

development of a final rule. The comment period originally scheduled to close on April 30, 1993, was extended until August 25, 1993 (58 FR 19220), to conduct public hearings and allow submission of additional comments. We also published notices of the proposed listing in five local newspapers and mailed copies of the proposed rule to list the silvery minnow as endangered to 148 different government agencies, private organizations, and interested individuals, including all counties having lands that border on or were within the area being proposed for critical habitat designation. Two public hearings were also held. Prior to listing the silvery minnow as endangered, we fully met the requirements of the Act for public notification. As discussed in the "Previous Federal Action" section of this rule, section 4 of the Act requires us to designate critical habitat at the time of listing, unless a determination is made that such designation is not prudent or not determinable. If a not determinable determination is made, we would have an additional year to make such a determination.

(23) *Comment:* The proposed rule and associated documents did not mention how critical habitat and section 7 consultation may affect the National Pollution Discharge Elimination System, water quality issues, or flood control structures.

*Our Response:* The EIS analyzed the impacts to the Albuquerque Metropolitan Arroyo Flood Control Authority, National Pollution Discharge Elimination System (NPDES) permitting, and other impacts on water quality (also see "Effect of Critical Habitat Designation" below). The final EIS found that the silvery minnow will most likely be protected by existing water quality standards, and that changes to current EPA discharge permitting activities are expected to be minimal, although the possibility exists for EPA's consultations with us to change as more becomes known about the water quality needs of the silvery minnow.

It is important to note that section 7(a)(2) of the Act requires that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to result in the "destruction or adverse modification" of critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features

that were the basis for determining the habitat to be critical." Where no such Federal agency action is involved, critical habitat designation has no effect on private landowners, State, or Tribal activities.

(24) *Comment:* How will critical habitat affect the City of Albuquerque's Drinking Water Project?

*Our Response:* Analysis of effects to listed species will be addressed in detail during section 7 consultation between the BOR and us. The section 7 consultation will determine whether the City of Albuquerque's Drinking Water Project jeopardizes the continued existence of the silvery minnow or adversely modifies or destroys critical habitat. As we have in the past, we will continue to work with the City of Albuquerque on conservation issues for the silvery minnow (see our response to comment 57 below).

(25) *Comment:* The Service proposed a 300-ft (91.4-m) lateral width for the boundary of critical habitat, but there is no site specific information to determine whether any particular area even has a floodplain or whether the floodplain, if present, extends 300 ft (91.4 m).

*Our Response:* We recognize that the lateral width of riparian areas fluctuates considerably in the middle Rio Grande. The 300-ft (91.4-m) lateral width includes the riparian zone, if present, that is adjacent to each side of the middle Rio Grande. We believe the riparian zone adjacent to the river channel provides an important function for the protection and maintenance of the primary constituent elements and is essential to the conservation of the species.

Developed lands within the 300-ft (91.4-m) lateral width are not considered critical habitat because they do not include the primary constituent elements. These lands were specifically excluded from the designation and include: developed flood control facilities, existing paved roads, bridges, parking lots, dikes, levees, diversion structures, railroad tracks, railroad trestles, water diversion and irrigation canals outside of natural stream channels, the low flow conveyance channel, active gravel pits, cultivated agricultural land, and residential, commercial, and industrial developments.

(26) *Comment:* The Service only considered excluding the Cochiti or San Acacia Reach. No other reaches were considered for exclusion within the middle Rio Grande.

*Our Response:* We did not include four areas within the Angostura and Isleta Reaches (see "Relationship of

Critical Habitat to Pueblo Lands under Section 3(5)(A) and Exclusions Under Section 4(b)(2)" section below).

Additionally, we solicited comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of excluding areas will outweigh the benefits of including areas as critical habitat. We requested information on any lands included in the proposed rule for which there was special management and protection in place such that those lands could not be included as critical habitat. We reviewed and considered all of the information and comments received and concluded that special management or protection is provided only for the management plans we received during the comment period from the Pueblos of Santo Domingo, Santa Ana, Sandia, and Isleta. Consequently, no other areas were determined to be not essential for inclusion for the final critical habitat designation.

(27) *Comment:* The City of Albuquerque requested that we exclude existing projects, facilities, and structures within the designated critical habitat.

*Our Response:* The City of Albuquerque did not provide a list describing the specific projects, facilities, or structures. However, some existing facilities and structures are excluded from the designation because they do not include the primary constituent elements. See response to comment 25 and the "Regulation Promulgation" section of this rule for specific exclusions.

(28) *Comment:* The designation of critical habitat will seize control of our water through Federal regulations and Federal courts. Elected officials and State Engineers are constitutionally responsible for decisions on state water management.

*Our Response:* An area designated as critical habitat is not a refuge or sanctuary for the species. Listed species are protected by the Act whether or not they are in an area designated as critical habitat.

We published required determinations in the proposed and final rules, including one in accordance with Executive Order 13132, which considered whether this rule has significant Federalism effects (see "Required Determinations" section below). We requested information from and coordinated development of the