

United States Department of the Interior
U.S. Fish and Wildlife Service
2321 West Royal Palm Road, Suite 103
Phoenix, Arizona 85021-4951
Telephone: (602) 242-0210 FAX: (602) 242-2513

In Reply Refer To:

AESO/SE

02-21-05-F-0176

02-21-03-F-0210

February 17, 2005

Memorandum

To: Field Manager, Yuma Field Office, Bureau of Land Management, Yuma, Arizona

From: Field Supervisor

Subject: Biological Opinion for Mittry Lake and Imperial Ponds Prescribed Burns, Yuma County, Arizona and Imperial County, California

Thank you for your request for formal consultation with the U.S. Fish and Wildlife Service (FWS) pursuant to section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), as amended (Act). Your request was made on January 25, 2005. At issue are impacts that may result from the proposed Mittry Lake and Imperial Ponds Prescribed Burns located in Yuma County, Arizona and Imperial County, California. The proposed action may affect the threatened bald eagle (*Haliaeetus leucocephalus*), endangered southwestern willow flycatcher (*Empidonax traillii extimus*) and Yuma clapper rail (*Rallus longirostris yumanensis*), the candidate yellow-billed cuckoo (*Coccyzus americanus*), and proposed critical habitat for the southwestern willow flycatcher. This biological opinion is being completed to analyze site-specific effects of the subject project to listed species and designated or proposed critical habitat. General effects to these species and critical habitats were considered in the September 3, 2004, programmatic biological opinion for Bureau of Land Management's (BLM's) statewide fire, fuels, and air quality management program (file number 02-21-03-F-0210). This biological opinion is tiered to, and references information from, the programmatic biological opinion.

In your memorandum, you requested our concurrence that the proposed action may affect, but is not likely to adversely affect the bald eagle, southwestern willow flycatcher, yellow-billed cuckoo, and proposed critical habitat for the flycatcher. We concur with your finding for these species. Please see Appendix A for an explanation of our determinations.

This biological opinion is based on information provided in the January 2005, biological evaluation, the project proposal, telephone conversations of January 25, 2005, between David Repass of your staff with Lesley Fitzpatrick of our office, and other sources of information. Literature cited in this biological opinion is not a complete bibliography of all literature available on the species of concern, or the effects of prescribed burns on cattail marshes, or on other subjects considered in this opinion. A complete administrative record of this consultation is on file at this office.

CONSULTATION HISTORY

In the memorandum dated January 11, 2005, the Bureau of Land Management (BLM) requested a concurrence with a finding of may affect, not likely to adversely affect the bald eagle, southwestern willow flycatcher and its proposed critical habitat, Yuma clapper rail, and yellow-billed cuckoo. After review of the proposed action and the biological evaluation, we determined that we could concur with this finding of may affect, not likely to adversely affect for all species except the Yuma clapper rail. As described in Appendix A, the timing and procedures included in the proposed action provide sufficient safeguards for the bald eagle, flycatcher and cuckoo to avoid the potential for take of an individual of these species. Because the Yuma clapper rail is a resident of the marshes that would be burned, even with the avoidance of breeding and molting seasons by the proposed action, there is a risk of an individual bird fleeing the area being injured or killed. Lesley Fitzpatrick of my staff discussed this concern with David Repass of your staff on January 25, 2005, and as a result, BLM verbally requested formal consultation for the Yuma clapper rail.

BIOLOGICAL OPINION

DESCRIPTION OF THE PROPOSED ACTION

The proposed action would take place on BLM lands below Imperial Dam on the lower Colorado River (LCR) in the Laguna Division. The proposed action consists of five sites for proposed burns, totaling 152 acres. The sites are: South Teal Alley (78 acres), Horseshoe Island (21 acres), Mitty Test Fire (1 acre), Imperial Pond One (37 acres), and Imperial Pond Two (15 acres). The two Imperial Pond sites are in Imperial County, California, with the remaining three sites in Yuma County, Arizona.

Vegetation on the proposed burn sites is predominantly composed of saltcedar (*Tamarix ramosissima*, *T. chinensis*), phragmites (*Phragmites australis*), cattail (*Typha* spp.), with scattered willows (*Salix* spp.), mesquite (*Prosopis* spp.), and other native and non-native trees and shrubs.

