April 27, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the proposed rule was dismissed.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–9293 Filed 5–10–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1144; MB Docket No. 04–331; RM–11053]

Radio Broadcasting Services; Washington, KS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: In response to a Notice of *Proposed Rule Making* (*''Notice''*), 69 FR 54614 (September 9, 2004), this *Report and Order* dismisses the underlying Petition for Rule Making requesting the allotment of Channel 271A at Washington, Kansas, because no comments or expressions of interest in response to the notice were received.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 04–331, adopted April 25, 2005, and released April 27, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document is not subject to the Congressional Review Act. (The Commission is, therefore, not required to submit a copy of this *Report and Order* to GAO pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the proposed rule is dismissed.)

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–9294 Filed 5–10–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05–1143, Docket No. 04–362, RM–11066]

Radio Broadcasting Services; Olustee, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule, dismissal.

SUMMARY: This document dismisses a petition for rule making filed by Charles Crawford to allot Channel 252A at Olustee, Oklahoma for failure to state a continuing interest in the requested allotment. *See* 69 FR 57898, published September 28, 2004. This document therefore terminates the proceeding.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 04–362, adopted April 25, 2005 and released April 27, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and Order to the Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the proposed rule was dismissed.)

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05–9295 Filed 5–10–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH57

Endangered and Threatened Wildlife and Plants; Reclassification of the Gila Trout (*Oncorhynchus gilae*) From Endangered To Threatened With Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reclassify the federally endangered Gila trout (*Oncorhynchus gilae*) to threatened status under the authority of the Endangered Species Act of 1973, as amended (Act). Based on a review of the species' current status, we have determined that reclassification of the Gila trout to threatened status is warranted. We are also proposing a special rule under section 4(d) of the Act that would apply to Gila trout found in New Mexico and Arizona. If finalized, the special rule included in this proposal would enable the New Mexico Department of Game and Fish (NMDGF) and the Arizona Game and Fish Department (AGFD) to promulgate special regulations in collaboration with the Service, allowing recreational fishing of Gila trout, beginning on the date that the final 4(d) rule becomes effective.

DATES: We will consider all comments on the proposed rule received from interested parties by July 15, 2005. We will hold public hearings on this proposed rule; we have scheduled the hearings for June 28, 2005 in Phoenix, Arizona and on June 29, 2005 in Silver City, New Mexico (see Public Hearing in the **SUPPLEMENTARY INFORMATION** section of this rule for dates).

ADDRESSES:

1. Send your comments on this proposed rule to the New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, New Mexico 87113. Written comments may also be sent by facsimile to (505) 346–2542 or through electronic mail to *R2FWE_AL@fws.gov.* You may also hand-deliver written comments to our New Mexico Ecological Services Field Office, at the above address. You may obtain copies of the proposed rule and other related documents from the above address or by calling (505) 346–2525. The proposed rule is also available from our Web site at *http://ifw2es.fws.gov/Library/.*

2. The complete file for this proposed rule will be available for public inspection, by appointment, during normal business hours at the New Mexico Ecological Services Field Office (*see* **ADDRESSES** above).

3. The public hearings will be held in Phoenix, Arizona on June 28, 2005 and in Silver City, New Mexico on June 29, 2005.

FOR FURTHER INFORMATION CONTACT: Joy Nicholopoulos, State Supervisor, New Mexico Ecological Services Field Office (*see* **ADDRESSES** above).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We intend to make any final action resulting from this proposed rule to be as accurate and as effective as possible. Therefore, we are soliciting comments from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

1. The reasons why Gila trout should or should not be reclassified with a special rule, as provided by section 4 of the Act;

2. Information concerning angling opportunities that may be affected by this action in New Mexico or Arizona and how the special rule might affect these uses; and

3. Comments on how the special rule could further the conservation of the Gila trout beyond what we have discussed in this rule.

Background

The purposes of the Act are to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved and to provide a program for the conservation of those species. Species can be listed as threatened and endangered because of any of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range, (2) overutilization for commercial, recreational, scientific, or educational purposes, (3) disease or predation, (4) the inadequacy of existing regulatory mechanisms, and (5) other natural or manmade factors affecting its continued existence. When we determine that protection of the species under the Act is no longer warranted, we take steps to remove (delist) the species from the Federal list. If a species is listed as endangered, we may reclassify it to threatened status as an intermediate step before eventual delisting, if it has met the criteria for downlisting to threatened; however, reclassification to threatened status is not required in order to delist.

Section 3 of the Act defines terms that are relevant to this proposal. An endangered species is any species that is in danger of extinction throughout all or a significant portion of its range. A threatened species is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. A species includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature.

Previous Federal Action

The Gila trout was originally recognized as endangered under the Federal Endangered Species Preservation Act of 1966 (32 FR 4001), and Federal designation of the species as endangered continued under the Act (1973). In 1987, the Service proposed to reclassify the Gila trout as threatened (October 6, 1987, 52 FR 37424). However, we withdrew our proposal for reclassification in 1991 (September 12, 1991) (*see* ''Recovery Plans and Accomplishments'' section below for further information). On November 11, 1996, Mr. Gerald Burton submitted a petition to us to downlist the species from endangered to threatened. We acknowledged receipt of the petition by letter on January 13, 1997. This proposed rule constitutes our 90-day finding and 12-month finding on the November 11, 1996, petition.

Systematics

The Gila trout is a member of the salmon and trout family (Salmonidae). Gila trout was not formally described until 1950, using fish collected in Main Diamond Creek in 1939 (Miller 1950). It is most closely related to Apache trout (*Oncorhynchus apache*), which is endemic to the upper Salt and Little Colorado River drainages in east-central Arizona. Gila trout and Apache trout are more closely related to rainbow trout (*O. mykiss*) than to cutthroat trout (*O. clarki*), suggesting that Gila and Apache trouts were derived from an ancestral form that also gave rise to rainbow trout (Behnke 1992; Dowling and Childs 1992; Utter and Allendorf 1994; Nielsen *et al.* 1998; Riddle *et al.* 1998).

Physical Description

The Gila trout is readily identified by its iridescent gold sides that blend to a darker shade of copper on the opercles (gill covers). Spots on the body are small and profuse, generally occurring above the lateral line and extending onto the head, dorsal (back, top) fin, and caudal (tail) fin. Spots are irregularly shaped on the sides and increase in size on the back. On the dorsal surface of the body, spots may be as large as the pupil of the fish eye and are rounded. A few scattered spots are sometimes present on the anal fin, and the adipose fin (fleshy fin located behind dorsal fin) is typically large and well-spotted. Dorsal, pelvic, and anal fins have a white to yellowish tip that may extend along the leading edge of the pelvic fins. A faint, salmon-pink band is present on adults, particularly during spawning season when the normally white belly may be streaked yellow or reddish orange. A yellow cutthroat mark is present on most mature specimens. Parr marks (diffuse splotches on the sides of body, usually seen on young trout) are commonly retained by adults, although they may be faint or absent (Miller 1950; David 1976).

Characteristics that distinguish Gila trout from other co-occurring, non-native trout include the golden coloration of the body, parr marks, and fine, profuse spots above the lateral line. These characters differentiate Gila trout from rainbow, brown (*Salmo trutta*), and cutthroat trouts. Roundtail chub (*Gila robusta*) are locally confused with Gila trout (Minckley 1973). The two species share a similar distribution, although roundtail chub typically occurs at lower elevations than Gila trout currently occupies. The two species may be confused partly because roundtail chub are occasionally caught by anglers fishing where both species occur together. The roundtail chub, a minnow (family Cyprinidae) whose adult size is similar to Gila trout's, differs from Gila trout (family Salmonidae) by its body shape and coloration. The roundtail chub lacks an adipose fin and has a narrow caudal peduncle (the segment of the body to which the tail fin is attached). Also, roundtail chub lack parr marks, golden coloration, yellow cutthroat marks, and

salmon-pink band found on Gila trout. Roundtail chub are typically a mottled olive or dark silver color above the lateral line, and body coloration lightens to a light silvery hue below the lateral line (Sublette *et al.* 1990).

Distribution and Threats

The extent of the historical distribution of the Gila trout is not known with certainty (Behnke 2002). It is known to be native to higher elevation streams in portions of the Gila River drainage, New Mexico. According to anecdotal reports, in 1896 Gila trout were found in the Gila River drainage, New Mexico, from the headwaters downstream to a box canyon, about 11.3 km (7 mi) northeast of Cliff, New Mexico (Miller 1950). By 1915, the downstream distribution of Gila trout in the Gila River had receded upstream to Sapillo Creek, a distance of approximately 25 km (15 mi) (Miller 1950). By 1950, water temperature in the Gila River at Sapillo Creek was considered too warm to support any trout species (Miller 1950). The earliest documented collections of Gila trout in the upper Gila River drainage were in 1939, from Main Diamond Creek (Miller 1950). New populations were sporadically found until 1992 when Gila trout were discovered in Whiskey Creek, a tributary to the upper West Fork Gila River (Service 2003).

Miller (1950) documented changes in suitability of habitats for Gila trout in the upper Gila drainage. Unregulated livestock grazing and logging likely contributed to habitat modifications noted by Miller (1950). The historical occurrence of intensive grazing and resulting effects on the land (*e.g.*, increased sedimentation by removal of riparian vegetation and increased runoff rates due to soil compaction) are indicated in published reports dating back to the early 1900s (Rixon 1905; Rich 1911; Duce 1918; Leopold 1921; Leopold 1924). Logging activities also likely caused major changes in watershed characteristics and stream morphology. Rixon (1905) reported the occurrence of small timber mills in numerous canyons of the upper Gila River drainage. Early logging efforts were concentrated along canyon bottoms, often with perennial streams. Tree removal along perennial streams within the historical range of Gila trout likely altered water temperature regimes, sediment loading, bank stability, and availability of large woody debris (Chamberlin *et al.* 1991).

