

by placing thereon the reduced duty rate applicable to each such article.

(c) *Verification of reduced-duty claim.* Any claim for reduced-duty treatment under this section shall be subject to such verification as the port director deems necessary. In the event that the port director is prevented from obtaining the necessary verification, the port director may treat the entry as dutiable at the applicable non-ATPA rate.

**Samuel H. Banks,**

*Acting Commissioner of Customs.*

Approved: December 24, 1997.

**John P. Simpson,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 98-2249 Filed 1-29-98; 8:45 am]

BILLING CODE 4820-02-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AE56

#### Endangered and Threatened Wildlife and Plants; Proposal To Determine the Pecos Pupfish (*Cyprinodon pecosensis*) To Be an Endangered Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) proposes to list the Pecos pupfish (*Cyprinodon pecosensis*) as an endangered species without critical habitat under authority of the Endangered Species Act of 1973, as amended (Act). The historical range of the Pecos pupfish included the mainstream Pecos River and various lakes, gypsum sinkholes, saline springs, and tributaries associated with the river from the vicinity of Roswell, Chaves County, New Mexico, downstream to the vicinity of Sheffield, Pecos County, Texas. The Pecos pupfish has been replaced by sheepshead minnow (*C. variegatus*) x Pecos pupfish hybrids throughout more than two-thirds of its historical range. The Pecos pupfish was declining prior to introduction of the sheepshead minnow, primarily as a result of competition and depredation by nonnative fish species, and habitat loss caused by such factors as water diversion, groundwater depletion, channelization, and watershed disturbance (Sublette et al. 1990, Minckley et al. 1991). This proposal, if made final, will implement Federal protection provided by the Act for the Pecos pupfish.

**DATES:** Comments from all interested parties must be received by March 31, 1998. Public hearing requests must be received by March 16, 1998.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna NE., Albuquerque, New Mexico 87113. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:**

Jennifer Fowler-Propst, Field Supervisor, Ecological Services Field Office (Albuquerque) (see **ADDRESSES** section) (telephone 505/761-4525).

**SUPPLEMENTARY INFORMATION:**

#### Background

The Pecos pupfish, described by Echelle and Echelle (1978), is a member of the family Cyprinodontidae. The taxonomic status of the Pecos pupfish had been uncertain for more than 30 years because of a previous description of a pupfish (*Cyprinodon bovinus*) from the Pecos River (Baird and Girard 1853). Type specimens from the Pecos River in the original series were lost or in poor condition, but were assumed to be the same as the Pecos pupfish until an extant population of *C. bovinus* was found at Leon Springs, Texas, and confirmed as different from the form in the Pecos River proper (Echelle and Miller 1974).

The Pecos pupfish is a small, deep-bodied (2.8 to 4.6 centimeter (cm) (1.1 to 1.8 inch (in.)) standard length) gray-to-brown fish. Male dorsal and anal fins are black almost to the margin with no yellow on the dorsal, anal, or caudal fins. The lateral bars on the female are typically broken into blotches ventrolaterally. The abdomen is generally naked (i.e., without scales) except for a few scales in front of the pelvic fins and a patch just behind the gill membrane isthmus. There are 20 to 21 gill rakers, and usually 3 or 4 preorbital pores on each side of the head (Echelle and Echelle 1978).

The Pecos pupfish is native to the Pecos River and its tributaries, and nearby lakes, sinkholes, and saline springs in New Mexico and Texas. The historical range of the species included the Pecos River from Bitter Lake National Wildlife Refuge and Bottomless Lakes State Park near Roswell, Chaves County, New Mexico, downstream approximately 650 km (404 mi) to the mouth of Independence Creek, southeast of Sheffield, Pecos County, Texas (Wilde and Echelle

1992). It was also found in gypsum sinkholes and saline springs at Bitter Lake National Wildlife Refuge (including the Salt Creek Wilderness Area); sinkholes and springs at Bottomless Lakes State Park (Brooks and Woods 1988); and in Salt Creek, Reeves County, Texas.

