

proposal described in the NPRM. TSA intends to analyze the public comments and issue a final rule.

Specific Issues for Discussion

There are several areas in particular in which TSA seeks information and comment from the industry at the public meeting, listed below. These key issues are intended to help focus public comments on subjects that TSA must explore in order to complete its review of the proposed Secure Flight program. The comments at the meeting need not be limited to these issues, and TSA invites comments on any other aspect of the proposed Secure Flight program. These are:

- (1) Proposed data elements.
- (2) Proposed data retention schedule.
- (3) Proposed 72-hour data transmission requirement.
- (4) Proposed watch list matching procedures for overflights.
- (5) Proposed watch list matching procedures for international 2-leg boarding pass issuance.
- (6) Proposed requirement for placing a code, such as a bar code, on boarding passes.
- (7) Proposed privacy notice requirement.
- (8) Proposed compliance schedule and estimated compliance costs.

Participation at the Meeting

The meeting is expected to begin at 9 a.m. Following an introduction by TSA, members of the public will be invited to ask clarifying questions or present their views.

Anyone wishing to present an oral statement at the meeting must register to present comments between 8 and 9:30 a.m. on the day of the meeting, and provide his or her name and affiliation. Such requests will be met on a first-come, first-served basis. Speakers should keep comments brief and plan to speak for no more than five minutes when presenting comments.

Public Meeting Procedures

TSA will use the following procedures to facilitate the meeting:

- (1) There will be no admission fee or other charge to attend or to participate in the meeting. The meeting will be open to all persons. All persons who wish to present an oral statement must register to present comments between 8 and 9:30 a.m. on the day of the meeting. TSA will make every effort to accommodate all persons who wish to participate, but admission will be subject to availability of space in the meeting room. The meeting may adjourn early if scheduled speakers complete their statements or questions in less time than is scheduled for the meeting.

(2) An individual, whether speaking in a personal or a representative capacity on behalf of an organization, will be limited to a five-minute statement and scheduled on a first-come, first-served basis.

(3) Any speaker prevented by time constraints from speaking will be encouraged to submit written remarks, which will be made part of the record.

(4) For information on facilities or services for individuals with disabilities or to request assistance at the meeting, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above before September 13, 2007.

(5) Representatives of TSA will preside over the meeting.

(6) The meeting will be recorded by a court reporter. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly.

(7) Statements made by TSA representatives are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a TSA representative is not intended to be, and should not be construed as, a position of TSA.

(8) The meeting is designed to invite public views and gather additional information. No individual will be subject to cross-examination by any other participant; however, TSA representatives may ask questions to clarify a statement.

Issued in Arlington, Virginia, on August 31, 2007.

Stephanie Rowe,

Assistant Administrator for Transportation Threat Assessment & Credentialing.

[FR Doc. E7-17607 Filed 9-4-07; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AU68

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Rio Grande Silvery Minnow in the Big Bend Reach of the Rio Grande in Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of availability of draft environmental assessment; notice of public hearing.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in

cooperation with the National Park Service, and the United States Section of the International Boundary and Water Commission, propose to reestablish the Rio Grande silvery minnow (*Hybognathus amarus*), a Federally listed endangered fish, into its historic habitat in the Big Bend reach of the Rio Grande in Presidio, Brewster, and Terrell counties, Texas.

We propose to reestablish the Rio Grande silvery minnow under section 10(j) of the Endangered Species Act of 1973, as amended (ESA), and to classify it as a nonessential experimental population (NEP). On the Rio Grande, the geographic boundaries of the NEP would extend from Little Box Canyon downstream of Ft. Quitman, Hudspeth County, Texas, through Big Bend National Park and the Rio Grande Wild and Scenic River, to Amistad Dam and the nearby railroad bridge (Big Bend reach of the Rio Grande). On the Pecos River, the geographic boundaries of the NEP would extend from the river's confluence with Independence Creek to its confluence with the Rio Grande.

