

APPENDIX C
RESPONSE TO COMMENTS

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Appendix C: Response to Comments

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Alternatives

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| 1 | ALT-01 | G-014-1 | The treatment of the environmental impacts associated with designation surrounding Lake Mead in the Draft EA is inadequate. | Comment noted. Lake Mead, as a result of implementing the Lower Colorado River Multi-Species Conservation Program, is excluded from critical habitat designation under the proposed Final Rule. The lower Colorado River is excluded from flycatcher critical habitat designation as result of LCR MSCP management, Tribal management, and National Wildlife Refuge management. The LCR MSCP was formed to protect critical habitat for endangered fish species, will conserve flycatcher habitat, and accommodate current water diversions and power production (see EA Section 3.2.8). |
| 2 | ALT-02 | G-014-1 | (Citing Draft EA, Page 41) The Draft EA fails to analyze the potential environmental impacts associated with any mandated releases of water from impoundments to avoid inundation of flycatcher habitat. | NEPA requires a "reasonably foreseeable" analysis of impacts, but not speculative analysis (40 CFR 1508.8[b]). Analyzing any future proposed release of impounded water for all reservoirs along all designated stream segment would be analyzed by project specific NEPA processes as projects are proposed. |
| 3 | ALT-03 | B-103-1 | Failure to consider scoping comments of SRP citing Center for Biological Diversity v. Norton, which remanded the 1997 flycatcher designation for revision by September 30, 2005, SRP urged the court to give the USFWS a full 24 months from the date of the order to complete the redesignation of habitat. | All scoping comments were reviewed and considered prior to preparation of the EA. As stated in the EA, the U.S. District Court of New Mexico remanded the 1997 case to the USFWS to issue a Proposed Rule by 30 September 2004 and publish a Final Rule no more that 1 year later. |
| 4 | ALT-04 | B-103-1 | The effects of the application of the adverse modification standard must be considered separately from those attributable to the jeopardy standard. The USFWS's failure to perform this analysis has likely resulted in an incomplete assessment of the effects of the flycatcher critical habitat designation on water management. Project proponents will be required to minimize effects of their activities on critical habitat, without question, they should be factored into the costs considered as part of the EA and Economic Analysis. The USFWS should modify its proposed critical habitat designation for the flycatcher to be consistent with the decisions of these courts and existing laws (citing Gifford Pinchot Task Force, supra, Sierra Club v. U.S. Fish and Wildlife Service 254 F 3d434 [5th cir 2001, American Motorcycle Ass'n District 37 v. Norton, Civ. No C03-020-S.I.]). The USFWS needs to refrain from relying upon the now invalidated regulatory definitions of "recovery," "adverse modifications," "maintenance of existing populations." The USFWS should modify its proposed critical habitat designation for the flycatcher to be consistent with court decisions (Gifford Pinchot and American Motorcycle decisions) and existing law. The Draft EA ignores the "recovery standard imposed by these decisions for determinations of "adverse modifications." | As stated in EA Section 1.3.1, formal section 7 consultations do consider jeopardy and adverse modification separately when making determinations on potential impacts to a listed species. As stated in Section 3.2.2.2 for water management projects, the EA confirms that these analyses are separate. As the purpose and need of the proposed action and alternatives is critical habitat designation, the effects of determination of the jeopardy standard is beyond the scope of EA analyses. |
| 5 | ALT-04 | B-103-01 | (3.2.2.2, Alternative A, Page 43) The USFWS ignores the fact that previous projects were subjected to the jeopardy standard alone. The USFWS must separately consider the impacts that would result from application of the adverse modification standard to future water projects, taking into account the recent case law interpreting the standard (see Gifford Pinchot). (3.2.2.2, Alternative A, Page 43) It is not appropriate for the USFWS to equate the effects of the flycatcher critical habitat designation analyzed under the "adverse modification" standard with the effects on past projects that were analyzed under the "jeopardy" standard. The court found that there is clear distinction between the "jeopardy" and the "adverse modification" standards as part of section 7. | As stated in EA Section 1.3.1, formal section 7 consultations do consider jeopardy and adverse modification separately when making determinations on potential impacts to a listed species. As stated in Section 3.2.2.2 for water management projects, the EA confirms that these analyses are separate. As the purpose and need of the proposed action and alternatives is critical habitat designation, the effects of determination of the jeopardy standard is beyond the scope of EA analyses. |
| 6 | ALT-05 | G-065-6 | Based upon the Draft EA prepared for the Proposed Rule to designate critical habitat for the flycatcher, the USFWS has not taken a "hard look" at the consequences of its actions, has not discussed a reasonable range of alternatives, and has failed to adequately discuss cumulative impacts. | Comment noted. The commentor did not include any suggestions for a "reasonable range of alternatives" that would be adequate. CEQ regulations require that the lead agency rigorously explore and objectively evaluate all reasonable alternatives (40 CFR 1502.14). This includes a range of alternatives applicable to the nature and timing of the proposed action. The public has the opportunity to propose alternatives during the scoping process (see development of alternative in the EA Section 2.1), but an agency is not required to consider every possibility that might be conjectured. The proposed range of alternatives in the EA meet the purpose and need for the project. |

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| 7 | ALT-06 | G-065-6 | The USFWS did not consider a reasonable range of alternatives. Neither the Proposed Rule nor the Draft EA develops biological metric that allows for the comparison of benefits with and without the inclusion of areas of concerns to the Districts (San Bernardino County Flood Control District, San Bernardino Valley Municipal Water District, Western Municipal Water District of Riverside County). These additional alternatives should have been included in the Draft EA. | All scoping comments were reviewed and considered prior to preparation of the EA. As stated in the EA, the U.S. District Court of New Mexico remanded the 1997 case to the USFWS to issue a Proposed Rule by 30 September 2004 and publish a Final Rule no more than 1 year later. Comment noted. The commentor did not include any suggestions for a "reasonable range of alternatives" that would be adequate. CEQ regulations require that the lead agency rigorously explore and objectively evaluate all reasonable alternatives (40 CFR 1502.14). This includes a range of alternatives applicable to the nature and timing of the proposed action. The public has the opportunity to propose alternatives during the scoping process (see development of alternative in the EA Section 2.1), but an agency is not required to consider every possibility that might be conjectured. The proposed range of alternatives in the EA meet the purpose and need for the project. |
| 8 | ALT-07 | G-070-1 | On Page ii, second paragraph in the EA, the following appears: "However, the action alternatives would: 5) indirectly increase the likelihood of greater expenditure of non-federal funds by project proponents to complete section 7 consultations and to develop reasonable and prudent alternatives (as a result of adverse modifications) to maintain designated critical habitat." This statement does not clearly depict the role of non-federal entities as a result of section 7 consultations on decisions made by federal agencies pertaining to non-federal actions, such as on issuance of a section 404 permit. | The expenditures by non-federal entities to complete section 7 cannot be predicted because the factors constituting each project are unique and because the outcome of consultations cannot be predicted. Precisely depicting the role of non-federal entities in the consultation process is speculative and is therefore beyond the scope of the EA. These issues would be resolved and/or enumerated during site-specific section 7 consultations. |
| 9 | ALT-08 | G-121-1 | The lateral definition of "critical habitat" is of concern. By definition, one would believe that the "critical habitat" is dense, low lying vegetation that produces sufficient ground level moisture for insect production. This type of habitat, which is critical to the survival of the species, is much less than the areas proposed in Alternative A and Alternative B. While the USFWS must consider establishing a corridor it may not need to be as broad as the alternative provides. | Comment noted. As stated in the EA (Section 1.2.2), critical habitat (as stipulated within the ESA) "shall be designated to the maximum extent prudent and determinable" to conserve the species. |
| 10 | ALT-09 | O-060-2 | The current alternatives in the EA fail to meet the paramount reason for critical habitat designation -- conservation. While Alternative A and possibly B are likely to protect enough habitat to prevent possible extinction, neither of these alternatives protect sufficient habitat to provide for the recolonization of previously occupied habitat. | The EA describes in Sections 2.2.2, 2.2.3, and 3.1.4 (methodology) how the alternatives were defined to meet the purpose and need of the project, which is conservation of the species. |
| 11 | ALT-10 | O-060-2 | The alternatives fail to meet any of the PCEs of critical habitat, including "1) Space for individual and population growth; 2) food, water, air, light, minerals, or other nutritional or physiological requirements" (EA, Page 6). The EA also notes that "feeding sites and migration stopover areas are essential components of the flycatcher's survival, productivity, and health, and they can also be areas where new nesting habitat develops as nesting sites are lost or degraded (USFWS 2002)" but fails to include these areas in the action alternatives. | Sections 2.2.2 and 2.2.3 state that the stream segments for the alternatives were identified using the criteria for defining essential habitat (Section 1.3.3), which includes key migratory habitat and which considers the dynamic nature of flycatcher habitat. |
| 12 | ALT-11 | O-060-2 | The EA quickly and without sufficient rationale excludes areas previously designated as critical habitat and other potential habitat from any alternatives. This occurs because only select criteria from the Recovery Plan are used to formulate alternatives in the EA. | Section 2.4.1 states why stream segments proposed under the 1997 were excluded from consideration under the Proposed Rule. That is, they did not meet the criteria for essential habitat. |
| 13 | ALT-12 | O-060-2 | There is not rationale why some 17,000 acres of Forest Service lands are excluded in Alternative B, including segments of Tularosa River, East and West Forks of the Gila River, San Francisco River, Wet Beaver Creek, West Clear Creek, and Tijuana River, many of which are in recovery after having had cattle grazing excluded from their riparian areas and are prime potential habitat for the flycatcher. There is no rationale given as to why some DoD areas are excluded in Alternative B. | All areas in the proposal were identified as essential habitat. DoD areas were identified for exclusion under Alternative B for reasons stated in Section 2.2.3 (existing INRMPs, section 7 consultations). DoD lands were subsequently exempted from critical habitat due to section 4(a)(3) of the ESA. The areas mentioned by the commentor were not proposed as critical habitat (as stated in Section 2.4.1) because they were not determined to be essential as a result of the criteria established for critical habitat. |

Alternatives

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| 14 | ALT-13 | O-060-2 | The benefits on flycatcher PCEs associated with the increased section 7 consultations (as a result of conservation measures employed by livestock grazing managers) required in Alternative A will not be obtained with Alternative B. | Under Alternative B, areas were excluded from critical habitat designation because HCPs and other protective measures (easements, partnerships, etc.) would provide conservation of flycatcher habitat. As stated in the EA (see Section 2.2.3), section 4(b)2 of the ESA allows for exclusions from critical habitat if it is determined that benefits of exclusion outweigh benefits of designating an area as critical habitat. This benefit analysis is included in the Final Rule. For example, effectiveness of an HCP's protection of habitat is addressed in a section 7 consultation, and HCPs typically provide greater conservation benefits by committing the permittee to long-term conservation over a large area compared to evaluation of critical habitat only through section 7 consultation on a project-by-project, site-by-site basis. |
| 15 | ALT-14 | O-113-2 | The USFWS should not exclude areas from the proposed flycatcher critical habitat designation solely because there is another legally operative or draft plan already in place of an area. Alternative B suggests exclusions from Alternative A's proposal because there are current and draft plans in place for some of the areas. Legally operative and draft HCPs, state conservation plans, or National Wildlife Refuge System Comprehensive Plans are not sufficient substitutes for critical habitat designation. | Under Alternative B, areas were excluded from critical habitat designation because HCPs and other protective measures (easements, partnerships, etc.) would provide conservation of flycatcher habitat. As stated in the EA (see Section 2.2.3), section 4(b)2 of the ESA allows for exclusions from critical habitat if it is determined that benefits of exclusion outweigh benefits of designating an area as critical habitat. This benefit analysis is included in the Final Rule. For example, effectiveness of an HCP's protection of habitat is addressed in a section 7 consultation, and HCPs typically provide greater conservation benefits by committing the permittee to long-term conservation over a large area compared to evaluation of critical habitat only through section 7 consultation on a project-by-project, site-by-site basis. |
| 16 | ALT-15 | O-113-2 | The USFWS did not adequately explain why or how Alternative B would produce the same effects as Alternative A. The USFWS cannot substitute other plans for critical habitat designation because they do not necessarily focus on recovery and survival of a species. Therefore, the other plans cannot afford the same management and protections provided by a critical habitat designation. Accordingly, Alternative B cannot produce the same effects as Alternative A. | Under Alternative B, areas were excluded from critical habitat designation because HCPs and other protective measures (easements, partnerships, etc.) would provide conservation of flycatcher habitat. As stated in the EA (see Section 2.2.3), section 4(b)2 of the ESA allows for exclusions from critical habitat if it is determined that benefits of exclusion outweigh benefits of designating an area as critical habitat. This benefit analysis is included in the Final Rule. For example, effectiveness of an HCP's protection of habitat is addressed in a section 7 consultation, and HCPs typically provide greater conservation benefits by committing the permittee to long-term conservation over a large area compared to evaluation of critical habitat only through section 7 consultation on a project-by-project, site-by-site basis. |
| 17 | ALT-17 | G-139-2 | Costs associated with the managing the Park under Alternative A versus Alternative B need to be calculated. The basic elements of this analysis could be taken from the Army Corps of Engineers Wildfire Risk Assessment along the Rio Grande Corridor 2005 report. Additionally, estimates for the statistical probabilities of the physical risks of bosque-originating fire are needed for each of the PCARs under both Alternative A and the modified Alternative B. Then a database containing the estimated dollar values of the 13,535 structures is needed. Then expected economic loss from fire damage could be computed for the structures at risk. Alternatively, if it were discovered that the insurance industry has already developed the necessary risk data, then the difference in premiums between Alternative A and the modified Alternative B could be calculated for the structures at risk and used as a cost measure. | In areas that are in relatively close proximity to large urban populations, fire management, including exotic species removal and fuels management, is a critical component of urban planning efforts. Thus, local officials in areas proximal to urban areas have understandable concerns with about ongoing and future plans for these activities, particularly exotic species removal (most particularly, tamarisk control). The revised Economic Analysis includes an expanded discussion of potential impacts on fire management activities. |
| 18 | ALT-19 | G-468-4 | Scenarios 1 and 2 under the Economic Analysis were not fully brought into consideration and were not compatible with the alternatives in the EA. Because the scenarios were so different from the alternatives in the EA, it was hard to distinguish the different environmental effects posed under the scenario in the Economic Analysis. For example, for Scenario 2 to take place, many of the laws for the movement of water on the Lower Colorado River would need to be edited. If this were the case, environmental effects of changing those laws would be substantial. This was not analyzed in the EA. Fisheries: The Economic Analysis suggests decreased flows due to changed dam operations on the Lower Colorado River. This may have the potential to affect native fish and may conflict with critical habitat designated for those fish. Was this analyzed under the alternatives in the EA? | As stated in EA Sections 3.1.4 and 3.2.10, a separate Economic Analysis was conducted to analyze the economic impacts of designating flycatcher critical habitat. As noted in these sections, the methodology and scope of the Economic Analysis differs from the natural resources analysis. |

Alternatives

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| 19 | ALT-20 | G-467-3 | The USFWS appears to have entirely ignored the scoping comments submitted by the Rio Grande Water Conservation District in developing alternatives for the EA. The District specifically suggested that only public lands should be designated in the San Luis Valley. However this alternative is not mentioned and reasons that it was not evaluated are not disclosed. | The commentor did not include any suggestions for a "reasonable range of alternatives" that would be adequate. CEQ regulations require that the lead agency rigorously explore and objectively evaluate all reasonable alternatives (40 CFR 1502.14). This includes a range of alternatives applicable to the nature and timing of the proposed action. The public has the opportunity to propose alternatives during the scoping process (see development of alternative in the EA Section 2.1), but an agency is not required to consider every possibility that might be conjectured. The proposed range of alternatives in the EA meet the purpose and need for the project. |
| 20 | ALT-22 | G-524-1 | It is not clear whether the critical habitat area in the EA will be permanent or if it will shift and expand due to the transient nature of the flycatcher. | As stated in Section 3.1.4, the lateral extent of proposed critical habitat would remain constant. The lengths of stream segments proposed as critical habitat will also remain constant in space and time. |
| 21 | ALT-23 | G-524-1 | Alternative A and B both envision new or re-initiation of section 7 consultations, which adds a level of uncertainty to financial planning and land use management, these additional consultations will create attorney and administrative costs for non federal interests not addressed. | As stated in the EA, cost would be incurred by agencies and proponents for section 7 consultations, with unpredictable costs due to the unique circumstances of each project, the mitigation that could be required, and the unpredictable outcome of the consultations. |
| 22 | ALT-24 | G-115-1 | Exclusion of Safford, Arizona from critical habitat designation would be a reasonable alternative that would allow Safford to continue the pursuit of economic and cultural practices that have been the basis for the community since its founding. This should place no significant threat to flycatcher in that areas of the riparian habitat could continue to be use by migratory flycatcher. | Critical habitat designation would not interfere with ongoing economic and cultural practices on private lands where no federal nexus is present (see Section 1.3 of the EA). However, if a proposed action in areas with the PCEs' category of critical habitat within the 100-year floodplain has a federal nexus, then consultation with the USFWS would need to be initiated. The impacts of that consultation are disclosed in Section 3.2.7 through Section 3.2.15. |
| 23 | ALT-25 | G-552-8 | Adaptive management needs to be incorporated. USFWS only gives lip service to this, but they continue to assume all the actions they take are beneficial and the consequences of all such actions are known. | Adaptive management is essential to the recovery of an endangered species. The Act provides the Secretary with the authority and discretion to add or delete critical habitat areas in the future as potential needs arise. NEPA requires a "reasonably foreseeable" analysis of impacts, but not speculative analysis (40 CFR 1508.8[b]). Analyzing possible future adaptive management strategies is speculative at this point. These strategies would be analyzed through project specific NEPA processes. |
| 24 | ALT-25 | G-552-8 | Precautionary principle needs to be incorporated, i.e., that in the face of poor information or great uncertainty, managers should adopt risk-averse practices. Abruptly excluding livestock may violate rather than uphold this principle. The assumption that exclusion without negative consequences is false and can actually harm southwestern riverine systems and the native species that depend upon them. | Section 3.2.7 of the EA discusses livestock grazing. The Recovery Plan documents the fact that poorly managed livestock grazing can negatively impact flycatcher habitat. Nowhere in the EA or the Proposed Rule (Preferred Alternative in the Final EA) is the possibility of excluding livestock grazing from public or private lands discussed or proposed. However, any reduction or cessation of livestock grazing from any stream segment designated as critical habitat is unlikely to harm riverine systems. It would instead serve to enhance the PCEs required by the flycatcher and other native species. |

Economics

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| 1 | ECO-01 | I-140-1 | Is the bird really endangered or just threatened? If the bird is just threatened, what will happen economically to a region that is affected? Will ranchers with property rights on Forest Service and BLM land be affected economically? If there is an economic taking, will these affected ranchers be compensated as guaranteed by the Fifth Amendment of the U.S. Constitution? | As described in the proposed Final Rule and EA, the USFWS has classified the flycatcher as an endangered species. |
| 2 | ECO-01 | I-140-1 | A portion of the ESA is to consider the economic effect to areas where the ESA is to be imposed. Has a realistic financial study really been done? What were the results? How will this designation affect future economic activity potentially thwarted by the designation. Was the economic impact as important to the study as the health of the bird? | See comment G-139-2 below. |
| 3 | ECO-01 | B-107-8 | A cost-effectiveness approach is the appropriate framework of economic science for weighing the economic costs and benefits of critical habitat designation. | Comment noted. Thank you. |
| 4 | ECO-01 | B-107-8 | (Citing the Draft Economic Analysis, Page 1-7, Paragraph 40) The Analysis fails to acknowledge the debate over the economics profession over non-market valuation techniques, the numerator, i.e., benefits, has been fixed by the ESA-mandated objective of designation. Instead we want to see cost-effectiveness recognized as the approach will yield the most useful results for decision-makers coupled with the cost-effectiveness examining options for exclusion based on economic impact. | Where data are available, the Economic Analysis attempts to recognize and measure the net economic impact of the proposed critical habitat designation. For example, if the fencing of a species' habitat to restrict motor vehicles results in an increase in the number of individuals visiting the site for wildlife viewing, then the analysis would recognize the potential for a positive economic impact and attempt to quantify the effect (e.g., impacts that would be associated with an increase in tourism spending by wildlife viewers). In this particular instance, however, the Economic Analysis did not identify any credible estimates or measures of positive economic impacts that could offset some of the negative economic impacts analyzed earlier in this analysis. While the ESA requires us to specifically consider the economic impact of a designation, it does not require us to explicitly consider any broader social benefits (or costs) that may be associated with the designation. In fact, the USFWS believes that this is by Congressional design because the ESA explicitly states up front that it is the federal government's policy to conserve all threatened and endangered species and the ecosystems upon which they depend. While section 4(b)(2) of the ESA gives the Secretary discretion to exclude certain areas from the final designation, she is authorized to do so only if an exclusion does not result in the extinction of the species. Thus, the USFWS believes that explicit consideration of broader social values for the species and its habitat, beyond economic impacts, is not necessary as Congress has already clarified the importance our society places on conserving all threatened and endangered species and their natural habitats upon which they depend. In terms of carrying out its responsibilities under section 4(b)(2) then, the USFWS need only to consider whether the economic impacts (both positive and negative) are significant enough to merit exclusion of any particular area without causing the species to go extinct. |
| 5 | ECO-01 | B-107-8 | Economists can estimate the direct and indirect economic costs of critical habitat for specific geographic areas and standards for habitat protection. | Comment noted. Thank you. |
| 6 | ECO-01 | B-103-1 | The Draft EA underestimates the economic impacts of the designation, as well as the impacts on water management and federal land management. | The commentor does not state how and to what degree the EA underestimates the impacts of flycatcher designation. |

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| 7 | ECO-01 | G-139-2 | The EA presents a more extended discussion [than does the Economic Analysis] of the desired ecological characteristics of critical habitat in terms of its PCEs set out in the proposed critical habitat designation itself. And by analyzing environmental impacts for 2 different geographical configurations of habitat (Alternatives A and B) it does effectively produce a qualitative comparison of benefits and cost between the 2 configurations, though this comparison is a very broad brush. It does not, explicitly identify the "biological terms" which will be used in balancing the benefits and the costs, apply them to rank candidate geographic areas low, medium and high in their provision of desirable characteristics, nor does it then balance the benefit and cost of each candidate area. Consequently the EA does not actually weigh the ecological benefit of inclusion against the economic cost that might support exclusion, even though this "weighing" is apparently the stated policy of the USFWS. The "weighing" process remains opaque and ex ante to the EA, and the reader is left with the impression that the reports are perfunctory by-products of decisions already made. | As stated in EA Section 1.1, the Need and Purpose of the EA was to comply with a court order to designate flycatcher critical habitat for conservation of the species. The EA analyzed the benefits of critical habitat designation and analyzed the impacts of critical habitat designation. The "biological terms" used to weigh benefits versus costs, and the process of weighing critical habitat designation or exclusion are more appropriately discussed in the USFWS proposed Final Rule. |
| 8 | ECO-01 | G-481-2 | The cost of designation of \$29.2 to \$39.5 million annually is an extremely high cost to pay for something that may be unattainable. | Comment noted. Thank you. |
| 9 | ECO-01 | I-489-1 | Has a realistic financial study been done, and how will this designation affect future economic activity? The financial burden will be most absorbed by farmers and ranchers. Please consider the history of the bird and the economic effect as required by the ESA. | See comment G-139-2 above. |
| 10 | ECO-01 | I-491-1 | Designation consumes enormous agency resources and huge social and economic needs. | Comment noted. Thank you. |
| 11 | ECO-01 | I-504-1 | Come on, be practical, and don't keep spending our money on things that don't benefit the taxpayers. | Section 4(b)(2) of the Endangered Species Act requires the Interior Secretary to designate critical habitat based on the best scientific data available after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. |
| 12 | ECO-01 | B-484-1 | Designation will have considerable economic and social effects. It restricts one's ability to make a property economically viable. | Comment noted. Thank you. |
| 13 | ECO-02 | I-140-1 | The control of these areas is largely the control of water. In other words, [the person] who controls the water controls all the productive land. This is a big problem that has to be addressed financially and way into the future. The Prosperous Homes Policy of the United States of America was very important to this country during the mid to late 1800s and into the early 1900s. The reason we are a relatively wealthy nation is due to the Prosperous Homes Policy largely promoted with the Homestead Act in the 1800s. | Section 4 of the Economic Analysis provides an analysis of economic impacts associated with flycatcher conservation activities related to water management activities, including dam operations, hydropower production, water diversion, groundwater pumping, river channelization, and bank stabilization. As discussed in Section 4, detailed assessment of the economic impacts on facilities and end users would require detailed system-wide hydrologic and economic models. This analysis utilizes best available data and simplifying assumptions to provide estimates that bound the magnitude of potential impacts that could result from alterations to water operations in proposed critical habitat designation areas. |
| 14 | ECO-02 | G-014-4 | The Draft Economic Analysis is intended to "consider the potential economic effects of efforts to protect the flycatcher and its habitat," but it fails to consider the costs of designation on Southern Nevada Water Authority's (SNWA's) planned in-state water resource projects. | Because the impacts of the project are unknown, impacts on water delivery are not estimated in the Economic Analysis. The impacts on SNWA water resource projects are discussed in the Economic Analysis (see Page 4-50). Also, see comment I-140-1 above. |
| 15 | ECO-02 | G-014-4 | The Draft Economic Analysis fails to identify and evaluate the costs attributable to SNWA's planned in-state water resource projects, including the SWD Project proposed within the Virgin River Management Unit. | Because the impacts of the project are unknown, impacts on water delivery are not estimated in the Economic Analysis. The impacts on SNWA water resource projects are discussed in the Economic Analysis (see Page 4-50). Also, see comment I-140-1 above. |