In Texas, genetically pure populations of the Pecos pupfish are now thought to occur only in the upper reaches of Salt Creek, Culberson and Reeves counties, Texas (Wilde and Echelle 1992) and, less probably, in 2 water-filled gravel pits owned by the Phipps Gravel Company, in Pecos County 10.8 km (6.7 mi) west of Grandfalls, Texas. In New Mexico, the species still occurs in the Pecos River from north of Malaga upstream to Bitter Lake National Wildlife Refuge. It continues to survive in the Salt Creek Wilderness Area (North Tract) of Bitter Lake National Wildlife Refuge, where it is found in sinkholes, springs and Salt Creek (Brooks and Woods 1988, Sublette et al. 1990, Hoagstrom and Brooks 1997). It is also found at Bottomless Lakes State Park. This range reduction represents a loss of more than two-thirds of the species' former range (Echelle and Connor 1989).

#### Previous Federal Actions

In both the December 30, 1982, Review of Vertebrate Wildlife, Notice of Review (47 FR 58454); and the September 18, 1985, Review of Vertebrate Wildlife, Notice of Review (50 FR 37958), the Pecos pupfish was included as a category 2 species. Category 2 candidates were those species for which the Service had information indicating that listing may be warranted but for which it lacked sufficient information on status and threats to support issuance of proposed listing rules. However, based on new information from more recent surveys, the Pecos pupfish was identified as a Category 1 candidate in the January 6, 1989, Animal Notice of Review (54 FR 554) and in the November 21, 1991, Animal Notice of Review (56 FR 58804). Category 1 candidates were those species for which the Service had on file sufficient information to support issuance of proposed listing rules. In the February 28, 1996, Candidate Notice of Review (61 FR 7596), the Service discontinued the designation of multiple categories of candidates, and only former category 1 species are now recognized as candidates for listing purposes. The Pecos pupfish remained as a candidate species in the February 28, 1996, Notice of Review (61 FR 7596) and in the September 19, 1997, Notice of Review (62 FR 49398).

Pre-proposal letters requesting comments and information were mailed to interested parties, including Federal, State, and local agencies, in June 1991 and again in March 1997. Responses were received to the 1991 request from three New Mexico State agencies, one Texas State agency, a national wildlife refuge, three Federal agencies, three scientific experts, and a county judge. One Federal agency, one State agency, two universities, and one environmental group responded to the 1997 request. Where appropriate, the comments received were included in this proposed rule. A presentation of the current known status of the species was made at the Annual Meeting of the Pecos River Compact Commission on April 17, 1997.

### Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Pecos pupfish (*Cyprinodon pecosensis*) are as follows:

#### A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Historical habitat of the Pecos pupfish in New Mexico has been drastically altered or destroyed by human uses of the Pecos River and activities in its watershed. These alterations include: conversion of flowing waters into slack waters by impoundment; alteration of flow regimes (including conversion of perennial flow to intermittent or no flow, and the reduction, elimination, or modification of natural flooding patterns); alteration of silt and bed loads; loss of marshes and backwaters; increases or decreases in water temperatures; and alteration of stream channel characteristics from well-defined, surface level, heavily vegetated channels with a diversity of substrates and habitats, to deeply cut unstable arroyos with little riparian vegetation, uniform substrate, and little habitat diversity. Causes of such alterations include: water diversion, damming, channelization, channel down-cutting, excessive groundwater pumping with resultant lowering of water tables, destruction of riparian vegetation, and other watershed disturbances. These ongoing changes in habitat conditions, along with displacement of the species

by hybrids, threaten the survival of the Pecos pupfish throughout its entire range (Wilde and Echelle 1992).

