



Questions and Answers: Southwestern Willow Flycatcher Critical Habitat Proposal

Arizona Ecological Services Field Office

<http://arizonaes.fws.gov>

Q: Why is the southwestern willow flycatcher endangered?

A: Flycatcher populations have declined significantly throughout their range because of changes to riparian ecosystems (trees and shrubs near water) including reductions in water flow, alteration of flood flows, physical modifications to watersheds and streams, and removal of riparian vegetation. These changes have occurred as a result of dams and reservoirs, groundwater pumping, channelization of streams for flood control, livestock overgrazing, agriculture developments, urbanization and other modifications. An increase in nest parasitism by cowbirds and predation of flycatcher nests affects populations, especially those in smaller numbers and at more isolated locations. As a result of changes in land use and water management, native riparian woody vegetation has changed in many areas to include more non-native and exotic vegetation such as salt cedar, Russian olive, and other species. Modification and loss of wintering habitat and “stopover” habitat used by flycatchers to replenish energy reserves during migration, and the continued use of agri-chemicals and pesticides in Latin America are also believed to be contributing to the decline of flycatchers.

The southwestern willow flycatcher was listed as endangered on Feb. 27, 1995.

Q: Where and when are southwestern willow flycatchers found in the United States?

A: The historical breeding habitat of the southwestern willow flycatcher included riparian areas in southern California, southern Nevada, southern Utah, Arizona, New Mexico, western Texas, southwestern Colorado, and the extreme northwestern portion of Mexico.

Flycatchers migrate from Latin America to their breeding areas in North America, typically arriving in early May. Flycatchers build nests, breed, incubate and hatch eggs through July, then fledge their juveniles through mid-August. They depart for their wintering grounds by mid-September.

The flycatcher’s current range is similar to its historical range, but the quality and quantity of habitat has been significantly reduced causing habitat to be less common and more isolated. Approximately 1150 documented flycatcher territories occur from near sea-level to over 8500 feet in elevation, but are usually found in lower elevation riparian habitats. Throughout its range, the flycatcher’s current distribution follows that of its riparian habitat; relatively small, isolated, widely dispersed locales. Flycatchers winter in Mexico, Central America, and possibly northern South America.

Q: What constitutes southwestern willow flycatcher breeding habitat?

A: The southwestern willow flycatcher breeds in patchy to dense riparian habitats along streams, reservoirs, or other wetlands. Common tree or shrub species include willow, seep willow, boxelder, tamarisk, stinging nettle, blackberry, cottonwood, and arrowweed. Habitat characteristics vary across the subspecies' range. However, occupied sites usually consist of dense vegetation in the patch interior, or dense patches interspersed with openings, creating a mosaic that is not uniformly dense. In almost all cases, slow-moving or still water, or saturated soil is present at or near breeding sites during non-drought years.

Q: What is critical habitat?

A: Critical habitat is defined as areas of land and water with physical and biological features essential to the conservation of a threatened or endangered species, and which may require special management considerations or protection. The Endangered Species Act defines "conservation" as the actions leading towards the eventual recovery of a species to the point where it is no longer threatened or endangered.

Critical habitat provides protection from the prohibition against destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency.

Q: Does a 'critical habitat' designation mean an area is considered a wildlife refuge or sanctuary?

A: Critical habitat is not designated to stop development or to establish a nature preserve. A critical habitat designation identifies areas that are important to the conservation of federally listed threatened or endangered species. A critical habitat designation requires Federal agencies to consult with the Service on any of their actions that may affect critical habitat in designated areas. The Service can then recommend ways to minimize any adverse effects. It imposes no requirements on State or private actions on State or private lands where no Federal funding, permits or approvals are required.

Q: What has been proposed as critical habitat for the southwestern willow flycatcher?

