

4. It is further ordered. That this proceeding is terminated.

5. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-17520 Filed 7-23-85; 8:45 am]

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INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1104, 1105, 1151, 1152, 1155, 1160, and 1180

[Ex Parte No. 449]

Filing of Pleadings and Applications

AGENCY: Interstate Commerce Commission.

ACTION: Final rules; correction.

SUMMARY: At 48 FR 34474, July 29, 1983, the Commission published rules reflecting centralization of certain functions and responsibility of the Office of the Secretary for the receipt and docketing of all formal applications, petitions and subsequent pleadings filed in such proceedings. That notice contained an omission, which this notice corrects.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King (202) 275-7428.

SUPPLEMENTARY INFORMATION: The amendatory instructions in the notice appearing at 48 FR 34474 are corrected by adding an additional instruction (15) to follow instruction (14) appearing on page 34476 to read as follows:

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

§ 1180.25 [Amended]

(15) Paragraph (f)(2) of § 1180.25 is amended by removing footnote 3.

James H. Bayne,

Secretary.

[FR Doc. 85-17558 Filed 7-23-85; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Experimental Population Status for Certain Introduced Populations of Colorado Squawfish and Woundfin

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final Rule.

SUMMARY: The U.S. Fish and Wildlife Service will introduce Colorado squawfish (*Ptychocheilus lucius*) and woundfin (*Plagopterus argentissimus*) into the Gila River drainage in Arizona and determine these populations to be "nonessential experimental" populations according to section 10(j) of the Endangered Species Act of 1973. Section 10(j) of that Act authorizes "experimental" populations of endangered species to be treated as if they were threatened.

The Service has much more discretion in devising a management program for threatened species than for endangered species, especially on matters regarding regulated taking. Accordingly, a special rule to allow take in accordance with State and Tribal law is established for these nonessential experimental populations. In addition, section 10(j) authorizes such experimental populations to be determined to be "nonessential" to the survival of the species; a nonessential experimental population is not subject to the protection of 7(a)(2) of the Act, but instead is treated under section 7 as a species proposed for listing. In the past, these fishes were widespread in the State of Arizona where they occurred in several river drainages. This action is being taken in an effort to reestablish populations of Colorado squawfish and woundfin within their historic range.

DATES: The effective date of this rule is August 23, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., P.O. Box 1306, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Conrad Fjetland, Assistant Regional Director, U.S. Fish and Wildlife Service, Albuquerque, New Mexico 87103 (505/766-2323 or FTS 474-2323) or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act Amendments of 1982, Pub. L. No. 97-17, became law on October 13, 1982. One of the significant changes made by the 1982 Amendments was the creation of Section 10(j) which established procedures for the designation of specific populations of listed species "experimental populations." Regulations implementing the experimental population provisions were published August 27, 1984 (49 FR 33885). Under authorities in the Endangered Species Act (ESA) previous to the 1982 Amendments, the Service was permitted to translocate populations into unoccupied portions of a listed species' historic range when it would foster conservation and recovery of the species. Local opposition to translocation efforts, however, severely handicapped the effectiveness of translocation as a management tool. This opposition stemmed from concerns regarding the restrictions and prohibitions on private and Federal activities affecting endangered species under sections 7 and 9 of the Act, section 10(j) of the 1982 Amendments past and future translocated populations established outside the current range but within the species' historic range may now be designated at the discretion of the Service as "experimental." This designation will increase the Service's flexibility to manage these translocated populations because the Amendments provide that such experimental populations of species which are otherwise listed as endangered may be treated as threatened. The Service has much more discretion in devising management programs for threatened species than for endangered species, especially on matters regarding regulated taking. Moreover, experimental populations found to be "nonessential" to the continued existence of the species in question would not be afforded protection under section 7(a)(2) of the Act, which requires Federal agencies to refrain from activities which are likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. The individual organisms comprising the designated experimental population will be removed from the existing source or donor population after it has been determined that removal itself will not violate section 7(a)(2) of the ESA and complies with permit requirements in section 10(a)(1)(A) and (d). The two species of fishes included in this determination are Colorado squawfish (*Ptychocheilus*

lacius) and woundfin (*Plagopterus argentissimus*), both of which are currently listed as endangered. Donor populations for both species will come from stocks at Dexter National Fish Hatchery, and their use has been addressed under the permit and section 7 consultation for the hatchery. Dexter NFH has already demonstrated the ability to produce sufficient squawfish for the reintroduction effort, but has been less successful with woundfin production. If the Service is unable to produce the required numbers of woundfin artificially, additional adult woundfin will be gathered from the Virgin River as discussed in the Woundfin Recovery Plan. A section 7 consultation on the possible removal from the wild was completed on March 5, 1985. The biological opinion found that such removal will not jeopardize the species if the fish are removed from the intermittent stream area immediately below the Washington and Mesquite water diversions. Woundfin below these diversions become stranded and die when the river is diverted for irrigation.