Low velocity floodplain habitats adjacent to the main channel of the Pecos River provide refugia for the small Pecos pupfish from high flows in the main channel. These habitats are also characterized by higher levels of productivity and more stable food sources for the omnivorous pupfish. However, channelization and stream incision of the Pecos River, exacerbated by encroachment and channel armoring by salt cedar, have eliminated extensive floodplain habitat along the Pecos River. Wetlands and marshes adjacent to the river, once regularly flooded by peak river flows, are now dry or are only sporadically wetted. Reduction of base flows also occurred as a result of dam construction and reservoir operation, greatly reducing the number and extent of these habitats linked to the main river channel. The continuing loss of these floodplain habitats is a significant threat to the Pecos pupfish.

Pecos pupfish living in sinkholes and springs are threatened by groundwater depletion. In southeastern New Mexico, groundwater is the primary water source for a variety of uses, including drinking water and irrigation. This dependence on groundwater has lowered the water tables, resulting in a decline in water levels in sinkholes and springs where Pecos pupfish live. When the water table was higher, water flowed between sinkholes; because the water table has been lowered, these sinkholes are no longer interconnected (Lee Marlatt, U.S. Fish and Wildlife Service, Bitter Lake National Wildlife Refuge, pers. comm. 1987). Because they are isolated from the river which is inhabited by sheepshead minnows, sinkhole populations of Pecos pupfish are more protected from the threat of hybridization than are river populations. Because sinkhole populations are more protected from the threat of hybridization, the loss of these populations would seriously affect the survival of the species.

#### B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Service is unaware of threats to the species from these factors. Pecos pupfish may occasionally be collected as bait by anglers and as specimens for scientific study, but these uses probably have a negligible effect on total population numbers.

#### C. Disease or Predation

The Service is unaware of threats to the species from disease. Sinkholes that

support introduced game fish have lower numbers of pupfish than sinkholes without game fish (Echelle and Echelle 1978). As the Pecos pupfish population is impacted by habitat loss and degradation and refugia become scarce, predation may become a more important threat.

#### D. The Inadequacy of Existing Regulatory Mechanisms

New Mexico State law provides limited protection for the Pecos pupfish. The State of New Mexico lists the Pecos pupfish as a threatened species. Threatened species, as defined by the State of New Mexico, are those species “\* \* \* whose prospects of survival or recruitment within the State are likely to be in jeopardy within the foreseeable future.” This designation provides the protection of the New Mexico Wildlife Conservation Act (sections 17-2-37 through 17-2-46) and prohibits taking of such species except under the issuance of a scientific collecting permit. The State also has a limited ability to protect the habitat of the species through the Habitat Protection Act (sections 17-6-1 through 17-6-11) and through water quality statutes and regulations. The species’ habitat is also protected tangentially through a provision of the Habitat Protection Act (section 17-4-14) which makes it illegal to de-water areas used by game fish.

New Mexico water law does not include provisions for the acquisition of instream water rights for protection of fish and wildlife and their habitat. Thus, there are no opportunities for protection of Pecos pupfish habitat in New Mexico through acquisition of water rights to maintain instream flows.

The Pecos pupfish was listed as threatened by the State of Texas on March 1, 1987. The State prohibits taking, possessing, and transporting State-listed species or goods made from such species (Texas Parks and Wildlife Code, section 68.015 (1975)). However, State-listing in Texas provides no protection for the habitat of listed species.

State regulations in New Mexico and Texas allow for the use of live bait in the Pecos River in areas containing the Pecos pupfish. This has encouraged the spread of detrimental species, specifically the sheepshead minnow, which replaces and/or hybridizes with the Pecos pupfish (see factor E).

Although both New Mexico and Texas provide protection against taking of the Pecos pupfish by virtue of State listing of the species, neither State provides sufficient protection to the aquatic habitat of the Pecos pupfish, and neither prohibits the introduction or spread of

such detrimental species as the sheepshead minnow.

