

Draft
Amendment to the Programmatic Safe Harbor Agreement with the City of Phoenix for the
Rio Salado Project Area
Maricopa County, Arizona
TE205294-1

July 29, 2016

1. Introduction

The Programmatic Safe Harbor Agreement (Agreement) and associated Enhancement of Survival Permit (Permit, TE205294-0) for the Rio Salado Project Area, Maricopa County, Arizona, was approved and issued by the U.S. Fish and Wildlife Service (FWS) on June 8, 2011. The agreement covers the bald eagle (*Haliaeetus leucocephalus*), Yuma clapper rail (*Rallus longirostris yumanensis*), and southwestern willow flycatcher (*Empidonax traillii extimus*) along the Salt River from approximately 24th Street downstream to 19th Avenue in the City of Phoenix, Maricopa County, Arizona (Figure 1).

On October 3, 2014, the FWS announced that the western population of the yellow-billed cuckoo (*Coccyzus americanus*) would be protected as a threatened species under the Endangered Species Act of 1973 (ESA), as amended. The FWS rule was published in the *Federal Register* (79 FR 59992) and became effective on November 3, 2014.

As a result of this ruling, the City requests an amendment to Agreement and Permit TE205294-0 to include the yellow-billed cuckoo, as authorized under 40 CFR 13, Subpart C, 13.23.

2. Amendment to the List of Covered Species

<u>Common Name</u>	<u>Scientific Name</u>	<u>Status</u>
Yellow-billed cuckoo	<i>Coccyzus americanus</i>	Threatened

3. Background

The enrolled lands are owned by the Permittee and are being managed for the purposes of native community restoration and passive recreation. Although not covered in the original agreement, the western yellow-billed cuckoo (YBCU) was discussed in the agreement as a “Species addressed but not covered” in anticipation of the time that it would be listed. Most of the species information for the YBCU in the following paragraphs are verbatim from the original agreement, Section 3, Species Addressed but not Covered, Western yellow-billed cuckoo (page 9).

Yellow-Billed Cuckoo

The yellow-billed cuckoo (YBCU) was listed as threatened without critical habitat on November 3, 2014 (79 FR 59991) due to the decline of populations in portions of 12 western states, Canada, and Mexico. Proposed critical habitat designations are expected to shortly be in a second public review and comment period.

The YBCU is a slender, medium-sized bird (about 12 inches in length and weighing about 2 ounces) of the Family Cuculidae, whose members are characterized in part by zygodactyl feet (with two toes pointing forward and two backward). The species has a slender, long-tailed profile, with a fairly stout and slightly down-curved bill that is blue-black with yellow on the base of the

lower mandible. Plumage is grayish-brown above and white below, with rufous primary flight feathers. The tail feathers are boldly patterned with black and white below. The legs are short and bluish-gray and adults have a narrow, yellow eye ring. Juveniles resemble adults, except the tail patterning is less distinct, and the lower bill may have little or no yellow. Males and females differ slightly, as males tend to have a slightly larger bill.

The YBCU has been associated with cottonwood-willow and dominated riparian vegetation (Hamilton and Hamilton 1965, Gaines 1974, Gaines and Laymon 1984, Laymon and Halterman 1986, 1987, 1989, Halterman 1991, Halterman and Laymon 1994, 1995). Cottonwood-willow remains the predominant and preferred habitat, but very tall screwbean-honey mesquite stands are also used. In addition, YBCU have been found to utilize a mixture of Tamarisk (*Tamarix* spp.) and cottonwood/willows (Corman and Magill, 2000). Gaines (1974) found that vegetative density, distance to water, and the length and width of the habitat area were important characteristics when surveying for cuckoos. The YBCU breeds in large blocks of riparian vegetation (particularly woodlands with cottonwoods and willows). Dense understory foliage appears to be an important factor in nest site selection, while cottonwood trees are an important foraging habitat in areas where the species has been studied in California (Halterman 1991).