This proposed reestablishment is part of the recovery actions that the Service, Federal and State agencies, and other partners are conducting throughout the species' historic range. This proposed rule provides a plan for establishing the NEP and provides for limited allowable legal taking of Rio Grande silvery minnows within the defined NEP area.

A draft environmental assessment (EA) has been prepared on this proposed action and is available for comment (see **ADDRESSES** section below).

DATES: We request that comments on this proposal be submitted by the close of business on November 5, 2007. We will also hold one public hearing on this proposed rule on October 10, 2007, at 7 p.m.

ADDRESSES: Written Comments. You may submit written comments and other information by any of the following methods (please see "Public Comments Solicited" section below for additional guidance):

1. *Mail or hand delivery:* Field Supervisor, Austin Ecological Services Field Office, 107011 Burnet Road, Suite 200, Austin, TX 78758.

2. *Fax:* (512) 490-0974.

3. *E-mail:* Aimee_Roberson@fws.gov.

Obtaining information from the Service. You may obtain copies of the proposed rule and the draft EA from the street address given above or by calling (512) 490-0057. The proposed rule and draft EA are also available from our Web site at <http://www.fws.gov/southwest/es/Library/>.

The supporting 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, 2105 Osuna Road NE., Albuquerque, New Mexico 87113 and at the Fish and Wildlife Service's office at 500 West Avenue H, Suite 104F, Alpine, Texas 79830.

Public Hearing

The public hearing will be held October 10, 2007, at Sul Ross State University, Gallego Center, Room 129, Alpine, Texas. The hearing will begin at 7 p.m. and last until 8:45 p.m., with an informal question and answer session beginning at 6 p.m.

FOR FURTHER INFORMATION CONTACT:

Adam Zerrenner, Field Supervisor, Austin Ecological Services Field Office, telephone (512)–490–0057 (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We want the final rule to be as effective as possible and the final EA on the proposed action to evaluate all potential issues associated with this action. Therefore, we invite the public, Tribal and government agencies, the scientific community, industry, and other interested parties to submit comments or recommendations concerning any aspect of this proposed rule and the draft EA. Comments should be as specific as possible.

To issue a final rule to implement this proposed action and to determine whether to prepare a finding of no significant impact or an environmental impact statement, we will take into consideration all comments and any additional information we receive. Such communications may lead to a final rule that differs from this proposal. All comments, including commenters' names and addresses, if provided to us, will become part of the supporting record.

If you wish to provide comments and/or information, you may submit your comments and materials by any one of several methods (see **ADDRESSES** section). Comments submitted electronically should be in the body of the e-mail message itself or attached as a text file (ASCII), and should not use special characters or encryption. Please also include "Attn: RGSM Proposed 10(j) Designation," in your e-mail message.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that

your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Background

Legislative

The ESA provides that species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the ESA, among other things, prohibits the take of endangered wildlife. "Take" is defined by the ESA as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Service regulations (50 CFR 17.31) generally extend the prohibitions of take to threatened wildlife. Section 7 of the ESA outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It mandates that all Federal agencies use their existing authorities to further the purposes of the ESA by carrying out programs for the conservation of listed species. It also states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the ESA does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

Under section 10(j) of the ESA, the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range, but within its historic range, as "experimental." With the experimental population designation, the relevant population is treated as threatened for purposes of section 9 of the ESA, regardless of the species' designation elsewhere in its range. Threatened designation allows us greater discretion in devising management programs and special regulations for such a population. Section 4(d) of the ESA allows us to adopt whatever regulations are necessary and advisable to provide for the conservation of a threatened species. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the 10(j) rule contains the prohibitions and

exemptions necessary and appropriate to conserve that species.

Based on the best scientific and commercial data available, we must determine whether the experimental population is *essential* or *nonessential* to the continued existence of the species. The regulations (50 CFR 17.80b) state that an experimental population is considered essential if its loss would be likely to appreciably reduce the likelihood of survival of that species in the wild. All other populations are considered nonessential. We have determined that this experimental population would not be essential to the continued existence of the species in the wild. Therefore, the Service is proposing to designate a nonessential experimental population (NEP) for the species in this area.