Colorado squawfish were once widespread, occupying the entire Colorado River system including the Gila River system in Arizona. Squawfish were also present in tributaries of the Gila River, including the Salt, Verde, and San Pedro Rivers and likely several others. The last specimen known from Arizona waters was collected in the early 1950's and extensive sampling subsequent to that date has failed to locate specimens anywhere within the State of Arizona. The reasons for the decline of the Colorado squawfish are dewatering, dams, and competition with exotic species of fish. However, good habitat remains in the stream areas selected for the reintroduction of the Colorado squawfish and there is a good likelihood that it will become reestablished in these areas. Establishment of experimental populations of Colorado squawfish will make a significant contribution to the recovery of the species and will therefore further its conservation. The Colorado Squawfish Recovery Plan calls for reintroduction of the species into selected streams in the lower basin where the species formerly occurred. The stock of Colorado squawfish to be reintroduced will come from an existing captive-bred population and will not result in the removal of any individuals from the wild population.

Woundfin were originally distributed in the mainstream Colorado, Gila, Salt, and Virgin Rivers. Dams and dewatering have made most of these habitats

unsuitable, while exotic species, especially red shiners (*Notropis lutrensis*), have outcompeted woundfin in the few remaining flowing streams. Only the Virgin River continues to maintain a woundfin population. The Service proposes to reintroduce individuals from Dexter National Fish Hatchery to stock the experimental populations. If insufficient woundfin are produced at Dexter, additional adult woundfin will be removed from the Virgin River as discussed in the Woundfin Recovery Plan. The Woundfin Recovery Plan calls for reintroduction into central Arizona streams where this species formerly occurred. The stream areas selected for reintroduction of the woundfin contain good habitat for this species, and the likelihood that these experimental populations will become established is good. If these experimental populations are successful they will make a significant contribution to the recovery of the woundfin. The release of these experimental populations will further the conservation of the species.

Summary of Comments and Recommendations

In the April 10, 1984, proposed rule (49 FR 14149) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in *The Arizona Republic* in Phoenix, Arizona, on April 25, 1984, which invited general public comments. Seventeen comments were received and are discussed below. No public hearing was requested or held.

Seven letters were received in support of the proposal. Three others expressed support of the experimental population concept, but had some reservations or requested specific changes in the proposal. Four letters were received in opposition to the proposal. Two letters received requested information, and another had no comments. Summaries of the comments and questions in these letters follow:

1. Support for the proposal was received from the American Society of Ichthyologists and Herpetologists, the Desert Fishes Council, and Arizona State University.

2. The Arizona Office of Economic Planning and Development had no comments on the proposal.

3. Two law firms responded to the proposal, one requested a copy of the

draft Environmental Assessment, and the other requested copies of all comments which the Service received regarding the proposal. The requested information was sent.

4. The U.S. Forest Service supports the proposal. They submitted the following comments and questions regarding the Environmental Assessment (EA) for this action: (C=comment, A=Service response) C. Who will sign the Decision Notice? A. This final rule is signed by the Assistant Secretary of the Interior for Fish and Wildlife and Parks. C. Is the issue of the EA to determine the proper classification of the two species? If so, the effects of different classifications should be discussed. A. The issue of this EA is the proper classification of reintroduced populations of these two species. Additional clarification of the effects of different classifications has been added to the EA. C. The statement in the EA, that without these reintroductions one or both of these species could become extinct in the foreseeable future, is a direct contradiction to the designation of these populations as nonessential to the survival of the species. A. The Service agrees with this comment and has changed the wording to more accurately reflect Service intent. C. The Forest Service feels that they should be more involved in a cooperative preparation of the EA. A. The basic responsibility of preparing the EA rests with the Service. However, the Service has cooperated with the Forest Service by obtaining that agency's input in preparing the EA.

