



Questions and Answers: Scoping for Southwestern Willow Flycatcher Critical Habitat Proposal

Arizona Ecological Services Field Office

<http://arizonaes.fws.gov>

Q: Why is the southwestern willow flycatcher endangered and when was it added to the list of federally endangered species?

A: Changes to riparian ecosystems (trees and shrubs near water) including reductions in water flow, alteration of flood flows, physical modifications to watersheds and streams, and removal of riparian vegetation have occurred as a result of dams and reservoirs, groundwater pumping, channelization of streams for flood control, livestock overgrazing, agriculture developments, urbanization and other modifications. These factors have contributed to a significant decline in flycatcher populations throughout its range. An increase in nest parasitism by cowbirds and predation of flycatcher nests affects populations, especially those in smaller numbers and at more isolated locations. As a result of changes in land use and water management, native riparian woody vegetation has changed in many areas to more adaptable exotic vegetation such as salt cedar, Russian olive, and other species. This change in vegetation has created and changed flycatcher habitat in many parts of its range. Modification and loss of wintering habitat and “stopover” habitat used by flycatchers to replenish energy reserves during migration, and the continued use of agri-chemicals and pesticides in Latin America are also believed to be contributing to the decline of flycatchers.

The southwestern willow flycatcher was listed as endangered on February 27, 1995.

Q: Where and when are southwestern willow flycatchers found in the United States?

A: The historical breeding habitat of the southwestern willow flycatcher included riparian areas in southern California, southern Nevada, southern Utah, Arizona, New Mexico, western Texas, southwestern Colorado, and the extreme northwestern portion of Mexico.

Flycatchers migrate from Latin America to their breeding areas in North America, typically arriving in early May. Flycatchers build nests, breed, incubate and hatch eggs through July, then fledge their juveniles through mid-August. They depart for their wintering grounds by mid-September.

The flycatcher’s current range is similar to its historical range, but the quality and quantity of habitat has been significantly reduced causing habitat to be less common and more isolated. Approximately 986 documented flycatcher territories occur from near sea-level to over 8500 feet in elevation, but are usually found in lower elevation riparian habitats. Throughout its range, the flycatcher’s current distribution follows that of its riparian habitat; relatively small, isolated, widely dispersed locales. Flycatchers winter in Mexico, Central America, and possibly northern South America.

Q: What constitutes southwestern willow flycatcher breeding habitat?

A: The southwestern willow flycatcher breeds in patchy to dense riparian habitats along streams, reservoirs, or other wetlands. Common tree or shrub species include willow, seep willow, boxelder, stinging nettle, blackberry, cottonwood, arrowweed, tamarisk (salt cedar), and Russian olive. Habitat characteristics vary across the subspecies' range. However, occupied sites usually consist of dense vegetation in the patch interior, or dense patches interspersed with openings, creating a mosaic that is not uniformly dense. In almost all cases, slow-moving or still water, or saturated soil is present at or near breeding sites during non-drought years.

Q: What is “scoping”?

A: We are employing a scoping process to identify public and agency concerns that may result from critical habitat designation at various locations, to define environmental issues and alternatives, and to define insignificant issues. An effective scoping process will focus our environmental assessment or environmental impact statement (under the National Environmental Policy Act) and economic analysis and actual critical habitat proposal (under the Endangered Species Act).

The general question on which we are seeking comments is the identification of direct, indirect, beneficial, and adverse effects caused by the prior or new designation of critical habitat for the flycatcher. In addressing this question you may wish to consider the following issues:

- a) impacts on floodplains, wetlands, wild and scenic rivers or ecological sensitive areas;
- b) impacts on park lands, cultural or historic resources;
- c) impacts on human health and safety;
- d) impacts on air, soil, and water;
- e) impacts on prime agricultural lands;
- f) impacts to other endangered or threatened species;
- g) any of the impacts identified in prior section 7 consultations as discussed above;
- h) disproportionately high adverse impacts on minority and low-income populations;
- i) any other potential or socioeconomic effects; and
- j) any potential conflicts with other Federal, State, local, or Tribal environmental laws or requirements.

Q: What is critical habitat?

