

OFFICE OF SPECIES CONSERVATION

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Governor



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April 27, 2020

Attn: FWS-R8-ES-2013-0011
U.S. Fish and Wildlife Service Headquarters
MS: JAO 1/N, 5275 Leesburg Pike
Falls Church, VA 22041-3803

Re: FWS-R8-ES-2013-0011: Yellow-Billed Cuckoo Revised Critical Habitat Designation

Dear U.S. Fish and Wildlife Service,

We appreciate the opportunity to provide comments on the Revised Critical Habitat Designation for the Yellow-Billed Cuckoo. The State of Idaho has been a proactive partner in the conservation and management of the western yellow-billed cuckoo (YBCU). The Idaho Governor's Office of Species Conservation, Idaho Department of Fish and Game, Idaho Department of Lands, Idaho State Department of Agriculture and other state agencies have a shared interest in conserving the species and associated designations within our region. When critical habitat was proposed in 2014, the State submitted a letter outlining concerns about the lack of information available for the species and the disbelief that another layer of regulations on currently protected federal lands will have any added benefit to the species or the citizens of Idaho.

Some of these concerns were addressed in the revised critical habitat designation, but others were not and are addressed in the comments below. Of primary concern now is the lack of an YBCU recovery plan to first leverage Idaho's existing and proven conservation efforts before designating critical habitat. The US Fish and Wildlife Service (USFWS) should therefore first develop a strategic YBCU recovery plan that engages the breadth of stakeholders and incentivizes conservation partnerships before designating critical habitat. A finalized Recovery Plan would be incredibly helpful to the critical habitat designation process by providing guidance on variables such as where designations may be most appropriate and which of those areas should be prioritized.

Given the criteria outlined in section 4(b)(2) of the Endangered Species Act (ESA) for designating critical habitat and in the absence of a recovery plan, the State is supportive of the Big Wood River critical habitat removal and recommends eliminating the following designated YBCU critical habitat in Idaho:

- Unit 65: ID-1, Snake River 1 (Bannock and Bingham Counties, Idaho).
- Unit 66: ID-2, South Fork Snake River 2 (Bonneville, Madison and Jefferson Counties, Idaho).
- Unit 67: ID-3, Henrys Fork, Teton River (Madison and Fremont Counties, Idaho).

Instead, USFWS should emphasize the planning and implementation of existing comprehensive ecologically based strategies to conserve the integrity of aquatic and terrestrial habitats for YBCU and other priority fish and wildlife species. As an alternative to designated critical habitat, the USFWS should support a conservation strategy that leverages existing collaborative efforts among private landowner, state and federal agency, and non-governmental organization partnerships consistent with the following key elements.

1. The USFWS should emphasize landscape-scale YBCU habitat conservation through the current Snake River Area of Critical Environmental Concern (ACEC) and Special Recreation Management Area (SRMA) managed by the BLM which includes the South Fork Snake River (ID-2), and the Henrys Fork River/Teton Rivers (ID-3). According to the BLM website, this area supports the largest riparian cottonwood gallery forest in the West and is home to 126 bird species. Emphasizing focus here and acting through existing regulations and collaboration would synergize conservation efforts for multiple priority species (e.g., YBCU, Yellowstone cutthroat trout, trumpeter swan, and Ute-ladies'-tresses orchid).
2. Collaborative stakeholder engagement (e.g., water users, Bureau of Reclamation (BOR), and Henrys Fork Watershed Council) should also be encouraged to incentivize ecologically-based cooperative water management practices and promote riverine processes that conserve functional riparian habitats (e.g., spring freshet flows), including cottonwood forests, balanced for example with agricultural irrigation, managed aquifer recharge, municipal uses, and flood control (see Merigliano 1996, Hauer et al. 2004, IDFG and Van Kirk 2014).
3. Coordination among state agencies, federal agencies such as the Natural Resource Conservation Service, USFWS, BLM, and private landowners should be further promoted. The use of Farm Bill funded water projects (e.g., incentivize flood irrigation practices and bio-engineered streambank stabilization) across ownerships to maintain landscape heterogeneity, improve riparian habitats, and preserve cottonwood forest resiliency is important for riparian species including YBCU (see Saab 1999).
4. Instead of an additional layer of regulation, the USFWS should continue to apply federal regulatory processes, including ESA Section 7 consultation, to address potential YBCU effects from federal actions. For example, the BOR 2017 Section 7 consultation has already produced a Biological Opinion, valid through 2035, for Henry's Lake Dam, Palisades Dam, and American Falls Reservoir, which concluded these projects were 'not likely to adversely affect' ESA-protected species.