5. The U.S. Bureau of Reclamation supports the proposal and offered to help in monitoring the reintroduced populations. They expressed some doubt about the probability of success of some of the reintroductions due to habitat factors. They noted that some downstream movement could occur over dams during periods of unusually high flow, and asked that it be specified that any such fish retain their nonessential experimental status. This has been clarified in the rule. They also expressed concern over the effect of squawfish reintroductions on bald eagle food habits. The Service's response is that although the squawfish is a top fish predator, it successfully coexisted for thousands of years with the bald eagle. Razorback suckers are also being reintroduced into the Salt and Verde Rivers, and if successful, will provide added food for the eagles. If the squawfish reintroduction is successful, it is believed that the overall effect will also benefit the eagles. A Section 7 consultation on this effect was completed on January 11, 1985. The

Biological opinion found that both fish species would be affected positively by the proposed action, as would the bald eagle.

6. The Arizona Game and Fish Department supports the proposal, however they feel recovery of these species would be better served by designation of these populations as essential experimental. They also noted that the recommended sites were being further evaluated in the summer 1984. The Service's response is that biologically, the survival of neither species will be dependent upon the survival of the reintroduced populations and loss of the reintroduced populations will not further jeopardize these species. Wild populations of both species appear to be stable and there are no immediate threats to that stability. Thus, nonessential designation seems more appropriate.

7. The U.S. Bureau of Land Management supports the concept of reintroduction of nonessential experimental populations of endangered species. However, they requested a change in the special rule to allow for "taking of the species incidental to activities that are otherwise lawful," to remove Section 9 prohibitions that might restrict development activities. This provision has been added to the special rule; however, taking of these species will be under the regulatory control of the State of Arizona and the White Mountain and San Carlos Apache Indian Tribes. Violation of applicable State and Tribal laws will also be a violation of the Endangered Species Act. BLM also submitted the following questions pertaining to the proposal: (Q=question, A=Service response) Q. Under what circumstances is informal consultation required? A. Informal conference is required when a Federal agency proposes to take, fund, or authorize an action which is likely to jeopardize the continued existence of the Colorado squawfish or the woundfin. Consultation is not required for nonessential experimental populations, only an informal conference. Q. Do these experimental nonessential populations count toward eventual recovery and delisting? A. Yes. Q. How long will the experimental reintroduction period be, and how will its success or failure be measured? A. The rule sets forth a 10-year reintroduction program; however, the experimental designation will remain on these populations until each species is delisted. Success or failure will be determined by monitoring carried out by the State of Arizona. Q. Will woundfin reintroductions be terminated if the

source population in the Virgin River is significantly reduced? A. Culturing woundfin at Dexter National Fish Hatchery has not succeeded as well as has squawfish culturing, but continues to improve. If Dexter is unable to produce sufficient number of woundfin, they will be taken from the Virgin River as described in the Woundfin Recovery Plan. These fish are normally trapped below irrigation diversion structures and lost when these reaches of the streams dry. The Section 7 consultation on the possibility of removal of wild stocks from the Virgin River for reintroduction concluded that such removal would not jeopardize the species. Continued monitoring of the woundfin in the Virgin River will assure that removal does not significantly reduce the population. Q. Under what circumstances, and how, would nonessential populations be reclassified as essential? A. The entire concept of the nonessential experimental designation is to assure private and governmental entities that Federal regulatory controls will be relieved on reintroduced populations. Nothing in the 1982 Amendments expressly discusses changing a designation from nonessential to essential. However, the implementing regulations do note the Congressional intent, as indicated in the House Report accompanying the Amendments, to be: "Regulations [to establish the experimental population designation or designate experimental populations] should be viewed as an agreement among the Federal agencies, the State fish and wildlife agencies and any landowners involved. Changes in the regulations should only be made after close consultation with all of the affected parties." (H.R. Rep. No. 567, 97th Cong., 2nd Sess. 34, 1982). The only action that might make the Service consider a change from a nonessential to an essential designation would be the loss of all or a significant portion of the wild populations. However, even in that extreme case, such a decision would require a rulemaking procedure involving extensive contact with Federal and State agencies, interested parties and affected landowners, publication in the Federal Register, and a public meeting if appropriate (50 CFR 17.81). BLM also requested that meetings be scheduled between affected land management agencies, State and county governments, and the public to discuss the reintroductions and the implementation of the action. Notification of the proposal was widespread in Arizona and the Service believes that a series of meetings were not needed on this rule since all

interested parties are well informed about the proposed action. The Service has made every effort to answer BLM's questions both in writing and in person. The Service is satisfied that the regulatory requirements of section 10(j) of the Act and 50 CFR 17.81 have been satisfied.

