

Upper Rio Grande Basin Water Operations Review and EIS
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Key Words: RGSM, Critical habitat

Completed By (Name): Janelle Harden; SWCA Albuquerque

Date: 4 June 2004

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Comments/Summary:

List of Subjects in 40 CFR Part 86

Administrative practice and procedure, Air pollution control, Gasoline, Labeling, Motor vehicles, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: January 20, 1993.

William K. Reilly,

Administrator.

[FR Doc. 93-4629 Filed 2-26-93; 8:45 am]

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DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

RIN 1018-AB56

Endangered and Threatened Wildlife and Plants; Notice of Reopening of Comment Period on Proposed Designation of Critical Habitat for Six Endangered Forest Species from Guam

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period on proposed designation of critical habitat.

SUMMARY: The U.S. Fish and Wildlife Service (Service) reopens the comment period for the proposed designation of critical habitat for six endangered forest species from Guam. The proposed rule was published on June 14, 1991 (56 FR 27485). The Service believes the comment period should be reopened at this time based on the availability of a revised Environmental Assessment pertaining to the establishment of an overlay refuge on U.S. Navy and U.S. Air Force lands on Guam. Additionally, in October 1992, the Inspector General of the Department of the Interior received a statement from a citizen of Guam who claims to have compelling, new information relating to the economic analysis done for the proposed rule, as well as other aspects of the proposed rule.

DATES: Comments on the proposed designation of critical habitat for six endangered forest species from Guam must be submitted by March 31, 1993.

ADDRESSES: Information, comments, or questions on the designation of critical habitat on Guam should be submitted to the Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Materials pertaining to the proposed designation of critical habitat will be available for public inspection

during normal business hours, by appointment, at the above address.

FOR FURTHER INFORMATION CONTACT:

Robert P. Smith, Field Supervisor, at the above Honolulu address (telephone 808/541-2749).

SUPPLEMENTARY INFORMATION:**Background**

On June 14, 1991 (56 FR 27485), the Service proposed to designate critical habitat for six endangered forest species from Guam: The little Mariana fruit bat (*Pteropus tokudae*), Mariana fruit bat (*Pteropus mariannus*), Guam broadbill (*Myiagra freycineti*), Mariana crow (*Corvus kubaryi*), Guam Micronesian kingfisher (*Halcyon cinnamomina cinnamomina*), and Guam bridled white-eye (*Zosterops conspicillatus conspicillatus*). The six species for which critical habitat has been proposed are found in the Mariana Islands in the western Pacific in the Territory of Guam. Two species, the Mariana fruit bat and the Mariana crow, are also found on the island of Rota in the Commonwealth of the Northern Mariana Islands. All were listed as endangered on August 27, 1984, due to one or more of the following activities: Poaching, predation by the introduced brown tree snake, and habitat loss. The proposed rule to designate critical habitat includes a total of 16,883 acres in northern Guam and 7,889 acres in southern Guam. The land is primarily under Federal ownership, with a smaller percentage owned by the Government of Guam and private landowners.

On July 12, 1991 (56 FR 31902), the Service announced the scheduling of a public hearing on the subject proposal. The public hearing was held in Agana, Guam, on July 31, 1991. The public was asked to submit written comments and materials by August 13, 1991. Subsequent to that date, the Guam Uranao Resort corporation requested the opportunity to submit additional information on the economic impacts of the proposed designation of critical habitat for consideration by the Service. The comment period was, therefore, reopened for two weeks on October 15, 1991, to accommodate this request (56 FR 51668). Since that date, the Service has prepared two versions of an Environmental Assessment for the establishment of an overlay refuge on Guam. On May 19, 1992, the National Wildlife Federation requested that the comment period be reopened, so that additional information on the proposed designation of critical habitat could be submitted for consideration. On June 12, 1992, the comment period was reopened

through July 15, 1992, both to accommodate the National Wildlife Federation request and to coordinate with the first open public comment period for the proposed Guam National Wildlife Refuge. A second draft of the Environmental Assessment for the proposed Guam National Wildlife Refuge is now available for public review. The revised Environmental Assessment for designation of the overlay refuge on U.S. Navy and U.S. Air Force lands may contain additional information that should be reviewed and considered in the process of arriving at a final decision for critical habitat on Guam. In addition, Mr. Antonio Artero Sablan of Guam, in a letter dated December 17, 1992, to Mr. James Richards of the Department of the Interior, claims to have "solid evidence" to show that parts of the proposed rule are flawed. The Service would like this information as a part of the documentation considered in a final decision on the proposed rule for critical habitat on Guam.

