



Southwestern Willow Flycatcher Critical Habitat Designation

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Frequently Asked Questions and Answers:

Q: Why is the southwestern willow flycatcher endangered?

A: Flycatcher populations have declined significantly throughout their range because of changes to riparian ecosystems (trees and shrubs near water) including reductions in water flow, alteration of flood flows, physical modifications to watersheds and streams, and removal of riparian vegetation. These changes have occurred as a result of dams and reservoirs, groundwater pumping, channelization of streams for flood control, overgrazing, urbanization and other modifications. An increase in nest parasitism by cowbirds and predation of flycatcher nests also negatively affects populations, especially those in smaller numbers and at more isolated locations. As a result of changes in land use and water management, native riparian woody vegetation has changed in many areas to include more non-native and exotic vegetation such as salt cedar, Russian olive and other species. Modification and loss of wintering habitat and “stopover” habitat used by flycatchers to replenish energy reserves during migration is believed to be contributing to their decline.

The southwestern willow flycatcher was listed as endangered on Feb. 27, 1995.

Q: Where and when are southwestern willow flycatchers found in the United States?

A: The historical breeding habitat of the southwestern willow flycatcher included riparian areas in southern California, southern Nevada, southern Utah, Arizona, New Mexico, western Texas, southwestern Colorado, and the extreme northwestern portion of Mexico.

Flycatchers migrate from Latin America to breeding areas in North America, typically arriving in early May. Flycatchers build nests, breed, incubate and hatch eggs through July, then fledge their juveniles through mid-August. They depart for their wintering grounds by mid-September.

The flycatcher’s current range is similar to its historical range, but the quality and quantity of habitat has been significantly reduced causing habitat to be less common and more isolated. Approximately 1150 documented flycatcher territories occur from near sea-level to over 8500 feet in elevation, but are usually found in lower elevation riparian habitats. Throughout its range, the flycatcher’s current distribution follows that of its riparian habitat; relatively small, isolated, widely dispersed locales. Flycatchers winter in Mexico, Central America, and possibly northern South America.

Q: What constitutes southwestern willow flycatcher breeding habitat?

A: The southwestern willow flycatcher breeds in patchy to dense riparian habitats along streams, reservoirs, or other wetlands. Common tree or shrub species include willow, seep willow, boxelder, stinging nettle, blackberry, cottonwood, arrowweed, tamarisk (salt cedar), and Russian olive. Habitat characteristics vary across the subspecies' range. However, occupied sites usually consist of dense vegetation in the patch interior, or dense patches interspersed with openings, creating a mosaic that is not uniformly dense. In almost all cases, slow-moving or still water, or saturated soil is present at or near breeding sites during non-drought years.

Q: What is critical habitat?

A: Critical habitat is a term in the Endangered Species Act (ESA). It identifies geographic areas that contain physical and biological features essential for the conservation of a threatened or endangered species and may require special management considerations or protection.

Critical habitat provides protection from the prohibition against destruction or adverse modification, through required consultation under section 7 of the ESA, with regard to actions carried out, funded, or authorized by a federal agency. It does not affect purely state or private actions on state or private land.

Q: Does a 'critical habitat' designation mean an area is considered a wildlife refuge or sanctuary?

A: No. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness reserve, preserve, or other conservation area. It does not allow government or public access to private lands.

Critical habitat is not designated to stop development or to establish a nature preserve. A critical habitat designation simply identifies areas that are important to the conservation of federally listed threatened or endangered species. Critical habitat has no regulatory impact on private landowners taking actions on their land unless they are doing something that involves Federal funding or permits. A critical habitat designation requires Federal agencies to consult with the Service on any of their actions that may affect critical habitat in designated areas. The Service can then recommend ways to minimize any adverse effects.

Q: What has been designated as critical habitat for the southwestern willow flycatcher?