8. The Arizona Department of Water Resources supports the concept of experimental reestablishment of these two species. However, they oppose the reintroduction of these species in any areas where there are proposed water projects contemplated at this time. The Service's response is that virtually all stretches of major streams in Arizona, including the Gila, Verde, Hassayampa, and San Francisco Rivers, have been contemplated for water development projects. Many of those projects will never be developed because the water of these systems is already fully committed. Others will be developed further to use existing water rights, but it is difficult to predict when and where which alternative of which project will be built. It is possible that projects built in the areas where reintroduced populations of woundfin and squawfish exist would have detrimental effects on those populations. However, the success of this reintroduction effort will be based on achieving a widespread population base for these species so that detrimental effects in a localized area will not appreciably reduce their overall chances for successful reestablishment.

9. The New Mexico Department of Game and Fish opposes the proposal. They submitted the following comments pertaining to the proposal: (C=comment, A=Service response) C. They were not contacted in the development of the proposal. A. Although the Service did not directly contact New Mexico Department of Game and Fish, that Department was contacted by the Arizona Game and Fish Department. Arizona requested New Mexico's input into the development of the proposal, but received no reply. It was assumed that New Mexico had no comments on the program, presumably because the reintroductions are unlikely to affect New Mexico. C. The upper Gila River woundfin transplant sites are not within historic range. A. The known historic ranges of many southwestern species, including the woundfin, are not well defined as historical collections were not always made in a thorough manner. The woundfin was collected in the Gila River drainage as far upstream as the Gila-Salt confluence. It was also collected up to 3400 feet elevation in the Verde River, about the same elevation

as the Gila River reaches near the Arizona-New Mexico border. Although historical collection records from the upper Gila River are extremely spotty, there were no barriers or known habitat considerations which would have precluded woundfin from existing in those areas upstream from the Gila-Salt confluence, and it is reasonable to believe that woundfin were once spread throughout acceptable habitats in the Gila River drainage as they were in the Verde River. This assumption is accepted by Minckley (1973 and 1979) and is accepted by State of Arizona biologists. C. The spokedace, another member of the tribe Plagopterini, which is a New Mexico listed species and a Federal candidate species, is found in the upper Gila River in New Mexico and may be adversely affected by the introduction of the woundfin. A. The spokedace is presently found in the Gila River only as far downstream as 20 miles above the New Mexico/Arizona State line, which is a separation of at least 20 miles, 3 low-head dams and an intermittent section of river from the proposed woundfin reintroduction site. In addition, the woundfin and spokedace historically coexisted in portions of the middle Gila River. Historic records show that both woundfin and spokedace were found in the Gila River near the confluence with the Salt River. The woundfin and a close relative of the spokedace, the Virgin River spinedace, still coexist in the Virgin River. C. The red shiner, an exotic fish, is presently found in the Gila and San Francisco Rivers at the reintroduction sites. This fish has been implicated in the decline of the woundfin through competitive interaction. A. The Service agrees that the presence of red shiner in the Gila and San Francisco Rivers is undesirable regarding the success of woundfin reintroductions, and their presence was considered in the selection of recommended sites. Although replacement of the woundfin by red shiner has been noted by Minckley and Deacon (1968) and by the Woundfin Recovery Plan (1984), it is not certain whether the replacement is due to competition or to habitat changes. Woundfin and red shiner have coexisted in the lower Virgin River for at least the past 10 years, indicating that such coexistence may be possible under the right conditions. Nearly every stream within historic range of the woundfin has been invaded by the red shiner, and removal of the shiner from selected reintroduction sites would be virtually impossible at worst and temporary at best. Therefore, reintroduction sites were chosen for habitat conditions