A: The proposal includes 1,556 floodplain miles in California, Arizona, Nevada, Utah, Colorado and New Mexico as critical habitat for the southwestern willow flycatcher within the 100-year floodplain or flood-prone areas. The proposal identifies the essential stream- and lake-edge habitats thought essential to conserve the species. The locations support large populations (ten or more flycatcher territories) and the proposal addresses the importance of maintaining those nesting birds' access to other local and inter-basin populations. Protecting the designated configuration of habitats will provide population stability, assure that birds can expand and colonize other locales, and promote genetic diversity. Designating the area within broad floodplains will accommodate the shifting and flooding nature of Southwest rivers, allowing habitat to persist, grow, recycle, and regenerate.

Q: How did the Service determine what areas to propose as flycatcher critical habitat?

- A:**
1. It examined the Southwestern Willow Flycatcher Recovery Plan's strategy, rationale, and science behind the conservation of the flycatcher and removing the threat of extinction.
 2. Because of the flycatcher's wide distribution and the dynamic nature of its habitat, it determined critical habitat locations must address the need for local flycatcher populations to have access to

“neighboring” populations within drainages (up to 18 miles) to promote gene flow, connectivity among disjunct populations (metapopulation stability), and to prevent catastrophic losses.

3. It recognized that breeding populations should be distributed throughout the bird’s range; populations and habitat should be distributed in a fashion that allows for flycatcher movement within and between drainages; and large populations (10 or more breeding territories) contribute most to metapopulation stability. These are referred to as “essential areas.”
4. It then excluded the following essential areas because the Service believes the benefit of excluding them outweighs the benefit of including them:
 - Approved Habitat Conservation Plans that cover the flycatcher and provide assurances that the conservation measures for the species will be implemented and effective;
 - Draft HCPs that cover the flycatcher, have undergone public review and comment, and provide assurances that the conservation measures for the species will be implemented and effective;
 - U.S. Department of Defense sites with an Integrated Natural Resource Management Plan that adequately addresses flycatcher conservation measures.
5. The next step will involve evaluating information provided in comments on the proposed critical habitat designation, environmental assessment and economic analysis, considering it in the development of the final critical habitat designation for the flycatcher. The Service will consider excluding proposed areas mentioned above as well as those where there are:
 - Tribal conservation plans that cover the species and provide assurances that the conservation measures for the species will be implemented and effective;
 - State conservation plans that provide assurances that the conservation measures for the species will be implemented and effective;
 - Service National Wildlife Refuge System Comprehensive Conservation Plans that provide assurances that the conservation measures for the species will be implemented and effective.

The Service will evaluate all of the information received during the comment period, and consider excluding both those areas identified in the proposal, and others which may come to our attention as a result of the economic analysis and public comments, where the environmental assessment and economic analysis indicate the benefits of excluding the areas outweigh the benefits of designating them as critical habitat, where such exclusions will not lead to extinction – a standard provided under the Act in demarcating critical habitat. Decisions on whether to exclude areas under this standard are discretionary.

Q: What sort of information would be of value in the critical habitat evaluation and decision process?

A: Any final action resulting from this proposal should be as accurate and as effective as possible. Therefore, comments or suggestions are requested concerning:

1. The reasons why any areas should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any economic or other relevant impacts resulting from the designation;
2. Specific information on the distribution and abundance of southwestern willow flycatchers and its habitat, and which habitat or habitat components are essential to the conservation of this species and

why;

3. Land use designations and current or planned activities in or adjacent to the areas proposed and their possible impacts on proposed critical habitat;
4. Any foreseeable economic or other potential impacts resulting from the proposed designation, in particular, any impacts on small entities;
5. The proposed exclusion of lands identified as essential for the conservation of the southwestern willow flycatcher in the proposal and on other lands that we are considering excluding in the final rule (see previous Q&A). However, the Service will continue to collect information, and work with our field offices, permittees, tribal, state, and federal partners to make this determination. The Service specifically solicits comments on flycatcher-specific management plans and implementation schedules delivered to Arizona Ecological Service Office covering areas included in this proposal and comment on: (a) whether these areas are essential; (b) whether these areas warrant exclusion; and (c) the basis for excluding these areas as critical habitat (section 4(b)(2) of the Act); and
6. Whether the approach to designate critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist in accommodating public concerns and comments.

Q: Would everything within designated critical habitat be treated as critical habitat?

