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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2018-0064]

Notice of Availability of an Environmental Assessment; Southwestern Willow Flycatcher Conservation Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the U.S. Department of Agriculture (USDA) and its sub-agency, the Animal and Plant Health Inspection Service (APHIS), are making available a draft environmental assessment for a conservation program pursuant to the Endangered Species Act to benefit the southwestern willow flycatcher, a small, neotropical migrant bird found in Arizona, California, Colorado, Nevada, New Mexico, Texas, and Utah. The draft environmental assessment examines the environmental effects associated with the selection of the program alternatives and conservation measures that USDA and APHIS propose to implement. We are making the draft environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to

<http://www.regulations.gov#!/docketDetail;D=APHIS-2018-0064>.

- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS-2018-0064, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238.

Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0064> or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799-7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. Kai Caraher, Biological Scientist, PHP, PPQ, APHIS, 4700 River Road Unit 150, Riverdale, MD 20737-1231; (301) 851-2345; Kai.Caraher@usda.gov.

SUPPLEMENTARY INFORMATION:

Saltcedar, also known as tamarisk (*Tamarix* species), is an invasive plant widely established in riparian areas in the western United States. This non-native weed, which can take the form of a shrub or small tree, was introduced into the United States in the latter 19th century. Although saltcedar is an invasive plant, native animals have adapted to its presence.

In 1986, the U.S. Department of Agriculture's (USDA's) Agricultural Research Service (ARS) began research into the potential for biological control of saltcedar. From 1998 to 2000, ARS conducted open field release trials of tamarisk leaf beetles (*Diorhabda* species) to determine the conditions under which releases could succeed. These field trials took place after ARS consulted with the U.S. Fish and Wildlife Service (USFWS) to ensure compliance with the Endangered Species Act (ESA). USDA's Animal and Plant Health Inspection Service (APHIS)

permitted the releases after it completed additional environmental risk analyses and provided the public an opportunity to comment on the documents.

In 2005, APHIS initiated a biological control program for saltcedar defoliation in the northern United States using the tamarisk leaf beetle as the biological control agent in limited locations outside of the habitat of the southwestern willow flycatcher (SWFL, *Empidonax traillii eximius*). Greater than anticipated natural dispersion and intentional human-assisted movement of the beetle into SWFL habitat caused defoliation of saltcedar trees, hampering the flycatcher's nesting success.

After tamarisk leaf beetles were discovered in SWFL habitat, APHIS terminated its saltcedar biological control program in 2010 and canceled release permits because of concern about the potential adverse effects to SWFL. APHIS reinitiated consultation with USFWS on these actions, in compliance with section 7(a)(2) of the ESA and 16 U.S.C. § 1536(a)(2), and USFWS concurred with APHIS' determination that these actions were not likely to adversely affect the SWFL.

On September 30, 2013, the Center for Biological Diversity filed a lawsuit against USDA, APHIS, ARS, the Department of the Interior (DOI), and USFWS alleging that the APHIS saltcedar biological control program violated the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*) and the ESA. On May 3, 2016, the Court granted the plaintiff's second of five claims, finding that APHIS did not comply with the ESA section 7(a)(1), which requires Federal agencies to consult with DOI and "utilize their authorities in furtherance of the purposes of [the ESA] by carrying out programs for the conservation of endangered species and threatened species listed pursuant to [16 U.S.C. § 1533]" 16 U.S.C. § 1536(a)(1). On June 19, 2018, the Court ordered USDA and APHIS to publish proposed

conservation program alternatives in compliance with ESA section 7(a)(1), solicit public comments on the proposed alternatives, then publish a draft environmental assessment for public comment, and complete review of all public comments, and issue final decision and final environmental assessment, or an environmental impact statement (EIS) should it be appropriate.

On October 26, 2018, APHIS published in the *Federal Register* (83 FR 54080-54082, Docket No. APHIS-2018-0064) a notice¹ informing the public of APHIS' intent to conduct a scoping process and prepare an environmental assessment (EA). We solicited comments for 30 days ending on November 26, 2018. We received 23 comments by that date. After reviewing the comments, APHIS prepared the draft EA to examine the environmental effects of possible program alternatives, including conservation measures available to USDA and APHIS as well as a "no action" alternative. The EA will be used for planning and decisionmaking and to inform the public about the environmental effects of the various conservation actions.

We are announcing the availability of the draft EA that considers the potential environmental effects of the proposed conservation measures. We are requesting public comments on the listed conservation program alternatives to ensure that additional potential alternatives and environmental issues overlooked by USDA and APHIS in the draft EA can be identified and examined before it is finalized. Based on the comments that we receive, we may determine that we should prepare an environmental impact statement (EIS) instead of an EA. In that case, we would notify the public of our intent to prepare an EIS in a notice published in the *Federal Register*.

¹ To view the notice and the comments we received, go to <https://www.regulations.gov/docket?D=APHIS-2018-0064>.

Proposed Programmatic Alternatives

The Council on Environmental Quality's (CEQ's) regulations for implementing the procedural provisions of NEPA regulations (40 CFR 1508.25) require the scope of analysis to include a no action alternative in comparison to other reasonable courses of action. Under the no action alternative, APHIS would evaluate the current USDA programs benefitting the SWFL and would not develop any new conservation programs for the species.

Under the proposed conservation program alternative, APHIS would assist existing conservation programs, contribute funding, monitor beetle impacts, and evaluate participation in additional current or future projects with the potential to benefit the flycatcher. APHIS received conservation program suggestions during the notice of intent comment period. These measures include:

- Expanding the educational campaign to include discouraging human-aided distribution of the tamarisk leaf beetle near known flycatcher nesting sites;
- Funding the construction, installation, and maintenance of cowbird traps in flycatcher-occupied riparian habitat to reduce nest parasitism; and
- Funding additional development and testing of a tamarisk leaf beetle repellent by Montana State University.

The EA will be prepared in accordance with: (1) NEPA, (2) CEQ's regulations for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508), (3) USDA's regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' regulations implementing NEPA (7 CFR part 372). In addition to publishing this notice in the *Federal Register*, APHIS will send the draft EA to 15 Tribal governments, the USDA's Natural Resource Conservation Service and Forest Service, the Bureau of Reclamation, the Bureau of Land Management, the

USFWS–Ecological Services and the National Wildlife Refuge System, the U.S. Geological Survey, the National Park Service, 7 States, and dozens of individuals from non-governmental groups (conservation and academic researchers). APHIS requests that Federal, State, Tribal, or local government entities who manage areas, or have jurisdictional control over sites or actions under consideration as part of this conservation program, contribute to this environmental risk analysis and development of the final NEPA documents.

Done in Washington, DC, this 2nd day of July 2019 .

Kevin Shea,

Administrator,

Animal and Plant Health Inspection Service.

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