A: Critical habitat has been designated for 737 river miles comprised of 120,824 acres in California, Arizona, Nevada, Utah, and New Mexico, all within the 100-year floodplain or flood prone areas. The Service identified the essential stream- and lake-edge habitats essential to avoid the bird's extinction. The locations support large populations (ten or more flycatcher territories) and address the importance of maintaining those nesting birds' access to other local and inter-basin populations. Protecting the designated configuration of habitats will provide population stability, assure that birds can expand and colonize other locales, and promote genetic diversity. Designating the area within broad floodplains will accommodate the shifting and flooding nature of Southwest rivers, allowing habitat to persist, grow, recycle, and regenerate. Not only will these areas provide habitat for breeding flycatchers, but also foraging habitat and shelter for migrating, dispersing, non-breeding, and territorial southwestern willow flycatchers. (Refer them to maps on the internet.)

Q: What was designated as critical habitat in Nevada?

A: The Service is designating 18.6 miles of critical habitat along the Virgin River from the Arizona border to the Overton Wildlife Management Area in Nevada.

Q: How did the Service determine what areas contains southwestern willow flycatcher critical habitat?

- A:**
1. The Service examined the Southwestern Willow Flycatcher Recovery Plan's strategy, rationale, and science behind the conservation of the flycatcher and removing the threat of extinction.
 2. Because of the flycatcher's wide distribution and the dynamic nature of its habitat, the Service determined critical habitat locations must address the need for local flycatcher populations to have access to "neighboring" populations within and between drainages (up to 18 miles) to promote gene flow, connectivity among disjunct populations (metapopulation stability), and to prevent catastrophic losses.
 3. The Service recognized that breeding populations should be distributed throughout the bird's range; populations and habitat should be distributed in a fashion that allows for flycatcher movement within and between drainages; and large populations (10 or more breeding territories) contribute most to metapopulation stability.
 4. The Service then excluded areas based on a variety of protection measures. (See Exclusions.)

Q: What sort of information was valuable in the critical habitat evaluation and decision process?

A: The final designation requested comments or suggestions concerning the following issues:

1. The reasons why any areas should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species resulting from the designation;
2. Specific information on the distribution and abundance of southwestern willow flycatchers and their habitat, and which habitat or habitat components are essential to the conservation of this species and why;
3. Land use designations and current or planned activities in or adjacent to the areas proposed and their possible impacts on proposed critical habitat;
4. Any foreseeable economic or other potential impacts resulting from the proposed designation, in particular, any impacts on small entities;
5. Exclusion of lands identified as essential for the conservation of the southwestern willow flycatcher. The Service specifically solicited flycatcher-specific management plans and implementation schedules be delivered to Arizona Ecological Service Office covering areas included in the proposal and comment on: (a) whether these areas are essential; (b) whether these areas warrant exclusion; and (c) the basis for excluding these areas as critical habitat (section 4(b)(2) of the ESA); and
6. Whether the approach to designate critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist in accommodating public concerns and comments.

Q: Will everything within designated critical habitat be treated as critical habitat?

A: No. The Service did not map critical habitat in sufficient detail to exclude all developed areas and other lands unlikely to contain “primary constituent elements” essential for flycatcher conservation. Within the proposed critical habitat boundaries, only lands containing some or all of the *primary constituent elements*, or with the potential to contain them, were designated as critical habitat. Existing features and structures within proposed critical habitat, such as buildings; roads; residential landscaping; residential, commercial, and industrial developments; and other features, did not contain some or all of the primary constituent elements. Therefore, these areas were not considered critical habitat and were excluded.

Q: What are “primary constituent elements”?

A: They are habitat features needed for life needs and successful reproduction of a species. These include but are not limited to:

- space for individual and population growth, and for normal behavior (migration, etc.)
- cover, food, water, and other nutritional/physiological requirements
- locations for breeding, feeding and rearing offspring

Once these areas are identified, the Service determines where significant threats exist and therefore which areas would benefit most from protection provided by critical habitat designation. Private lands will be proposed only if they are necessary to achieve conservation of the species. Even then, prohibitions of critical habitat designation only apply if private landowners are taking actions on their land that involve Federal funding or permits.

Q: What are the “primary constituent elements” of flycatcher critical habitat?

