

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AT52

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Mexican Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period, notice of availability of draft economic analysis and draft environmental assessment, and notice of a public meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis and draft environmental assessment for the proposal to designate critical habitat for Mexican spotted owl (owl) (Strix occidentalis

lucida) under the Endangered Species Act of 1973, as amended. We are also reopening the public comment period for the proposal to designate critical habitat for this species to allow all interested parties to comment on and request changes to the proposed critical habitat designation, as well as the associated draft economic analysis and draft environmental assessment. Over a 10-year time period, the future efficiency impacts associated with owl conservation are forecast to range from \$8.7 to \$30.4 million (or \$0.9 to \$3.0 million per year). Comments previously submitted on the July 21, 2000, proposed rule (65 FR 45336) or the November 18, 2003, notice (68 FR 65020) need not be resubmitted as they have been incorporated into the public record as part of this reopening of the comment period and will be fully considered in preparation of the final rule.

DATES: Comments must be submitted directly to the Service (see ADDRESSES section) on or before [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER], or at the public meeting to be held in April 2004.

We will hold a public informational session on April 20, 2004, in Las Cruces, New Mexico, from 5 p.m. to 7 p.m.

ADDRESSES:

Meeting: The public informational session will be held at the Corbett Center, New Mexico State University Campus, Jordan and University Streets, Las Cruces, New Mexico.

If you wish to comment, you may submit your comments and materials by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, New Mexico 87113.

2. You may hand-deliver written comments and information to our New Mexico Ecological Services Field Office, at the above address, or fax your comments to 505-346-2542.

You may obtain copies of the draft economic analysis and draft environmental assessment by mail, review comments and materials received, and review supporting documentation used in preparation of this proposed rule, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Joy Nicholopoulos, New Mexico State Administrator, New Mexico Ecological Services Field Office (telephone 505-761-4706,

facsimile 505-346-2542).

## SUPPLEMENTARY INFORMATION:

### Background

The Mexican spotted owl (owl) inhabits canyon and montane forest habitats across a range that extends from southern Utah and Colorado, through Arizona, New Mexico, and west Texas, to the mountains of central Mexico. On November 18, 2003 (68 FR 65020), we reopened the public comment period on our July 21, 2000, proposed rule to designate critical habitat for the owl (65 FR 45336). The proposal included approximately 5.5 million hectares (ha) (13.5 million acres (ac)) in Arizona, Colorado, New Mexico, and Utah, mostly on Federal lands. On November 12, 2003, the United States District Court for the District of Arizona, (Center for Biological Diversity v. Norton, Civ. No. 01-409 TUC DCB), ordered the Service to submit a final rule for designation of critical habitat for the owl to the Federal Register by August 20, 2004. Additional background information is available in the November 18, 2003, notice reopening the public comment period.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. If the proposed rule is made final, section 7 of the Act will

prohibit adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Section 4 of the Act requires that we consider economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We have developed a draft economic analysis and draft environmental assessment for the proposal to designate certain areas as critical habitat for the owl. We solicit data and comments from the public on these draft documents, as well as on all aspects of the proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

#### Public Comments Solicited

We intend any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments

concerning:

(1) The reasons why any habitat 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 designation;

(2) Specific information on the amount and distribution of the owl and its habitat, and which habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject area and their possible impacts on proposed critical habitat;

(4) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

(5) Any foreseeable economic, environmental, or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(6) Whether the economic analysis identifies all State and local costs. If not, what other costs are overlooked;

(7) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(8) Whether the economic analysis correctly assesses the effect on regional costs associated with land use controls that derive from the designation;

(9) Whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation;  
and

(10) Whether the economic analysis appropriately identifies all costs that could result from the designation.

We also are continuing to accept comments on the proposed critical habitat designation. If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see ADDRESSES).

Comments previously submitted on the July 21, 2000, proposed rule (65 FR 45336) or the November 18, 2003, notice (68 FR 65020) need not be resubmitted as they have been incorporated into the public record as part of this reopening of the comment

period and will be fully considered in preparation of the final rule. Comments submitted during this comment period also will be incorporated into the public record and will be fully considered in the final rule. We are required by court order to complete the final designation of critical habitat for the owl by August 20, 2004. To meet this date, all comments or proposed revisions to the proposed rule, associated draft economic analysis, and draft environmental assessment need to be submitted to us during the comment period reopened by this document (see DATES).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comments. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for public inspection, by appointment, during normal business hours at the New Mexico Field Office (see ADDRESSES).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

Dated: March 22, 2004

Signed: /s/ David P. Smith

Acting Assistant Secretary for Fish and Wildlife and Parks

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