#### *E. Other Natural or Manmade Factors Affecting Its Continued Existence*

The primary cause for the recent (post 1980) range reduction of Pecos pupfish is the introduction of the sheepshead minnow, a species once confined to shallow, brackish, coastal waters of the Gulf and Atlantic coasts of the continental United States. The two *Cyprinodon* species appear to have little in the way of premating isolating mechanisms and readily hybridize (Cokendolpher 1980). Hybridization with and/or replacement by the sheepshead minnow poses a major threat to the Pecos pupfish. The sheepshead minnow was introduced into the Pecos River, probably in the vicinity of Pecos, Texas, sometime between 1980 and 1984. Sheepshead minnow x Pecos pupfish hybrids have since moved upstream and downstream at a rapid pace despite the presence of six irrigation diversion dams. The spread of hybrids has occurred both naturally and presumably through "bait bucket" introductions.

By 1984, surveys at four sites along the Pecos River below Red Bluff Reservoir, Texas, revealed evidence of hybridization between the Pecos pupfish and sheepshead minnow (Echelle 1985). In the vicinity of Pecos, Texas, the Pecos pupfish had been entirely replaced by sheepshead minnow x Pecos pupfish hybrids. At sites ranging from 50 km (31 mi) further upstream to 250 km (156 mi) downstream, evidence of hybridization was still apparent, though less pronounced (Echelle and Connor 1989).

Surveys in 1986 found the presence of genetic markers for sheepshead minnows in pupfish from Red Bluff Reservoir, New Mexico (Wilde and Echelle 1992). The introduction of sheepshead minnows into Red Bluff Reservoir means that genetically pure populations of Pecos pupfish south of Malaga, New Mexico (including the entire Texas population in the Pecos River), have been or probably will be eliminated except in areas not connected to the river or where effective fish barriers prevent access to habitat now occupied by the pupfish. In 1995, hybrids were taken from the Pecos River near the Loving Bridge (Eddy County), New Mexico, which is upstream of the pure pupfish population at Malaga Bend (Hoagstrom and Brooks, 1995).

The purity of the pupfish populations in Salt Creek, Texas, and in the abandoned gravel pits near Grandfalls, Texas, is unknown. Both populations occur on privately owned lands, and

surveys have not been conducted on these lands since 1989. Because the gravel pits are close to the Pecos River and because hybrids occur in that portion of the river, the gravel pit populations may not be genetically pure.

The northward expansion of sheepshead minnow x Pecos pupfish hybrids had reduced the range of the Pecos pupfish by approximately 60 percent by the late 1980's (Wilde and Echelle 1992). Subsequent expansion of the hybrids into the Pecos River upstream from Red Bluff Reservoir has further constricted the range of the pupfish. Genetically pure populations of Pecos pupfish may now occur only in off-channel habitats. The river populations are most susceptible to replacement by and/or hybridization with sheepshead minnow. However, the sinkhole populations are also considered vulnerable to hybridization due to the possibility of anglers releasing sheepshead minnows into sinkholes.

Sinkhole, lake, and spring populations may also be susceptible to introductions of exotic fish species during periods of river flooding. Flood waters have inundated sinkholes and springs and could allow exotic species, including the sheepshead minnow, to access these otherwise isolated sites.

Large scale fish kills caused by algal blooms occurred in the Pecos River, Texas, in 1985 and 1986 (Rhodes and Hubbs 1992). Such algal blooms may affect the Pecos pupfish (Rhodes and Hubbs 1992).

Other threats to the Pecos pupfish include nonnative fish introductions and piscicide applications. Anglers interested in developing sport fisheries in sinkholes apply piscicides to remove unwanted fish species prior to introducing sport fish. Such manipulation, although conducted in compliance with State laws, can adversely affect or eliminate Pecos pupfish populations.

Oil spills from pipelines into Salt Creek in Texas have occurred and represent an ongoing threat to water quality and Pecos pupfish habitats.

The Service has carefully reviewed the status of the species and assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Pecos pupfish as endangered. The species has experienced a large population decline and great reduction of its range. This species is in danger of becoming extinct throughout all or a significant portion of

its range. Threatened status would not accurately reflect the population decline, vulnerability, and imminent threats to this species. Critical habitat is not being proposed for the reasons discussed below.