When the Gila trout was listed as endangered, it was thought that its range had been reduced to five streams within the Gila National Forest, New Mexico: Iron, McKenna, Spruce, Main Diamond, and South Diamond. In 1998, it was determined that the McKenna and Iron Creek populations had hybridized with rainbow trout and therefore, did not contribute to the recovery of the species because they are not pure (Leary and Allendorf 1998; Service 2003). In 1992, another original pure population (*i.e.*, relict population) of Gila trout was discovered in Whiskey Creek (Leary and Allendorf 1998). Consequently, there are four confirmed original pure populations known today. Reasons for listing the Gila trout as endangered included hybridization, competition, and/or predation by non-native rainbow, cutthroat, and brown trout, and habitat degradation.

Occurrence of Gila trout in tributaries to the Gila River in Arizona is less certain, although these streams harbored a native trout. Native trout occurred in the Eagle Creek drainage, a tributary of the Gila River in Arizona located west of the San Francisco River drainage (Minckley 1973; Kynard 1976). The identity of this native trout, now lost through hybridization with rainbow trout, is uncertain (Marsh *et al.* 1990). Native trout were reported from Oak Creek, a tributary to the Verde River, before the turn of the century (Miller 1950). Four specimens collected from Oak Creek before 1890 were ascribed to Gila trout (Miller 1950; Minckley 1973). Native trout were also reported from West Clear Creek, another Verde River tributary (Miller 1950). Trout collected in 1975 from Sycamore Creek, a tributary of Agua Fria, were reported to be Gila x rainbow trout hybrids. However, this determination was based solely on examination of spotting pattern (Behnke and Zarn 1976). Unfortunately, no pure Gila trout are extant from Arizona tributaries to the Gila River and scientists are unable to make a clear determination of the identity of the four remaining preserved specimens that were collected from Oak Creek (Miller 1972).

Habitat Characteristics

Nursery and rearing habitats are areas used by larval and juvenile Gila trout. Although no studies have been done on habitat use by these life stages of Gila trout, generalizations can be made based on characteristics of related trout species. Suitable nursery habitat for trout includes areas with slow current velocity such as stream margins, seeps, shallow bars, and side channels (Behnke 1992). Low flows during emergence from the egg and early growth of larval trout may result in strong year classes (young fish are not displaced downstream) (Behnke 1992), as may constant, elevated flows during summer (improved water quality) (Service 2003). Absence of predation by non-native trout, particularly brown trout, is another essential element of nursery and rearing habitat.

Subadult and adult habitats are defined as areas suitable for survival and growth of these life stages. Subadults are sexually immature individuals, generally less than 150 millimeters (mm) (6 inches (in)) total length and adults are sexually mature individuals typically greater than 150 mm (6 in) total length (Propst and Stefferud 1997). Subadult Gila trout occur primarily in riffles (shallow water flowing over cobbles), riffle-runs, and runs, while adults are found mainly in pools (Rinne 1978). Cover (large woody debris, undercut banks, boulders, deep water, and overhanging woody and herbaceous vegetation) is an important component of subadult and adult habitat (Stefferud 1994). The quantity and quality of adult habitat typically limits the trout population biomass (Behnke 1992). Essential elements of subadult and adult habitat relate principally to channel dimensions, cover, and hydrologic variability. Absence of competition with non-native trouts (brown and rainbow) for foraging habitat is also an essential element of subadult and adult habitat.

Variation in stream flow is a major factor affecting subadult and adult population size (McHenry 1986, Turner 1989, Propst and Stefferud 1997). In particular, high flow events may cause marked decrease in population size. These events result in short-term, radical changes in habitat conditions, primarily in flow velocity. Because most streams occupied by Gila trout have relatively narrow floodplains, the forces associated with high flow events are concentrated in and immediately adjacent to the bankfull channel. High stream flow velocities cause channel scouring and displacement of fish downstream, often into unsuitable habitats (Rinne 1982).

Overwintering habitat is defined as areas that afford shelter during periods of low water temperature, generally from November through February. Rinne (1981) and Propst and Stefferud (1997) indicated the importance of pool habitat for overwinter survival of Gila trout. Essential elements of overwintering habitat are deep water with low current velocity and protective cover (Behnke 1992). These elements are important because small streams can freeze, but the presence of deep pools provides areas that do not freeze. Trout are typically more sluggish in the winter and cover is important to protect them

from predators. Barriers to fish movement (*e.g.*, waterfalls, dry stream bed) that prevent fish from accessing overwintering habitat may impact populations of Gila trout. Gila trout are now restricted to small headwater streams that typically have fewer deep pools and less suitable overwintering habitat than do larger streams (Harig and Fausch 2002).

Life History

Spawning occurs mainly in April (Rinne 1980) when temperatures are 6 to 8°C (43 to 46°F); however, day length may also be an important cue. Stream flow is apparently of secondary importance in triggering spawning activity (Rinne 1980). Young fish less than 25 mm (1.0 in) in length emerge from gravel nests 56 to 70 days after egg deposition (Rinne 1980). By the end of their first summer, young attain a total length of 70 to 90 mm (2.7 to 3.5 in) at lower elevation streams and 40 to 50 mm (1.6 to 2.0 in) at higher elevation sites (Rinne 1980; Turner 1986). Growth rates are variable, but Gila trout generally reach 180 to 220 mm (7.1 to 8.7 in) total length by the end of the third growing season in all but higher elevation streams. On average, for every 100 eggs that hatch, only two fish will survive to become adults (Brown *et al.* 2001).

Females reach maturity at age 2 to 4 at a minimum length of about 130 mm (5 in) (Nankervis 1988, Propst and Stefferud 1997). Males typically reach maturity at age 2 or 3. Most Gila trout live to about age 5 (Turner 1986), with a maximum age of 9 reported by Nankervis (1988). Thus, the majority of female Gila trout only spawn once and most males only spawn two or three times.

Aquatic insects are the primary food of Gila trout. Regan (1966) reported that adult flies, caddisfly larvae, mayfly nymphs, and aquatic beetles were the most abundant food items in the stomachs of Gila trout in Main Diamond Creek. There was little variation in food habits over the range of size classes sampled (47 to 168 mm (1.8 to 6.6 in) total length). Gila trout diet shifted seasonally as the relative abundance of various prey changed. Insect taxa consumed by Gila trout were also common in stomach contents of non-native trout species in the Gila River drainage, indicating the potential for interspecific competition. Hanson (1971) noted that Gila trout established a feeding hierarchy in pools during a low flow period in Main Diamond Creek. Larger fish aggressively guarded their feeding stations and chased away smaller fish. Large Gila trout occasionally consume speckled dace and may also cannibalize smaller Gila trout (Van Eimeren 1988; Propst and Stefferud 1997).

Adult Gila trout are typically sedentary and movement is influenced by population density and territoriality (Rinne 1982). Although individual fish may move considerable distances (*e.g.*, over 1.5 km (0.9 mi)), Rinne (1982) found that after eight months, 75 percent of tagged fish were less than 100 m (328 ft) from their release sites in Main Diamond, South Diamond, and McKnight Creeks. Gila trout showed a tendency to move upstream in South Diamond Creek, possibly to perennial reaches with suitable pool habitat in response to low summer discharge. Downstream movement in Main Diamond and McKnight Creeks involved primarily smaller fish and probably occurred because of nocturnal migrations (nighttime dispersal) or displacement downstream during flooding (Rinne 1982). High density of log structures in Main Diamond Creek appeared to reduce mobility of Gila trout in that stream (Rinne 1982).

Factors affecting population size and dynamics of Gila trout are not well understood. Inferences about factors that control population size have been made from analysis of time-series data (Turner and McHenry 1985, Turner 1989, Propst and Stefferud 1997). Hydrologic variability appears to be most important in regulating population size of Gila trout in many of the streams occupied by the species (*e.g.*, Regan 1966, Mello and Turner 1980, McHenry 1986, Turner 1989, Brown *et al.* 2001). Gila trout populations typically have high densities during relatively stable flow periods (Platts and McHenry 1988). The overall importance of environmental factors, specifically drought and flooding, that can occur following a fire due to a loss of vegetation, are critical factors in determining persistence of Gila trout populations. Examples of the effects of severe wildfires and subsequent floods and ash flows are the elimination of the Gila trout populations from Main Diamond Creek (1989) and South Diamond Creek (1995).

Recovery Plans and Accomplishments

The original recovery plan for Gila trout was completed in 1979. The main objective of this recovery plan was ''To improve the status of Gila trout to the point that its survival is secured and viable populations of all morphotypes are maintained in the wild'' (Service 1979). The Gila Trout Recovery Plan was revised in 1984 with the same objective as the original plan. Downlisting criteria in the plan stated that ''The species could be considered for downlisting from its present endangered status to a threatened status when survival of the four original ancestral populations is secured and when all morphotypes are successfully replicated or their status otherwise appreciably improved'' (Service 1984). Replication involves either moving individuals from a successfully reproducing original pure or replicated population or taking hatchery-propagated fish and releasing them into a renovated stream. In 1987, we proposed that Gila trout be reclassified from endangered to threatened with a special rule to allow sport fishing (52 FR 37424). At that time, Gila trout populations were deemed sufficiently secure to meet criteria for reclassification to threatened as identified in the Plan (52 FR 37424). However, the proposed rule to downlist Gila trout was withdrawn in 1991 (September 12, 1991, 56 FR 46400) because:

1. Severe flooding in 1988 reduced the Gila trout populations in McKnight Creek by about 80 percent;
2. Wild fires in 1989 eliminated Gila trout from Main Diamond Creek and all of the South Diamond drainage except Burnt Canyon, a small headwater stream;
3. Propagation activities at hatcheries had not proceeded as planned and fish were not available to replenish wild stocks; and
4. Brown trout, a predator, was present in Iron Creek, which at the time was thought to harbor one of the original pure populations of Gila trout.

