

examine 100 slides each day. When setting this limit, we explicitly stated that it “represents an absolute maximum number of slides and is not to be employed as a performance target for each individual.” 42 CFR 493.1257(b)(1). Similarly, when designing the proficiency testing program, we recognized that due to varying skill levels, and other factors, some cytologists will work at a much slower pace than others. Since the proficiency program is designed to allow all individuals to work at their normal speed, the rate for proficiency testing was set below the maximum rate at which cytologists may work under the regulations.

3. Third, we also decided that the slide-per-hour rate should be lower during proficiency testing than during normal workdays because the staining characteristics of the proficiency test slides may be different from those prepared in the test subject’s laboratory, forms for recording results will be unfamiliar, and the test will create some anxiety for the cytologist. To account for these factors, we determined that extra time should be allowed.

In light of the experience of the Maryland program, and the factors mentioned above, we determined that the 2 and 4 hour time limits for proficiency testing are appropriate because they take into account the differences between examination of slides during normal workdays and during a proficiency test.

Given the proficiency testing situation described above, CDC reaffirms that the timeframe established in the February 28, 1992 final rule for completion of cytology proficiency tests is, “to the extent practicable,” comparable to normal working conditions, and fulfills the Congressional intent to test adequately the abilities of cytologists to determine test results accurately.

Carlyn L. Collins.

[FR Doc. 00–6580 Filed 3–16–00; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018–AE56

#### Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule To List the Pecos Pupfish (*Cyprinodon pecosensis*) as Endangered

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

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** We, the Fish and Wildlife Service (Service), withdraw the proposal to list the Pecos pupfish (*Cyprinodon pecosensis*) as an endangered species under the Endangered Species Act of 1973, as amended (Act). 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 species now occurs in some reaches of the Pecos River in New Mexico, on lands administered by us, the New Mexico Division of State Parks (NMDSP), and the Bureau of Land Management (BLM); and on private lands in Texas. This withdrawal is based on actions taken by us and other Federal and State resource and management agencies to remove immediate threats to the species and also on commitments by us and those agencies to actively protect and enhance existing populations and habitats and to repatriate the species to appropriate habitats within its native range. In cooperation with the New Mexico Department of Game and Fish (NMDGF), New Mexico Department of Agriculture, NMDSP, Texas Parks and Wildlife Department (TPWD), and BLM, we have executed a Conservation Agreement that addresses the threats to the survival of the species. These protections will sufficiently assure the viability of the Pecos pupfish within its historical range.

**ADDRESSES:** The complete file for this notice is available for public inspection, by appointment, during normal business hours at our New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, New Mexico 87113.

**FOR FURTHER INFORMATION CONTACT:** Joy Nicholopoulos, Field Supervisor, New Mexico Ecological Services Field Office, at the above address (505–346–2525).

#### 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 centimeters (cm) (1.1 to 1.8 inches (in) average length) gray-to-brown fish. Male dorsal (back) and anal fins are black almost to the margin with no yellow on the dorsal, anal, or caudal (tail) fins. The lateral (side) bars on the female are typically broken into blotches ventrolaterally (along the sides

near the bottom). The abdomen is generally without scales, except for a few scales in front of the pelvic fins and a patch just behind the gill membrane isthmus (a narrow strip of tissue). There are 20 to 21 gill rakers and usually 3 or 4 preorbital (behind the eye socket) 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 kilometers (km) (404 miles (mi)) to the mouth of Independence Creek, southeast of Sheffield, Pecos County, Texas (Wilde and Echelle 1992). The species was also found in gypsum sinkholes and saline springs at Bitter Lake National Wildlife Refuge; 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 (G. Garrett, TPWD, pers. comm. 1998). In New Mexico, the species still occurs in the Pecos River from north of Malaga upstream to Bitter Lake National Wildlife Refuge. The species is also found at Bottomless Lakes State Park and the BLM’s Overflow Wetlands Wildlife Habitat Area/Area of Critical Environmental Concern. This range reduction represents a loss of more than two-thirds of the species’ former range (Echelle and Connor 1989; Echelle *et al.* 1997; Hoagstrom and Brooks 1998).