The YBCU arrives on the breeding grounds beginning in mid to late May (Fanzreb and Laymon 1993). Nesting activities usually take place between late June and late July, but may begin as early as late May, and continue to late August, depending on the season. Nest building takes 2-4 days. Nests are typically built in willow or mesquite thickets 4 to 10 feet (but as high as 35 feet) above the ground, are usually well-hidden by foliage, and are almost always near water. Incubation begins as soon as the first egg is laid, and lasts 11 days. Clutch size is usually two or three eggs, and development of the young is very rapid, with a breeding cycle of 17 days from egg-laying to fledging young. The young are fed large food items such as green caterpillars, tree frogs, katydids, and grasshoppers for the 6-7 day nestling period. After fledging, the young are dependent on the adults for at least 2 weeks.

Detection of the species is often due to vocalization. Mated males have a distinctive “kowlp” call which is a loud, nonmusical series of notes about 2-3 seconds long which slows down and slurs toward the end. Unmated males use a separate call which is an indeterminate series of soft notes “coo-coo-coo-coo.” Both members of a pair may give the “knocker” call, which is a harsh, rattled series of notes (Hughes 1999).

Historically, the western yellow-billed cuckoo occupied and bred in riparian zones from western Washington (possibly southwestern British Columbia) to northern Mexico, including Oregon, Washington, southwestern Idaho, California, Nevada, Utah, western Colorado, Arizona, New Mexico, and western Texas (American Ornithologists’ Union 1993). Today, the species is absent from Washington, Oregon, and most of California, is likely extirpated in Nevada, is rare in Idaho and Colorado, and occurs in the balance of its range within riparian vegetation that are much reduced from their previous extent and are heavily affected by human use (U.S. Fish and Wildlife Service 2002, 2001).

Principal causes of riparian vegetation losses are conversion to agricultural and other uses, dams and river flow management, stream channelization and stabilization, and livestock grazing. Available breeding habitats for yellow-billed cuckoos have also been substantially reduced in area and quality by groundwater pumping and the replacement of native riparian vegetation by invasive, non-native plants (particularly tamarisk) (Groschupf 1987, Rosenberg *et al* 1991). Estimates of riparian vegetation losses in the west as a result of the factors described above range from 90 to 99 percent in California, 90 percent in New Mexico, and 90 to 95 percent in Arizona

(U.S. Fish and Wildlife Service 2001). Cuckoo numbers appear to have declined substantially in Arizona. In 1976 an estimated 846 yellow-billed cuckoo pairs occupied the lower Colorado River and five of its major tributaries (U.S. Fish and Wildlife Service 2001), while in 1999, just 172 cuckoo pairs and 81 unmated adults were located during surveys of 221 miles of riparian vegetation (Corman and Magill 2000). Specific declines in cuckoo numbers in Arizona have been documented along the lower Colorado River and the Bill Williams River delta (Rosenberg *et al* 1991).

Nevertheless, Arizona is thought to contain the largest remaining cuckoo population in the western states (Service 2002). Currently in Arizona, cuckoos occur in a scattered fashion throughout the central, east-central, west-central and southeastern parts of the state, with the majority of known populations occurring along the San Pedro, Verde, and Agua Fria rivers, Cienega Creek in Pima, Pinal, Cochise, and Yavapai counties, and Sonoita Creek in Santa Cruz County (Corman and Magill 2000). Because the yellow-billed cuckoo was listed so recently, no recovery plan has yet been developed that will determine criteria for delisting. Cuckoos are not known to occur on the enrolled lands.

4. Amendment to the Responsibilities of the Parties

There are no changes to the responsibilities of the Parties, and the Parties will continue to work cooperatively on other issues as necessary to further the purposes of the Agreement and this Amendment. Moreover, nothing in this Amendment shall limit the ability of Federal and State conservation authorities to perform their lawful duties, and conduct investigations as authorized by statute and by court guidance and direction.

Permittee continues to agree to:

1. Establish habitat for conservation of the cuckoo, including the following types: aquatic strand, wetland marsh, cottonwood willow as funding allows. This habitat will be managed as described in Section 6, Management Activities for Covered Species in the 2011 Agreement.
2. Provide reports to the Service on the covered species, including cuckoo, regarding mortalities, injuries, or diseases observed on the enrolled lands. These reports will be submitted annually on March 1 for activities occurring during the previous calendar year throughout the term of this Amendment.
3. Notify the Service 30 days in advance of any planned land management activity (such as wetlands draining, storm drain outfall maintenance, trail maintenance, controlled burn, fencing, construction, or tilling) that the Permittee reasonably anticipates will result in take of the covered species on the enrolled lands; and provide the Service a reasonable opportunity to capture and/or relocate any potentially affected covered species. The Permittee may proceed with the planned activity unless the Service requests an opportunity to exercise its rights under this paragraph, in writing, within 20 days of receiving the Permittee's notice. Land management activities may take place immediately if the Permittee determines them essential to protect public health and/or safety, in which case the Service will be notified as soon as possible.