Additional information and comments may be submitted to the Service office in the ADDRESSES section until march 31, 1993.

Author

This notice was prepared by Mr. Robert Smith, U.S. Fish and Wildlife Service, Pacific Islands Office, P.O. Box 50167, Honolulu, Hawaii 96850 (telephone 808/541-2749).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. 99-625, 190 Stat. 3500, unless otherwise noted.)

List of Subjects in 50 CFR Part 17

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

Dated February 16, 1993.

Richard N. Smith,

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

[FR Doc. 93-4674 Filed 2-26-93; 8:45 am]

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50 CFR Part 17

RIN 1018-AB56

Endangered and Threatened Wildlife and Plants; Proposed Rule to List the Rio Grande Silvery Minnow as Endangered, With Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the Rio Grande silvery minnow (*Hybognathus amarus*) as an endangered species with critical habitat under authority of the Endangered Species Act of 1973, as amended (Act). This species of fish occurs only in the Rio Grande from Cochiti Dam downstream to the headwaters of Elephant Butte Reservoir, New Mexico. Threats to the species include loss of stream habitat due to dewatering, channelization and regulation of river flow to provide water for irrigation; diminished water quality caused by municipal, industrial, and agricultural discharge; and competition or predation by nonnative introduced fish species. Currently, the species occupies approximately five percent of its known historic range.

DATES: Comments from all interested parties must be received by April 30, 1993. Public hearing request must be received by April 15, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 3530 Pan American Highway NE., Suite D, Albuquerque, New Mexico 87107. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald L. Burton (see ADDRESSES) at (505) 883-7877.

SUPPLEMENTARY INFORMATION:

Background

The Rio Grande silvery minnow is one of seven species in the genus *Hybognathus* found in the United States (Pflieger 1980). The species was first described by Girard (1856) from specimens taken from the Rio Grande near Fort Brown, Cameron County, Texas. Physically, it is a stout silvery minnow with moderately small eyes and a small slightly oblique mouth (Pflieger 1975). Adults may reach 90 mm (3½ in) in total length (Sublette *et al.* 1990). The dorsal fin is distinctly pointed with the front of it located slightly closer to the tip of the snout than to the base of the tail (Pflieger 1975). Life color is silver with emerald reflections. The belly is silvery white, fins are plain, and barbels are absent (Sublette *et al.* 1990; Pflieger 1975).

This species was historically one of the most abundant and widespread fishes in the Rio Grande basin, occurring from Espanola, New Mexico, to the Gulf of Mexico (Bestgen and Platania 1991). It was also found in the

Pecos River, a major tributary of the Rio Grande, from Santa Rosa, New Mexico, downstream to its confluence with the Rio Grande (Pflieger 1980). Collection data indicate the species presently occupies about five percent of its historic range. It has been completely extirpated from the Pecos River and from the Rio Grande downstream of Elephant Butte Reservoir. Currently, it is found only in a 274 km (170 mi) reach of the Middle Rio Grande River, New Mexico, from Cochiti Dam, Sandoval County, to the headwaters of Elephant Butte Reservoir, Socorro County (Bestgen and Platania 1991). Throughout much of its historic range, decline of *H. amarus* may be attributed to modification of stream discharge patterns and channel desiccation by impoundments, water diversion for agriculture, and stream channelization (Cook *et al.* 1992; Bestgen and Platania 1991).

