

FINDING OF NO SIGNIFICANT IMPACT

Designation of Critical Habitat for Southwestern willow flycatcher

(Empidonax traillii extimus)

The U.S. Fish and Wildlife Service (Service) is designating revised critical habitat for southwestern willow flycatcher (*Empidonax traillii extimus*) (flycatcher) under the Endangered Species Act.

A total of approximately 1,975 stream km (1,227 stream mi) encompassing approximately 84,569 hectares (208,973 acres) are being designated as critical habitat in this revision. The designation excludes from final critical habitat a total of approximately 1,257 stream kilometers (781 stream miles) encompassing 114,143 hectares (282,051 acres) that were originally included our August 15, 2011 proposed designation.

In this final designation, we did not exclude every area that was identified in the proposed designation as being considered for exclusion under the Secretary of Interior's discretion per section 4(b)(2) of the Act. We have recommended exclusion of a large number of proposed areas based on various conservation plans and partnerships where the benefits of exclusion outweigh the benefits of inclusion of the area as critical habitat (and verifying that such exclusion will not result in the extinction of the species). The following summary highlights some of the exclusion issues:

- Most non-Federal proposed lands covered under an existing Habitat Conservation Plans (HCPs) or similar conservation plan are recommended for exclusion.
- Some Federal lands covered under water operations HCPs are also recommended for exclusion because of the benefits to the Service's non-Federal water operations partners.
- Most other Federal lands were not recommended for exclusion because of the benefits provided by critical habitat designation. Lands around Elephant Butte Reservoir, for example, were considered for exclusion, but ultimately not recommended for exclusion. These lands are owned by the Bureau of Reclamation, but there are no adequate management plans in place and no conservation partnerships that would be affected by designation of critical habitat. However, based on the comments we received on the proposed rule, we have recommended reducing the amount of area designated as critical habitat at the inflow of Elephant Butte Reservoir.
- All proposed Tribal lands are being recommended for exclusion mainly because the Tribes have either ongoing management plans for flycatchers or exclusion provided substantial benefits for maintaining conservation partnerships that benefited the flycatcher and other listed species.

Section 7 of the ESA requires Federal agencies to ensure, through consultation with the Service, that actions they fund, authorize, or carry out will not likely jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat.

Our Environmental Assessment recognizes the difference between Section 7 consultations that result from the listing of the species that would occur regardless of critical habitat designation (i.e., jeopardy) and consultations that result from the presence of critical habitat (i.e., adverse modification). Separating the future Section 7 impacts into those that are attributable to the listing of the species and those that are attributable to critical habitat designation yields a more accurate estimation of the actual impacts and cost of designating critical habitat, and also provides an estimate of the total cost of species conservation.

Aside from the added protection that may be provided under Section 7, the ESA does not provide other forms of protection to lands designated as critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Because consultation under Section 7 of the ESA does not apply to activities on private or other non-Federal lands that do not involve a Federal action, critical habitat designation would not result in any regulatory requirement for these activities.

This designation has been coordinated with interested and/or affected parties. The Service published a Notice of Availability on July 12, 2012 (77 FR 41147), and provided written notice to interested individuals including Native American Tribes, private landowners, county commissioners, congressional and State representatives, State and Federal agencies, and other potentially interested parties, of the draft Environmental Assessment and draft Economic Analysis. We provided 60 days for public review and comment. In addition, a public meeting was held on the proposal in San Carlos, Arizona, on August 16, 2012. All comments received were analyzed and, where appropriate, were incorporated into the final Environmental Assessment, final Economic Analysis, and/or the Final Rule.

As discussed in the July 12, 2012, notice announcing the availability of the draft Economic Analysis (77 FR 41147), the draft analysis estimated for the proposed potential future costs of designating critical habitat, were estimated to be between \$11 million to \$19 million (\$920,000 to \$1.7 million annualized), assuming a 7 percent discount rate. The analysis also showed that the proposed critical habitat designation will not have a significant economic impact on a substantial number of small business entities.

After taking into consideration public comment on the proposal, the draft Economic Analysis and the draft National Environmental Policy Act (NEPA) document, we evaluated the benefits of conservation programs, plans, and partnerships relative to the regulatory benefits of critical habitat pursuant to Section 4(b)(2) of the ESA. As a result, we are finalizing the revised critical habitat designation for the willow flycatcher and have prepared a final Environmental Assessment available on the Service's website: <http://www.fws.gov/southwest/es/arizona/>.

Council on Environmental Quality Analysis of Significance

Under the Council on Environmental Quality (CEQ) 40 CFR Part 1508.27, the determination of "significant" impacts, for the purpose of determining whether a more detailed Environmental Impact Statement must be prepared, requires consideration of both context and intensity.

