



April 27, 2020

Submitted via www.regulations.gov

Public Comments Processing
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: Revised Designation of Critical Habitat for the Western Distinct Population Segment of the Yellow-Billed Cuckoo

Dear Sir/Madam:

Western Energy Alliance appreciates the U.S. Fish & Wildlife Service's (FWS) decision to revise and reduce its designation of critical habitat for the western distinct population segment of the Yellow-Billed Cuckoo (YBC). We urge FWS to ensure the final rule is narrowly tailored to the species' critical habitat and does not impose unduly burdensome restrictions on resource development outside of the designated areas.

Western Energy Alliance represents over 300 companies engaged in all aspects of environmentally responsible exploration and production of oil and natural gas across the West. The Alliance represents independents, the majority of which are small businesses with an average of fourteen employees.

Designating critical habitat for the western distinct population segment of the YBC could have significant impacts on the activities that drive local economies in the West, including oil and natural gas development. While FWS has not identified oil and natural gas development as a threat to the species or its habitat, an overly expansive critical habitat designation could subject companies to requirements and restrictions under the Endangered Species Act (ESA) that would significantly impact their operations.

It is important that identified critical habitat be as accurate as possible because federal agencies such as the Bureau of Land Management (BLM) rely on these designations in crafting resource management plans (RMP) and issuing permits for land use activities. BLM is often required to place stipulations on resource development in RMPs for the protection of species covered by the ESA, and these stipulations are often highly restrictive.

We are thus encouraged that FWS has withdrawn the proposed designation first released in 2014 and replaced it with revised boundaries that more accurately reflect the critical habitat for the species. Specifically, we appreciate that FWS has removed all units in Wyoming that were identified in the 2014 draft critical habitat rule. At the time, FWS

stated that the YBC was historically “rare” in Wyoming, with fewer than five estimated breeding pairs estimated in the state. Based on that information, there was no basis to identify YBC habitat in Wyoming, and we appreciate that all units in the state have been removed in the revised designation. We further support revisions that reduce the previous draft acreage by approximately 30 percent, especially in Utah and Colorado, two states where FWS noted the YBC is “uncommon” and was “probably never common,” respectively.¹

As FWS works to finalize the designation, we request that FWS narrowly tailor its decision to ensure that any resulting restrictions will not negatively affect operations outside of critical habitat that do not negatively impact the species. As noted in the 2014 draft rule, there are no studies that demonstrate significant impacts to the yellow-billed cuckoo associated with noise or lights on nearby operations.

FWS should therefore ensure that any proposed conservation measures are limited to those within critical habitat, and should not seek to enforce buffers around those boundaries. Buffers are unnecessary to protect the species from resource development in surrounding areas, as demonstrated by the literature on noise and light impacts.

Finally, FWS has proposed to designate areas that are subject to a variety of voluntary measures, restoration projects, and management actions to conserve the Western YBC. FWS may elect to exclude lands from a critical habitat designation upon a finding that they will still be protected via other mechanisms, including “management plans that take into consideration [a species’] status as an endangered species.”²

As such, we recommend FWS exclude from the final critical habitat designation all lands subject to voluntary measures, restoration projects, and management actions to conserve the Western YBC. BLM and the U.S. Forest Service (USFS) are fully implementing multiple regulatory mechanisms to conserve the Western YBC and its habitat on federal lands through restrictions in RMPs, land management plans (LMP), and other documents, including oil and natural gas permits.

BLM and USFS are bound by those restrictions and protections regarding the management of the Western YBC and any future authorizations that may impact the species and its habitat must conform to the protections laid out in the RMPs and LMPs. Given that BLM and USFS will continue to provide an adequate regulatory mechanism to protect the species through management plans, we urge FWS to reconsider designating areas as critical habitat that are already subject to protections.

Thank you for the opportunity to submit comments on the revised critical habitat designation for the western distinct population segment of the Yellow-Billed Cuckoo. We appreciate that FWS is seeking to ensure a designation accurately reflects the critical

¹ 78 Fed. Reg. 61635-36

² *Ctr. for Biological Diversity v. Salazar*, 770 F. Supp. 2d 68, 89 (D.D.C. 2011)

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habitat, and urge FWS to ensure the final rule is narrowly tailored to provide protections for the species while not being overly burdensome on resource development occurring outside the critical habitat boundaries. Please do not hesitate to contact me with any questions.

Sincerely,



Tripp Parks
Vice President of Government Affairs