

**United States Department of the Interior**

**U.S. Fish and Wildlife Service**

**Arizona Ecological Services Office**

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In Reply Refer To:  
AESO/SE  
22410-2011-F-0025

January 5, 2011

Memorandum

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

From: Field Supervisor

Subject: Biological Opinion on Mittry and Quigley Hazardous Fuel Reduction Project, Yuma, Arizona

Thank you for your request for formal consultation/conference 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 dated November 24, 2010, and received by us on November 29, 2010. At issue are impacts that may result from the proposed Mittry and Quigley Hazardous Fuel Reduction Project located in Yuma County, Arizona. The proposed action may affect the endangered Yuma clapper rail (*Rallus longirostris yumanensis*).

In your memorandum, you requested our concurrence that the proposed action is not likely to adversely affect the endangered southwestern willow flycatcher (*Empidonax traillii extimus*) and the candidate yellow-billed cuckoo (*Coccyzus americanus*). We concur with your findings and present our rationales in Appendix A.

This biological opinion is based on information provided in the biological assessment (BA), telephone conversations, 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, the effects of fuels reduction projects on riparian and marsh habitats, or on other subjects considered in this opinion. A complete administrative record of this consultation is on file at this office.

**Consultation History**

The FWS reviewed the draft BA in July 2010 and provided comments to the Bureau of Land Management (BLM). The final BA was received by us with the request for consultation.

## **BIOLOGICAL OPINION**

### **DESCRIPTION OF THE PROPOSED ACTION**

The proposed action is a hazardous fuels reduction project on the Mittry Lake Cooperative Wildlife Management Area (Mittry) and the Quigley Wildlife Management Area (Quigley). Mittry is managed by BLM and Arizona Game and Fish Department (AGFD) and is on the Colorado River above Laguna Dam. Quigley is managed by AGFD and is on the Gila River near Tacna. The BA describes the proposed action in detail and is herein incorporated by reference.

BLM proposes to treat for hazardous fuels on 631 acres of the 7,062 total acres at Mittry (which includes the wildlife area and other lands under BLM control) and 298 acres of the 615 total acres at Quigley. The lands to be treated are saltcedar-dominated riparian and overgrown cattail marsh. The proposed action would use a variety of techniques to remove existing vegetation, including mechanical clearing, mulching, burning, and herbicide application. Fuel breaks would also be created at both Mittry and Quigley to aid in control of future wildfires. These fuel breaks would average 15-100 feet in width and would vary in length depending on their location. Creation and maintenance of these fuel breaks would permanently remove 141 acres of mostly saltcedar at Mittry and 14 acres of mostly saltcedar at Quigley. Prescribed burns totaling 490 acres at Mittry and 236 acres at Quigley would be conducted over a seven-year period. In the riparian areas, post-burn replanting with native trees and management actions to reduce reestablishment of saltcedar would be accomplished. Cattail marsh naturally regenerates post-burn and additional management to restore marsh habitat is not needed. No more than 100 acres of marsh would be burned in any one year.

The proposed action includes conservation measures to protect Yuma clapper rail breeding seasons. All phases of mechanical treatment, fuel-break construction, and prescribed burns would occur between September 15 and March 15 to avoid the Yuma clapper rail breeding season. Outside of these dates, if Yuma clapper rails are observed, all work would stop and a BLM wildlife biologist would be notified. There may be some preparatory work for the proposed action conducted during the breeding season; however, Yuma clapper rail habitat would be protected by a minimum 200-foot-wide buffer to avoid any disturbance.

### **STATUS OF THE SPECIES AND CRITICAL HABITAT (rangewide and/or recovery unit)**

#### Listing History

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 found in the United States were listed as endangered; those in Mexico were not listed under the 1966 law or the subsequent Endangered Species Act of 1973 (as amended). Critical habitat has not been designated for the Yuma clapper rail. The Yuma Clapper Rail Recovery Plan was issued in 1983 (USFWS 1983) and is currently under revision (USFWS 2010)

Further information on the status of this species is summarized on our web page ([www.fws.gov/southwest/es/arizona](http://www.fws.gov/southwest/es/arizona)) under Document Library, Documents by Species. If you do not have access to the Internet or cannot otherwise access the information, please contact this office.