Since the Pecos pupfish was proposed for listing on January 30, 1998 (63 FR 4608), the most significant threats to its continued existence have been ameliorated. The main threats to the Pecos pupfish were habitat loss caused by damming and dewatering of the Pecos River, excessive pumping of groundwater, and, since the early 1980s, hybridization with the sheepshead minnow (*Cyprinodon variegatus*). Genetically pure populations have been made more secure—a fish barrier constructed at the Bitter Lake National Wildlife Refuge has protected the population that exists there; a fish barrier constructed at Dexter National Fish Hatchery and Technical Center has created a managed wetland for establishing a refugial population; and the BLM has placed the population on the BLM’s Overflow Wetlands Area of

Critical Environmental Concern under active protection through BLM's Resource Management Plan. Through this plan, the BLM has prohibited surface occupancy in future oil and gas leases within a buffer zone of the Area, restricted future oil and gas surface occupancy in other areas, excluded rights-of-way in certain portions of the Area, limited use of off-highway vehicles, and retired a grazing lease. These actions, which are discussed in the Conservation Agreement, have already been implemented. Habitat for the populations at Bottomless Lakes State Park and Bitter Lake National Wildlife Refuge is being renovated. Moreover, the States of Texas and New Mexico have begun managing the introduction of the nonnative sheepshead minnow, which has hybridized and displaced the Pecos pupfish in much of the historical pupfish habitat. Both States have approved modification of existing fishing regulations to ban the use of sheepshead minnow as a bait fish in the Pecos River.

In addition to these already implemented actions, the Conservation Agreement includes commitments for long-term protective and enhancement actions for the species. For instance, various agencies in both New Mexico and Texas have committed to—(1) removing nonnative predators from sinkholes with a pupfish population, (2) replacing sheepshead minnow x Pecos pupfish hybrids with pure pupfish whenever feasible, (3) identifying additional habitats under State control for expansion of populations of Pecos pupfish, and (4) working with willing private landowners to identify potential repatriation sites on private lands. A more complete discussion is found below.

### Summary of Comments and Recommendations

We proposed the Pecos pupfish for listing as an endangered species on January 30, 1998 (63 FR 4608). We published notices inviting public comment in seven newspapers of general circulation in the area of the Pecos River valley in both New Mexico and Texas—the Albuquerque Journal, the Fort Stockton Pioneer, the Pecos Enterprise, the Roswell Daily Record, the Carlsbad Current Argus, the Midland Reporter-Telegram, and the Odessa American. We also published notices of a public hearing in these same newspapers. We held the hearing on the proposal in Carlsbad, New Mexico on April 9, 1998.

During this extended public comment period (January 30 to November 20,

1998), we contacted State and Federal land and resource management agencies in New Mexico and Texas to determine if adequate protections could be implemented through a Conservation Agreement. We made the Conservation Agreement developed by these agencies available for public review through a notice of availability in the **Federal Register** (63 FR 71424) on December 28, 1998. The comment period was reopened and extended to January 27, 1999, in order to receive additional comments on the proposal and on the draft Conservation Agreement. We sent approximately 200 copies of the draft Conservation Agreement to agencies and individuals on the mailing list maintained by our New Mexico Ecological Services Field Office. The mailing included a request to the interested entities for review and comments. Finally, we reopened the comment period from February 24, 1999, to March 26, 1999 (64 FR 9119).

In accordance with our peer review policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we drafted the Conservation Agreement with the expert input of researchers who have spent decades investigating the Pecos pupfish and its habitats in Texas and New Mexico. In addition to the input received during the development of the document, we also sought peer review during periods of public comment. We presented the draft conservation agreement to the Rio Grande Fishes Recovery Team for review at the annual meeting of the team in November 1998. During the reopened public comment period, we provided the draft document for peer review to Recovery Team members in addition to other experts on the species at the University of Texas Pan-American, the University of New Mexico, Oklahoma State University, Arizona State University, and the University of Michigan. We did not receive any comments from the peer review of the draft Conservation Agreement.