The Gila Trout Recovery Plan was revised in 1993 to incorporate new information about ecology of the species and recovery methods. Criteria for downlisting remained essentially the same as in the 1984 revision but were more specific. The 1993 plan specified that downlisting would be considered ''when all known indigenous lineages are replicated in the wild'' and when Gila trout were ''established in a sufficient number of drainages such that no natural or human-caused event may eliminate a lineage.'' The recovery plan was revised again in 2003 (Service 2003). The criteria for downlisting in the 2003 Recovery Plan include the following: (1) The four known non-hybridized indigenous lineages are protected and replicated in the wild in at least 85 km (53 mi) of streams; (2) each known non-hybridized lineage is replicated in a stream geographically separate from its remnant population such that no natural or human-caused event may eliminate a lineage; and (3)

an Emergency Evacuation Procedures Plan for Gila Trout (Emergency Plan) to address wildfire impacts and discovery of non-native salmonid invasion in Gila trout streams has been developed and implemented.

Today three of the four original pure populations (Main Diamond, South Diamond, and Spruce Creeks) are replicated at least once. The Service believes the three replicated populations are secure and the viability of the Gila trout is sufficiently protected through these three populations. The species is no longer in danger of extinction. Whiskey Creek, the fourth pure population, is not replicated. The Service believes that a small population of Gila trout remains in Whiskey Creek and that it may be possible to replicate the Whiskey Creek population in the future. Work will continue to conserve the Whiskey Creek lineage, if possible. Whiskey Creek is considered a harsh environment, and the Gila trout population there has been in a tenuous situation. A broodstock management plan and an Emergency Plan have been completed (Kincaid and Reisenbichler 2002; Service 2004). Recovery actions have included chemically treating streams within the historic range of the species to remove non-native fish species, removing non-native trout by electrofishing, and constructing physical barriers to prevent movement of non-natives into renovated reaches (Service 2003).

Surveys of the 12 existing populations indicate that the recovery efforts to remove non-native fish and prevent their return to the renovated areas have been successful (Service 2003). Replicated populations in New Mexico are successfully reproducing, indicating that suitable spawning and rearing habitats are available. Replicated populations in Arizona exist in Raspberry and Dude Creeks. Young of the year were planted in Raspberry Creek in Arizona in 2000. In 2004, Gila trout in Raspberry Creek were found in mixed size classes, indicating that the fish spawned and successfully recruited. Although some fish were removed from Raspberry Creek due to the threat of wildfire, some of these fish were restocked in November 2004 into the uppermost portions of Raspberry Creek, which survived the impacts caused by the fire and which still support Gila trout. The status of the population at Raspberry Creek will be reassessed in 2005. Factors limiting reproduction in Dude Creek in Arizona are not known.

Overall, there has been an increase in the total wild population of Gila trout. In 1992, the wild populations of Gila trout were estimated to be less than 10,000 fish greater than age 1. In 2001, the population in New Mexico was estimated to be 37,000 fish (Brown *et al.* 2001). As noted above, Gila trout were more recently replicated in Arizona; as such, we do not have estimated numbers of fish at this time. The stream renovation and transplantation efforts have been accomplished jointly by the Service, Forest Service, NMDGF, AGFD, and New Mexico State University. Original pure populations and their replicates are summarized in Table 1.

TABLE 1.—SUMMARY AND STATUS OF STREAMS INHABITED BY GILA TROUT AS OF JANUARY 2001 (ORIGINAL PURE POPULATION (*i.e.*, RELICT) LINEAGES IN BOLD)

State	County	Stream name	Drainage	km (mi) of stream inhabited	Origin
NM	Sierra	**Main Diamond Creek**	East Fork Gila River	6.1 (3.8)	**Relict Lineage** Eliminated in 1989, re-established in 1994.
NM	Grant	McKnight Creek	Mimbres River	8.5 (5.3)	Replicate of Main Diamond, est. 1970.
NM	Grant	Black Canyon	East Fork Gila River	18.2 (11.3)	Replicate of Main Diamond, est. 1998.
NM	Catron	Lower Little Creek	West Fork Gila River	6.0 (3.7)	Replicate of Main Diamond, est. 2000.
NM	Catron	Upper White Creek	West Fork Gila River	8.8 (5.5)	Replicate of Main Diamond, est. 2000.
NM	Sierra	**South Diamond Creek**[1]	East Fork Gila River	6.7 (4.2)	**Relict Lineage** Eliminated in 1995, re-established in 1997.
NM	Catron (Grant)	Mogollon Creek[2]	Gila River	28.8 (17.9)	Replicate of South Diamond Creek, est. 1987.
NM	Catron	**Spruce Creek**	San Francisco River	3.7 (2.3)	**Relict Lineage**
NM	Catron	Big Dry Creek	San Francisco River	1.9 (1.2)	Replicate of Spruce Creek, est. 1985.
AZ	Gila	Dude Creek	Verde River	3.2 (2.0)	Replicate of Spruce Creek, est. 1999.
AZ	Greenlee	Raspberry Creek	Blue River	6.0 (3.7)	Replicate of Spruce Creek, est. 2000.
NM	Catron	**Whiskey Creek**	West Fork Gila River	2.6 (1.6)	**Relict Lineage**

[1] South Diamond Creek includes Burnt Canyon.
[2] Mogollon Creek includes Trail Canyon, Woodrow Canyon, Corral Canyon, and South Fork Mogollon Creek. Portions of the drainage are in Grant County, New Mexico.

Three of the four original pure population lineages are currently protected and replicated in 100 km (62 mi) of stream, each replicate is geographically separate from its original pure population, and an Emergency Plan has been developed and implemented. The Emergency Plan addresses wildfire-related impacts and discovery of non-native salmonid invasions (Service 2004). In 2002, the Emergency Plan (Service 2004) was implemented during the Cub Fire to evacuate fish from Whiskey Creek (Brooks 2002), and in 2003 the plan was implemented during the Dry Lakes Fire to remove fish from Mogollon Creek (J. Brooks, U.S. Fish and Wildlife Service, *in litt.* 2003b).

Summary of Factors Affecting the Species

Section 4 of the Act and regulations issued to implement the listing provisions of the Act (50 CFR Part 424) set forth the procedures for listing, reclassifying, and delisting species. Species may be listed as threatened or endangered if one or more of the five factors described in section 4(a)(1) of the Act threaten the continued existence of

the species. A species may be reclassified, according to 50 CFR 424.11(c), if the best scientific and commercial data available substantiate that the species' status at which it is listed is no longer correct. This analysis must be based upon the five categories of threats specified in section 4(a)(1).

For species that are already listed as threatened or endangered, this analysis of threats is primarily an evaluation of the threats that could potentially affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections. Our evaluation of the future threats to the Gila trout that would occur after reduction of the protections of the Act is partially based on the protection provided by the Gila and Aldo Leopold Wilderness areas, the Emergency Plan, the broodstock management plan, and limitations on take that would be determined by the States in collaboration with us.

After a thorough review of all available information and an evaluation of the five factors specified in section 4(a)(1) of the Act, we are proposing to reclassify the Gila trout as threatened, with a special rule allowing for recreational fishing, due to partial recovery. Discussion of the five listing factors and their application to recovery of the Gila trout are as follows:

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

In the past, Gila trout populations were threatened by habitat degradation and watershed disturbances (52 FR 37424). These factors compounded the threats posed by non-native salmonids (*see* Factors C and E below for discussions on non-native salmonids). We discuss habitat degradation from livestock grazing, timber harvest, and wildfires below.

Livestock Grazing

Intensive livestock grazing has been shown to increase soil compaction, decrease infiltration rates, increase runoff, change vegetative species composition, decrease riparian vegetation, increase stream sedimentation, increase stream water temperature, decrease fish populations, and change channel form (Meehan and Platts 1978; Kaufman and Kruger 1984; Schulz and Leininger 1990; Platts 1991; Fleischner 1994; Ohmart 1996). Although direct impacts to the riparian zone and stream can be the most obvious sign of intensive livestock grazing, upland watershed condition is also important because changes in soil compaction, percent cover, and vegetative type influence the timing and amount of water delivered to stream channels (Platts 1991). Increased soil compaction, decreased vegetative cover, and a decrease in grasslands lead to faster delivery of water to stream channels, increased peak flows, and lower summer base flow (Platts 1991; Ohmart 1996; Belsky and Blumenthal 1997). As a consequence, streams are more likely to experience flood events during monsoons (water runs off quickly instead of soaking into the ground) that negatively affect the riparian and aquatic habitats and are more likely to become intermittent or dry in September and October (groundwater recharge is less when water runs off quickly) (Platts 1991; Ohmart 1996).

