

approximately 5.5 million hectares (ha) (13.5 million acres (ac)) of critical habitat in Arizona, Colorado, New Mexico, and Utah, mostly on Federal lands. The final rule designated approximately 1.9 million ha (4.6 million ac) of critical habitat on Federal lands in Arizona, Colorado, New Mexico, and Utah.

DATES: We will accept comments until December 18, 2003.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning the July 2000 proposal by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, New Mexico 87113.

2. You may hand-deliver written comments and information to our New Mexico Ecological Services Field Office, at the above address, or fax your comments to 505-346-2542.

3. You may send your comments by electronic mail (e-mail) to "R2FWE_AL@fws.gov." For directions on how to submit electronic filing of comments, see the "Public Comments Solicited" section.

All comments and materials received, as well as supporting documentation used in preparation of this notice and the July 2000 proposed rule (65 FR 45336) will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Joy Nicholopoulos, New Mexico State Administrator, New Mexico Ecological Services Field Office (telephone 505-761-4706, facsimile 505-346-2542).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

Comments previously submitted on the July 2000 proposal need not be resubmitted, because they will be incorporated into the public record as part of this reopening of the comment period, and will be fully considered in the final rule. It is our intent that any final action resulting from our July 2000 proposal be as accurate as possible.

Section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires us to consider the economic and other relevant impacts of specifying any area as critical habitat and authorizes us to exclude areas from designation upon finding that the benefits of exclusion outweigh the benefits of including the areas as critical habitat, so long as excluding those areas will not result in the extinction of the species concerned. We will conduct a

new analysis of the economic impacts of designating these areas, in a manner that is consistent with the ruling of the 10th Circuit Court of Appeals in *New Mexico Cattle Growers Ass'n v. USFWS*, 248 F.3d 1277 (10th Cir. 2001). We will also undertake a new National Environmental Policy Act (NEPA) analysis for this critical habitat designation. We intend to publish a notice of availability and reopening of the comment period in the **Federal Register** to accept public comments on the draft economic analysis and draft NEPA compliance documents.

We hereby solicit data and comments from the public on all aspects of the July 2000 proposal, including new scientific or commercial data and new data on economic and other impacts of the designation. We also are specifically seeking comment on the exclusion of tribal lands (see "Designation of Critical Habitat on Tribal Lands" section below). The final designation may differ from the July 2000 proposal based on new information received during the public comment period and the findings of the economic analysis and NEPA assessment. We particularly seek comments 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;

(2) Specific information on the amount and distribution of owl habitat, and what habitat is essential to the conservation of the 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, including any impacts on small entities;

(5) Economic and other values associated with the benefits of designating critical habitat for the owl, such as those derived from nonconsumptive uses (e.g., hiking, camping, birding, enhanced watershed protection, increased soil retention, "existence values," and reductions in administrative costs);

(6) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments;

(7) Conservation benefits to the owl from tribal or other management plans;

(8) The possible effects of a critical habitat designation on tribal or other lands; and

(9) The possible effects on tribal or other resources resulting from designation of critical habitat on nontribal lands.

If you wish to comment, you may submit your comments and materials concerning the July 2000 proposal by any one of several methods (see **ADDRESSES** section). Please submit electronic comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include "Attn: RIN 1018-AT52" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our New Mexico Ecological Services Field Office at (505) 346-2525.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you would like for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Background

Recent Court Actions Related to Critical Habitat for the Owl

On March 13, 2000, the United States District Court for the District of New Mexico, (*Southwest Center for Biological Diversity v. Babbitt*, CIV 99-519 LFG/LCS-ACE), ordered us to propose critical habitat for the Mexican spotted owl within 4 months of the Court's order, and to complete and publish a final designation of critical habitat by January 15, 2001. On July 21, 2000, we published a proposal to designate critical habitat for the Mexican spotted owl on approximately 5.5 million hectares (ha) (13.5 million acres (ac)) in Arizona, Colorado, New Mexico, and Utah, mostly on Federal