We received 15 comments on the proposal to list the Pecos pupfish. We received one letter of support from a scientist working on the species. Three commenters—the NMDGF; the New Mexico Energy, Minerals & Natural Resources Department; and the Texas Commissioner to the Pecos River Compact—recommended the use of alternative methods, such as a Conservation Agreement, to protect the species. One Federal agency provided comments concerning editorial corrections to the proposal but with no position regarding the listing of the

species. Ten comment letters opposed the listing.

We received a total of 11 comments on the draft Conservation Agreement: from 1 municipality, 2 private organizations, 1 county agency, 1 water power and control district, and 6 State agencies.

Below we address issues raised concerning the proposal, followed by the issues and our responses to the comments on the Conservation Agreement. We grouped comments of a similar nature into general issues delineated below for purposes of response.

### Comments and Responses on the Proposed Rule

*Issue 1:* The Service should attempt proactive management to address the threats to the pupfish posed by the sheepshead minnow. Given that the primary threat to the Pecos pupfish is introgressive hybridization with the sheepshead minnow and that hybrids are common in the Pecos River, the prudent course at this point seem to be the establishment of secure off-channel refugia until the hybrid swarm can be eliminated, if that is possible.

*Our Response:* We concur that management of the sheepshead minnow to reduce or remove the threat of hybrids replacing pure Pecos pupfish in this ecosystem is important for conservation of the pupfish. Under the Conservation Agreement, fish barriers have been installed to protect off-channel refugia for remaining populations of pure Pecos pupfish. In addition, the States of Texas and New Mexico have approved regulations banning the use of sheepshead minnows as bait.

*Issue 2:* The Service should propose critical habitat.

*Our Response:* When we list a species as threatened or endangered, the Act requires that the listing rule specify, "to the maximum extent prudent and determinable," the species' critical habitat. However, this issue is now irrelevant because we are not listing the Pecos pupfish.

### Comments and Responses on the Conservation Agreement

Based on the comments received during the first public comment period, particularly from the NMDGF, the TPWD, and the Texas Commissioner to the Pecos River Compact, we initiated efforts in February 1998 to develop an agreement among the management entities to address the identified threats to the Pecos pupfish. The Conservation Agreement that resulted from the meetings set forth the commitments of

State and Federal agencies to control nonnative competing species and to protect and manage the Pecos pupfish and its habitat to ensure its survival and promote its conservation.

Significant threats to the species include problems associated with small, isolated populations and the potential for hybridization with the sheepshead minnow. The signatory agencies to the Conservation Agreement made commitments to protect known extant populations of pure Pecos pupfish, to expand the distribution of the species within its native range by establishing new populations, and to prohibit the use of sheepshead minnow through revision of baitfish regulations in New Mexico and Texas. As discussed above, several of the provisions of the Conservation Agreement have been implemented.

Below is a description of comments received on the Conservation Agreement provided for public review on December 28, 1998. Some commenters raised issues on the proposal to list the Pecos pupfish in their comments on the Conservation Agreement. For the issues concerning the data upon which the biological status of the Pecos pupfish was determined, please refer to the above discussion of comments.

*Issue 3:* What set of circumstances would create a situation where reintroduction of the Pecos pupfish into the mainstream of the Pecos would be appropriate? To what extent would the signatories attempt to modify the environment of the mainstream of the Pecos River in order to create circumstances appropriate for reintroduction?

