

critical to the recovery of the silvery minnow that we reestablish the species in areas outside of its current occupied range. The current population of silvery minnow in the middle Rio Grande is in an imperiled state, making reestablishment into other portions of its historic range extremely important.

As noted above, nonessential experimental populations located within the National Park System are treated, for purposes of section 7 of the Act, as if they are listed as threatened (50 CFR 17.83(b)). Thus, a nonessential experimental population established in the river reach in the lower Rio Grande downstream of the Big Bend National Park boundary (*i.e.*, within the reach designated as a wild and scenic river) to the Terrell/Val Verde County line, TX, would be treated, for purposes of section 7, as a threatened species because this area is a component of the national wild and scenic rivers system that is administered by the Secretary of the Interior through the National Park Service and is considered part of the National Park System (16 U.S.C. 1281(c)). These lands downstream of Big Bend National Park are owned by the State of Texas (Black Gap Wildlife Management Area) and approximately 12 to 15 private landowners. The National Park Service's management authority in the wild and scenic river designation currently extends 0.25 mi from the ordinary high water mark.

For the past two years, Big Bend National Park has been working on a management plan for the "outstanding remarkable values of the Rio Grande wild and scenic river" (F. Deckert, Big Bend National Park, pers. comm. 2002). The development of the river management plan has involved stakeholders, including private landowners and the State of Texas. Throughout the stakeholder-based planning process, the Park has built trust among diverse and competing interests by encouraging open dialogue regarding various river management issues. If critical habitat were designated in this river reach, the introduction of additional Federal influence could jeopardize the trust and spirit of cooperation that has been established over the last several years (F. Deckert, pers. comm. 2002). The designation of critical habitat would be expected to adversely impact our, and possibly the Park's, working relationship with the State of Texas and private landowners, and we believe that Federal regulation through critical habitat designation would be viewed as an unwarranted and unwanted intrusion.

The National Park Service expects to complete and finalize its management

plan and EIS in 2003. We will review the river management plan when the draft EIS is released to suggest management recommendations for this river reach that are consistent with the recovery needs of the silvery minnow. We believe this area has the greatest potential for repatriating the species within an area of its historic range and believe this river reach also has the greatest potential for developing an experimental population under section 10(j) of the Act. In order for an experimental population to be successful, the support of local stakeholders—including the National Park Service, the State of Texas, private landowners, and other potentially affected entities—is crucial. In light of this and the fact that the river management plan will soon be completed, we find that significant benefits result from excluding this river reach from designation of critical habitat.

On the middle Pecos River, we acknowledge that the NMISC has been actively acquiring and leasing water rights to meet the State's delivery obligations to TX as specified in the Pecos River Compact and pursuant to an Amended Decree entered by the U.S. Supreme Court. For example, between 1991 and 1999, \$27.8 million was spent on the Pecos River water rights acquisition program. NM faced a shortfall in its Pecos River Compact delivery obligations for the year 2001 and the possibility of priority administration, in which the State Engineer would order junior water rights holders not to use water. Given this tight water situation and the Pecos River Compact delivery obligations, we believe that the flexibility of section 10(j) would be especially appropriate in the middle Pecos. Economic costs associated with endangered species management and critical habitat designation for the silvery minnow are discussed in the economic analysis. There are a variety of current and potential future costs associated with the ongoing water management and water reallocation on the middle Pecos River. The economic analysis and EIS discuss and analyze these costs in greater detail. We used the economic analysis and EIS to make our determinations on the benefits of including or excluding areas from the designation of critical habitat. Prior to making our final determination, we considered comments on the economic and other relevant impacts of all of the areas we determined to be essential for the conservation of the silvery minnow.

In summary, we believe that the benefits of excluding the middle Pecos

River and lower Rio Grande outweigh the benefits of their inclusion as critical habitat. Including these areas may result in some benefit through additional consultations with Federal agencies whose activities may affect critical habitat. However, overall this benefit is minimal because of the presence of the Pecos bluntnose shiner and its critical habitat in the middle Pecos River and the minimal number of estimated future consultations that are expected to occur within Big Bend National Park and the wild and scenic river designation that extends beyond the Park's boundaries. On the other hand, an exclusion will greatly benefit the overall recovery of the minnow by allowing us to move forward using the flexibility and greater public acceptance of section 10(j) of the Act to reestablish minnows in other portions of its historic range where it no longer occurs. This is likely the most important step in reaching recovery of this species and we believe that section 10(j), as opposed to a critical habitat designation, is the best tool to achieve this objective. Thus, we believe that an exclusion of these two areas outweighs any benefits that could be realized through a designation of critical habitat and we have not included these two areas within this critical habitat designation.

The Pecos River and lower Rio Grande reaches were historically occupied but are currently unoccupied by the silvery minnow (Hubbs 1940; Trevino-Robinson 1959; Hubbs *et al.* 1977; Bestgen and Platania 1991). 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). However, if critical habitat were designated in the middle Pecos River or lower Rio Grande, the likelihood of extinction of the species from the occupied reach of the middle Rio Grande would not decrease because critical habitat designation is not a process to reestablish additional populations within areas outside of the current known distribution. We believe that the exclusion of the river reaches of the middle Pecos River and the lower Rio Grande will not lead to the extinction of the species.

Relationship of Critical Habitat to Pueblo Lands Under Section 3(5)(A) and Exclusions Under Section 4(b)(2)

In the proposed rule for the designation of critical habitat for the silvery minnow (June 6, 2002; 67 FR 39213), we indicated that if any management plans are submitted during the open comment period, we would