The Rio Grande silvery minnow no longer exists in the Pecos River where it was replaced by its congener, the introduced plains minnow (*H. placitus*) (Hatch *et al.* 1985; Bestgen *et al.* 1989; Cook *et al.* 1992). It is believed the plains minnow was introduced into the Pecos drainage during 1968, probably the result of the release of "bait minnows" which were collected from the Arkansas River drainage. The displacement that ensued was complete in less than one decade (Cowley 1979). The plains minnow may be more tolerant of modified habitats and therefore able to replace *H. amarus* in the modified reaches of the Pecos River where they were introduced. It is also believed the two species hybridized. Habitat alteration and resulting flow modification could have also contributed to extirpation of the species in the Pecos River.

Decline of the species in the Middle Rio Grande probably began in 1916 with the completion of Elephant Butte Dam. Construction of the dam signaled the beginning of an era of modification of the main stream Rio Grande and the construction of five major main stream dams within the minnow's habitat (Shupe and Williams 1988). These dams allowed the flow of the river to be manipulated and diverted for the benefit of agriculture. Often this manipulation resulted in the desiccation of reaches of river and elimination of all fish. Concurrent with construction of the main stream dams was an increase in the abundance of nonnative and exotic fish species as these species were stocked into the reservoirs created by the dams (Sublette *et al.* 1990). Once established, these species often completely replaced the native fish

fauna (Propst *et al.* 1987). Development of agriculture and the growth of cities within the historic range of *H. amarus* resulted in a decrease in the quality of water in the river which may have also adversely affected the range and distribution of the species.

Most land bordering the river where the species currently exists is owned by the Middle Rio Grande Conservancy District (District) which is a quasi-public agency of the State of New Mexico. Other landowners include six Pueblos, the U.S. Bureau of Reclamation, the Service, the U.S. Bureau of Land Management, New Mexico State Parks, New Mexico Department of Game and Fish, New Mexico State Lands Department, and the U.S. Army Corps of Engineers (Corps).

Water flow in the Middle Rio Grande is controlled by the Rio Grande Compact Commission (Commission). Established in 1929 for the purpose of permanently and equitably apportioning the flows of the Rio Grande, the Commission is composed of a Federal chairperson, appointed by the United States President, and three voting members—a representative designated by the Texas governor and the state engineers of New Mexico and Colorado. The Commission meets annually to review compliance with the compact over the preceding year, to hear reports from Federal water management agencies, and to consider water management decisions that have interstate implications. Other water managers and decision-makers who also determine timing and amount of flow in the river include the International Boundary and Water Commission, which ensures delivery of water to Mexico under international treaties; the Bureau of Reclamation, which has played an important role in water development in the Middle Rio Grande and has been actively involved in the major water supply networks of the basin; and the Corps, which is responsible for controlling any dredging or filling activities within navigable waterways and associated wetlands under the "404 permit" program. The Corps also has constructed and operates Abiquiu, Cochiti, Galisteo, and Jemez dams to control flood waters and sediment in the Rio Grande.

On February 19, 1991, approximately 80 pre-proposal notification letters were mailed to various governmental agencies, knowledgeable individuals, and the New Mexico Congressional delegation. The purpose of the letter was to inform recipients of the Service's intent to add *H. amarus* to the Federal list of Endangered and Threatened Wildlife and Plants and solicit their comments. The Service was particularly

interested in obtaining additional status information or information concerning threats to the continued survival of *H. amarus*. On May 22, 1991, a second informational letter was sent to the New Mexico Congressional delegation. Comments were received from New Mexico Department of Game and Fish; City of Albuquerque; Texas Parks and Wildlife Department; and the New Mexico Interstate Stream Commission. None who commented offered additional information concerning the status of the species or information concerning additional threats. Most commented that the range of the species had been severely reduced and that Federal listing should be considered. The response from the New Mexico Interstate Stream Commission included a historical review of water development in the Middle Rio Grande Valley.

