

following newspapers in NM: Albuquerque Journal, Albuquerque Tribune, Socorro Defensor Chieftain, Santa Fe New Mexican, and Las Cruces Sun. Transcripts of these hearings are available for inspection (see **ADDRESSES** section). The comment period was originally scheduled to close on September 4, but was extended until October 2, 2002 (September 12, 2002; 67 FR 57783). We contacted all appropriate State and Federal agencies, Tribes, county governments, scientific organizations, and other interested parties and invited them to comment. On June 6, 2002, we hosted a teleconference to provide a short presentation and answer questions by reporters on all aspects of the proposed critical habitat designation, the draft economic analysis, and draft EIS. We also provided notification of these documents through e-mail, telephone calls, letters, and news releases faxed and/or mailed to affected elected officials, media outlets, local jurisdictions, Tribes, and interest groups. We also published all of the associated documents on our Region 2 Internet site following their release on June 6, 2002.

We solicited five independent experts who are familiar with this species to peer review the proposed critical habitat designation. Only one of the peer reviewers submitted comments, and these supported the proposed designation. We also received a total of 34 oral and 54 written comments. Of the oral comments, 10 supported critical habitat designation and 24 opposed designation. Of the written comments, 17 supported critical habitat designation, 22 opposed designation, and 15 were neutral or provided additional information. We reviewed all comments received for substantive issues and new data regarding critical habitat and the silvery minnow, the draft economic analysis, and the draft EIS. In the following summary of issues we address all comments received on all three documents during the comment periods and public hearing testimony. Comments of a similar nature are grouped into issues.

Issue 1: Biological Concerns

(1) *Comment:* Some commenters state that the extent of critical habitat proposed by us is inadequate to address survival and recovery of the species (e.g., critical habitat for the silvery minnow should be expanded beyond the current proposal).

Recommendations for additional areas designated include the Rio Grande from Caballo to the NM-TX border, the area from the confluence of the Rio Conchas

to the downstream boundary of Big Bend National Park, and the Pecos River from Sumner to Brantley Reservoir.

Our Response: Our analysis of the following two areas—(1) the river reach in the middle Pecos River, NM, from Sumner Dam to Brantley Dam in De Baca, Chaves, and Eddy Counties, NM; and (2) the river reach in the lower Rio Grande in Big Bend National Park downstream of the National Park boundary to the Terrell/Val Verde County line, TX—finds that the benefits of excluding these areas from the designation of critical habitat outweigh the benefits of including them (see “Exclusions Under Section 4(b)(2)” section). Although we believe these areas are essential to the conservation of the silvery minnow, these areas are not designated as critical habitat.

It is critical to the recovery of the silvery minnow that we reestablish the species in areas outside of its current occupied range. We believe that one of the goals of the Recovery Plan can be fulfilled by reestablishing the silvery minnow in areas of its historic range using the flexibility provided for in section 10(j) of the Act. In order to achieve recovery for the silvery minnow, we need assistance from local stakeholders to ensure the success of reestablishing the minnow in areas of its historic range. Use of section 10(j) is meant to encourage local cooperation through management flexibility. Critical habitat is often viewed negatively by the public since it is not well understood and there are many misconceptions about how it affects private landowners (E. Hein, U.S. Fish and Wildlife Service, pers. comm, 2002). It is important for recovery of this species that we have the support of the public when we move toward meeting the second recovery goal of reestablishing the species in areas of its historic range.

The reasons why other areas of the silvery minnow's historic range were not designated as critical habitat are detailed within the “Reach-by-Reach Analysis” section below. If, in the future, we determine from information or analysis that those areas designated in this final rule need further refinement or if we identify and determine additional areas to be essential to the conservation of the species and requiring special management or protection, we will evaluate whether a revision of critical habitat is warranted at that time.

(2) *Comment:* The current proposal for critical habitat for the silvery minnow is contrary to the recommendations of the Rio Grande Silvery Minnow Recovery Team and the Recovery Plan. The proposed

designation is deficient in its omission of critical habitat in the “three other areas within its historic range” as required by the Recovery Plan. Our proposal to not designate the lower Rio Grande as critical habitat has no factual basis.

Our Response: It is important to note that we utilized the recommendations of the Recovery Team in the Recovery Plan, consistent with this definition of conservation, to conclude that the middle Rio Grande and the middle Pecos River from Sumner Dam to Brantley Dam, NM, and the lower Rio Grande from the upstream boundary of Big Bend National Park downstream through the area designated as a wild and scenic river to the Terrell/Val Verde County line, TX, are “essential to the conservation of” the silvery minnow. Although the middle Pecos River and the lower Rio Grande are not designated as critical habitat, we believe they are important for the recovery of the silvery minnow. Thus, we concur with the Recovery Plan that reestablishment of the silvery minnow within additional geographically distinct areas, within its historical range, is necessary to ensure the minnow's survival and recovery (Service 1999). However, recovery is not achieved by designating critical habitat. The Act provides for other mechanisms that will provide for reestablishment of the minnow outside of the middle Rio Grande and the eventual recovery of the silvery minnow. In addition, please see responses 1 and 44 for information related to this particular issue.

(3) *Comment:* The Service appears to be greatly concerned that critical habitat could jeopardize the trust and spirit of cooperation that has been established over the last several years because critical habitat designation would be viewed as an unwarranted and unwanted intrusion in the middle Pecos and lower Rio Grande. However, the same arguments can be made in the middle Rio Grande.

Our Response: The middle Pecos and lower Rio Grande are essential to the conservation of the silvery minnow. Still, the silvery minnow has been extirpated from these areas of its historic range and we believe that the appropriate means to potentially reestablish the species is through use of the 10(j) experimental population rule (see “Exclusions Under Section 4(b)(2)” section). We also have not included areas within the middle Rio Grande where we believe adequate special management is in place and because of other relevant issues (see “Relationship of Critical Habitat to Pueblo Lands under Section 3(5)(A) and Exclusions Under Section 4(b)(2)” section).