The South Teal Alley and the two Imperial Pond sites would be burned as part of an ongoing study assessing prescribed fire as a habitat management tool for marsh habitats used by the Yuma clapper rail and California black rail (*Laterallus jamaicensis corturniculus*). This study is an important component in determining future management for marshes on the lower Colorado River. The remaining two sites would be burned to prepare for re-planting with native cottonwood (*Populus fremontii*), willow, or other native riparian plant species. Burns would be conducted before March 15 or after September 15. Conducting prescribed burns in cattail stands prior to the spring growth period would allow for re-growth of the stands within the growing season.

The biological evaluation contains a comprehensive list of procedures and stipulations to avoid or minimize the risk of wildfire, pre-burn surveys for the listed species, and timing of the burns to avoid important breeding periods for the species. These conservation measures provide significant protection for the species and adjacent habitats during the implementation of the proposed action. The contents of the biological evaluation are incorporated by reference.

STATUS OF THE SPECIES

The Yuma clapper rail was listed as an endangered species on March 11, 1967, under endangered species legislation enacted in 1966 (Public Law 89-669). Only populations in the United States were listed, those in Mexico were not. There is no critical habitat for the species. The Yuma Clapper Rail Recovery Plan (USFWS 1983) was signed in 1983. The Yuma clapper rail is protected under the Migratory Bird Treaty Act (MBTA).

The Yuma clapper rail is a marsh bird found in dense cattail or cattail-bulrush marshes along the LCR from the Southerly International Boundary to the lower Muddy River and Virgin River in Utah above those rivers' confluence with Lake Mead. Significant populations are found in the Imperial Valley near and around the Salton Sea in California, and along the lower Gila River and Phoenix Metropolitan area in Arizona. The populations in Mexico are found along the LCR in the delta, marshes associated with tributaries to the LCR, and the Cienega de Santa Clara (Hinojosa-Huerta *et al.* 2000). Survey detections for the United States habitats have fluctuated between 467 and 907 over the last 10 years (USFWS survey data). Those figures represent birds counted, and are not statistical population estimates. The population in Mexico was estimated statistically at 6,300 birds in 2000 (Hinojosa-Huerta *et al.* 2001), but declined to 4,850 by 2002, likely due to overgrowth of cattails (Hinojosa-Huerta *et al.* 2003). Changes in water flow between 2002-2003 improved habitat quality and counts of rails increased.

Yuma clapper rails may be somewhat migratory, although the extent to which birds move seasonally is not known. They are capable of significant movements, and dispersal away from existing population centers is a source of individuals to augment or initiate outlier populations.

Life history information for the species is summarized in the Recovery Plan (USFWS 1983) and other papers (Todd 1986, Eddleman 1989). No significant new life history information has been developed since these papers were published; however, basic information on the potential of adverse effects to reproductive success relating to selenium concentrations in habitats occupied by clapper rails has been developed (Andrews *et al.* 1997, Garcia-Hernandez *et al.* 2001, King *et al.* 1993, 2000, 2003; Roberts 1996).

Threats to the Yuma clapper rail population in the United States include the loss of marsh habitats to channelization or other river maintenance, lack of long-term management of existing marshes to maintain their suitability as habitat, lack of protection for habitat areas related to land ownership and water supply issues, and the presence of environmental contaminants such as selenium in the LCR and Salton Sea.

Since 1983, AESO has processed 34 formal section 7 consultations involving the Yuma clapper rail. Of the 33 formal consultations, 15 were completed prior to 1991, and most of these involved Bureau of Reclamation (Reclamation) dredging, bank stabilization, and dike construction projects, and general management plans by BLM along the LCR and lower Gila River. Habitat losses due to Reclamation activities were offset by the creation of mitigation areas and backwaters as part of these projects. From 1991-2004, the 19 formals involved use of prescribed fire to benefit habitat and management plans for wildfire, permits under section 404 of the Clean Water Act, and large-scale agency plans by Reclamation, BLM, and Environmental

Protection Agency (EPA). There was one jeopardy opinion issued for the rail. The Roosevelt Habitat Conservation Plan in Gila County, Arizona, is the only completed section 10(a)(1)(B) permit that includes the species (USFWS 2003).