For the purposes of section 7 of the ESA, we treat an NEP as a threatened species when the NEP is located within a National Wildlife Refuge or National Park, and section 7(a)(1) and the consultation requirements of section 7(a)(2) of the ESA apply. Section 7(a)(1) requires all Federal agencies to use their authorities to carry out programs for the conservation of listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, insure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. When NEPs are located outside a National Wildlife Refuge or National Park, we treat the population as proposed for listing, and only two provisions of section 7 apply—section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are in the form of conservation recommendations that are optional as the agencies carry out, fund, or authorize activities. Activities that are not carried out, funded, or authorized by Federal agencies, and are not on Federal lands are not affected by a NEP designation.

Rio Grande silvery minnows that are used to establish an experimental population may come from a donor population, provided their removal will not create adverse impacts upon the parent population, and provided appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal. In the

case of the Rio Grande silvery minnow, the donor population is a captive-bred population that was propagated with the intention of re-establishing wild populations to achieve recovery goals. In addition, it is possible that stock raised from wild eggs could also be released into the NEP area. Rio Grande silvery minnow eggs are collected from the wild population in New Mexico each year and are raised in captivity to provide individuals for captive propagation and augmentation of the wild population.

Critical habitat has been designated for the Rio Grande silvery minnow in New Mexico (68 FR 8088–8135; February 19, 2003), and the designated critical habitat does not include this NEP area. Section 10(j)(2)(C)(ii) of the ESA states that critical habitat shall not be designated for any experimental population that is determined to be nonessential. Accordingly, we cannot designate critical habitat in areas where we have already established an NEP.

Biological

The Rio Grande silvery minnow is one of seven species in the genus *Hybognathus* found in the United States (Pflieger 1980, p. 177). The species was first described by Girard (1856 in Service 1999, p. 38) from specimens taken from the Rio Grande near Fort Brown, Cameron County, Texas. It is a stout silvery minnow with moderately small eyes and a small, slightly oblique mouth. Adults may reach 5 inches (in) (125 millimeters (mm)) in total length (Remshardt 2006b). Its 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. The fish is silver with emerald reflections. Its belly is silvery white, its fins are plain, and barbels are absent (Sublette *et al.* 1990, pp. 129–130).

This species was historically one of the most abundant and widespread fishes in the Rio Grande Basin, occurring from Española, New Mexico, to the Gulf of Mexico (Bestgen and Platania 1991, p. 225). It was also found in, but is now absent from, 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, p. 177). The Rio Grande silvery minnow is extirpated from the Pecos River and also from the Rio Grande downstream of Elephant Butte Reservoir and upstream of Cochiti Reservoir (Bestgen and Platania 1991, pp. 226–229). The current distribution of the Rio Grande silvery minnow is limited to the Rio Grande between Cochiti Dam and Elephant Butte Reservoir in New Mexico, which is only

about 5 percent of its historic range (Bestgen and Platania 1991, pp. 226–229). Throughout much of its historic range, the decline of the Rio Grande silvery minnow has been attributed to modification of the flow regime (hydrological pattern of flows that vary seasonally in magnitude and duration, depending on annual precipitation patterns such as runoff from snowmelt), channel drying, reservoirs and dams, stream channelization, and perhaps interactions with nonnative fish and decreasing water quality (Cook *et al.* 1992, p. 42; Bestgen and Platania 1991, pp. 229–230; Service 1999, pp. 1–2). Development of agriculture and the growth of cities within the historic range of the Rio Grande silvery minnow resulted in a decrease in the quality of river water caused by municipal and agricultural runoff (i.e., sewage and pesticides) that may have also adversely affected the range and distribution of the Rio Grande silvery minnow (Service 1999, p. 2).