A: Critical habitat is defined as areas of land and water with physical and biological features essential to the conservation of a threatened or endangered species, and which may require special management considerations or protection. The Endangered Species Act defines “conservation” as **recovering** a species to the point where it is no longer threatened or endangered.

Critical habitat receives protection from the prohibition against destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. “Destruction or adverse modification” (of critical habitat) is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for the survival and recovery of the listed species for which critical habitat was designated.

Q: Does a 'critical habitat' designation mean an area is considered a wildlife refuge or sanctuary?

A: Critical habitat is not designated to stop development or to establish a nature preserve. A critical habitat designation identifies areas that are important to the conservation of federally listed threatened or endangered species. A critical habitat designation requires Federal agencies to consult with the Service on any of their actions that may affect critical habitat in designated areas. We can then recommend ways to minimize any adverse effects.

Q: How would a critical habitat designation affect my private land?

A: Requirements for consultation on critical habitat do not apply to entirely private actions on private lands. Critical habitat designations only apply to Federal lands or federally funded or permitted activities on private lands. Activities on private or State lands that are funded, permitted or carried out by a Federal agency, such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act, or a section 402 permit under the Clean Water Act from the Environmental Protection Agency, will be subject to the section 7 consultation process with the Fish and Wildlife Service (Service) if those actions may affect critical habitat or a listed species. Through this consultation, we would advise agencies whether the permitted actions would likely jeopardize the continued existence of the species or adversely modify critical habitat. Federal actions not affecting critical habitat or otherwise affecting flycatchers or their habitat (e.g., suitable habitat outside of critical habitat), and actions on non-Federal lands that are not federally funded, permitted or carried out, will not require section 7 consultation.

Q: When an area is designated as critical habitat, are all human activities in the area prohibited?

A: No. The only activities prohibited in these areas are Federal actions that are likely to appreciably reduce the value of that habitat

Q: Will livestock grazing be affected by critical habitat designation?

A: Formal consultation under the Endangered Species Act is required only when federally-permitted grazing may adversely affect critical habitat. Federal land management agencies are required to evaluate the effect grazing has on federally managed critical habitat areas. The flycatcher has demonstrated that it can exist in grazed areas provided that ecosystem health and habitat suitability are maintained (and cowbird populations are kept in check).

Q: Do all listed species have critical habitat designated for them?

A: No. We don't designate critical habitat if doing so would not be a benefit for the species. To qualify as critical habitat, an area must contain the physical and biological elements essential to the species, and be in need of special management or protection.

Q: Why are we initiating the designation of critical habitat for the flycatcher again?

A: In 1997, 599 river miles of flycatcher critical habitat were designated in southwestern New Mexico, southern California, and Arizona. In 2001, the 10th Circuit Court of Appeals set aside designated critical habitat in those states under the Circuit's jurisdiction (New Mexico). We, in turn, set aside critical habitat designated in California and Arizona until a reassessment of the economic effects of designation could be completed. We are currently under a Court order to again designate critical habitat. The Court recently assigned a schedule whereby we are to complete a draft analysis and propose critical habitat by September 2004 and arrive at a final critical habitat determination by September 2005.

Q: How will we determine what areas to propose as flycatcher critical habitat?

A: A proposal to designate critical habitat is expected to provide an interconnected system of habitat essential to southwestern willow flycatcher survival and maintains the viability of local populations of flycatchers that are dependant upon reproductive success and continued genetic interchange. In establishing this system, we will consider verified flycatcher breeding locations within each of the flycatcher's recovery areas (identified in the Southwestern Willow Flycatcher Recovery Plan). We will include locations for which we have adequate scientific information indicating that they are essential to the conservation of the subspecies and that are threatened by habitat loss. We will propose and finalize only those areas where our environmental assessment and economic analysis indicates the "benefits" of designation outweigh the "costs" – an evaluation required under the Act in demarcating critical habitat.

We consider habitat features needed for life needs and successful reproduction of a species. These include but are not limited to:

- space for individual and population growth, and for normal behavior (migration, etc.)
- cover, food, water, and other nutritional/physiological requirements
- locations for breeding, feeding and rearing offspring

Once these areas are identified, we determine where significant threats exist and therefore which areas would benefit most from protection provided by critical habitat designation. Private lands will be proposed only if they are necessary to achieve conservation of the species.