On March 20, 1992, the Service held a meeting in Albuquerque, New Mexico, to explore with various interested governmental and private entities existing or potential flexibility in water delivery schedules that might avoid dewatering of the Rio Grande and the habitat of *H. amarus*. The Service also requested information which would add to the knowledge of the current distribution of the species. No new information concerning distribution, abundance, or threats to the species was provided.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal list of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Rio Grande silvery minnow (*Hybognathus amarus*) are as follows:

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

Since completion of Elephant Butte Dam in 1916, four additional main stream dams have been constructed on the mainstem Rio Grande, and two dams have been constructed on one of its major tributaries, the Rio Chama (Shupe and Williams 1988). Construction and ration of these dams have modified natural flow of the river. During low-flow years, these dams have the

capacity to completely divert all the flow from the natural river channel into irrigation ditches. These reservoirs also store spring runoff and summer inflows, which would normally cause flooding, and release this water back into the river channel over a prolonged period of time. This release is often made during the winter months when low flows would normally occur. The natural flow of the river has been replaced by flows which depart significantly from natural conditions. Although the mechanisms of how the decline of the species occurred are not well documented or understood, water flow manipulation may be one of the primary reasons *H. amarus* has been extirpated from 95 percent of its historic range.

From Elephant Butte Dam downstream approximately 322 km (200 mi) to its confluence with the Rio Conchos, the Rio Grande is fully controlled by reservoir releases and irrigation return flows. Meanders, oxbows, and other components of historic riverine habitat have been eliminated. Manipulated releases now pass water as efficiently as possible for agricultural irrigation and downstream deliveries.

Growth of agriculture and cities in the Rio Grande Valley during the last century may have adversely affected the quality of the river's water. During low-flow periods, a large percentage of the river's flow consists of municipal and agricultural discharge. As a result, less water is available to dilute pollutants. This degradation of water quality may affect *H. amarus* survival. Poor water quality in the Rio Grande near Albuquerque, especially during low flows, may be a problem as low numbers of *H. amarus* and an overall reduced fish community is found there (Bestgen and Platania 1991).

Two native main stream Rio Grande fish species, the phantom shiner (*Notropis orca*) and the bluntnose shiner (*Notropis simus*) have already become extinct. The Rio Grande silvery minnow may also be threatened with extinction through the last remnant of its occupied range due to significant and continuing habitat modification and destruction.

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

None known at this time. Due to the present reduced population of *H. amarus* in New Mexico, it is anticipated that New Mexico Department of Game and Fish will issue fewer and more restrictive permits to collect the species for scientific purposes.

C. Disease or Predation

When fish are forced into confined habitats due to low flow they are more susceptible to both disease and predation. Predation takes place when nonnative species including northern pike (*Esox lucius*), walleye (*Stizostedion vitreum*), white crappie (*Pomoxis annularis*), white bass (*Morone chrysops*), black and brown bullheads (*Ameiurus melas*, *A. nebulosus*), smallmouth bass (*Micropterus dolomieu*) and largemouth bass (*Micropterus salmoides*) are forced, during low flow or no flow, into limited habitat with *H. amarus* and other native species. Native predatory fish species including the Rio Grande club (*Gila pandora*) and bluegill (*Lepomis macrochirus*), may also prey upon subadult *H. amarus* under these circumstances. Avian and mammalian predation probably increases when *H. amarus* becomes confined in small clear water pools.

Confining fish to pools causes stress which can often result in outbreaks of parasitic disease. Most notable is the protozoan *Ichthyophthirius multifiliis* (ich) which can be stress-induced. External copepod parasites such as *Lernaea* are more common among fish in confined conditions. No studies have been conducted on the impact of disease and parasites upon *H. amarus*; therefore, the significance of these threats upon existing populations of the species is not known.

Another threat to the continued existence of *H. amarus* is the introduction and spread of exotic and nonnative game fish species into its habitat. These species have been introduced primarily by State and Federal fish and wildlife management agencies in efforts to develop sport fisheries in reservoirs created by the main stream dams. They have not remained confined to the reservoirs and have become established in the river both upstream from the impoundments and downstream of the dams. Once established, these species compete with *H. amarus* for space and food, or may prey upon them. This situation is exacerbated during periods of low flow when fish in the river are crowded into limited available habitat. Under these circumstances, the more predatory nonnative and exotic species prey upon native fishes including *H. amarus*.

