

## FINDING OF NO SIGNIFICANT IMPACT

### Designation of Critical Habitat for the Mexican Spotted Owl

The U.S. Fish and Wildlife Service (Service) is designating critical habitat for the Mexican spotted owl (owl) (*Strix occidentalis lucida*) pursuant to section 4 of the Endangered Species Act of 1973, as amended (Act). We are designating approximately 3.5 million hectares (ha) (8.6 million acres (ac)) of critical habitat in Arizona, Colorado, New Mexico, and Utah, on Federal lands. Critical habitat units are designated in portions of McKinley, Rio Arriba, Sandoval, and Socorro counties in New Mexico; Apache, Cochise, Coconino, Graham, and Pima counties in Arizona; Carbon, Emery, Garfield, Grand, Iron, Kane, San Juan, Washington, and Wayne counties in Utah; and Custer, Douglas, El Paso, Fremont, Huerfano, Jefferson, Pueblo, and Teller counties in Colorado. Section 7 of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to destroy or adversely modify designated critical habitat. As required by section 4 of the Act, we considered economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat.

State and private lands are not designated as critical habitat. We excluded, pursuant to section 4(b)(2) of the Act, all Tribal lands and 157 wildland urban interface fuel treatment project areas on Forest Service lands in Arizona and New Mexico, and the Penasco wildland urban interface fuel treatment project on the Lincoln National Forest, because the benefits of excluding these lands outweigh the benefits of their inclusion. Under section 4(b)(3) of the Act, we also are not including the majority of military lands.

#### **Alternatives analyzed include the following:**

The Environmental Assessment analyzes three action alternatives, an "Option A" that can be combined with either alternative I or II, and the no action alternative. The No Action alternative is defined as no designation of critical habitat for the Mexican spotted owl. Alternative I consists of selected areas within 72 mapped critical habitat units, as described in the 21 July 2000 proposed rule (65 FR 45336). Only Federal and tribal lands within these 72 critical habitat units would be designated as critical habitat. Alternative II excludes all tribal lands from critical habitat designation and refines critical habitat unit boundaries on Federal lands based on improved, more precise mapping of essential habitat, exclusion of some Department of Defense lands pursuant to the 2004 National Defense Authorization Act, and exclusion of some lands on the Carson National Forest that do not contain PACs. Alternative III would exclude all Forest Service lands in Arizona and New Mexico and all tribal lands. In addition, Option A was formulated to address concerns about risks to human health and safety from wildfire. This option would exclude from critical habitat designation 157 wildland urban interface fuel treatment project areas and the Penasco wildland urban interface fuel treatment project area on Forest Service lands. These 158 areas were identified to be at high risk of imminent catastrophic wildfire and include residential communities, critical communications sites, municipal watersheds, high voltage transmission lines, observatories, church camps, scout camps, research facilities, and other structures in the project area (Forest Service, 2001; Service, 2001).

**Alternative II with Option A was selected over the other alternatives because:**

Implementation of our decision, as described in the environmental assessment as Alternative II with Option A (the exclusion of 158 wildland urban interface areas), is expected to have: (1) a minor change in section 7 consultations compared to the existing condition; (2) a moderate benefit from tracking changes in owl habitat; and (3) a moderate educational benefit from critical habitat designation. Effects of critical habitat designation on most resource areas are generally similar under each of the action alternatives, and vary only in terms of potential area of effect. Alternative II with Option A was selected after analyzing the public comments received, as well as after consideration of the economic and other relevant impacts of the designation, as required under section 4(b)(2) of the Act. We do not expect any change to Tribal Trust Resources because all Tribal lands are excluded. Additionally, potential impacts from critical habitat designation would not be likely to result in any incremental impact when added to other past, present, or reasonably foreseeable future actions. Thus, there are unlikely to be any cumulative effects associated with this or any of the critical habitat designation alternatives.

**The proposal has been thoroughly coordinated with all interested and/or affected parties.**

**Parties contacted include:** The Bureau of Reclamation, Bureau of Land Management, Forest Service, Tribal, State, local government, and private interests. On November 18, 2003, we reopened the public comment period on the July 21, 2000, proposed rule. We also published a notice of availability of the final draft economic analysis and the final draft environmental assessment and opened a 30-day comment period on March 26, 2004 (69 FR 15777). During this comment period, we held one informational meeting in Las Cruces, New Mexico, to provide an opportunity to the public to ask the Service questions. In the final rule, we categorize and respond to applicable, substantive comments received during the public comment periods. All comments received were analyzed and, where appropriate, were incorporated into the final environmental assessment, economic analysis, and/or the final rule.

One of the purposes of an environmental assessment is to provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact (40 CFR 1508.9). An environmental impact statement (EIS) is required only in instances where a proposed Federal action is expected to have a significant impact on the human environment. In order to determine whether designation of critical habitat would have such an effect, we prepared the environmental assessment that analyzes the effects of the designation. We made the draft environmental assessment available for public comment on March 26, 2004, and published a notice of its availability in the Federal Register (69 FR 15777). Following consideration of public comments, we prepared a final environmental assessment. Based on a review and evaluation of the information contained in the environmental assessment, it is my determination that the designation of critical habitat for the Mexican spotted owl does not constitute a major Federal action having a significant impact on the human environment under the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (as amended). Significance is determined by analyzing the context and intensity of a proposed action (40 CFR 1508.27). Context refers to the setting of the proposed action and includes consideration of the affected region, affected interests, and locality (40 CFR 1508.27[a]). The context of both short- and long-term effects of proposed designation of critical habitat includes the 51-county analysis area as well as local areas that encompass critical habitat units. The

effects of proposed critical habitat designation at both of these scales, although long-term, would be small.

Intensity refers to the severity of an impact and is evaluated by considering ten factors (40 CFR 1508.27[b]). The intensity of potential impacts that may result from proposed designation of critical habitat for Mexican spotted owl is low.

The potential impacts may be both beneficial and adverse, but minor.

There would be no effects to public health or safety from proposed designation of critical habitat, and the proposed action would not affect unique characteristics of the geographic area.

Potential impacts from critical habitat designation on the quality of the environment are unlikely to be highly controversial and do not involve any uncertain, unique, or unknown risks.

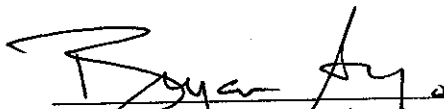
Proposed designation of critical habitat for Mexican spotted owl does not set a precedent for future actions with significant effects and would not result in significant cumulative impacts.

Significant cultural, historical, or scientific resources are not likely to be affected by proposed designation of critical habitat.

Proposed critical habitat designation would have a beneficial effect to Mexican spotted owl and other threatened or endangered species (e.g. Mexican gray wolf, Gila trout).

Proposed critical habitat designation would not violate any Federal, state, or local laws or requirements imposed for the protection of the environment.

As such, an environmental impact statement is not required.

  
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Regional Director, Region 2  
U.S. Fish and Wildlife Service

August 18, 2004  
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Date