favorable to woundfin with the assumption that under such conditions the woundfin can successfully resist displacement by the red shiner. Dr. W.L. Minckley, in a study of the Gila River complex done in 1979 for BLM, recommended: "The Gila River mainstream within its box canyon is considered as a prime site for reestablishment of woundfin, and it should be given priority for any program considered." C. The woundfin introduced into the Gila and San Francisco Rivers will migrate upstream into New Mexico and will revert to endangered status there. A. It is unlikely that woundfin will migrate into New Mexico. In the Gila River there are three low-head irrigation dams just inside the New Mexico border; the most downstream of which is one mile east of the State line and is 6 feet high. The second is 5 miles east of the State line and is 4 feet high. These dams form insurmountable barriers to upstream movement of woundfin unless they are purposefully carried over them by man. On the San Francisco River no natural or manmade barrier exists; however, high elevation and other habitat considerations make the San Francisco River in New Mexico marginal habitat for the woundfin. In the unlikely case that woundfin do make their way into New Mexico, this rule provides for nonessential experimental status for all populations in the Gila basin, including any individuals which spread upstream or downstream from the immediate transplant site. Migration of experimental populations outside of the area of reintroduction does not change their designation unless they mix with wild populations that are fully protected. C. No habitat management plan has been done for the reintroduction sites. A. The Woundfin Recovery Plan calls for preparation of habitat management plans for reintroduction sites as "soon as potential transplant sites are approved." However the recovery plan did not consider the use of nonessential experimental populations. The experimental nonessential designation is being used for these populations in order to minimize Federal regulations and restrictions. Therefore it is not appropriate for the Service to require the preparation of habitat management plans for these sites. Biologically, such plans are desirable; however, the decision whether such plans are implemented or not is up to the agency, organization, or individual who owns or administers the land. C. The regulations implementing experimental population designations have not been finalized

and New Mexico feels that the experimental designation of squawfish and woundfin should be deferred until such finalization. A. The regulations for experimental populations have been finalized, and were published in the Federal Register on August 27, 1984. C. New Mexico feels that their experience concerning the transplant of the endangered whooping crane has shown that the Service cannot be trusted to live up to any agreements that are not legally binding. A. The Service regrets that the State of New Mexico feels that it was not treated fairly in the matter of the whooping crane, but does not think that those misunderstandings should prevent valid recovery efforts for other endangered and threatened species in New Mexico and bordering portions of other States.

10. Mobil Alternative Energy Inc. stated that they believe nonessential experimental populations are a valid recovery method. Other comments and questions submitted by them and the Service's responses follow: Q. What protection would the nonessential experimental populations receive under sections 7(a) (1) and (4) of the Act? A. Section 7(a)(1) applies to these experimental populations. It states in part that . . . "All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act." The reintroduction of these species is obviously a conservation program for their recovery. Specific additional conservation measures are not required by section 7(a)(1). The protection provided under section 4 is discussed under the "Protective Regulations" portion of this rule. Q. Would formal or informal consultation be necessary for nonessential experimental populations on agency or industry projects, and what limitations would there be on commitment of resources? A. On nonessential experimental populations only an informal conference is required, and only if Federal action, authorization or funding is involved. This may lead to recommendations, but not to the imposition of mandatory restrictions. Q. Will conservation or recovery plans be developed for these and other Lower Colorado River basin species? A. Both of these species already have approved recovery plans. No plans for other species are currently being considered except for an overall document being prepared by the Lower Colorado River

Coordination Group to tie together the various reintroduction efforts, both planned and underway. Management plans for the reintroduced populations may be written, if suitable. *Q.* Should the nonessential status of these populations ever be changed to essential, what would be the protection afforded them, and what factors could cause such a change? *A.* The Service's response is the same as found under paragraph 7. Additionally, it is noted that an "essential" experimental population has full protections under section 7(a)(2). A change from "nonessential" to an "essential" classification would not necessarily change any of the section 9 protections that apply to the experimental populations. *Q.* Will data gathered during the reintroduction and monitoring of these nonessential experimental populations be used to upgrade the status of these populations to essential or endangered if the populations fail to establish themselves successfully? *A.* No. Data gathered during monitoring will be used to determine the success of the reintroduction efforts and to provide the data necessary to delist the species, but not to provide additional protection. *Q.* If the reintroduction efforts are a success will the increased population numbers be used to delist the species? *A.* The success of such reintroductions is part of the criteria set forth in the recovery plans for downlisting and delisting these species. *Q.* Mobil asked that these comments and answers be incorporated into the rule and that it be republished as a proposal prior to finalization. *A.* The Service feels that the incorporation of information answering questions received and of changes requested is sufficient to address the concerns of Mobil and other interested parties, and that reproposal would delay the reintroduction effort unnecessarily. The major concern of Mobil appears to be the potential for change in the status of these populations from nonessential to essential or endangered status, and that these populations will be used to force mandatory restrictions on their operations. As the answers to their submitted questions indicate, such problems are not likely to arise. The nonessential experimental status is specifically designed to avoid such restrictions and to allow for recovery efforts for this species with a minimum effect on agencies, industry, and individuals.