If the USFWS chooses to move forward with the currently proposed YBCU critical habitat designations in Idaho, the USFWS should expand the boundaries of ID-2 and ID-3 to correspond to federal lands within the Snake River ACEC/SRMA and with non-federal lands included only per landowner discretion, which would incorporate all potentially suitable YBCU breeding habitat along Idaho's Henrys Fork and South Fork of the Snake River to their confluence.

Additionally, the USFWS should also work with the BLM, the counties and other local stakeholders on a potential SRMA designation (apply the existing Snake River ACEC/SRMA approach) for federal lands in ID-1, which currently has no special management designation along the Snake River between Idaho Falls and American Falls Reservoir. The USFWS should implement these key strategic elements described above to avoid unnecessarily designating

critical habitat and instead support and emphasize leveraging the BLM's successful implementation of the Snake River ACEC/SRMA for successful conservation of the YBCU.

Most importantly, Idahoans are well versed in collaborative and ecological conservation efforts and can contribute important local knowledge of the Snake River ecosystem in this area. The health of the ecosystem and species are a critically important part of the picture, but as USFWS considers this critical habitat designation they cannot lose sight of the other critically important variables in the planning process; the economic and social aspects. The USFWS and federal land management agencies should therefore directly engage state and local stakeholders during any planning effort such as critical habitat or SRMA designations.

Below are additional specific comments regarding the revised critical habitat designation the State of Idaho would like the USFWS to consider during this planning process. If you have any questions regarding the attached comments, please contact the State of Idaho using the following contacts: IDFG's Frank Edelmann, at 208-287-2756 or frank.edelmann@idfg.idaho.gov, and myself at 208-332-1556 or joshua.uriarte@osc.idaho.gov.

Sincerely

A handwritten signature in blue ink that reads "Joshua R. Uriarte". The signature is written in a cursive style with a large initial 'J'.

Joshua Uriarte
Office of Species Conservation

The following is a compilation of additional specific comments regarding the revised critical habitat designation. The State of Idaho would like the USFWS to consider these comments during this planning process.

Economics

Reference: “We are soliciting information on the economic impact of the revised proposed designation and will continue to reevaluate the potential economic impacts between our proposed and final designation.” (Docket No. FWS–R8– ES–2013–0011; 4500030114, pg. 11458)

Comment: Within this proposed rule the USFWS asked commenters to provide feedback on the potential economic impacts of the designation. Based on this request, during their analysis the USFWS should consider that changing the management of the Snake River, or its tributaries without finding a balanced approach would have significant impacts on Idaho stakeholders that are involved in the energy, irrigation, livestock, conservation and recreational/fishing community. Through the current regulations and designations, Idaho has shown that these aspects can coexist to provide a healthy ecosystem as well as the opportunity for multiple uses and that through collaborative efforts with some additional prioritization, long-term successful solutions can be implemented. Any top down determination that would add another layer of restriction and burden to the users and the livelihoods of citizens that depend on the Snake River is unacceptable if not first vetted through those that would be affected. There is a scenario where the community and the YBCU can benefit without undermining the collaborative approach and significant efforts that stakeholders have worked on to balance the management of Idaho’s river system for multiple purpose and benefits.

Agriculture is the driver of Idaho’s economy and producers in several eastern Idaho counties could be significantly affected by the proposed designation. Idaho is a major national producer of potatoes, barley, sugar beets, hops, alfalfa hay, spring wheat and onions. and nearly all of these crops grown in Idaho are dependent on irrigation from surface water from the Snake River, a tributary, or ground water pumped from the associated aquifer. The critical habitat rule itself may not add additional restrictions to these uses, but the reactions from other federal land management and regulatory agencies could severely impact these uses through potential rules and restrictions that would be enacted.

