

## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 17

**Endangered and Threatened Wildlife and Plants; Proposal To Designate the Inyo Brown Towhee as Threatened With Critical Habitat**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Service proposes to determine the Inyo brown towhee to be a threatened species. This action is being taken because the entire population of this species is confined to a very limited habitat that has already been altered to some extent and could further be 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 proposed rule. The rule would provide protection under the Endangered Species Act for this bird. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments from all interested parties must be received by January 22, 1985. Public hearing requests must be received by January 7, 1985.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Regional Director (SE), U.S. Department of the Interior, Fish and Wildlife Service, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne White, Chief, Division of Endangered Species, Region 1, Fish and Wildlife Service, U.S. Department of the Interior, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231-6131; FTS 429-6131).

**SUPPLEMENTARY INFORMATION:****Background**

The Inyo brown towhee (*Pipilo fuscus eremophilus*) is a medium-sized (7-7½ inch) 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. This one is particularly significant because it is completely isolated from the other subspecies geographically and has become adapted to a rigorous desert environment not fully duplicated 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.

The population is estimated to include less than 175 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., under contract to the Bureau of Land Management; the results were reported in *Western Birds* 10:131-156, 1979. Mills *et al.* (1982) and WESTEC (1983) provide more recent data on the towhee.

**Summary of Factors Affecting the Species**

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; a revision was published October 1, 1984; 49 FR 38900-38912) set forth the procedures for adding species to the Federal lists. 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 the Inyo brown towhee are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Inyo brown 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 Mojave 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 feral burros), mining, water exporting, and recreational activities could be the cause of these changes in habitat. Destruction of some portions of the habitat has been documented in the past and is continuing at the present time. Feral burros have already had some impact at some springs by grazing and trampling of the vegetation. The total range of the Inyo brown towhee is very small, and the ecosystem is fragile; hence, the species could be extirpated rather quickly, if current uses change. Some 100-175 adult towhees are scattered over a tiny area in the Argus Mountains.

The total available habitat is on the order of 2700 acres. The effective population size for this bird has not been determined, but for most avian species the number is about 100. Any lower population level would invite genetic and other problems upon this isolated bird, including extinction.

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

**C. Disease or predation.** Not applicable.

**D. The inadequacy of existing regulatory mechanisms.** The bulk (est. 2670 acres) of the habitat is administered by the Bureau of Land Management and U.S. Navy, and at least, in part, these agencies can control the use of lands under their jurisdiction. Designating the species as threatened will be a supportive measure that will open up additional options for protection and management. No other Federal or State laws or regulations otherwise protect the habitat of this bird. A tiny portion (31 of the 2700 acres) 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 information available, regarding the past, present, and future threats faced by this bird in determining to propose this rule. Based on this evaluation, the preferred action is to list the Inyo brown towhee as threatened. The only immediate threats to the continued existence of this species is localized destruction of habitat by feral burros; otherwise, there is only the long-term potential loss of the very limited habitats that it requires.

#### Critical Habitat

Critical habitat, as defined by Section 3 of the Act and at 50 CFR Part 424, 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 protections, and (ii) specific areas outside the geographical 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.

In section 4(a)(3), the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrent with the

determination that a species is endangered or threatened. Critical habitat is proposed to be designated for the Inyo brown towhee to include approximately 2,700 acres of riparian scrub habitat near springs and streams on, and in the vicinity of, the China Lake Naval Weapons Center, Argus, Mountains, Inyo County, California. Proposed critical habitat lies in the vicinity of the following: Margaret Ann Springs, Snooky Spring, Ruby Spring, Quail Spring, Benko Spring, Moscow Spring, Bainter Spring, Indian Joe Spring, Great Falls Basin, Mountain Springs Canyon, and a number of unnamed springs. The areas proposed as critical habitat satisfy all known criteria for the ecological, behavioral, and physiological requirements of the subspecies. The riparian scrub habitat provides sufficient cover for nesting, roosting, and escaping from predators, and also provides a source of food.

Subsection 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public and private), which 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. Specific activities that could cause the above are:

- (1) Water diversion or substantially increased water use for mining, recreation, grazing, or any other use;
- (2) Grazing by domestic livestock or feral burros;
- (3) Mechanical brush clearing for any purpose; or
- (4) Damage to vegetation from recreational vehicles.

If the Inyo brown towhee is listed, 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.

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 will reevaluate the geographic critical habitat designations at the time of the final rule, after considering all additional relevant information obtained at the time of the final rule.

#### 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 land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species, which are initiated by the Service following listing. The protection required by Federal agencies and taking and harm prohibitions 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. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402, and are now under revision (see proposal at 48 FR 29989; June 29, 1983). Section 7(a)(4) requires Federal agencies to informally confer 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. When a species is 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 an activity may affect a listed species, the Federal agency must enter into consultation with the Service.