11. Phelps Dodge Corporation submitted comments both from their Morenci Branch and from their Western General Office. Both oppose this proposal. They feel that the proposal

has an "overwhelming potential" to seriously jeopardize their Morenci copper mining and processing operation and significantly impair or terminate implementation of flood control plans on the Gila and San Francisco Rivers due to the potential for the nonessential experimental populations to be upgraded and critical habitat designated at some time in the future. They believe that reintroductions should not occur in any areas where "probable designation of critical habitat could directly or indirectly jeopardize the economic well-being of the human species on the scale of counties." In addition, they feel that the proposed reintroduction site in the San Francisco River is unsuitable due to the presence of red shiner. The Service's response to the question of upgrading the status for these populations is given in paragraph 7. Upgrading of the population in the San Francisco River to essential or endangered would occur only under very extreme circumstances and critical habitat could only be designated for the woundfin in the San Francisco if that upgrade were to occur. Such designation would be subject to publication of the proposal in the **Federal Register** and to extensive discussions with affected organizations, groups, and individuals. Since the purpose of the nonessential experimental status was specifically to reduce restriction on agencies, industries and landowners, it would be self-defeating to propose this nonessential designation with the idea in mind of changing it in order to restrict those exact activities it was designed not to restrict. Flood control in the San Francisco and Gila Rivers may be a valid need; however, the Service believes that such future projects can be arranged to the satisfaction of all parties involved, and that nonessential experimental populations such as these should not conflict with such projects. The Phelps Dodge Morenci operation would not be jeopardized by these reintroductions because no binding restrictions could be placed on them. The Service's response to the question of red shiner is given in paragraph 9. Phelps Dodge's comments and questions were also answered directly by letter.

12. The White Mountain Apache Tribe opposes the proposal. The Tribe's objections are based upon the following comments: *C.* The Service failed to contact the Tribe during preparation of the proposal. *A.* The Tribe was not contacted prior to the proposal publication. The purpose of a proposal is exactly that—to contact the involved parties and solicit their comments, questions, information, and input. The

possibility of reintroduction of squawfish into the Salt River discussed with the Tribe some time ago, and the incorporation of experimental populations into the 1982 Amendments to the special rule. *C.* The Service failed to address, in the special rule, the fact that State law jurisdiction over hunting is not applicable to a federally recognized Indian reservation, and that Arizona license requirements do not apply within the Fort Huachuca Reservation. Regulation of fish on lands of the White Mountain Apache Tribe are under the authority of Tribal law. *A.* The special rule has been changed to cover applications as well as State laws and regulations. The Tribe objects to the special rule contained in the proposal. The Tribe's water rights on the Salt River Project, a private water supply project, are not being affected. The Tribe owns most of the water rights in the Salt River basin. They point out there is presently ongoing litigation in State and Federal court with respect to all of the water rights in the Salt River basin, and that the White Mountain Apache Tribe claims "reserved and paramount" rights to the Salt River pursuant to the Water Rights Doctrine. *A.* The Service recognizes that such litigation is ongoing and that it is in the public interest to proceed with progress. The statement has been removed from the final rule. The Tribe's objections were all answered directly by letter.

13. The Salt River Project opposes the proposal. They expressed concern about the effect of the squawfish reintroductions in the Salt River and Tonto Creek on nesting bald eagles. They requested a review of the proposal under section 7 of the proposal. The Service's response to this same as found in paragraph 7.

Status of Reintroduced Populations

The reintroduced populations of Colorado squawfish and woundfin are designated as nonessential experimental populations according to the special rule of the 1982 Amendments to the Endangered Species Act. The special rule for State or Tribal take, for the reintroduction of squawfish and woundfin, they will be subject to the special rule sections 7(a)(1) and (4) of the special rule. These special rules authorize Federal agency programs furthering conservation of listed species and also require agencies to informally coordinate with the Service regarding actions

likely to jeopardize the continued existence of the species. The restrictions on Federal agency activity in section 7(a)(2) will not apply. Justification for the "nonessential" status for the introduced experimental populations of Colorado squawfish and woundfin is as follows:

1. *Colorado squawfish*. Populations of this species are still viable in portions of the Green, Colorado, and Yampa Rivers in the upper basin. In addition, sufficient brood stock is available at Dexter NFH to produce millions of fry. Techniques for propagating and rearing this species have been developed and are in place. Reintroduction is a recovery action designed to increase the number of populations, rather than to prevent their further decline. The loss of these captive-reared specimens will not reduce the likelihood of the survival of Colorado squawfish in the wild.