The FWS-Carlsbad Fish and Wildlife Office processes informal and formal consultations concerning the Yuma clapper rail in California. Many of these address issues with irrigation system maintenance and other projects in the Imperial Valley. A formal consultation for a geothermal plant adjacent to the Sonny Bono Salton Sea National Wildlife Refuge was recently completed. The most significant recent formal consultation addressed Reclamation's voluntary fish and wildlife conservation measures and associated conservation agreements with California water agencies in 2002 (USFWS 2002). This consultation is connected to the 400,000 afy water exchanges that was the subject of consultation between FWS-AESO and Reclamation (USFWS 2001) and addresses effects to listed species near the Salton Sea from water conservation actions of IID. Reclamation and state partners will fund the conservation measures (USFWS 2002).

This biological opinion is the first to be issued for a specific project under the September 3, 2004 programmatic consultation on the BLM statewide fire and fuels program.

ENVIRONMENTAL BASELINE

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

A. STATUS OF THE SPECIES WITHIN THE ACTION AREA

The Yuma clapper rail is found in the LCR action area wherever suitable cattail marsh habitat is found. Because of the existing stabilization of the LCR, the creation and destruction of marsh habitats characteristic of the pre-development river no longer occurs. More permanent marshes have formed at suitable areas along the LCR. However, as these marshes age and become overgrown or otherwise lose water area, the amount of habitat available declines. This changing habitat quality, largely to do accumulation of dead cattail stalks that reduces access within the stand and accretes material that raises the area above the water level, has a significant effect on local populations over the short term. Because of this variability, only the most recent annual survey data (2000-2004) are used to describe the current status of the species in the LCR action area. Survey effort over this period was reasonably consistent between areas on the LCR. The annual surveys provide an estimate of the minimum number of birds present, and do not provide an actual population estimate.

Based on data from annual survey efforts over the last 5 years, the LCR supports between 35% and 48% of the total birds surveyed in those years (Table 1) (USFWS survey data). Of the birds recorded from the LCR, the total found on National Wildlife Refuges (NWRs) ranged from 51% to 75% over this period. These habitats are secure from development or other disturbances; however they are subject to declines in habitat quality due to accumulation of dead plant

material. The other two significant habitat areas for the species are the marshes of the Imperial Division outside of the Imperial NWR, and the marshes in the Laguna Division immediately downstream of Imperial Dam. Mittry Lake Wildlife Area is in the Laguna Division and contains a significant amount of the clapper rail habitat and contains three of the proposed burn sites (South Teal Alley, Mittry Test Fire, and Horseshoe Island). Lands in the Imperial and Laguna divisions are mostly Federal (Reclamation withdrawn lands and BLM owned lands) but, outside of the Mittry Lake WA and a small amount of BLM land are not managed for wildlife. Recreation and river-management needs are the primary sources of disturbance. Future development or provision for other activities on these lands is subject to section 7 consultation.

Data from the South Teal Alley survey route indicates a significant decline in clapper rail numbers (Table 2). In 1999, 24 clapper rails were documented, the highest number for the four survey routes in the area (24 of 71 total birds). In 2004, only 9 clapper rails were documented, the lowest of the four routes (9 of 63 birds). It is likely that population numbers in the areas to be burned have not increased significantly since spring 2004 due to the declining value of the habitat. Data for the Mittry Test Fire and Horseshoe Island sites are less available; however, there are surveys covering these areas (Mittry Lake West and Mittry Lake East).

Survey information for the Imperial Ponds shows an increase in clapper rail use of the areas since 2002 (Table 2). The condition of the cattails in these areas is declining, and the habitat is becoming less suitable for clapper rails and unlikely to maintain the past increase in use.

