flycatchers have not yet returned to their historical locations on the SPRNCA but may soon. Habitat protection and cowbird management at The Nature Conservancy's Kern River Preserve and on Marine Corps Base Camp Pendleton in California have improved habitat and reduced brood parasitism pressures for resident E. t. extimus (Griffith and Griffith 1993). Wetland management at Bosque del Apache National Wildlife Refuge in New Mexico is apparently sustaining a small population of flycatchers. While these actions are beneficial, they provide for *E. t. extimus* only at several locales. Further, long-term continuation of these management actions is not assured.

Provisions of section 404 of the Clean Water Act do not specifically protect *E. t. extimus* or its habitat, but do provide some protection to the aquatic and riparian ecosystems of which it is a part. Section 404 of the Clean Water Act also provides for mitigation of destruction of these habitats, however, allowing even temporary destruction of riparian habitat is not consistent with the immediate conservation needs of *E. t. extimus.* 

Issue 27: The Service did not use the best available scientific or commercial information in making this determination; the Service presented insufficient and inconclusive information to support listing; the proposed rule used information which was general, incomplete, and originated with other flycatcher subspecies; the proposed rule was premature; the Service did not adequately solicit information and public input; scientific, economic, biological, hydrological and botanical data must support listing; how does the Service know the scientific information supporting listing was right?

Service Response: The Service canvassed the published literature regarding the taxonomy, ecology, and biology of the southwestern willow flycatcher, and the threats to it and its habitat. Because numerous and complex phenomena and processes were involved, this information ranged from general (e.g., wide scale trends in riparian habitat) to very specific (status of nesting groups). The Service believes it used the best available information, and has determined that this information is adequate to support listing. The Service evaluates sources before using or discounting information. In general, the Service expects that publications in peer-reviewed scientific journals, reports from land and resource management agencies, and dissertations or reports from academic or research

institutions have undergone technical review. Other information sources are considered more anecdotal, and the Service seeks to confirm such information before using it.

*Issue 28*: The Service should comply with the National Environmental Policy Act (NEPA) by completing an Environmental Impact Statement (EIS), and comply with 40 CFR 1506 to reduce duplication between NEPA and State and local requirements; the Service should comply with 40 CFR 1508.20 to compensate for producing substitute resources or environments; the Service should engage in joint planning with local governments under NEPA regulations.

Service Response: As noted in this final rule, the Service has determined that an Environmental Assessment, as defined under the authority of NEPA, need not be prepared for listing actions. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244). Because of this determination, an EIS also need not be prepared. Also because of this determination, reduction of duplication between the NEPA process and State and local agencies, and joint planning between those agencies and the NEPA process, are rendered moot.

*Issue 29*: The proposed rule violates the Regulatory Flexibility Act; no Regulatory Impact Analysis/Assessment as required under Executive Orders 12291 and 12866 was completed; it also may be inconsistent with the mandates of other agencies.

Service Response: Decisions on listing and reclassification under the Act are made based on five factors defined in section 4(a)(1) of the Act. These five factors are discussed in this rule, as they relate to E. t. extimus. The Act requires the Service to consider only scientific and commercial information relating to these five factors in making listing determinations, not economic information. Economic information is considered in designating critical habitat, which is not part of this rule. Therefore, compliance with the **Regulatory Flexibility Act and Executive** Orders 12291 and 12866 is not an issue for this action, but will be addressed if a critical habitat designation is made (H.R. Conf. Rep. No. 835, 97th Cong., 2d Sess. 20 (1982); accord, S. Rep. No. 418, 97th Cong., 2d Sess. 4 (1982)).

Where conservation and recovery of threatened and endangered species is inconsistent with other mandates of Federal agencies, processes under section 7 of the Act serve to evaluate projects arising from those mandates, with regard to protection of listed species. However, section 2(c) of the Act requires all Federal departments and agencies to conserve listed species and further the purposes of the Act.

*Issue 30*: The Service should complete a Takings Implications Assessment prior to listing/designating critical habitat.

Service Response: The Service will complete a takings analysis for any final designation of critical habitat in compliance with Executive Order 12630 and the Attorney General's supplemental guidelines issued June 30, 1988. In accordance with those guidelines and Interior Department policy, this analysis will be completed after listing, not as part of consideration of the listing determination itself.

*Issue 31*: Řequests were received for local public hearings.

Service Response: The proposed rule stated that three public hearings would be held. Because of many requests for additional hearings, a total of six public hearings were held. Regulations at 50 CFR 424.16(c)(3) require the Service to hold one public hearing if requested.

*Issue 32*: The time allowed for public comments was inadequate; the proposal should have been subjected to peer review.

Service Response: The Service is required to accept public comments for at least 60 days regarding proposals to list and/or designate critical habitat (50 CFR 424.16(c)(2)). In this case the Service initially announced a 90-day public comment period, then extended that another 40 days for a total of 130 days (July 23, 1993 through November 30, 1993). Public comment periods and public hearings are the mechanisms by which the Service receives input from all interested parties, including scientific peer review.

*Issue 33*: Listing would require private property owners to consult with the Service on their actions; listing and/ or designating critical habitat constitute take of private property rights; adverse modification of critical habitat would be prohibited on private lands; the Service failed to notify the affected public of the consequences of adverse modification of critical habitat; listing and/or designating critical habitat may affect civil rights.

Service Response: Listing does not require private property owners to consult with the Service on actions which may affect a listed species. However, section 7 of the Act does require Federal agencies to consult on actions which they fund, permit, or carry out if those actions may affect a listed species or adversely modify critical habitat. Any potential take of private property will be analyzed in compliance with Executive Order 12630