Improper livestock grazing practices degrade riparian and aquatic habitats, likely resulting in decreased production of trout (Platts 1991). Livestock affect riparian vegetation directly by eating grasses, shrubs, and trees, by trampling the vegetation, and by compacting the soil. Riparian vegetation benefits streams and trout by providing insulation (cooler summer water temperatures, warmer winter water temperatures), by filtering sediments so that they do not enter the stream (sediment clogs spawning gravel and reduces the survival of salmonid eggs), by providing a source of nutrients to the stream from leaf litter (increases stream productivity), and by providing root wads, large woody debris, and small woody debris to the stream (provides cover for the fish) (Kauffman and Krueger 1984; Platts 1991; Ohmart 1996). Poor livestock grazing practices can increase sedimentation through trampling of the steam banks (loss of vegetative cover), by removal of riparian vegetation (filters sediment), and through soil compaction (decreases infiltration rates, increases runoff, causes increased erosion). Sediment is detrimental to trout because it decreases the survival of their eggs (Bjornn and Reiser 1991), and because of its negative impact on aquatic invertebrates, a food source for trout (Wiederholm 1984).

In the late 1800s and early 1900s, livestock grazing was uncontrolled and unmanaged over many of the watersheds that contain Gila trout, and much of the landscape was denuded of vegetation (Rixon 1905; Duce 1918; Leopold 1921; Leopold 1924; Ohmart 1996). Livestock grazing is more carefully managed now, which has resulted in less impact to streams occupied by Gila trout. Improved grazing management practices (*e.g.*, fencing) have reduced livestock access to streams. Six of the 12 streams currently occupied by Gila trout are within Forest Service grazing allotments. However, as described below, on creeks occupied by Gila trout, grazing has either been suspended or cattle are typically excluded.

Mogollon Creek is within the Rain Creek/74 Mountain Allotment. This allotment receives only winter use, and much of the riparian habitat is inaccessible to livestock. Riparian vegetation along Mogollon Creek is in good condition (A. Telles, U.S. Forest Service, Gila National Forest, in litt. 2003c). Main Diamond Creek and the adjacent riparian zone, located in the South Fork Allotment, are excluded from grazing. The Forest Service is implementing a fencing project along Turkey Run Creek to prevent livestock trespass into Main Diamond Creek (A. Telles, U.S. Forest Service, Gila National Forest, in litt. 2003c).

South Diamond Creek and Black Canyon are within the Diamond Bar Allotment, where grazing was suspended in 1996. This has resulted in marked improvements in the condition of riparian and aquatic habitat in these areas (A. Telles, U.S. Forest Service, Gila National Forest, in litt. 2003c).

In Arizona on the Apache-Sitgreaves National Forest, Raspberry Creek, which is located in the Blue Range Primitive Area, includes two grazing allotments, Strayhorse and Raspberry. The Strayhouse Allotment includes about 75 percent of the watershed above the fish barrier. The allotment was evaluated in July 1998, and determined to be in ''Proper Functioning Condition'' (D. Bills, U.S. Fish and Wildlife Service, in litt. 2003d). It has a well-developed riparian plant community and no adverse impacts from ongoing livestock grazing (Service 2000). Evaluation of the Raspberry Allotment occurred twice in 1998 and concluded that the allotment was ''Functional—At Risk'' and in a ''Downward'' trend (Service 2000). The report noted an incised channel (eroded downward), and concluded that upland watershed conditions were contributing to the riparian degradation. Significant changes were made to the Raspberry Allotment in 2000 (Service 2000). Specifically, the Forest Service required a reduction in livestock numbers to 46 cattle from November 1 to June 14 (or removal of cattle prior to June 14 if utilization standards are reached). Prior to this, 225 cattle were permitted on the Allotment yearlong and 160 cattle were permitted from January 1 to May 15.

Dude Creek, on the Tonto National Forest, is within the East Verde Pasture of the Cross V Allotment. Current management techniques are designed to protect the stream banks and riparian

vegetation, thereby reducing sedimentation and increasing river insulation (and thereby maintaining cooler summer and warmer winter water temperatures).

Timber Harvest

Logging activities in the early to mid 1900s likely caused major changes in watershed characteristics and stream morphology (Chamberlin *et al.* 1991). Rixon (1905) reported the occurrence of small timber mills in numerous canyons of the upper Gila River drainage. Early logging efforts were concentrated along canyon bottoms, often with perennial streams. Tree removal along perennial streams within the historical range of Gila trout likely altered water temperature regimes, sediment loading, bank stability, and availability of large woody debris (Chamberlin *et al.* 1991). Nine of 10 populations in New Mexico exist in the Aldo Leopold Wilderness or Gila Wilderness. Of the two populations in Arizona, Raspberry Creek occurs in the Blue Range Primitive Area. Timber harvest is not allowed in wilderness or primitive areas. There are no plans for timber harvest near the other streams that have Gila trout (A. Telles, U.S. Forest Service, Gila National Forest, in litt. 2003c). If timber harvest were to be proposed in the future, in the two areas located outside of a wilderness or primitive area, the Forest Service would need to consider the effects of the proposed action under section 7 of the Act.

Fire

High-severity wildfires, and subsequent floods and ash flows, caused the extirpation of seven populations of Gila trout since 1989: Main Diamond (1989), South Diamond (1995), Burnt Canyon (1995), Trail Canyon (1996), Woodrow Canyon (1996), Sacaton Creek (1996), Upper Little Creek (2003) (Propst *et al.* 1992; Brown *et al.* 2001; J. Brooks, Service, pers. comm. 2003). Lesser impacts were experienced in 2002 when ash flows following the Cub Fire affected the lower reach of Whiskey Creek. However, lower Whiskey Creek is frequently intermittent and typically contains few fish (Brooks 2002). Upper Whiskey Creek, where the majority of the fish occur, was not affected by the Cub Fire. The Cub Fire also impacted the upper West Fork Gila and may have eliminated non-native trout from the watershed upstream of Turkey Feather Creek (Brooks 2002). In 2003, fire retardant was dropped on Black Canyon, affecting approximately 200 m (218 yards) of stream (J. Monzingo, U.S. Forest Service, Gila National Forest, in litt. 2003e). Although some Gila trout were killed, the number of mortalities is unknown (J. Monzingo, U.S. Forest Service, Gila National Forest, in litt. 2003e) because dead fish were carried by the current out of the area by the time fire crews arrived. However, a week after the retardant drop, live Gila trout were observed about 400 m (438 yards) below the drop site (J. Monzingo, U.S. Forest Service, Gila National Forest, in litt. 2003e).

Severe wildfires capable of extirpating or decimating fish populations are a relatively recent phenomenon, and result from the cumulative effects of historical or overly intensive grazing (can result in the removal of fine fuels needed to carry fire) and fire suppression (Madany and West 1983; Savage and Swetnam 1990; Swetnam 1990; Touchan *et al.* 1995; Swetnam and Baisan 1996; Belsky and Blumenthal 1997; Gresswell 1999), as well as the failure to use good forestry management practices to reduce fuel loads. Historic wildfires were primarily cool-burning understory fires with return intervals of 3–7 years in ponderosa pine (Swetnam and Dieterich 1985). Cooper (1960) concluded that prior to the 1950s, crown fires were extremely rare or nonexistent in the region. In 2003, over 200,000 acres burned in the Gila NF (S. Gonzales, U.S. Fish and Wildlife Service, in litt. 2004). The watersheds of Little Creek, Black Canyon, White Creek, and Mogollon Creek were affected. Because Gila trout are found primarily in isolated, small streams, avoidance of ash flows is impossible and opportunities for natural recolonization usually do not exist (Brown *et al.* 2001). Persistence of Gila trout in streams affected by fire and subsequent ash flows is problematic. In some instances, evacuation of Gila trout from streams in watersheds that have burned is necessary (Service 2004).

Effects of fire may be direct and immediate or indirect and sustained over time (Gresswell 1999). The cause of direct fire-related fish mortalities has not been clearly established (Gresswell 1999). Fatalities are most likely during intense fires in small, headwater streams with low flows (less insulation and less water for dilution). In these situations, water temperatures can become elevated or changes in pH may cause immediate death (Cushing and Olson 1963). Spencer and Hauer (1991) documented 40-fold increases in ammonium concentrations during an intense fire in Montana. Ammonia is very toxic to fish (Wetzel 1975). The inadvertent dropping of fire retardant in streams is another source of direct mortality during fires (J. Monzingo, U.S. Forest Service, Gila National Forest, in litt. 2003e).

Indirect effects of fire include ash and debris flows, increases in water temperature, increased nutrient inputs, and sedimentation (Swanston 1991; Bozek and Young 1994; Gresswell 1999). Ash and debris flows can cause mortality months after fires occur when barren soils are eroded during monsoonal rain storms (Bozek and Young 1994; Brown *et al.* 2001). Fish suffocate when their gills are coated with fine particulate matter, they can be physically injured by rocks and debris, or they can be displaced downstream below impassable barriers into habitat occupied by non-native trout. Ash and debris flows or severe flash flooding can also decimate aquatic invertebrate populations that the fish depend on for food (Molles 1985; Rinne 1996; Lytle 2000). In larger streams, refugia are typically available where fish can withstand the short-term adverse conditions; small headwater streams are usually more confined, concentrating the force of water and debris (Pearsons *et al.* 1992; Brown *et al.* 2001).

