

analysis for critical habitat designation. Additionally, on November 21, 2000, the United States District Court for the District of New Mexico, in *Middle Rio Grande Conservancy District v. Babbitt*, 206 F. Supp. 2d 1156 (D.N.M. 2000), set aside the July 9, 1999, critical habitat designation and ordered us to issue within 120 days both an EIS and a new proposed rule designating critical habitat for the silvery minnow. We have prepared this designation and the EIS pursuant to that court order.

#### Government-to-Government Relationship With Indian Pueblos and Tribes

In accordance with the 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 Department of the Interior's requirement at 512 DM 2, we understand that we must conduct relations to recognized Federal Indian Pueblos and Tribes on a Government-to-Government basis. Therefore, we solicited information from the Indian Pueblos and Tribes and arranged meetings with those that requested during the comment period to discuss potential effects to them or their resources that may result from critical habitat designation.

#### References Cited

A complete list of all references cited in this final rule is available upon request from the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

#### Authors

The primary authors of this notice are the New Mexico Field Office staff (see **ADDRESSES** section).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

#### Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

#### PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.95(e) by revising critical habitat for the Rio Grande silvery minnow (*Hybognathus amarus*), to read as follows.

#### § 17.95 Critical habitat—fish and wildlife.

\* \* \* \* \*

(e) *Fishes.* \* \* \*

#### Rio Grande Silvery Minnow (*Hybognathus amarus*)

(1) Designated critical habitat is depicted for Socorro, Valencia, Bernalillo, and Sandoval Counties, New Mexico, on the map and as described below.

(2) For each river reach, the upstream and downstream boundaries are described below. Critical habitat includes the stream channels within the identified river reaches and areas within these reaches included within the existing levees, or if no levees are present, then within a lateral distance of 300 ft (91.4 m) on each side of the river width at bankfull stage. Bankfull stage is the flow at which water begins to leave the channel and move into the floodplain. The bankfull stage is not defined by water, and can be determined by visual or physical indicators, including: The top of the highest depositional features (e.g., point bars), staining of rocks, exposed root hairs, and other features.

(3) Within these areas the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, and reproduction. These elements include the following:

(i) A hydrologic regime that provides sufficient flowing water with low to moderate currents capable of forming and maintaining a diversity of aquatic habitats, such as, but not limited to the following: Backwaters (a body of water connected to the main channel, but with no appreciable flow), shallow side channels, pools (that portion of the river that is deep with relatively little velocity compared to the rest of the channel), eddies (a pool with water moving opposite to that in the river channel), and runs (flowing water in the river channel without obstructions) of varying depth and velocity—all of which are necessary for each of the particular silvery minnow life-history stages in appropriate seasons (e.g., the silvery minnow requires habitat with sufficient flows from early spring (March) to early summer (June) to trigger spawning, flows in the summer (June) and fall (October) that do not

increase prolonged periods of low or no flow, and a relatively constant winter flow (November through February));

(ii) The presence of eddies created by debris piles, pools, or backwaters, or other refuge habitat (e.g., connected oxbows or braided channels) within unimpounded stretches of flowing water of sufficient length (i.e., river miles) that provide a variation of habitats with a wide range of depth and velocities;

(iii) Substrates of predominantly sand or silt; and

(iv) Water of sufficient quality to maintain natural, daily, and seasonally variable water temperatures in the approximate range of greater than 1 °C (35 °F) and less than 30 °C (85 °F) and reduce degraded conditions (e.g., decreased dissolved oxygen, increased pH).

(4) The Pueblo lands of Santo Domingo, Santa Ana, Sandia, and Isleta are not designated.

(5) Designated critical habitat is depicted on the following map for the middle Rio Grande, which includes the area from Cochiti Reservoir downstream to the utility line crossing the Rio Grande just east of the Bosque Well as demarcated on USGS Paraje Well 7.5 minute quadrangle (1980), with the Universal Transverse Mercator (UTM) coordinates of UTM Zone 13: 311474 E, 3719722 N (as referenced with the 1927 North American Datum (NAD27)), Sandoval, Bernalillo, Valencia, and Socorro Counties, New Mexico. The designation also includes the upper section of the tributary Jemez River from Jemez Canyon Dam to the upstream boundary of Santa Ana Pueblo, Sandoval County. The river reaches in the middle Rio Grande include:

(i) Jemez Canyon Reach—1 mi (1.6 km) of the Jemez River immediately downstream of Jemez Canyon Dam to the upstream boundary Santa Ana Pueblo;

(ii) Cochiti Diversion Dam to Angostura Diversion Dam (Cochiti Reach)—21 mi (34 km) of river immediately downstream of Cochiti Reservoir to the Angostura Diversion Dam;

(iii) Angostura Diversion Dam to Isleta Diversion Dam (Angostura Reach)—38 mi (61 km) of river immediately downstream of the Angostura Diversion Dam to the Isleta Diversion Dam;

(iv) Isleta Diversion Dam to San Acacia Diversion Dam (Isleta Reach)—56 mi (90 km) of river immediately downstream of the Isleta Diversion Dam to the San Acacia Diversion Dam; and

(v) San Acacia Diversion Dam to the Elephant Butte Dam (San Acacia Reach)—92 mi (147 km) of river immediately downstream of the San