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| 16 | ECO-02 | G-014-4 | The Draft Economic Analysis must be revised to include consideration of additional costs of SNWA and the greater Las Vegas Valley resulting from the proposed critical habitat designation. These costs include but are not limited to 1) ESA regulatory compliance requirements, including cost to conduct section 7 consultations and to modify the pending Virgin River HCP; 2) Mitigation and conservation packages; 3) Project modification and/or redesign; 4) Location and development alternative water supply options in the SWD Project cannot be developed as a result of designation. | Section 4 of the Economic Analysis provides an analysis of economic impacts associated with flycatcher conservation activities related to water management activities, including dam operations, hydropower production, water diversion, groundwater pumping, river channelization, and bank stabilization. As discussed in Section 4, detailed assessment of the economic impacts on facilities and end users would require detailed system-wide hydrologic and economic models. This analysis utilizes best available data and simplifying assumptions to provide estimates that bound the magnitude of potential impacts that could result from alterations to water operations in proposed critical habitat designation areas. |
| 17 | ECO-02 | G-014-4 | Significant indirect economic costs would result if designation were to negatively affect SNWA's ability to develop and maintain water supply to meet future water demands within Las Vegas Valley. | Comment noted. See comment G-014-4 above. |
| 18 | ECO-02 | B-107-8 | Economic Analysis fails to identify and evaluate costs attributable planned water resource projects, including South Nevada Water Authority's Surface Development project proposed within the Virgin River Management Unit. | Because the impacts of the project are unknown, impacts on water delivery are not estimated in the Economic Analysis. The impacts on SNWA water resource projects are discussed in the Economic Analysis (see Page 4-50). Also, see comment I-140-1 and G-014-4above. |
| 19 | ECO-02 | B-107-8 | Economic costs of water resource projects must be included in the Draft EA (citing WUWC paper on Critical Habitat Economic Analysis Principles) alternatives methods suggested. | Economic costs of water resource projects are discussed and analyzed in the Economic Analysis. Section 4 of the Economic Analysis provides an analysis of economic impacts associated with flycatcher conservation activities related to water management activities, including dam operations, hydropower production, water diversion, groundwater pumping, river channelization, and bank stabilization. As discussed in Section 4, detailed assessment of the economic impacts on facilities and end users would require detailed system-wide hydrologic and economic models. This analysis utilizes best available data and simplifying assumptions to provide estimates that bound the magnitude of potential impacts that could result from alterations to water operations in proposed critical habitat designation areas. |
| 20 | ECO-02 | B-522-1 | The extent that limitations on the availability of water use will impact the viability of ranch operations. | Section 5 of the Economic Analysis examines potential impacts on grazing activities that include exclusion or removal of livestock grazing from riparian areas year-round or during the flycatcher breeding season. In many cases, the estimates include impacts that may be associated with other riparian habitat initiatives and other endangered species. Estimates also include potential impacts on private lands grazing, although the USFWS questions the assumption that private grazing will be affected in the future. The analysis includes a range that includes the potential for all private grazing to be removed from the riparian are due to flycatcher conservation activities. As a result, Section 5 acknowledges that the loss of 89,000 AUMs is conservative, that is, estimates are more likely to overstate than understate impacts due to flycatcher. |
| 21 | ECO-03 | I-140-1 | Before any critical habitat decisions are made in Arizona, please consider the bird history and economic effect as required in the ESA. | The EA discusses the natural history of the flycatcher. The Economic Analysis identifies those economic activities believed to most likely threaten the flycatcher and its habitat and, where possible, quantifies the economic impact to avoid, mitigate, or compensate for such threats within the boundaries of the critical habitat designation. In instances where critical habitat is being proposed after a species is listed, some future impacts may be unavoidable, regardless of the final designation and exclusions under 4(b)(2). However, due to the difficulty in making a credible distinction between listing and critical habitat effects within critical habitat boundaries, the analysis considers all future conservation-related impacts to be coextensive with the designation. |

Economics

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| 22 | ECO-04 | I-128-2 | Of other concern is the Economic Analysis. It is fatally flawed because it fails to address the true economic impacts on small farming and livestock operations utilizing privately owned land. The analysis assumes that the only costs of critical habitat designation will be the reduction of livestock grazing for individuals using federal lands. It does not take into account the costs that accompany activities on private lands that require permitting by the USFWS or agencies. | Section 5 of the Economic Analysis examines potential impacts on grazing activities that include exclusion or removal of livestock grazing from riparian areas year-round or during the flycatcher breeding season. In many cases, the estimates include impacts that may be associated with other riparian habitat initiatives and other endangered species. Estimates also include potential impacts on private lands grazing, although the USFWS questions the assumption that private grazing will be affected in the future. The analysis includes a range that includes the potential for all private grazing to be removed from the riparian area due to flycatcher conservation activities. Section 5 of the revised Economic Analysis now recognizes the possibility that small reductions in AUMs could affect the viability of some ranching operations. The analysis now places impacts that could occur in the context of the economics of ranching, and points out that "ranchers often have debts to repay that rely on the current number of AUMs grazed. NMCA states that even small cuts in the number of AUMs grazed by these ranchers can affect the financial stability of those operations." |
| 23 | ECO-04 | B-107-8 | Designation adds another costly regulatory overlay for landowners without providing resource protection benefits. | Comment noted. Thank you. |
| 24 | ECO-05 | I-128-2 | Also, the Economic Analysis totally fails to address the major economic impacts to other important industries such as mining. What will be the economic impacts to mining when this industry is sometimes heavily dependent on water use from what could be declared flycatcher habitat. The Economic Analysis has left out some important segments. | The Draft Economic Analysis did not discuss potential impacts to mining activities. Based on information provided during the public comment period from mining interests, the Economic Analysis has been revised to include a chapter that considers potential impacts to the mining industry. |
| 25 | ECO-06 | I-127-1 | A designation of critical habitat for the flycatcher would only jeopardize the small cattle industry, recreational potential and hurt the large scale development being created to save the culture and history of this small community. | Comment noted. The commentor does not provide specific information demonstrating that flycatcher critical habitat designation would impact only the resources and activities cited, and to what degree they would be impacted. |
| 26 | ECO-06 | I-102-1 | I am concerned that the burdens that would be imposed by a critical habitat designation might be too much for our farmers, eventually forcing them out of business and forever changing for the worse the nature and character of the Safford Valley in Graham County. | Potential impacts on crop agriculture are addressed as part of Scenario 2 for water management activities in Section 4. As detailed in Exhibit A-4, estimated water losses to districts supplying agricultural end users may reduce irrigated agricultural acreage in the affected counties by up to 30,938 acres, assuming all reservoir facilities are affected. A cropland reduction of that magnitude would represent approximately 1.05 percent of total irrigated and non-irrigated cropland in the affected areas. Additional detail is provided in Section 4 and Appendix A of the Economic Analysis. Critical habitat designation will not influence human uses and future infrastructure development on private lands without a federal nexus. Nowhere in the EA or the Proposed Rule is it proposed or disclosed that the project would result in the elimination of ranching and farming. |
| 27 | ECO-06 | O-082-6 | We encourage the USFWS to fully consider the economic ramifications for individual growers and the restrictions on farming operations associated with designation of habitat. | See Comment G-097-7 below. |
| 28 | ECO-06 | G-097-7 | The increased costs and impacts to private ranchers are not addressed in the Economic Analysis. The analysis only addresses increased cost and impacts to federal land managing agencies, but neglects to address impacts and costs to permittees, local ranchers, and local communities. | See Comment G-097-7 below. |
| 29 | ECO-06 | G-097-7 | The Proposed Rule has potential to seriously harm a large number of farmers and ranchers, and we urge USFWS to consider these costs and to analyze small business regulatory alternatives that have the ability to reduce costs. | Potential impacts on crop agriculture are addressed as part of Scenario 2 for water management activities in Section 4 of the Economic Analysis. As detailed in Exhibit A-4, estimated water losses to districts supplying agricultural end users may reduce irrigated agricultural acreage in the affected counties by up to 30,938 acres, assuming all reservoir facilities are affected. A cropland reduction of that magnitude would represent approximately 1.05 percent of total irrigated and non-irrigated cropland in the affected areas. Additional detail is provided in Section 4 and Appendix A of the Economic Analysis. |

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| 30 | ECO-06 | G-101-1 | Most farmers of the Gila Valley Irrigation District are modest family farms with gross revenue less than \$750,000 (profile included), Gila Valley Irrigation District is concerned that designation will result in burdens that farmers will not have the financial resources to meet. | Comment noted. Section 5 of the Economic Analysis describes and quantifies potential impacts on ranching activities. Potential impacts on crop agriculture are addressed as part of Scenario 2 for water management activities in Section 4. |
| 31 | ECO-06 | G-105b-1 | The ranchers, farmers, and irrigation providers within or near the proposed critical habitat areas in the Little Colorado Management Unit are small enterprises with modest revenue, and are concerned that the designation will result in financial burdens that they cannot meet. | Comment noted. Thank you. |
| 32 | ECO-06 | G-105b-1 | (Citing 16 U.S.C. § 1533(b)(2)) The Secretary may exclude any area from critical habitat if he determines the benefits of such exclusion outweigh the benefits of specifying such areas as part of critical habitat, unless he determines based on best scientific and commercial data that failure to designate an area will result in extinction of species concerned. | See comment G-139-2 above |
| 33 | ECO-06 | G-105b-1 | The majority of ranchers, farmers, and irrigation providers in the Little Colorado Management Unit have a gross of less than \$750,000 qualifying them for the protections of the Regulatory Flexibility Act. Careful consideration of exclusion under 16 U.S.C. § 1533(b)(2) is clearly warranted. | Comment noted. Thank you. |
| 34 | ECO-06 | G-105b-1 | If USFWS decides not to exclude the Little Colorado area from proposed designation, the reasons should be explained as provided by 5 U.S.C. § 603(c), including an in-depth Economic Analysis specifically addressing the impact the proposed designation on the Little Colorado Management Unit ranchers, farmers, irrigation providers and communities. | As stated in the Final EA Section 2.2.3, the "the South Fork of the Little Colorado River from Joe Baca Draw downstream to its confluence with the Little Colorado River has been removed because a re-evaluation of the essential nature of the area indicated that it did not exhibit nesting habitat for flycatchers and the topography would not allow it to develop nesting habitat in the future." |
| 35 | ECO-06 | O-030-6 | By discouraging ranching and agriculture on currently farmed/ranched lands a negative impact on the economy would occur because the ranchers and farmers are bought out by government or non profit preservation groups. This would eliminate the taxes currently generated on the property as well as jobs from the working of the land. | Comment noted. However, nowhere in the EA or the Proposed Rule is it proposed or disclosed that the project would result in the elimination of or discourage ranching and farming. |
| 36 | ECO-06 | G-097-7, G-042-3 | The economic impacts to local farmers and ranchers and communities are not adequately addressed in the Economic Analysis. The proposed critical habitat would severely impact the livelihood of the ranching community and could compromise management of our water resources. | Section 5 of the Economic Analysis describes and quantifies potential impacts on ranching activities. Regarding potential impacts on crop agriculture, these are addressed as part of Scenario 2 for water management activities in Section 4. Because several water districts potentially affected under Scenario 2 for water management provide water for agricultural purposes, reductions in available water to these districts could result in corresponding reductions in irrigated crop acres for end users, if farmers are unable to switch to less water-intensive crops or find substitute water sources. Vail Dam, Isabella Dam, Horseshoe Dam, Roosevelt Dam, and the Lower Colorado systems dams all serve a significant number of agricultural users and are projected to lose water under Scenario 2. As detailed in Exhibit A-4, estimated water losses to districts supplying agricultural end users may reduce irrigated agricultural acreage in the affected counties by up to 30,938 acres, assuming all reservoir facilities are affected. A cropland reduction of that magnitude would represent approximately 1.05 percent of total irrigated and non-irrigated cropland in the affected areas. Additional detail is provided in Section 4 and Appendix A of the Economic Analysis. |
| 37 | ECO-07 | I-102-1 | While I am not knowledgeable about the requirements of the ESA or its ramifications of a designation of critical habitat, I am concerned that the farmers could not afford, for example, the mitigation obligations and section 7 consultation delays and expenses that may result. | Comment noted. As discussed in the EA, the designation of flycatcher critical habitat would likely incur additional section 7 consultation costs. The costs (and the impacts) of section 7 consultation are unique to each site-specific project and would be quantified under site-specific section 7 consultations and site-specific NEPA processes. |

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| 38 | ECO-07 | B-069-01 | The Analysis must include the impact designation will have on property values, increase section 7 consultation, operation of fields and tailings impoundments near Gila and San Pedro River floodplains, and pipeline conveying water to Ray Mine from Hayden and distribution to the township of Kelvin. | Section 4 of the Economic Analysis provides an analysis of economic impacts associated with flycatcher conservation activities related to water management activities, including dam operations, hydropower production, water diversion, groundwater pumping, river channelization, and bank stabilization. As discussed in Section 4, detailed assessment of the economic impacts on facilities and end users would require detailed system-wide hydrologic and economic models. This analysis utilizes best available data and simplifying assumptions to provide estimates that bound the magnitude of potential impacts that could result from alterations to water operations in proposed critical habitat designation areas. Based on information provided during the public comment period from mining interests, the Economic Analysis has been revised to include a section that considers potential impacts to the mining industry (section 9). Impacts to real estate are discussed in Section 6. |
| 39 | ECO-07 | G-121-1 | The re-opening of section 7 consultation on existing projects would essentially give the USFWS a "second bite of the apple" and could cause injury to vested rights to projects already permitted. Perhaps more attention should be paid to the economic impact that this will have on projects both current and proposed along Arizona's waterways and the increased burden on the USFWS as an enforcement agency. | The potential impacts of re-initiated section 7 consultations were considered in the EA. The project-specific costs (and the potential impacts) of section 7 consultation are unique to each site-specific project and would be quantified under site-specific section 7 consultations and site-specific NEPA processes. |
| 40 | ECO-07 | B-103-1 | The Draft EA's description of costs resulting from the increased number of section 7 consults is incomplete resulting in a significant underestimation. Nowhere are the actual costs of the mitigation itself mentioned, much less considered. | The economic costs of flycatcher habitat mitigation would be unique to each site-specific project. Because the outcomes of section 7 consultations cannot be predicted nor the potential mitigation costs associated with them, the economic costs on the project proponent and the USFWS cannot be predicted. Attempting to calculate these costs would be speculative and beyond the scope of the EA. |
| 41 | ECO-07 | G-467-3 | The assumption that "few land use activities would be subject to consultation requirements" (EA, Page 62-63) erroneously calculates the cost of consultations in the San Luis Valley, but also the costs of surveying for constituent elements and/or occupied habitat. | As a result of flycatcher conservation agreements and conservation management actions, the proposed designated critical habitat stream segments in the San Luis Valley will be excluded in the proposed Final Rule. |
| 42 | ECO-07 | G-481-2 | The extra time cost for consultations and technical assistance should be kept at a minimum, especially for private landowners, or they should be compensated. | The revised Economic Analysis includes a discussion of the potential impacts of delay in Section 4 (Water Management), Section 6 (Development) and Section 10 (Other Activities). |
| 43 | ECO-08 | I-102-1 | Before designating either the Safford Valley or the Duncan-Virden Valley as critical habitat, please consider and weigh the economic burdens of our communities. When you do, I am confident that the economic burdens will far outweigh the benefits to the flycatcher. | The Economic Analysis identifies those economic activities (including local and regional activities near Safford, Arizona that include groundwater pumping and mining, fire management, etc) believed to most likely threaten the flycatcher and its habitat and, where possible, quantifies the economic impact to avoid, mitigate, or compensate for such threats within the boundaries of the designated critical habitat. |
| 44 | ECO-09 | I-090-1 | I believe that it is more economically prudent to protect our dwindling riparian areas by reducing or preferably eliminating grazing from our public lands and curtailing growth and mining activities rather than to incur the significant costs associated from the process of designating critical habitat. | Comment noted. Thank you. |
| 45 | ECO-10 | G-095-01 | The estimated costs for the flycatcher conservation activates (\$29.2-\$39.5 million) are very high; the proposal for such a large volume of critical habitat magnifies economic consequences not just for landowners, but taxpayers as well. | Comment noted. Thank you. |
| 46 | ECO-11 | G-097-7 | There is local concern about the impacts the critical habitat designation will have on implementation of Washington County's Economic Development Plan. | Comment noted. Thank you. |

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| 47 | ECO-12 | G-105b-1 | (Citing 5 U.S.C. § 603(c)) Each initial flexibility analysis shall also contain a description of any significant alternatives to the Proposed Rule that minimize economic impact on small entities such as an exemption from coverage of the rule. | The flexibility analysis cited in 5 U.S.C. 603 is incorporated into the project's Economic Analysis. Appendix A considers the extent to which the analytic results presented in the main body of the Economic Analysis reflect potential future impacts to small businesses. Appendix A, Small Business Impacts, has been revised to provide additional details about the estimated location of potential impacts by county as well as by water user, where appropriate. The revised Economic Analysis presents impacts on grazing activities organized by county and on a per ranch basis in Appendix A. |
| 48 | ECO-13 | G-041-1 | The Economic Analysis is lacking impacts to the San Carlos Irrigation and Drainage District and its landowners, only addressing impacts of designation within Gila River watershed to the San Carlos Apache Tribe. | The revised Economic Analysis incorporates a discussion of potential economic impacts on water users in the Little Colorado, Upper Gila Management Units, and other concerned areas for which public comments were submitted. Section 7 of the Economic Analysis presents all available information regarding potential flycatcher conservation activities that have affected or which may affect the fifteen Tribes whose lands fall within proposed critical habitat designation areas. Attempts were made to contact each Tribe with lands in proposed critical habitat designation, as well as a number of other Tribes outside of critical habitat designation that expressed concern about potential impacts on them. Exhibit 7-3 summarizes potential impacts on the Tribes, and highlights where costs to the Tribes are unknown. Section 4 of the Economic Analysis provides an analysis of economic impacts associated with flycatcher conservation activities related to water management activities, including dam operations, hydropower production, water diversion, groundwater pumping, river channelization, and bank stabilization. As discussed in Section 4, detailed assessment of the economic impacts on facilities and end users would require detailed system-wide hydrologic and economic models. This analysis utilizes best available data and simplifying assumptions to provide estimates that bound the magnitude of potential impacts that could result from alterations to water operations in proposed critical habitat designation areas. |
| 49 | ECO-13 | G-041-01 | USFWS ignores economic impact to Casa Grande and Florence Valleys due to designation, which could have devastating and long-lasting impacts on agricultural activities by landowners with the San Carlos Irrigation District and the Gila River Indian Community who depend on the San Carlos Reservoir and Gila River for their livelihood. | The revised Economic Analysis incorporates a discussion of potential economic impacts on water users in the Little Colorado, Upper Gila Management Units, and other concerned areas for which public comments were submitted. |
| 50 | ECO-14 | B-069-01 | Asarco supports USFWS decision to prepare economic impact analysis and make the analysis available for public comment prior to final designation. | Comment noted. Thank you. |
| 51 | ECO-15 | B-107-8 | The analysis makes a significant error in refusing to differentiate between the impacts of jeopardy from listing a species, and the impacts of critical habitat. | The EA and Economic Analysis acknowledge that a recent Ninth Circuit judicial opinion, <i>Gifford Pinchot Task Force v. United States Fish and Wildlife Service</i> , has invalidated the USFWS's regulation defining destruction or adverse modification of critical habitat. The USFWS is currently reviewing the decision to determine what effect it (and to a limited extent <i>Center for Biological Diversity v. Bureau of Land Management</i> (Case No. C-03-2509-SI, N.D. Cal.)) may have on the outcome of consultations pursuant to section 7 of the ESA. |
| 52 | ECO-15 | B-107-8 | The most significant failure of the proposed designation process is that the USFWS makes no attempt to analyze or consider a 4(b)(2) process of excluding an area based on the economic costs (quoting Draft EA, Page 17). | A primary reason for conducting this analysis is to provide information regarding the economic impacts associated with a proposed critical habitat designation. Section 4(b)(2) of the ESA requires the Secretary to designate critical habitat based on the best scientific data available after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. |

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| 53 | ECO-15 | B-107-8 | USFWS needs to establish a high cost/low biological value for areas for exclusion as encouraged by law and court decisions. | Section 4(b)(2) of the Endangered Species Act requires the Secretary to designate critical habitat based on the best scientific data available after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Act requires the USFWS to specifically consider the economic impact of a designation; it does not require it to explicitly consider any broader social benefits (or costs) that may be associated with the designation. While section 4(b)(2) of the ESA gives the Secretary discretion to exclude certain areas from the final designation, she is authorized to do so only if an exclusion does not result in the extinction of the species. Thus, the USFWS believes that explicit consideration of broader social values for the species and its habitat, beyond economic impacts, is not necessary as Congress has already clarified the importance our society places on conserving all threatened and endangered species and their natural habitats upon which they depend. In terms of carrying out its responsibilities under section 4(b)(2) then, the USFWS need only to consider whether the economic impacts (both positive and negative) are significant enough to merit exclusion of any particular area without causing the species to go extinct. |
| 54 | ECO-16 | B-107-8 | USFWS shows a clear bias toward excluding only those areas that have made the time-consuming and costly investment in an HCP. Landowners are left with only a choice between obtaining an HCP and incurring the potentially severe restrictions of critical habitat designation, as economic exclusion options have been inappropriately eliminated. | While the ESA requires the USFWS to specifically consider the economic impact of a designation, it does not require it to explicitly consider any broader social benefits (or costs) that may be associated with the designation. In fact, the USFWS believes that this is by Congressional design because the ESA explicitly states up front that it is the federal government's policy to conserve all threatened and endangered species and the ecosystems upon which they depend. While section 4(b)(2) of the ESA gives the Secretary discretion to exclude certain areas from the final designation, she is authorized to do so only if an exclusion does not result in the extinction of the species. Thus, the USFWS believes that explicit consideration of broader social values for the species and its habitat, beyond economic impacts, is not necessary as Congress has already clarified the importance our society places on conserving all threatened and endangered species and their natural habitats upon which they depend. In terms of carrying out its responsibilities under section 4(b)(2) then, the USFWS need only to consider whether the economic impacts (both positive and negative) are significant enough to merit exclusion of any particular area without causing the species to go extinct. |
| 55 | ECO-17 | B-103-1 | SRP is concerned about the clarity of the USFWS's methodologies for determining impacts attributable to designation as opposed to impacts that are not attributable to the designation, more generally to conservation activities undertaken for the benefit of the flycatcher. | The Economic Analysis estimates the total cost of species conservation activities without subtracting the impact of pre-existing baseline regulations (i.e., the cost estimates are fully co-extensive). In 2001, the U.S. 10th Circuit Court of Appeals instructed the USFWS to conduct a full analysis of all of the economic impacts of proposed critical habitat designation, regardless of whether those impacts are attributable co-extensively to other causes (<i>New Mexico Cattle Growers Ass'n v. U.S.F.W.S.</i> , 248 F.3d 1277 (10th Cir. 2001)). The Economic Analysis complies with direction from the U.S. 10th Circuit Court of Appeals. Where data are available, the analysis attempts to recognize and measure the net economic impact of the proposed designation. For example, if the fencing of a species' habitat to restrict motor vehicles results in an increase in the number of individuals visiting the site for wildlife viewing, then the analysis would recognize the potential for a positive economic impact and attempt to quantify the effect (e.g., impacts that would be associated with an increase in tourism spending by wildlife viewers). In this particular instance, however, the Economic Analysis did not identify any credible estimates or measures of positive economic impacts that could offset some of the negative economic impacts analyzed earlier in this analysis. |