The various life history stages of the Rio Grande silvery minnow require low velocity habitats with a sandy and silty substrate that is generally associated with a meandering river that includes side channels, oxbows, and backwaters (Bestgen and Platania 1991, pp. 227–228). Although the Rio Grande silvery minnow is a hardy fish, capable of withstanding many of the natural stresses of the desert aquatic environment, its maximum documented longevity in the wild is about 25 months, and very few survive more than 13 months. However, it is not uncommon for Rio Grande silvery minnows in captivity to live beyond 2 years (Service 2007, p. 8). Thus, a successful annual spawn is key to the survival of the species (Service 1999, p. 20; Dudley and Platania 2001, pp. 16–21; Dudley and Platania 2002, p. 3). More information about the life history and decline of the Rio Grande silvery minnow can be found in the final designation of critical habitat for the species (February 19, 2003; 68 FR 8088–8090) and in the Rio Grande Silvery Minnow Recovery Plan (Recovery Plan; Service 1999, pp. 1–38).

The Rio Grande silvery minnow is extirpated from the Big Bend reach of the Rio Grande (Service 2007). Natural repopulation is not possible without human assistance due to extensive reaches of river with no Rio Grande silvery minnow habitat (including large reservoirs, where this species cannot survive) between where the species currently exists in the wild in New Mexico and the Big Bend reach. Reasons for the species' extirpation in the Rio Grande in Texas are uncertain, but are

believed to have been due to a combination of low flows caused by drought and diversions and of water pollution in the 1950s (Edwards 2005, p. 3). The last documentation of a Rio Grande silvery minnow in the Big Bend reach of the Rio Grande was in 1960 (Bestgen and Platania 1991, p. 229). However, the Big Bend reach has not experienced extensive drying since the drought of the 1950s, and the continuing presence of members of the pelagic spawning guild with life history requirements similar to the Rio Grande Silvery minnow are evidence that the Big Bend reach of the Rio Grande may support reestablishment of Rio Grande silvery minnow (Edwards 2005, pp. 37–38). Water quality in the Big Bend reach appears to be generally improving over time, and we do not believe it is a primary determinant of the survivability of the Rio Grande silvery minnow in this reach (Edwards 2005). In addition, most of the Rio Grande in the Big Bend Reach on both sides of the river is designated as a conservation area and managed for habitat protection and improvement by the State of Texas, the National Park Service, and governmental agencies and private organizations in Mexico (Edwards 2005, p. 11).

The Service contracted a study examining the suitability of the habitat in the Big Bend reach of the Rio Grande for the Rio Grande silvery minnow. The completed study indicates that there is a reasonable likelihood that Rio Grande silvery minnows will survive in this portion of the Rio Grande. It also identifies the need for habitat restoration projects, with an emphasis on the removal of invasive, nonnative species, such as salt cedar (*Tamarix chinensis*) and giant river cane (also known as giant reed; *Arundo donax*), which can prevent sediment from entering the river in amounts that are needed to form Rio Grande silvery minnow habitat (Edwards 2005, pp. 43–44). We anticipate working with land managers and other interested parties, on a voluntary basis, to develop plans to further guide and accomplish habitat management and restoration activities, including removal and control of invasive, nonnative species, such as salt cedar and giant river cane.

Recovery Efforts

We published the final rule to federally list the Rio Grande silvery minnow on July 20, 1994 (59 FR 36988). Restoring an endangered or threatened species to the point where it is recovered is a primary goal of our endangered species program. Thus, on July 1, 1994, the Rio Grande Silvery

Minnow Recovery Team (Recovery Team) was established under section 4(f)(2) of the ESA and our cooperative policy on recovery plan participation, a policy intended to involve stakeholders in recovery planning (July 1, 1994; 59 FR 34272). Numerous individuals, agencies, and affected parties were involved in the development of the Recovery Plan or otherwise provided assistance and review (Service 1999, pp. 63–67). On July 8, 1999, we finalized the Recovery Plan (Service 1999, 71 pp.). The Recovery Plan has been updated and revised, and a draft revised Recovery Plan (Service 2007) was released for public comment on January 18, 2007 (72 FR 2301).