### Species Description

The Yuma clapper rail is a 14-16 inch (350-400 mm) long marsh bird with a long, down-curved beak. Both sexes are slate brown above, with light cinnamon underparts and barred flanks. The Yuma clapper rail is distinguished from other clapper rail subspecies using distributional data, plumage color, and wing configurations (Banks and Tomlinson 1974). The Yuma clapper rail is a secretive species and is not often seen in the wild. It has a series of distinctive calls that are used to identify birds in the field. Frequency of calls or responsiveness to taped calls varies seasonally.

### Life History

Habitat for the Yuma clapper rail is freshwater and brackish marshes with dense vegetation, dominated by cattails (*Typha spp.*) that include both mats of old material and more open stands. The most productive areas consist of uneven-aged stands of cattails interspersed with open water of variable depths (Conway *et al.* 1993). Other important factors in the suitability of habitat include the presence of vegetated edges between marshes and shrubby riparian vegetation (saltcedar or willow thickets) (Eddleman 1989), and the amount and rate of water level fluctuations within the habitat. Water flow in the open channels within the marsh is desirable (Todd 1971; Tomlinson and Todd 1973). Yuma clapper rails will use quiet backwater ponds, flowing stream or riverside areas, irrigation canals and drainage ditches, reservoirs and small lakes, or other small marshlands where cattail habitat is available. Natural and artificially constructed marshes can provide suitable habitat.

The breeding season for the Yuma clapper rail runs from February through early July (Eddleman 1989). Nests are constructed in marsh vegetation or low-growing riparian plants at the edge of the water. Non-native (introduced) crayfish (*Procamberus clarki*) form the primary prey base for Yuma clapper rails today (Todd 1986). Prior to the introduction of crayfish, isopods, aquatic and terrestrial insects, clams, plant seeds, and small fish dominated the diet. Once believed to be highly migratory (with most birds thought to spend the winter in Mexico), telemetry data shows that most rails do not migrate (Eddleman 1989). Very little is known about the dispersal of adult or juvenile birds, but evidence of populations expanding northward along the lower Colorado River, Salton Sea, and central Arizona over the last 80 years indicates that Yuma clapper rails can effectively disperse to new habitats provided that habitat corridors exist between the old and new sites (Rosenberg *et al.* 1991).

Additional life history information is found in the revised Recovery Plan (USFWS 2010), Todd (1986), Eddleman (1989), and Rosenberg *et al.* (1991).

### Status and Distribution

The Yuma clapper rail has two major population centers in the United States; the Salton Sea and surrounding wetlands in California, and the lower Colorado River marshes from the border with Mexico to Havasu National Wildlife Refuge. Smaller numbers of rails are found along the lower Gila River in Yuma County, the Phoenix metropolitan area (including portions of the Gila, Salt, and Verde rivers) in Maricopa County, Roosevelt Lake in Gila County, Picacho Reservoir in Pinal County, and the Bill Williams River in La Paz County, Arizona (U.S. Fish and Wildlife Service annual survey data). Yuma clapper rails have also recently been documented from southern Nevada in Clark County (McKernan and Braden 2000; Tomlinson and Micone 2000) and the Virgin River in Washington County, Utah and Mohave County, Arizona (McKernan and Braden 2000).

Survey data compiled by the Fish and Wildlife Service for the period 1990 through 2009 documented between 464 and 1076 rails observed annually (via calls or visual observation). Surveys in 2009 documented 639 birds. These figures are of actual birds detected and are not extrapolated to provide a population estimate. The unlisted Yuma clapper rail population in Mexico was estimated to contain 6,300 birds (Hinojosa-Huerta *et al.* 2000), and the amount of movement between the two populations is unknown.

### Threats

Declines in actual numbers heard or seen on survey transects since the early 1990's have not been positively connected to any event on the lower Colorado River or Salton Sea; however, changes in habitat quality caused by overgrown marsh vegetation is suspected of influencing rail numbers in those areas. Habitat restoration through mowing or burning over-age cattail stands is under evaluation in several locations to determine future management needs.

Recently developed information that may affect the life history of the Yuma clapper rail involves selenium levels in the crayfish, the primary prey species. Levels of selenium in crayfish from Yuma clapper rail habitats were high enough to cause concern for potential reproductive effects (Roberts 1996, King *et al.* 2000). No adverse effects from selenium have been observed; however, due to the clapper rails' secretive nature, nests are very difficult to find and young birds hard to observe. Additional monitoring is under consideration at this time.

### Effects of Federal Actions on the Species

Federal actions that may have adverse effects to the Yuma clapper rail undergo section 7 consultation. These actions include issuance of Clean Water Act section 404 permits for dredging or filling in wetlands, and placement of seawalls or other shoreline modifications on all rivers and streams within the U.S. range of the species. The number of such actions varies between river systems.

