

Advocacy Advises FWS to Address Small Business Concerns in Designation of Critical Habitat for the Southwestern Willow Flycatcher

On July 14, 2005, the Office of Advocacy (Advocacy) sent a letter to the U.S. Fish and Wildlife Service (FWS), in response to a notice it recently published, *Reopening the Comment Period on Proposed Designation of Critical Habitat for the Southwestern Willow Flycatcher* (70 Fed. Reg. 39,227; July 7, 2005). Advocacy recommended that FWS withdraw the notice, complete an initial regulatory flexibility analysis, and provide an adequate opportunity for the public to participate in the rulemaking through comments. A complete copy of Advocacy's letter to the FWS may be accessed at <http://www.sba.gov/advo/laws/comments/>.

- The Endangered Species Act (ESA) requires FWS to designate critical habitat for endangered and threatened species to provide those species extra protection. A user of land that falls within a critical habitat designation requires a Federal clearance or permit for the use of that land and must undergo more vigorous review by FWS. FWS may require mitigation efforts by land users within critical habitat designations, or the agency may ultimately deny the permit and forbid the land use.
- Small farmers and cattle growers have informed Advocacy that they face significant burdens from the designation of critical habitat for the Southwestern Willow Flycatcher. Farmers along river banks believe they could be forced to consult with FWS prior to using legal pest control measures or clearing brush.
- Advocacy previously informed FWS that the Regulatory Flexibility Act (RFA) required FWS to consider small business costs and regulatory alternatives in a regulatory impact analysis. The agency failed to do so, and certified its rule as not having a significant economic impact on a substantial number of small entities. In doing so, the agency provided 11 days for the public to comment on the decision. Advocacy expressed its disappointment with the abbreviated time frame that will limit FWS' ability to receive input from the public.

For more information, visit Advocacy's Web page at: <http://www.sba.gov/advo>, or contact assistant chief counsel Michael See by email at michael.see@sba.gov or by phone at (202) 619-0312.