B. FACTORS AFFECTING SPECIES ENVIRONMENT WITHIN THE ACTION AREA

All extant cattail habitats in the LCR action area are subject to declines in habitat quality through overgrowth of the marsh and the subsequent accumulation of dead plant material. Prior to the LCR being controlled, normal flow patterns cyclically created and destroyed marsh habitats and reduced the likelihood a marsh would be static long enough to become choked with dead plant material. These processes no longer function, and many marshes in the LCR action area have declined in quality as dead material accumulated. Wildfires, either lightning- or human-caused, are a significant risk to clapper rail habitats, because they can burn during breeding seasons and are uncontrolled in their extent. A study evaluating the use of prescribed fire to burn marshes and remove accumulated material to restore habitat quality is currently underway on the LCR and Salton Sea areas. The managed fire does not kill the cattail roots, but does eliminate the dead vegetation on the surface. Initial results indicate that, when habitats where clapper rail use has declined due to overgrowth are burned, clapper rails return to the areas within a year once new growth of cattails appears and clapper rail numbers in the restored habitat increase. Active burn programs under this study are in place on Havasu and Imperial NWRs. Unlike wildfires that may occur at any time, these programs plan for burns outside of the clapper rail breeding and molting season to reduce adverse effects.

Other threats to the Yuma clapper rail in the LCR include selenium contamination of the forage base, noise and other disturbance from recreational activity, and elimination of habitat for development. The significance of existing selenium levels to Yuma clapper rail reproduction is not known; however, the levels of selenium in clapper rail habitats are high enough to be of concern (Roberts 1996, Andrews *et al.* 1997, King *et al.* 2000, 2003; Garcia-Hernandez *et al.* 2001). There is no current evidence that reproductive failures have occurred; however, no

specific research looking for eggs and young birds to evaluate the potential for effects has occurred.

Implementation of the 1983 recovery plan in the LCR action area includes the multi-agency cooperative survey and efforts to define proper management for clapper rail habitat and eventually provide continuity for such management in written management plans. Development of management plans for the FWS refuges on the LCR is in preliminary stages.

Federal and non-Federal activities have had significant adverse effects to the Yuma clapper rail. Construction of the large dams eliminated many miles of floodplain habitats due to the formation of lakes. Changes in flows, elimination of overbank flooding, and channelization of the river disconnected the river from the floodplain and eliminated the cycle of creation for marshes on the floodplain and along the secondary channels. Prior to this, the amount of marsh present on the LCR at any one time varied greatly, and the cycle of creation, aging, and destruction was based on river flows. The creation of the small diversion dams, especially Laguna and Imperial dams, provided stable water levels behind them where marshes could become permanently established. Whether or not there is more marsh available now than in the past is uncertain. The certain thing is that the marshes that are present now are more permanent. However, even these marshes will eventually be destroyed by high flows that deposit sediments but are unable to scour other areas to create new marshes and backwaters. Further, marshes age and become dryer land with the accumulation of sediments and dead plant materials that raise the ground surface above the water. Many marshes in the LCR exhibit this aging process. Because the natural cycle of creation and destruction is not operating, without active human interference through fire, dredging, or other management, these areas will cease to be marshes that can support Yuma clapper rails. The most significant areas of habitat for rails on the LCR are in Federal ownership and are protected from development pressures. Active management is necessary to provide for the long-term continuance of these marshes due to natural aging.

A change to salinity and selenium concentrations in LCR waters also has the potential for adverse effects to rails and their habitats. Small backwaters and marshes with high evaporation rates often have very high salinities that can affect the ability of cattails and bulrush to grow. Cattails generally will not grow at over 5,000-ppm salinity (Sanchez *et al.* 2000). Salinity levels can also affect the forage base in these areas. Selenium is known to interfere with successful reproduction in rail species and, while no such effects have been documented on the LCR, the levels of selenium now present in some areas are high enough to be of concern for reproduction. The change from more transient marshes and backwater to the more permanent ones characteristic of the LCR today may also have affected the local concentrations of selenium and the degree of exposure possible to the rail population. If there has been an increase in selenium in the LCR, and that trend continues because of the current pattern of river management, adverse effects to reproductive success may begin to appear. Differences in selenium concentrations between connected and isolated backwaters (Velasco and Marr 2003) and the relative value of those different habitats for rails is an issue for investigation.