Q: What sort of information would be of value in the critical habitat evaluation and decision process?

A: It is our intent that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions concerning:

- (1) The reasons why any habitat should or should not be determined to be critical habitat;
- (2) Biological and other relevant data concerning the number and distribution of flycatchers, quantity and quality of available flycatcher habitat, and what habitat is essential to the conservation of the species and why;
- (3) Current or planned land use activities in habitat areas and their possible impacts;
- (4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, including any impacts on small entities or families; and
- (5) Economic and other values associated with designating critical habitat for the flycatchers such as those derived from non-consumptive uses (e.g., hiking, camping, bird-watching, enhanced

watershed protection, improved air quality, increased soil retention, “existence values”, and reductions in administrative costs).

(6) Existing management plans and Habitat Conservation Plans for flycatchers.

Q: Would everything within designated critical habitat be treated as critical habitat?

A: No. We will not map critical habitat in sufficient detail to exclude all developed areas and other lands unlikely to contain “primary constituent elements” essential for flycatcher conservation. Within the proposed critical habitat boundaries, only lands containing some or all of the primary constituent elements, or with the potential to contain them, will be proposed as critical habitat. Existing features and structures within proposed critical habitat, such as buildings; roads; residential landscaping; residential, commercial, and industrial developments; and other features, do not contain some or all of the primary constituent elements. Therefore, these areas will not be considered critical habitat and will be specifically excluded by definition.

Q: What are the “primary constituent elements” of flycatcher habitat?

A: Primary constituent elements are those habitat components that are essential for the primary biological needs of foraging (provide sufficient prey base and cover from which to forage in an appropriate configuration), nesting (trees and of adequate size to support nests in the proximity to foraging, roosting, and sheltering), rearing of young (adequate cover for protection from the climatic elements and predators in an appropriate configuration in relation to the nest site), roosting (provides substrates of adequate size and cover), sheltering (provides substrates of adequate size and cover), and dispersal (provide adequate cover and configuration to facilitate movement and reduce mortality factors [predators, prey availability, anthropomorphic factors, etc.]). We have not yet proposed constituent elements for the anticipated critical habitat designation; however, constituent elements from the 1997 critical habitat designation may again apply. Those included dense thickets of riparian shrubs and trees occurring near rivers, streams, open water, cienegas, marshy seeps or saturated soils. These included areas near surface water, including areas where riparian vegetation is not present but may become established in the future. Vegetation structure ranged from simple, single layer patches as low as 9 feet in height to multiple layers and tree canopies nearing 60 feet in height.

Q: Hasn't the southwestern willow flycatcher always had a sparse distribution?

A: The flycatcher has always been sparsely distributed in the Southwest due to the sparse distribution of its riparian (streamside) habitat in this predominantly arid region. However, sparse distribution and rarity are not equivalent. Although flycatcher habitat is rare, nesting pairs have occurred in high densities where suitable habitat is present.

Q: How will the proposed critical habitat compare to the Southwestern Willow Flycatcher Recovery Team’s recommendations for habitat conservation?

A: We recognize that the Recovery Team’s efforts and the adopted recovery plan represent a treatment of the best, most current biological information and a projected plan for the recovery of the species. However, the plan makes no critical habitat recommendations. The science, threats, issues and effected entities identified in the Recovery Plan will be incorporated in our critical habitat proposal deliberation.

Q: Would the southwestern willow flycatcher only be protected on designated critical habitat areas?

A: No. All other protection afforded by the Act apply both on and off designated critical habitat. Listed species, both inside and outside critical habitat, are protected from 'take,' which includes harming (e.g., shooting, killing, trapping, collecting) and harassing individual animals. However, incidental taking that may result from, but is not the purpose of, otherwise legal activities may be allowed with a permit available from the Service.

Q: When would a critical habitat designation become effective?

A: Critical habitat designation that would trigger ESA section 7 review of Federal activities would become effective 30 days following our final determination, scheduled under court order for (anticipated in September 2005). However, section 7 also requires “conferences” on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat (anticipated in September 2004). Our conference opinions do not require Federal agencies to offset proposed critical habitat destruction of adverse modification. However, most agencies accept the recommendations made in our conference opinions, as most conference opinions can be connected to biological opinions once critical habitat is finalized, thereby saving consultation and project delays that could occur when a final rule becomes effective.