A: The areas designated as critical habitat are designed to provide sufficient riparian habitat for breeding, non-breeding, territorial, dispersing and migrating southwestern willow flycatchers throughout their range, and provide those habitat components essential for conservation of the species. They include:

(1) Riparian habitat in a dynamic successional riverine environment (for nesting, foraging, migration, dispersal, and shelter) that comprises:

(a) Trees and shrubs that include Gooddings willow (*Salix gooddingii*), coyote willow (*Salix exigua*), Geyers willow (*Salix geeyerana*), arroyo willow (*Salix lasiolepis*), red willow (*Salix laevigata*), yewleaf willow (*Salix taxifolia*), pacific willow (*Salix lasiandra*), boxelder (*Acer negundo*), tamarisk (*Tamarix ramosissima*), Russian olive (*Eleagnus angustifolia*), buttonbush (*Cephalanthus occidentalis*), cottonwood (*Populus fremontii*), 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*), 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 2 m to 30 m (6 to 98 ft). Lower-stature thickets (2 to 4 m or 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 4 m (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 openings 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 0.1 ha (0.25 ac) or as large as 70 ha (175 ac); 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).

Q: Why and how were areas within the 100-year floodplain chosen to demark critical habitat?

A: Flycatcher breeding habitat (as noted above) is usually contained within the 100-year floodplain (including reservoir draw-down areas).

The boundary or “lateral extent” of the areas proposed for designation all fall within the 100-year floodplain, but are frequently limited to flood-prone areas less expansive than the 100-year floodplain. The Federal Emergency Management Agency (FEMA) designates and maps the 100-year floodplain boundaries for many larger rivers in the vicinity of urban and suburban areas. However, not all of 100-year floodplains throughout the proposed critical habitat areas have been mapped by FEMA. As a result, the Service has, for this proposed rule, mapped the lateral extent or riparian zones by one of two methods; the areas were either captured from existing digital sources or created through expert visual interpretation of aerial photographs and satellite imagery. These maps are available at <http://arizonaes.fws.gov>.

Q: How does the critical habitat designated compare to the Southwestern Willow Flycatcher recovery team’s recommendations for habitat conservation?

A: The Service recognizes that the recovery team’s efforts and recovery plan represent a treatment of the best, most current biological information and a projected plan for the recovery of the species. However, the recovery plan made no critical habitat recommendations. The scientific determinations, threats, issues, importance of “metapopulation” stability, and affected entities identified in the recovery plan have been incorporated in the critical habitat designation.

Q: Has the southwestern willow flycatcher always had a sparse distribution?

A: Yes. The flycatcher has always been sparsely distributed in the Southwest due to the sparse distribution of its riparian (streamside) habitat in this predominantly arid region. However, sparse distribution and rarity are not equivalent. Although flycatcher habitat is rare, nesting pairs have occurred in high densities where suitable habitat is present.

Q: Would the southwestern willow flycatcher only be protected in designated critical habitat

areas?

A: No. All other protections afforded by the ESA apply to all members of the species, regardless of whether they inhabit designated critical habitat or not. Listed species, both inside and outside critical habitat, are protected from 'take,' which includes harming (e.g., shooting, killing, trapping, collecting) and harassing individual animals. However, incidental taking that may result from, but is not the purpose of, otherwise legal activities may be allowed with a permit from the Service.

Q: What other species will benefit from the designation of critical habitat for the flycatcher?

A: Southwestern riparian habitats are by nature diverse and dynamic, providing a wide spectrum of habitats for many different species. There are approximately 40 other species that are currently listed as threatened or endangered, under the ESA which utilize the same habitats as the flycatcher. The disproportionately high level of threatened and endangered species indicates their riparian habitats have been degraded over a wide area. If riparian and aquatic ecosystems in the arid Southwest are restored to their natural, dynamic, heterogeneous conditions, many imperiled species will benefit, as will recreationally and economically important species and habitats.

Q: When will a critical habitat designation become effective?

A: Critical habitat designation that requires ESA section 7 review of Federal activities will become effective 30 days following the final determination by the Service, scheduled under court order for September 30, 2005.