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| 56 | ECO-18 | I-039-1 | USFWS identifies the total impact to be between \$29.2 and \$39.5 million. But this is just an overall impact. Does it take into consideration the impact to local towns such as Benson, Arizona or to counties such as Cochise? | The Economic Analysis (Appendix A) considers the extent to which the analytic results presented in the main body of the Economic Analysis reflect potential future impacts to small businesses. Appendix A, Small Business Impacts, has been revised to provide additional details about the estimated location of potential impacts by county as well as by water user, where appropriate. The revised Economic Analysis presents impacts on grazing activities organized by county and on a per ranch basis in Appendix A. |
| 57 | ECO-18 | I-085-3 | The federal agencies and cohorts are destroying the economic stability of rural areas and the State of Colorado and other states. | Comment noted. Thank you. |
| 58 | ECO-18 | I-044-1 | USFWS identifies the total impact to be between \$29.2 million and \$39.5 million. But is this just an overall impact? Does it take into consideration the impact to local communities, towns and county tax bases? To individual businesses and schools? | The project's Economic Analysis considers the impacts to local communities and counties, and local businesses. Appendix A considers the extent to which the analytic results presented in the main body of the Economic Analysis reflect potential future impacts to small businesses. Appendix A, Small Business Impacts, has been revised to provide additional details about the estimated location of potential impacts by county as well as by water user, where appropriate. The revised Economic Analysis presents impacts on grazing activities organized by county and on a per ranch basis in Appendix A. Section 5 of the Economic Analysis examines potential impacts on grazing activities. Impacts on real estate are discussed in Section 10. |
| 59 | ECO-18 | G-047-1 | The impact of the designation would have a very major economic impact on the small farms and business in both the Stafford Arizona Valley and Graham County. 30% of the county's tax base is a very significant portion and would devastate this area if it were reduced. | See comment ECO-25 below. |
| 60 | ECO-18 | G-115-1 | The proposed critical habitat in the vicinity of Safford, Arizona should be eliminated because of the potential economic and public health and welfare impacts. There is not critical habitat in or near Safford and no flycatchers were actually observed during the work. Consultations with the USFWS about activities in the Gila River floodplain, and mitigation measures, would be unnecessary and wasteful. Economic and public health and welfare activities may be delayed and made more costly by the proposed designation, including flood control, fire suppression and insect control. Even if the area were deemed to contain the necessary PCEs, the economic impacts on these and other municipal activities outweigh the benefit of including this relatively small stretch of critical habitat in the designation. | The revised Economic Analysis incorporates a discussion of potential economic impacts on water users in the Little Colorado, Upper Gila Management Units, and other concerned areas for which public comments were submitted. |
| 61 | ECO-18 | G-139-2 | We believe the proposed critical habitat designation of the Rio Grande would be an administrative and economic burden to the ongoing ecological stewardship of the Park by the City, and the multi-agency cooperative projects new planned--including those for enhancement of flycatcher habitat. We also believe the Economic Analysis and EA do not adequately address the benefits associated with continued management of the Park by the City, nor the potential added costs that would result from designation as critical habitat. | The Rio Grande Valley State Park was excluded from flycatcher critical habitat designation because it is being conserved through implementation of the Bosque Action Plan that conserves and preserves vegetation and wildlife communities, including the flycatcher and the habitat upon which it depends |
| 62 | ECO-19 | G-139-2 | The Draft EA is wholly inadequate for analyzing the impact of the critical habitat designation within the RGVSP. Most significantly, the EA ignores the need for fire control activities within the boundaries of the urbanized RGVSP, and the economic costs associates with burdening or precluding these activities essential to public health and safety. | The Rio Grande Valley State Park was excluded because it is being conserved through implementation of the Bosque Action Plan that conserves and preserves vegetation and wildlife communities, including the flycatcher and the habitat upon which it depends |
| 63 | ECO-19 | G-139-2 | Economic consultant review of EA notes two significant impacts not reported: 1) the reviewer references a recent report [Army Corps of Engineers Wildfire Risk Assessment along the Rio Grande Corridor 2005] which identifies 13,535 structures at moderate, high or extreme risk from a bosque-initiated fire in the Park. Then he illustrates the Economic Analysis that could be developed to measure the economic impact of such fires, and suggests the magnitude could be \$360 million, plus the costs of fighting fires. | The Rio Grande Valley State Park was excluded because it is being conserved through implementation of the Bosque Action Plan that conserves and preserves vegetation and wildlife communities, including the flycatcher and the habitat upon which it depends |

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| 64 | ECO-19 | G-139-2, con't | 2) The cost of "time delays and regulatory uncertainty" associated with fire management that would be created by inclusion as critical habitat and concluded that this cost is difficult to measure but is "nevertheless significant." For example, 4 of the 6 PCEs refer to dense foliage; the restrictions imposed by critical habitat designation would create a situation of regulatory uncertainty regarding the required density of the Park habitat. The City believes these costs are substantial and a basis to exclude the Park from critical habitat designation. Costs would only be "negligible" if the USFWS were willing to declare that the park could be managed in accordance with the City's plan. However, if the USFWS were willing to make this declaration, the question then becomes what is gained by critical habitat designation in the first place. | The Rio Grande Valley State Park is excluded in the proposed Final Rule because it is being conserved through implementation of the Bosque Action Plan that conserves and preserves vegetation and wildlife communities, including the flycatcher and the habitat upon which it depends. |
| 66 | ECO-21 | B-103-1 | The USFWS should clarify the impacts attributable to the critical habitat designation, impacts not attributable to designation, and to conservation activities. | As stated in EA Section 3.1.4, the EA scope of analysis of impacts is limited to the potential impacts that would result from the designation of flycatcher critical habitat, and an analysis of those impacts was conducted and documented in the EA. It discloses the potential physical and biological impacts. The Economic Analysis identifies those economic activities believed to most likely threaten the flycatcher and its habitat and, where possible, quantifies the economic impact to avoid, mitigate, or compensate for such threats within the boundaries of the critical habitat designation. In instances where critical habitat is being proposed after a species is listed, some future impacts may be unavoidable, regardless of the final designation and exclusions under 4(b)(2). However, due to the difficulty in making a credible distinction between listing and critical habitat effects within critical habitat boundaries, this Economic Analysis considers all future conservation-related impacts to be coextensive with the designation. |
| 67 | ECO-21 | T-096-2 | Section 4(b)(2) of the ESA requires you to consider the economic impact and any other relevant impact of specifying any particular area as critical habitat. That requirement is not limited to impacts on the lands proposed to be designated. | This analysis identifies those economic activities believed to most likely threaten the flycatcher and its habitat and, where possible, quantifies the economic impact to avoid, mitigate, or compensate for such threats within the boundaries of the designated critical habitat. In instances where critical habitat is being proposed after a species is listed, some future impacts may be unavoidable, regardless of the final designation and exclusions under 4(b)(2). However, due to the difficulty in making a credible distinction between listing and critical habitat effects within critical habitat boundaries, this analysis considers all future conservation-related impacts to be coextensive with the designation. |
| 68 | ECO-21 | B-103-01 | (3.2.2.2, Alternative A, Page 42) The EA fails to consider the cost of conservations measures, which are often significant, as an "impact" of the flycatcher critical habitat designation. The extent that the costs of conservation measures referred to in this section of the Draft EA can be attributed coextensively to both the species listing and the critical habitat designation, these costs must be considered as an impact of the designation. | As stated in EA Section 3.1.4, the EA considered "the costs of section 7 consultations for federal agencies and non-federal project proponents. These include opportunity costs associated with allocating staff time to the consultation process, costs associated with delay of the Proposed Action until consultation is completed, and direct monetary expenditures to implement any reasonable and prudent alternatives and any associated project delays. " In analyzing the impacts of these costs, it was determined that the costs of section 7 consultations are unique for each consultation, based upon site-specific conditions and concerns. Assigning costs to the consultation process would be speculative, and beyond the scope, of this EA. The costs and economic impacts of conservation measures would more accurately be determined under site-specific NEPA processes and site-specific section 7 consultations. |
| 69 | ECO-22 | B-508-8 | The loss of recreational areas will cause grave economical disaster to communities. | The commentator does not state what recreational areas will be lost due to flycatcher designation, or how or to what degree this will adversely impact local communities. |
| 70 | ECO-28 | B-107-8 | The beds of reservoirs serving large populations in highly arid climates should be excluded up to the high water mark. | Comment Noted, however the commentator does not state why reservoir beds should be excluded. |

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| | Resource / Issue Code | Source / Region Code | Comment | Response |
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| 71 | ECO-04 | G-538-2 | Throughout the EA (e.g., Page 5, Sec 1.3; Page 31, Sec 3.1.2; Page 78, Sec 3.2) it states that, without the "federal nexus" critical habitat designation does not impose any management or land use restrictions on private land; however, the Economic Analysis shows large impact to private lands. It would appear the USFWS attributes these impacts to listing and not critical habitat designation. The consideration must include all relevant factors, not only those above baseline of impacts from listing. There are no analytical methods or criteria for the Secretary to weigh the decision of whether the benefits of excluding outweigh the benefits of including. | A primary reason for conducting this analysis is to provide information regarding the economic impacts associated with a proposed critical habitat designation. Section 4(b)(2) of the ESA requires the Secretary to designate critical habitat based on the best scientific data available after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. Economic impacts can be both positive and negative and by definition, are observable through market transactions. Where data are available, this analysis attempts to recognize and measure the net economic impact of the proposed designation. For example, if the fencing of a species' habitat to restrict motor vehicles results in an increase in the number of individuals visiting the site for wildlife viewing, then the analysis would recognize the potential for a positive economic impact and attempt to quantify the effect (e.g., impacts that would be associated with an increase in tourism spending by wildlife viewers). In this particular instance, however, the Economic Analysis did not identify any credible estimates or measures of positive economic impacts that could offset some of the negative economic impacts analyzed earlier in this analysis. While the ESA requires us to specifically consider the economic impact of a designation, it does not require us to explicitly consider any broader social benefits (or costs) that may be associated with the designation. In fact, the USFWS believes that this is by Congressional design because the ESA explicitly states up front that it is the federal government's policy to conserve all threatened and endangered species and the ecosystems upon which they depend. While section 4(b)(2) of the ESA gives the Secretary discretion to exclude certain areas from the final designation, she is authorized to do so only if an exclusion does not result in the extinction of the species. Thus, the USFWS believes that explicit consideration of broader social values for the species and its habitat, beyond economic impacts, is not necessary as Congress has already clarified the importance our society places on conserving all threatened and endangered species and their natural habitats upon which they depend. In terms of carrying out its responsibilities under section 4(b)(2) then, the USFWS need only to consider whether the economic impacts (both positive and negative) are significant enough to merit exclusion of any particular area without causing the species to go extinct. Critical habitat designation will not influence human uses and future infrastructure development on private lands without a federal nexus. Nowhere in the EA or the Proposed Rule is it proposed or disclosed that the project would result in the elimination of ranching and farming. |
| 72 | ECO-18 | G-537-3 | The San Luis Valley is one of the poorest regions in Colorado, and the burden of designation and a case-by-case compliance with the ESA is not cost-effective and presents an economic burden on landowners. | As a result of flycatcher conservation agreements and conservation management actions, the proposed designated critical habitat stream segments in the San Luis Valley will be excluded in the proposed Final Rule. |
| 74 | ECO-21 | G-548-8 | Loss of county taxes is never addressed nor is the impact it has on those counties to maintain their operations to provide services to their constituents. How does the loss of AUMs in those counties affect the ability of a county to operate? Many of the counties are struggling to fund basic needs, such as schools, roads and health care because of the impact of NEPA and ESA. Present and past estimates provided by the USFWS EIA for the upper Gila region puts the loss of grazing alone at \$628,000-\$903,000. What direct impact does that have on the counties that this will happen to? | See comment ECO-25 below. |
| 75 | ECO-22 | G-557-1 | We agree that the losses envisioned by the Draft EA will have serious long-term economic and social impact upon the small communities of Greer, Alpine, St. Johns, Springerville, and Eagar, which rely upon agricultural and tourism revenues. | Comment noted. Thank you. |

Economics

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|----|-----------------------|--|--|---|
| 76 | ECO-23 | G-552-8 | On numerous occasions in the EA, it states that without a federal nexus, critical habitat designation does not impose any management or land use restrictions on private land. On numerous occasions, local government, private land and water management and development have been subjected to mitigation requirements for listed species and critical habitat that include either the dedication of the portion of the property or water for habitat or purchase of mitigation lands or water of offset the impacts created by development actions. Local government and private land owners have also been required to bear the costs of extensive, time consuming and expensive analysis in order to proceed with projects. The potential for these types of mitigation requirements have physical, biological, economic, and social environmental potential impacts that need to be disclosed through NEPA analysis. | Comment noted. As stated in EA Section 3.1.4, the EA scope of analysis of impacts is limited to the potential impacts that would result from the designation of flycatcher critical habitat, and an analysis of those impacts was conducted and documented in the EA. It discloses the potential physical and biological impacts. The Economic Analysis identifies those economic activities believed to most likely threaten the flycatcher and its habitat and, where possible, quantifies the economic impact to avoid, mitigate, or compensate for such threats within the boundaries of the critical habitat designation. In instances where critical habitat is being proposed after a species is listed, some future impacts may be unavoidable, regardless of the final designation and exclusions under 4(b)(2). However, due to the difficulty in making a credible distinction between listing and critical habitat effects within critical habitat boundaries, this Economic Analysis considers all future conservation-related impacts to be coextensive with the designation. |
| 77 | ECO-23 | G-552-8 | On numerous occasions in the EA, it states that without a federal nexus, critical habitat designation does not impose any management or land use restrictions on private land. However, the EIA shows large impacts to private landowners from management and land use restriction due to flycatcher conservation efforts. It would appear USFWS attributes them to the listing, not to previous critical habitat designation. This is apparent violation of previous court order "baseline approach" and is not acceptable. ESA states that the Secretary must designate critical habitat for listed species only after taking into account the economic impact ... and any other relevant impact ... not sure how Secretary will determine whether benefits of exclusion outweigh benefits of inclusion when there are no analytical methods or criteria for making this decision in the EIA or EA. | The Economic Analysis estimates the total cost of species conservation activities without subtracting the impact of pre-existing baseline regulations (i.e., the cost estimates are fully co-extensive). In 2001, the U.S. 10th Circuit Court of Appeals instructed the USFWS to conduct a full analysis of all of the economic impacts of proposed critical habitat designation, regardless of whether those impacts are attributable co-extensively to other causes (<i>New Mexico Cattle Growers Ass'n v. U.S.F.W.S.</i> , 248 F.3d 1277 (10th Cir. 2001)). The Economic Analysis complies with direction from the U.S. 10th Circuit Court of Appeals. This analysis identifies those economic activities believed to most likely threaten the flycatcher and its habitat and, where possible, quantifies the economic impact to avoid, mitigate, or compensate for such threats within the boundaries of the critical habitat designation. In instances where critical habitat is being proposed after a species is listed, some future impacts may be unavoidable, regardless of the final designation and exclusions under 4(b)(2). However, due to the difficulty in making a credible distinction between listing and critical habitat effects within critical habitat boundaries, this analysis considers all future conservation-related impacts to be coextensive with the designation. |
| 79 | ECO-24 | G-551-8 | Loss of county taxes is never addressed nor is the impact it has on those counties to maintain their operations to provide services to their constituents. How does the loss of AUMs in those counties affect the ability for a county to operate? Many of the counties are struggling to fund basic needs, such as schools, roads and health care because of the impact of NEPA and ESA. Present and past estimates provided by the USFWS EIA for the upper Gila region puts the loss of grazing alone at \$628,000-\$903,000. What direct impact does that have on the counties that this will happen to? | See comment ECO-25 below. |
| 80 | ECO-24 | G-550-8 G-552-8 G-549-8 G-548-2 | The map shows a large expansion of critical habitat along the Rio Grande and Gila Rivers that would have a negative effect on local residents. We are opposed to any designation of critical habitat that would impose an economic burden on individuals and natural resource operations within these areas. The majority of these maps show areas that are not being currently used as nest sites nor have the potential to become nesting sites in the foreseeable future. In the proposal it is estimated that designation of critical habitat for the flycatcher will result in an annual effect on the economy of \$100 million or more throughout the range of the designation. How does this loss outweigh the needs to the flycatcher vs. the needs of the people? Additionally, what are the cumulative economic impacts to the counties and municipalities that depend upon that \$100 million? | The commentor does not describe which areas along the Rio Grande and Gila rivers would be affected. |

Economics

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|----|-----------------------|---|---|---|
| 81 | ECO-24 | G-550-8 | Loss of county taxes is never addressed nor is the impact it has on those counties to maintain their operations to provide services to their constituents. How does the loss of AUMs in those counties affect the ability for a county to operate? Many of the counties are struggling to fund basic needs, such as schools, roads and health care because of the impact of NEPA and ESA. Present and past estimates provided by the USFWS EIA for the upper Gila region puts the loss of grazing alone at \$628,000-\$903,000. What direct impact does that have on the counties that this will happen to? | See comment ECO-25 below. |
| 82 | ECO-25 | G-551-8 G-550-8 G-549-9 G-548-8 | Request that USFWS provide an in-depth economic and social analysis for this designation and how it will affect each RURAL locality in the designated area. We stress a local analysis, not a national or even a state analysis. The analysis that is needed is one that describes those effects on the local level within the proposed critical habitat areas. | Appendix A in the Economic Analysis considers the extent to which the analytic results presented in the main body of the Economic Analysis reflect potential future impacts to small businesses. Appendix A, Small Business Impacts, has been revised to provide additional details about the estimated location of potential impacts by county as well as by water user, where appropriate. The revised Economic Analysis presents impacts on grazing activities organized by county and on a per ranch basis in Appendix A. |
| 83 | ECO-26 | G-549-8 G-550-8 G-551-8 G-552-8 G-548-8 | Incentives need to be used to entice more rural support for these types of efforts. Previous effort to execute the provisions of ESA has had a negative effect on rural communities. If given the right incentives, agricultural producers could and probably would assist in the recovery of the species. | Comment noted. |
| 84 | ECO-27 | G-552-8 G-550-8 G-551-8 G-549-8 G-548-8 | In the proposal it is estimated that designation of critical habitat for the flycatcher will result in an annual effect on the economy of \$100 million or more throughout the range of the designation. How does this loss outweigh the needs to the flycatcher vs. the needs of the people? Additionally, what are the cumulative economic impacts to the counties and municipalities that depend upon that \$100 million? | The Economic Analysis quantifies economic effects associated with flycatcher conservation activities. This information is intended to assist the USFWS in determining whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas. It is therefore beyond the scope of the Economic Analysis to evaluate the cumulative effects of all previous designations. |

Environmental Justice

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|---|-----------------------|----------------------|---|---|
| 1 | EJ-1 | T-131-2 | The USFWS has failed to consider the environmental justice impacts on the Taos Pueblo. The new designation of critical habitat and consequent constraints on new depletions would disproportionately impact the Pueblo, a low-income, minority community. The Pueblo's water use triggers the ESA consultation requirement. In contrast, non-Indian farmers tend to not have federal involvement and hence do not trigger the ESA's consultation requirement. The Taos Pueblo would bear the brunt of the designations impacts on agriculture in the Taos Valley. | As discussed in Section 3.2.15, the impacts on minority or low-income populations are unknown because the outcomes of section 7 consultations cannot be predicted and site-specific population demographics within proposed critical habitat are unknown. Specifically, the Taos Pueblo does not contain stream segments proposed for designation as flycatcher critical habitat, so ESA water use consultations would not be impacted beyond current conditions. |
| 2 | EJ-2 | G-100-3, G-467-3 | Most of the area in the San Luis Valley proposed for critical habitat designation is privately owned agricultural lands. The added burden of critical habitat on these lands creates a financial and logistical disincentive for private landowners in an already impoverished region to participate in federal assistance programs that promote the protection and restoration of riparian habitat and reduce economic disparities. The designation of critical habitat in the San Luis Valley will have a disproportionate effect on low-income and minority populations. | Comment noted. However, the proposed Final Rule will exclude the San Luis Valley stream segments from critical habitat designation for the flycatcher. |

Fire

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|---|-----------------------|----------------------|---|--|
| 1 | FIRE-1 | G-115-1 | The presence of a salt cedar monoculture increases the risk of catastrophic fire that would imperil both flycatcher and Safford. Many areas along the river show stands of apparently fire-killed cottonwoods. | Comment noted. The major federal documents addressing fire management all set the protection of lives and property as a priority for fire management (see the Federal Wildland Fire Management Policy, National Fire Plan, and 10-Year Comprehensive Strategy). As stated in Section 3.2.4, tamarisk (salt cedar) control methods are being considered by the USFWS to reduce the risk of wildland fire. |
| 2 | FIRE-2 | G-139-2 | [MRGMU] areas must be managed to avoid/control catastrophic wildlife and critical habitat designation will impose substantial costs upon that management. EA notes that fire management activities produce "short-term adverse effects to flycatcher PCEs ... from riparian vegetation disturbance..." However, both the EA and EIA reports conclude that fire management costs for the proposed critical habitat in its entirety are "minimal" and don't even identify the MRGMU as an area subject to fire hazard. Costs associated with the managing the Park under Alternative A versus Alternative B need to be calculated. The basics of this analysis could be taken from the USACE Wildfire Risk Assessment along the Rio Grande Corridor 2005 report. Additionally, estimates for the probabilities of the physical risks of bosque-originating fire are needed for each of the PCARs under both Alternative A and the modified Alternative B, and a database containing the estimated dollar values of the 13,535 structures is needed. The expected economic loss from fire damage could be computed for the structures at risk. Alternatively, if the insurance industry has already developed the necessary risk data, then the difference between Alternative A and the modified Alternative B premiums could be calculated and used as a cost measure. | Sections 3.2.6.2 and 3.2.6.3 in the EA describe the impacts to fire management in terms of impacts and constraints on fire management and fire management goals, not economic costs. The EA analysis concludes that there would be minimal impacts on fire risk reduction projects and wildland fire suppression projects. |
| 3 | FIRE-3 | G-139-2 | Rio Grande Valley State Park is a fire hazard to the surrounding metropolitan community. The MRGMU outside the park is also a fire hazard. Recent fires in both areas demonstrate this. The Economic Analysis identifies neither area as being at risk, and also says that fire management activities are expected to be "minimal." The EA perpetuates the omission of any reference to these fire hazards by relying on the Economic Analysis to have identified any areas of risk. | Identifying specific geographic areas of wildland fire risk is beyond the scope of the EA, and would be more appropriately analyzed and identified through site-specific NEPA and site-specific section 7 consultations. The EA does describe types of fire risk, including those risks associated with exotic vegetation (see Section 3.2.4), Wildland-Urban Interface areas, and wildland fire risks within riparian areas (see Section 3.2.6). The EA also notes that a National Fire Plan and a 10-year Comprehensive Strategy have been implemented, as an interagency commitment, to protect the public, communities, and natural resources. |
| 4 | FIRE-3 | G-139-2 | The EA also concludes that "designating flycatcher critical habitat is expected to have minimal impact of fire risk reduction project and wildfire suppression. The logic of this omission apparently rests upon the notion that fire mgt activities produce "short-term adverse effects to flycatcher PCEs ... from riparian vegetation disturbance ... but are expected to produce long-term beneficial impacts by reducing risk of critical habitat from catastrophic uncontrolled wildland fire ..." This is an inaccurate statement in a wildland-urban interface such as the Park. Fire management activities here cannot be simple "short-term adverse impact ... "; they must be a permanent condition of the park management, lest it regenerate the same fire hazards. For example "dense" foliage/vegetation is an element of 4 of the 6 PCEs but it is this dense character that must be permanently reduced to lower fire risk. So those "short-term" impacts are really permanent management elements in the Park. | The logic of the EA's analysis that there would be minimal impacts on wildland fire suppression and risk reduction projects is based on "Conservation activities and measures [that] have focused on timing and avoiding occupied locations, limitations that allow fire management goals to be achieved, [and] the alternative section 7 regulations for fire management limit the delays that fire management projects experience to complete consultations" (see Section 3.2.6.2). Additional analysis will be included in the EA to address your concerns regarding permanent fire management in Wildland-Urban Interfaces. |
| 5 | FIRE-3 | G-139-2 | An improved analysis, when conducted, should focus particularly on contrasting the fire hazards risk associated with managing the Rio Grande Valley State Park as flycatcher critical habitat against managing as a multi-purpose wildland-urban interface within a large metropolitan region. Then, the process of weighing the "direct benefits of the Proposed Rule in biological terms against the expected cost impacts of the rulemaking" should be publicly reported for the MRGMU and the Park [in either the EA or Economic Analysis docs]. The absence of Economic Analysis of these areas for possible exclusion is a critical deficiency of the EA. | Comment noted. However, a cost-benefit analysis of fire hazard risk versus the economic costs is beyond the scope of the EA, which is to analyze the impacts of designating flycatcher critical habitat. This form of analysis would be more appropriately analyzed in the Economic Analysis. |