#### **Critical Habitat**

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for the Pecos pupfish at this time. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat receives consideration under section 7 of the Act with regard to actions carried out, authorized, or funded by a Federal agency (see Available Conservation Measures section). As such, designation of critical habitat may affect activities on Federal lands and may affect activities on non-Federal lands where such a Federal nexus exists. Under section 7 of the Act, Federal agencies are required to ensure that their actions do not jeopardize the continued existence of a species or result in destruction or adverse modification of critical habitat. However, both jeopardizing the continued existence of a species and adverse modification of critical habitat have similar standards and thus similar thresholds for violation of section 7 of the Act. In fact, biological opinions that conclude that a Federal agency action is

likely to adversely modify critical habitat but not jeopardize the species for which the critical habitat has been designated are extremely rare. Also, the designation of critical habitat for the purpose of informing Federal agencies of the locations of occupied Pecos pupfish habitat is not necessary because the Service can inform Federal agencies through other means. For these reasons, the designation of critical habitat for the Pecos pupfish would provide no additional benefit to the species beyond that conferred by listing, and therefore, such designation is not prudent.

Occupied habitat for the Pecos pupfish occurs adjacent to and on the Bitter Lake National Wildlife Refuge and the Bureau of Land Management's (BLM) Bottomless Lakes Waterfowl Management Area. Because these occupied habitats are well known to the managers of these Federal lands, no adverse modification of this habitat is likely to occur without consultation under section 7 of the Act. Because of the small size of the species' current range, any adverse modification of the species' critical habitat would also likely jeopardize the species' continued existence. Designation of critical habitat for the Pecos pupfish on Federal land, therefore, is not prudent because it would provide no additional benefit to the species beyond that conferred by listing.

Because the aquatic habitat of the Pecos pupfish is considered "waters of the United States" under section 404 of the Clean Water Act, alteration of this habitat on private land may be regulated by the Army Corps of Engineers (COE) and may require consultation under section 7 of the Act. Certain other activities causing direct or indirect effects to habitat on private lands also may involve a Federal agency action. Although there may be COE or other Federal involvement requiring consultation for activities occurring in the species' habitat on private lands, because of the small size of the species' current range, any consultation which would result in a finding that the activity causes adverse modification of the species' critical habitat would also likely result in a finding that the activity jeopardizes the species' continued existence. Designation of critical habitat for the Pecos pupfish on private land, therefore, is not prudent because it would provide no additional benefit to the species beyond that conferred by listing.

Protection of the habitat of the Pecos pupfish will be addressed through the section 4 recovery process and the section 7 consultation process. The Service believes that activities involving

a Federal action which may affect the Pecos pupfish can be identified without designating critical habitat by providing Federal agencies with information on the locations of occupied habitats and information on the kinds of activities which could affect the species. For the reasons discussed above, the Service finds that the designation of critical habitat for the Pecos pupfish is not prudent.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Activities which may involve a Federal agency action and which may require conference and/or consultation as described in the preceding paragraph include: ground water pumping which can lower the water level in occupied sinkholes and springs; water diversion which dries streams; and other activities which cause habitat destruction or degradation including water quality degradation.

Lands along the Pecos River and tributaries are primarily privately owned. However, small areas of BLM land exist along the Pecos River between Fort Sumner and Roswell, New Mexico, and a short segment of the Pecos River flows through the Bitter Lake National Wildlife Refuge. Activities on private lands which may affect the Pecos pupfish or its habitat and which involve a Federal agency action require conference and/or consultation. Activities on BLM, Service, or other Federal lands which may affect the Pecos pupfish or its habitat also require conference and/or consultation.