Preliminary contact with the Bureau of Land Management and U.S. Navy has not revealed current or proposed programs that would adversely affect critical habitat for this species. These agencies are planning a cooperative program to preserve and manage Inyo brown towhee habitat within their areas of jurisdiction. Programs authorized in the future that might impact critical habitat would be livestock grazing, water exporting, human recreation, and mining. Consultation with the Fish and Wildlife Service on such issues as they arise would probably result in identification of alternatives; whereby towhee habitat could be protected without curtailment of the proposed program.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general

prohibitions that apply to all threatened wildlife. These prohibitions, in part, would 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 commercial activity, or sell or offer for sale in interstate or foreign commerce this species. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered animal species under certain circumstances. Regulations governing permits are at 50 CFR 17.32. Such permits are available for scientific purposes, zoological exhibition, educational purposes, and incidental take or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available. Since the towhee is a migratory bird (50 CFR Part 10), no commercial trade is allowed, and no hardship permits would be expected in this case.

**Public Comments Solicited**

The Service intends that any final rule adopted will be accurate and as effective as possible in the conservation of each endangered or threatened species. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

- (1) Biological or other relevant data concerning any threat (or lack thereof) to the Inyo brown towhee;
- (2) The location of any additional populations of the Inyo brown towhee and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by Section 4 of the Act;
- (3) Additional information concerning the range and distribution of this species;
- (4) Current or planned activities in the subject area and their possible impacts of the Inyo brown towhee; and
- (5) Any foreseeable economic and other impacts resulting from the proposed critical habitat.

Final promulgation of the regulations on the Inyo brown towhee will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of 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 filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 N.E. Multnomah Street, Portland, Oregon 97232.

**National Environmental Policy Act**

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined by 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).

**References**

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.  
 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 authors of this proposed rule are Mr. Sanford R. Wilbur, U.S. Fish and Wildlife Service, Region 1, 500 N.E. Multnomah Street, Portland, Oregon 97232 (503/231-6131) and Dr. Kathleen E. Franzreb, Endangered Species Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E-1823, Sacramento, California 95825 (916/440-2791).

**List of Subjects in 50 CFR Part 17**

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

**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 reads as follows:

**Authority:** Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-358, 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. 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:							
Towhee, Inyo brown	<i>Pipilo fuscus eremophilus</i>	U.S.A. (CA)	Entire	T		17.95(b)	NA

3. It is further proposed to amend § 17.95(b) by adding critical habitat of the Inyo brown towhee in alphabetical order 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 miles of streambed and 1/8 mile on either side of the wash from Margaret Ann Spring to Snooky Spring including those areas of the wash in T23S R42E Sections 3, 4, and 10. (Map location A)

(2) T23S R42E SW 1/4 NE 1/4 Section 8. (Map location B)

(3) T23S R42E NW 1/4 NW 1/4 Section 20. (Map location C)

(4) Approximately 2 miles of streambed and 1/4 mile on either side of the wash from Ruby Spring (TR23S R42E Section 22) southeast to the boundary between Sections 25 and 26 including those areas of the wash

in T23S R42E Sections 22, 23, and 26. (Map location D)

(5) T24S R42E SW ¼ NE ¼ Section 28. (Map location E)

(6) A circle ¼ mile in radius with Benko Spring as the center within T23S R42E Sections 34 and 35. (Map location F)

(7) A circle ¼ mile in radius with bench mark 5485 in TR23S R42E Section 31 as the center and lying within T23S R42E Sections 31 and 32. (Map location G)

(8) T24S R42E E ½ SE ¼ Section 6, NE ¼ NE ¼ Section 7 and NW ¼ NW ¼ Section 8. (Map location H)

(9) T24S R42E NW ¼ NW ¼ Section 2 and NE ¼ NE ¼ Section 3. (Map location I)

(10) Approximately 1.8 miles of streambed and ½ mile on either side of the wash commencing from the western edge of T24S R42E E ½ Section 11 to the eastern boundary of Section 12. (Map location J)

(11) Circles with ½ mile radii around every spring in T24S R43E Section 7 (4 springs) and Bainter Spring in Section 18, and in T24S R42E Section 13 (2 springs) and Indian Joe Spring in Section 24. (Map location K)

Major constituent element: riparian scrub vegetation.

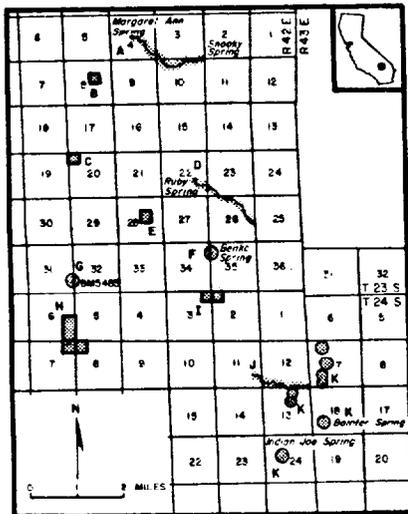
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Dated: September 24, 1984.

J. Craig Potter,  
Acting Assistant Secretary for Fish and  
Wildlife and Parks.

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(12) Approximately 5 miles of streambed and ½ mile on either side of the wash commencing from the south border of Section 8 to the SE corner of SW ¼ Section 12 including those areas within T23S R41E Sections 8, 9, 10, 11, 12, 13, 14, and 17. (Map location L)

