

from the designated critical habitat will not lead to the extinction of the species. It should be noted that the Service, in collaboration with other State and Federal agencies, rescues silvery minnow eggs in the lower San Acacia Reach for use in captive propagation and subsequent augmentation of the silvery minnow in the middle Rio Grande.

Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires us to base critical habitat designations on the best scientific and commercial data available, after taking into consideration the economic and any other relevant impact of specifying any particular area as critical habitat. We may exclude areas from a critical habitat designation when the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. 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, concludes that the benefits of excluding these areas from the designation of critical habitat outweigh the benefits of including them. Therefore, we are not designating these areas as critical habitat.

(1) Benefits of Inclusion

The benefits of inclusion of the river reach in the middle Pecos River, NM, from Sumner Dam to Brantley Dam in De Baca, Chaves, and Eddy Counties, NM, would result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed actions do not destroy or adversely modify critical habitat. Historically, no consultations have occurred on the Pecos River for the silvery minnow since the area is not occupied by the species. However, while critical habitat designation could provide some benefit to the silvery minnow, in fact, consultations are already occurring for another listed fish with similar habitat requirements. The Pecos bluntnose shiner (*Notropis simus pecosensis*) was federally listed in 1987 and portions of the Pecos River are designated as critical habitat for the Pecos bluntnose shiner (February 20, 1987; 52 FR 5295). As stated in the "Criteria for Identifying Critical Habitat" section of this rule, these fish species belong to the same guild of broadcast spawners with semibuoyant

eggs and also spawn during high flow events with eggs and larvae being distributed downstream (Bestgen *et al.* 1989). Therefore, flow regime operations in this reach that benefit the Pecos bluntnose shiner also provide benefits to silvery minnow habitat. We also believe that the primary constituent elements for the Pecos bluntnose shiner critical habitat are compatible with the primary constituent elements for the silvery minnow (see "Criteria for Identifying Critical Habitat" section below). Thus, we find that little additional benefit through section 7 consultation would occur as a result of the overlap between habitat suitable for the silvery minnow and the Pecos bluntnose shiner listing and critical habitat designation.

In *Sierra Club v. Fish and Wildlife Service*, 245 F.3d 434 (5th Cir. 2001), the Fifth Circuit Court of Appeals stated that the identification of habitat essential to the conservation of the species can provide informational benefits to the public, State and local governments, scientific organizations, and Federal agencies. The court also noted that heightened public awareness of the plight of listed species and their habitats may facilitate conservation efforts. We agree with these findings; however, we believe that there would be little additional informational benefit gained from including the middle Pecos River because the final rule identifies all areas that are essential to the conservation of the silvery minnow, regardless of whether all of these areas are included in the regulatory designation. Consequently, we believe that the informational benefits will be provided to the middle Pecos River, even though this reach is not designated as critical habitat.

The economic analysis recognizes that while consultations regarding the Pecos River will occur without a silvery minnow critical habitat designation, those consultations would not consider the silvery minnow. However, because of the similar life history requirements of these species, we do not anticipate that the outcomes of such consultations would be altered. We recognize, as does the economic analysis, that the middle Pecos River area (as described above) covers about twice the length of the area designated for the Pecos bluntnose shiner. Historically, two formal consultations and two informal consultations occurred annually for the Pecos bluntnose shiner. The economic analysis assumes that twice as many consultations would occur if this area were designated as critical habitat for the silvery minnow, since the area would be doubled in size. However, the

economic analysis also recognizes that this is likely an overstatement of the actual increase in consultations because consultations frequently occur on projects located outside of Pecos bluntnose shiner critical habitat, because of the interdependent nature of the river system and the presence of the species. Consequently, we do not believe that designating critical habitat within this river reach would provide additional benefits for the silvery minnow, because currently the activities that occur outside of critical habitat designated for the Pecos bluntnose shiner are also the subject of consultation. In the absence of the silvery minnow, we find little benefit to including this river reach in the critical habitat for the silvery minnow because of the presence of the Pecos bluntnose shiner and its designated critical habitat. Current and ongoing conservation activities for the Pecos bluntnose shiner are compatible with those of the silvery minnow such that reestablishment of the silvery minnow in this stretch of river should not be precluded in the future. Thus, we determine that any additional benefit from a designation of critical habitat in this river reach does not outweigh the benefit of excluding this area, as discussed below in the "Benefits of Exclusion" section.

The benefits of inclusion of the river reach in the lower Rio Grande in Big Bend National Park downstream of the park boundary to the Terrell/Val Verde County line, TX, would also result from the requirement under section 7 of the Act that Federal agencies consult with us to ensure that any proposed actions do not destroy or adversely modify critical habitat. However, as indicated in the economic analysis, we anticipate very little consultation activity within this area. The economic analysis (section 6.3.3) estimates that over the next 20 years there would be a total of 12 formal consultations and 6 informal consultations if silvery minnow critical habitat were designated. The only Federal action that we are aware of within the river reach of the lower Rio Grande downstream of Big Bend National Park is the Big Bend National Park oversight and permitting authority for float trips, scientific research permits, environmental education, and law enforcement (R. Skiles, Big Bend National Park, pers. comm. 2001). Therefore, unless there are other types of Federal permitting or authorization within this area, private and State-owned lands would not be affected. Additional activities that were used to estimate the numbers of consultations