Water use in the Pecos River basin is regulated by the States of New Mexico and Texas in accordance with the Pecos River Compact (Compact), a Congressionally approved agreement addressing allocation of water between New Mexico and Texas. The U.S. Bureau of Reclamation (BR) and the COE operate dams on the river, and thereby regulate flows, in accordance with the Compact. The operation of dams by the BR and COE requires conference and/or consultation.

Additionally, other Federal agency actions along the Pecos River that may require conference and/or consultation include: Environmental Protection Agency authorization of discharges under the National Pollutant Discharge Elimination System (NPDES) and registration and regulation of pesticides; Federal Highway Administration involvement in road and bridge construction and maintenance; BLM issuance of grazing permits and oil and gas leases; COE authorization of discharges of dredged or fill material into waters of the United States under section 404 of the Clean Water Act (e.g., authorization of oil, gas, and water pipeline construction); U.S. Department of Agriculture (USDA) Animal and Plant Health Inspection Service programs (e.g., Rangeland Grasshopper Cooperative Management); USDA Natural Resources Conservation Service projects and technical assistance programs; USDA Farm Service Agency programs (e.g., financial assistance for certain irrigation projects); and the Department of Housing and Urban Development's Small Cities Community Development Block Grant program.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general trade prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot,

wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

It is the policy of the Service (July 1, 1994, 59 FR 34272) to identify to the maximum extent practicable those activities that would or would not constitute a violation of section 9 of the Act at the time of listing. The intent of this policy is to increase public awareness of the effect of listing on proposed or ongoing activities. The Service believes that, based on the best available information, the following actions will not result in a violation of section 9, provided these activities are carried out in accordance with any existing regulations and permit requirements:

1. Livestock grazing which does not destroy or significantly degrade occupied Pecos pupfish habitat.
2. Groundwater pumping in areas where the groundwater is not connected to riverine or sinkhole habitats occupied by Pecos pupfish.
3. Oil and gas exploration and drilling in areas where surface or groundwater is not connected to habitats occupied by Pecos pupfish.

The following activities would likely violate section 9 of the Act:

1. Livestock grazing which causes destruction or significant degradation of occupied Pecos pupfish habitat.
2. Stocking of piscivorous fish or introduction of sheepshead minnows into habitat occupied by Pecos pupfish or into waters which are connected to, or which during high flows become connected to, habitat occupied by Pecos pupfish.
3. Pumping of groundwater which causes a significant reduction in the quantity or quality of water in areas occupied by Pecos pupfish.
4. Channelization or other activities which cause dewatering of habitats occupied by the Pecos pupfish.

5. Activities which cause significant degradation of surface water or groundwater quality of habitat occupied by the Pecos pupfish.

The term "significant degradation of habitat" as used in the descriptions of activities above, is that amount of degradation which causes "take" of Pecos pupfish. Not all of the activities mentioned above will result in violation of section 9 of the Act; only those activities which result in "take" of Pecos pupfish are considered violations of section 9. Contacts have been identified to assist the public in determining whether a particular activity would be prohibited under section 9 of the Act. In New Mexico, contact the Field Supervisor, Ecological Services Field Office (Albuquerque) (see ADDRESSES section). In Texas, contact the Field Supervisor, Ecological Services Field Office, 10711 Bernet Road, Suite 200, Hartland Bank Building, Austin, Texas 78758, (512/490-0057).

#### Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

- (1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;
- (2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;
- (3) Additional information concerning the range, distribution, and population size of this species;
- (4) Current or planned activities in the subject area and their possible impacts on this species, and;
- (5) Any other information related to the status of, or threats to, the Pecos pupfish.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication

of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Ecological Services Field Office (Albuquerque) (see ADDRESSES section).

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

#### Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

#### References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Service's Ecological Services Field Office (Albuquerque) (see ADDRESSES section).

