

However, we determine that other areas of the middle Rio Grande meet the definition of critical habitat, and we did not exclude these areas under section 4(b)(2) based upon economic or other relevant impacts.

We are actively involved with ensuring conservation benefits to the listed species within the middle Rio Grande by participating in a collaborative working group to develop a long-term strategy/solution (Middle Rio Grande Endangered Species Act Collaborative Program). We believe this type of cooperative program is an important opportunity to achieve and facilitate conservation of the minnow, while allowing water activities to continue.

(4) *Comment*: It is well documented that the Rio Grande has historically gone dry. The current proposal to keep the river running throughout the year is not reasonable, feasible, or necessary. You are attempting to create a habitat that has never existed. The proposed rule does not identify minimum flow requirements to maintain the primary constituent elements. Critical habitat will only increase the "bureaucratic red tape," not silvery minnow habitat.

*Our Response*: Critical habitat primarily focuses on the maintenance of habitat features identified as primary constituent elements. Critical habitat does not serve to create these features where they do not currently exist.

We agree that some areas designated as critical habitat within the middle Rio Grande have the potential for periods of low or no flow under certain conditions (see "Primary Constituent Elements" section). We also recognize that the critical habitat designation specifically includes some areas that have lost flow periodically (MRGCD 1999; Scurlock and Johnson 2001; Scurlock 1998). We nevertheless believe these areas are essential to the conservation of the silvery minnow because they likely serve as connecting corridors for fish movement between areas of sufficient flowing water (e.g., see Deacon and Minckley 1974; Eberle et al. 1993). Additionally, we believe the designated critical habitat is essential for the natural channel geomorphology (the topography of the river channel) to maintain habitat, such as pools, by removing or redistributing sediment during high flow events (e.g., see Simpson et al. 1982; Middle Rio Grande Biological Interagency Team 1993). Therefore, we believe that the inclusion of an area that has the potential for periods of low or no flow as critical habitat will ensure the long-term survival and recovery of silvery minnow. As such, we believe that the

primary constituent elements as described in this final rule provide for a flow regime that allows for short periods of low or no flow.

The primary constituent elements identified below provide a qualitative description of those physical and biological features necessary to ensure the conservation of the silvery minnow. We did not identify quantitative estimates of specific minimum thresholds (e.g., minimum flows or depths), because we believe these estimates vary seasonally and annually, and by river reach within the designated critical habitat. Thus, we believe these thresholds are appropriately enumerated through section 7 provisions 7(a)(1) and 7(a)(2) (e.g., see Service 2001b), which can be easily changed if new information reveals effects to critical habitat in a manner or extent not previously considered (see 50 CFR 402.16(b)).

We based this final rule on the best available scientific information, including the recommendations in the Recovery Plan (Service 1999). We have designated only river reaches that currently contain the primary constituent elements (described below) during all or a part of the year and that are currently occupied by the minnow. We did not include river reaches where the current or potential suitability for the silvery minnow is unknown. Consequently, we are not attempting to create habitat conditions or minimum flow requirements, but rather, we will review projects that have a Federal nexus to ensure that any proposed actions do not adversely affect the current primary constituent elements to the extent that the designated critical habitat will be adversely modified or destroyed.

(5) *Comment*: The silvery minnow is doing very well in its current situation and is not vulnerable to a single catastrophic event. The captive breeding program is flourishing and it seems reasonable that you could release many millions of silvery minnows each spring. Therefore, you should not condemn the river to support a species that has an arbitrary designation and is not truly endangered.

*Our Response*: The purpose of the Act is to conserve listed species and the ecosystems on which they depend. Relegating a species to captivity does not conserve the ecosystem on which they depend. Controlled propagation is not a substitute for addressing factors responsible for an endangered or threatened species' decline. Therefore, our first priority is to recover wild populations in their natural habitat wherever possible, without resorting to

the use of controlled propagation. This position is fully consistent with the Act. Moreover, there has been insufficient time to develop a captive propagation management plan that captures the majority of genetic variability of the minnow in the wild to maximize the low genetic diversity in captive propagated silvery minnows (Turner 2002).

We reviewed the best scientific and commercial data available to determine that the silvery minnow should be classified as an endangered species on July 20, 1994 (59 FR 36988). Procedures found at section 4(a)(1) of the Act, and regulations (50 CFR Part 424) issued to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. There is no evidence to suggest that the silvery minnow is recovered, and recovery goals outlined in the Recovery Plan have not yet been met. Therefore, we do not agree that the silvery minnow is "doing very well in its current situation." Additionally, the silvery minnow occupies less than 5 percent of its historic range, and the likelihood of extinction from catastrophic events is high because of its limited range (Hoagstrom and Brooks 2000, Service 1999).

(6) *Comment*: In the proposed rule, the Service suggests that the primary constituent elements for the silvery minnow and Pecos bluntnose shiner are compatible. However, if this were the case, the silvery minnow would not be extirpated from the Pecos River.

*Our Response*: We continue to believe that the primary constituent elements for the Pecos bluntnose shiner critical habitat (e.g., clean permanent water; a main river channel habitat with sandy substrate; and a low velocity flow (February 20, 1987; 52 FR 5295)) are compatible with our conservation strategy for repatriating the silvery minnow. There are no conclusive data to substantiate any reasons for extirpation of the silvery minnow from the Pecos River. Primary constituent elements are those physical and biological habitat components that are essential for the conservation of the species, and are not determined based upon the species' presence. The absence of silvery minnows from the Pecos River does not mean that the minnow's primary constituent elements are not present. (Also refer to the "Background" section for information on the role of the plains minnow (*Hybognathus placitus*) in the decline and extirpation of the silvery minnow from the Pecos River).