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


ACTION: Final Rule.

SUMMARY: The U.S. Fish and Wildlife Service will introduce Colorado squawfish (Psychocheilus lucius) and woundfin (Plagiocheilus 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 section (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.

Endangered species. Donor species and woundfin have been listed as endangered. The Service proposes to reintroduce individuals from Dexter National Fish Hatchery to satisfy the consultation for the hatchery. Dexter CHS 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 of the wild was completed on March 1, 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 complex and include 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 re-established 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 along 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 satisfy the consultation for the hatchery. Dexter CHS 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. 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.

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 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. Is the issue of the EA to determine the proper classification of the two species? If so, 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.
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 with the bald eagle. Razorback suckers are also being reintroduced into the Salt and Verde Rivers, and if successful, will provide 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.
Biological opinion found that both fish species would be affected positively by the proposed action, as would the build rule.

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 question: (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 authorizes 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 contribute 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 culture; 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 which 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 regulatory regime would be made after close consultation with all of the affected parties.” (16 U.S. Rep. No. 567, 97th Cong., 2nd Sess, 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 meettines 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 meettines were not needed on this rule since all interested parties were 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 area 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 considered 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 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 the 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 drainages 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 the area 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 spinedace, another member of the tribe Haemulidae, 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 spinedace 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 upper area woundfin reintroduction site. In addition, the woundfin and spinedace historically coexisted in portions of the middle Gila River. Historic records show that both woundfin and spinedace were found in the Gila River near the confluence with the Salt River. The woundfin and a close relative of the spinedace, 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 mainstem within its box canyon is considered the best potential 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(1) 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 as nonessential species 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? 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 no proposal 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 operations 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 area 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 restrictions 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 squawfish into the Salt River discussed with the Tribe a year ago, and the incorporation experimental population of the 1982 Amendments to the Fish and Wildlife Coordination Act is a result of those discussions. Service failed to address the rule, the fact that State law, jurisdiction over hunting a federally recognized Indian reservation, and that Art. 9 license requirements and Art. 10 not apply within the Fort Apache Reservation. Regulation of fish on lands of the White Mountain Apache Tribe are under tribal rights. A. The specific proposed change 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 area 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 restrictions 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.

13. The Salt River Project proposal. They expressed the effect of the squawfish reintroductions in the Salt Project and Tonto Creek as nesting bald eagles. They section 7 review of the proposal was done by the Service and the salt water rights on the Salt River Project, a private water rights in most of the water. The point out there is present litigation in State and Federal law. A. The specific proposed change 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 area 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 restrictions 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.
likely to jeopardize the continued
existence of the species. The restrictions
on Federal agency activity in section
9(a)(2) will not apply. Justification for
the “nonessential” status for the
introduced experimental populations of
Colorado squawfish and woudfin 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 National Fish Hatchery (NHF) 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 (NHF),
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
deeded “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 new rule
establishes a special rule for these
nonessential experimental populations.
This special rule provides that
regulation of taking in these populations
will be governed by 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
permits 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 600 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 Cisala.

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 streambed. 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
for the next 10 years. The first 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 seine survey will be
made 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
L. 96-511).

Literature Cited

Arizona Department of Game and Fish.
Phoenix, 239pp.
Southwestern fishes and the enigma of
“endangered species”. Science 158:2424-
2425.
Resource inventory for the Gila River
Complex, Eastern Arizona. USDI Bureau
of Land Management. Final report.
contract YA-512-CT6-2166.

Authors

The principal authors of this rule are
James Williams and Peter C. Poulos.

<table>
<thead>
<tr>
<th>Species</th>
<th>Scientific name</th>
<th>Historic range</th>
<th>Endangered or Threatened</th>
<th>Status</th>
<th>When listed</th>
<th>Critical Habitat</th>
<th>Special rules</th>
</tr>
</thead>
<tbody>
<tr>
<td>Squawfish, Colorado</td>
<td>Phychocheilus ichtus</td>
<td>U.S.A. (AZ, CA, CO, NM, NV, UT, WY, WASH)</td>
<td></td>
<td>XN</td>
<td></td>
<td></td>
<td>17 84(b)</td>
</tr>
<tr>
<td>Arizona</td>
<td>Dicentrarchus argenteus</td>
<td>U.S.A. (AZ, NV, UT)</td>
<td></td>
<td>XN</td>
<td></td>
<td></td>
<td>17 84(b)</td>
</tr>
</tbody>
</table>

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
(Phychocheilus ichtus) and woundfin
(Phoxocephalus argenteus).

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

2. No person shall take the species,
extcept 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,
zoolological exhibition, and other
conservation purposes consistent with
the Act.

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

(iii) 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)(iii) 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.