Fire

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|---|-----------------------|----------------------|---|--|
| 6 | FIRE-3 | G-139-2 | The EA [and Economic Analysis] do not refer to the Rio Grande Valley State Park as a fire hazard. Yet it is very clearly a fire hazard, and one made more pronounced by the fact that it is wholly contained within an urbanized area. After 2 major fires in 2003, which damaged contiguous residential areas, it is clear that fire management must consist of permanent rather than just the "short-term" impacts referred to in the EA. Ability to control fire in the park present a very real public health and safety issue. | The logic of the EA's analysis that there would be minimal impacts on wildland fire suppression and risk reduction projects is based on "Conservation activities and measures [that] have focused on timing and avoiding occupied locations, limitations that allow fire management goals to be achieved, [and] the alternative section 7 regulations for fire management limit the delays that fire management projects experience to complete consultations" (see Section 3.2.6.2). The Rio Grande Valley State Park is excluded from flycatcher critical habitat designation under the proposed Final Rule. |

Grazing

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|---|-----------------------|---------------------------|---|---|
| 1 | GRAZ-01 | I-099-3 | For years cattle have been pastured along the river [Lower Rio Grande River] on both sides and have continually grazed all new growth down to the ground, thus no willows. | The lower Rio Grande from Elephant Butte Reservoir downstream is not being proposed as critical habitat. Through the middle Rio Grande from near the City of Albuquerque downstream to above Elephant Butte Reservoir, many flycatcher breeding territories exist and at least one of the PCEs persists along that river segment. |
| 2 | GRAZ-02 | I-090-1 | Removing cattle from the riparian area in Pinto Creek seems to be the key factor. | Pinto Creek is to be excluded from flycatcher critical habitat designation in the proposed Final Rule. |
| 3 | GRAZ-03 | G-097-7 | Cattle growers are concerned that the Forest Service and BLM could deny grazing permits along river corridors designated as critical habitat. | As discussed in EA Section 3.2.7.2, the impacts on livestock grazing are expected to be negligible, based on the seven reasons described in that section. |
| 4 | GRAZ-04 | I-077-6 | The USFWS should remove cattle from all riparian areas on public lands from all occupied habitat anywhere. Livestock grazing is limiting recovery of riparian habitat and flycatchers rangewide. Removal is the only way to restore riparian habitat. | While the EA does consider the impacts of grazing on the flycatcher, the removal of cattle from all public lands is beyond the scope of the EA. Cattle removal activities would be analyzed site-specifically through the section 7 process or through site-specific NEPA documents. |
| 5 | GRAZ-05 | I-053-2, I-492-1, B-522-1 | It has been mistakenly said that cattle cause a decrease in bird populations, but the truth is that in many cases, where there are no cattle there may be no birds. Cattle fertilize the land, promoting the green growth needed. Cattle grazing does not adversely affect the flycatcher, but it would be drastically limited if the designation were implemented. Studies have shown that flycatcher and cattle can cohabitate. | Studies of the impacts of livestock grazing on flycatcher habitat are compiled in the flycatcher Recovery Plan, and a brief summary of the impacts are included in Section 3.2.7 of the EA. The impacts of livestock grazing are considered to be an important factor in the degradation of riparian habitats. But, while over-grazing can adversely impact flycatcher habitat, grazing can be properly managed to limit those impacts. |
| 6 | GRAZ-06 | O-150-1 | The National Forest managers have received new directives involving utilization guidelines, which have restricted the Forest Service's ability to manage grazing in the manner they have been able to in the past. They will not be able to react to section 7 consultations in the short term and do the things that are necessary to be done to help improve riparian areas. | Comment noted, however, the commentator does not provide additional information on how the Forest Service's utilization guidelines directives prevent section 7 consultation. |
| 7 | GRAZ-07 | G-467-3 | The information, focusing on grazing operators/permittees on Forest Service and BLM lands, is not relevant given the statewide basis of the figures. The information presented in these tables does not address the magnitude of grazing on private lands in the San Luis Valley that are proposed for critical habitat. | As a result of flycatcher conservation agreements and conservation management actions, the proposed designated critical habitat stream segments in the San Luis Valley will be excluded in the proposed Final Rule. |
| 8 | GRAZ-08 | O-089-1 | Removal of cattle on public lands (BLM and Forest Service) during times when cottonwood and willow seedlings are springing up is recommended to restore flycatcher habitat. | Site-specific mitigation to conserve flycatcher habitat is beyond the scope of the EA. However, both Alternatives A and B conclude that re-initiated and new section 7 site-specific consultations would be conducted within designated flycatcher habitat for livestock grazing activities that could adversely impact flycatcher habitat. |

Grazing

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|----|-----------------------|--|---|--|
| 9 | GRAZ-09 | G-524-1 | The Draft EA and Economic Analysis do not provide a detailed analysis of the proposal's impacts to ranchers and small business. | A detailed Economic Analysis of the impacts of designating critical habitat is beyond the scope of the EA. A detailed Economic Analysis was conducted separately from the EA (Industrial Economics 2005) for impacts from flycatcher critical habitat designation. |
| 10 | GRAZ-10 | B-484-1 | Designation could severely hamper our ability to rotate the cattle from fields during the summer and growing season, hampering operation and profit. | Comment noted. However, the commentor does not provide additional information on how designation could impact cattle rotation. |
| 11 | GRAZ-01 | G-538-2 | There are no studies in the EA that document the direct cow/bird relationship. The environmental consequences of no grazing must be analyzed under NEPA. Therefore the cumulative effect is rendered meaningless. | NEPA requires that a No Action alternative be included as part of the analysis of impacts (40 CFR 1502.14[b]). The No Action alternative means that the proposed activity would not take place (no designation of critical habitat). Thus, the No Action requires analysis for non-designation of critical habitat, not analyses on the cessation of grazing. |
| 12 | GRAZ-01 | G-552-2 G-549-2 G-550-2 G-551-2 | There are no studies in the EA that deal with the direct cow/bird relationship. It is assumed that exclusion of grazing is not only benign, but a "good" action with absolutely no significant consequences. This assumption is false. There are facts that show that "rest" does have negative impacts, very significant ones. The environmental consequences of "rest" (no grazing) must be analyzed under NEPA. | NEPA requires that a No Action alternative be included as part of the analysis of impacts (40 CFR 1502.14[b]). The No Action alternative means that the proposed activity would not take place (no designation of critical habitat). Thus, the No Action requires analysis for non-designation of critical habitat, not analyses on the cessation of grazing. The commentor does not explain or provide a rationale as to why the cowbird relationship should be considered in the analysis of designating flycatcher critical habitat. The EA does describe cowbird parasitism as a natural threat to flycatchers (Section 1.2.1). |
| 16 | GRAZ-09 | G-548-8 | The economic impact to grazing is underestimated and does not address the impact it has on the ranchers to repay their operations even with the slightest AUM cut. Most ranchers have loans they need to repay, given they have a set number of AUMs that help in this matter any cut to their operation has a direct effect on their ability to pay those loans back. | The economic impacts to grazing are addressed in the Economic Analysis. Section 5 of the Economic Analysis examines potential impacts on grazing activities that include exclusion or removal of livestock grazing from riparian areas year-round or during the flycatcher breeding season. In many cases, the estimates include impacts that may be associated with other riparian habitat initiatives and other endangered species. Estimates also include potential impacts on private lands grazing, although the USFWS questions the assumption that private grazing will be affected in the future. The analysis includes a range that includes the potential for all private grazing to be removed from the riparian areas due to flycatcher conservation activities. As a result, Section 5 acknowledges that the loss of 89,000 AUMs is conservative, that is, estimates are more likely to overstate than understate impacts due to flycatcher. Section 5 of the revised Economic Analysis now recognizes the possibility that small reductions in AUMs could affect the viability of some ranching operations. The analysis now places impacts that could occur in the context of the economics of ranching, and points out that "ranchers often have debts to repay that rely on the current number of AUMs grazed." |
| 17 | GRAZ-11 | G-552-8 | USFWS has belittled research that questioned the prudence and impact of livestock exclusion from Southwest streams on native fishes, referring to this work as speculation. Hard data and research exists that brings into serious question the "get the cows off" approach. We have recent peer review publications in hand to substantiate our assertions. For the USFWS to ignore this information shows how biased and unscientific the EA really is. | The commentor did not provide additional data to substantiate the assertion of impacts of livestock exclusions on native fish species, or the adverse impacts of excluding livestock from flycatcher habitat. |

Health and Safety

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|---|-----------------------|----------------------|---|---|
| 1 | HS-01 | G-143-2 | To delay the conversion of this habitat is intolerable because of the threat to human health and safety that is posed by the fires that now consume more than 1,000 acres of bosque every year. | Comment noted. As stated in Section 3.2.6.2 the combination of timing and avoiding occupied habitat, and the alternative section 7 consultations that speed up completion of consultations for fire management projects would limit the delays of achieving fire management goals. The EA also notes that a National Fire Plan and a 10-year Comprehensive Strategy have been implemented, as an interagency commitment, to protect the public, communities, and natural resources. |

Land Management

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|---|-----------------------|----------------------|--|---|
| 1 | LANMA-01 | B-103-1 | The Draft EA underestimates the economic impacts of the designation, as well as the impacts on water management and federal land management. | As stated in EA Sections 3.1.4 and 3.2.10, a separate Economic Analysis was conducted to analyze the economic impacts of designating flycatcher critical habitat. As noted in these sections, the methodology and scope of the Economic Analysis differs from the environmental analysis, and only portions of the Economic Analysis that were germane to the EA were incorporated. |
| 2 | LANMA-02 | O-072-1 | The members of the Yuma Fresh Vegetable Association are concerned for imposed government regulations with regard to whether the government will prevent farmers from engaging in usual farm practices, whether the bureaucrats say plowing fields creates too much dust, whether the government will say farmers can't use pesticides to control the insects, and how much the impositions will cost farmers. | As mentioned in Section 3.2.9.2, the impacts to land use activities, including agriculture, is expected to be minor because of the expectation that few land use activities would be subject to consultation requirements based solely on the presence of flycatcher designated critical habitat, and because impacts to habitat are currently being assessed in section 7 consultations on effects to the subspecies. |
| 3 | LANMA-05 | I-077-6 | The USFWS should prohibit other activities that degrade riparian areas. This includes, among other things, off-road vehicle use and sand mining. | OHV use and sand mining are legitimate activities when permitted under existing agency land management plans. The land management stipulations for these activities within riparian areas are beyond the scope the EA. The potential direct impacts of OHV and sand mining would require project-specific NEPA analysis that is beyond the scope of this EA, and impact analysis as part of individual section 7 consultations. |
| 4 | LANMA-06 | I-077-6 | The USFWS should restore large blocks of riparian habitat to a more contiguous portion of the landscape. This will allow flycatchers and numerous other species to recover to more stable population sizes, which are buffered from systemic and stochastic losses. Larger habitat blocks will likely also improve nest success by allowing flycatchers to more effectively conceal their nests from cowbirds and predators. | The best available data and methodology were used in identifying stream segments used in the EA alternatives for flycatcher conservation in order to meet the project purpose and need. |
| 5 | LANMA-07 | G-100-3 | A major effort to restore and improve the ecological and geomorphic function of the Rio Grande, the Rio Grande Headwaters Restoration Project, is in its planning stages. Critical habitat designation would place an additional burden on these efforts whose goals include the long-term enhancement of riparian habitat. | The commentor did not provide specific information on what additional burdens would be placed on the restoration project, and why. However, the long-term restoration of exotic riparian vegetation to native riparian habitat, especially habitat that relies on dynamic river processes is complex. The USFWS encourages careful and well-planned site-specific restoration projects. |

Land Management

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|----|-----------------------|----------------------|---|---|
| 6 | LANMA-11 | O-113-2 | The USFWS should designate flycatcher critical habitat from Otowi Gage to Albuquerque and from San Marcial to the Headwaters of Elephant Butte. The Draft EA fails to explain why these segments are excluded despite their inclusion in the Recovery Plan. | As stated in EA Section 2.4.2, some stream segments that were included in the Recovery Plan were not included as designated critical habitat in the Proposed Rule because they did not meet the criteria for flycatcher critical habitat. The segments listed in the Recovery Plan did not all have large flycatcher populations and/or small populations with high connectivity. That said, a large section of the Rio Grande, from Albuquerque to immediately above Elephant Butte Reservoir, including San Marcial, was proposed as critical habitat. As a result of protections provided flycatcher habitat by the City of Albuquerque/Rio Grande Valley State Park, Isleta Pueblo, and Sevilleta and Bosque del Apache National Wildlife Refuges, these specific areas were excluded from the final designation. |
| 7 | LANMA-12 | O-113-2 | Refusing to designate migratory habitat, such as feeding sites and migration stopover areas, the USFWS violates the ESA because under the ESA, "critical habitat" means those geographic areas, both occupied and unoccupied by a species, that are essential to its conservation. | The commentor does not identify where in the EA that migratory habitat is not included as critical habitat. As described in the EA (Section 1.3), the ESA defines critical habitat as those "specific areas within the geographic area occupied by a species at the time it is listed ... on which are found those physical and biological features essential to the conservation of the species...." The proposal and Final Rule both described migratory habitat as important. While the target of flycatcher critical habitat was breeding locations, the river segments designated also provide habitat for migrating, dispersing, non-breeding, territorial, and foraging flycatchers, and for the normal succession of those habitats within the designated stream segments. |
| 8 | LANMA-15 | G-467-3 | The Draft EA, Pages 58-59, discusses the number of section 7 consultations from 1994-2004. The Rio Grande Water Conservation District points out the a major effort to restore and improve the ecological and geomorphic function of the Rio Grande, the Rio Grande Headwaters Restoration Projects, is in its planning stages. Several federal partners were involved in the project planning and would likely be involved in implementation activities. Critical habitat designation would place an additional burden on these efforts whose goals include the long-term enhancement of riparian habitat. | The commentor does not provide information on what the additional burdens would be. |
| 9 | LANMA-16 | B-103-1 | (3.2.8.3, Land Management, Alternative B, Page 63) The reference to excluding federal and Tribal lands with HCPs is in error, federal agencies cannot undertake HCPs pursuant to section 10, but must receive incidental take coverage under section 7 of the ESA. | Comment note. The EA text will be revised to correct the text error. |
| 10 | LANMA-17 | G-136-1 | The USFWS should revise the land ownership and management status of Upper Alamo Lake; the EA states that this area is an unnamed artillery range. This land was withdrawn by USACE for dam construction and Arizona Game and Fish Department has management authority for these lands through a license agreement for fish and wildlife purposes. | Comment noted. The EA text has been amended to reflect the change in land status of Alamo Lake. Also, Alamo land will be excluded from designation under the proposed Final Rule. |
| 11 | LANMA-18 | I-085-3 | The expressed delusional desired plans are to eliminate all human uses and all human infrastructure as stated in these drafts. This is an intentional plan to enforce the die-off scam by focused displacement of humans, starvation of humans while advocating for the end of agriculture, ranching, farming in our rural communities and ending all water diversions of any kind. | Critical habitat designation will not influence human uses and future infrastructure development on private lands without a federal nexus. Nowhere in the EA or the Proposed Rule is it proposed or disclosed that the project would result in the elimination of ranching and farming. |
| 12 | LANMA-19 | O-089-1 | To restore flycatcher habitat, ranches must be retired by the voluntary buy-out of these lands along streams where cattle will devour the willow and cottonwood seedlings. To restore flycatcher habitat, the voluntary willing buyer/willing seller effort should continue to be made to retire crop/subsidized crop farmlands where possible. | Restoration of riparian habitat is essential to the conservation and recovery of the flycatcher. Developing methods for reduction, or in some cases elimination, of livestock grazing can be the most cost-effective technique to achieve local or regional restoration goals. Riparian habitat restoration is beyond the scope of the EA, which " ... is to identify and disclose the environmental consequences resulting from ... " re-designating critical habitat for the endangered flycatcher. Riparian habitat restoration projects would be analyzed through site-specific NEPA documents and site-specific section 7 consultations. |

Land Management

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|----|-----------------------|--|--|--|
| 13 | LANMA-20 | B-550-2 B-551-2 B-549-2 B-548-2 | Concerns regarding the recovery planning for flycatcher: it contradicts the Recovery Plan for the Rio Grande silvery minnow. This is one of the major problems with ESA. It is species specific and does not address the entire ecosystem and all other associated species. For example, recovery for silvery minnow calls for elimination of salt cedar and the recovery of flycatcher calls for the protection of salt cedar for nesting. When in fact, elimination of phreatophytes would enhance the habitat for both species by providing more water and more importantly provide for the economic base in the Rio Grande Valley. | The Recovery Plan does not call for the protection of salt cedar, but does include proposed management actions to reduce the spread of exotic riparian plant species and to restore native plant species within flycatcher habitat. It does not call for the elimination of salt cedar, but rather site-specific control (see Recovery Plan, Appendix H). As stated in Section 3.2.4, the EA acknowledges that tamarisk does provide nesting habitat for the subspecies, that overall habitat quality is less than native plant species, and that human-caused alterations of the riparian ecosystem favor exotic species. The commenter's concerns regarding the ESA are beyond the scope of the EA. However, the long-term restoration of exotic riparian vegetation to native riparian habitat, especially habitat that relies on dynamic river processes is complex. The Recovery Team and the USFWS recognize that while restoration efforts are important, not all locations are appropriate candidates for successful restoration. Some areas are not able to support native vegetation. Without appropriate planning, some well-intentioned restoration projects could lead to waste of project dollars, because there is no chance for successful restoration of native vegetation. In a worse case scenario, depending on the location and scale of the project, the effects of eliminating woody riparian vegetation could result in adverse effects to the flycatcher, other wildlife, and river function. Impacts to river function could lead to increased sedimentation and possibly loss of bank stability leading to loss of property. Recent peer-reviewed published literature (Glenn and Nagler 2005; Shafroth et al. 2005) challenges long-held beliefs that removal of tamarisk results in water savings and that tamarisk is inadequate for wildlife. |

Land Use

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|---|-----------------------|----------------------|--|---|
| 1 | LANDU-02 | G-097-7 | A vast majority of the proposed critical habitat along the Virgin River in Utah is private property; the Utah Farm Bureau is very concerned about the impacts this designation will have on private property rights. We are concerned that through the designation of critical habitat, the USFWS may require federal clearance or permit use of land, including agricultural practices, within designated habitat and that the potential impacts on private property rights are not adequately addressed in the analysis. | As stated in EA Section 1.3.1, Endangered Species Act section 7 consultation on private lands designated at critical habitat does not apply unless federal funds, federal permits, or federal authorization are used or required by the landowner. |
| 2 | LANDU-04 | O-030-6 | If ranching and agriculture are made more difficult due to habitat designation, they will become less profitable. As a result more ranchers and farmers would sell their land to developers and build homes. This will reduce habitat and open space. | It is beyond the scope of the EA to speculate on impacts to ranching and agricultural land uses, other than those that result from critical habitat designation. As noted in EA Section 3.2.7.2, there are impacts to grazing that cannot be separated from the impacts caused by critical habitat designation. Impacts such as drought, current and future market trends and fluctuations, and supplemental forage availability contribute to the cumulative impacts to livestock grazing. These potential impacts are speculative, and not "reasonably foreseeable." Also, the potential impacts to ranching and agricultural land uses for flycatcher habitat conservation would require project-specific analysis that is beyond the scope of the EA and would be analyzed as part of individual section 7 consultations. |
| 3 | LANDU-05 | I-054-2 | I intend to run my ranch in an environmentally friendly manner until the day I die. | Comment noted. Thank you. |

Land Use

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|---|-----------------------|----------------------|--|---|
| 4 | LANDU-06 | G-100-3 | The predominantly agricultural and ranching-based economy has co-existed with the flycatcher successfully for over a century in the San Luis Valley. This is demonstrated by the fact that the flycatcher territories in the Valley far exceed the numbers required for recovery. | As a result of flycatcher conservation agreements and conservation management actions, the proposed designated critical habitat stream segments in the San Luis Valley will be excluded in the proposed Final Rule. |
| 5 | LANDU-07 | G-467-3 | The designation of critical habitat would create a disincentive for landowners to participate in projects that could benefit the flycatcher and its habitat and would create an additional burden for NRCS staff as they administer these conservation-oriented programs. | Critical habitat designation is mandated by the ESA and court order and the NRCS is legally bound to conduct its activities in accordance with both. |
| 6 | LANDU-08 | O-060-2 | Areas currently not considered for designation that are occupied, feeding areas, migratory stopovers, and potential habitat that is limited due to ongoing effects of grazing or water used that reduce key wetland and riparian habitat, would greatly benefit from designation and the resulting consultation leading to the protection of the flycatcher. | Section 3(5)(c) of the ESA states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species." In this instance, it is not the determination of the USFWS that all areas that can be occupied or are presently within the geographic area of the flycatcher are necessary for conservation of the bird, and that all proposed and subsequently designated critical habitat within its present range is adequate. |

Process

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|---|-----------------------|--|--|---|
| 1 | PRO-01 | I-124-0, G-501-1 | Is there a number I can call to verify that you received my comments? Request for response. | Emailed commentors received an emailed response that their comments were received. Commentors who mailed their letters can call the Arizona Ecological Services Office, Phoenix, Arizona at 602-242-0210 to verify that their comments were received. |
| 2 | PRO-02 | I-499-I-120-3, I-119-3, I-498-8, I-499-8 | Please let me know of the exact 10-day period in which you intend to re-open the comment period. When is the 10-day period in June? Request for date when comment period would be reopened (cited Regulatory Enforcement Fairness Act of 1196). | The comment period was re-opened from July 7, 2005 until July 18, 2005 and was announced in the federal register. |
| 3 | PRO-03 | G-097-7 | The ESA and the USFWS's own rules require the agency to provide at least 60 days for the public to comment on economic data that the agency relies on for any final critical habitat rule, availability of the Draft Economic Analysis and Draft EA for public review and comment was published in the federal register on April 28, 2005 with a comment sue date of May 31, 2005, because of the possible economic impacts of the Proposed Rule on farmers and ranchers and other small business and local communities, Utah Farm Bureau urges USFWS to allow full 60-day review of the Economic Analysis and EA. | The USFWS extended the EA comment period beyond the 30-day period to allow commentors additional time to prepare and submit comments on the EA. |
| 4 | PRO-04 | G-097-7 | (Citing EO 13272) Requires federal agencies to implement policies protecting small business when proposing new rules and regulations; the Regulatory Flexibility Act (RFA) requires federal agencies to consider economic impact that a Proposed Rulemaking will have on small entities, Utah Farm Bureau believes that small farms and ranches that will be affected by the Proposed Rule fall under these requirements and an initial regulatory flexibility analysis (IRFA) is required. Such analysis should be published in the Federal Register for public comment. | Appendix A of the Economic Analysis considers the extent to which the analytic results presented in the main body of the Economic Analysis reflect potential future impacts to small businesses. Appendix A, Small Business Impacts, has been revised to provide additional details about the estimated location of potential impacts by county as well as by water user, where appropriate. The revised Economic Analysis presents impacts on grazing activities organized by county and on a per ranch basis in Appendix A. |
| 5 | PRO-05 | G-117-1 | The USFWS's present system for designation of critical habitat is driven by litigation rather than biology, and limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic cost. | Comment noted. Thank you. |