4. Notify the Service at least 30 days in advance of any change to the enrolled land's management that the Permittee reasonably anticipates will result in the loss of individuals of a covered species or occupied habitat, including 60 days prior notification for returning the enrolled property to baseline conditions; and identify the actions that would result in changed management or return to baseline.
5. Agree to a schedule for monitoring and reporting on compliance with this Amendment based on recommendations and goals relating to the cuckoo in Appendix A, and the Monitoring and Adaptive Management Plan of the Agreement that was developed specifically for this conservation effort.
6. Allow reasonable access to the enrolled lands by the Service, or another agreed-upon party, for purposes of carrying out monitoring and management activities.
7. Funding sources have not changed for this Amendment, and actions carried out by the Permittee under this Amendment will be funded by the outline in Section 12, Funding, of the 2011 Agreement.

The Service agrees to:

1. Provide technical assistance, to the maximum extent practicable, when requested by the Permittee; and provide information on Federal funding programs relating to the management of endangered species and their habitat.
2. Upon execution of the Amendment and satisfaction of all other applicable legal requirements, it is anticipated that the Service will issue an amended Enhancement of Survival permit to the Permittee in accordance with Section 10(a)(1)(A) of the ESA, authorizing incidental take of the cuckoo as a result of lawful activities within the enrolled property that are described in this Amendment. The term of the permit will expire on June 8, 2061 to coincide with the expiration date of the original permit (50 years from the issuing date of June 8, 2011). The permit shall not impose additional requirements or limitations beyond those expressly provided in this Amendment and applicable regulation.
3. Ensure that the Permittee is implementing the terms of the Amendment.
4. Perform or assist with biological monitoring, unless conducted solely by the Permittee. The Service shall provide written notice of the desired access at least 30 days in advance. In the event of an emergency, the Service may enter the premises to care for and protect covered species at any time after contacting the landowner.

5. Baseline Determination

The baseline level of use of enrolled lands by YBCU is described in this section. This baseline determination was discussed in the original agreement based on the possibility that the YBCU may be listed under the Endangered Species Act and be added to the agreement by amendment. According to the Agreement, habitat for the species west of the Continental Divide includes riparian cottonwood-willow galleries (tamarisk is also used by the cuckoo rarely). Dense understory foliage is an important factor in nest site selection, while cottonwood trees are important in foraging areas. No suitable habitat existed for the YBCU on the enrolled lands at the time of the Agreement and a baseline of zero was established for this species. This Amendment therefore carries forward the baseline of zero for the yellow-billed cuckoo at the Rio Salado project area.

Attachments

Amended Work Plan

Figure 1–Enrolled Lands

Rio Salado Safe Harbor Agreement, signed June 8, 2011

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Amendment to Agreement TE205294-0 to be in effect as of the date that the FWS issues the section 10(a)(1)(A) Enhancement of Survival Permit associated with this Agreement.

Deputy Director
Parks and Recreation Department
City of Phoenix

Date

Deputy Regional Director
U.S. Fish & Wildlife Service

Date

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Attachment A: Amended Workplan

This monitoring plan was amended to add the yellow-billed cuckoo, as follows. No other aspect of the monitoring plan has changed.

Yellow-billed cuckoo

Yellow-billed cuckoo (YBCU) habitat is most likely to be found in the low flow channel between Central Avenue and 7th Avenue. Upon development of suitable habitat, the area will be surveyed using established call stations along a permanent transect. The number of stations will vary depending on the presence of habitat patches but shall be enough to adequately cover the area. It is estimated that no less than five sample points will be used. Audubon Arizona, who operates the Nina Mason Pulliam Rio Salado Audubon Center in the Rio Salado Project Area at Central Avenue, has committed to assist with the YBCU surveys in addition to the other bird surveys associated with the Agreement.