Increases in water temperature occur when the riparian canopy is eliminated by fire and the stream is directly exposed to the sun. After fires in Yellowstone National Park, Minshall *et al.* (1997) reported that maximum water temperatures were significantly higher in headwater streams affected by fire than temperatures in reference (unburned) streams; these maximum temperatures often exceeded tolerance levels of salmonids. Warm water is stressful for salmonids and can lead to increases in disease and lowered reproductive potential (Bjornn and Reiser 1991). Salmonids need clean, loose gravel for spawning sites (Bjornn and Reiser 1991). Ash and fine particulate matter created by fire can fill the interstitial spaces between gravel particles and eliminate spawning habitat or, depending on the timing, suffocate eggs that are in the gravel. Increases in water temperature and sedimentation can also impact aquatic invertebrates, changing species composition and reducing population numbers (Minshall 1984; Wiederholm 1984; Roy *et al.* 2003), consequently affecting the food supply of trout.

As discussed above, in the ''Timber'' and ''Grazing'' sections, we have determined that the threats to Gila trout habitat from grazing and timber harvest have been greatly reduced over time. It is expected that the livestock management practices (*e.g.*, exclusion from riparian zones, reduction in numbers, suspension of grazing in some allotments) that have been implemented

will remain in place (A. Telles, U.S. Forest Service, Gila National Forest, in litt. 2003c). Additionally, the Forest Service will continue to consider the effects of grazing on Gila trout under section 7 of the Act. Presently, 9 of the 10 streams that contain Gila trout occur in the Aldo Leopold Wilderness Area or the Gila Wilderness within the Gila National Forest, New Mexico. Timber harvest, roads, and mechanized vehicles are not allowed in wilderness areas, providing further protection to the habitat of Gila trout. Dispersed recreation does occur in wilderness areas but because of the inaccessibility of most of the streams (not near roads, hiking or backpacking is required), dispersed recreation has very little impact on the habitat. By practice, the NMDGF does not stock non-native trout within wilderness areas or above any barrier that protects a population of Gila trout. The NMDGF has not stocked non-native fish in wilderness areas for over 20 years (Mike Sloan, NMDGF, pers. comm. 2004).

High-severity forest fires remain a threat to isolated populations because natural repopulation is not possible. However, populations have been reestablished after forest fires (Main Diamond and South Diamond Creeks), there is an Emergency Plan (Service 2004) that outlines procedures to be taken in case of a high-severity forest fire, and most populations are sufficiently disjunct (*e.g.*, separated by mountain ridges), thereby ensuring that one fire would not affect all populations simultaneously. Additionally, as discussed in this rule, fires have occurred in recent times in many areas occupied by Gila trout. Thus, the risk of fire in these areas, especially one that would affect all populations, is reduced due to an overall reduction in fuel loads. Populations may still be extirpated because of forest fires, but through management activities (rescue of fish, reestablishment of populations, hatchery management) populations can be, and have been, reestablished successfully once the habitat recovers.

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

All stream reaches that contain Gila trout have been closed to sport fishing since the fish was listed in 1967. While some illegal fishing may take place, we believe that the amount of take is small. These are remote high-elevation streams located away from roads and difficult to access. NMDGF visits the recovery streams on an annual basis and has found limited evidence of illegal fishing activity (*e.g.*, fishing tackle has been found on a few occasions). Also, because NMDGF makes periodic visits to these streams, we believe their possible presence at unpredictable times serves as a deterrent to illegal angling activities.

The special rule (see ''Description of Proposed Special Rule'' section below) being proposed with this reclassification would enable NMDGF and the AGFD to promulgate special regulations allowing recreational fishing of Gila trout in specified waters, not including the four relict populations identified in Table 1 above. Any changes to the recreational fishing regulations will be made by the States with in collaboration with the Service. Management as a recreational species will be conducted similar to Apache trout, with angling in both recovery and enhancement waters. Enhancement waters are those managed solely for recreational purposes. Recreational management for Gila trout will be consistent with the goals of the recovery plan for the species (Service 2003). It is anticipated that implementation of the special rule will benefit the Gila trout by providing a means whereby excess Gila trout may be placed in waters that can provide a recreational benefit, thereby avoiding potential overcrowding in the designated recovery streams. Additionally, the special rule contributes to the conservation of the Gila trout through: (1) Eligibility for Federal sport fishing funds, (2) increase in the number of wild populations, (3) enhanced ability to monitor populations (*e.g.*, creel censuses) for use in future management strategies, and (4) creation of goodwill and support in the local community. Each of these topics is discussed in detail in the ''Description of Proposed Special Rule'' section below.

A few Gila trout are removed from the wild for propagation, and some are taken for scientific or educational proposes, but the take is small and controlled through Federal and State permitting. Federal and State permitting will continue. Because of the remoteness of current and proposed recovery streams, the special regulations that will be imposed on angling, and the small amount of Gila trout collected for scientific and educational purposes, we determine that overutilization for recreational, scientific, or educational purposes is not a threat to Gila trout.

C. Disease or Predation

The carrier of bacterial kidney disease (BKD) is known to occur in trout in the upper West Fork drainage. The carrier, a bacterium (*Renibacterium salmoninarum*), occurs in very low amounts in brown trout populations in the upper West Fork Gila River drainage and in the Whiskey Creek population of Gila trout. The bacterium was also detected in rainbow *x* Gila trout hybrid populations in Iron, McKenna, and White Creeks. Although the carrier bacterium is present, there were no signs of BKD in any Gila trout populations (Service 2003). Trout populations in the Mogollon Creek drainage, McKnight Creek, Sheep Corral Canyon, and Spruce Creek all tested negative for BKD.

Whirling disease (WD) was first detected in Pennsylvania, in 1956, and was transmitted here from fish brought from Europe (Thompson *et al.* 1995). *Myxobolus cerebralis* is a parasite that penetrates through the skin or digestive tract of young fish and migrates to the spinal cartilage, where it multiplies very rapidly, putting pressure on the organ of equilibrium. This causes the fish to swim erratically (whirl) and have difficulty feeding and avoiding predators. In severe infections, the disease can cause high rates of mortality in young-of-the-year fish. Water temperature, fish species and age, and dose of exposure are critical factors influencing whether infection will occur and its severity (Hedrick *et al.* 1999). Fish that survive until the cartilage hardens to bone can live a normal life span, but have skeletal deformities. Once a fish reaches 3 to 4 inches in length, cartilage forms into bone and the fish is no longer susceptible to effects from whirling disease. Fish can reproduce without passing the parasite to their offspring; however, when an infected fish dies, many thousands to millions of the parasite spores are released to the water. The spores can withstand freezing, desiccation, passage through the gut of mallard ducks, and can survive in a stream for many years (El-Matbouli and Hoffmann 1991). Eventually, the spore is ingested by its alternate host, the common aquatic worm, *Tubifex tubifex*. After about 3.5 months in the gut of the worms, the spores transform into a Triactinomyon (TAM). The TAMs leave the worm and attach to the fish or they are ingested when the fish eats the worm. The spores are easily transported by animals, birds, and humans.

Salmonids native to the United States did not evolve with WD. Consequently, most native species have little or no natural resistance. Colorado River cutthroat trout and rainbow trout are very susceptible to the disease, with 85 percent mortality within 4 months of exposure to ambient levels of infectivity in the Colorado River (Thompson *et al.* 1999). Brown trout, native to Europe,

evolved with *M. cerebralis,* become infected but rarely suffer clinical disease. At the study site on the Colorado River, brown trout thrive, but there has been little survival beyond 1 year of age of rainbow trout since 1992 (Thompson *et al.* 1999). Gila trout are also vulnerable to WD (D. Shroufe, Arizona Game and Fish Department, in litt. 2003a).

There have been no documented cases of WD in the Gila River drainage in New Mexico or Arizona. Wild and hatchery populations of Gila trout tested have been negative for WD (Service 2003). Although WD is a potential threat to Gila trout, high infection rates would probably only occur where water temperatures are relatively warm and where *T. tubifex* is abundant. *T. tubifex* is the secondary host for the parasite; when *T. tubifex* numbers are low, the number of TAMs produced will be low, and consequently, the infection rate of Gila trout will be low. *T. tubifex* is an ubiquitous aquatic oligochaete (worm); however, it is most abundant in degraded aquatic habitats, particularly in areas with high sedimentation, warm water temperatures, and low dissolved oxygen. In clear coldwater streams (typical Gila trout habitat) it is present but seldom abundant. Infection rate is low at temperatures less than 10°C (50°F) (Thompson *et al.* 1999).

We determine that BKD is not a threat to the 4 original pure populations or the 10 replicated populations because of its limited distribution, low occurrence within the trout populations, and lack of any clinical evidence of the disease in Gila trout. Likewise, we determine that WD is not a threat to Gila trout because they are located in high-elevation headwater streams that typically have cold water and low levels of sedimentation, which limit *T. tubifex* populations and infection rates from TAMs. Although Gila trout may be susceptible to infection, there has not been a documented occurrence of WD in a wild Gila trout population. Mora National Fish Hatchery and Technology Center, where Gila trout have been held, has tested negative for WD. In addition, NMDGF and AGFD are educating the public about how to prevent the spread of WD (*e.g.*, through educational brochures and information provided with fishing regulations).

Predation of Gila trout by brown trout has been a serious problem, and continues to be a problem for fish below stream barriers. Brown trout, a non-native salmonid, preys on Gila trout and is able to severely depress Gila trout populations. Predation threats have been addressed by chemically removing all non-native fish and reintroducing only native species. The specific locations and timing of the potential use of chemicals in any future stream restoration projects would be made by the States in coordination with the Recovery Team. Additionally, the Gila Trout Recovery Plan provides a list of potential stream reaches that may be used for recovery purposes. Physical stream barriers, either natural waterfalls or constructed waterfalls (*e.g.*, either composite concrete/rock or basket-type gabion) built by cooperating agencies, prevent brown trout from moving upstream and preying on Gila trout. Barrier failure is generally not considered a threat to existing Gila trout populations in New Mexico because most existing barriers are natural waterfalls. However, human-made barriers exist on lower Little Creek, McKnight Creek, and Black Canyon. Failure of human-made barriers would most likely result from catastrophic flooding and include scouring around barriers, undercutting, or complete removal. Brown trout and other non-native species downstream from these barriers remain a threat.

