additional human recreation, and mining. In addition, activities associated with the development, testing, and evaluation of air weapons and air warfare systems by CLNWC have potential to adversely affect the towhee and its critical habitat. Consultation with the Fish and Wildlife Service on such issues as they arise would assist in identifying means for reducing the potential for adverse effects from such activities.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened

wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a 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 had 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 threatened wildlife species under certain circumstances. Regulations governing such permits are at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, and for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Public Comments Solicited

In an accompanying announcement in this same part of today's **Federal Register**, the Service solicits comments and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or other interested parties concerning the possible addition of areas to the critical habitat designated in the present rule for the Inyo brown towhee. The comment period, which opens on the date of publication of this rule and the accompanying proposal, will remain open for 60 days. A final decision on the inclusion of these additional areas will be made and published in the **Federal Register** following the conclusion of the comment period.

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).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The critical habitat designation, as defined in the proposed rule of November 23, 1984, did not bring forth economic or other impacts to warrant consideration of revising the critical habitat because of such impacts. The critical habitat consists of selected riparian habitat near springs and within washes in Argus Mountains, Inyo County, California. The lands are primarily owned by the U.S. Navy (China Lake Naval Weapons Center) and, to a lesser extent, by the Bureau of Land Management, U.S. Department of the Interior. Of the 5,570 acres (2,255 hectares) of critical habitat (designated and proposed), approximately 190 (77 hectares) are in private ownership.

There is no known involvement of Federal funds or permits for the private lands within the critical habitat designation. BLM has indicated that it does not anticipate conflicts between its management of the area and the critical habitat. No specific information on military activities was disclosed that would indicate that the designation of critical habitat will adversely affect the national security mission of the Center or its routine operations.

Consequently, no significant economic impacts are expected to result from the designation of critical habitat for the Inyo brown towhee. Also, no direct costs, enforcement costs, or information collection or recordkeeping requirements are imposed on small entities by this designation. These determinations are based on a Determination of Effects that is available at the Regional Office, U.S. Fish and Wildlife Service, 500 NE., Multnomah Street, Suite 1692, Portland, Oregon 97232. This Determination of Effects also addresses the economic

impacts of the proposed revision, published in today's **Federal Register**, to the critical habitat designation for the Inyo brown towhee promulgated in this rule.

Literature Cited

Cord, B., and J.R. Jehl, Jr. 1979. Distribution, biology and status of a relict population of brown towhee (*Pipilo fuscus eremophilus*). *Western Birds* 10:131-156.
 LaBerteaux, D. 1984. Unpubl. Rept. on the Inyo brown towhee prepared by California Dept. of Fish and Game, Sacramento, California.
 Mills, S.G., S. Sutherland, and F.W. Reichenbacher. 1982. Vertebrate survey of selected riparian habitats on the China Lake Naval Weapons Center. Preliminary report prepared for S.W. Carothers and Associates.
 WESTEC Services Inc. 1983. Biological resource survey of Mountain Springs Canyon on the Naval Weapons Center, NWC TP 6424.

Author

The primary author of this final rule is Dr. Kathleen E. Franzreb, Endangered Species Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E-1823, Sacramento, California 95825 (916/978-4866).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

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

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. 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							
Towhee, Inyo brown	<i>Pipilo fuscus eremophilus</i>	U.S.A. (CA)	Entire	T	282	17.95(b)	NA

3. Amend § 17.95(b) by adding critical habitat of the Inyo brown towhee in same sequence as the species appears in § 17.11 as follows:

§ 17.95 Critical habitat—fish and wildlife.

(b) Birds.