2. *Woundfin*. The population in the Virgin River is relatively stable and the habitat is moderately secure. Fish numbers vary with amounts of springtime flows and irrigation practices that dewater portions of the stream, but the recovery team sees no near-future significant alteration for the Virgin River habitat. Woundfin are being held at Dexter National Fish Hatchery (NFH), and recent attempts to spawn them have been successful. These hatchery reared stocks will be used for reintroduction. If such stocks are insufficient then woundfin will be taken from the Virgin River for reintroduction. Any fish taken from the wild will be taken from adults trapped below irrigation water diversion structures. These fish normally die when the river is diverted and the stream bed dries. Therefore, the loss of the reintroduced populations will not reduce the likelihood of the survival of the woundfin in the wild. This reintroduction is an action to increase the numbers of populations of woundfin rather than an attempt to prevent their further decline.

Successful reintroduction of squawfish and woundfin may result in individuals or populations being displaced or migrating upstream or downstream from the reintroduction site. These fish would retain their nonessential experimental status. All woundfin or squawfish encountered in the Gila River drainage will derive from these reintroduced populations and as such will have a status of nonessential experimental.

Protective Regulations

Section 4(d) provides for issuance by the Secretary of protective regulations for species listed as threatened. Such regulations shall be issued when

deemed "necessary and advisable to provide for the conservation of such species" and they can apply any of the prohibitions in section 9(a)(1) for endangered species of fish and wildlife to threatened species. This final rule establishes a special rule for these nonessential experimental populations. This special rule provides that regulation of taking in these populations will be governed under applicable State and Tribal laws and regulations. The State will regulate direct taking of the species through the requirement of State collecting permits. The Service has concluded that the State collection permit system is adequate to protect the species from excessive taking. A separate Federal permit system is not required to address the potential threats to the species.

Indian tribal laws require fishing licenses and limits on all fish taken. No regulations currently exist for squawfish and woundfin since none are presently found on reservation lands; however, the listed Apache trout, which is present on reservation land, is protected by tribal law.

The special rule acknowledges that incidental take of species by State and tribal-licensed recreational fishermen is not a significant threat to the species. Therefore, under this rule, incidental take would not be a violation of the Act if the fishermen returned the individual fish taken to its habitat.

Location of Reintroduced Populations

All of the sites selected for reintroduction of Colorado squawfish and woundfin are totally isolated from existing populations of these species. The nearest population of Colorado squawfish is above Lake Powell in the Green and Colorado Rivers, an upstream distance of at least 800 miles, 6 mainstream dams and 200 miles of dry riverbed from the selected release site. Woundfin are similarly isolated (450 miles distant, 200 miles of dry streambed and 5 mainstream dams from the selected release site). All reintroduction sites are within the probable historic range of these species.

Colorado Squawfish

1. *Arizona: Gila County*. Salt River from Roosevelt Dam upstream to U.S. Highway 60 bridge.

2. *Arizona: Gila and Yavapai Counties*. Verde River from Horseshoe Dam upstream to Perkinsville.

The lower segments of large streams which flow into these two sections of river may, from time to time, be inhabited by Colorado squawfish. Downstream movement of squawfish in these areas will be restricted by dams

and upstream movement is limited by lack of suitable habitat.

Woundfin

1. *Arizona: Gila and Yavapai Counties*. Verde River from backwaters of Horseshoe Reservoir upstream to Perkinsville.

2. *Arizona: Graham and Greenlee Counties*. Gila River from backwaters of San Carlos Reservoir upstream to the Arizona/New Mexico State line.

3. *Arizona: Greenlee County*. San Francisco River from its junction with the Gila River upstream to the Arizona/New Mexico State line.

4. *Arizona: Gila County*. Tonto Creek from Punkin Center upstream to Giseia.

5. *Arizona: Yavapai County*. Hassayampa River, from Red Cliff upstream to Wagoner.

