

In summary, human activities have had many adverse effects on the Pecos River ecosystem in the last 100 years. Although many adverse effects have occurred, it appears that lack of permanent flow and an altered hydrograph (diminished peak flows and sustained block flows) are the primary threats to the continued existence of the shiner.

Interior Least Tern

The New Mexico State Parks and Recreation Division will continue to manage human use of selected lands around Brantley Reservoir. The New Mexico Department of Game and Fish will continue their lease agreement to authorize and enforce State fishing and hunting regulations at Brantley Reservoir. State Park recreational use and other forms of human disturbance are expected to continue and can adversely affect tern breeding success. The use of all-terrain and four-wheeled drive vehicles and watercraft may allow recreational users to explore areas previously inaccessible other than by foot. Occasionally, users may violate restricted Wildlife Management Areas. Even momentary presence of human activity may be enough to directly or indirectly affect the breeding or nesting behavior of terns. Displaced adults may be forced to leave their nests open, resulting in direct disturbance. Nest contents can be accidentally crushed under foot or wheel without being noticed.

The Carlsbad Irrigation District will continue to call for block releases that cause the water elevation in Brantley Reservoir to rise, possibly inundating tern nests and habitat.

V. Conclusion

Pecos Bluntnose Shiner

After reviewing the current status of the shiner, the environmental baseline for the action area, the effects of the proposed water operations, the short duration of time covered by this BO, and the cumulative effects, it is the Service's biological opinion that the proposed Pecos River water operations as proposed, is not likely to jeopardize the continued existence of the shiner, and is not likely to destroy or adversely modify designated critical habitat. We found that the proposed action is not likely to have adverse effects to designated critical habitat or alter the function and intended conservation role of shiner critical habitat.

Despite the extremely low runoff forecast for the Pecos River Basin this year, the Service reached these conclusions because Reclamation has the reservoir storage to meet their commitment of maintaining a continuous river. The relatively high storage in the upstream reservoirs this year provides Reclamation with more flexibility to manage block releases and avoid intermittency for shiners. Because intermittency is associated with declines in the shiner population, continuous flow is essential to maintain minimum population levels. Reclamation is also pursuing additional water acquisitions (i.e., lease agreements with FSID, Pecos River water users, groundwater pumping) that, if successful, would provide even more flexibility with their future water operations and contribute to ensuring that the flow of water in the Pecos River will not become intermittent. Therefore, we did not analyze the effects of river intermittency in the BO.

Reclamation's proposed operations, including the proposed supplemental water activities, will augment base flows for the shiner and avoid river intermittency. We anticipate the river will remain whole through the use of existing reservoir storage, bypass flows, the fish conservation pool, and managing block releases in cooperation with CID. Additionally, Reclamation has verbally committed to coordinating block releases with CID such that river intermittency will be avoided.

Interior Least Tern

After reviewing the current status of the tern, the environmental baseline for the action area, the effects of actions associated with this amendment of the biological assessment of Reclamation's proposed Pecos River dam operations, and cumulative effects, it is the Service's biological opinion that this action, as proposed, is not likely to jeopardize the continued existence of the tern because Brantley Reservoir represents a very small portion of their range. To date, no critical habitat has been designated for the tern; therefore, none will be affected.

VI. Incidental Take Statement

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act prohibit the take (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) of endangered and threatened species, respectively, without special exemption. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this incidental take statement.

The measures described below are non-discretionary, and must be undertaken by Reclamation so that they become binding conditions of any grant or permit issued to any applicants, as appropriate, for the exemption in section 7(o)(2) to apply. Reclamation has a continuing duty to regulate the activity covered by this incidental take statement. If Reclamation (1) fails to assume and implement the terms and conditions or (2) fails to require the applicant to adhere to the terms and conditions of the incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, Reclamation must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement. [50 CFR §402.14(i)(3)]