

of the best scientific and commercial information available and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We based this final rule on the best available scientific information, including the recommendations in the Recovery Plan (Service 1999). In order to make a final critical habitat designation, we furthered utilized the economic analysis and our analysis of other relevant impacts, and considered all comments and information submitted during the public hearing and comment period. No areas proposed as critical habitat were excluded or modified because of economic impacts. However, we have excluded areas from the final designation on the basis of a final determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat (see "Exclusions Under Section 4(b)(2) of the Act" section). In accordance with section 4(b)(2) of the Act, we cannot exclude areas from critical habitat when their exclusion will result in the extinction of the species. We have prepared an economic analysis that was available for public review and comment during the comment period for the proposed rule. You can request copies of the economic analysis and EIS from the New Mexico Ecological Services Field Office (see ADDRESSES section).

Section 4(b)(2) of the Act and 50 CFR 424.19 require us to consider the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. Executive Order 12866 defines "significant regulatory action," in part, as a regulatory action that is likely to result in a rule that may have an annual effect on the economy of \$100 million or more. The final Economic Analysis for this rule estimates that the potential economic effects could range from \$1.9 to \$16.2 million annually. This includes potential economic effects related to consultations, project modifications, and providing target flows, including those effects that may be attributed co-extensively with the listing of the species. Thus, we do not believe that the adverse modification prohibition (from critical habitat designation) will have significant economic effects such that it will have an annual economic effect of \$100 million or more. We recognize, however, that while the impacts may not be considered "significant" under Executive Order 12866, there will be some economic impact within the middle Rio Grande area. Additionally, the final Economic Analysis recognizes

the benefits associated with conservation of an endangered species. The economic analysis provides information on the social welfare benefits associated with maintaining instream flows in the Middle Rio Grande (e.g., ecological improvements, recreational opportunities, and protection afforded to other species). These benefits are described in detail in the final Economic Analysis. On the basis of our evaluation of lands proposed as critical habitat, we believe that the designation of the lands in this final rule as critical habitat are essential to the conservation of the silvery minnow, and these lands are currently occupied by the species. Consequently, none of the proposed lands have been excluded from the designation on the basis of potential economic impacts pursuant to section 4(b)(2) of the Act.

American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act

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" (May 9, 1994, 59 FR 22951); Executive Order 13175; and the Department of the Interior's requirement at 512 DM 2, we believe that, to the maximum extent possible, Indian Pueblos and Tribes should be the governmental entities to manage their lands and tribal trust resources. To this end, we support tribal measures that preclude the need for Federal conservation regulations. We provided technical assistance to Indian Pueblos and Tribes who asked for assistance in developing and expanding tribal programs for the management of healthy ecosystems so that Federal conservation regulations, such as designation of critical habitat, on tribal lands are unnecessary.

The Presidential Memorandum of April 29, 1994, also requires us to consult with the Indian Pueblos and Tribes on matters that affect them, and section 4(b)(2) of the Act requires us to gather information regarding the designation of critical habitat and the effects thereof from all relevant sources, including Indian Pueblos and Tribes. Recognizing a government-to-government relationship with Indian Pueblos and Tribes and our Federal trust responsibility, we have and will continue to consult with the Indian Pueblos and Tribes that might be affected by the designation of critical habitat.

We consulted with the affected Indian Pueblos and Tribes during the comment period for the proposed rule to gain information on: (1) Possible effects if critical habitat were designated on Tribal lands; and (2) possible effects on tribal resources resulting from the proposed designation of critical habitat on non-tribal lands. At their request, we met with each potentially affected Pueblo or Tribe to ensure that government-to-government consultation on proposed critical habitat issues occurred in a timely manner.

Designation of Critical Habitat on Tribal Lands

Section 3(5) of the Act defines critical habitat, in part, as areas within the geographical area occupied by the species "on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection." We included lands of the Indian Pueblos of Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, and Isleta in the proposed designation of critical habitat for the silvery minnow; however, Santo Domingo, Santa Ana, Sandia, and Isleta were not included for the final designation because they submitted sufficient management plans during the open comment period, and we concluded that these river reaches did not meet the definition of critical habitat because adequate special management is being provided for the silvery minnow on these lands. The plans and our analysis of other relevant issues are summarized above under the "Relationship of Critical Habitat to Pueblo Lands Under Section 3(5)(A) and Exclusions Under Section 4(b)(2)" section.

Effects on Tribal Trust Resources From Critical Habitat Designation on Non-Tribal Lands

We do not anticipate that the proposal of critical habitat on non-tribal lands will result in any impact on tribal trust resources or the exercise of tribal rights. However, in complying with our tribal trust responsibilities, we communicated with all Indian Pueblos and Tribes potentially affected by the designation. At their request, we arranged meetings with them during the comment period on potential effects to them or their resources that may result from critical habitat designation. We sent preproposal letters and the proposed rule and associated documents to all affected Indian Pueblos, including Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia, Isleta, and San Juan,