*Our Response:* The primary factor to be addressed in any consideration of repatriation of the Pecos pupfish to its historical habitat in the mainstream of the Pecos River is the presence or absence, or relative dominance within the fish community, of the sheepshead minnow. Should a significant fishkill occur naturally, such as that observed in 1985–86 in the Pecos River in Texas as a result of an algal bloom, sheepshead minnow and other nonnatives may be removed or significantly reduced. At that time, the Conservation Agreement participants would determine whether the biological conditions support the repatriation of the Pecos pupfish to the river. The signatory agencies may undertake other efforts, quite likely on a much more localized level, to eradicate the sheepshead minnow if the conditions are favorable.

We and other species experts recognize that major efforts to repatriate the pupfish to large reaches of its historical habitat in the Pecos River will

not likely occur either in the near future or without significant events, either natural or induced, affecting the existing fish community. However, we believe that the potential for restoration of the species to its historical habitat should be included in any plan or agreement for its conservation. It should be noted that one of the major purposes of this Conservation Agreement is to protect and enhance habitat conditions to facilitate population expansion.

*Issue 4:* Several commenters requested the clarification of goals and objectives of the Conservation Agreement, particularly with respect to those objectives considered essential to the continued conservation of the Pecos pupfish and, thus, the removal of the need to protect the species by listing it under the Act.

*Our Response:* We modified the Conservation Agreement to include quantifiable and time-certain standards by which the agreement and its applicability to the conservation of the Pecos pupfish will be measured.

However, the Conservation Agreement partners have already implemented a number of protective measures (see Background section of this rule) that, combined with measures to be implemented in the future as part of the Conservation Agreement, have reduced the threats so that the species is no longer in danger of extinction, nor likely to become so, in the foreseeable future throughout all or a significant portion of its range.

*Issue 5:* Some commenters objected to section V.F.8 of the draft Conservation Agreement, in which the agencies participating in the Conservation Agreement agreed to support the listing of the Pecos pupfish should the measures and actions be found insufficient to remove the threats to the species.

*Our Response:* We amended this section by removing the sentence regarding the support of listing by the Conservation Agreement entities should we determine that listing the species is necessary.

*Issue 6:* One commenter requested that we extend the time for the decision on the proposal to list by six months, in part, to better assess or gather additional biological information. The commenter felt that the biological information was not adequate to proceed with the withdrawal of the proposed rule.

*Our Response:* In accordance with section 4(b)(6) of the Act and the implementing regulations at 50 CFR 424.17, within one year of the publication of a proposed listing action, we generally must publish a final determination or a notice withdrawing

the proposed action if we find that the available evidence does not justify the action. When there is “substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination concerned,” the Act and regulations allow for a 6-month extension of a proposed listing action.

We cannot use an extension to obtain more information or to provide more time before making a decision. We can only use this provision if there is a legitimate disagreement among scientific experts and a definitive resolution is expected that will clarify the subject of the disagreement. We do not agree with the assessment of the adequacy of the biological information presented by the commenter. We consulted experts on the Pecos pupfish (see the discussion in the paragraph on peer review, above), including scientists who performed the original research and reported the results that formed the basis of the commenter’s review. No disagreement exists among these species experts concerning the status and distribution of the species to support the 6-month delay.

*Issue 7:* Four commenters raised concerns regarding the proposed actions of the BLM within the Conservation Agreement, including changes in grazing leases. We requested that the BLM respond to those comments. Their response is summarized as follows:

The BLM’s Roswell Field Office is responsible for managing all uses of about 602,973 hectares (1,490,000 acres) where both the surface and subsurface estates are in Federal ownership. The land use plan governing management of these public lands addressed all proposed actions included in the Conservation Agreement and was, after public review and comment, signed by the Bureau’s State Director on October 10, 1998. In addition, the Roswell Field Office prepared the Overflow Wetlands Habitat Management Plan and Environmental Assessment for the Overflow Wetlands Wildlife Habitat Area in 1992. The adjustment of grazing leases for Allotments 65060, 65062, and 65069, and the cancellation of the grazing lease on Allotment 65041 were presented during the development of the Roswell Resource Management Plan, as were the oil and gas lease stipulations, mineral entry closure, and rights-of-way exclusion. Socio-economic impacts of implementing the Plan were analyzed in Chapter 4 of the Proposed Plan and Final Environmental Impact Statement.

