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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2018-0064]

Availability of an Environmental Assessment and Finding of No Significant Impact; Southwestern Willow Flycatcher Conservation Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the United States Department of Agriculture and its sub-agency, the Animal and Plant Health Inspection Service, have prepared an environmental assessment and finding of no significant impact 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. Based on our finding of no significant impact, we have determined that an environmental impact statement need not be prepared.

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 part of the 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 extimus*). 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 on 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 (EA) for public comment, and complete review of all public comments, and issue final decision and final EA, 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 notice[1] informing the public of APHIS' intent to conduct a scoping process and prepare an EA. We solicited comments for 30 days ending on November 26, 2018. We received 23 comments by that date.

[1] To view the notice of intent and the comments that we received on that document, or the subsequent notice of availability of the environmental assessment, its supporting documents, and the comments that we received on that document, go to http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0064.

After taking into consideration the comments that we received, on July 9, 2019, we published in the *Federal Register* (84 FR 32701-32702, Docket No. APHIS-2018-0064) a notice in which we announced the availability, for public review and comment, of an EA that examined the environmental effects of possible SWFL conservation measures available to USDA and APHIS, as well as a "no action" alternative.

We solicited comments on the EA for 30 days ending August 8, 2019. We received 22 comments by that date. Four commenters were supportive of the preferred alternative in the EA without further comment, and one expressed general opposition to all APHIS biocontrol efforts. Additionally, several commenters asked for changes in nomenclature or phrasing within the draft EA in order to clarify its provisions without changing its meaning; we have incorporated the requested changes to the extent possible within the final EA. The remaining comments are addressed in the final EA itself.

In this document, we are advising the public of our finding of no significant impact (FONSI) regarding our preferred alternative for SWFL conservation measures. The finding, which is based on the EA, reflects our determination that the preferred alternative will not have significant impact on the quality of the human environment.

The EA and FONSI may be viewed on the Regulations.gov website (see footnote 1). Copies of the EA and FONSI are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 799-7039 to facilitate entry into the reading room. In addition, copies may be obtained by calling or writing to the individual listed under FOR FURTHER INFORMATION CONTACT.

The EA and FONSI have been prepared in accordance with: (1) NEPA, as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500-1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 26th day of November 2019 .

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

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