AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

AgendaTitle:
Ratification of Correspondence; US Fish and Wildlife Service; Proposed Rule by FWS on 08/15/2014 "Designation of Critical Habitat for the Western Continental United States Distinct Population Segment (DPS) of the Yellow-billed Cuckoo"

Action Requested: Motion

Parties to the Agreement:

Term Begins: **Term Ends:** **Grant Contract #:**

Summary:
The attached letter was uploaded to Regulations.gov and sent via certified mail with return receipt on 1/9/15. Each of the commissioners gave their individual approval to use their signature stamps on the letter.

Fiscal Impact:

Submitted by: Katherine Haase for Jim Cochran **Submitter's Email Address:** khaase@gunnisoncounty.org

Finance Review: ○ Required ◉ Not Required

Comments:

Reviewed by: Discharge Date:

County Attorney Review: ◉ Required ○ Not Required

Comments:

ok db 1/9/15

Reviewed by: GUNCOUNTY1\dBaumgarten Discharge Date: 1/9/2015 Certificate of Insurance Required

Yes ○ No ◉

County Manager Review:

Comments:

Reviewed by: GUNCOUNTY1\mbirnie Discharge Date: 1/9/2015

◉ Consent Agenda ○ Regular Agenda ○ Worksession Time Allotted:

Agenda Date: 1/13/2015 Follow Up Agenda Date:

Revised April 2013

Gunnison County
COLORADO

Gunnison County Board of County Commissioners
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January 8, 2015

SUBMITTED ELECTRONICALLY VIA REGULATIONS.GOV AND BY CERTIFIED USPS MAIL

Public Comments Processing
Attn: FWS-R8-ES-2013-0011
U.S. Fish and Wildlife Service Headquarters
MS: BPHC
5275 Leesburg Pike
Falls Church, VA 22041-3808

Re: Proposed Rule by FWS on 08/15/2014 "Designation of Critical Habitat for the Western Continental United States Distinct Population Segment (DPS) of the Yellow-billed Cuckoo"
ID: FWS-R8-ES-2013-0011-0001

As the Board of County Commissioners for Gunnison County, Colorado we hereby submit the following comments in regard to the proposed critical habitat designation for the distinct population segment of the Western Yellow-billed Cuckoo (YBCU). Our comments consist of four general categories:

1. **Lack of Evidence Demonstrating YBCU Abundance and Habitat Utilization in Colorado**
    a. There is little data and few records related to the historic abundance of YBCU in Colorado. The limited records which are available (including those relied upon by FWS in drafting the proposed critical habitat rule) indicate that YBCU has never been common in the State of Colorado.
        i. Records of Colorado avifauna from the early 1900s often made no note of YBCU within the state. (Gilman 1907, Warren 1908).
        ii. Later records noted YBCU as "an uncommon summer resident" in Colorado. (Bailey & Niedrach 1965).
        iii. More recently, credible biological literature has noted YBCU as a "rare local summer resident…it appears that it was never common in Colorado." (Andrews & Righter 1992).
        iv. Using some of these same records to describe YBCU history in Colorado, FWS concluded that "the yellow-billed cuckoo was probably never common and it is now extremely rare." (USFWS 2013, p.61635).
    b. Throughout the listing and critical habitat designation processes, FWS has failed to establish that Colorado has ever been an essential portion of the range for YBCU as required by law.
    c. FWS has also failed to establish that YBCU have ever been more abundant within Colorado than they are today.

d. The limited data and records which are available in regard to YBCU do not demonstrate that habitat in Colorado is critical to breeding or reproduction of the species.
   i. Known records of breeding activity agree that breeding in this region is uncommon to rare and local, with breeding habitat confined to a very small area of the landscape. (Bent 1940 & Hughes 1999).

2. **Demonstration of Necessity to Designate Critical Habitat**
   a. FWS has not demonstrated that critical habitat in western Colorado, and specifically, in proposed Unit 58 is 1) essential to the conservation of the species; 2) may require special management considerations or protection as required by law. *16 U.S.C. §1532(5)(a)(i).* Unit 58 is clearly outside the normal range of the species. Sightings have been incidental and unverified. There is no evidence of breeding or other activities essential to the survival of the species.
   b. FWS has taken a "broad-brush" approach in proposing critical habitat for the YBCU in western Colorado. The Endangered Species Act (ESA) specifically states that "*Except in those circumstances determined by the Secretary critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species*". *Id. at §1532(5)(c).* Designating critical habitat based upon a limited number of unverified sightings, where the YBCU is an incidental or occasional visitor, is clearly outside the intent of the ESA.

3. **Consideration of Economic Impacts**
   a. FWS has not adequately considered the regional economic impacts of the proposed critical habitat designation.
      i. The proposed critical habitat in Gunnison County, Unit 58, which totals 938 acres (Gunnison County GIS 2014) is composed of two distinct landownership types. The eastern portion of the unit is almost entirely private (approx. 611 acres or 65.2% of proposed critical habitat in Unit 58), with considerable residential development with agricultural, grazing lands to the west.

         FWS did not adequately consider the impacts of critical habitat designation on private lands within Unit 58, including administrative costs to FWS necessary if this area is designated critical habitat. The administrative burden, to both private landowners and the FWS, is not justified and will not result in conservation of the species.