According to a 2018 Idaho Commerce report, tourism is the third largest industry in Idaho. and is especially important in rural SE Idaho. Much of the tourism is directly connected to the Snake River’s fishing and recreational opportunities. In Fremont County, where the majority of the proposed Unit 67 is located, 10% of all jobs are in tourism and travel. In 2018, destination tourism was directly responsible for \$350M being spent in the areas where the proposed critical habitat areas are located and these activities resulted in \$32M in state and local taxes, 5,000 jobs, and \$117M in earnings for local employees. It is important to note that 4.5% of all jobs in the region are directly related to travel and tourism and an additional layer of regulation could have an unneeded effect on this industry.

The Bureau of Reclamation, Idaho irrigators, and Idaho conservation groups have worked hard to balance the development and management of Idaho’s river systems – including for fish and wildlife. In addition to irrigation, flood control, hydropower generation and recreation, many of Idaho’s reservoirs already incorporate operations for fish and wildlife benefits. As an example, each year, up to 487,000-acre feet of Idaho water is sent downstream for flow augmentation to assist with downriver migration of juvenile salmon and steelhead as part of the implementation of the 2004 Snake River Water Rights Agreement. This water, which comes from the federal

government, state of Idaho, and irrigators, could otherwise be used for agricultural or other uses, but is left in the river. It is important to note, that because this flow augmentation program is based on leasing water from willing participants, any change in the river management system that affects the timing or availability of irrigation water could inadvertently affect irrigators ability or willingness to lease water to the flow augmentation program.

Existing Uses

The impacts from American Falls Dam and reservoir, which is contained within Unit 65 ID-1, have already been realized on this landscape and should not be affected by the critical habitat designation. Construction on the dam, according to the BOR website was completed in 1927 and has been in place for almost a century. The water in American Falls Reservoir is crucial for power generation, flood control, recreation, irrigation and fish and wildlife resources. The continuation of the existing water management based on the BOR 2017 Section 7 consultation and subsequent Biological Opinion, valid through 2035, concluded this project was ‘not likely to adversely affect’ ESA-protected species. As such, the critical habitat designation should not inhibit or reduce the capacity of the reservoir. Such an action could have implications for Idahoans that make a living and depend on the reservoir and its products to do so.

Transmission lines in the area need to be maintained and shouldn’t be burdened with going through section 7 consultation into the future for maintenance activities. Maintenance is a predictable ongoing impact that is already realized. Many of the activities included in maintenance are for continuation of services to Idahoans, safety of the public, wildfire prevention, etc.

Exclusions under Section (4)(b)(2) of the Endangered Species Act

Reference: “We are looking for additional information, such as management plans or specific agreements, regarding these conservation properties that describe the commitment and assurances of protection of the physical or biological features for the YBCU to help us evaluate these areas for potential exclusion from final critical habitat designation under section 4(b)(2) of the Act.” (Docket No. FWS–R8– ES–2013–0011; 4500030114, pg. 11459)

Comment: Through the protections offered under the 2008 BLM/Snake River Activity and Operations Plan (SRAO), 1985 Medicine Loge RMP, FONSI/ROD for the SRAO EA, Biological Assessment for the SRAO EA, and Biological Option for BOR operated Palisades Dam, American Falls Reservoir, and Henry’s Lake Dam, it is apparent that there is sufficient evidence to exclude Units 66 and Units 67 from the final critical habitat designation based on the guidelines under section 4(b)(2) of the Endangered Species Act.

According to the BLM’s Upper Snake Field Office, within the Snake River Area of Critical Environmental Concern (ACEC) there are 30 conservation easements and 26 acquired properties purchased/managed by either the BLM, the Nature Conservancy, Teton Regional Land Trust, or the Land and Water Conservation Fund along the river corridor. This shows a network of private, state, and federal partners already working together to achieve the goals that are being put forth in the proposed critical habitat designation; then going one step further by implementing a plan of enhancing and protecting that critical habitat without the USFWS designation.