A: No. The Service can not map critical habitat in sufficient detail to exclude all developed areas and other lands unlikely to contain “primary constituent elements” essential for flycatcher conservation. Within the proposed critical habitat boundaries, only lands containing some or all of the primary constituent elements will be designated as critical habitat. Existing features and structures within critical habitat, such as buildings; roads; residential landscaping; residential, commercial, and industrial developments; and other features, do not contain some or all of the primary constituent elements. Therefore, these areas will not be considered critical habitat and will be specifically excluded by definition.

Q: What are “primary constituent elements”?

A: They are habitat features needed for life needs and successful reproduction of a species. These include but are not limited to:

- space for individual and population growth, and for normal behavior (migration, etc.)
- cover, food, water, and other nutritional/physiological requirements
- locations for breeding, feeding and rearing offspring

Q: What are the “primary constituent elements” of proposed flycatcher critical habitat?

A: The areas proposed for designation as critical habitat are designed to provide sufficient riparian habitat for breeding, non-breeding, territorial, dispersing and migrating southwestern willow flycatchers and to flycatchers throughout their range, and provide those habitat components essential for conservation of the species. They include:

1. Nesting habitat with **trees and shrubs** that include, but are not limited to, willow species and boxelder;

2. **Dense riparian vegetation** with thickets of trees and shrubs ranging in height from 6 to 98 feet tall in middle and lower elevation riparian forests, and with lower-stature thickets (6-13 feet tall) found at higher elevation riparian;
3. Dense riparian **understory** foliage at least from the ground level up to approximately 13 feet;
4. Sites for nesting that contain a dense tree and/or shrub **canopy** (i.e. a tree or shrub canopy with densities ranging from 50 percent to 100 percent);
5. Dense patches of riparian forests that are interspersed with small openings of open water or marsh or shorter/sparser vegetation, that creates a **mosaic**; and
6. A variety of **insect** prey populations (wasps, bees, flies, beetles, butterflies/moths etc.).

Q: Why and how were areas within the 100-year floodplain chosen to demark critical habitat?

A: Flycatcher breeding habitat (as noted above) is usually contained within the 100-year floodplain (including reservoir draw-down areas).

The boundary or “lateral extent” of the areas proposed for designation all fall within the 100-year floodplain, but are frequently limited to flood-prone areas less expansive than the 100-year floodplain. The Federal Emergency Management Agency (FEMA) designates and maps the 100-year floodplain boundaries for many larger rivers in the vicinity of urban and suburban areas. However, not all of 100-year floodplains throughout the proposed critical habitat areas have been mapped by FEMA. As a result, the Service has, for this proposed rule, mapped the lateral extent or riparian zones by one of two methods; the areas were either captured from existing digital sources or created through expert visual interpretation of aerial photographs and satellite imagery. These maps are available at <http://arizonaes.fws.gov>.

Q: How will the proposed critical habitat compare to the Southwestern Willow Flycatcher Recovery Team’s recommendations for habitat conservation?

A: The Service recognizes that the Recovery Team’s efforts and the adopted recovery plan represent a treatment of the best, most current biological information and a projected plan for the recovery of the species. However, the plan makes no critical habitat recommendations. The science, threats, issues, importance of “metapopulation” stability, and affected entities identified in the Recovery Plan have been incorporated in the critical habitat proposal deliberation.

Q: Are economic effects considered during critical habitat designation?

A: The Endangered Species Act (Act) requires the Service to designate critical habitat on the basis of 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 Service may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Q: How did the Service analyze the economic effects associated with the flycatcher and critical habitat designation?