Actions by Reclamation in managing the lower Colorado River have the greatest potential to destroy large marsh habitats or disturb individual birds during dredging, bank stabilization,

and other channel maintenance activities. Past Federal actions to construct dams, diversion structures, and other management actions have increased the amount and longevity of marsh habitats in several locations on the lower Colorado River. These same actions eliminate the variable physical conditions that provide for marsh regeneration, and habitat quality is reduced over time. Measures are in place under the Lower Colorado River Multi-Species Conservation Plan to provide conservation to address the effects of current management on remaining marshes. Effects to the Salton Sea habitats from changes in water flow to the Sea that have a Federal nexus are being addressed under section 7. Formal consultations completed for Arizona after 2000 are listed in Appendix B.

#### ENVIRONMENTAL BASELINE [in the action area]

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.

#### **Description of the Action Area**

Since Mittry and Quigley are not located in the same area, the action area is comprised of two distinct areas.

##### Mittry

Mittry is managed under a management plan (AGFD 1997) for establishment of native riparian habitats for both resident and migratory birds and other riparian-dependent species, enhancement of upland habitats for small game, and to provide recreational use in accordance with wildlife-management goals. Mittry is in the floodplain of the Colorado River, and the action area includes old oxbows (including the historical channel of the Colorado River), open water areas, marshes, and riparian vegetation. The total acreage of the Mittry wildlife area is approximately 3,500 acres comprised of the following vegetation communities:

- Marsh: 675 acres (19.0%)
- Open water: 440 acres (12.4%)
- Cottonwood-willow: 114 acres (3.2%)
- Saltcedar/arrowweed/saltcedar-screwbean mesquite: 2,184 acres (61.4%)
- Desert uplands: 138 acres (3.9%)

#### **A. Status of the species within the action area**

Yuma clapper rails are found in all marsh habitats on the wildlife area. Black rails, a candidate species under the Act, are also found in the marshes. Annual surveys for Yuma clapper rails are conducted here by AGFD on five routes, of which three would be affected by the proposed action. Data for the last 10-years of surveys are presented in Table 1.

Table 1: Survey data for all Mittry Lake Yuma clapper rail routes, 2000-2009. Routes with an asterisk (\*) are those affected by the proposed action. An “NS” indicates no survey of that route in that year.

Survey Route	Number of Yuma clapper rails detected in each year									
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
South Imperial Dam	27	4	3	34	NS	NS	17	29	40	27
Imperial Dam Marsh	NS	NS	NS	NS	NS	NS	12	3	7	7
Teal Alley*	34	32	20	24	23	23	21	27	14	16
YPG Slough*	23	17	37	51	40	23	33	29	14	34
Mittry Lake*	6	NS	NS	10	NS	NS	8	7	8	12
Total rails	90	53	60	119	63	46	91	95	83	106

The YPG Slough and Teal Alley routes are the core areas for Yuma clapper rails in the Mittry wildlife area. This Yuma clapper rail population is a significant component of the total Colorado River population.

#### **B. Factors affecting the species' environment within the action area**

Mittry wildlife area is a relict marsh/backwater complex of the Colorado River that exists today because of management actions taken in the past to preserve the natural values. Imperial Dam is at the northern end of the reach and Laguna Dam is at the south. Imperial Dam is the diversion point for water to the Imperial Valley in California and to agricultural areas in the Wellton-Mohawk Irrigation and Drainage District (WMIDD) on the lower Gila River and other agricultural users around Yuma. Normal water releases through the action area are limited to the minor flows that support the Mittry wildlife area and the sluicing flows that remove sediment from the settling basins on the All American Canal. Flood flows are no longer an annual event in the area, and any managed moderate-to-high releases are not always directed toward the wildlife area, but are sent down the channel used for the sluicing flows. Thus, the natural processes that would destroy and re-create the marsh through removal of vegetation and sediment, scouring of new backwaters, and creation of new sandbars where marsh vegetation can establish no longer operate in the action area, and the marsh is ageing into decadence and becoming less suitable for Yuma clapper rails.