The BLM disclosed the adjustment of grazing leases for the above allotments

in the Plan to inform the public of this possible action. The types of adjustments were listed as changes in stocking rate and seasons of use, but a reduction in the number of livestock was not listed in the Resource Management Plan. Reductions could occur based on range monitoring studies for the entire allotment and not necessarily for the Pecos pupfish Conservation Agreement. The specific adjustments, if necessary, would be made by the BLM at the grazing lease/permit level with an accompanying environmental analysis, not at the Conservation Agreement level. Therefore, no specific adjustments are presented in the Conservation Agreement.

The grazing lease for Allotment 65041 was canceled. In 1991, the BLM acquired the private lands within this allotment from a willing seller (who also held the grazing lease) for the protection of the Overflow Wetlands Wildlife Habitat Area, which is now designated an Area of Critical Environmental Concern. Allotment 65041 is no longer an active grazing allotment.

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and the regulations (50 CFR part 424) that implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. We must consider the five factors described in section 4(a)(1) of the Act when determining whether to list a species. These factors and their application to our decision to withdraw the proposal to list the Pecos pupfish 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 changes in habitat conditions, along with displacement of the species by hybrids, threatened the survival of the Pecos pupfish throughout its entire range (Wilde and Echelle 1992; Echelle *et al.* 1997).

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. Base flows were also reduced by dam construction and reservoir operation, greatly reducing the number and extent of these habitats linked to the main river channel.

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 but because the water table has been lowered, these sinkholes are no longer interconnected (Lee Marlatt, Service, Bitter Lake National Wildlife Refuge, pers. comm. 1987). Because they are isolated from the river that is inhabited by sheepshead minnow, sinkhole populations of Pecos pupfish are more protected from the threat of hybridization than are river populations. Therefore, the loss of these populations would seriously affect the survival of the species.

The Conservation Agreement executed by the State and Federal agencies specifically addresses the protection of all known off-channel, pure populations of Pecos pupfish. As discussed in the Background section of this rule, a number of protective actions have already been implemented. Further, both State and Federal land management entities will ensure that the management of the species is

incorporated into resource management plans. Additionally, each has committed to identifying additional habitats under its control for expansion of populations of Pecos pupfish. Resource management agencies in both New Mexico and Texas are committed to working with willing private landowners to identify potential repatriation sites on private lands and establish populations of the species on those lands.

In summary, while the Pecos pupfish has been eliminated from a significant portion of its historical range, we believe that the measures provided in the Conservation Agreement have significantly reduced threats to the species and will ensure its continued existence.

*B. Overutilization for commercial, recreational, scientific, or educational purposes.* We are unaware of threats to the species from these factors. Anglers may occasionally collect Pecos pupfish as bait and scientists may collect specimens for scientific study, but these uses probably have a negligible effect on total population numbers.

*C. Disease or predation.* We are 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 could become a more important threat. However, the measures through the Conservation Agreement to remove nonnative predators from sinkholes will reduce this 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 somewhat protected through a provision of the Habitat Protection Act (section 17–4–14) that

makes it illegal to de-water areas used by game fish.

The State of Texas listed the Pecos pupfish as threatened by 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 situation has encouraged the spread of detrimental species, specifically the sheepshead minnow, which replaces and/or hybridizes with the Pecos pupfish (see Factor E). However, the NMDGF and the TPWD modified fishing regulations to ban the use of sheepshead minnow as a bait fish. Additionally, all signatories of the Conservation Agreement have committed to, when and where feasible, replacing the sheepshead minnow x Pecos pupfish hybrids within the Pecos River and at other sites with pure Pecos pupfish.

*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.

