

Texas Parks and Wildlife 1999). Canyon habitat reduces river channel width, which decreases sinuosity and meandering, and creates deep channels that do not provide suitable habitat (e.g., shallow, braided streams with sandy substrates) (Bestgen and Platania 1991; Dudley and Platania 1997; Remshardt *et al.* 2001). Additionally, the presence of algal blooms will continue to affect water quality in this reach. For these reasons, we do not believe that this reach is essential to the conservation of the silvery minnow. It is unknown whether this reach contains or has the potential to develop the primary constituent elements. Although portions of this river reach may contain fresh water (*i.e.*, salinity less than 1 part per thousand), we suspect that much of this river reach may never provide suitable habitat for the silvery minnow, and it is not designated as critical habitat. On June 6, 2002, we proposed designating 212 mi of critical habitat for the silvery minnow. This final rule designates 157 mi as critical habitat for the silvery minnow.

Land Ownership

Except for the river reaches on Pueblos lands covered by special management plans (*see* "Relationship of Critical Habitat to Pueblo Lands under Section 3(5)(A) and Exclusions Under Section 4(b)(2)" section), the designated critical habitat for the silvery minnow encompasses river reaches where the species has been collected in the recent past and where it is currently known to exist. Critical habitat for the silvery minnow includes both the active river channel and the area of bankfull width plus 300 feet on either side of the banks, except in areas narrowed by existing levees.

Ownership of the river channel and the lateral width along the bank is unclear in the designated critical habitat of the middle Rio Grande. However, most of the land in the middle Rio Grande valley that abuts critical habitat is within the administrative boundaries of the MRGCD. The MRGCD is a political subdivision of the State of New Mexico that provides for irrigation, flood control, and drainage of the middle Rio Grande valley in NM, from Cochiti Dam downstream 150 mi (285 km) to the northern boundary of the Bosque del Apache National Wildlife Refuge. Within these 150 mi are also the lands of the communities of Algodones, Bernalillo, Rio Rancho, Corrales, Albuquerque, Los Lunas, Belen, Socorro, and a number of smaller incorporated and unincorporated communities. Other landowners, sovereign entities, and managers

include: the Pueblos of Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, and Isleta; the BOR; the Service; the U.S. Bureau of Land Management (BLM); New Mexico State Parks Division; New Mexico Department of Game and Fish; New Mexico State Lands Department; and the Corps. The Pueblo lands of Santo Domingo, Santa Ana, Sandia, and Isleta include 29.5 river mi (47.5 km), and are not included in the final designation.

Effect of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including ourselves, to ensure that actions they fund, authorize, or carry out do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the survival and recovery of the species. Individuals, organizations, States, Indian Pueblos and Tribes, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Activities on Federal lands that may affect the silvery minnow or its critical habitat will require section 7 consultation. Actions on private, State, or Indian Pueblo and Tribal lands receiving funding or requiring a permit from a Federal agency also will be subject to the section 7 consultation process if the action may affect critical habitat. Federal actions not affecting the species or its critical habitat, as well as actions on non-Federal lands that are not federally funded or permitted, will not require section 7 consultation. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or to result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were

designated. We may adopt the formal conference report as a biological opinion if the critical habitat is designated and if no significant new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

Regulations at 50 CFR 402.16 also require Federal agencies to reinstate consultation in instances where we have already reviewed an action for its effects on a listed species if critical habitat is subsequently designated. Consequently, some Federal agencies may request reinstitution of consultation or conferencing with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director of the Service believes would avoid the likelihood of jeopardizing the continued existence of listed species or result in the destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Section 4(b)(8) of the Act requires us to describe in any proposed or final regulation that designates critical habitat a description and evaluation of those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. When determining whether any of these activities may adversely modify critical habitat, we will analyze the effects of the action in relation to designated critical habitat (Service and National Marine Fisheries Service 1998). Therefore, the analysis (*i.e.*, the determination whether an action destroys or adversely modifies critical habitat) conducted through consultation or conferencing should evaluate whether that loss, when added to the environmental baseline, is likely to appreciably diminish the capability of critical habitat to satisfy essential