Context

The context of short- and long-term impacts of the proposed designation of flycatcher critical habitat includes stream segments that encompass parts of 49 counties within 5 states—CA, NV, UT, AZ, and NM--in 29 Management Units clustered within 6 Recovery Units. Impacts of critical habitat designation will not be national, only regional and mostly local. Impacts at these scales would be minor.

Intensity

Intensity is defined by CEQ as referring to the severity of impact. The following 10 points identified by CEQ were considered in evaluating intensity:

1. *Potential impacts to environmental resources, both beneficial and adverse, would be minor or moderate in all cases.* Analyses of impacts of critical habitat designation on sensitive resources within stream segments proposed as flycatcher critical habitat were conducted and discussed in Chapter 3 of the EA, and it was determined that designation of critical habitat would have both adverse and/or beneficial impacts on those resources. These analyses concluded that the adverse impacts of critical habitat designation would not be significant.
2. *There would be no or negligible impacts to public health or safety from the proposed designation of critical habitat.* Wildland fire suppression and wildland fire management within wildland-urban interface areas would not be significantly impeded by the designation of critical habitat. To the extent that a construction project has a public safety benefit, delays resulting from consultations on adverse modification could lead to public safety risks, which would need to be addressed on an individual project basis. Any risks remaining after avoidance or mitigation would be expected to be negligible.
3. *Impacts on unique characteristics of the area would be negligible.* Activities proposed by the Federal land managers in these areas would only be those specifically intended to improve the health of these riparian ecosystems, and thus they would be anticipated to help recover or sustain the PCEs along these segments. Therefore any adverse impacts to critical habitat would be negligible at most.
4. *Potential impacts to the quality of the environment are not likely to be highly controversial.* Impacts are not likely to be highly controversial because, as the analysis of impacts of critical habitat designation has concluded, the quality of the environment would not be significantly modified from current conditions. This analysis was based

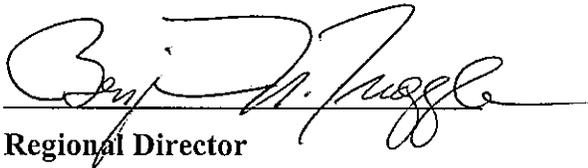
on past consultations, past impacts of flycatcher conservation on activities within the flycatcher recovery area, and the likely future impacts from flycatcher conservation.

Impacts to water management and resource activities are not expected to be highly controversial because, as discussed in the analysis of impacts on water resources, the constraints on current water management activities are expected to be limited.

The Service believes that, with the combination of exclusions and voluntary conservation measures already in place for most water projects, the likely impacts of the proposed designation would not be highly controversial. The Service understands that, given the prior history of designation, some level of controversy may result.

5. *The impacts do not pose any uncertain, unique, or unknown risks.* Critical habitat has been designated for the species since 1995, and the nature of the potential impacts are clear from the actual felt impacts of on-the-ground projects, consultations, and modifications. The proposed designation may cause minor changes in the location and frequency of impacts, but not to their nature or their severity.
6. *The designation of critical habitat by the Service for the conservation of endangered species is not a precedent-setting action with significant effects.* The agency has designated critical habitat for numerous other species and, of course, for the southwestern willow flycatcher itself. Therefore, designating critical habitat for flycatchers is not a precedent-setting action.
7. *There would not be any significant cumulative impacts* because the cumulative impacts would be limited to section 7 consultation outcomes, which our analysis has determined to be minor at most; subsequent effects on other species; and the effects of designated critical habitat for other species, all of which are anticipated to be minor at most.
8. *This critical habitat designation is not likely to affect sites, objects, or structures of historical, scientific, or cultural significance* because any such potential impacts would be addressed by Federal and state laws enacted to protect and preserve these resources.
9. *The proposed designation of critical habitat for flycatcher would have long-term, beneficial effects for this endangered subspecies.* The purpose of the Service's action is to re-designate critical habitat for the flycatcher, a subspecies listed as endangered under the ESA. Critical habitat designation would have long-term, beneficial, conservation-related impacts on the flycatcher subspecies' survival and recovery through maintenance of PCEs.
10. *Proposed critical habitat designation would not violate any Federal, state, or local laws.* This re-designation of critical habitat was agreed to pursuant to a settlement agreement with the Center for Biological Diversity, as described above.

Based on a review and evaluation of the information contained in the Environmental Assessment, it is my determination that the designation of critical habitat for southwestern willow flycatcher (*Empidonax traillii extimus*) does not constitute a major Federal action significantly affecting the quality of the human environment under the meaning of Section 102(2)(c) of the NEPA of 1969 (as amended). As such, an Environmental Impact Statement is not required.



Regional Director

12/6/12
Date

Southwest Region

U.S. Fish and Wildlife Service