Unitt (1987) reviewed historical and contemporary records of E. t. extimus throughout its range, determining that it had "declined precipitously," and that "although the data reveal no trend in the past few years, the population is clearly much smaller now than 50 years ago, and no change in the factors responsible for the decline seem likely." Data are now available that indicate continued declines, poor reproductive performance, and/or continued threats for most remaining populations (Brown 1991, Whitfield and Laymon, Kern River Research Center, in litt. 1993, Sogge and Tibbitts 1992, Sogge et al. 1993, Muiznieks et al. 1994).

Previous Federal Actions

The Service included the southwestern willow flycatcher on its Animal Notice of Review as a category 2 candidate species on January 6, 1989 (54 FR 554). A category 2 species is one for which listing may be appropriate but for which additional biological information is needed. After soliciting and reviewing additional information, the Service elevated E. t. extimus to category 1 candidate status on November 21, 1991 (56 FR 58804). A category 1 species is one for which the Service has on file substantial information to support listing, but for which a proposal to list has not been issued because it is precluded at present by other listing activity.

On January 25, 1992, a coalition of conservation organizations (Suckling et al. 1992) petitioned the Service, requesting listing of *E. t. extimus* as an endangered species under the Act. The petitioners also requested emergency listing and designation of critical habitat. On September 1, 1992, the Service published a finding (57 FR 39664) that the petition presented substantial information indicating that listing may be warranted and requested public comments and biological data on the species. On July 23, 1993, the Service published a proposal (58 FR 39495) to list E. t. extimus as endangered with critical habitat, and again requested public comments and biological data on the southwestern willow flycatcher.

Summary of Comments and Recommendations

In the July 23, 1993, proposed rule (58 FR 39495) and associated notifications, all interested parties were requested to submit comments or information that might bear on whether to list the southwestern willow flycatcher. The comment period was originally scheduled to close October 21, 1993, then was extended to November 30,

1993. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the following newspapers; In California, Los Angeles Times, L.A. Watts Times, Kern Valley Sun, and San Diego Union-Tribune; in Arizona, Arizona Daily Sun, Arizona Republic, Tucson Daily Citizen, White Mountain Independent, and Arizona Daily Star; in New Mexico, Albuquerque Journal, Albuquerque Tribune, Santa Fe New Mexican, Carlsbad Current-Argus, Silver City Daily Press; in Nevada, Las Vegas Sun; in Colorado, Durango Herald; in Utah, Daily Spectrum; and in Texas, El Paso Times. The inclusive dates of publications were August 31 through September 13, 1993, for the initial comment period and October 28 through November 5, 1993, for the public hearings and extension of public comment period.

The Service held six public hearings. Because of anticipated interest in the proposed rule, the Service announced its intention to hold at least three public hearings. In response to requests from the public, three additional hearings were scheduled. A notice of the hearing dates and locations was published in the Federal Register on October 18, 1993 (58 FR 53702). Approximately 424 people attended the hearings. About 17 people attended the hearing in Tucson, Arizona; 27 in Flagstaff, Arizona; 10 in Las Cruces, New Mexico; 12 in Albuquerque, New Mexico; 350 in Lake Isabella, California; and 8 in San Diego, California. Transcripts of these hearings are available for inspection (see ADDRESSES)

A total of 3,102 written comment letters were received at the Service's Ecological Services State Office in Arizona: 264 supported the proposed listing; 2,650 opposed the proposed listing; and 188 expressed neither support nor opposition, but either commented on information in the proposed rule, provided additional information, or were non-substantive or irrelevant to the proposed listing.

Oral or written comments were received from 62 parties at the hearings: 8 supported the proposed listing; 40 opposed the proposed listing; and 14 expressed neither support nor opposition but provided additional information, or were non-substantive or irrelevant to the proposed listing.

In total, oral or written comments were received from 31 Federal and State agencies and officials, 17 local officials, and 3,116 private organizations, companies, and individuals. All comments received during the comment period are addressed in the following summary. Comments of a similar nature are grouped into a number of general issues.

Issue 1: The American Ornithologists' Union (AOU) did not list E. t. extimus in its latest Checklist of North American Birds; Unitt (1987) could not distinguish *E. t. extimus* by color or morphology; genetic analysis is necessary to distinguish subspecies; significant disagreement exists among scientists regarding taxonomy, for example, McCabe (1991) did not recognize E. t. extimus; the willow flycatcher subspecies, in fact the North American Empidonax flycatcher species are too difficult to distinguish to make it reasonable to list subspecies of those species; hybridization of the willow flycatcher subspecies occurs; subspecies are not worth listing; E. t. extimus is a subspecies of a very common species; E. t. extimus is not worth listing because it is one of nine common species in the genus Empidonax; this subspecies and subspecies in general are of minor ecological value; their loss would be unimportant; there is little value in preserving rare species/subspecies; and historical taxonomic questions may confuse population trend information.

Service Response: The Service has determined that E. t. extimus is a valid taxon. The Service relies on the most current and authoritative data available in making decisions regarding the validity of species, subspecies, or distinct vertebrate population segments. These data include articles published in professional journals, agency reports, and other unpublished data provided by researchers. For the southwestern willow flycatcher, the Service reviewed this information and found a majority opinion that E. t. extimus is a valid subspecies. Authorities who critically examined the taxonomy of *E. traillii* and recognized E. t. extimus include Phillips (1948), Aldrich (1951), Hubbard (1987), Unitt (1987), and Browning (1993). Other authorities accepting the subspecies include Behle and Higgins (1959), Phillips et al. (1964), Bailey and Niedrach (1965), Oberholser (1974), Monson and Phillips (1981), Harris et al. (1987), Schlorff (1990), Whitfield (1990), Brown (1991), Harris (1991), Western Foundation for Vertebrate Zoology in litt. 1993, University of California in litt. 1993. The AOU (1983) did not list subspecies of any bird, including the willow flycatcher, in its 1983 Checklist of North America Birds. However, this does not indicate a lack of recognition of E. t. extimus, or for the concept of subspecies. The preface to the 1983 Checklist states "The Committee