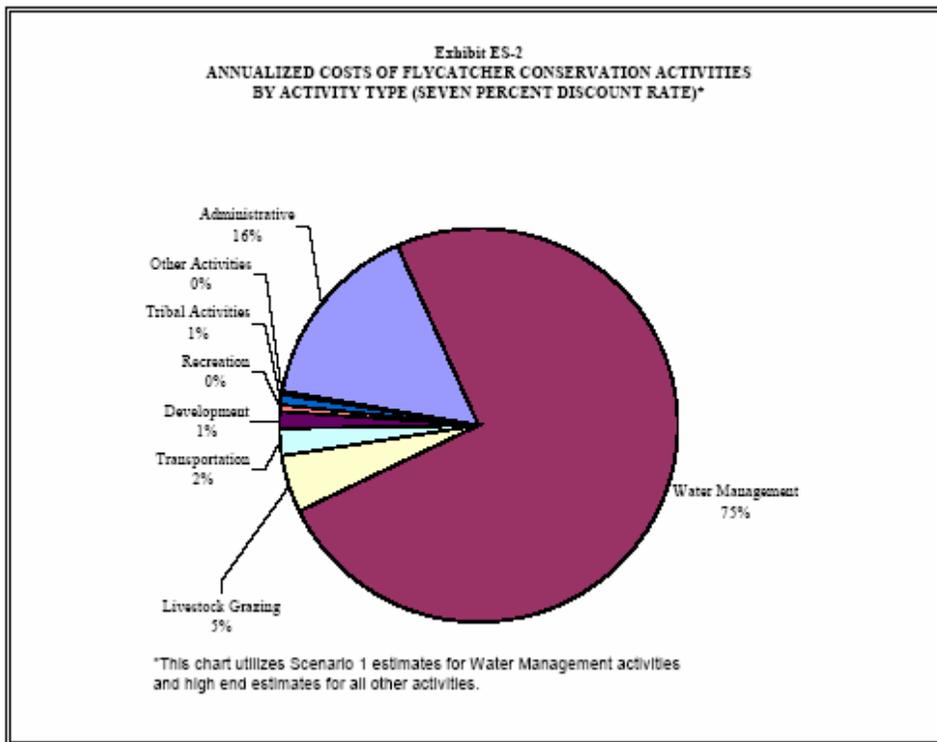
A: The Circuit Court of Appeals directed the Service that when deciding which areas to designate as critical habitat, the economic analysis should include “co-extensive” effects. Those include all economic effects resulting from conserving the species, the species’ listing (endangered) status, previous and future mitigation costs, and the implementation of critical habitat. The economic analysis evaluates the co-extensive effects of flycatcher conservation. The environmental assessment (under the National Environmental Policy Act) focuses on the natural and human environment that may result from critical habitat designation alone.

Q: What are the economic effects and who is experiencing them?

A: The draft economic analysis estimates the impacts of all flycatcher conservation efforts in the proposed designated areas, not just those exclusively associated with critical habitat designation, between \$29.2 and \$39.5 million annually. Some of those costs are associated with the development of Habitat Conservation Plans and other management efforts that could result in areas not being designated as critical habitat.

Based on past, ongoing and future costs associated with flycatcher conservation efforts under the most likely scenario are estimated as follows (annually):

- Water management activities \$25.7 million 75% of total costs
- Administrative costs \$1.6-\$5.4 million 16% of total costs
(Fish & Wildlife Service, action agencies, third parties)
- Reduced livestock grazing \$0.16-\$1.69 million 5% of total costs
- Transportation projects \$0.7 million 2% of total costs
- Development activities \$0.5 million 1% of total costs
- Impacts to Tribes \$0.2 million 1% of total costs
- Recreation activities \$0.09 million 0% of total costs



Q: Hasn't the southwestern willow flycatcher always had a sparse distribution?