Process

| | Resource / Issue Code | Source / Region Code | Comment | Response |
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| 6 | PRO-05 | I-491-3 | Please consider protecting other flycatcher habitats in California, Arizona, and New Mexico. I find it dishonest and not scientific trying to acquire a larger percentage of habitat in the San Luis Valley relative to other states. Base the decisions on biology and ecology and not risk assessment and law suit. If habitats have been lost in California, Arizona, and New Mexico, hold them accountable. | Comment noted. However, as a result of flycatcher conservation agreements and conservation management actions, the proposed designated critical habitat stream segments in the San Luis Valley will be excluded in the proposed Final Rule. |
| 7 | PRO-05 | I-492-1 | USFWS's present system for designating critical habitat is driven by litigation rather than biology. | Comment noted. As stated in the EA, the basis for critical habitat alternative development was essential habitat criteria (Section 1.3.3), Recovery Plan potential stream segments, and input from public and agency scoping comments. The selection of stream segments for designation was refined as described under Methodology (Section 3.1.4) using the latest geospatial data and imagery. The commentor is incorrect: litigation and a subsequent directive by the District Court for New Mexico required the USFWS to issue a Proposed and Final Rule on flycatcher critical habitat designation; however, the method (or "system") for determining and defining critical habitat was based on biology. |
| 8 | PRO-06 | G-041-1, T-133-1, B-103-1, G-031-1, G-065-6, G-094-4, G-100-3 | The potential direct and cumulative impacts of designating critical habitat along all of the major streams and rivers of the southwestern U.S. will be significant and require a full-blown EIS that analyzes these impacts in detail. The USFWS should prepare a full EIS under NEPA in order to adequately analyze the real effects of the proposed designation of critical habitat. The USFWS must ultimately prepare a EIS for designation; it is a significant federal action given its geographic scope and uniqueness, controversial nature, uncertainties, types and sizes of economic activities potentially affected, and involvement of species listed under the ESA. | An EA was undertaken because the USFWS did not anticipate significant environmental impacts from flycatcher critical habitat designation as a result of the subsequent scoping content analysis and consideration of issues. The EA, combined with an approximately 68% reduction in acreage designated as flycatcher critical habitat due to 1) exclusions, that include approved flycatcher management plans, HCPs, partnerships, etc., 2) acreage exempted from military lands, and 3) acreage removed following re-evaluation of proposed areas, helped to confirm that there would be no significant impacts to the environment due to flycatcher critical habitat designation. |
| 9 | PRO-06 | G-154-2 | The EA claims no direct impacts on the environment, but the analysis under NEPA requires a "hard look" at direct, indirect and cumulative impacts, and when looking at all of those, we feel that significance raises its ugly head and a full blown EIS is required. | An EA was undertaken because the USFWS did not anticipate significant environmental impacts from flycatcher critical habitat designation as a result of the subsequent scoping content analysis and consideration of issues. The EA, combined with an approximately 68% reduction in acreage designated as flycatcher critical habitat due to 1) exclusions, that include approved flycatcher management plans, HCPs, partnerships, etc., 2) acreage exempted from military lands, and 3) acreage removed following re-evaluation of proposed areas, helped to confirm that there would be no significant impacts to the environment due to flycatcher critical habitat designation. |
| 10 | PRO-06 | O-113-2 | In the Draft EA, the USFWS did not adequately provide sufficient evidence and analysis for determining whether to prepare an EIS. The inadequate descriptions on the affected environment make it very difficult for the reader to understand what constitutes the baseline and to believe that the USFWS engaged in adequate research and analysis to reach its conclusions. | Comment noted. The EA Section 3.1.4 describes in detail the methodology used to analyze the impacts on those resources selected during the public and agency scoping process. |
| 11 | PRO-06 | G-467-3 | An EIS is required because of significant adverse impacts to major resources. Although USFWS commissioned a Draft Economic Analysis for the proposed critical habitat designation, it must ultimately prepare an EIS for designation of flycatcher habitat because this rule-making is a "significant" federal action given its geographic scope and uniqueness, controversial nature, uncertainties, types and sizes of economic activities potentially affected, and involvement of species listed under the ESA. The Tenth Circuit has determined that the USFWS must usually prepare and EIS when designating critical habitat -- exceptions "will be unusually rare." (Citing Middle Rio Grande Conservancy Dist. 206 F. Supp. 2d 1193, Catron County). | An EA was undertaken because the USFWS did not anticipate significant environmental impacts from flycatcher critical habitat designation. The EA, combined with acreage excluded due to approved flycatcher management plans, HCPs, partnerships, etc.; acreage exempted from military lands, and acreage removed following re-evaluation of proposed areas, confirmed that there would be no significant impacts due to flycatcher critical habitat designation. |
| 12 | PRO-06 | G-467-3 | Given the significant adverse impacts of critical habitat designation on socioeconomic resources, water management and land use, USFWS must proceed expeditiously to prepare an EIS. | An EA was undertaken because the USFWS did not anticipate significant environmental impacts from flycatcher critical habitat designation. The EA, combined with acreage excluded due to approved flycatcher management plans, HCPs, partnerships, etc.; acreage exempted from military lands, and acreage removed following re-evaluation of proposed areas, confirmed that there would be no significant impacts due to flycatcher critical habitat designation. |

Process

| | Resource / Issue Code | Source / Region Code | Comment | Response |
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| 13 | PRO-06 | G-467-3 | The USFWS must give full consideration to the issues raised, including allowance of sufficient time for USFWS to prepare and EIS in order to fully consider alternatives, to conduct the environmental analysis, and to consider public input. | Under NEPA, an EA is conducted to determine if impacts are significant. If, after publication and distribution of the Final EA, the lead agency determines in the Decision Notice that impacts would be significant, then an EIS is considered (40 CFR 1505.2). |
| 14 | PRO-06 | G-521-1 | The size of the area affected, miles of water affected, and the recreation, livestock, grazing, and hydropower resources affected in six states is a "major federal action." It needs to be an EIS. | An EA was undertaken because the USFWS did not anticipate significant environmental impacts from flycatcher critical habitat designation as a result of the subsequent scoping content analysis and consideration of issues. The EA, combined with an approximately 68% reduction in acreage designated as flycatcher critical habitat due to 1) exclusions, that include approved flycatcher management plans, HCPs, partnerships, etc., 2) acreage exempted from military lands, and 3) acreage removed following re-evaluation of proposed areas, helped to confirm that there would be no significant impacts to the environment due to flycatcher critical habitat designation. |
| 15 | PRO-06 | G-041-1, T-133-1, B-103-1, G-031-1, G-065-6, G-094-4, G-100-3 | The use of an EA for an action as major as proposed critical habitat on approximately 376,000 acres across six states is clearly an abuse of the environmental review process under NEPA and an abuse of due process under the Administrative Procedures Act. We request that an EIS be prepared and that Graham County be offered the opportunity to participate, as either a cooperating agency or a member of the Interdisciplinary Team. The USFWS failed to adequately evaluate impacts to the human environment. The Proposed Rule to designate critical habitat for the flycatcher is a major federal action leading to significant impacts to the human environment. Consequently, the USFWS should prepare an EIS now. The impact of delay caused by additional section 7 consultations is probably the most significant impact that will result from the imposition of critical habitat for the flycatcher. Yet, this impact was not evaluated. The significant impacts from delay necessitate an EIS. | An EA was undertaken because the USFWS did not anticipate significant environmental impacts from flycatcher critical habitat designation as a result of the subsequent scoping content analysis and consideration of issues. The EA, combined with an approximately 68% reduction in acreage designated as flycatcher critical habitat due to 1) exclusions, that include approved flycatcher management plans, HCPs, partnerships, etc., 2) acreage exempted from military lands, and 3) acreage removed following re-evaluation of proposed areas, helped to confirm that there would be no significant impacts due to flycatcher critical habitat designation. |
| 16 | PRO-06 | G-041-1, T-133-1, B-103-1, G-031-1, G-065-6, G-094-4, G-100-3 | The City of Phoenix has previously commented during the scoping process about the need for the USFWS to prepare an EIS instead of an EA, because of the magnitude of potential impacts to be analyzed and the large geographic scope of the proposed designation. The Proposed Rule and the Economic Analysis confirm the City's expectations that the magnitude of the potential impacts to the environment would be very large. The large financial impacts alone justify the creation of an EIS. The EA is insufficient and an EIS is required because of significant adverse impacts to major resources. An EIS is needed for designation of flycatcher critical habitat because this rule-making is a "significant" federal action given its geographic scope and uniqueness, controversial nature, uncertainties, types and sizes of economic activities potentially affected and involvement of species listed under the ESA. | Comment noted. Significance has a very specific definition under NEPA and is associated with both the context and intensity of an impact. The purpose of the EA is to determine significance of potential impacts. An EA was undertaken because the USFWS did not anticipate significant environmental impacts from flycatcher critical habitat designation as a result of the subsequent scoping content analysis and consideration of issues. The EA, combined with an approximately 68% reduction in acreage designated as flycatcher critical habitat due to 1) exclusions, that include approved flycatcher management plans, HCPs, partnerships, etc., 2) acreage exempted from military lands, and 3) acreage removed following re-evaluation of proposed areas, helped to confirm that there would be no significant impacts to the environment due to flycatcher critical habitat designation. |
| 17 | PRO-07 | G-007-6, I-157-1 | As the designation of any lands within Kern County as critical habitat for the flycatcher could potentially have significant impacts upon the Kern River Watermaster and the other agencies we represent, please provide us with direct notice of any draft economic analyses, EAs, and future notices regarding draft critical habitat designation. (Information request that is relevant to San Simon Area that may be impact to designation.) | Comment noted. Portions of the Kern River are designated as flycatcher critical habitat in the proposed Final Rule; however, South Fork Kern Wildlife Area (including upper Lake Isabella), Sprague Ranch, and Hafenfeld Ranch are being excluded from critical habitat due to protections provided to flycatcher habitat. |
| 18 | PRO-08 | B-069-1 | The maps included in the rule and on the website do not provide adequate notice to landowners of whether their land is within proposed critical habitat. Without clear demarcation of the boundary along the floodplains of the Gila River, we cannot identify the status of our lands, and as a result cannot quantify the true economic impacts of the proposal. The scale on the website do not provide a clear boundary of the limits of critical habitat. The preamble to the Proposed Rule indicates the boundary based on a number of different reference sources but the maps do not indicate which reference was used to draw the actual line for a particular stream segment. The most salient example of lack of notice to landowners is the description on USFWS website (citing website) "the designated critical habitat displayed in this map does not represent all the critical habitat designated ..." | Comments regarding the Proposed Rule mapping website are beyond the scope of the EA. |

Process

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|----|-----------------------|---|---|--|
| 19 | PRO-09 | B-078-1, I-064-7, I-044-1, I-039-1, G-094-4 | Phelps Dodge appreciates and supports USFWS to reopen the comment period; the additional time provided by re-opening will be helpful in completing a number of assessments underway. A 30-day extension to the comment period for the Draft Economic Analysis and Draft EA is requested in order to give individuals and local entities to review the documents and develop meaningful comments. I request a minimum 120-day extension to the comment period for the Draft Economic Analysis and Draft EA for the Proposed Designation of Critical Habitat for the flycatcher. The 22-day response period subjects affected landowners to double or triple the necessary ordinary consulting fees due to the sudden demand on these services. It is extremely costly for landowners, ridiculously unjust and plainly inconsiderate to put them under such an unforgiving time constraint. | Comment noted. The end of the comment period for the EA was extended from May 31, 2005 to July 18, 2005. However, the comment period for the EA has now been closed. |
| 20 | PRO-09 | G-115-1 | USFWS should extend the public comment period because so little time was provided to review the Economic Analysis and EA. | Comment noted. The end of the comment period for the EA was extended from May 31, 2005 to July 18, 2005. However, the comment period for the EA has now been closed. |
| 21 | PRO-09 | B-078-1, I-064-7, I-044-1, I-039-1G-094-4 | Twenty-two days are not sufficient time for individuals or state and local governments to review the documents and develop good and meaningful comments. A 30-day extension to the comment period for the Draft Economic Analysis and EA for flycatcher designation is requested. The Colorado River Commission of Nevada is disappointed to be granted only one month for comment on the Draft Economic Analysis and Draft EA. The allotted public comment period was not adequate for thorough review and economic modeling back-checks that could be useful to the USFWS, and we respectfully request that the comment period be extended. | Comment noted. The end of the comment period for the EA was extended from May 31, 2005 to July 18, 2005. However, the comment period for the EA has now been closed. |
| 22 | PRO-10 | B-107-08, G-109-1 | The USFWS should consider using more rigorous biological and economic methods, and maintaining greater fidelity to the language and intent of the ESA. The impact evaluation provided in the EA is inadequate: NEPA requires appropriate data collection and methodology be used to evaluate impacts. The Rule, Analysis and EA readily admit many types of data an modeling were unavailable in preparing the designated critical habitat. As a result, additional study is warranted before the designated critical habitat is finalized. | Comment noted. According to CEQ regulations (40 CFR 1502.22), the EA clearly states when data may be incomplete or unavailable for analysis. Given the geographic extent of the proposed critical habitat and the nature of the Proposed Rule, collection of all these data would be cost and time prohibitive. Existing data are adequate to provide a "hard look" at potential impacts and ensure an informed decision. |
| 23 | PRO-10 | O-060-2 | The methodology used to determine critical habitat did not focus on areas for the flycatcher to expand. | Section 3.1.4 Methodology states that the stream segments selected for designation as flycatcher critical habitat were selected because "they possess riparian habitat essential for breeding, non-breeding, territorial, dispersing, and migrating flycatchers." These habitats are defined in EA Section 1.3.2 PCEs. |
| 24 | PRO-11 | B-107-08 | Non-federal lands are already making an enormous contribution to protect clean water and upland riparian areas for numerous listed and unlisted aquatic species. | Comment noted. Thank you. |
| 25 | PRO-13 | I-001-2, G-067-6, G-109-1 | If the USFWS did not notify major players (Forest Service) and directly affected people, how can the agency meet the requirement of public participation? The Board of Supervisors in Inyo County feels that there has been a lack of public notices throughout the process. The proposed action was only published in the Federal Register and requests of the USFWS by the Board for a Public Hearing in the Owens Valley to give citizens the opportunity to express their concerns were denied. The Board requests the USFWS notify any future public hearings in the Owens Valley in the local newspaper and provide direct notice of future actions related to this project via mail to the County of Inyo and any landowners/lessees potentially affected by the project. The impact evaluation provided in the EA is inadequate: NEPA requires adequate public involvement. Considering the potential for substantial impact, additional public meeting/hearing locations were warranted. Notably, only two locations were offered in Arizona. This was not sufficient considering the highly dispersed nature of the designated critical habitat areas and economic cross-section of communities within those areas. Additional opportunities for public comment should be provided. | Comment noted. Stream segments along the Owens River will be excluded from designated flycatcher critical habitat in the proposed Final Rule. The USFWS communicated with local officials with respect to critical habitat. A meeting and coordination (at the request of the LADWP) with the appropriate officials and local citizens occurred in Bishop, California. LADWP established a MOU and a flycatcher conservation strategy (developed with the USFWS). As a result of those protections, the USFWS subsequently excluded this area from critical habitat. |

Process

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|----|-----------------------|----------------------|--|--|
| 26 | PRO-13 | G-115-1 | USFWS should hold a public hearing in the Stafford area to solicit public comments from the citizens who are most affected by the designation. | Comment noted. A brief summary of the scoping process and issues is included in the EA (Section 1.4). As stated in the flycatcher Public Scoping Report (2004), 8 scoping meetings were held in key communities (as determined by the USFWS) within the 6 states where critical habitat is proposed for designation. Meetings were announced at least two weeks prior to their scheduled dates. In addition, USFWS staff contacted or visited key community leaders to inform and invite attendance. At the request of officials in Safford, the USFWS provided an informational meeting to citizens and local officials. |
| 27 | PRO-13 | G-116-6 | The Department of Water and Power for the City of Los Angeles was not notified of the series of public scoping meetings that were held in 2004. | Comment noted. A brief summary of the scoping process and issues is included in the EA (Section 1.4). As stated in the flycatcher Public Scoping Report (2004), 8 scoping meetings were held in key communities (as determined by the USFWS) within the 6 states where critical habitat is proposed for designation. Meetings were announced at least two weeks prior to their scheduled dates. In addition, USFWS staff contacted or visited key community leaders to inform and invite attendance. The USFWS coordinated, at the request of LADWP, an informational meeting where the Ventura and Arizona Ecological Services offices met with locals in Bishop, California. |
| 28 | PRO-13 | G-142-6 | The Department of Water and Power for the City of Los Angeles requested a public meeting be held in Bishop or Owens Valley, and we really haven't really received a response to that. | Comment noted. A brief summary of the scoping process and issues is included in the EA (Section 1.4). As stated in the flycatcher Public Scoping Report (2004), 8 scoping meetings were held in key communities (as determined by the USFWS) within the 6 states where critical habitat is proposed for designation. Meetings were announced at least two weeks prior to their scheduled dates. In addition, USFWS staff contacted or visited key community leaders to inform and invite attendance. The USFWS coordinated, at the request of LADWP, an informational meeting where the Ventura and Arizona Ecological Services offices met with locals in Bishop, California. |
| 29 | PRO-13 | G-481-2 | Local landowners did not have a good opportunity to comment, meetings in Silver City were advertised in Silver City papers only, very few people were aware of the meetings. | Comment noted. A brief summary of the scoping process and issues is included in the EA (Section 1.4). As stated in the flycatcher Public Scoping Report (2004), 8 scoping meetings were held in key communities (as determined by the USFWS) within the 6 states where critical habitat is proposed for designation. Meetings were announced at least two weeks prior to their scheduled dates. In addition, USFWS staff contacted or visited key community leaders to inform and invite attendance. |
| 30 | PRO-14 | I-085-3 | The Draft Proposed Rule, Draft Economic Analysis and Draft EA for the flycatcher and all subspecies, all of it is fatally flawed. These documents are riddled with words such as supposed, potential, would, should, could and other hypothetical words. Where is the finding of facts and law for such verbiage when the entire and exclusive use appears to be for the benefit of ending cultures, customs and traditions of any given area listed in these proposals? | Comment noted. The commentor does not provide specific information demonstrating that the analyses are fatally flawed or specific recommendations to rectify the analyses. The use of "would" and similar words is used to set a conditional subjunctive mood in describing the action alternatives, associated mitigation, and environmental effects. It is common practice in NEPA documentation today. |

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| 31 | PRO-15 | G-065-6 | Based upon the Draft EA prepared for the Proposed Rule to designate critical habitat for the flycatcher, the USFWS has not taken a "hard look" at the consequences of its actions, has not discussed a reasonable range of alternatives, and has failed to adequately discuss cumulative impacts. With respect to water management, exotic vegetative control, fire management and land use, the Draft EA glosses over impacts from additional section 7 consultations. Essentially, the Draft EA concludes impacts are expected to be minimal simply because very few additional section 7 consultations are expected to occur. However, there is no discussion or analysis of what are the "minimal impacts." The USFWS must take a "hard look" at cumulative impacts whether an EIS or EA is prepared. A cumulative effects analysis must identify and analyze past projects so the decision maker can make an informed decision. The USFWS failed to identify other past critical habitat designations that are used in its cumulative effects analysis. Nor does the USFWS examine the cumulative effects of its proposed designation along with foreseeable future designations of critical habitat of other species. | In reference to the "hard look doctrine," case law has established that if the environmental document provides good faith analysis and sufficient information to allow a firm basis for weighing the risks and benefits of a proposed action, the court will find the analysis to be sufficient (<i>County of Suffolk v. Secretary of the Interior</i> , 562 F.2d 1368 (2nd Cir. 1977), cert. denied, 434 U.S. 1064 (1978)). The commentor does not provide specific information to improve analyses or other areas where deficiencies are claimed to occur in the EA. |
| 32 | PRO-16 | G-070-1 | On Page 10, first paragraph of the EA, Lake Mead should be included on the list of lakes after the sentence "The three areas where lakebeds were included as proposed critical habitat have been identified using maximum pool elevation ..." | Lake Mead, as a result of implementing the Lower Colorado River Multi-Species Conservation Program, is excluded from critical habitat designation under the proposed Final Rule. The lower Colorado River is excluded from flycatcher critical habitat designation as result of LCR MSCP management, Tribal management, and National Wildlife Refuge management. The LCR MSCP was formed to protect critical habitat for endangered fish species, will conserve flycatcher habitat, and accommodate current water diversions and power production (see EA Section 3.2.8). |
| 33 | PRO-17 | G-070-1 | On Page 23, Table 2.6 of the EA, the definition of the "Water Resources" category is not clear. It is not clear that the description of effects is accurate with regard to management of water resources. The designation of critical habitat within the pool space of reservoirs thus results in greater potential burden on managers of reservoirs than presence alone, or not, of the species. The statement under Alternative A, "Impacts to ongoing water management projects similar to No Action, with minor impacts to proposed water management projects" and the statement under No Action, "Impacts to water resources would not change from existing trends and conditions" thus understate effects from the designation of critical habitat for water management projects. | The commentor is incorrect. The presence of flycatchers within the pool space of reservoirs will trigger section 7 consultations if federal actions will potentially impact the subspecies habitat within the pool space. |
| 34 | PRO-18 | G-094-4 | The methods used to define the spatial extent of the critical habitat designation are not consistent between the Rule, Analysis and EA. This is critical to an evaluation of the appropriateness of the critical habitat designation. An inconsistency between the Rule, Analysis and EA is the EA evaluates "... resources within and along the riparian corridors of the recovery area ..." yet points out the critical habitat designation does not match the areas identified in the Recovery Plan (EA, Page 37). This introduces confusion as to the study boundaries of the EA, and the relationship between the critical habitat designation and Recovery Plan. | Comment noted. The EA text will be amended to clarify the areas of EA analysis. |
| 35 | PRO-19 | G-094-4 | An inconsistency between the Rule, Analysis, and EA is that several conclusions reached in the EA appear to contradict, weaken or even negate statements in the Rule and/or the Analysis: We do not agree with the EA's conclusion that "for many listed species, critical habitat designation would not be expected to materially affect the number or nature of consultations ..." (EA, Page 31). Instead, as discussed in the Rule and Analysis, the critical habitat designation includes areas that are known to be occupied, thereby requiring section 7 consultations in areas where they are not currently required. | The comment is noted, but the commentor incorrectly interprets the statement made in Section 3.1.2 regarding consultations in flycatcher habitat. A methodology criterion for stream segments proposed for designation as critical habitat was that it be areas with large breeding populations or smaller breeding in close proximity that equaled a large breeding population, which also includes habitat occupied by non-breeding, territorial, dispersing, and migrating flycatchers (EA Section 3.1.4). As stated in the EA, the expectation that critical habitat designation would not "materially affect the number or nature of consultations" is based on the likelihood that, even if the flycatcher habitat were not designated as critical habitat, consultations under ESA section 7 for actions that could potentially affect that habitat would still be required because they are specific areas within the geographic area occupied by the endangered flycatcher (see Section 3.1.2). |

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| 36 | PRO-20 | G-094-4, G-109-1 | An inconsistency between the Rule, Analysis and EA is that several conclusions reached in the EA appear to contradict, weaken or even negate statements in the Rule and/or the Analysis. The EA states that " ... it is not possible to predict with any certainty or detail what the effects of designation would be: because actions an proposals cannot be predicted, and " ... past consultations provide predictive value of future effects" (EA, Page 32). However, the Analysis identifies expected actions and proposals and uses the actions to reach conclusions, albeit with caveats and assumptions. | As stated in EA Sections 3.1.4 and 3.2.10, a separate Economic Analysis was conducted to analyze the economic impacts of designating flycatcher critical habitat. As noted in these sections, the methodology and scope of the Economic Analysis differs from the environmental analysis, with differing analytical conclusions. |
| 37 | PRO-21 | G-094-4, G-109-1 | An inconsistency between the Rule, Analysis and EA is that several conclusions reached in the EA appear to contradict, weaken or even negate statements in the Rule and/or Analysis. The Rule and Analysis note that, in general, critical habitat has not been proven to markedly improve species protection. However, the EA concludes that increased section 7 consultations, due to critical habitat designation, would likely have " ... beneficial conservation-related effects to flycatcher PCEs ... " (EA, Page 37). Conclusions in the EA appear to contradict, weaken, or even negate statements in the Rule and/or Analysis. ADOT does not agree with the EA conclusion that "for many listed species, critical habitat designation would not be expected to materially affect the number or nature of consultations ... " Instead, as discussed in the Rule and Analysis, the designated critical habitat includes areas that are not known to be occupied, thereby requiring section 7 consultations in areas where they are not currently required. | The comment is noted, but the commentor incorrectly interprets the statement made in Section 3.1.2 regarding consultations in occupied flycatcher habitat. A methodology criterion for stream segments proposed for designation as critical habitat was that it be occupied habitat, which included nesting, non-nesting, territorial, dispersing, and migrating flycatchers (EA Section 3.1.4). As stated in the EA, the expectation that critical habitat designation would not "materially affect the number or nature of consultations" is based on the likelihood that, even if the occupied habitat were not designated as critical habitat, consultations under ESA section 7 for actions that could potentially affect that habitat would still be required because it is the occupied habitat of the endangered flycatcher subspecies (see Section 3.1.2). |
| 38 | PRO-22 | G-094-4 | An inconsistency between the Rule, Analysis and EA is that several conclusions reached in the EA appear to contradict, weaken or even negate statements in the Rule and/or the Analysis. As concluded in the EA, "the impacts of water management operation and maintenance activities under Alternative A would be similar to those described under No Action Alternative because of the expectation that few projects and operation would be subject to consultation based solely on the presence of designated critical habitat ... due to the scale and scope of these undertakings..." (EA, Page 42). Also, according to the EA, "effects to future water management activities and water resources from critical habitat designation are expected to be minor and not constrain any intended water management activities ... " (EA, Page 43). We feel these EA conclusions undermine the purpose and the findings of the analysis and feel that the conclusion considerably weakened the analysis. | As stated in EA Sections 3.1.4 and 3.2.10, a separate Economic Analysis was conducted to analyze the economic impacts of designating flycatcher critical habitat. As noted in these sections, the methodology and scope of the Economic Analysis differs from the environmental analysis. |
| 39 | PRO-23 | G-094-4 | An inconsistency between the Rule, Analysis and EA is that several conclusions reached in the EA appear to contradict, weaken or even negate statements in the Rule and/or the Analysis. Because the Analysis was co-extensive, while the EA focuses on critical habitat designation impacts, the two documents are not parallel. The EA makes specific, seemingly unfounded critical habitat designation impact conclusions that the Analysis does not/cannot make. We are concerned that this approach has de-emphasized the severity of impacts that could result from the critical habitat designation. | As stated in EA Sections 3.1.4 and 3.2.10, a separate Economic Analysis was conducted to analyze the economic impacts of designating flycatcher critical habitat. As noted in these sections, the methodology and scope of the Economic Analysis differs from the environmental analysis. |
| 40 | PRO-24 | G-094-4, G-109-1 | The level of inconsistency and frequency of contradiction between the Rule, Analysis and EA suggests that decision makers did not take economic impacts into account when proposing critical habitat designation. The level of inconsistency and frequency of contradiction between the Rule, Analysis and EA indicate that economic impacts were not taken into account by decision makers when proposing the designated critical habitat. | As stated in EA Sections 3.1.4 and 3.2.10, a separate Economic Analysis was conducted to analyze the economic impacts of designating flycatcher critical habitat. As noted in these sections, the methodology and scope of the Economic Analysis differs from the environmental analysis. |
| 41 | PRO-25 | G-100-3 | The EA makes errors in assumptions, methods and analysis. The fundamental flaw in the Draft EA is use of the listing "baseline" approach to discount environmental effects from critical habitat designation, which was rejected by the Tenth Circuit Court for economic analyses. While we do not suggest that the EA must address co-extensive listing effects, there is not basis to attribute most of the effects of critical habitat designation to listing, particularly given the recent invalidation by the courts of the USFWS interpretation of adverse modification. Using this baseline approach, the EA suggests that most impacts resulting from designation would be "negligible or minor." | The commentor does not provide any explanation of the "baseline" approach of analysis. The EA does use the section 7 consultation history for each resource to describe the affected environment. Also, as stated in the Methodology Section of the EA (3.1.4), "the impact assessments consider the consultation history for the subspecies, the location and kind of projects addressed in those consultations, and the resources and activities addressed." |
| 42 | PRO-26 | G-100-3 | A major flaw in the EA is the use of circular logic to minimize impacts. | Comment noted. Thank you. |