The draft revised Recovery Plan describes recovery goals for the Rio Grande silvery minnow (Service 2007, pp. 66–73) and actions for their completion (Service 2007, pp. 74–109). The three goals identified for the recovery and delisting of the Rio Grande silvery minnow are:

(1) Prevent the extinction of the Rio Grande silvery minnow in the middle Rio Grande of New Mexico;

(2) Recover the Rio Grande silvery minnow to an extent sufficient to change its status on the List of Endangered and Threatened Wildlife from endangered to threatened (downlisting). This may be considered when three populations (including at least two that are self-sustaining) of the species have been established within the historic range of the species and have been maintained for at least 5 years; and

(3) Recover the Rio Grande silvery minnow to an extent sufficient to remove it from the List of Endangered and Threatened Wildlife (delisting). This may be considered when three self-sustaining populations have been established within the historic range of the species, and they have been maintained for at least 10 years (Service 2007, p. 66).

The Rio Grande silvery minnow's range has been so greatly restricted that the species is extremely vulnerable to catastrophic events, such as a prolonged period of low or no flow in its habitat in the middle Rio Grande in New Mexico (i.e., the loss of all surface water) (Dudley and Platania 2001, p. 21). Reestablishment of the Rio Grande silvery minnow into other areas of its historic range will assist in the species' recovery and long-term survival in part because it is unlikely that any single event would simultaneously eliminate the Rio Grande silvery minnow from three geographic areas (Service 1999, pp. 57–61).

The Recovery Team developed a reach-by-reach analysis of the Rio Grande and Pecos River basins to identify the salient hydrological, chemical, and biological features of each reach. This analysis addressed the threats to the Rio Grande silvery minnow and considered the suitability of each reach for potential reestablishment (Service 2007).

The Recovery Team's reach-by-reach analysis considered: (1) The reasons for the species' extirpation from the selected reach; (2) the presence of other members of the reproductive guild (pelagic spawner; non-adhesive, semibuoyant eggs); (3) habitat conditions (including susceptibility to river drying and presence of diversion structures); and (4) the presence of congeners (i.e., other species of *Hybognathus*). After completing their analysis, the Recovery Team identified the Big Bend reach of the Rio Grande as the first priority for reestablishment efforts (Service 2007, p. 160) (see "Reestablishment Area" below for more details).

In accordance with the Recovery Plan, we have initiated a captive propagation program for the Rio Grande silvery minnow (Service 1999, pp. 60–61). We currently have Rio Grande silvery minnows housed at: (1) The Service's Dexter National Fish Hatchery and Technology Center, Dexter, New Mexico; (2) the City of Albuquerque's Biological Park, Albuquerque, New Mexico; and (3) the New Mexico State University, Las Cruces, New Mexico. These facilities are actively propagating and rearing Rio Grande silvery minnows. Offspring of these fish are being used to augment the Rio Grande silvery minnow population in the middle Rio Grande, New Mexico.

Ongoing recovery efforts involving the release of captive-bred Rio Grande silvery minnows for augmentation of the population in the middle Rio Grande of New Mexico have demonstrated the potential viability of reestablishment as a tool for Rio Grande silvery minnow conservation. In 2000, the Service initiated captive propagation as a strategy to assist in the recovery of the Rio Grande silvery minnow. Captive propagation is conducted in a manner that will, to the maximum extent possible, preserve the genetic and ecological distinctiveness of the Rio Grande silvery minnow and minimize risks to existing wild populations.

Since 2000, approximately one million silvery minnows have been propagated (using both adult wild silvery minnows and wild-caught eggs) and then released into the wild in New Mexico. Wild gravid adults are

successfully spawned in captivity at the City of Albuquerque's propagation facilities. Eggs left in the wild have a very low survivorship and spawning in captivity ensures that an adequate number of spawning adults are present to repopulate the river each year. While hatcheries continue to successfully spawn silvery minnows, wild eggs are collected to ensure genetic diversity within the remaining population. This program is carefully monitored so that it will not have an adverse effect on the wild population of Rio Grande silvery minnows in New Mexico.

