

The Service has analyzed the benefits of including the Pueblos of Santa Domingo, Santa Ana, Sandia, and Isleta as part of the critical habitat designation and the benefits of excluding these areas, and determined that the benefits of exclusion outweigh those of inclusion. A major factor in the analysis described below is that, even if excluded, these river reaches owned and managed by the Pueblos will nonetheless receive special management and protection through the Pueblos management plans, which were submitted during the open comment period for the proposed rule. Under these management plans, the silvery minnow will benefit from monitoring, restoration, enhancement, and survey efforts. The Service has also determined that exclusion would not result in the extinction of the species.

#### (1) *Benefits of Inclusion*

There are few additional benefits of including the Pueblos of Santa Domingo, Santa Ana, Sandia, and Isleta in this critical habitat designation beyond what will be achieved through the implementation of their management plans. The principal benefit of any designated critical habitat is that activities in and affecting such habitat require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid destruction or adverse modification of critical habitat. If adequate protection can be provided in another manner, the benefits of including any area in critical habitat are minimal. The economic analysis found that the Bureau of Indian Affairs (BIA) has no consultation history for the silvery minnow (*i.e.*, no consultations have been conducted since the species was listed). However, the economic analysis found that, consultations may occur in the future for water trades or voluntary leasing that would benefit the silvery minnow. The economic analysis estimated 6 informal consultations may occur over the next 20 years, resulting from these beneficial water trades, but that no formal consultations were likely. These consultations would occur regardless of whether critical habitat is designated, because the species occupies these four areas. Section 7 consultation under the jeopardy standards will still be required for activities affecting the silvery minnow. Beyond these informal consultations, we do not expect any additional consultations.

Although we believe the likelihood of additional consultations is small, consultation requirements under section 7 of the Act would be triggered as a

result of the funding or permitting processes administered by the Federal agency involved. The benefit of critical habitat designation would ensure that any actions funded by or permits given by a Federal agency would not likely destroy or adversely modify any critical habitat. Without critical habitat, projects would still trigger consultation requirements under the Act because the silvery minnow is currently present in the middle Rio Grande. Given that no consultations have occurred with the BIA or the Pueblos since the silvery minnow was listed as endangered in 1994 and the overall low likelihood of Federal projects being proposed in these areas, the Service believes there is almost no regulatory benefit of a critical habitat designation in this area. Consequently, the designation of critical habitat in these areas would provide minimal, if any, regulatory benefit to the species.

Another possible benefit is that the designation of critical habitat can serve to educate the public regarding the potential conservation value of an area, and this may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation value for certain species. Any information about the silvery minnow and its habitat that reaches a wide audience, including other parties engaged in conservation activities, would be considered valuable. However, the Pueblos are already working with the Service to address the habitat needs of the species. Further, these areas were included in the proposed designation, which itself has reached a wide audience, and has thus provided information to the broader public about the conservation value of these areas. Thus, the educational benefits that might follow critical habitat designation, such as providing information to the BIA, BOR, or Pueblos on areas that are important for the long-term survival and conservation of the species, have already been provided by proposing these areas as critical habitat. Alternatively, the same or greater educational benefits will be provided to these lands if they are excluded from the designation, because the management plans provide for conservation benefits above any that would be provided by designating critical habitat. For example, the educational aspects are likely greater for these areas if they are not included in the designation because the Pueblos will continue to work cooperatively toward the conservation of the silvery minnow, which will include continuing, initiating, and completing scientific

studies (*see* discussion below). For these reasons, then, we believe that designation of critical habitat would have few, if any, additional benefits beyond those that will result from continued consultation under the jeopardy standard.

#### (2) *Benefits of Exclusion*

The benefits of excluding the Pueblos of Santa Domingo, Santa Ana, Sandia, and Isleta from designated critical habitat are more significant. The proposed critical habitat designation included 29.5 mi (47.5 km) of river through these areas. We believe that not designating critical habitat on these areas would have substantial benefits including: (1) The furtherance of our Federal Trust obligations and our deference to the Pueblos of Santa Domingo, Santa Ana, Sandia, and Isleta to develop and implement Tribal conservation and natural resource management plans for their lands and resources within the Rio Grande ecosystem, which includes the silvery minnow and its habitat; (2) the establishment and maintenance of effective working relationships to promote the conservation of the silvery minnow and its habitat; (3) the allowance for continued meaningful collaboration and cooperation in scientific studies to learn more about the life history and habitat requirements of the species; and (4) providing conservation benefits to the Rio Grande ecosystem and the silvery minnow and its habitat that might not otherwise occur.

As detailed above, we met with Pueblos and Tribes to discuss how each might be affected by the designation of critical habitat. During the open comment period, we established effective working relationships with the Pueblos of Santa Domingo, Santa Ana, Sandia, and Isleta. As part of our relationship, we provided technical assistance to each of these four Pueblos to develop voluntary measures to conserve the silvery minnow and its habitat on their lands. These voluntary measures are contained within special management plans that each of these Pueblos submitted during the open comment period (*see* discussion above). These actions were conducted in accordance with Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" (June 5, 1997); the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); Executive Order 13175; and the relevant provision of the Departmental