         Gunnison County is approximately 80% federal lands. To impose unnecessary impacts to a disproportionate share of private lands in the proposed YBCU critical habitat Unit 58 imposes an unnecessary economic impact on the community and will not result in protecting habitat necessary for the conservation of the species.

      ii. The riparian corridors which FWS has proposed for designation as critical habitat contain some of the most critical economic infrastructure within the region. The Uncompahgre and North Fork Valleys are important centers of agricultural production in Colorado. This agricultural production relies upon continued operation of irrigation facilities which are located within the proposed critical

habitat corridors along the Uncompahgre River (Unit 57: CO-4) and North Fork of the Gunnison (Unit 56: CO-3).

iii. Restrictions on the continued operation of these irrigation facilities, particularly the diversion structures, would be catastrophic to the agricultural economy of the area.
   1. In Delta County, 34% of land is involved in agricultural production. This number is 23% for Montrose County. (Colorado State University Tri River Area Extension 2014).
   2. When considering that the majority of lands within both of these counties are held and administered by the federal government, the importance of preserving productivity on the available private lands becomes even more critical. Total 2012 agricultural sales were $55.6 million and $103.2 million for Delta and Montrose Counties, respectively. (USDA Agricultural Census 2012).

iv. The imposition of Section 7 consultations within critical habitat would undermine the efficacy of economic programs offered by the Natural Resources Conservation Service (NRCS) and other federal partners. Fundamental agricultural activities like planting and harvesting cannot be postponed due to consultation. Required consultation may require program participants to abandon programs or cause participation to be delayed for a given year. These foreseeable outcomes would be harmful to the program and participants and not result in conservation of the species, as mandated by law.

v. The imposition of Section 10 consultations would be onerous for agricultural producers in that producers cannot afford to miss critical activities while waiting for consultation. Section 10 consultations in residential areas impose unnecessary, adverse impacts. The habitat in residential areas does not provide necessary physical or biological features for the species; therefore imposition of arbitrary critical habitat requirements will not result in conservation of the species, as required by law.

vi. The adverse economic and ecological impacts of tamarisk are well documented. Identifying this species as a constituent element of YBCU habitat would put critical habitat at odds with management programs designed to restore riparian corridors which have been overtaken by tamarisk.

4. **Request of the Service**
   a. We specifically request that FWS remove all proposed critical habitat within Gunnison County, Colorado.
   b. Further, in comments submitted to the FWS on October 14, 2014, the Colorado Department of Natural Resources (CDNR) states: "*Per our comments in response to the proposed listing dated 3 December 2013 (CPW) and 18 February 2014 (DWR), we continue to assert that designation of critical habitat in Colorado is not appropriate. Colorado is on the fringe of the natural YBCU range and cannot make a significant contribution toward the conservation of the species*". Clearly, CDNR and CPW provide

compelling arguments that critical habitat should not be designated in western Colorado. Therefore we request that no YBCU critical habitat be designated in western Colorado.

Conclusion

a. In addition to the specific information that we have already provided in these comments, we provide this summation of our request to remove critical habitat designations.
   i. The best available data and records do not demonstrate that FWS' proposed critical habitat within Colorado is essential to the conservation of the YBCU and therefore it does not meet the definition of critical habitat.
   ii. The adverse economic impacts associated with designation of the proposed critical habitat would outweigh the potential benefits of designating marginal YBCU habitat. Section 4 of the ESA gives the Secretary clear authority to exclude critical habitat for this reason.

Respectfully,

Paula Swenson, Chairperson | Phil Chamberland, Commissioner | Jonathan Houck, Commissioner

Citations

Andrews, A. and R. Righter. 1992. Colorado Birds: A Reference to their Distribution and Habitat. Denver: Denver Museum of Natural History. 442 pp.

Bailey, A.M. and R.J. Niedrach. 1965. Birds of Colorado. Denver: Denver Museum of Natural History.

Bent, A.C. 1940. Life Histories of North American Cuckoos, Goatsuckers, Hummingbirds and their Allies. Washington, D.C: Smithsonian Institution. 506 pp.

Gilman, M.F. 1907. Some birds of southwest Colorado. Condor 9:152-158, 194-195.

Hughes, J.M. 1999. Yellow-billed Cuckoo (*Coccyzus americanus*), The Birds of North America Online (A. Poole, Ed.). Ithaca: Cornell Lab of Ornithology; Retrieved from the Birds of North America Online at: <http://bna.birds.cornell.edu/bna/species/418>.

King, Mike. 2014. Comments from Colorado Department of Natural Resources regarding the Designation of Critical Habitat for the Western Distinct Population Segment of the Yellow-billed Cuckoo. 29 Fed. Reg 48548 (August 15, 2014)

US Fish and Wildlife Service (FWS). 2013. Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Western Distinct Population Segment of the Yellowbilled Cuckoo (*Coccyzus americanus*); Proposed Rule. 50 CFR Part 17, Vol 78 No. 192. 61622-61666.

Warren, E.R. 1908. Northwestern Colorado bird notes. Condor 10:18-26.