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| 43 | PRO-26 | G-467-3 | The EA is flawed because of the use of circular logic to minimize impacts. In the EA, the effects to water use are "expected to be minor" because of mitigation incorporated into the projects, but the significant impacts of the mitigation itself (e.g., cost and delay) is not considered as part of the analysis. | Site-specific mitigation for water resource projects and activities is beyond the scope of the EA, which is to analyze the impacts of designating critical habitat for the flycatcher. As stated in the EA Section 3.1.2, "designation of critical habitat does not have any inherent effects on the environment, except through the section 7 consultation process. This is because critical habitat designation does not impose broad rules or restrictions on land use, nor does it automatically prohibit any land use activity." |
| 44 | PRO-28 | G-100-3 | The Tables 3.5 and 3.6 focus solely on the number of cattle grazing operators/permittees on Forest Service and BLM lands. The information is not relevant, given the state-wide basis of the figures. In particular, the information presented in these tables does not address the magnitude of grazing on private lands in the San Luis Valley that are proposed for critical habitat. | As a result of flycatcher conservation agreements and conservation management actions, the proposed designated critical habitat stream segments in the San Luis Valley will be excluded in the proposed Final Rule. |
| 45 | PRO-30 | G-109-1 | Several contradictions and inconsistencies between Rule, Analysis and the EA were identified, as follows: the methods used to define the spatial extent of the designated critical habitat are not inconsistent between the Rule, Analysis and EA. This is critical to an evaluation of appropriateness of the designated critical habitat. The EA evaluates "... resources within and along the riparian corridors of the recovery area ..." yet points out that the designated critical habitat does not match the areas identified in the Recovery Plan (EA, Page 37). This introduces confusion as to the study boundaries of the EA and the relationship between the designated critical habitat and the Recovery Plan. The Rule and Analysis note that, in general, critical habitat has not been proven to markedly improve species protection. However, the EA concludes that increased section 7 consultations, due to the designated critical habitat would likely have "... beneficial conservation-related effects to flycatcher PCEs ..." (EA, Page 37). | As stated in EA Sections 3.1.4 and 3.2.10, a separate Economic Analysis was conducted to analyze the economic impacts of designating flycatcher critical habitat. As noted in these sections, the methodology and scope of the Economic Analysis differs from the environmental analysis. The EA will be amended to clarify the areas of analysis, i.e., those areas that lie within designated critical habitat stream segment boundaries. |
| 46 | PRO-31 | G-109-1 | The No Action conclusion for vegetation in the EA should point out that riparian vegetation (namely PCEs) would not be afforded additional protection under this alternative. | The EA defines the No Action Alternative in Section 2.2.1. The analysis for vegetation under the No Action alternative states the impacts to vegetation would not change from current conditions, and that no section 7 consultations would be conducted pursuant to the critical habitat provisions of the ESA. |
| 47 | PRO-32 | G-109-1 | The EA should include an introductory section providing negative declarations or other explanations for resources not evaluated. | NEPA requires that the Lead Agency (USFWS) identify "at an early stage the significant environmental issues deserving of study and de-emphasizing insignificant issues" (40 CFR 1501.1[d]). Thus, the EA has documented, analyzed and described those resources and issues, considered during public and agency scoping, potentially impacted or affected by the proposed action and alternatives. |
| 48 | PRO-33 | G-142-6 | The Owens River Management Unit was not included in the original habitat designation that came out and when it was later included it was a shock. We felt as if there was not enough communications between agencies prior to the designation. | The Owens River stream segments will be excluded from critical habitat designation in the proposed Final Rule. Exclusions were based on the establishment of a MOU and implementation of a flycatcher conservation strategy. As a result of those protections, The USFWS excluded the Owens River segments from designation as critical habitat. |
| 49 | PRO-34 | O-113-2 | The USFWS did not adequately explain the affected environment/environmental baseline and thereby, disregarded key information. In the EA it is very difficult to understand what constitutes the affected environment and the descriptions do not give any sufficient indication of what the conditions are in the proposed areas. | Chapter 3 of the EA explains the affected environment, which are riparian areas along stream segments within the states of California, Nevada, Arizona, Colorado, Utah, and New Mexico. A broad overview of the affected environment is appropriate here because this is a programmatic EA. Detailed descriptions of the affected environment along every stream segment would be provided by site-specific NEPA procedures associated with future proposed federal actions in critical habitat. Detailed maps of each designated stream segment are available online and through each USFWS state office. |

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| 50 | PRO-34 | G-467-3 | A fundamental flaw in the Draft EA is the use of the listing "baseline" approach to discount environmental effects from critical habitat designation, which was rejected by the Tenth Circuit for economic analyses. There is no basis to attribute most of the effects from critical habitat designation to listing, particularly given the recent invalidation by the courts of the USFWS interpretation of adverse modification. As acknowledged in the EA, evaluation of adverse modification involves a different standard than jeopardy under recent case law (Gifford Pinchot, 378 F.3d). Using this baseline approach, the EA suggest that most impacts resulting from designation would be "negligible or minor." | The commentor does not provide any explanation as to what constitutes the "baseline" approach of analysis. The EA does use the section 7 consultation history for each resource to describe the affected environment. Also, as stated in the Methodology Section of the EA (3.1.4), "the impact assessments consider the consultation history for the subspecies, the location and kind of projects addressed in those consultations, and the resources and activities addressed." |
| 51 | PRO-35 | I-140-1 | I heard the bird is not native to the areas of Arizona the USFWS is considering as critical habitat designation areas. Plans to make such designation need to be studied historically to determine if the bird was present in the distant past. If it wasn't then the entire thought of critical habitat designation is a moot point. | The EA Section 1.2.1 describes the natural history and range of the flycatcher subspecies. The flycatcher is native to Arizona and the southwestern United States. This bird breeds in the U.S. and winters in central America and northern South America. |
| 52 | PRO-36 | O-464-7 | The EA prematurely and arbitrarily writes off the rest of the flycatcher populations and suitable habitats across central and south-central Utah National Forests. If the EA is really going to "write off" these populations, the disclosure and analysis of the validity of taxonomic issues needs to be drastically expanded in the EA. For example, why are flycatcher habitat and individuals along the UM creek and Freemont (sic) River areas left out of consideration in the EA? | As stated in the EA (Section 1.3.3), stream segments were selected for designation based on the criteria of "essential habitat with 10 or more flycatcher territories occurring with 29 km (18 miles) of each other." Information from the Recovery Plan, expert opinion, location of territories, habitat models, and the constituent elements of critical habitat were used to determine the boundaries of each stream segment. |
| 53 | PRO-37 | G-468-4 | For Scenario 2 [of the Economic Analysis] to take place, many of the laws for the movement of water on the Lower Colorado River would need to be amended. If this were the case, environmental effects of changing those laws would be substantial. This was not analyzed in the EA. | As stated in EA Sections 3.1.4 and 3.2.10, a separate Economic Analysis was conducted to analyze the economic impacts of designating flycatcher critical habitat. As noted in these sections, the methodology and scope of the Economic Analysis differs from the environmental analysis. |
| 54 | PRO-38 | B-103-1 | (1.3.2, PCEs, Page 7) We suggest replacing the second "is" with "can be," or all habitat that has been used for foraging and/or migration should be designated. | Comment noted. The EA text will be amended. |
| 55 | PRO-39 | G-481-2 | The CD given was incomplete and complete CD was mailed and received only 2-3 days before comment period ended. | The comment period was extended after the end of the initial 30-day comment period (ending 31 May 2005). |
| 56 | PRO-40 | I-485-1 | The Draft EA and the Draft Economic Analysis is satisfactory written, particularly sections barring development and grazing, which is imperative for the flycatcher to be protected. | Comment noted. Thank you |
| 57 | PRO-E | G-109-1 | USFS is not an accurate acronym -- use Forest Service of USDA Forest Service. | Comment noted. The EA text will be amended to show the correct form of the agency acronym. |
| 58 | PRO-E | G-109-1 | The Acronym ACOE is used in the EA, while USACE is used in the Analysis -- terminology should be consistent between documents to avoid confusion. | Comment noted. The EA text will be amended to show consistency for acronyms. |
| 59 | PRO-E | G-136-1 | In the EA, Page 4, Section 1.3, the criteria for excluding habitat based on the need for "special management considerations or protections" should be defined. | Comment noted. The EA text will be amended to more clearly define this phrase. |
| 60 | PRO-E | G-136-1 | In the EA, Page 8, Paragraph 3, essential components for habitat needs to be better defined. The difference between PCS and essential habitat needs to be better explained. The USFWS should explain what constitutes foraging habitat, floater, or non-breeding habitat. | The essential components for habitat (PCEs) are described in EA Section 1.3.2. The EA text will be amended to include a more descriptive discussion of flycatcher habitats. |
| 61 | PRO-E | G-136-1 | In the EA, Page 33: The following actions not likely to adversely modify or jeopardize critical habitat include those that would be implemented in compliance with the Recovery Plan (USFWS 2002) should be included in the EA: livestock grazing, water and river management, exotic plant species control, habitat restoration fire management, and recreation. | The Recovery Plan is not an enforceable, regulatory document. Thus, these activities are not included as actions not likely to adversely modify or jeopardize critical habitat. |
| 62 | PRO-E | G-136-1 | USFWS should include U.S. Fish and Wildlife Intra-Service consultations when 10a1a/1b permits are issued. | Comment noted. Thank you. |
| 63 | PRO-E | G-136-1 | In the EA, Page 45, Section 3.2.4, Paragraph 2 replace "desired" with "used." | Comment noted. The EA text will be amended to correct the word choice. |
| 64 | PRO-E | G-468-4 | Page 13, Section 2.1: Reclamation's participation in scoping was not listed under the scoping process. Reclamation provided substantive comments in several letters. | Comment noted. The EA text will be amended to include the BOR as a scoping contributor. |

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| 65 | PRO-E | G-468-4 | Page 36, Section 3.1.5: Reclamation's consultations are missing, e.g., LCR Operations and Maintenance 1996 BA, 1887 BO, 2002 BA, 2002 BO; Interim Surplus Criteria and Secretarial Implementation Agreements-2000 BA, 2001 BO. | BOR section 7 consultations are included in Table 3.1 of EA Section 3.1.5. The consultations were grouped according to type of activity, not by agency. The number of BOR section 7 consultations were based on information provided by the USFWS that summarized flycatcher section 7 consultation for the period 1994-2004. |
| 66 | PRO-E | G-468-4 | Page 41, Paragraph 3. The correct name of the program is the "Lower Colorado River Multi-Species Conservation Program." | Comment noted. The EA will be amended to correct the name of the LCR MSCP. |
| 67 | PRO-E | G-468-4 | Page 62, LCR MSCP. The correct name of the program is the "Lower Colorado River Multi-Species Conservation Program (LCR MSCP)." | Comment noted. The EA will be amended to correct the name of the LCR MSCP. |
| 68 | PRO-04 | B-562-1 | USFWS fails to comply with the policy aims of Exec Order 12866; Regulatory Flexibility Act and Small Business Regulatory Enforcement Act; Exec Order 13211 (must prepare a statement of energy effects); Unfunded Mandates Reform Act; Exec Order 12988 (civil justice reform). | Comment noted. Thank you. |
| 69 | PRO-06 | B-562-1 | USFWS should prepare an EIS because USFWS fails to address the significant impacts on the human environment posed by the critical habitat designation. Need for EIS is triggered if the federal action will significantly affect the human environment. The proposed critical habitat designation will likely result in significant impacts that the USFWS does not adequately address in the EA. Specific impacts which should be analyzed include Arizona copper mining industry, which influences, among other things, economic, social, historical and cultural aspects of the human environment. Critical habitat designation could result in operational disruptions and/or cessation. These disruptions to mine operations would cause economic and social impacts to local residents (employees) or the local communities (which rely on the mines for direct and indirect support). Also fails to discuss possible national security concerns resulting from a disruption in copper production. Finally the EA does not analyze safety or health concerns created by mine disruptions. | Mining was not an issue raised during the public and agency scoping process, but the potential impacts to mining activities from flycatcher critical habitat designation would be similar to those described for other land use activities in EA Section 3.2.9. Potential disruptions to mining activities as a result of section 7 consultations, consultation outcomes, and mitigation cannot be predicted. As discussed in depth in the Economic Analysis, the potential direct impacts to mine operations and indirect impacts to local economies from potential groundwater and surface water diversions for flycatcher habitat conservation would require project-specific analysis that is beyond the scope of the EA and would be analyzed as part of these individual section 7 consultations. |
| 70 | PRO-06 | B-562-1 | USFWS should prepare an EIS due to the uncertain risks created by the proposed critical habitat designation. Agency must prepare an EIS if the environmental effects are highly uncertain. In addition to the highly uncertain, unique, and unknown risk relating to the proposed critical habitat designation's effect on the copper mining industry, USFWS acknowledges several uncertain risks associated with the proposed action. For example, USFWS states that Alternative A may have unknown effects on land management, because of state and federal land management within designated critical habitat, which could include RMP revisions, cowbird control, project monitoring and mitigation, grazing and recreation monitoring. EA also says it is not possible to predict the specific actions and proposals that could become a subject of section 7 consultations in the areas proposed. EA also says that the disproportionate impact to Hispanic populations and the below-poverty level populations are unknown. | An EA was undertaken because the USFWS did not anticipate significant environmental impacts from flycatcher critical habitat designation as a result of the subsequent scoping content analysis and consideration of issues. The EA, combined with an approximately 68% reduction in acreage designated as flycatcher critical habitat due to 1) exclusions, that include approved flycatcher management plans, HCPs, partnerships, etc., 2) acreage exempted from military lands, and 3) acreage removed following re-evaluation of proposed areas, helped to confirm that there would be no significant impacts to the environment due to flycatcher critical habitat designation. |
| 71 | PRO-06 | B-562-1 | USFWS failed to take the requisite "hard look" at the potential environmental impacts of the critical habitat designation. USFWS has not provided a convincing list of reasons of why it should not prepare an EIS. Chapter 4 is nothing more than conclusory and cursory statements regarding the potential impact to environmental resources, public health and safety, and the human environment. At a minimum, the EA wholly disregards the adverse impact to the copper mining industry. | See comment responses PRO-06 above for mining and EA preparation. |
| 72 | PRO-06 | G-552-8 G-551-8 G-550-8 G-549-8 | We believe the issue of significance rises to a level requiring a full EIS (if there are no controversial impacts, how come you are receiving all these comments?). In addition, the cumulative environmental and economic impact analyses need to include all of the listings and designations of critical habitat for all species occurring within the proposed critical habitat designation of the flycatcher. | An EA was undertaken because the USFWS did not anticipate significant environmental impacts from flycatcher critical habitat designation as a result of the subsequent scoping content analysis and consideration of issues. The EA, combined with an approximately 68% reduction in acreage designated as flycatcher critical habitat due to 1) exclusions, that include approved flycatcher management plans, HCPs, partnerships, etc., 2) acreage exempted from military lands, and 3) acreage removed following re-evaluation of proposed areas, helped to confirm that there would be no significant impacts to the environment due to flycatcher critical habitat designation. |

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| 73 | PRO-06 | G-552-8 | We request a full EIS to determine the impacts of the full implementation of the Wildlands Project and the unratified Biodiversity Treaty. We also request that the Environmental and Economic Impact Analyses for the critical habitat designation include a disclosure of how this designation fits into implementation of these 2 agendas. | An EA was undertaken because the USFWS did not anticipate significant environmental impacts from flycatcher critical habitat designation as a result of the subsequent scoping content analysis and consideration of issues. The EA, combined with an approximately 68% reduction in acreage designated as flycatcher critical habitat due to 1) exclusions, that include approved flycatcher management plans, HCPs, partnerships, etc., 2) acreage exempted from military lands, and 3) acreage removed following re-evaluation of proposed areas, helped to confirm that there would be no significant impacts to the environment due to flycatcher critical habitat designation. |
| 77 | PRO-41 | G-538-2 | This action stands as a testament to the absurdity of the narrow-minded, irresponsible, single-species approach to management now imposed by the ESA and our federal courts. | Comment noted. Thank you. |
| 78 | PRO-42 | G-557-1 | It is not clear whether the critical habitat area identified in Draft EA will be permanent, or whether they will shift or expand dues to the transient nature of the flycatcher. | As stated in the EA Section 3.1.4 Methodology, the stream segments proposed as critical habitat will not change in lateral extent or length. The width and length of the critical habitat designation was designed in order to accommodate the dynamic nature of rivers and dynamic location of riparian habitat over time. |
| 79 | PRO-43 | G-557-1 | We need a better understanding of the anticipated impacts on the availability of surface and groundwater for the parties having Norviel Decree or other water rights, and region-specific, anticipated socioeconomic impacts on the ranches and their communities. | The Recovery Plan recognizes a number of legal constraints on the USFWS's or other action agencies ability to modify water management practices to protect for the flycatcher, including water rights, delivery contracts, legal commitments to power generation, and requirements for flood control. These types of arrangements exist on many of the rivers included in critical habitat designation areas. However, where legal precedents exist, no changes to water law are anticipated to result from this rulemaking. For example, currently there is no legal requirement for BOR to maintain water levels below flycatcher habitat at the lake created by Hoover Dam [Southwest Center for Biological Diversity v. U.S. Bureau of Reclamation, 143 F.3d 515 (9th Cir. 1998)]. The Department of Interior has interpreted the U.S. Supreme Court's injunction [Arizona v. California, 376 U.S. 340 (1964)] as precluding the release of water from Lake Mead for the sole purpose of protecting flycatcher habitat. Congress has also enacted legislation to prohibit BOR from releasing San Juan/Chama water for flycatcher management purposes at Heron Reservoir. |
| 80 | PRO-44 | G-552-8 | Several CEQ directives have admonished federal agencies to invite the participation of state, Tribal and local government as cooperating agencies ... yet to our knowledge no member county received such an invitation. | THE CEQ regulations require that federal agencies responsible for preparing NEPA analysis and documentation do so "in cooperation with state and local governments" and other agencies with jurisdiction by law or special expertise. As detailed below, we attempted to engage these parties in the NEPA process to meet the spirit and intent of cooperating agency status. We believe that the NEPA analysis was done consistent with the CEQ implementing regulations and CEQ Memorandum. We issued a widely disseminated news release regarding our proposal and published legal notices in major newspapers in areas involved in the proposal. We published numerous Federal Register notices including a notice of intent to conduct scoping for critical habitat, the critical habitat proposal, comment period extensions, notice of availability of draft documents, notices of scoping meetings and hearings. We sent out thousands of letters and cards to State and federal government agencies, private individuals and groups, elected officials, and Tribal governments also announcing the proposal and document availability, and inviting them to participate at our public meetings and hearings. |
| 81 | PRO-45 | G-552-8 | Section 3.1.4 states the Economic Analysis is only partially germane to the EA. We could not determine from the information which part of the EIA is germane to the EA. | Comment noted. The EA has been amended to include a description of what information was extracted from the Economic Analysis and incorporated into the EA. |
| 82 | PRO-46 | G-552-8 | Attachment: Critical Habitat Sequence and Critical Habitat Narrative (narrative and flow chart), refer to attachment. | Comment noted. Thank you. |

Process

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|----|-----------------------|-------------------------------|---|---|
| 83 | PRO-47 | G-551-8 G-550-8 G-549-8 | EA concludes there are no significant beneficial or adverse impacts to the environment, economy or even the flycatcher. A \$100 million impact may be insignificant to some, but this is certainly not the case in rural New Mexico. If there is no impact, then why create the designation? Apparently the only reason is to comply with the ESA and to comply with a U.S. District Court Order. | As stated in the EA, the purpose and need for the proposed action of designating flycatcher critical habitat is to comply with the ESA and to comply with a U.S. District Court order to issue a Final Rule on critical habitat designation for the flycatcher. |

Recreation

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|---|-----------------------|----------------------|---|---|
| 1 | REC-01 | I-016-8 | One way we should protect wildlife is to restrict recreation to the form with the least impact: hiking, mountain biking and other extreme forms of recreation should be prohibited. | Comment noted. However, federal law and policy directives require land management agencies such as the Forest Service and Bureau of Land Management to provide opportunities for recreation in its many forms. The Occupancy Act of 1915, the Federal Land Policy and Management Act of 1976 (FLPMA), the Multiple-Use Sustained Yield Act of 1960 are some of the major laws and guidelines for recreational use on federal lands. |
| 2 | REC-02 | I-090-1 | I would argue that the economic benefits of heavy recreational use of critical habitat designation areas should be overridden by the necessity of protecting an endangered species. Its is true that people need an out to recreate. However, people can be patient and wait out the nesting season before returning to their favorite spots. Flycatchers don't have that luxury. | Comment noted. Thank you. |
| 3 | REC-03 | G-100-3 | The Draft EA states, "riparian areas receive an disproportionately high recreational use in the arid Southwest when compared to other areas, and riparian areas near urban areas receive greater use than those in more remote locales ..." This discussion does not represent conditions in the San Luis Valley. Most of the land proposed to be critical habitat in the Valley is privately owned and does not see high levels of recreational use, if any. In the Draft EA, Page 65-66, it states the riparian areas receive disproportionately high recreational use in the arid Southwest ... This discussion may reflect conditions in other parts of the flycatcher's range; it does not represent conditions in the San Luis Valley. Most of the land proposed to be critical habitat in the San Luis Valley is privately owned and does not see high levels of recreational use, if any. | As a result of flycatcher conservation agreements and conservation management actions, stream segments in the San Luis Valley proposed for designation as critical habitat in the Proposed Rule will be excluded from designation in the proposed Final Rule. |
| 4 | REC-05 | G-136-1 | We recommend that the EA in Section 3.2.5 identify sportfish as a fisheries resource in reservoirs and rivers. These fish have biological, recreational, and economic value to the public that should be recognized and considered by the USFWS. Inclusion of such information will strengthen the link between fisheries resources and the recreational impacts of designation of critical habitat in reservoirs, which may cause re-initiation of section 7 consultation, could lead to a significant expenditure of funds by the Department, USFWS, and other stakeholders, could limit the Department's ability to manage these fisheries effectively, and may further restrict angling recreation above those identified in Section 3.2.11 of the EA. | Comment noted. The EA will be amended to recognize sportfish as a recreational resource. |
| 5 | REC-06 | G-136-1 | Further restrictions on recreation access are not needed to protect PCEs from the negligible impacts of fishing, hunting and camping because occupied habitat is currently protected without critical habitat designation. | Comment noted. As present, critical habitat has not been designated for the flycatcher. Formal issuance of a Final Rule on flycatcher critical habitat designation would meet the conservation goals for the flycatcher. However, as described in section 1.0 of the EA, the U.S. Court of Appeals Tenth Circuit set aside the 1997 designation of flycatcher critical habitat on May 11, 2001. |