Direct and indirect evidence from the Rio Grande silvery minnow monitoring program indicates that augmentation efforts in the Rio Grande near Albuquerque, New Mexico, are contributing to an increase in catch (i.e., during seining) rates of Rio Grande silvery minnows. The success of this augmentation effort indicates that hatchery-raised individuals can be released back to the wild with adequate retention in or near original release sites, can experience survival of at least 2 years after release, and ultimately can contribute to future spawning efforts (Remshardt 2006, pp. 11–12).

The source of Rio Grande silvery minnows for releases in the Big Bend reach will likely be from the Service's Dexter National Fish Hatchery and Technology Center, or another Service facility set up to provide fish specifically for this purpose. Expanding the Rio Grande silvery minnow's propagation program for potential releases into the Big Bend reach will result in more fish being produced overall and will not negatively impact the current program, which is producing Rio Grande silvery minnows for augmentation of the population in New Mexico.

Reestablishment Area

The primary factors resulting in the determination by the Recovery Team that the Rio Grande reach from Presidio to Amistad Reservoir is the most suitable for reintroduction efforts are water quality and quantity; the presence of suitable habitat; a lack of barriers to fish movement; a lack of ongoing activities that are likely to adversely affect the Rio Grande silvery minnow; and that most of the Rio Grande in the Big Bend Reach on both sides of the river is designated as a conservation area and managed for habitat protection and improvement by the State of Texas, the National Park Service, and governmental agencies and private organizations in Mexico (Edwards 2005, p. 11).

The Big Bend reach is generally perennial with a base flow of approximately 400 cubic feet per second (cfs). Severe flow reductions only occurred during the severest droughts in the 1950s. A period of intermittent drying did occur in 2003. However, this drying event appears to have been brief and occurred in a small area. In addition, this reach is not levied and has small rock dam weirs, all but one of which (Foster's weir, at the end of the reach deemed suitable) does not appear to be a barrier to fish movement. The substrate ranges from silt to cobble and boulder depending on local conditions. Almost half of this reach is in canyons, including the Big Bend National Park. The lower canyons reach has spring input resulting in improved water quality and quantity. Outside the canyon reaches, the river is braided in some sections with a moderate gradient, providing areas of suitable habitat for Rio Grande silvery minnows. In addition, there are no regular channel maintenance activities in this reach.

Based on the above information, we believe that the Rio Grande, from Mulato Dam (near the western border of Big Bend Ranch State Park) to Foster's Weir, east of the Terrell/Val Verde county line, contains suitable habitat for the Rio Grande silvery minnow and that it is likely the species can be successfully reestablished in the Big Bend reach. Establishment of a viable population of Rio Grande silvery minnows in the Big Bend reach of the Rio Grande under this proposed NEP designation would help achieve one of the primary recovery goals for downlisting and eventually delisting this species (see "Recovery Efforts" section above for more information). However, it would take several years of monitoring to fully evaluate if Rio Grande silvery minnows have become established and remain viable in this river reach.

Therefore, we are proposing to release the Rio Grande silvery minnow into its historic habitat in this area. The NEP area, which encompasses all potential release sites, will be located (1) in the Rio Grande, from Little Box Canyon downstream of Ft. Quitman, Hudspeth County, Texas, through Big Bend National Park and the Rio Grande Wild and Scenic River, to Amistad Dam and the nearby railroad bridge; and (2) in the Pecos River, from its confluence with Independence Creek to its confluence with the Rio Grande.

Section 10(j) of the ESA requires that an experimental population be geographically separate from other wild populations of the same species. This NEP area is totally isolated from existing

populations of this species by large reservoirs, and this fish is not known to move through large reservoirs. Therefore, the reservoirs would act as barriers to the species' downstream movement in the Rio Grande below Amistad Reservoir, and would ensure that this NEP remains geographically isolated and easily distinguishable from existing upstream wild populations in New Mexico. Based on the habitat requirements of the Rio Grande silvery minnow, we do not expect them to become established outside the NEP.