The changed physical conditions also support invasive plant and animal species that may affect rails. The introduction of crayfish (*Procamberus* sp.) to the LCR provided the rails with a significant new food resource, although it is one that accumulates selenium in its tissues. Crayfish also have significant adverse effects on fish and other invertebrate populations, so any

value of the crayfish to the rails may have been offset by the reduction in those natural forage bases. The spread of non-native plants, such as giant reed (*Arundo donax*) and, most recently, giant salvinia (*Salvinia molesta*), affects habitat quality and the ability of the rails to use the habitat available. Rails do not appear to select areas of giant reed, and replacement of native cattail and bulrush by these species would reduce the amount of available habitat. Salvinia is an invasive water plant (a member of the fern family) that prefers quiet waters and may grow into mats a foot or more thick that choke shallow waters and prevent access to the substrate by bottom-feeding birds such as rails. Very contaminated areas may also be anoxic much of the time, and not support invertebrate populations.

EFFECTS OF THE ACTION

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

Implementation of the proposed prescribed burns would eliminate thick mats of dead cattail stems and stalks and enable new growth to come up from the roots. Prescribed fire does not kill cattail roots, and the timing of the prescribed burns to the period before cattail winter dormancy breaks provides for significant re-growth in the first season. This rapid re-establishment of suitable habitat conditions has been seen in prescribed fires on the Imperial National Wildlife Refuge north of the proposed project sites, and in the South Yuma Proving Ground Slough adjacent to the proposed project sites. Clapper rails return to the burned areas as the conditions become suitable, usually within the first year. No long-term loss of habitat is anticipated from the implementation of this proposed action, and the quality of the existing habitat would be enhanced.

There is suitable cattail marsh habitat adjacent to the sites that would be burned under the proposed action. Clapper rails in the area being burned can move into these areas during the burn and avoid the fire. The usual result of marsh prescribed fire is a mosaic of burned and unburned areas even within the site, and the unburned areas can also provide a refuge for individuals. Even with these refuges, there is a risk of a clapper rail being affected by heat or smoke and being injured or killed.

We have not identified any interrelated or interdependent effects associated with this proposed action.

CUMULATIVE EFFECTS

Cumulative effects include the effects of future State, tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act.

We have not identified any cumulative effects that would affect the clapper rail in the action area.

CONCLUSION

After reviewing the current status of the Yuma clapper rail, the environmental baseline for the action area, the effects of the proposed prescribed burns and the cumulative effects, it is the FWS's biological opinion that the Mittry Lake and Imperial Ponds Prescribed Burns, as proposed, are not likely to jeopardize the continued existence of the Yuma clapper rail. Habitat for the species would be improved by implementation of the prescribed burns. No critical habitat has been designated for this species; therefore, none will be affected.

The conclusions of this biological opinion are based on full implementation of the project as described in the Description of the Proposed Action section of this document, including any Conservation Measures that were incorporated into the project design.

INCIDENTAL TAKE STATEMENT

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

The measures described below are non-discretionary, and must be undertaken by the BLM so that they become binding conditions of any grant or permit issued to any applicant, as appropriate, for the exemption in section 7(o)(2) to apply. The BLM has a continuing duty to regulate the activity covered by this incidental take statement. If the BLM (1) fails to assume and implement the terms and conditions or (2) fails to require the (applicant) to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the BLM must report the progress of the action and its impact on the species to the FWS as specified in the incidental take statement. [50 CFR §402.14(i)(3)].

AMOUNT OR EXTENT OF TAKE

In the September 3, 2004, programmatic biological opinion, incidental take from future prescribed burns was not exempted. The programmatic biological opinion allows for temporary habitat loss of up to 100 acres per 2-year period and harassment of individual clapper rails of the numbers detected during pre-project surveys. The proposed action, at 152 acres affected, is in excess of the level of incidental take of 100 acres provided for in the programmatic biological opinion. We understand that some of the area that would be burned is not clapper rail habitat; however, the three areas designated as part of the prescribed fire research project total 130 of the 152 acres, and, the Horseshoe Island site (21 acres) is ringed with cattails that may be burned during the treatment. Because this consultation specifically examines the effects from the proposed action, we have included the entire 152 acres as the amount of take in this biological opinion. Based on surveys from 2003 and 2004 (using only the data available for the most recent year of survey), up to 38 clapper rails may be harassed through the temporary loss of habitat that will displace them to adjacent areas. Pre-burn surveys that are part of the conservation measures included in the programmatic biological opinion should provide information to refine this number.