In recent years, the cattails have become overgrown, with increasing accumulations of dead fronds that make access through the vegetation difficult even for the Yuma clapper rail. This reduces the usable area of the marsh, since access into these dense cattail patches is restricted. The interior of the patches is usually where nests are built, and if adult birds cannot adequately access the interior of the patch, nests may be built in more exposed and unsafe areas. Similarly, foraging is impeded since the invertebrate prey of the Yuma clapper rail can remain hidden and less available in the dead vegetation mats. If the amount of dead cattail material continues to increase, there will be further reductions in habitat suitability for the species.

## 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.

The burning of the seven identified marsh burn units at Mittry will remove the standing dead vegetation and allow new growth of cattails to establish. The density of the cattail fronds will be significantly reduced, allowing greater access to and utilization of the refreshed habitat. Burning of decadent cattails is an accepted management tool for marshes, and has been used with great success to refresh Yuma clapper rail habitats on Havasu, Imperial, Cibola, and Sonny Bono Salton Sea national wildlife refuges. Burns that take place in the winter (as is proposed under this action) remove the dead material and re-sprouting is virtually immediate. Re-occupancy by Yuma clapper rails is rapid, and the number of individuals occupying the habitat increases (Courtney *et al.* 2010). The restrictions on the amount of marsh that may be burned in a single year (100 acres), and that the burns would take place over seven years, allows adequate refuge space for the Yuma clapper rails present in the action area during the re-growth period. On the whole, this is a beneficial action to manage for Yuma clapper rail habitat.

Wildfire is a continual threat to riparian and marsh habitats on the lower Colorado River, and may occur at any time of the year. Removal of hazardous fuels in the marsh, and in the saltcedar-dominated sections of the floodplain provides protection for occupied Yuma clapper rail habitats from an uncontrollable wildfire. Further, the placement of fuel breaks assists in managing any wildfire that is ignited, and contributes to a reduction in risk of a large destructive wildfire in the action area.

The prescribed burns would not take place during the breeding period of the Yuma clapper rail, therefore nests, eggs, and chicks are not at risk. Adult Yuma clapper rails are flightless during the late summer, and burns would not be planned for that period. However, although Yuma clapper rail adults and juveniles would be able to escape the burn unit once fire was ignited (either through flying away or moving through the vegetation to exit the area), there remains a risk of an individual Yuma clapper rail being harmed or killed during the course of the prescribed burn in marsh habitat. At least one individual was lost during implementation of a project like this elsewhere on the Colorado River.

## 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.

The action area at Mittry is largely owned by the Bureau of Reclamation, and is managed by them, BLM, and AGFD for a variety of purposes. There is some Tribal Land (Fort Yuma Tribe) adjacent to the action area; however, development of any type is unlikely to occur on these lands due to their proximity to the water-management structures of the Bureau of Reclamation. Most activities that could potentially affect the Yuma clapper rail or its habitat in the action area are Federal activities and subject to additional section 7 consultation.

### Quigley

The Quigley portion of the action area is comprised of the Quigley Wildlife Management Area. It is located within the boundaries of the WMIDD. The management plan (AGFD 1996) contains goals for managing wildlife habitat for riparian species, waterfowl, shorebirds, and other associated wildlife while providing for recreational wildlife opportunities. Quigley is in the floodplain of the Gila River and the action area includes a series of ponds in an old oxbow channel, some old farmfields now supporting riparian vegetation, and upland vegetation. The total acreage of the Quigley wildlife area is approximately 615 acres comprised of the following vegetation communities:

- Marsh: 100 acres (19.0%)
- Open water: 18 acres (3%)
- Cottonwood-willow: none in area to be treated
- Saltcedar/arrowweed/saltcedar-screwbean mesquite: 85 acres (16%)
- Desert uplands: 95 acres (16%)

#### **A. Status of the species within the action area**

Yuma clapper rails are surveyed annually at Quigley Ponds; however, this area does not sustain a robust population. In surveys from 2000-2009 over nine years (there was no survey in 2002), numbers ranged from zero (2000) to eight (2006), to one in 2009.

#### **B. Factors affecting the species' environment within the action area**

As the last, relatively large natural marsh complex on the lower Gila River, Quigley could be of significant importance to the Gila River Yuma clapper rail population. However, as with Mittry, natural processes that create and eventually destroy marsh habitats are not operating at this site. While the Gila River is more prone to periodic flood flows than the lower Colorado, most of the time there is little to no water present in the channel except for agricultural return flows. When there is a flood, the constrained floodway does not allow for use of the entire historical floodplain, so high flows can be destructive.