**Author:** The primary author of this proposed rule is Jennifer Fowler-Propst (see ADDRESSES section).

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

#### Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

#### PART 17—[AMENDED]

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

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.11(h) by adding the following, in alphabetical order under "Fishes," to the List of Endangered and Threatened Wildlife to read as follows:

#### § 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						
FISHES							
*	*	*	*	*	*		*
Pupfish, Pecos .....	<i>Cyprinodon pecosensis.</i>	USA (NM, TX) .....	Entire .....	E	.....	NA	NA
*	*	*	*	*	*		*

Dated: January 21, 1998.

**Jamie Rappaport Clark,**

Director, Fish and Wildlife Service.

[FR Doc. 98-2273 Filed 1-29-98; 8:45 am]

BILLING CODE 4310-55-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 23

#### Request for Information and Recommendations on Species to Consider for Changes to the CITES Appendices

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Request for information.

**SUMMARY:** This notice solicits recommendations for amending Appendices I or II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The U.S. Fish and Wildlife Service invites information and comment from the public on animal or plant species that should be considered as candidates for U.S. proposals to amend Appendices I or II. Such amendments may concern the addition of species to Appendix I or II, the transfer of species from one Appendix to another, or the removal of species from Appendix I or II.

**DATES:** The Service will consider all information and comments received by March 31, 1998.

**ADDRESSES:** Correspondence concerning this request pertaining to species amendments should be sent to Chief, Office of Scientific Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, Room 750; Arlington, Virginia 22203. Comments and materials received will be available for public inspection by appointment from 8 a.m. to 4 p.m., Monday through Friday, at the Office of Scientific Authority.

**FOR FURTHER INFORMATION CONTACT:** Dr. Susan Lieberman, Acting Chief, Office of Scientific Authority, phone 703-358-1708, fax 703-358-2276, e-mail susan\_lieberman@fws.gov.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, TIAS 8249 (hereinafter referred to as CITES or the Convention), is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may be threatened with extinction. These species are listed in Appendices to CITES, copies of which are available from the Office of Scientific Authority at the above address or from the Service's World Wide Web site <http://www.fws.gov/r9dia/applinks.html>. Currently 143 countries, including the United States, are Parties to the Convention. CITES calls for biennial meetings of the Conference of the Parties, which review its implementation, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I and II for consideration by the other Parties.

This is the first in a series of **Federal Register** notices which, together with announced public meetings, provide an opportunity for the public to participate in the development of the United States' negotiating positions for the eleventh regular meeting of the Conference of the Parties to CITES (COP11). The Service's regulations governing this public process are found in 50 CFR 23.31-23.39.

The Service expects the eleventh meeting of the Conference of the Parties to be held in November 1999, in Indonesia.

##### Request for Information and Comments

One of the purposes of this notice is to solicit information that will help the Service identify species that are candidates for addition, removal, or

reclassification in the CITES Appendices or to identify issues warranting attention by the CITES Nomenclature Committee. This request is not limited to species occurring in the United States. Although U.S. proposals submitted for recent Conferences of the Parties have focused on species native to the United States, any Party may submit proposals concerning animal or plant species occurring in the wild anywhere in the world. The Service encourages the submission of information on species for possible inclusion in the Appendices if these species are subject to international trade that may be detrimentally impacting the status of the species. Complete proposals are not being requested at this time, but rather we are asking interested persons to submit convincing information describing: (1) The status of the species, especially trend information; (2) conservation and management programs for the species, including the effectiveness of enforcement efforts; and (3) the level of domestic as well as international trade in the species, especially trend information. Any other relevant information can also be provided.

The term "species" is defined in CITES as "any species, sub-species, or geographically separate population thereof." Each species for which trade is controlled is included in one of three Appendices, either as a separate listing or incorporated within the listing of a higher taxon. The basic standards for inclusion of species in the Appendices are contained in Article II of CITES. Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species which, although not necessarily now threatened with extinction, may become so unless trade in them is strictly controlled.

Appendix II also lists species that must be subject to regulation in order that trade in those currently and potentially threatened species may be brought under effective control. Such listings frequently are required because of difficulty in distinguishing specimens of currently or potentially threatened