On page 5 of the BLM/USFS Snake River Activity and Operations Plan Revision EA, Figure 1 illustrates how the current SRAO plan and Medicine Lodge RMP manage a larger area than the current revised critical habitat proposed for Unit 66 and Unit 67 in Idaho by covering an area all the way to Palisades Dam. There are already conservation measures in place within the Snake River ACEC for the YBCU: Monitoring YBCU populations through baseline inventories of

habitat, mapping habitat use, implementing restoration projects, developing a weed management program that mitigates invasive weed competition with willow and cottonwood stands, protecting YBCU strongholds by limiting disturbing activity (dispersed camping, boat staging areas, other human activity) in those areas during their reproductive season (May 1 through August 31) and maintaining a 2.5 mile weed treatment zone around occupied zones, and supporting conservation easements/cooperative management efforts on adjacent non-federal lands. (Section B. Threatened, Endangered, and Candidate Species; Yellow-Billed Cuckoo; BLM/USFS Snake River Activity and Operations Plan Revision EA pgs. 27 – 28.) It is unclear how another set of federal regulations on top of this ecosystem would be beneficial to the river corridor, the YBCU, or the Idahoans that live there.

Conservation Easements

Reference: “We are also looking for information regarding private land(s) in Unit 65 (ID-1) where landowners may be pursuing a conservation easement or fee title purchase in the future and have demonstrated a history of managing these lands for the conservation benefit of western yellow-billed cuckoo habitat.” (Docket No. FWS–R8– ES–2013–0011; 4500030114, pg. 11459)

Comment: USFWS should include language in their plan that encourages conservation easements to willing landowners that promote working ranches or other operations and outlines what possible federal actions might affect private landowners’ property. Since the bird is a rare feature on the Idaho landscape, many private landowners are likely not managing their lands directly for the conservation benefit of YBCU. Incentives that encourage conservation measures for YBCU while incorporating the needs of the landowner or producer could encourage properties of interest to enter into such agreements. The USFWS along with the other federal agencies should work with the State of Idaho to have an open dialogue with the private landowners about proactive conservation strategies and measures, instead of waiting for a federal action to be implemented. The potential effects from a designation to adjacent private landowners are unknown until they are put in place by a land management agency. Also, the potential regulations or restrictions that maybe put in place because of the critical habitat designation could have a significant effect on permitted activities and the users of public lands in these areas.

Occupied Habitat and Connectivity

Reference: “Therefore, given the threatened status and the relatively small number of extant western yellow-billed cuckoo breeding locations within the DPS... a critical habitat designation limited to areas confirmed to be occupied by breeding birds through specific surveys at the time of listing would be *inadequate* to provide for the conservation of the species...areas alternatively meet the definition of critical habitat under section 3(5)(A)(ii) of the Act, *meaning that we consider these areas to be essential for the conservation of the species*, as they represent the various ecological (representation) and distributional aspects (redundancy) and provide for connectivity and dispersal areas for the species when not used for breeding.” (Docket No. FWS–R8– ES–2013–0011; 4500030114, pg. 11461)

Comment: The areas in Idaho confirmed to be occupied at the time of listing are essentially the same areas that meet the ecological representation and redundancy definition under 3(5)(A)(ii) of the Endangered Species Act. It is unclear how the new changes of excluding the Big Wood River section and expanding the Henry’s Fork designation, along with the previously included habitat, make the overall habitat in Idaho essential conservation of the species including connectivity and dispersal when researchers still are unsure about cuckoo habitat associations in Idaho and how

insect populations may drive cuckoo occurrence. (IDFG YBCU Habitat Use in Southern Idaho Annual Report 2019, pg. iii) Unit 65 has the most regular sightings of the YBCU, whereas Unit 66 and Unit 67 have had sightings historically, though not as regular. IDFG estimates there are 11 – 18 individuals observed every year in Idaho, though these have been found during surveys of potential habitat, not during population estimation surveys.