In addition, because of the inherent risk of death from fire, the FWS anticipates that up to 2 individual clapper rails may be killed or injured as a result of this proposed action. The incidental take is expected to occur if clapper rails are unable to safely exit the burn area. Unless an individual bird is spotted flying away and succumbing to heat or smoke, the chances of documenting mortality will be difficult. The take of 2 individuals represents 10 percent of the 2003-2004 survey known individuals. While it is anticipated, and has proved the case in other prescribed burns, that clapper rails will safely leave an area being burned under prescription, there is a risk that an individual may not escape. If more than 2 birds were observed being injured or killed, then the assumption that the risk from prescribed fire is low would need to be re-evaluated.

The Fish and Wildlife Service will not refer the incidental take of any migratory bird or bald eagle for prosecution under the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §§ 703-712), or the Bald and Golden Eagle Protection Act of 1940, as amended (16 U.S.C. §§ 668-668d), if such take is in compliance with the terms and conditions (including amount and/or number) specified herein.

EFFECT OF THE TAKE

In the accompanying biological opinion, the FWS determined that this level of anticipated take is not likely to result in jeopardy to the species or destruction or adverse modification of critical habitat.

REASONABLE AND PRUDENT MEASURES AND TERMS AND CONDITIONS

In order to be exempt from the prohibitions of section 9 of the Act, the BLM must comply with the terms and conditions for the reasonable and prudent measures contained in the programmatic biological opinion. We have determined that these measures and implementing terms and conditions are sufficient to minimize the risk of incidental take of Yuma clapper rail, and no

additional measures are needed. that also outline required reporting/monitoring requirements. These terms and conditions are non-discretionary.

Review requirement: The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize incidental take that might otherwise result from the proposed action. If, during the course of the action, the level of incidental take is exceeded, such incidental take would represent new information requiring review of the reasonable and prudent measures provided. The BLM must immediately provide an explanation of the causes of the taking and review with the AESO the need for possible modification of the reasonable and prudent measures.

Disposition of Dead or Injured Listed Species

Upon locating a dead, injured, or sick listed species initial notification must be made to the FWS's Law Enforcement Office, 2450 W. Broadway Rd, Suite 113, Mesa, Arizona, 85202, telephone: 480/967-7900) within three working days of its finding. Written notification must be made within five calendar days and include the date, time, and location of the animal, a photograph if possible, and any other pertinent information. The notification shall be sent to the Law Enforcement Office with a copy to this office. Care must be taken in handling sick or injured animals to ensure effective treatment and care, and in handling dead specimens to preserve the biological material in the best possible state.

CONSERVATION RECOMMENDATIONS

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

Because this project exceeds the amount of incidental take contained in the programmatic biological opinion for Yuma clapper rails, and thus does not allow for any other prescribed fire to be used for management of clapper rail habitat until late in 2006, we suggest BLM reinstate the programmatic consultation in order to allow an amendment or other modification to the incidental take statement in the programmatic biological opinion be developed to provide coverage for a higher acreage of prescribed fire projects.

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

REINITIATION NOTICE

This concludes formal consultation on the action(s) outlined in the (request/reinitiation request). As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if: (1) the amount or extent of incidental take is exceeded; (2) new

information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

The FWS appreciates the BLM's efforts to identify and minimize effects to listed species from this project. For further information please contact Jeff Whitney at (602) 242-0210 (x204) or Lesley Fitzpatrick (x236). Please refer to consultation number, 02-21-05-F-0176, in future correspondence concerning this project.

/s/ Steven L. Spangle

cc: Regional Director, Fish and Wildlife Service, Albuquerque, NM (ARD-ES)
Lower Colorado River Coordinator, Fish and Wildlife Service, Phoenix, AZ
Assistant Field Supervisor, AESO, Fish and Wildlife Service, Flagstaff, AZ

Chief, Habitat Branch, Arizona Game and Fish Department, Phoenix, AZ
Regional Supervisor, Arizona Game and Fish Department, Yuma, AZ

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TABLES

Table 1: Number of Yuma clapper rails recorded during surveys, 2000-2004, on the LCR and showing relevant percentages in relation to total birds surveyed and to birds surveyed on LCR. Survey data is from USFWS files.