General

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|---|-----------------------|--|--|--|
| 1 | GEN-01 | I-033-1, I-021-1, I-085-3, I-085-3, B-508-8, I-509-8 | I am opposed to more habitat set aside for the Southwestern Willow Flycatcher. The environmental and economic impact on the species homo sapiens in this six state area would be devastating. By endorsement of the Draft EA, Economic Analysis and the Proposed Rule, cronies are advocating for the complete usurpation of the state, state rights and nation. In addition, they (federal agencies) are advocating for the abolishment of our Free-Republic while promoting tyranny. The use of the flycatcher is an abuse of the ESA and other federal programs all for the exclusive benefit of human and land control. I do not think the answer is to close such diverse areas and close it to public uses to protect a species that most people are unaware of. | Critical habitat designation is mandated by the ESA and by court order. Impacts to humans have been discussed in Section 3.2.7 through 3.2.15 of the Draft EA. Critical habitat does not close any public or private lands to most activities; critical habitat designation only serves to identify areas essential to the conservation of the flycatcher. Should development projects be proposed for these areas, the action agency would be required to disclose the potential negative impacts to flycatchers or their PCEs. |
| 2 | GEN-02 | I-028-0, I-024-6, I-023-0, I-019-0, I-017-0, I-025-, I-018-0, I-016-8, I-009-8, I-482-8, I-483-8, I-502-8, I-505-8, I-506-8, I-507-8 | I want to save habitat for the Southwestern Willow Flycatcher. I believe it is in the best interests of human beings to save that land. I am writing to express my support for your proposed designation of 1,556 miles within the 100-year floodplain of waters in California, Arizona, Nevada, Utah, Colorado and New Mexico as critical habitat for the endangered Southwestern Willow Flycatcher. We sincerely hope you do all you can to protect the Southwestern Willow Flycatcher and eventually protect them, over species, and the land. The Southwestern Willow Flycatcher should be protected, whatever the cost. They must be given top priority because they can't protect themselves from us. I urge you to save the flycatcher. If our biodiversity is lost, there will be no beauty left in the world. | The critical habitat designation will identify habitat essential to the conservation of the flycatcher. |
| 3 | GEN-03 | I-025-1 | The flycatcher is in all 15 Arizona counties and efforts can adversely affect each. | Potential adverse impacts to counties in Arizona are disclosed in Section 3.2.7 through 3.2.15 of the Draft EA and are summarized in the Draft Economic Analysis of Critical Habitat Designation for the Southwestern Willow Flycatcher by <i>Industrial Economics, 2005</i> . |
| 4 | GEN-04 | I-086-1 | I agree with and approve of the proposed critical habitat for the flycatcher for map 15 MU, Hoover-Parker Dam/Bill Williams/Parker-Southerly International Border Management Units. This includes Davis Dam and south through Bullhead City where there are undeveloped state trust lands and BLM lands which would be held for future state ecological preserves or parks. | This stream segment has been excluded from critical habitat designation because of implementation of the Lower Colorado River Multi-Species Conservation Program, Tribal Management, and National Wildlife Refuge Management. These Plans have been determined by USFWS to adequately meet the conservation and recovery needs of the flycatcher, and to provide habitat protection equal to or exceeding protection provided by critical habitat designation. |

Tribal

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|---|-----------------------|---------------------------|---|---|
| 1 | TRIBE-03 | T-046-2, T-096-2, T-131-2 | In determining the critical habitat needs for the flycatcher, it is imperative that the proposed designation on Indian lands take into consideration the federal government's trust responsibility to Tribal governments and especially the significance of Tribal sovereignty with regard to the management of Tribal lands and resources. Each Pueblo must be kept abreast on any and all action in order to make informed decisions and ensure the protection of Tribal sovereignty, resource interests, and to adequately fulfill the federal governments trust obligations to the affected Tribes. The USFWS will need to conduct formal, meaningful government-to-government consultation with the Tribes and Pueblos before making a final decision on the critical habitat designation. | Each Tribe possibly affected by this rule was contacted when USFWS published its notice of intent to designate critical habitat, which included the location of scoping meetings being held near their area. USFWS later contacted all Tribes/Pueblos specifically seeking management plans and government-to-government consultations. USFWS contacted each Tribe/Pueblo when the Proposed Rule was published. They provided all Tribes/Pueblos included in the draft proposal a Management Plan template that outlined habitat conservation measures or plans. Representatives from local field offices in Arizona, California, and New Mexico contacted Tribes/Pueblos in person, through telephone calls, and/or during meetings to inform them about this rule and help with development of management plans. In many cases, Fish and Wildlife Service provided review and assisted Tribes in the development of management plans. Fish and Wildlife Service will continue to consult with all Tribes and Pueblos throughout this project and will consider this consultation as part of the decision-making process. Later, the USFWS contacted each Tribe/Pueblo when the Draft Economic Analysis and Draft EA were made available and about the dates and locations of public hearing and open house meetings. We (USFWS) held an open house meeting specifically for the Pueblos in New Mexico. We intend to keep improving our relationships with the Tribes and the Bureau of Indian Affairs following the tenets of Secretarial Order 3206 and Executive Order 13175. |
| 2 | TRIBE-07 | T-096-2 | Proposed critical habitat includes the Middle Rio Grande Management Unit, a portion of the river corridor downstream from our Tribal lands. It is foreseeable that maintaining flows in the downstream critical habitat reach will affect our water use. The Santo Domingo Tribe and its members would experience disproportionate impacts from the designation because of our location upstream from a critical habitat reach and our dependence on diversions from the Rio Grande. We contacted each Tribe/Pueblo when the Draft Economic Analysis and Draft EA were made available and the dates and locations of public hearing and open house meetings. We held an open house meeting specifically for the Pueblos in New Mexico. We intend to keep improving our relationships with the Tribes and the Bureau of Indian Affairs following the tenets of Secretarial Order 3206 and Executive Order 13175. | The EA analysis analyzes the impacts of designating flycatcher critical habitat on Tribal Trust Resource in Section 3.2.14 and in the Environmental Justice Section (3.2.15). As stated in the 3.2.15, "The potential for disproportionate impacts to below poverty level-populations are unknown from designating these acreages as critical habitat (and the increased number of section 7 consultations for ongoing and proposed actions that "may affect" these designated areas). This is because 1) designating critical habitat does not directly restrict land management and/or land use activities, 2) site-specific riparian-associated human demographics are unknown, and 3) the outcomes of section 7 consultations and the subsequent impacts upon these populations cannot be predicted. Further study of the unknown impacts to minority and/or low-income populations of critical habitat designation would be useless because of the unpredictability of section 7 consultation outcomes (and their subsequent impacts on these populations) even if a detailed demographic study or characterization were conducted." |
| 3 | TRIBE-08 | T-096-2, T-131-2 | Nowhere does your Proposed Rule, nor your Draft Economic Analysis and EA, consider the potential impacts on the Tribe. You need to redo the Draft Economic Analysis and EA to take into account effects on the Tribe. The proposed habitat designation could adversely affect the Pueblo by effectively limiting the Pueblo's depletions to maintain flows in critical habitat. This effect is an adverse economic effect because economic development associated with developing and using water rights within the Pueblo would be constrained and the income earned by leasing Pueblo's water to users outside the Pueblo would be reduced or eliminated. The Tribal Trust Resources section of the Draft EA limits its analysis to the Tribal lands within the proposed designation. The Draft EA contains no analysis of impacts on the Pueblo's water rights or the Abeya settlement negotiations. The Draft EA and Economic Analysis fail to discuss any consideration of "other relevant impacts" including the impacts on cultural resources and practices. | The EA analysis analyzes the impacts of designating flycatcher critical habitat on Tribal Trust Resource in Section 3.2.14. Alternative A was amended to include a description of additional economic impacts to Tribes. Regarding impacts to cultural resources and practices, the commentor did not provide information on what those impacts might be. |

Tribal

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|----|-----------------------|----------------------|--|--|
| 4 | TRIBE-09 | T-131-2 | The Pueblo of Taos is concerned about USFWS's proposed designation of critical habitat for the flycatcher because the designation may adversely affect the Pueblo's water rights. The USFWS has completely failed to consider the impacts of the proposed designation on the Taos Pueblo. The USFWS has not considered how the flycatcher listing and critical habitat designation could upset the delicate balance of interests underlying the (Pueblo) settlement. Adverse modifications of the habitat downstream of the numerous diversions for existing and future use water rights protected under the settlement might impose unacceptable forbearance or other mitigation costs. | The EA analysis analyzes the impacts of designating flycatcher critical habitat on Tribal Trust Resource in Section 3.2.14. The Taos Pueblo is not included in the proposal or final designation of flycatcher critical habitat. |
| 5 | TRIBE-10 | T-131-2 | The USFWS will need to identify and mitigate adverse effects on the Pueblo consistent with the USFWS's federal trust duty. | Comment noted. The Taos Pueblo is not included in the proposal or final designation of flycatcher critical habitat. |
| 6 | TRIBE-11 | T-133-1, T-134-1 | The critical habitat designation will materially and substantially interfere with the ability of the Tribe to survive in its permanent Tribal Homeland. The trust relationship with the U.S. requires federal government involvement and funding, thus requiring costly section 7 consultation. This consultation is a problem due to the lack of resources and funding on the Reservation. The Draft EA fails to adequately consider any of the real and adverse impacts to Tribal Trust resources with the designation of critical habitat on the Reservation. The critical habitat designation will materially and substantially interfere with the ability of the Yavapai-Apache Tribe to survive in its permanent Tribal Homeland. The Draft EA fails to adequately consider any of the real and adverse impacts to Tribal Trust resources with the designation of critical habitat on the Reservation. | The EA analysis analyzes the impacts of designating flycatcher critical habitat on Tribal Trust Resource in Section 3.2.14. Alternative A was amended to include a description of additional economic impacts to Tribes. |
| 7 | TRIBE-12 | T-133-1, T-134-1 | The full magnitude of the economic impacts of the Apache Tribe and Yavapai-Apache will be significant. However, the full magnitude of the impacts cannot be easily predicted. Such economic impacts will not be any less real when they are realized in the future as a result of the critical habitat designation on the Reservation. The Apache Tribe and Yavapai-Apache, not the USFWS, is charged with protecting Tribal resources on the Reservation. Designating habitat on the reservation imposes very real and disproportionate administrative hurdles and economic costs as a result of the section 7 process itself, and due to possible project modifications and mitigation requirements. | The EA analysis analyzes the impacts of designating flycatcher critical habitat on Tribal Trust Resource in section 3.2.14. Alternative A was amended to include a description of additional economic impacts to Tribes. |
| 8 | TRIBE-13 | T-133-1, T-134-1 | A FONSI is inappropriate given the imposed burden on the Apache and Yavapai-Apache Tribe. The profound burden is not adequately considered in the Draft EA or Economic Analysis. The USFWS should prepare a full EIS under NEPA in order to adequately analyze the real effects of the proposed designation. | As required under NEPA (40 CFR 1505.2), an EA Decision Notice is not issued until the Final EA has been published and distributed for public review (40 CFR 1506.6[b]). Thus, it would be inappropriate to assume that a FONSI will be issued for the EA. Both the San Carlos Apache and Yavapai-Apache Tribes have developed and are implementing flycatcher management plans. As a result, the USFWS is excluding these Tribes from flycatcher critical habitat. |
| 9 | TRIBE-14 | T-141-6 | If Bureau of Indian Affairs would expect to see a detailed analysis of exactly why the habitat on Tribal land is of such importance that without it recovery could not occur. | As stated in the EA (Section 1.3.3), stream segments were selected for designation based on the criteria of "essential habitat with 10 or more flycatcher territories occurring with 29 km (18 miles) of each other." Not only do these areas provide essential breeding habitat for flycatchers, but essential habitat for migrating, dispersing, non-breeding, and territorial flycatchers. Information from the Recovery Plan, expert opinion, location of territories, habitat models, and the constituent elements of critical habitat were used to determine the boundaries of each stream segment on Tribal and non-Tribal lands. |
| 10 | TRIBE-19 | B-103-1 | The Draft EA notes Tribal lands are not proposed for exclusion but may be excluded after further analysis and public comment. This statement appears to acknowledge the legal requirement, affirmed by the Arizona District Court in Norton, Supra, that the public may be given the opportunity to comment on proposed exclusion of Tribal lands and any basis for such exclusion. However, on the same page the USFWS notes Tribal lands may be excluded after evaluation of management plans apparently without regard to whether the public has been given the opportunity to comment. As no opportunity has been provided for public comment on any of these plans, the USFWS is not free to exclude the Tribal lands from the final critical habitat designation. On Page 28, Table 2.6 wrongly assumes that under Alternative B, Tribal lands are excluded from the final critical habitat designation. | Alternative B in Table 2.6 of the EA summarizes the impacts to Tribal Trust Resources for those Tribes that have prepared and are implementing flycatcher management plans and would have Tribal lands excluded from critical habitat designation. At the time that the EA was published, some Tribes were in the process of preparing plans for flycatcher management. Thus, additional Tribal lands could be excluded in the Final Rule and Final EA. The table will be amended to clarify that process. |

Tribal

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|----|-----------------------|----------------------|--|--|
| 11 | TRIBE-21 | T-131-2 | The USFWS's Draft EA fails to assess the environmental and socioeconomic impacts on Taos Pueblo and its trust resources in violation of NEPA. | See comment 3 above. As required by NEPA, the EA analyzed the impacts of the proposed action and alternatives, which included the potential impacts to the environment of designating critical habitat for the flycatcher (see EA Section 1.0 Purpose and Need). |
| 12 | TRIBE-22 | T-535 | As a sovereign entity, Ohkay Owingeh maintains the right to continue to manage and control the resources within the exterior boundaries of our reservation, to continue our cultural and traditional ties with the Rio Grande and riparian areas including the management of non-native vegetation management that has created a hazardous fire situation. | Comment noted. Thank you |
| 13 | TRIBE-23 | T-558-2 | As a sovereign entities the three affected Pueblos—San Juan, Santa Clara, and San Ildefonso—maintain the right to continue to manage and control the resources within the exterior boundaries of our reservation, to continue our cultural and traditional ties with the Rio Grande and riparian areas including the management of non-native vegetation management that has created a hazardous fire situation. | Comment noted. Thank you |

Vegetation

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|---|-----------------------|---------------------------|---|---|
| 1 | VEG-01 | I-099-3, I-077-6, G-154-2 | Healthy, mature riparian areas are hugely important in the arid Southwest. Adequate protection would benefit many species—perhaps keeping some from being listed—not just the Southwestern Willow Flycatcher. The USFWS should remove tamarisk and replant with natives. Mechanical removal of tamarisk is necessary in areas targeted for restoration, such as habitat adjacent to currently occupied flycatcher sites. Removal should not occur where flycatchers are currently nesting and where natives are absent or depopulated because nesting and perching sites could be eliminated with no immediate native replacements. Salt cedar eradication and restoration of native vegetation is the desired condition along our riparian waterways in the Southwest. There are many species dependent on those riparian areas in a healthy, functioning, and natural condition -- not just the flycatcher, who seems to be able to survive in salt cedar, but others that don't, and other species of riparian obligates do not as well. | <p>The flycatcher Recovery Plan includes proposed management actions to reduce the spread of exotic riparian plant species and to restore native plant species within flycatcher habitat. It does not call for the elimination of salt cedar, but rather site-specific control, and replacement of tamarisk in areas where native vegetation is capable of replacing exotic vegetation (see Recovery Plan, Appendix H). As stated in Section 3.2.4, the EA acknowledges that tamarisk does provide nesting habitat for the subspecies, that flycatchers are healthy and productive in those high quality tamarisk habitats; however, it also recognizes that overall habitat quality is lower than that produced by native plant species, and that human-caused alterations of the riparian ecosystem favor exotic species.</p> <p>However, the long-term restoration of exotic riparian vegetation to native riparian habitat, especially habitat that relies on dynamic river processes is complex. The Recovery Team and the USFWS recognize that while restoration efforts are important, not all locations are appropriate candidates for successful restoration. Some areas are not able to support native vegetation. Without appropriate planning, some well-intentioned restoration projects could lead to waste of project dollars, because there is no chance for successful restoration of native vegetation. The USFWS encourages careful and well-planned site-specific restoration projects.</p> |

Vegetation

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|---|-----------------------|----------------------|---|---|
| 2 | VEG-02 | G-486-1 | Salt Cedar is damaging to our farmland and its eradication is imperative to improve water quantity and quality; therefore, the efforts for removal should be barred. | critical habitat designation will not interfere with salt cedar (tamarisk) control and restoration efforts, provided that the resulting habitat is of equal or better quality than the habitat that was modified/removed (see Sec. 3.2.4). However, the long-term restoration of exotic riparian vegetation to native riparian habitat, especially habitat that relies on dynamic river processes is complex. The Recovery Team and the USFWS recognize that while restoration efforts are important, not all locations are appropriate candidates for successful restoration. Some areas are not able to support native vegetation. Without appropriate planning, some well-intentioned restoration projects could lead to waste of project dollars, because there is no chance for successful restoration of native vegetation. In a worse case scenario, depending on the location and scale of the project, the effects of eliminating woody riparian vegetation could result in adverse effects to the flycatcher, other wildlife, and river function. Impacts to river function could lead to increased sedimentation and possibly loss of bank stability leading to loss of property. Recent peer-reviewed published literature (Glenn and Nagler 2005; Shafroth et al. 2005) challenges long-held beliefs that removal of tamarisk results in water savings and that tamarisk is inadequate for wildlife. The USFWS encourages careful and well-planned site-specific restoration projects. |
| 3 | VEG-2 | G-014-1 | The environmental impact analysis on exotic vegetation is inadequate (citing Draft EA, Page 45) as it fails to consider the impacts of the Proposed Designation on exotic vegetation management activities, including reduction on exotic species removal from the presence of designated critical habitat for the flycatcher. There is a conflict between flycatcher occupancy of tamarisk and tamarisk control and exotic vegetation management. The Draft EA fails to recognize that tamarisk control is important in water resource conservation and fire suppression. The Draft EA must analyze reasonable foreseeable environmental impacts and mitigation measures and exotic vegetation management. Appropriate mitigation measures to avoid potential impacts to flycatcher could include limitations on removal of exotic vegetation, including tamarisk during breeding season or when flycatcher is occupying lands. The Draft EA should clarify that all exotic vegetation removal areas will be required to revegetate with native, suitable flycatcher habitat. Analysis of impacts associated with exotic vegetation removal and measures intended to prevent impacts to flycatchers from such activities should be included in Final EA. | See comment response VEG-01 above. The analysis of impacts on exotic vegetation does consider the impacts on exotic vegetation control and fire suppression. As stated in Section 3.2.4.2, section 7 consultations could alter exotic vegetation control projects to occur outside of the breeding season, but that the impacts on exotic vegetation control would be minor. In Section 3.2.6, the impacts on fire management from critical habitat designation is discussed and analyzed, and again, the impacts of designating critical habitat would be minor on fire management and fire suppression projects. |
| 4 | VEG-02 | G-095-1, G-097-7 | We are concerned the critical habitat designation will protect tamarisk, it is essential to projects to control tamarisk be allowed to move forward. We are concerned tamarisk control will be forbidden in flycatcher critical habitat. Scientific studies suggest that the flycatcher prefers other species (than tamarisk) for nesting, therefore it is essential that communities and private landowners be allowed to improve watersheds and conserve water by controlling tamarisk. Washington County has a active program to eradicate tamarisk and there is local concern that designation of critical habitat would cause bureaucratic interference with this activity. There is concern about the impact that critical habitat designation will have Washington County noxious weed control program. | critical habitat designation will not interfere with salt cedar (tamarisk) control and restoration efforts, provided that the resulting habitat is of equal or better quality than the habitat that was modified/removed (see Sec. 3.2.4). |
| 5 | VEG-04 | O-040-6 | Because the Sprague Ranch land recently purchased as riparian habitat for the flycatcher is not currently riparian habitat consisting of mature willow and cottonwood trees, we recommend that the reservoir at Lake Isabella not be flooded to its maximum capacity until willow and cottonwood trees are planted and they mature to the point where they are riparian habitat adequate for flycatcher nesting. | The Sprague Ranch will be excluded from critical habitat designation in the proposed Final Rule. |
| 6 | VEG-05 | I-077-6 | The USFWS should not use biological control of tamarisk at this time. Using exotic insects in absence of addressing the causes for loss of native vegetation may result in eradication of tamarisk with no replacement, which could harm existing flycatcher populations occurring the tamarisk. | Absent any new information on biocontrol, USFWS continues to support the concern and guidance provided in the Recovery Plan regarding introduction of biocontrol into the breeding range of the flycatcher (USFWS 2002:121). |

Vegetation

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|----|-----------------------|----------------------|---|--|
| 7 | VEG-06 | G-100-3 | Unlike many of the other parts of the flycatcher's range, exotic plants such as tamarisk and Russian olive have not yet gained a foothold in the riparian systems of the San Luis Valley. The additional burden of critical habitat would create a disincentive to proactive management of these and other exotic species in the Valley. | As a result of flycatcher conservation agreements and conservation management actions, the proposed designated critical habitat stream segments in the San Luis Valley will be excluded in the proposed Final Rule. |
| 8 | VEG-07 | G-136-1 | Flycatchers will preferentially place nests in tamarisk even when willows are present. This behavior has been seen at the nest scale but new evidence suggests willow preference at coarser spatial scales. This information should be included in the EA, Page 45, Section 3.2.4, fourth paragraph. | Comment noted. The EA text will be amended with this additional information. |
| 9 | VEG-08 | G-136-1 | The comment in the EA that states flycatcher productivity is generally lower in exotic habitat is unsubstantiated by published data. | The Recovery Plan stated that "...productivity in tamarisk dominated sites has been variously found to be equal to or lower than in sites dominated by native willow species." We have corrected the text to accurately reflect this statement. |
| 10 | VEG-09 | G-136-1 | A more balanced review of tamarisks impact on wildlife biodiversity and its impact on floodplain soil conditions should be included in the EA. | The EA does present a balanced, objective description of tamarisk: 1) the exotic species does provide suitable habitat for flycatchers, but of overall lower quality than native plant species; 2) tamarisk creates conditions that increase wildland fire hazards; and 3) tamarisk does not support a level of biodiversity equal to native plant species (see Section 3.2.4). |
| 11 | VEG-10 | G-136-1, G-137-1 | The State of Arizona Department of Game and Fish opposes the release of the tamarisk beetle in Arizona because in most riparian areas the underlying ecological processes no longer exist to support cottonwood and willow forest. The beetle would defoliate tamarisk lowering the current wildlife value, and due to hydrological alterations these areas would not support self-sustaining native forest, which would irreparably harm habitat for riparian species, including the flycatcher. | The project decision does not involve the release of the tamarisk beetle. |
| 12 | VEG-11 | G-137-1 | We (USDA) oppose actions that would restrict our efforts to establish other biotypes of Diorhabda beetles in the intermediate latitudinal zone previously approved sites at Cache Creek, Hunter-Liggett or Owens Valley, California or in areas of southern California, central New Mexico and western Colorado/eastern Utah where additional release sites have been requested. We (USDA) oppose actions that would restrict the natural dispersal of the beetles from the release sites of the degree of control may and should be restricted in areas of demonstrated significant harm to non-target plants, which so far as not occurred and which we anticipate is extremely unlikely. We (USDA) request removal of any statements that biological control or the introduction of biological control insects adversely modify the habitat of the flycatcher. | NEPA requires a succinct description of the area(s) affected by the Proposed Action and alternatives (40 CFR 1502.15). As such, the EA describes, as part of the affected environment (in Section 3.2.4), the current efforts at biocontrol of tamarisk. The EA description of biocontrol is objective and factual; however, NEPA does require full disclosure of resource conditions and concerns to allow decision-makers to make informed decisions. |
| 13 | VEG-01 | G-552-8 | USFWS takes a myopic view. Although USFWS recognizes malignant nature of tamarisk, it then says flycatcher needs to have this bane of the Southwest riparian systems for its survival. Are we to continue and encourage this nonnative curse for a single species? | The EA discloses that tamarisk: 1) does provide suitable habitat for flycatchers, but of overall lower quality than native plant species; 2) tamarisk creates conditions that increase wildland fire hazards; and 3) tamarisk does not support a level of biodiversity equal to native plant species (see Section 3.2.4). The EA also discloses what the project decision will mean in terms of how tamarisk is managed. |
| 14 | VEG-01 | G-548-8 | We are concerned with how the elimination of salt cedar along the Rio Grande is being conducted. Instead of rehabbing the upper reaches of the watersheds, restoration began downstream. The cost is going to be tremendous, as long as there is a seed source upstream. Should have started at headwaters and moved downward. We are very interested as to what the exact cost to local communities will be to restore the habitat of these areas. | The analysis of the costs of habitat restoration is speculative at this point and would be analyzed through project specific NEPA or section 7 consultation on a case-by-case basis. The long-term restoration of exotic riparian vegetation to native riparian habitat, especially habitat that relies on dynamic river processes is complex. The Recovery Team and the USFWS recognize that while restoration efforts are important, not all locations are appropriate candidates for successful restoration. Some areas are not able to support native vegetation. Without appropriate planning, some well-intentioned restoration projects could lead to waste of project dollars, because there is no chance for successful restoration of native vegetation. The USFWS encourages careful and well-planned site-specific restoration projects. |