## EFFECTS OF THE ACTION

The prescribed burns at Quigley will burn all the extant cattail marshes over the seven-year life of the project. As with the Mittry burns, seasonal restrictions on burning will be in place and sufficient marsh habitat will remain each year post-burn to accommodate any displaced Yuma clapper rails. Improvement to the quality of marsh habitat at Quigley is an overall beneficial action for Yuma clapper rail.

As described for Mittry, there is a risk of mortality to individual Yuma clapper rails from the prescribed burns at Quigley.

## CUMULATIVE EFFECTS

The action area is on land owned by AGFD, and activities funded by AGFD from non-Federal dollars would not be subject to section 7 consultation. However, because the Quigley Wildlife Area is known to be occupied by a listed species, AGFD is unlikely to take any state-funded management action at the site that could harm the Yuma clapper rail.

## CONCLUSION

After reviewing the current status of the Yuma clapper rail, the environmental baseline for the action area, the effects of the proposed Mittry and Quigley Hazardous Fuel Reduction Project, and the cumulative effects, it is the FWS's biological opinion that the action, as proposed, is not likely to jeopardize the continued existence of the Yuma clapper rail. No critical habitat has been designated for this species, therefore, none will be affected.

We present this conclusion on the Yuma clapper rail for the following reasons:

- The implementation of the proposed action will result in benefits to the species through improvement of habitat conditions at both Mittry and Quigley wildlife areas.
- The proposed action avoids disturbing or harming individual Yuma clapper rails during the sensitive breeding and molting period (March 16-September 14).

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 the 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

The FWS anticipates that up to 94 Yuma clapper rails per year may be taken as a result of the proposed action at Mittry and Quigley over the seven years of implementing the prescribed burns in marsh habitat. This number was derived from the maximum number of individual Yuma clapper rails recorded at the Teal Alley, Mittry Lake, YPG Slough, and Quigley survey routes between 2000 and 2009. This take is expected to be in the form of harassment by the noise and smoke resulting from burn operations, displacement of individuals in the treated areas to adjacent occupied habitats that may result in crowding in refuge habitats, and temporary loss of habitat until the cattails begin to regrow and create new habitat. These effects will be transitory and not likely to result in permanent effects to any Yuma clapper rails in the unburned area.

Within this number, up to seven individual Yuma clapper rails may be killed over the seven-year term of the project if they are unable to escape the flames, or are affected by heat and smoke while attempting to leave the area during the burns. Our current data does not indicate that a significant number of individual Yuma clapper rails have ever been lost to prescribed burns conducted within the parameters included in the proposed action. This amount of take is precautionary, in the event of an incident occurring, as has been documented in the past.

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 this biological opinion, the FWS determines that this level of anticipated take is not likely to result in jeopardy to the species or destruction or adverse modification of critical habitat for the reasons stated in the Conclusions section.

## REASONABLE AND PRUDENT MEASURES and TERMS AND CONDITIONS (as appropriate)

The proposed action already contains significant conservation to reduce the potential for lethal take from the proposed action. The use of prescribed burning carries with it the inherent opportunity for non-lethal take as described above, and there are no reasonable and prudent measures available to reduce that level of take. However, the following reasonable and prudent measure is necessary and appropriate to assess take of Yuma clapper rail:

1. The BLM shall monitor the lethal incidental take resulting from the proposed action and report to the FWS the findings of that monitoring.

## TERMS AND CONDITIONS

In order to be exempt from the prohibitions of section 9 of the Act, the BLM must comply with the following terms and conditions, which implement the reasonable and prudent measure described above and outline required reporting/monitoring requirements. These terms and conditions are non-discretionary.

- 1.1 The BLM shall designate staff or other responsible parties to monitor the project are during prescribed burns that occur in marsh habitats to ascertain take of individuals of the species. This monitoring will be accomplished by visual survey of the area being burned during the operation to watch for individual Yuma clapper rails leaving the area. A ground-level visual survey of the burned area post-burn should also be accomplished. We understand that surface conditions at the burn site may not allow for this type of survey to be completed.
- 1.2 The BLM shall submit annual monitoring reports to the Arizona Ecological Services Office by the end of the Federal fiscal year in which activities were conducted under this project. These reports shall briefly document for the previous year the effectiveness of the terms and conditions and locations of listed species observed, and, if any are found dead, suspected cause of mortality. The report shall also summarize tasks accomplished under the proposed minimization measures and terms and conditions. The report shall make recommendations for modifying or refining these terms and conditions to enhance listed species protection or reduce needless hardship on the BLM and its permittees.