YEAR	2000	2001	2002	2003	2004
Total birds surveyed rangewide (USA only)	477	531	608	830	907
Total birds on LCR % birds on LCR vs total birds	230 (48%)	221 (42%)	212 (35%)	345 (42%)	347 (38%)
Total birds on National Wildlife Refuges on LCR % birds on Refuges vs total birds % birds on Refuges vs LCR total	117 (24%) (51%)	140 (26%) (63%)	136 (22%) (64%)	202 (24%) (59%)	259 (29%) (75%)
Total birds in Imperial Division outside of Imperial NWR % birds in ID vs LCR total	23 (10%)	17 (8%)	13 (6%)	21 (6%)	22 (6%)
Total birds in Laguna Division % birds in LD vs LCR total	90 (41%)	53 (24%)	60 (27%)	119 (37%)	63 (18%)

Table 2: Number of Yuma clapper rails recorded during surveys 2000-2004 on the South Teal Alley, Mittry Lake East and Mittry Lake West survey routes at Mittry Lake and the Imperial Pond routes

Year	2000	2001	2002	2003	2004
South Teal Alley	18	17	8	9	9
Mittry Lake East	5	ns	ns	8	ns
Mittry Lake West	1	ns	ns	2	ns
Imperial Pond One	ns	0	0	0	3
Imperial Pond Two	ns	ns	0	5	14

Notes:

- The Mittry Lake East and West Routes were not surveyed in 2001, 2002, and 2004.
- In 2003, none of the rails from Mittry Lake West were found in the area designated for the prescribed burns. One rail was found on the Mittry Lake East route at Horseshoe Island.

Appendix A

Concurrences

Bald Eagle

Bald eagles are winter residents and migrants through the project area. The proposed burn sites do not contain significant areas used by eagles for roosting or foraging; however, eagles in the general area could be disturbed by the burn activity and leave the area. Suitable habitat is available outside of the burn areas, and the number of eagles in the area is not such that crowding of such habitats would occur. Large snags left after the prescribed burns would be left to provide roosting sites for eagles. The status of bald eagles in the area supports a finding of may affect, not likely to adversely affect

Southwestern Willow Flycatcher

The prescribed burns would take place outside the period when southwestern willow flycatchers are likely to be present in the area. No nesting habitat has been documented in the general area; however, suitable habitat does exist near one of the proposed burn sites. Migrating flycatchers may use a variety of riparian habitat types in addition to areas described as containing suitable habitat.

Provisions to contain the prescribed fire within the designated burn zones include creation of hand or mechanically cleared areas creating fire lines, use of sprinklers on areas of desirable vegetation, and on-site fire crews equipped with tankers and hoses to contain any escaped fire. These measures are designed to protect existing habitats outside of the proposed burn sites. Some loss of saltcedar-dominated areas used during migration will occur as a result of burning these areas. There is a large amount of this same type of vegetation community in the immediate vicinity, and this loss would not be significant. Replacement of non-native saltcedar with native riparian plant species on the revegetation sites could improve habitat values for the flycatcher. The status of flycatchers in the area supports a finding of may affect, not likely to adversely affect.

The proposed project is within the boundaries of the proposed critical habitat for the flycatcher. Approximately three acres of saltcedar that would be burned contains constituent elements of critical habitat, specifically that the areas are dense stands near open water and have a variety of insect prey populations. The saltcedar dominated areas that meet the constituent elements would be replanted with native riparian plants that could provide a higher habitat value and meet the constituent elements. The loss of these three acres is not significant to the overall value of the critical habitat in this unit, and would not result in an adverse modification of critical habitat.

Yellow-billed Cuckoo

The prescribed burns would take place outside of the period the yellow-billed cuckoo are likely to be present in the area. No nesting habitat would be eliminated as a result of the prescribed burns. Loss of habitat used during migration is not likely to be significant, since the surrounding area contains large amount of such habitats. Large trees that could be used by cuckoos in areas

adjacent to the burn sites would be protected by buffer areas and watering to prevent their loss. Replacement of non-native saltcedar with native riparian trees may provide additional habitat for the species in the area. The status of cuckoos in the area supports a finding of may affect, not likely to adversely affect.