Q: How do I provide information to the Service?

A: We ask that all comments, including those derived at scoping meetings, please be written and sent by mail, fax or e-mail. Send to Field Supervisor, U.S. Fish and Wildlife Service, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021-4951 (602-242-0210, FAX 242-2513) or e-mailed to WIFLcomments@fws.gov. Scoping meetings to will be conducted from 6:30 until 8:30 p.m. at the following locations and dates. The first ½-hour will allow participants to receive conservation and critical habitat process and flycatcher information. Information will then be discussed in a workshop format.

Jan 26, Phoenix, AZ
Fraternal Order of Police Lodge No. 2
12851 N. 19th Ave
Phoenix, AZ 85029-2654

Jan. 29, Alamosa, CO
Alamosa Family Recreation Center
2222 Old Sanford Road
Alamosa, CO 81101

Feb. 4, Corona/City of Chino, CA
El Prado Golf Course
6555 Pine Avenue
Chino, CA 91710

Jan 27, Silver City, NM
Flame Convention Center
2800 Pinos Altos Road (West of 32nd St
& Hwy 180)
Silver City, NM 88061

Feb. 2, Las Vegas, NV
BLM building
4701 N. Torrey Pines Drive
Las Vegas, 89130

Feb. 5, Escondido, CA
Escondido Center for the Arts
340 N. Escondido Blvd.
Escondido, CA 92025

Jan. 28, Albuquerque, NM
Indian Pueblo Cultural Center
2401 12th Street NW
Albuquerque, NM 87104

Feb.3, Lake Isabella, CA
Lake Isabella Senior Center
Veteran's Facility, Room 1
6405 Lake Isabella Blvd.
Lake Isabella, CA 93240

The 1997 critical habitat rule, final recovery plan, and other flycatcher information, are available on the Internet at <http://arizonaes.fws.gov> or by contacting the Field Supervisor.

Q: What are the recovery goals for the southwestern willow flycatcher?

A: The Recovery Plan establishes criteria that should be met before the southwestern willow flycatcher could be considered for reclassification to the less serious category of “threatened,” and for eventual removal from the Federal list of threatened and endangered species.

To be considered threatened, one of two criteria need to be met. There should be at least 1,950 flycatcher territories (approximately 3,900 individuals) geographically distributed in the Plan’s six Recovery Units that are maintained over a five-year period. An alternative criteria involves establishing fewer pairs (1,500 territories, approximately 3,000 individuals) geographically distributed throughout the Recovery Units for three years. However, unlike the first criteria, these habitats must be provided sufficient protection from threats through development and implementation of various types of conservation management agreements.

In 2003, there were 986 known territories.

To be considered for removal from the Federal list of threatened and endangered species, flycatcher populations and the habitat the species requires should be protected into the foreseeable future through the development and implementation of conservation management agreements. At least 1,950 territories of flycatchers (approximately 3,900 individuals) are required to be geographically distributed throughout each Recovery Unit. In addition, the amount of suitable breeding habitat within each Management Unit should be double that required to support the target number of flycatchers within each of the Units. The management agreements for all the territories and additional habitat must provide protection from threats to the flycatcher and create/secure sufficient habitat to assure maintenance of these populations and/or habitats over time, and demonstrate their effectiveness for a period of at least five years prior to delisting.

Q: What can a landowner do to enhance habitat for the flycatcher?

A: The U.S. Fish and Wildlife Service is able to provide technical and financial assistance to landowners who want to improve or restore habitat on their property through the Partners for Fish and Wildlife Program and other private stewardship grant programs.

Q: What other species will benefit from the designation of critical habitat for the flycatcher?

A: Southwestern riparian habitats are by nature diverse and dynamic, providing a wide spectrum of habitats for many different species. There are a number of species that are currently listed as threatened or endangered, under the Act, as amended, which utilize the same habitats as the flycatcher (including 39 species of vertebrates). The disproportionately high level of threatened and endangered species indicates their riparian habitats have been degraded over a wide area. If riparian and aquatic ecosystems in the arid Southwest are restored to their natural, dynamic, heterogenous conditions, many imperiled species will benefit, as will recreationally and economically important species and habitats.