

Advocacy Comments on FWS' Proposed Critical Habitat Designation for the Northern Mexican Gartersnake and Narrow-headed Gartersnake

On June 29, 2020, the Office of Advocacy submitted comments to the U.S. Department of the Interior's Fish and Wildlife Service (FWS) on its revised proposal to designate critical habitat for the northern Mexican gartersnake and the narrow-headed gartersnake. The proposal would revise the original proposal based on additional scientific data and public comment.

- On July 10, 2013, the Service published a proposed rule to list the northern Mexican gartersnake and narrow-headed gartersnake as threatened species; and simultaneously in a separate but concurrent rulemaking designate critical habitat for the two species.¹ The proposal would designate approximately 421,423 acres for the northern Mexican gartersnake and 210,189 acres for the narrow-headed gartersnake in several counties of Arizona and New Mexico.² In the proposed rulemaking to designate critical habitat, the Service certified that the rule would not have a significant economic impact on a substantial number of small entities.³ The Service accepted comments on both proposed rulemakings until September 9, 2013 but did not finalize the rule to designate critical habitat. On July 8, 2014, the Service published a final rule in which it added the northern Mexican gartersnake and the narrow-headed gartersnake to the list of threatened species. The rule went into effect on August 7, 2014.⁴
- On April 28, 2020, the Service published a revised designation that would reduce the previously proposed areas to approximately 27,784 acres for the northern Mexican gartersnake, and 18,701 acres for the narrow-headed gartersnake.
- Advocacy commends the Service in its efforts to revise its previously proposed critical habitat designation, taking into consideration updated scientific data and public comment. Advocacy further urges the Service to consider the full scope of economic impacts and to conduct a proper and thorough Regulatory Flexibility Act analysis for its critical habitat rulemakings.
- Advocacy made the following comments and suggestions to the agency:
 1. The Service should continue to engage with stakeholders early in the process and consider public comments in making habitat designations.

¹ See Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Northern Mexican Gartersnake and Narrow-Headed Gartersnake, 78 Fed. Reg. 41549 (July 10, 2013). See also Endangered and Threatened Wildlife and Plants; Threatened Status for the Northern Mexican Gartersnake and Narrow-headed Gartersnake, 78 Fed. Reg. 41499 (July 10, 2013).

² See *id.*

³ See *id.*

⁴ Endangered and Threatened Wildlife and Plants; Threatened Status for the Northern Mexican Gartersnake and Narrow-Headed Gartersnake, 79. Fed. Reg. 38677 (July 8, 2014).



2. The Service should continue to include areas within the range of the species. Where areas outside the range are proposed, the Service should include scientific data to support why those areas are included.
3. The Service should not rely solely on historically occupied areas in designating critical habitat when the last known record of occupancy is too far in the past to be relevant and more recent data is available.
4. Advocacy supports revisions to the proposal including updating the elevation range and lateral extent boundaries for the species, as well as updating the last known record of occupancy to data that is from 1998 or later only.
5. While small entities support this revised designation, the Service must still consider the full scope of impacts to small entities. Advocacy urges the Service to thoroughly examine the impacts of all critical habitat designations on small entities.