

and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

No conservation plans or habitat restoration projects specific to the southwestern willow flycatcher exist on lands managed by the U.S. Forest Service (USFS), BLM, U.S. Bureau of Reclamation (Reclamation), Indian Nations, State agencies, or the Service. The USFS and BLM have focussed some attention on modifying livestock grazing practices in recent years, particularly as they affect riparian ecosystems. As mitigation for other projects impacting riparian habitats, Reclamation is engaged in riparian habitat restoration projects in several areas in the range of *E. t. extimus*, including some historical nesting locations. The BLM currently manages approximately 40 miles of the upper San Pedro River in Arizona (including historic nest sites), as a Riparian National Conservation Area. Riparian habitat rehabilitation is also underway at several National Wildlife Refuges in the breeding range of *E. t. extimus*, which are managed by the Service. The Nature Conservancy manages one of the largest remaining flycatcher populations, as well as several other areas with high recovery potential. The U.S. Marines have maintained a cowbird control program near the Santa Margarita River to benefit the least Bell's vireo. This program has benefitted nesting southwestern willow flycatchers there. Grand Canyon National Park has instituted a seasonal recreation closure at the remaining site with nesting willow flycatchers in the Grand Canyon, and has begun a cowbird monitoring program.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a listing on proposed and ongoing activities within a species' range. The Service believes that, based on the best available information, the following are examples of actions that will not result in a violation of section 9:

(1) Dispersed recreational activities near willow flycatcher breeding areas that do not disrupt normal flycatcher breeding activities and behavior, attract avian and mammalian predators, nor result in the trampling or destruction of riparian breeding habitat;

(2) Federally-approved projects that involve activities such as discharge of fill material, draining, ditching, tiling, pond construction, stream channelization or diversion, or diversion or alteration of surface or ground water flow into or out of the wetland (i.e., due to roads, impoundments, discharge pipes, stormwater detention basins, etc.)—when such activity is conducted in accordance with any reasonable and prudent measures given by the Service in accordance with section 7 of the Act; and

(3) Livestock grazing that does not attract the brood parasitic brown-headed cowbird or result in the destruction of

riparian habitat or the disturbance of breeding flycatchers.

Activities that the Service believes could potentially harm the southwestern willow flycatcher and result in "take," include, but are not limited to:

(1) Unauthorized handling or collecting of the species;

(2) Destruction/alteration of the species' habitat by discharge of fill material, draining, ditching, tiling, pond construction, stream channelization or diversion, or diversion or alteration of surface or ground water flow into or out of the wetland (i.e., due to roads, impoundments, discharge pipes, stormwater detention basins, etc.);

(3) Livestock grazing that results in direct or indirect destruction of riparian habitat;

(4) Activities such as continued presence of cattle and fragmentation of flycatcher habitat that facilitate brood parasitism by the brown-headed cowbird; and

(5) Pesticide applications in violation of label restrictions.

Questions as to whether specific activities will constitute a violation of section 9 should be directed to Sam F. Spiller or Robert M. Marshall at the Service's Ecological Services State Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021 (Telephone 602/640-2720)

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

#### References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Supervisor, Ecological Services State Office in Arizona (see **ADDRESSES** above).

#### Author

The primary author of this rule is Robert M. Marshall, Ecological Services State Office in Arizona (see **ADDRESSES** above).

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

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, and Transportation.