The threat of predation by brown trout has been reduced by eliminating brown trout from streams with Gila trout populations, and by creating barriers that prevent the upstream dispersal of brown trout into areas occupied by Gila trout. Field monitoring by the Service, Forest Service, AGFD, and the NMDGF of Gila trout provides a means to detect the introduction of brown trout into a Gila trout population, and, once detected the non-natives are removed (Service 2004). Each population is monitored at least once every 3 years. Monitoring may occur more, often depending upon the situation, such as additional surveys due to the occurrence of wildfire. Annual monitoring using electrofishing is not undertaken due to potential sampling impacts from electrofishing. The Emergency Plan provides further information on the procedures for detecting and addressing the threat of non-natives (Service 2004).

D. The Inadequacy of Existing Regulatory Mechanisms

Before the Gila trout was federally listed as endangered (1967), the species had no legal protection. Upon being listed under the Act, the Gila trout immediately benefited from a Federal regulatory framework that provided protection and enhancement of the populations in three ways. First, take was prohibited. Take is defined under the Act to include killing, harassing, harming, capturing, or collecting individuals or attempting to do any of these things. Habitat destruction or degradation is also prohibited if such activities harm individuals of the species. Second, section 7 of the Act requires that Federal agencies consult with the Service to ensure that their actions will not likely jeopardize the continued existence of the species. Third, once a species is listed, the Service is required to complete a recovery plan and make timely revisions, if needed. Thus, listing the species provided recognition, protection, and prohibitions against certain practices (such as take), facilitated habitat protection, and stimulated recovery actions.

Subsequent to the Federal listing action, the States of New Mexico and Arizona officially recognized the declining status of the species. Arizona designated the Gila trout as an endangered species in 1988, which includes species that are known or suspected to have been extirpated from Arizona but that still exist elsewhere. New Mexico designated the Gila trout as an endangered species (Group 1) on January 24, 1975 (NM State Game Commission Regulation No. 663) under authority of the Wildlife Conservation Act. Group 1 species are those whose prospects of survival or recruitment in New Mexico are in jeopardy. The designation provides the protection of the New Mexico Wildlife Conservation Act (Sections 17–2–37 through 17–2–18 NMSA 1978) and prohibits taking of such species except under a scientific collecting permit. New Mexico also has a limited ability to protect the species' habitat through the Habitat Protection Act (Sections 17–3–1 through 17–3–11) through water pollution legislation, and tangentially through a provision that makes it illegal to dewater areas used by game fish (Section 17–1–14). Take of Gila trout in Arizona is prohibited through State statute (Arizona Revised Statute Title 17) and Commission Order (Commission Order 40). We do not expect any changes in the current State protections provided to the Gila trout as a result of this rule. However, if our proposed special rule is finalized, the States of Arizona and New Mexico will likely be adopting regulations to allow for recreational fishing as described in the ''Description of the Proposed Special Rule'' section below.

We determine that because of the protection that would be provided from Federal listing as a threatened species, along with this proposed special rule, State regulatory protection, and habitat protection provided by the National Forests, there are adequate regulatory mechanisms to protect and enhance Gila trout populations and their habitat.

Many of these protective regulations, conservation measures, and recovery actions have substantially improved the status of the Gila trout.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

When the Gila trout was listed as endangered, the most important reason for the species' decline was hybridization and competition with and/or predation by non-native salmonids (52 FR 37424). Uncontrolled angling depleted some populations of Gila trout, which in turn encouraged stocking of hatchery-raised, non-native species (Miller 1950; Propst 1994). Due to declining native fish populations, the NMDGF propagated and stocked Gila trout, rainbow trout, cutthroat trout, and brown trout during the early 1900s to improve angler success. Gila trout were propagated from 1923 to 1935, at the Jenks Cabin Hatchery in the Gila Wilderness, but the program was abandoned because of the hatchery's poor accessibility and low productivity (Service 1984). After early stocking programs were discontinued, the non-native trout species persisted and seriously threatened the genetic purity and survival of the few remaining populations of Gila trout. Recent efforts to recover the species have included eliminating non-native salmonids from the species historic habitat through piscicide (fish-killing), mechanical removal, and construction of waterfall barriers to prevent their reinvasion. Currently, 12 viable populations of Gila trout exist in the absence of non-native salmonids.

We have determined that the threats posed by non-native fish are reduced because non-native trout are not present in the streams with original pure or replicated populations of Gila trout. Barriers are present to prevent non-native trout from dispersing into areas occupied by pure Gila trout populations. Drought, wildfire, and floods remain as threats. However, conditions are monitored and fish can be rescued from streams threatened by drying, fires, floods, or barrier failure, if necessary (Service 2004). As explained in the Emergency Plan, these remote areas may be accessed through helicopter or use of horses and mules, depending upon the urgency of the situation. Flooding that occurs in an undisturbed watershed is not considered a threat to Gila trout. However, flooding that occurs after a severe fire is a threat. Service personnel monitor fires and the potential for flooding, and rescue fish from streams that are in danger of flash floods (Service 2004). Rescued fish may be used in broodstock development, may be introduced into other suitable streams, or they can be placed back into their stream of origin once the habitat conditions are suitable. However, it may take many years for the habitat to recover to the point that it is suitable for trout again.

Summary

We believe that reclassifying the Gila trout from endangered to threatened status with a special rule is consistent with the Act, and that the special rule will further the conservation and recovery of this species. See the ''Description of the Proposed Special Rule'' section below for an explanation of the conservation benefits of the proposed special rule. Threatened status is appropriate because the number of populations has increased from 4 to 12 since recovery efforts began and the threats affecting the species have been reduced or eliminated. Additionally, as noted above, the wild populations of Gila trout were estimated to be fewer than 10,000 fish greater than age 1 in 1992. In 2001, almost 10 years later, the population in New Mexico had increased significantly and was estimated to be 37,000 fish (Brown *et al.* 2001). Three of the four original pure population lines are protected and replicated in 100 km (62 mi) of stream, each replicate is geographically separate from its remnant population, and an Emergency Plan was developed and has been implemented in 2002 and 2003 (Service 2004), and will continue to be implemented as necessary. A copy of the Emergency Plan is available by contacting the New Mexico Fishery Resources Office (*see* **ADDRESSES** section). We have determined that the Gila trout is no longer in danger of extinction throughout all or a significant portion of its range and therefore no longer meets the definition of endangered.

Threatened status is appropriate for the Gila trout because although the major threats have been reduced by recovery efforts and its status has improved, threats to the species still exist. Non-native salmonids, which were the major threat to the species, are not in the streams that currently support Gila trout. We will continue to work with the States to manage non-native salmonids. Current State and Federal regulations prohibit the take of Gila trout and few Gila trout are taken for scientific or educational purposes, in accordance with State and Federal permits under section 10(a)(1)(A) of the Act. State and Federal regulations governing take will continue after downlisting because the special rule will prohibit take, except for take related to recreational fishing activities in accordance with State law. Threats due to natural disasters remain, but are mitigated by the Emergency Plan that addresses wildfire- and drought-related impacts and discovery of non-native salmonid invasions (Service 2004) (see ''Recovery Plans and Accomplishments'' section for a discussion of past successes). Therefore, we believe that given continued careful management, reclassification to a threatened status is appropriate.

Description of the Proposed Special Rule

Through a special rule that amends our regulations at 50 CFR 17.44, we are proposing that some forms of recreational fishing be exempted from the prohibitions against take of Gila trout. Under current regulations regarding endangered species, angling for Gila trout is not allowed. Our proposed special rule replaces the Act's general prohibitions against take of Gila trout. Those prohibitions (under section 9 of the Act) make it illegal to import, export, take, possess, deliver, receive, carry, transport, ship in interstate commerce, or sell such species. The term take, defined in section 3 of the Act, means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. However, section 4(d) of the Act provides that we may issue a special rule when a species is listed as threatened. In that case, the general prohibitions in 50 CFR 17.31 for threatened species do not apply to that species, and the special rule contains all the prohibitions and exceptions that do apply. Typically, such special rules incorporate all the prohibitions contained in 50 CFR 17.31, with additional exceptions for certain forms of take that we have determined are not necessary to prohibit.

In 1978, we finalized regulations applying most of the take prohibition provisions to threatened wildlife (50 CFR 17.31). These procedures were established on April 28, 1978 (43 FR 18181), and amended on May 31, 1979 (44 FR 31580). This proposed rule, if made final, would change the status of the Gila trout from endangered to threatened. Reclassifying the species will have no effect on the regulations regarding protection and recovery of Gila trout, except for take related to recreational fishing as provided in the proposed special rule. However, the special rule included in this proposal would enable the States of Arizona and New Mexico to promulgate special regulations allowing recreational fishing

for Gila trout, beginning on the effective date of the final reclassification rule.