The purity of the pupfish populations in Salt Creek, Texas, and in the abandoned gravel pits near Grandfalls, Texas, were unknown at the time of the proposal. Both populations occur on privately owned lands, and surveys had 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 were considered extremely vulnerable to introgression. Research conducted during the proposal

period confirmed that the gravel pit populations are hybrid.

The northward expansion of sheepshead minnow x Pecos pupfish hybrids reduced the range of the Pecos pupfish by approximately 60 percent by the late 1980s (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. While the river populations are most susceptible to replacement by and/or hybridization with sheepshead minnow, the sinkhole populations are also considered vulnerable to hybridization due to the possibility of anglers releasing sheepshead minnows into sinkholes. However, actions by the States of New Mexico and Texas to restrict the use of sheepshead minnows for bait, plus the construction of a fish barrier at Bitter Lake National Wildlife Refuge, have enhanced the security of the off-channel pupfish populations. Additionally, all signatories of the Conservation Agreement have committed to, when and where feasible, replacing the sheepshead minnow x Pecos pupfish hybrids within the Pecos River and other sites with pure Pecos pupfish.

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, conducted exclusively on private lands and without the knowledge by the landowner of the presence of the Pecos pupfish, can adversely affect or eliminate Pecos pupfish populations. Enforcement by either State of its prohibitions against take of protected species on private lands is not considered an effective bar to these activities. However, we do not consider such applications of piscicides a significant threat to the species and do not specifically address piscicide application in the Conservation Agreement.

Oil spills from pipelines into Salt Creek in Texas are a threat because they have occurred in the past and represent an ongoing threat to water quality and Pecos pupfish habitats. However, Salt Creek is believed to be the only population clearly vulnerable to such a

catastrophe, and the Salt Creek population, although the only known naturally occurring pure population in Texas, represents only about one-tenth of the species' population throughout its range. Catastrophic spills of oil or other contaminants into pupfish-occupied privately owned habitats are not considered controllable by the Conservation Agreement. However, establishment of more populations, as delineated in the agreement, would act as a buffer against such losses.

We consider the latter two threats, the introduction of nonnative fish and use of piscicides on private land and uncontrolled oil spills or other contamination of isolated habitats, far less significant threats to the Pecos pupfish than hybridization. Thus, we do not specifically address them in the Conservation Agreement. However, both the States of New Mexico and Texas have committed to conducting public outreach and education to inform private landowners of the occurrence of the Pecos pupfish and to increasing the numbers and security of populations of the Pecos pupfish. Hence, the increased numbers of fish diminish the potential impacts of isolated losses arising from the latter two threats.

#### **Finding and Withdrawal**

The Conservation Agreement signed by the NMDGF, New Mexico Department of Agriculture, NMSPD, TPWD, the BLM, and us was specifically developed to address and alleviate the known threats to the Pecos pupfish.

The two most significant threats, security of existing populations and loss of genetic purity of Pecos pupfish populations through hybridization with the sheepshead minnow, have received immediate action—physical barriers now prohibit access by the sheepshead minnow to occupied Pecos pupfish habitat; the resource entities have included the conservation of the Pecos pupfish as a specific management goal in planning documents; and the NMDGF and the TPWD approved revision of State regulations to ban the use of sheepshead minnow as a bait fish in the Pecos River. Additionally, signatories of the Conservation Agreement committed to establishing and protecting additional populations on lands they administer and, with the cooperation of willing landowners, on private lands within the historical range of the species. Based on these commitments, we determine that listing the Pecos pupfish as endangered or threatened under the Act is not warranted. Therefore, we withdraw our January 30, 1998, proposed rule (63 FR

4608) to list the Pecos pupfish as endangered.

#### References Cited

A complete list of all references we cited, as well as others, is available upon request from our New Mexico Ecological Services Field Office (see **ADDRESSES** section).

#### Author

The primary author of this document is Jennifer Fowler-Propst, New Mexico Ecological Services Field Office (see **ADDRESSES** section).