However, ESA section 7 required “conferences” on Federal actions that were likely to result in the adverse modification or destruction of the critical habitat area proposed in 2004. The Service’s conference opinions did not require Federal agencies to offset critical habitat destruction or adverse modification. However, most agencies accepted the recommendations made in the conference opinions, as most conference opinions can potentially be connected to biological opinions once critical habitat is finalized, thereby saving consultation and project delays that could occur when a final rule becomes effective.

Q: How will critical habitat designation affect my private land?

A: Requirements for consultation on critical habitat do not apply to entirely private actions on private lands. Critical habitat designations only apply to Federal lands or federally funded or permitted activities on private lands. Activities on private or State lands that are funded, permitted or carried out by a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, or a section 402 permit under the Clean Water Act from the Environmental Protection Agency, will be subject to the section 7 consultation process with the Service if those actions may affect critical habitat or a listed species. Through this consultation, the Service would advise agencies whether the permitted actions would likely jeopardize the continued existence of the species or adversely modify critical habitat. Federal actions not affecting critical habitat or otherwise affecting flycatchers or their habitat (e.g., suitable habitat outside of critical habitat), and actions on non-Federal lands that are not federally funded, permitted or carried out, will not require section 7 consultation.

Q: What can a landowner do to enhance habitat for the flycatcher?

A: The U.S. Fish and Wildlife Service is able to provide technical and financial assistance to landowners who want to improve or restore habitat on their property through the Partners for Fish and Wildlife Program and other private stewardship grant programs. Contact the program at U.S. Fish and Wildlife Service, Branch of Habitat Restoration, 4401 N. Fairfax Drive, Arlington, VA 22203. Telephone number is (703) 358-2201. Web address is <http://www.fws.gov/Partners/>.

Q: When an area is designated as critical habitat, are all human activities in the area prohibited?

A: No. The only activities prohibited in these areas are Federal actions that are likely to appreciably reduce the value of that habitat.

Q: Why is the Service initiating the designation of critical habitat for the flycatcher again?

A: In 1997, 599 river miles in southwestern New Mexico, southern California, and Arizona were designated as flycatcher critical habitat. In, 2001, the 10th Circuit Court of Appeals, as a result of a suit from the New Mexico Cattlegrowers' Association, set aside critical habitat, citing a faulty economic analysis, and instructed the Service to issue a new critical habitat designation. In, 2003, in a complaint brought forth by the Center for Biological Diversity, the U.S. District Court of New Mexico instructed the Service to propose critical habitat by September 30, 2004, and publish a final rule by September 30, 2005. On October 12, 2004, pursuant to the court's order the Service proposed to designate 1,556 river miles and associated riparian areas as critical habitat for the southwestern willow flycatcher. The Service extended the comment period twice and it closed on May 31, 2005, and additional 10 day comment period was re-opened and closed July 18, 2005. After reviewing comments from the public scoping period and the economic analysis, the Service is now designating 737 river miles as critical habitat for the flycatcher.

Q: What does the public comment period accomplish?

A: Early in the flycatcher critical habitat deliberation, the Service conducted an extensive series of scoping meetings (eight in five states) and solicitation of comments. Many of those comments contributed to the Service's rationale for selecting the critical habitat and forming the basis for critical habitat deliberation.

The public comment period was the venue for receiving formal public, industry and conservation group input into the critical habitat designation process. Also during this time, the Service was seeking scientific peer review of its proposal and rationale for critical habitat designations. Then the Service announced the availability of the draft environmental assessment and economic analysis to the public. Both of these documents relied heavily upon comments received during the scoping process. All comments were incorporated into or addressed in the final designation and supporting environmental assessment and economic analysis.

Q: How do I find information on the Southwestern Willow Flycatcher?

A: The 1997 critical habitat rule, final recovery plan, the current rule, maps of the designated critical habitat, and other flycatcher information, are available on the Internet at <http://arizonaes.fws.gov> or by contacting the Field Supervisor of the U.S. Fish & Wildlife Service Arizona Field Office at the Arizona Ecological Services Field Office, 2321 W. Royal Palm Rd., Ste 103, Phoenix, AZ 85021.

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