This proposed special rule will apply to Gila trout found in New Mexico and Arizona. The proposed special rule would allow recreational fishing of Gila trout in specified waters, not including the four relict populations identified in Table 1 above. As noted elsewhere, changes to the recreational fishing regulations will be made by the States in collaboration with the Service. Management as a recreational species will be conducted similar to Apache trout and consistent with the goals of the recovery plan for the species (Service 2003). For the reasons explained in this proposal, it is no longer necessary or advisable for the conservation of the Gila trout to prohibit take through regulated fishing. In general, establishment of recreational opportunities can be developed in recovery waters that have stable or increasing numbers of individuals (as measured by population surveys) and where habitat conditions are of sufficient quality to support viable populations of Gila trout (populations having annual recruitment, size structure indicating multiple ages, and individuals attaining sufficient sizes to indicate 3 to 7 years' survival). In addition, recreational opportunities may be developed in non-recovery or enhancement waters. The principal effect of the special rule is to allow take in accordance with fishing regulations enacted by New Mexico and Arizona. We will collaborate with the States to develop fishing regulations that are adequate to protect and conserve Gila trout. We anticipate New Mexico and Arizona will institute special regulations in certain waters that allow recreational fishing of Gila trout.

This proposed rule, even when made final, is not an irreversible action on our part. Reclassifying the Gila trout back to endangered status is possible and may be done through an emergency rule if a significant risk to the well-being of the Gila trout is determined to exist, or through a proposed rule should changes occur that alter the species' status or significantly increase the threats to its survival. Because changes in status or increases in threats (*e.g.*, wildland fire effects, non-native salmonid invasion, barrier failure, drought) might occur in a number of ways, criteria that would trigger another reclassification proposal cannot be specified at this time.

The proposed 4(d) special rule for recreational fishing is based on the best available science. We anticipate that over time, as a result of additional studies and as the analyses of monitoring data become available, some changes in these regulations may be required (*e.g.*, closure of areas previously permitted for fishing, or opening of new areas). Changes to the recreational fishing regulations will be made by the States in collaboration with the Service. Management as a recreational species will be consistent with the goals of the recovery plan for the species (Service 2003). These changes could result in an increase or decrease in restrictions on recreational fishing as determined in collaboration with State and Service personnel.

Conservation of the Gila Trout

As noted above, a special rule for a threatened species shall be issued by the Secretary when it is deemed necessary and advisable to provide for the ''conservation'' of the species. The term conservation, as defined in section 3(3) of the Act, means to use and the use of all methods and procedures necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, these methods and procedures may include regulated taking. Based on the definition of conservation in the section 3(3) of the Act, recreational fishing may be authorized pursuant to a 4(d) rule in order to relieve population pressures.

We currently have active production of Gila trout at the Mora National Fish Hatchery and Technology Center. Within the near future, recovery augmentation and broodstock management needs for these two lineages will likely require the production of up to 20,000 fish. Ensuring the genetic diversity of these 20,000 fish through implementation of the broodstock management plan will result in the simultaneous production of about 100,000 fish that are excess to the recovery needs of the Gila trout. Excess Gila trout are produced as a result of the specific controlled propagation techniques required to ensure the genetic quality of the Gila trout needed for recovery. Currently, hatchery-reared and rescued Gila trout are stocked only in streams designated for recovery that are closed to angling. If the excess Gila trout were to be stocked into the designated recovery streams, this would create population pressures due to overcrowding. The streams designated for recovery are small, high-elevation streams, which do not support great numbers of fish (*i.e.*, they have a low carrying capacity). While the numbers of Gila trout stocked into recovery streams would vary each year, depending on circumstances such as wildfire, we expect that the number of Gila trout produced would greatly exceed the carrying capacity of the recovery streams. We believe that placing excess Gila trout in streams (*e.g.*, lower West Fork Gila River downstream of the falls near White Creek confluence, and throughout the Middle Fork Gila River) and lakes (*e.g.*, Bill Evans Lake, Lake Roberts, Snow Lake) that are currently not identified for use as part of the long-term Gila trout recovery strategy would avoid any potential overcrowding in the designated recovery streams. Without a 4(d) rule in place that allows for recreational fishing, Gila trout could not be stocked in nonrecovery streams that are open to angling due to the take prohibitions of the Act that apply to endangered and threatened species. As proposed, the 4(d) rule for Gila trout would avoid overcrowding in the designated recovery streams by allowing excess Gila trout to be placed in streams open to angling. If excess Gila trout are not used for stocking in nonrecovery streams, we would be required to euthanize all genetically pure excess Gila trout because of limited space and resources to maintain them at the hatchery. Below we provide additional reasons as to how the proposed 4(d) rule provides for the conservation of the Gila trout beyond that of relieving potential population pressures due to overcrowding. Specifically, this proposed special 4(d) rule contributes to the conservation of the Gila trout through: (1) Determining eligibility for Federal sport fishing funds, (2) causing increase in the number of wild populations, (3) enhancing the ability to monitor populations, and (4) creating goodwill and support in the local community. Each of these topics is discussed in detail below.

Expansion of the Population

There are several benefits to stocking fish in streams and lakes. First, having Gila trout in additional stream miles and lakes will increase the overall security of the species. If Gila trout are introduced into larger, higher order streams that are less subject to catastrophic events and where refugia are more abundant, these fish are likely to persist even if a large-scale disturbance such as fire were to occur. It is probable that some Gila x rainbow

trout hybrids would be produced and that Gila trout might also be lost to predation by brown trout. However, it is expected that some pure Gila trout would persist since brown trout far outnumber rainbow trout in nonrecovery streams and the chance for hybridization would be minimal. Second, areas directly below existing barriers could also be targeted for stocking. These reaches of stream would then act as ''buffers'' between the pure populations and populations of Gila trout mixed with non-native trout. Through repeated stocking, the proportion of non-native trout would decline and decrease the likelihood that non-natives would pass the barrier, either by human transport or natural dispersal.

Finally, if Gila trout were stocked in additional waters, the angling public would be exposed to, and become more familiar with, Gila trout and their natural beauty and value as a sport fish. Having public support of recovery is essential to the success of the program. As noted above, there are several lakes (*e.g.*, Bill Evans Lake, Lake Roberts, Snow Lake) and stream segments (*e.g.*, lower West Fork Gila River downstream of the falls near White Creek confluence, and throughout the Middle Fork Gila River) that are not currently identified in long-term recovery strategies and that could provide quality angling opportunities for Gila trout. Within Arizona, Verde River, Oak Creek, Wet Beaver Creek, and West Clear Creek have potential for developing angling opportunities for Gila trout. Reservoirs include Watson, Willow, Mingus, and Deadhorse.

Eligibility for Funds

Once streams and lakes occupied by Gila trout are opened to angling, the trout can be designated as a ''sport fish'' and the amount of funds available to Gila trout restoration projects would increase tremendously. For example, as a sport fish the Gila trout would be eligible for funding through the Sport Fish Restoration Program (SFRP) for management activities, including hatchery production associated with the gila trout. In fiscal year 2004 NMDGF received $3,258,275 and AGFD received $3,556,597 through the SFRP. The specific amount that would be spent on the Gila trout using these funds would depend on the priorities of the NMDGF and the AGFD; however, as a sport fish the States would have this additional funding source available for restoration projects (P. Mullane, U.S. Fish and Wildlife Service, in litt. 2005). In contrast, the amount of Service money spent on Gila trout in 2004 is estimated at $137,500.

In Arizona, approximately $2.1 million (including matching dollars) are available to sport fishing projects (L. Riley, ADGF, pers.comm. 2004). In addition, about $1.7 million are available for the culture (hatchery production) of sport fish (L. Riley, ADGF, pers. comm. 2004). With increased hatchery production and establishment of new populations in additional waters, recovery goals could be reached sooner and more angling opportunities could be provided to the public. With an increase in the amount of money available for non-native trout removal, barrier construction, habitat restoration, and hatchery production, recovery and delisting of the Gila trout could be enhanced.

Monitoring and Education

Monitoring and education are critical to the successful conservation of the Gila trout. We intend to work closely with the States of New Mexico and Arizona to develop evaluation and assessment programs to gather population data (*e.g.*, size of fish caught, number caught and released), survival of released fish, and angler-related data (*e.g.*, time spent fishing, streams fished, catch rate, hooking, and handling mortality) on streams and lakes. Our ability to evaluate these data is essential to the development of management strategies that ensure the long-term conservation of Gila trout. Using a population viability model that examined mortality from various sources, Brown *et al.* (2001) found that up to 15 percent angling mortality of adult Gila trout per year had no effect on population viability. Although models never perfectly incorporate the complexity of natural systems and are only an approximation based on many assumptions (Schamberger and O'Neil 1986), they are useful tools that can be used by managers to improve recovery strategies. With information gathered from streams and lakes open to angling, the impact of angling on population dynamics could be tested directly, leading to better management of the populations, especially as the species moves closer to recovery.

We also intend to work with the States to develop education programs and materials on proper handling and release of Gila trout to reduce hooking and handling mortality in catch-and-release areas, and on species identification for educational purposes. Educating the public on the uniqueness of the Gila trout, its limited distributional range, and its value as one of New Mexico's and Arizona's few native trout is expected to build support for the conservation of the species.

Goodwill

As mentioned above, community support is essential to the recovery of Gila trout. Some members of the public have opposed Gila trout recovery efforts because of the loss of angling opportunities for non-native trout through the renovation of streams (Brooks *et al.* 2000; Blue Earth Ecological Consultants 2001). As stated earlier, we believe that adequate regulatory mechanisms are in place; however, illegal angling has occurred in streams officially closed to angling (NMDGF 1997a, b), and unauthorized stocking of non-native salmonids into streams either currently occupied by Gila trout or proposed for reintroductions have been documented in recent years (NMDGF 1998; Brooks *et al.* 2000). It is likely that because Gila trout evolved and are adapted to this ecosystem, they will produce more stable populations and a more dependable fishery than non-native trout (Turner 1986). There is also a demonstrated high public interest in the future angling opportunities for Gila trout (NMDGF 1997a, b). Therefore, we believe that the availability of recreational fishing for Gila trout will increase public support for the conservation and recovery of the species (NMDGF 1997a).