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. 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.

The proposed actions are designed to improve habitat for the Yuma clapper rail and contribute to its recovery. We appreciate the efforts of BLM and AGFD to implement actions in the recovery plan for this species.

### **REINITIATION NOTICE**

This concludes formal consultation on the action outlined in the 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 efforts of BLM and AGFD to identify and minimize effects to listed species from this project. For further information please contact Lesley Fitzpatrick at (602) 242-0210 (x236) or me (x244). Please refer to consultation number 22410-2011-F-0025 in future correspondence concerning this project.

/s/ Steven L. Spangle

cc: Refuge Manager, Imperial National Wildlife Refuge, Yuma, AZ  
Project Manager, LCR MSCP, Boulder City, NV (Attn: W. Singleton)

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

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## Appendix A: Concurrences

### Southwestern willow flycatcher

We concur with your finding of “may affect, not likely to adversely affect” for the following reasons:

- There is no breeding habitat for this species on the lands proposed for vegetation treatments under the proposed action. Some migratory habitat does exist in these areas that would be lost to the treatments; however, adjacent areas will continue to provide migration habitat over the course of the proposed action.
- Project activities would not take place during most of the migration season for this species. There may be a few late-departing individuals present in the area after September 15; however, there will be sufficient migration habitat for those individuals to use as they move through the area.

### Yellow-billed cuckoo

We concur with your finding of “may affect, not likely to adversely affect for the following reasons:

- There is no breeding habitat for this species on the lands proposed for vegetation treatments under the proposed action. Some migratory habitat does exist in these areas that would be lost to the treatments; however, adjacent areas will continue to provide migration habitat over the course of the proposed action.
- Project activities would not take place during most of the migration season for this species. There may be a few late-departing individuals present in the area after September 15; however, there will be sufficient migration habitat for those individuals to use as they move through the area.



## Appendix B: Formal Consultations in Arizona: Yuma clapper rail Fiscal Year 2000-2010

<b>Consultation Number</b>	<b>Title</b>	<b>Finding</b>
2000-0273	Interim Surplus Criteria	Non-jeopardy
2000-0349	EPA animal feeding	Non-jeopardy
2002-0299	Tilapia Removal in Virgin River	Non-jeopardy
2003-0003	Roosevelt Incidental Take Permit	Non-jeopardy
2003-0022	Statewide Safe Harbor for Gila Topminnow and Desert Pupfish	Non-jeopardy
2003-0107	Field 11 and Headquarters Pond Prescribed Burn	Non-jeopardy
2003-0210	BLM Statewide Fire Suppression Program	Non-jeopardy
2004-0161	Lower Colorado River Multi-Species Conservation Program	Non-jeopardy
2004-0255	Cotton Lane Bridge	Non-jeopardy
2005-0176	Mittry Lake and Imperial Ponds Prescribed Burn	Non-jeopardy
2005-0231	Field 13 and Triangle Prescribed Burn	Non-jeopardy
2005-0277	Whiskey Slough Prescribed Burn	Non-jeopardy
2005-0751	Quigley Ponds Wildlife Area Prescribed Burn	Non-jeopardy
2005-0784	BLM Lake Havasu Field Office RMP	Non-jeopardy
2006-0001	Marsh Creation and Prescribed Burn at Arlington Wildlife Area	Non-jeopardy
2006-0174	Field 14 and Imperial Ponds Prescribed Burn	Non-jeopardy
2006-0224	Colorado River Shortage Guidelines	Covered by LCR MSCP
2007-0122	Crystal Beach Prescribed Burn	Non-jeopardy
2007-0196	BLM Yuma Field Office RMP	Non-jeopardy
2007-0212	Limitrophe Vegetation Clearing Project	Non-jeopardy
2007-0463	BLM Arizona Strip RMP	Non-jeopardy
2008-0126	City of Tempe Safe Harbor Agreement	Non-jeopardy
2008-0219	Bill Williams River Bridge Fire Repair Project	Non-jeopardy
2008-0348	Rotenone Treatment of Cibola High Levee Pond	Non-jeopardy
2009-0018	Integrated treatment of Noxious Weeds or Invasive Plants on the Tonto National Forest	Non-jeopardy
2009-0118	Phoenix Reach of the Rio Salado Safe Harbor Agreement	Non-jeopardy
2009-0509	Hazardous Fuels Reduction and Vegetation Restoration in the Lower Gila River	Non-jeopardy

Total Informal Consultations: 191