

(UTM) coordinates of UTM Zone 13: 311474 E, 3719722 N, as referenced with the 1927 North American Datum (NAD27). The designation also includes the tributary Jemez River from Jemez Canyon Dam to the upstream boundary of Santa Ana Pueblo, which is not included (see the "Regulation Promulgation" section of this rule for exact descriptions of boundaries of critical habitat), and no other reaches within the historic range of the silvery minnow. We have also not included four areas of the middle Rio Grande in the critical habitat because of Tribal management plans and other relevant issues (see "Relationship of Critical Habitat to Pueblo Lands under Section 3(5)(A) and Exclusions Under Section 4(b)(2)" section of this rule). Therefore, we are only designating some sections of the river reaches currently occupied by the silvery minnow.

This final rule is selected as the preferred alternative in the final EIS, pursuant to NEPA, which we were required to prepare under court order from the United States District Court for the District of New Mexico, in *Middle Rio Grande Conservancy District v. Babbitt*, 206 F. Supp. 2d 1156 (D.N.M. 2000). The two reaches referenced above (i.e., middle Pecos River and lower Rio Grande) were also analyzed in the EIS and Economic Analysis. We followed the procedures required by the Act, NEPA, and the Administrative Procedure Act during this Federal rulemaking process. Therefore, we solicited public comment on all reaches identified in the proposed rule as essential, including whether any of these or other areas should be excluded from the final designation pursuant to section 4(b)(2). As required by law, we have considered all comments received on the proposed rule, the draft EIS, and the draft economic analysis before making this final determination.

Recovery Plan

Restoring an endangered or threatened species to the point where it is recovered is a primary goal of our endangered species program. To help guide the recovery effort, we prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting the species, and estimate time and cost for implementing the recovery measures needed. Although a recovery plan is not a regulatory document (i.e., recovery plans are advisory documents because there are no specific protections, prohibitions, or requirements afforded

to a species solely on the basis of a recovery plan), the information contained in the Rio Grande Silvery Minnow Recovery Plan (Recovery Plan) was considered in developing this critical habitat designation.

On July 1, 1994, the Recovery Team was established by the Service pursuant to section 4(f)(2) of the Act and our cooperative policy on recovery plan participation, a policy intended to involve stakeholders in recovery planning (July 1, 1994; 59 FR 34272). Stakeholder involvement in the development of recovery plans helps minimize the social and economic impacts that could be associated with recovery of endangered species. Numerous individuals, agencies, and affected parties were involved in the development of the Recovery Plan or otherwise provided assistance and review (Service 1999). On July 8, 1999, we finalized the Recovery Plan (Service 1999), pursuant to section 4(f) of the Act.

The Recovery Plan recommends recovery goals for the silvery minnow, as well as procedures to better understand the biology of the species. The primary goals of the Recovery Plan are to: (1) Stabilize and enhance populations of silvery minnow and its habitat in the middle Rio Grande valley and (2) reestablish the silvery minnow in at least three other areas of its historic range (Service 1999). The reasons for determining that these three areas were necessary for recovery include: (1) Consideration of the biology of the species (e.g., few silvery minnows live more than 12 to 14 months, indicating the age-1 fish (i.e., all fish born in 2000 that remain alive in 2001 would be age-1 fish) are almost entirely responsible for perpetuation of the species); (2) the factors in each reach that may inhibit or enhance reestablishment and security of the species vary among areas; and (3) it is unlikely that any single event would simultaneously eliminate the silvery minnow from three geographic areas (Service 1999).

In accordance with the Recovery Plan, we have initiated a captive propagation program for the silvery minnow (Service 1999; Brooks 2001). Silvery minnows are currently being propagated at five facilities in NM and one in South Dakota (SD); one additional NM facility will come on-line in 2003. We currently have silvery minnows housed at: (1) The Service's Dexter National Fish Hatchery and Technology Center, NM; (2) the Service's Mora National Fish Hatchery and Technology Center, NM; (3) the City of Albuquerque's Biological Park, NM; (4) the New Mexico State University, NM; (5) the New Mexico Department of

Game and Fish's Rock Lake State Fish Hatchery, NM; and (6) the U.S. Geological Survey Biological Resources Division's Yankton Laboratory, SD (J. Brooks, pers. comm., 2002). Progeny of these fish are being used to augment the middle Rio Grande silvery minnow population, but could also be used in future augmentation or reestablishment programs for the silvery minnow in other river reaches (J. Remshardt, New Mexico Fishery Resources Office, pers. comm. 2001).

We have also salvaged and transplanted silvery minnows within the middle Rio Grande in recent years (Service 1996, 1998, 1999, 2000, 2001, 2002). Approximately 225,500 silvery minnow larvae and adults have been released (i.e., stockings from captive bred fish or translocated from downstream reaches) since May 1996 (J. Remshardt, U.S. Fish and Wildlife Service, pers. comm. 2001). For example, in late 2001, the University of New Mexico (UNM) released 11,900 silvery minnows into the San Acacia Reach. In June 2002, we released 2,500 marked silvery minnows within the Angostura Reach. These fish were marked to determine the movement of silvery minnows in the wild. Results of studies of the effectiveness of these releases will be useful for evaluating future efforts to reintroduce the species. These results should be available in 2003 (R. Dudley and S. Platania, UNM, pers. comm. 2002).

We have also continued working with the Recovery Team since the Recovery Plan was finalized. We believe this critical habitat designation and our conservation strategy (see "Exclusions Under Section 4(b)(2) of the Act" section below) are consistent with the Recovery Plan (Service 1999). The purpose of the Recovery Plan is to outline the research and data collection activities that will identify measures to ensure the conservation of the silvery minnow in the wild. We believe this critical habitat designation and our conservation strategy are consistent with the recommendations of the Recovery Plan and Recovery Team.

Summary of Comments and Recommendations

In the June 6, 2002, proposed rule, we requested all interested parties to submit comments or information concerning the designation of critical habitat for the silvery minnow (67 FR 39206). During the comment period, we held public hearings in Socorro and Albuquerque on June 25, and 26, 2002, respectively. We published newspaper notices inviting public comment and announcing the public hearings in the