In the 1996 Policy for Conserving Listed or Proposed Species under the Endangered Species Act While Providing for and Enhancing Recreational Fisheries Opportunities (61 FR 27978), we note that fishery resources and aquatic ecosystems are integral components of our heritage and play an important role in the Nation's social, cultural, and economic well being. Accordingly, we are aggressively working to promote compatibility and reduce conflict between administration of the Act and recreational fisheries (Executive Order 12962). Carefully regulated recreational fishing is not likely to impact Gila trout populations, and can promote awareness and conservation of the species by maintaining public support for conservation.

In conclusion, Gila trout will continue to be protected under the Act, but reclassification from endangered to threatened with a special 4(d) rule would allow recreational fishing opportunities to be developed in recovery and enhancement waters, and avoid potential overcrowding in the designated recovery streams by allowing excess Gila trout to be placed in waters open to angling. Additionally, the 4(d)

rule would provide New Mexico and Arizona greater flexibility in the management of Gila trout, it will increase the amount of funding available for population expansion and habitat restoration, it will allow for the expansion and greater security of populations, it will enhance our ability to monitor and manage populations, and it will increase the public's knowledge and appreciation of this native trout. On the basis of our experience with Gila trout recovery, we expect an increase in public acceptance and greater opportunity for us to work with local agencies and the public to find innovative solutions to potential conflicts between endangered species' conservation and humans. We believe this special rule is consistent with the conservation of the species and that it will speed recovery of the Gila trout. Therefore, this special rule is necessary and advisable to provide for the conservation of the Gila trout.

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 encourages and results in conservation actions by Federal, State, and private agencies, and groups and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery plans be developed and implemented for the conservation of the species, unless a finding is made that such a plan will not promote the conservation of the species. Most of these measures have already been successfully applied to Gila trout.

Under this proposed rule, the protections of the Act will continue to apply to the Gila trout. This proposed rule would change the classification of the Gila trout from endangered to threatened, and allow New Mexico and Arizona to promulgate special regulations allowing recreational fishing of Gila trout. The protection required of Federal agencies and the prohibitions against taking and harm are discussed in the *Summary of Factors Affecting the Species* section, Factor D, the inadequacy of existing regulatory mechanisms.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. 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 any species listed as endangered or threatened, or to 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 consultation with us. If a Federal action is likely to jeopardize a species proposed to be listed as threatened or endangered or destroy or adversely modify proposed critical habitat, the responsible Federal agency must confer with us.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within the species' range. We believe that, based on the best available information, the following actions are not likely to result in a violation of section 9, provided these actions are carried out in accordance with existing regulations and permit requirements:

(1) In accordance with section 9(b)(1) of the Act, the possession, delivery, or movement, including interstate transport and import into or export from the United States, involving no commercial activity, of specimens of this taxon that were collected prior to the listing of this species (December 28, 1973);

(2) Activities authorized, funded, or carried out by Federal agencies (*e.g.*, grazing management, recreational trail or forest road development or use, road construction, prescribed burns, timber harvest, or piscicide application (fish-killing agent), when such activities are conducted in accordance with a biological opinion from us on a proposed Federal action;

(3) Activities that may result in take of Gila trout when the action is conducted in accordance with a valid permit issued by us pursuant to section 10 of the Act;

(4) Recreational activities such as sightseeing, hiking, camping, and hunting in the vicinity of Gila trout populations that do not destroy or significantly degrade Gila trout habitat as further defined in the FS and State management strategies for the occupied areas; and

(5) Angling activities in accordance with authorized fishing regulations for Gila trout in New Mexico and Arizona.

We believe that the following actions involving Gila trout could result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Take of Gila trout without a valid permit or other incidental take authorization issued by us pursuant to section 10 of the Act. Take includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions, except in accordance with applicable State fish and wildlife conservation laws and regulations;

(2) Possessing, selling, delivering, carrying, transporting, or shipping illegally taken Gila trout;

(3) Use of piscicides, pesticides, or herbicides that are not in accordance with a biological opinion issued by us pursuant to section 7 of the Act, or a valid permit or other incidental take authorization issued by us pursuant to section 10 of the Act;

(4) Intentional introduction of non-native fish species (*e.g.*, rainbow and brown trout) that compete or hybridize with or prey upon Gila trout;

(5) Destruction or alteration of Gila trout habitat that results in the destruction or significant degradation of cover, channel stability, substrate composition, increased turbidity, or temperature that results in death of or injury to any life history stage of Gila trout through impairment of the species' essential breeding, foraging, sheltering, or other essential life functions; and

(6) Destruction or alteration of riparian and adjoining uplands of waters supporting Gila trout by timber harvest, fire, poor livestock grazing practices, road development or maintenance, or other activities that result in the destruction or significant degradation of cover, channel stability, substrate composition, increased turbidity, or temperature that results in death of or injury to any life history stage of Gila trout through impairment of the species' essential breeding, foraging, sheltering, or other essential life functions.

Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the Field Supervisor of the New Mexico Ecological Services Field Office (*see* **ADDRESSES** section).

Requests for copies of the regulations concerning listed wildlife or inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, P.O. Box 1306, Albuquerque, New Mexico 87103

(telephone 505/248–6649; facsimile 505/248–6922).

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the document clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (*e.g.*, grouping and order of sections, use of headings, paragraphing) aid or reduce its clarity? (4) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand? Send a copy of any written comments about how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240.

Our practice is to make comments that we receive on this rulemaking, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by Federal law. In some circumstances, we may withhold from the rulemaking record a respondent's identity, as allowable by Federal law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, including individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed reclassification and special rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule immediately following publication in the **Federal Register** to these peer reviewers. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed actions.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposed rule.

Public Hearing

The Act provides for one or more public hearings on this proposed rule, if requested. Given the likelihood of a request, we plan to schedule two public hearings. We will hold one public hearing in Phoenix, Arizona on June 28, 2005 and one in Silver City, New Mexico on June 29, 2005. Announcements for the public hearings will be made in local newspapers.

Public hearings are designed to gather relevant information that the public may have that we should consider in our rulemaking. During the hearings, we will present information about the proposed action. We invite the public to submit information and comments at the hearings or in writing during the open public comment period. We encourage persons wishing to comment at the hearings to provide a written copy of their statement at the start of the hearings. This notice and public hearings will allow all interested parties to submit comments on the proposed reclassification and special rule. We are seeking comments from the public, other concerned governmental agencies, tribes, the scientific community, industry, or any other interested parties concerning the proposal. Persons may send written comments to the New Mexico Ecological Services Field Office (*see* **ADDRESSES** section) at any time during the open comment period. We will give equal consideration to oral and written comments.

Required Determinations

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* This rule will not impose new record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have analyzed this rule making in accordance with the criteria of the National Environmental Policy Act and 318 DM 2.2(g) and 6.3(D). We have determined that Environmental Assessments and Environmental Impact Statements, 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 of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Section 7 Consultation

We do not need to complete a consultation under section 7 of the Act for this rule making. The actions of listing, delisting, or reclassifying species under the Act are not subject to the requirements of section 7 of the Act. An intra-Service consultation is completed prior to the implementation of recovery or permitting actions for listed species.

Government-to-Government Relationship With Indian Pueblos and Tribes

In accordance with the Secretarial Order 3206, American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act (June 5, 1997); the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951); Executive Order 13175; and the Department of the Interior's requirement at 512 DM 2, we understand that we must conduct relations with recognized Federal Indian Pueblos and Tribes on a Government-to-Government basis. Therefore, we will solicit information from the Indian Pueblos and Tribes during the comment period. We will meet with any affected Indian Pueblos and Tribes to discuss potential effects on them or on their resources that may result from the reclassification of Gila trout and the special rule.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Authors

The primary authors of this notice are the New Mexico Ecological Services Field Office staff (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, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as follows:

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 § 17.11(h) by revising the entries in the Status and Special Rule columns of the entry for ''Trout, Gila'' under ''FISHES'' in 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							
*	*	*	*	*	*		*
Trout, Gila	*Oncorhynchus* (=Salmo) *gilae*	U.S.A. (AZ, NM)	entire	T	1, _	N/A	17.44(z)
*	*	*	*	*	*		*

3. Add the following paragraph (z) to read as follows:

§ 17.44 Special rules—fishes.

* * * * *

(z) Gila trout (*Oncorhynchus gilae*).

(1) Except as noted in paragraph (z)(2) of this section, all prohibitions of 50 CFR 17.31 and exemptions of 50 CFR 17.32 shall apply to the Gila trout.

(i) No person may possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of this section or in violation of applicable fish and conservation laws and regulations promulgated by the States of New Mexico or Arizona.

(ii) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense listed in this special rule.

(2) In the following instances you may take this species in accordance with applicable fish and wildlife conservation laws and regulations in New Mexico or Arizona, as constituted in all respects relevant to protection of Gila trout:

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

(ii) Fishing activities authorized under New Mexico or Arizona laws and regulations; and

(3) Any violation of applicable fish and wildlife conservation laws or regulations in New Mexico or Arizona with respect to the taking of this species is also a violation of the Act.

Dated: April 25, 2005.

Matt Hogan,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 05–9121 Filed 5–10–05; 8:45 am]

BILLING CODE 4310–55–P