D. The Inadequacy of Existing Regulatory Mechanisms

The State of New Mexico lists *H. amarus* as an endangered species, Group 2 (New Mexico State Game Comm., 1985), which are those species

" * * * whose prospects of survival or recruitment within the State are likely to be in jeopardy within the foreseeable future." This listing provides the protection of the New Mexico Wildlife Conservation Act (Section 17-2-37 through 17-2-46 NMSA 1978) and prohibits taking of such species except under the issuance of a scientific collecting permit. The protection afforded to the species by the State does not provide protection to the habitat upon which the species depends.

New Mexico water law does not include provisions for acquisition of instream water rights for protection of fish and wildlife and their habitats. This has been a major factor affecting the survival of species dependent upon the presence of instream flow.

State Game and Fish regulations in New Mexico allow the use of live minnows, including those brought into the State from other drainages, for sport fishing. This practice has encouraged the spread of bait fish species, one of which, the plains minnow, is known to have completely replaced *H. amarus* in the Pecos River.

E. Other Natural or Man-made Factors Affecting its Continued Existence

The only existing population of *H. amarus* continues to be threatened by annual dewatering of a large percentage of its habitat. This dewatering is primarily the result of diversion of river flow for agriculture within the Middle Rio Grande Valley. During a year when an average, or above average, amount of water is available, the impacts of the diversions are not severe. During a below average water-year, the river channel may be dry from Isleta Diversion Dam downstream approximately 179 km (111 mi) to the headwaters of Elephant Butte Reservoir for two months or more. When two below average flow years occur consecutively, a short lived species such as *H. amarus* can be severely affected, if not completely eliminated from the dry reaches of river.

During the 94 years for which flow records have been maintained for the Middle Rio Grande, it is not unusual for the 246 km (153 mi) reach of the Rio Grande from the Angostura Diversion Dam downstream to the reservoir to experience periods of zero flow. Even before construction of main stream dams the Middle Rio Grande frequently experienced periods of zero flow. During such periods, it is suspected *H. amarus* survived in areas where irrigation return flows re-entered the river, in the pools formed by water leaking through the gates of the diversion dams, and in the irrigation

ditches and drains. Some *H. amarus* probably survived in the reaches of stream above the diversions where their offspring could repopulate downstream reaches when conditions permitted.

Construction of main stream dams and impoundments stocked with nonnative fish, improved water delivery systems extending reaches of no flow in the river bed, and greater load of contaminants have exacerbated conditions. These conditions have decreased *H. amarus* populations to critically low levels.

In 1979, Cowley discovered the introduction of plains minnow (*H. placitus*) into the Pecos River drainage, New Mexico, from collections made as early as 1968, and also recognized the disappearance of native *H. amarus*. The last known collections of *H. amarus* from the Pecos River took place in 1968 near Roswell, New Mexico. These same collections verified the first specimens of *H. placitus* from the river. It is suspected, because of the widespread use of *H. placitus* as a commercial bait species, that its introduction into the Pecos River was the result of release of bait fish by anglers.

In 1958, in an effort to meet Rio Grande Compact water delivery requirements, the Bureau of Reclamation constructed a 96 km (60 mi) long conveyance channel from San Acacia to Elephant Butte Reservoir. The purpose of the conveyance channel is to divert all flow less than 57 m³/s (2,000 ft³/s) in order to prevent loss of the Rio Grande flow to seepage and evaporation from the aggraded riverbed. The conveyance channel has seldom been operated to its full capacity. If however, the channel were to be operated at full capacity, the natural stream bed downstream of San Acacia would have been dry more frequently and for longer periods of time. Both the Corps of Engineers and the Bureau of Reclamation are drafting plans to rehabilitate and protect the channel in order to bring it into full operation. Such actions will increase the likelihood of more frequent and longer periods of no flow in the river stretches essential to *H. amarus* survival.

In determining to propose this rule, the Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. The Service conducted a review of the status of the species and took into account efforts by the state and other agencies to protect the species. Based on this evaluation, the preferred action is to list the Rio Grande silvery minnow (*Hybognathus amarus*) as endangered. A decision to take no action would

constitute failure to properly classify this species pursuant to the Endangered Species Act and would exclude it from protection of the Act. This action is appropriate because of the significantly reduced range and declining abundance of the species, and because of the remaining threats to this fish and its habitat. Without Federal protection, *H. amarus* can be expected to become extinct in the foreseeable future.