Water

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|---|-----------------------|----------------------|---|---|
| 1 | WAT-01 | G-097-7 | Cleaning the Virgin River channel for flood control impacts need to be assessed in the EIS. | Cleaning the Virgin River channel is beyond the scope of the EA, which is to analyze the impacts of designating flycatcher critical habitat. Potential impacts to the river would require project-specific analysis and would be analyzed as part of individual section 7 consultations. |
| 2 | WAT-02 | G-012-1 | We feel it's within our mission to call your attention to the tremendous role that the Verde River and its waters fulfill in the local agricultural communities economically and historically. It is our hope that USFWS will address this in a manner to all concerned parties. | Comment noted. Thank you. Please see the discussion of human impacts in Section 3.2.7 through 3.2.15 of the Draft EA. |
| 3 | WAT-03 | B-084-1, I-492-1 | The area proposed in Arizona, 654 miles of rivers, amounts to a huge confiscation of property rights and taking Arizona's most valuable resource. The affected Arizona rivers provide the majority of Arizona's agricultural water supply. | As stated in EA Section 1.3, the ESA section 7 consultation process would not affect state or private property unless federal funding, and/or federal permits, or federal authorizations are involved. |
| 4 | WAT-04 | B-084-1 | Reducing Roosevelt Lake's storage capacity by 50% unconscionable. | NEPA requires a "reasonably foreseeable" analysis of impacts, but not speculative analysis (40 CFR 1508.8[b]). Analyzing the impacts of reducing lake storage capacity is beyond the scope of the EA, which is to analyze the impacts of designating critical habitat for the flycatcher. Potential impacts to the lake would require project-specific NEPA analysis and would also be analyzed as part of individual section 7 consultations. The commentor should note that Lake Roosevelt will be excluded from critical habitat designation under the Final Rule. |
| 5 | WAT-05 | B-103-1 | The operation of reservoirs designated as critical habitat will be prohibited of modification and is too broadly interpreted to refer any alteration of habitat. | The EA analysis concludes (in Section 3.2.2.2) that there would impacts on dam operation similar to the No Action alternative for the action alternatives as a result of critical habitat designation, but with a likely increase in section 7 consultations. A potential outcome of increasing section 7 consultations for water management activities would be maintenance of flycatcher PCEs through conservation measures and improvements, protection, and acquisition of flycatcher habitats. |
| 6 | WAT-06 | B-103-1 | The Draft EA underestimates the economic impacts of the designation, as well as the impacts on water management and federal land management. A fundamental flaw in the Draft EA is the use of the listing baseline approach to discount environmental effects from critical habitat designation, which was rejected by the Tenth Circuit for economic analyses, the baseline approach is an underestimation of the impacts critical habitat designation on water management activities. | NEPA requires that a No Action alternative be analyzed in order to provide a "benchmark" that will enable decision makers to compare the magnitude of environmental effects of the action alternatives. In the case of flycatcher critical habitat designation, the No Action alternative is the current situation in which the flycatcher is listed as endangered. The act of critical habitat designation has always required an Economic Analysis. Because the Tenth Circuit opinion in <i>New Mexico Cattle Growers Association, et al, v. USFWS</i> required the Economic Analysis, which was conducted separately from the EA, to examine co-extensive costs when considering critical habitat designation, the USFWS determined that to include the costs associated with listing the flycatcher. The analysis threshold for the EA and Economic Analysis are not the same, with the Economic Analysis requiring consideration of co-extensive costs and NEPA requiring environmental analysis against the benchmark of the No Action alternative. |

Water

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|----|-----------------------|----------------------|--|--|
| 7 | WAT-08 | B-103-1 | A flaw in the Draft EA is the USFWS's use of circular logic to minimize impacts. For example the effects to water management activities are "expected to be minor" because of mitigation incorporated into the projects, but the significant impacts of the mitigation itself (cost and delay) are not considered as part of the analysis. | NEPA requires that a No Action alternative be analyzed in order to provide a "benchmark" that will enable decision makers to compare the magnitude of environmental effects of the action alternatives. In the case of flycatcher critical habitat designation, the No Action alternative is the current situation in which the flycatcher is listed as endangered. The act of critical habitat designation has always required an Economic Analysis. Because the Tenth Circuit opinion in <i>New Mexico Cattle Growers Association, et al, v. USFWS</i> required the Economic Analysis, which was conducted separately from the EA, to examine co-extensive costs when considering critical habitat designation, the USFWS determined that to include the costs associated with listing the flycatcher. The analysis threshold for the EA and Economic Analysis are not the same, with the Economic Analysis requiring consideration of co-extensive costs and NEPA requiring environmental analysis against the benchmark of the No Action alternative. Site-specific project mitigation and the costs associated with section 7 consultations are unique to each project or activity. It is beyond the scope of the EA to analyze and predict mitigation costs and delays associated with project modifications and/or section 7 consultations. |
| 8 | WAT-09 | O-089-1 | In order to preserve riparian habitat, we urge the removal of dams and groundwater pumping adjacent to rivers that is used to grow federally subsidized crops. The birds were here first and now they are threatened. In order to preserve habitat, efforts must be made to retire farmland growing crops such as cotton and hay in the arid Southwest, crops which are only sustained and maintained by federal water and power subsidies (as low electric rates to agribusiness for groundwater pumping and water from federally subsidized dams). In order to preserve habitat, recharging water underground below or downstream from dams and not keeping dams so full should take place. This would allow more space in places like Horseshoe and Roosevelt Reservoirs for their existing populations of flycatchers. Recharging groundwater would reduce evaporative losses of water from reservoirs, which are the greatest exposed surface areas. Having water stored underground provides a bank for the public, both urban and agribusiness in times of drought. | Future potential management to preserve or restore riparian habitat is beyond the scope of this EA process. This EA analysis is to determine the impacts of designation of critical habitat for the flycatcher. Potential impacts to flycatcher habitat from groundwater pumping and groundwater recharging would require project-specific analysis that is beyond the scope of the EA and would be analyzed as part of individual section 7 consultations. |
| 9 | WAT-10 | I-077-6 | The USFWS should manage existing dams to preserve native riparian habitat. This can be accomplished by timing flooding above and below dams to cohere to the habitat requirements of cottonwood and willow. This includes immediately lowering reservoir levels at Mead, Roosevelt and Isabella. The USFWS should prohibit flood-control activities that destroy or degrade limited riparian habitat. Flood-control activities, such as channelization and construction of levees of dams, are a direct threat to existing and potential flycatcher habitat. | Future potential management of dams to preserve or restore riparian habitat is beyond the scope of this EA process. This EA analysis is to determine the impacts of designation of critical habitat for the flycatcher. Potential impacts to flycatcher habitat from flood-control activities would require project-specific analysis that is beyond the scope of the EA and would be analyzed as part of individual section 7 consultations. |
| 10 | WAT-11 | I-077-6 | The USFWS should ban urban and agricultural development in river floodplains. This will protect habitat and will cease further need for flood-control in river floodplains. | Future potential management of urban and agricultural development to preserve or restore riparian habitat is beyond the scope of this EA process. This EA analysis is to determine the impacts of designation of critical habitat for the flycatcher. Potential impacts to flycatcher habitat from urban and agricultural development and management would require project-specific analysis that is beyond the scope of the EA and would be analyzed as part of individual section 7 consultations. |
| 11 | WAT-12 | I-077-6 | The USFWS should establish instream flow rights for all Southwest rivers and streams. Instream flow rights will protect against over utilization by groundwater pumping, water diversion and urban sprawl and will allow for the maintenance and restoration of large blocks of native riparian habitat. | Future potential management of in-stream flow rights to preserve or restore riparian habitat is beyond the scope of this EA process. This EA analysis is to determine the impacts of designation of critical habitat for the flycatcher. Potential impacts to flycatcher habitat from management of in-stream water rights would require project-specific analysis that is beyond the scope of the EA and would be analyzed as part of individual section 7 consultations. |

Water

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|----|-----------------------|----------------------|--|--|
| 12 | WAT-13 | G-029-6 | Critical habitat designation may affect FEMA, National Resources Conservation Service, and Kern County efforts to remove vegetation and sediment necessary to restore channel capacity. The inability to undertake normal maintenance could cause the river to divert or flood other areas as well as destroy riparian vegetation that may be occupied by the flycatcher. These issues need to be fully addressed in the EA document. | The commentor does not provide data, additional information, or a substantiated rationale for incorporation into the analysis of impacts. It should be noted that the proposed critical habitat stream segments on the Kern River will be excluded from the Final Rule. |
| 13 | WAT-16 | G-037-6 | The lengthy process of consultation that cause project costs to escalate due to environmental permit processing time should be included in the financial analysis and the impacts to the human environment of delay due to the designation of critical habitat should be considered. | An EA was undertaken because the USFWS did not anticipate significant environmental impacts from flycatcher critical habitat designation as a result of the subsequent scoping content analysis and consideration of issues. The EA, combined with an approximately 68% reduction in acreage designated as flycatcher critical habitat due to 1) exclusions, that include approved flycatcher management plans, HCPs, partnerships, etc., 2) acreage exempted from military lands, and 3) acreage removed following re-evaluation of proposed areas, helped to confirm that there would be no significant impacts to the environment due to flycatcher critical habitat designation. |
| 14 | WAT-17 | G-050-2, G-098-1 | The dramatic difference and apparent errors in water consumption and proportional use data within and between the Draft EA and the Draft Economic Analysis at the very least call into question the complication of data and analyses that purportedly support the proposed designation of critical habitat. There is no question that the designation of critical habitat has significant ecological implications. The EA's conclusions regarding effects of designating critical habitat for flycatchers on water resources is curious at best. The EA provides no support for the conclusion that "beneficial effects" on water resources will result. Conversely, the Economic Analysis discusses the potential negative impacts on water resources and quantifies those impacts generally and in some cases specifically. | NEPA requires that a No Action alternative be analyzed in order to provide a "benchmark" that will enable decision makers to compare the magnitude of environmental effects of the action alternatives. In the case of flycatcher critical habitat designation, the No Action alternative is the current situation in which the flycatcher is listed as endangered. The act of critical habitat designation has always required an Economic Analysis. Because the Tenth Circuit opinion in <i>New Mexico Cattle Growers Association, et al, v. USFWS</i> required the Economic Analysis, which was conducted separately from the EA, to examine co-extensive costs when considering critical habitat designation, the USFWS determined that to include the costs associated with listing the flycatcher. The analysis threshold for the EA and Economic Analysis are not the same, with the Economic Analysis requiring consideration of co-extensive costs and NEPA requiring environmental analysis against the benchmark of the No Action alternative. Site-specific project mitigation and the costs associated with section 7 consultations are unique to each project or activity. It is beyond the scope of the EA to analyze and predict mitigation costs and delays associated with project modifications and/or section 7 consultations. |
| 15 | WAT-18 | G-100-3 | No mention is made of potential impacts to water in the San Luis Valley, which are at least briefly discussed in the Economic Analysis at Pages 4-65 to 4-68. As indicated in the Economic Analysis, impacts to water resources are not likely to be minor. | As a result of flycatcher conservation agreements and conservation management actions, the proposed designated critical habitat stream segments in the San Luis Valley will be excluded in the proposed Final Rule. |
| 16 | WAT-19 | 0-150-1 | The EA failed to discuss the impacts from mines on our streams and our waterways. Mines do a lot of groundwater pumping in and near streams, and their impacts on these riparian areas should be at least discussed. | NEPA requires that the public scoping process be used to identify the scope of issues to be addressed in the EA (40 CFR 1501.7). Mining was not an issue raised during scoping. Potential disruptions to mining activities as a result of section 7 consultations, consultation outcomes, and mitigation cannot be predicted. As discussed in depth in the Economic Analysis, the potential direct impacts of mine operations would require project-specific analysis that is beyond the scope of the EA and would be analyzed as part of individual section 7 consultations. |
| 17 | WAT-20 | I-151-1 | The flycatcher habitat around Roosevelt Lake has been flooded. | As stated in EA Sections 1.3.2 and 1.3.3, flycatcher habitat is dynamic, requiring disturbances (including periodic inundation) to maintain habitat suitable for nesting, foraging, and migrating flycatchers. |
| 18 | WAT-21 | G-136-1 | Groundwater withdrawal causing lowering of water tables is a impact to riparian areas. This text should be added to Page 3, Paragraph 1 in the EA. | Comment noted. Groundwater-withdrawal impacts to riparian areas has been incorporated into the EA text. |

Water

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|----|-----------------------|----------------------|--|--|
| 19 | WAT-22 | G-136-1 | In some instances dam operation has periodically increased the amount of available flycatcher habitat in delta areas of reservoirs, and has increased the abundance of forest along some downstream reaches. This should be noted in the EA, Page 39, Paragraph 2. | Comment noted. However, the commentor did not provide any information on or instances where dam operations have increased flycatcher habitat. A document review will be conducted, and if instances are found, then the EA text will be amended to recognize the increase in forest along riparian corridors. |
| 20 | WAT-23 | G-468-4 | (Page 23, Table 2.6, Water Resources) It appears that the summary in Table 2.6, and section on water resources, does not take into consideration the future impacts as described in the Economic Analysis, particularly under Scenario 2. The effects described in the Economic Analysis for future impacts should be included in the EA. | As stated in EA Sections 1.3.2 and 1.3.3, flycatcher habitat is dynamic, requiring periodic disturbances (including inundation of habitat within conservation space of lakes) to maintain long-term habitat suitability for nesting, foraging, and migrating flycatchers. |
| 21 | WAT-24 | G-468-4 | (Page 80, First full paragraph) Potential impacts to water management will be controversial on the Lower Colorado River. If the LCR MSCP is not excluded ... water management implications, except those suggested in Scenario 2 of the Economic Analysis would create much controversy. | The area managed under the LCR MSCP (from full pool elevation of Lake Mead to Southerly International Border) is excluded from critical habitat designation under the proposed Final Rule. The lower Colorado River is excluded from flycatcher critical habitat designation as result of LCR MSCP management, Tribal management, and National Wildlife Refuge management. The LCR MSCP was formed to protect critical habitat for endangered fish species, will conserve flycatcher habitat, and accommodate current water diversions and power production (see EA Section 3.2.8). |
| 22 | WAT-26 | B-103-1 | Rather than the 21,000 acre-feet of water listed in the exhibits, an average of 30,000 acre-feet of water is subject to potential loss at Horseshoe (comment about Economic Analysis report of water loss). | The ability of storage facilities to adapt water management practices is unique for each facility based on hydrology, water management system, and current legal water agreements. Some facilities may be able to adapt management practice to reduce water losses due to flycatcher conservation measures, while others may not. As stated in Section 4 of the Economic Analysis, analysis does not subtract any costs associated with "windfall" downstream use of water following spillage -- that is, this analysis assumes that all water released will be not be used by downstream users (i.e., lost to the ocean). |
| 23 | WAT-28 | B-103-1 | (3.2.2, Water Resources, Page 40) The take of 45 territories was with respect to construction of modifications to Roosevelt, not operations. The Roosevelt HCP covers operations of the dam, which could result in take of up to 750 acres of habitat, affecting 400 or more birds. | Analyzing the impacts of HCPs is beyond the scope of the EA. However, as stated in EA Section 2.2.3, the effectiveness of an HCP's protection of essential flycatcher habitat is addressed in a section 7 consultation. HCPs typically provide greater conservation benefits than what occurs in consultations for individual projects, and HCPs include stipulations for long-term protection and management of flycatchers. Specifically, as also stated in this section, the Roosevelt HCP provides for flycatcher habitat protection and off-site conservation of habitat. |
| 24 | WAT-30 | G-050-2 | There are two units listed in The Draft EA regarding water data on Table 3.2, so it is difficult to tell how much surface water is claimed to be used by agriculture. Likewise, the relative proportions of "withdrawals" for "Public" use and "Irrigation" appear to be off by at least five times. | The table was extracted from the flycatcher Final Recovery Plan, which is a compilation of the best information on flycatcher habitat. The table was included in the description of the water resources affected environment with the purpose of generally describing water use within the 6-state area where flycatcher critical habitat has been proposed. |
| 25 | WAT-31 | I-489-1, I-492-1 | The problem with any claim of an endangered or threatened species in Arizona or New Mexico is the fact that there are such limited areas with water availability, water is an important resources in this arid country, and the USFWS should look closer at the impacts for the future, limiting water rights will have. Critical habitat designation will limit land and water use. | As stated in the EA, the designation of flycatcher critical habitat would likely increase the number of section 7 consultations for actions or activities that could potentially impact flycatcher habitat. Existing water rights are not expected to be affected, and an analysis of limitation-related impacts on land or water use is beyond the scope of the EA, as the analysis would be speculative. Potential impacts on land and water use would require project-specific analysis and would also be analyzed as part of individual section 7 consultations. |

Water

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|----|-----------------------|----------------------|--|--|
| 26 | WAT-32 | G-524-1 | Surface water diversions and such uses may be deemed to affect critical habitat, consequently landowners in the Franklin Irrigation District will be adversely impacted. "Incidental take" provisions in the EA indicate the scope of the Draft EA and Draft Economic Analysis outreaches the boundaries of proposed critical habit areas. | As stated in the EA, the designation of flycatcher critical habitat would likely increase the number of section 7 consultations for actions or activities that could potentially impact flycatcher habitat. Existing water rights are not expected to be affected, and an analysis of limitation-related impacts on land or water use is beyond the scope of the EA, as the analysis would be speculative. These activities would be analyzed under site-specific NEPA documents and through the site-specific section 7 consultation process. |
| 27 | WAT-33 | G-524-1 | The potential loss of the ability to divert surface water and potential groundwater is an important economic, social, and environmental concern not addressed in Draft EA or Economic Analysis. State water law in determining the subflow of groundwater pumping activities and that effect on riparian habitats being used by flycatcher is not addressed. Arbitrary determinations made by the USFWS will result in increased litigation and judicial challenges. | Section 4 of the Economic Analysis provides an analysis of economic impacts associated with flycatcher conservation activities related to water management activities, including dam operations, hydropower production, water diversion, groundwater pumping, river channelization, and bank stabilization. As discussed in Section 4, detailed assessment of the economic impacts on facilities and end users would require detailed system-wide hydrologic and economic models. This analysis utilizes best available data and simplifying assumptions to provide estimates that bound the magnitude of potential impacts that could result from alterations to water operations in proposed critical habitat designation areas. |
| 28 | WAT-33 | G-486-1 | Restrictions on water activity, pumping and diverting in the Gila River will have tremendous economic consequences. The impacts will include water allocation issues and additional oversight and regulation of nearby activities | As discussed in EA Section 3.2.2, the impacts on water resources from designation of flycatcher critical habitat "would be minor and not constrain any intended water management activities." |

Wilderness

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|---|-----------------------|----------------------|---|--|
| 1 | WILD-01 | G-097-7 | There is local concern about the impact that critical habitat designation will have on Washington County's Mosquito Abatement Program. | The commentor does not provide any additional, specific information on concerns for or impacts on the mosquito control program. The USFWS does not believe that mosquito abatement programs focused in communities and developed areas necessarily pose a risk to flycatchers. The USFWS encourages cooperation and coordination from those applying chemicals to riparian areas in and around river water due to possible concerns regarding flycatchers, other wildlife dependent on insect populations, and water quality. We believe there are applications of mosquito abatement in riparian areas that could be compatible with flycatchers and reduce risk to other wildlife and people. For example, application of larvicide is typically most effective, target specific, and provides the least risk to non-target species. |
| 2 | WILD-02 | I-077-6 | The USFWS should trap cowbirds, as it is necessary in many areas for flycatcher recovery. The USFWS should eliminate feeding sources for cowbirds. Activities that provide feeding areas for cowbirds, such as grazing, should be prohibited in a 5-mile radius adjacent to current flycatcher populations or in a areas targeted for restoration of populations and habitat. | As stated in the EA (Sections 3.2.2, 3.2.7), cowbird trapping is conducted by a variety of agencies and land managers throughout the subspecies range in locations where brood parasitism is believed to be an issue. |
| 3 | WILD-03 | I-077-6 | Prohibit take of flycatchers. Prohibiting further take of any flycatchers is the absolute minimum action necessary to prevent the flycatcher from going extinct. | The listing of an endangered species protects the species from unlawful "take" under federal law (section 9 of the ESA). However, if "take" is going to occur in the course of research, recovery, or enhancement activities on a species, or if "take" is going to occur incidentally during an otherwise lawful activity, federal, non-federal organizations, and individuals must apply for and receive a permit that authorizes the anticipated take. Thus, authorized "take" is a lawful activity. |

Wilderness

| | Resource / Issue Code | Source / Region Code | Comment | Response |
|---|-----------------------|----------------------|--|--|
| 4 | WILD/ALT -04 | G-468-4 | (Page 24, Table 2.6, Fisheries) The Economic Analysis suggests decreased flows due to changed dam operations on the Lower Colorado River. This may have the potential to affect native fish and may conflict with critical habitat designated for those fish. Was this analyzed under the alternatives in the EA? (Page 25, Table 2.6, Threatened and Endangered Species) 1) The Economic Analysis suggests decreased flows due to changed dam operations on the Lower Colorado River, which may affect native fish. 2) the 2 critical habitat designations may have conflicting recommendations/requirements. | The lower Colorado River is excluded from flycatcher critical habitat designation as result of LCR MSCP management, Tribal management, and National Wildlife Refuge management. The LCR MSCP was formed to protect critical habitat for endangered fish species, will conserve flycatcher habitat, and accommodate current water diversions and power production (see EA Section 3.2.8). |
| 5 | WILD-05 | G-468-4 | (Page 52, Section 3.2.5.2) Decreased flows due to changed dam operations on the Lower Colorado River may affect native fish, Yuma clapper rail and black rail. Also the discussion under the fisheries centers mainly on the Lower Colorado River. Were other fisheries in other river systems also considered, for example the Rio Grande? | Fish species in other river systems were not considered. The Lower Colorado River system was used to provide a brief description of the Colorado River system and illustrate the impacts to Southwest fisheries from altered flow regimes and hydrological cycles. |
| 6 | WILD-06 | G-538-2 | A "get the cows off" approach is imprudent to the management of southwestern riverine systems and the native species that depend on them. Their approach is failed and destructive one of single-species command and control. | As stated in the grazing Section of the EA (3.2.7.2), the impacts to livestock grazing would increase because of increase section 7 consultations, but grazing practices are expected to remain similar to current conditions. Improvement of riparian areas for the flycatcher is expected to benefit all wildlife dependent on southwestern streams, not just flycatchers. A large number of riparian species are listed as threatened or endangered, species that naturally inhabit the riparian and/or aquatic habitats to which the flycatcher is also tied. This underscores that southwestern riparian and aquatic habitats, while supporting disproportionately high levels of biodiversity, have also been degraded at a landscape level. The presence of so many listed species within this broad ecosystem does not mean that difficult decisions must be made of managing for one listed species rather than, or at the expense of, another. Rather, this situation illustrates that if riparian and aquatic ecosystems are improved to a more natural, heterogeneous conditions (recognizing that restoring rivers to completely wild conditions is not possible), many imperiled species will benefit. |
| 7 | WILD-07 | G-552-8 | USFWS takes a myopic view. USFWS recognizes that narrowing of channels and lower water temps have had significant negative effects on native fish, but then USFWS states that their habitat conservation measures [for flycatcher] will do the very same thing ... and now it's a good thing because it helps the flycatcher. Chapter 4 says there are unlikely to be uncertain, unique or unknown risks. What about the risks of flycatcher conservation action on stream channels and native minnows? | The commentor does not mention which habitat conservation measures would have negative impacts on native fish, or what those impacts would be. As stated in EA Section 3.2.2, mitigation measures for water resources (prior to and as a result of section 7 consultations) include habitat restoration, habitat monitoring, water exchanges, and releasing supplemental water from dams. The beneficial impacts on water resources from flycatcher habitat conservation are listed in the section. |