**Authority:** The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act (16 U.S.C. 1532 *et seq.*).

Dated: February 25, 2000.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 00-6602 Filed 3-16-00; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 000229053-0053-01; I.D. 120699A]

RIN 0648-AK96

#### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 17

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS issues this proposed rule to implement Amendment 17 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This rule proposes to extend the current commercial reef fish vessel permit moratorium, which expires on December 31, 2000, for 5 years to December 31, 2005. The purpose of the moratorium is to provide a stable environment in the fishery necessary for evaluation and development of a more comprehensive controlled access system for the entire commercial reef fish fishery.

**DATES:** Comments must be received no later than 5:00 p.m., eastern standard time, on May 1, 2000, at the appropriate address or fax number (see **ADDRESSES**).

**ADDRESSES:** Written comments must be mailed to the Southeast Regional Office,

NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702; they may also be sent via facsimile (fax) to 727-570-5583, but they may not be sent via e-mail or the Internet.

Requests for copies of Amendment 17, which includes an environmental assessment and a regulatory impact review, should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, Florida 33619-2266; phone: 813-228-2815; fax: 813-225-7015; e-mail: Gulf.Council@noaa.gov.

**FOR FURTHER INFORMATION CONTACT:** Michael Barnette, 727-570-5305; fax: 727-570-5583; e-mail: Michael.Barnette@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery is managed under the FMP as prepared by the Gulf of Mexico Fishery Management Council (Council) and approved and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

This proposed rule would implement FMP Amendment 17 and extend the moratorium on the issuance of new commercial reef fish vessel permits that was initiated by Amendment 4 in 1992. Amendment 4 was intended to last for 3 years but was extended twice. The second extension in 1995 was for 5 years ending on December 31, 2000. The permit moratorium was deemed necessary to moderate short-term future increases in fishing effort and to stabilize fishing mortality while the Council was considering a more comprehensive effort limitation program. During the moratorium, the Council developed an individual transferable quota system for red snapper. However, before it was implemented, Congress prohibited individual fishing quotas (IFQs) under sections 303(d) and 407 of the Magnuson-Stevens Act. The current Congressional prohibition of IFQs will lapse on October 1, 2000.

The Council intends to evaluate a broad range of controlled access systems, including IFQs, for the commercial reef fish fishery. Development and implementation of a comprehensive controlled access system are expected to extend past the period of the current moratorium. Without a moratorium, fishing effort in the resulting open access reef fish fishery is likely to increase and complicate allocation of fishing privileges, creating an unstable fishery environment.

Additional background and rationale for the measures discussed above are

contained in Amendment 17, the availability of which was announced in the **Federal Register** on December 17, 1999 (64 FR 70678). Written comments on Amendment 17 were solicited and must have been received by February 15, 2000, to be considered in the approval/disapproval decision on Amendment 17. All comments received on Amendment 17 or on this proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

#### Classification

At this time, NMFS has not determined that the amendment that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on Amendment 17.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed rule contains a single provision to extend the commercial reef fish permit moratorium for 5 years, from its current expiration date of December 31, 2000, to December 31, 2005, unless replaced sooner by a comprehensive controlled access system. The moratorium on new permits was first instituted in May 1992 and was extended on two previous occasions by FMP Amendments 9 and 11. The current expiration date of December 31, 2000, was set by FMP Amendment 11 in January 1996 with the stated purpose of allowing time for the Gulf of Mexico Fishery Management Council (Council) to consider limited access for the reef fish fishery. However, several intervening events since January 1996, including a Congressional moratorium on new individual transferable quota management systems in effect until October 2000, have hindered the Council's taking its intended action to develop a limited access system for this fishery. Comprehensive controlled access systems are difficult to develop and implement; there is an insufficient amount of time to implement such a system by December 31, 2000. Hence, the Council is proposing the current action to provide additional time to develop a new limited access system and to ensure that the current management system will not revert to open access before the new system is developed, approved, and implemented.

The entities that could be affected by Amendment 17 are those firms holding commercial reef fish harvest permits. There