- A:** Yes. The flycatcher has always been sparsely distributed in the Southwest due to the sparse distribution of its riparian (streamside) habitat in this predominantly arid region. However, sparse distribution and rarity are not equivalent. Although flycatcher habitat is rare, nesting pairs have occurred in high densities where suitable habitat is present.
- Q: Would the southwestern willow flycatcher only be protected in designated critical habitat areas?**
- A:** No. All other protections afforded by the Act apply both on and off designated critical habitat. Listed species, both inside and outside critical habitat, are protected from 'take,' which includes harming (e.g., shooting, killing, trapping, collecting) and harassing individual animals. However, incidental taking that may result from, but is not the purpose of, otherwise legal activities may be allowed with a permit available from the Service.
- Q: When will a critical habitat designation become effective?**
- A:** Critical habitat designation that would trigger Endangered Species Act section 7 review of Federal activities would become effective 30 days following our final determination, scheduled under court order for September 2005. However, section 7 also requires “conferences” on Federal actions that are likely to result in the adverse modification or destruction of the currently proposed critical habitat. The Service’s conference opinions do not require Federal agencies to offset proposed critical habitat destruction or adverse modification. However, most agencies accept the recommendations made in the conference opinions, as most conference opinions can be connected to biological opinions once critical habitat is finalized, thereby saving consultation and project delays that could occur when a final rule becomes effective.
- Q: How would a critical habitat designation affect my private land?**
- A:** Requirements for consultation on critical habitat do not apply to entirely private actions on private lands. Critical habitat designations only apply to Federal lands or federally funded or permitted activities on private lands. Activities on private or State lands that are funded, permitted or carried out by a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, or a section 402 permit under the Clean Water Act from the Environmental Protection Agency, will be subject to the section 7 consultation process with the Service if those actions may affect critical habitat or a listed species. Through this consultation, the Service would advise agencies whether the permitted actions would likely jeopardize the continued existence of the species or adversely modify critical habitat. Federal actions not affecting critical habitat or otherwise affecting flycatchers or their habitat (e.g., suitable habitat outside of critical habitat), and actions on non-Federal lands that are not federally funded, permitted or carried out, will not require section 7 consultation.
- Q: What can a landowner do to enhance habitat for the flycatcher?**
- A:** The U.S. Fish and Wildlife Service is able to provide technical and financial assistance to landowners who want to improve or restore habitat on their property through the Partners for Fish and Wildlife Program and other private stewardship grant programs.
- Q: When an area is designated as critical habitat, are all human activities in the area prohibited?**

A: No. The only activities prohibited in these areas are Federal actions that are likely to appreciably reduce the value of that habitat for the flycatcher. (See above)

Q: Will livestock grazing be affected by critical habitat designation?

A: Formal consultation under the Endangered Species Act is required only when federally-permitted grazing may adversely affect critical habitat. Federal land management agencies are required to evaluate the effect grazing has on federally managed critical habitat areas. The flycatcher can exist in grazed areas, but does best in areas where the species' habitat suitability is maintained in good condition and cowbird populations are kept in check.

Q: Why is the Service initiating the designation of critical habitat for the flycatcher again?

A: In 1997, 599 river miles of flycatcher critical habitat were designated in southwestern New Mexico, southern California, and Arizona. In 2001, the 10th Circuit Court of Appeals set aside designated critical habitat in those states under the Circuit's jurisdiction (New Mexico). The Service, in turn, set aside critical habitat designated in California and Arizona until a reassessment of the economic effects of designation could be completed. The Service is currently under a Court order to again designate critical habitat. The Court assigned a schedule requiring a completed draft analysis and proposed critical habitat by September 2004 and a final determination by September 2005.

Q: What does the public comment period accomplish?

A: Early in the flycatcher critical habitat deliberation, the Service conducted an extensive series of scoping meetings (eight in five states) and solicitation of comments. Many of those comments contributed to the Service's rationale for selecting the proposed critical habitat and are forming the basis for critical habitat deliberation.

The current public comment period is the venue for receiving formal public, industry and conservation group input into the critical habitat designation process. Also during this time, the Service seeks scientific peer review of its proposal and rationale for critical habitat designations. The draft environmental assessment and economic analysis are now available to the public. Both of these documents relied heavily upon comments received during the scoping process. All comments will be incorporated into or addressed in the final designation and supporting environmental assessment and economic analysis.

Q: How do I provide information and comments to the Service?

A: Please write comments and send them by mail, fax or e-mail by May 31, 2005. Send to Field Supervisor, U.S. Fish and Wildlife Service, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021-4951 (602-242-0210, FAX 242-2513) or e-mailed to WIFLcomments@fws.gov. Comments will also be recorded at a series of public hearings.

The 1997 critical habitat rule, final recovery plan, the current proposal, draft economic analysis, draft environmental assessment, maps of the proposed critical habitat, and other flycatcher information, are available on the Internet at <http://arizonaes.fws.gov> or by contacting the Field Supervisor.