Reference: “All of the areas that support the western yellow-billed cuckoo face threats including habitat fragmentation, and degradation, altered hydrology, *livestock grazing*, nonnative vegetation, human disturbance, and the effects of climate change.” (Docket No. FWS–R8– ES–2013–0011; 4500030114, pg. 11461)

Comment: The proposed habitat designation for YBCU will increase the coordination and time needed for consultation with livestock grazers within the area. The USFWS should note that it is improperly managed livestock grazing, not livestock grazing in general that has the potential to negatively impact habitat for YBCU. This should be considered during habitat designation and future consultation.

Mapping

Reference: TABLE 1—Revised Proposed Critical Habitat Units For Western Yellow-Billed Cuckoo, Docket No. FWS–R8– ES–2013–0011; 4500030114 pg.11477

Comment: USFWS should reach out to local and state agencies with access to the most update information on land ownership before the release of this document. Using only one GIS layer to determine the boundaries and acreage is irresponsible considering that subsequent NEPA analysis and federal actions from this designation will have a significant impact on federal, state and private landowners in the future.

The State of Idaho holds title to the beds of navigable lakes and rivers in trust for the benefit of the public. IDL manages these public trust lands below the ordinary high watermark to provide for their commercial, navigational, recreational and other public uses pursuant to Idaho Code § 58-104(9). This includes those lands lying below the ordinary high-water mark of the South Fork of the Snake River, the Henry’s Fork of the Snake River, and the mainstem of the Snake River, and may also include islands that have accreted since statehood.

Please note these two categories of State lands managed by IDL have different constitutional mandates. The endowment trust lands, due to their constitutional mandate to generate income are not to be considered as “multiple use” lands. These lands should be treated like other private lands in any economic analysis.

Upon reviewing the listed threats, IDL does not anticipate any effects to the proposed designated critical habitat from the State’s land management activities, or any of IDL’s regulatory programs. IDL within the State of Idaho’s comments previously commented on acreage discrepancies for the critical habitat proposal in 2014.

Several of the State of Idaho’s concerns were addressed but some major discrepancies remain. For example, after an analysis of IDL GIS data, there is a 981-acre discrepancy on Unit 65 ID- 1 regarding the amount of tribal land, and another 285-acre discrepancy between the amount of private land on that same unit, as well as smaller discrepancies across the other units. The table below compares the published acreage and IDL’s GIS data with the data shown in Table 1 of the proposed listing.

Unit	type	Proposed Rule list acres	IDL GIS acres
#65 ID-1 Snake River 1	<i>Total CH</i>	9,655	10,713
	<i>Federal</i>	3,694	3,791
	<i>State</i>	1,763	1,756
	<i>Tribal</i>	2,227	3,208
	<i>Other</i>	1,672	1,957

Unit	type	Proposed Rule list acres	IDL GIS acres
#66 ID-2 Snake River 2	<i>Total CH</i>	11,442	11,524
	<i>Federal</i>	5,862	5,857
	<i>State</i>	1,940	2,027
	<i>Tribal</i>	0	0
	<i>Other</i>	3,641	3,640
#67 ID-3 Henry's Fork and Teton Rivers	<i>Total CH</i>	4,641	4,641
	<i>Federal</i>	756	739
	<i>State</i>	511	517
	<i>Tribal</i>	0	0
	<i>Other</i>	3,374	3,385

Citations:

Idaho Travel Impacts, 2010-2017, Report by Dean Runyan Associates for the Idaho Commerce – Tourism Development (2018).

Hauer, F. R., M. S. Lorang, D. Whited, and P. Matson. 2004. Ecologically Based Systems Management: The Snake River - Palisades Dam to Henrys Fork. Final Report to U.S. Bureau of Reclamation, Boise, Idaho. Flathead Lake Biological Station, University of Montana. Polson, Montana, 133 p.

Idaho Department of Fish and Game, and R. Van Kirk. 2014. Rationale for Protest of Permit Applications 01-10625 and 01-10626, an Expert Report.

Merigliano, M. F. 1996. Flood-plain and vegetation dynamics along a gravel bed, braided river in the northern Rocky Mountains. Ph.D. Dissertation. University of Montana. 180 pp.

Saab, V. A. 1999. The importance of spatial scale to habitat use by breeding birds in cottonwood forests: a hierarchical analysis. *Ecological Applications* 9:135—151.