Critical Habitat

Critical habitat, as defined by section 3 of the Act means:

(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and;

(ii) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being proposed for Rio Grande silvery minnow to include the main stream of the Rio Grande from the bridge crossing of State Highway 22 immediately south of Cochiti Dam, Sandoval County, New Mexico, downstream to the Atchison Topeka and Santa Fe Railroad crossing of the river near San Marcial, Socorro County, New Mexico. A more precise description of the proposed critical habitat is included in the "Proposed Regulations Promulgation" section.

The area proposed as critical habitat for *H. amarus* is the only area where reproduction is known to occur and all life stages of the species have been collected in the recent past. As such, the proposed area is the only known area remaining within the species historic range that contains physical characteristics required for the species to spawn successfully, rear young and recruit adults to the wild population. Constituent elements of critical habitat required to sustain *H. amarus* in the wild include:

- Stream morphology that supplies sufficient flowing water to provide food and cover needed to sustain all life stages of this fish,
- Water quality to prevent water stagnation (elevated temperatures,

decreased oxygen, carbon dioxide build-up, etc.), and

—Water quantity to prevent formation of isolated pools that restrict fish movement, foster increased predation by birds and aquatic predators, and congregate disease causing pathogens.

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public and private) that may adversely modify such habitat or may be affected by such designation. Activities which may adversely affect the proposed critical habitat include any activity that would lessen the amount of the minimum flow or would significantly alter the natural flow regime. Such activities include but are not limited to, excessive groundwater pumping, impoundment, water diversions, and the operation of irrigation and return flow ditches. Irrigation uses greatly affect the volume of the river. Releases and diversions vary greatly and frequently result in little or no flow downstream from major diversion facilities.

Any activity that would extensively alter the channel morphology of the Rio Grande could adversely impact the proposed critical habitat. Such activities include but are not limited to, channelization, impoundment, deprivation of substrate source, and riparian destruction.

Any activity that would significantly alter the water chemistry in the Rio Grande could adversely impact the proposed critical habitat. Such activities include, but are not limited to, release of chemical or biological pollutants into the waters at a point source or by dispersed release.

The introduction, advertent or otherwise, of nonnative or exotic predatory and competitive fish species, could adversely affect *H. amarus* populations and could reduce or eliminate them within the critical habitat.

Activities that may be affected by the designation include construction, maintenance, and operation of diversion structures, use of the conveyance channel and other canals, and levee and dike construction and maintenance.

Section 4(a)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service will consider the critical habitat designation in light of all relevant information obtained before making a decision on whether to issue a final rule.

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, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with States, and authorizes recovery plans for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed in part, below.

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

Federal actions which are expected to occur that may affect the survival of *H. amarus* include the operation and maintenance of dams and other structures which regulate the flow of water in the Rio Grande.

The Act and implementing regulations found at 50 CFR 17.21, set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale any listed species in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or

ship any such wildlife that has been illegally taken. Certain exceptions apply to agents of the Service and State conservation agencies.

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

In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. This species is not in trade, and such permit requests are not expected.

Public Comments Solicited

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

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

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

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Albuquerque Field Office (See ADDRESSES above).

National Environmental Policy Act

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

References Cited

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

Author

The primary author of this proposed rule is Gerald L. Burton (see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

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

Proposed Regulations Promulgation

PART 17—[AMENDED]

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

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. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order, under "Fishes" to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *
(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific						
Fishes.							
Minnow, Rio Grande silvery	<i>Hybognathus amarus</i>	U.S.A. (NM, TX), Mexico.	Entire	E		17.95(e)	NA

3. It is further proposed to amend § 17.95(e) by adding critical habitat of the Rio Grande silvery minnow, in the same alphabetical order as the species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