The movement of woundfin beyond these areas will be limited to the lower portion of larger tributaries where suitable habitat exists. Downstream movement is limited by dams, reservoirs, and dry streambeds. Upstream movement from these areas is restricted due to the absence of suitable habitat. Upstream areas are too cold and the gradient is too steep to support populations of woundfin.

Management

The Service and the Arizona Game and Fish Department plan to initiate reintroduction as soon as possible. Present plans call for annual stocking of Colorado squawfish could consist of as many as 100,000 individuals. These could be distributed in approximately equal numbers between the 2 sites identified above. All of the fish will come from the hatchery stock which was spawned and reared in the Dexter National Fish Hatchery in Dexter, New Mexico. Future Colorado squawfish stock will also come from the hatchery. The first stocking of woundfin will consist of at least 5,000 individuals which will be distributed among the 5 areas identified above based on the available habitat in each area. Woundfin for stocking will also come from hatchery stock at Dexter National Fish Hatchery, if possible, but may also come from the Virgin River if Dexter is unable to produce sufficient numbers. Wild fish will be removed from localities in the Virgin River that traditionally become intermittent during the irrigation season, and will not exceed 25,000 fish.

The reintroduced populations will be checked annually to determine their condition. A seining survey will be used to determine population expansion or

contraction, reproductive success, and general health condition of the fish. This monitoring effort complies with the Service's regulatory requirements. These experimental populations of squawfish and woundfin will be treated as threatened species under all provisions of the Act other than section 7 (except for subsection (a)(1) thereof), under which they will be treated as proposed species. No person may take fish from these experimental populations, except that individual fish of these populations may be taken in accordance with applicable State or Tribal Law.

National Environmental Policy Act

An Environmental Assessment under NEPA has been prepared and is available to the public at the Albuquerque Regional Office of Endangered Species, U.S. Fish and Wildlife Service (see ADDRESSES). This assessment forms the basis for a decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500-1508).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that this is not a major

action under Executive Order 12291 and certifies that this action will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These determinations are based on a Determination of Effects that is available at the Service's Regional Office in Albuquerque, New Mexico (see ADDRESSES). That Determination of Effects concluded that these rules will have no effect on any actions now allowed or on any proposed actions presently under consideration. The rule does not contain any information, collection, or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

Literature Cited

Minckley, W.L. 1973. Fishes of Arizona. Arizona Department of Game and Fish. Phoenix. 293pp.
 Minckley, W.L., and J.E. Deacon. 1968. Southwestern fishes and the enigma of "endangered species". Science 159:1424-2432.
 Minckley, W.L., M.R. Sommerfield, et al. 1979. Resource inventory for the Gila River Complex, Eastern Arizona. USDI Bureau of Land Management. Final report, contract YA-512-CT6-2168.

Authors

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List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 17.11(h) by adding the following in alphabetical order under FISHERIES (following the existing entry) to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHERIES							
Squawfish, Colorado	<i>Ptychocheilus lucius</i>	U.S.A. (AZ, CA, CO, NM, NV, UT, WY), Mexico	Salt and Verde River drainages, AZ	XN		NA	17.84(f)
Woundfin	<i>Pisgaster argenteus</i>	U.S.A. (AZ, NV, UT)	Gila River drainage, AZ, NM	XN		NA	17.84(f)

3. Add the following special rule to Part 17 by adding a new § 17.84(b) as follows:

§ 17.84 Special rules—vertebrates.

(b) Colorado squawfish (*Ptychocheilus lucius*) and woundfin (*Pisgaster argenteus*).

(1) The Colorado squawfish and woundfin populations identified in paragraph (6) below are experimental, nonessential populations.

(2) No person shall take the species, except in accordance with applicable State or Tribal fish and wildlife conservation laws and regulations in the following instances:

(i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or

(ii) Incidental to otherwise lawful activities, provided that the individual fish taken, if still alive, is immediately returned to its habitat.

(3) Any violation of applicable State or Tribal fish and wildlife conservation laws or regulations with respect to the taking of this species (other than incidental taking as described in paragraph (b)(2)(ii) of this section) will also be a violation of the Endangered Species Act.

(4) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State or Tribal fish and wildlife laws or regulations.

(5) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (b) (2) through (4) of this section.

(6) All of the sites for reintroduction of Colorado squawfish and woundfin are totally isolated from existing populations of these species. The nearest population of Colorado squawfish is above Lake Powell in the Green and Colorado Rivers, an