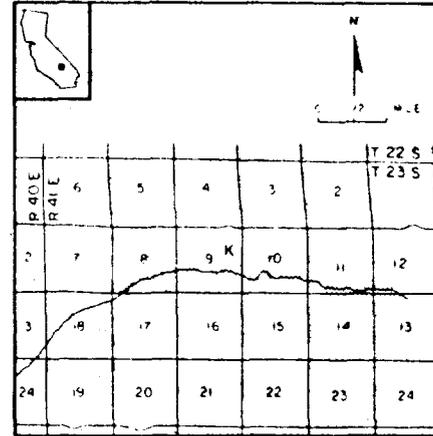
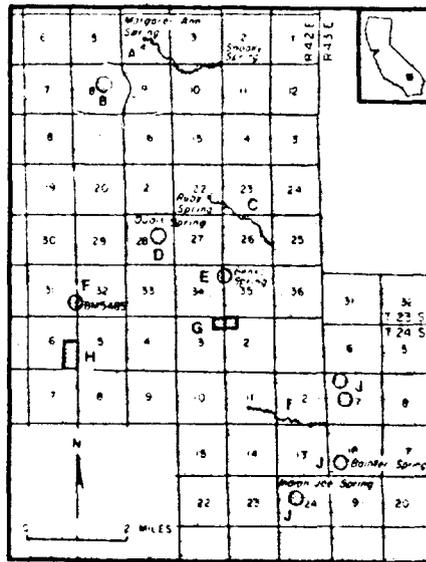
Inyo Brown Towhee (*Pipilo fuscus eremophilus*)

California, Inyo County: lands within and adjacent to the China Lake Naval Weapons Center identified as follows:

- (1) Approximately 2.0 miles of streambed and 1/8 mile on either side of the wash from Margaret Ann Spring and proceeding downstream to the eastern boundary of Section 3 near Snooky Spring. The above includes portions of Sections 3, 4, 9, and 10, T23S R42E. (Map location A)
- (2) A circle 1/8 mile in radius with the spring in T23S R42E W 1/2 NE 1/4 Section 8 as the center. (Map location B)
- (3) Approximately 2 miles of streambed and 1/8 mile on either side of the wash from Ruby Spring (T23S R42E, Section 22) and proceeding downstream to the boundary between Sections 25 and 26. The above includes portions of Sections 22, 23, 25, and 26, T23S R42E. (Map location C)
- (4) A circle 1/8 mile in radius with Quail Spring as the center in T23S R42E, NE 1/4 Section 28. (Map location D)
- (5) A circle 1/8 mile in radius with Benko Spring as the center in T23S R42E, Sections 34 and 35. (Map location E)
- (6) A circle 1/8 mile in radius with Bench Mark 5485 (some USGS maps report this as 5484) near the common boundary of Sections 31 and 32, T23S R42E, as the center and lying within Sections 31 and 32. (Map location F)

- (7) T24S R42E, NW 1/4 NW 1/4 Section 2 and NE 1/4 NE 1/4 Section 3. (Map location G)
- (8) T24S R42E, E 1/2 SE 1/4 Section 6. (Map located H)
- (9) Approximately 1.8 miles of streambed and 1/8 mile on either side of Great Falls Basin Wash commencing from the western boundary of E 1/2 Section 11, T24S R42E, and proceeding downstream along the streambed to the eastern boundary of Section 13. The above includes portions of Sections 11, 12, 13, and 14, T24S R42E. (Map location I)
- (10) Circles with 1/8 mile radii around Mumford and Austin Springs in T24S R43E, Section 7 and Bainter Spring in Section 18 and around Indian Joe Spring in T24S R42E Section 24. (Map locations J)

- (11) Approximately 5 miles of streambed and 1/8 mile on either side of Mountain Springs Canyon commencing from the southern border of Section 8 and continuing along the streambed to the point at which Mountain Springs Canyon Wash intersects the eastern boundary of SW 1/4 Section 12. The above includes portions of Sections 8, 9, 10, 11, 12, 13, 14, and 17, T23S R41E. (Map location K)



Major constituent element: desert riparian scrub vegetation.

Dated: June 22, 1987.

Susan Recco,
Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-17383 Filed 7-31-87; 8:45 am]

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