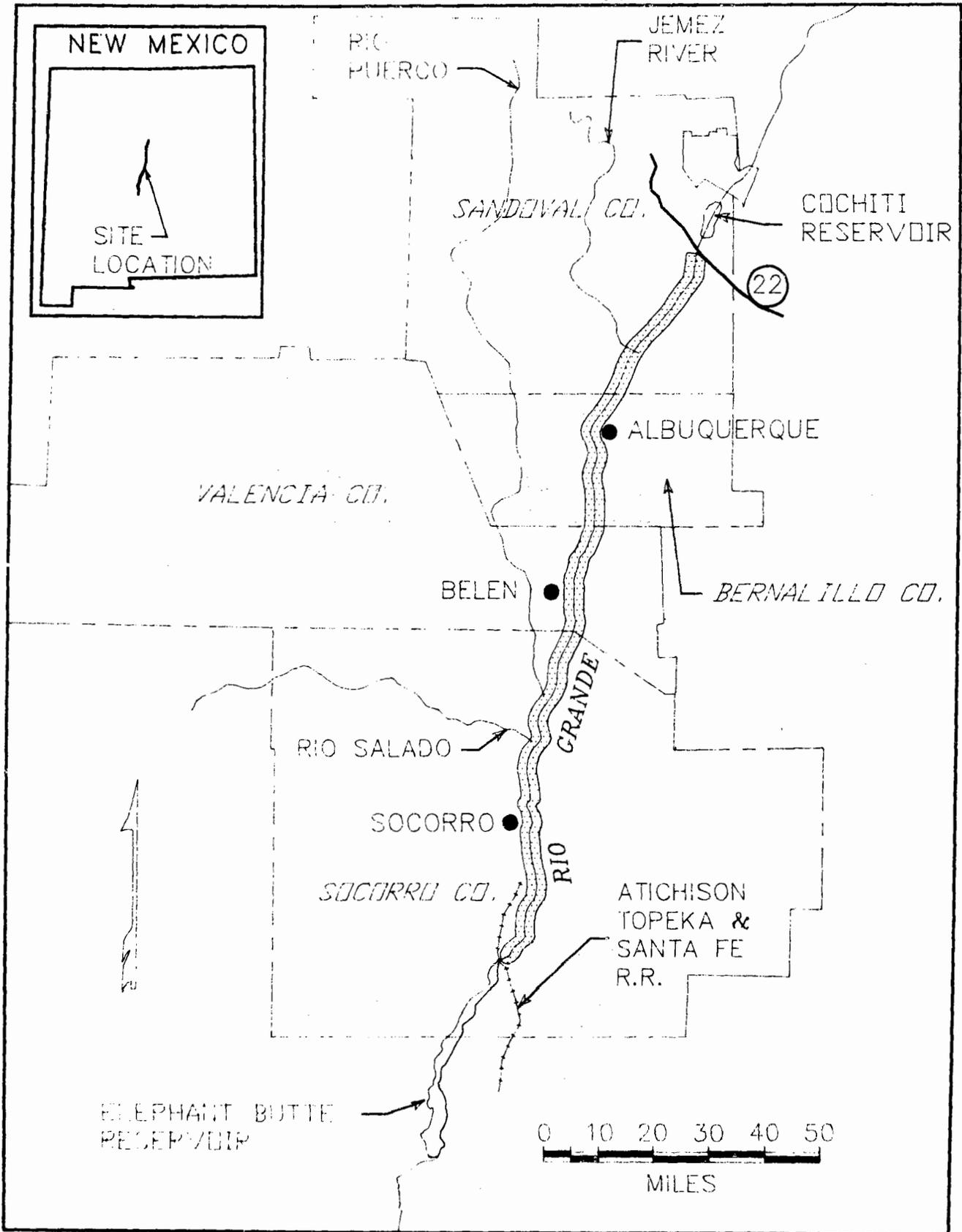
(e) * * *
* * * * *

Rio Grande Silvery Minnow (*Hybognathus amarus*)

New Mexico: Socorro, Valencia, Bernalillo, and Sandoval Counties. Rio Grande from the downstream side of State Highway 22 bridge crossing of the Rio Grande, immediately downstream of Cochiti Dam, extending south downstream approximately 262 km (163 mi) to where the Atchison Topeka and

Santa Fe Railroad crosses the river near San Marcial, Socorro County.

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Dated: December 23, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

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