The geographic extent being proposed for NEP designation is larger than needed as only portions of this proposed NEP area contain suitable habitat. However, this area represents what we believe to be the maximum geographic extent to which the fish could move if released in the Big Bend reach of the Rio Grande. We believe including this additional area provides a more effective recovery strategy by eliminating changing regulatory requirements in case Rio Grande silvery minnows unexpectedly move beyond the expected establishment area. If any of the released Rio Grande silvery minnows, or their offspring, move outside the designated NEP area, then the Service would consider these fish to have come from the NEP area, and we would propose to amend this 10(j) rule to enlarge the boundaries of the NEP area to include the entire range of the expanded populations.

Release Procedures

The exact dates for releases have not been determined at this time. However, an implementation plan, including information about potential release sites, methods, and the number of individuals to be released, is appended to the draft EA and is also available for public comment.

As part of the Rio Grande silvery minnow augmentation program in New Mexico, the Service evaluated different release strategies such as time of year, time of day, specific release habitats, and various hatchery environments (natural outdoor ponds versus indoor facilities). All of this information adds to our knowledge of the species and will assist us in future recovery actions, such as providing release procedures and monitoring strategies for the proposed reestablishment of Rio Grande silvery minnows in the Big Bend reach (Remshardt 2006, pp. v, 13–15).

Status of Reestablished Population

As stated earlier, we have determined that this reintroduced population is nonessential. This determination has been made for the following reasons:

(a) An established population of Rio Grande silvery minnows exists in the middle Rio Grande, New Mexico;

(b) Captive propagation facilities maintain a captive population and provide adequate numbers of Rio Grande silvery minnows to maintain the wild New Mexico population at current levels;

(c) The additional number of silvery minnows needed for reestablishment would not inhibit the augmentation efforts to maintain the established population in the middle Rio Grande, New Mexico; and

(d) The possible failure of this proposed action would not appreciably reduce the likelihood of survival of the species in the wild.

If this proposal is adopted, we would ensure, through our section 10 permitting authority and the section 7 consultation process, that the use of Rio Grande silvery minnows from any donor population for releases in the Big Bend reach is not likely to jeopardize the continued existence of the species in the wild. Reestablishment of populations within the Rio Grande silvery minnow's historic range is necessary to further the recovery of this species (Service 2007, p. 67).

We believe that incidental take of members of the NEP associated with otherwise lawful activities would not pose a substantial threat to Rio Grande silvery minnow recovery, as activities that currently occur in the NEP area are compatible with Rio Grande silvery minnow recovery. For example, there are no major dams or diversions in the Big Bend reach, which are the primary threats to the species within its current range in the Rio Grande in New Mexico. Also, most of the portion of the Big Bend reach in which we expect Rio Grande silvery minnows to become established is protected and managed for fish and wildlife and other natural resources by State and Federal agencies in both the United States and Mexico. Thus, the more stringent legal protections provided under an essential experimental population are unnecessary. The anticipated success of this reestablishment would enhance the conservation and recovery potential of this species by extending its present range into currently unoccupied historic habitat (Service 2007, pp. 159–171).

Management

The aquatic resources in the reestablishment area are managed by the National Park Service, the International Boundary and Water Commission, the State of Texas, and private landowners. Multiple-use management of these waters would not change as a result of

the experimental population designation. Agricultural, recreational, and other activities by private landowners within and near the NEP area would not be affected by this rule and the subsequent release of the Rio Grande silvery minnow. Because of the exceptions provided by NEP designation, we do not believe the reestablishment of Rio Grande silvery minnows would conflict with existing human activities or hinder public use of the area.

The Service, the National Park Service, the International Boundary and Water Commission, and Texas Parks and Wildlife Department employees would plan and manage the reestablishment of Rio Grande silvery minnows. This group would closely coordinate on releases, monitoring, coordination with landowners and land managers, and public awareness, among other tasks necessary to ensure successful reestablishment of the species. The Service has also convened a Technical Team comprised of representatives from these agencies and other experts. This Technical Team assisted in the development of the Implementation and Monitoring Plan that is appended to the draft EA.

(a) *Mortality*: The regulations implementing the ESA define "incidental take" as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity (50 CFR 17.3) such as recreation (e.g., fishing, boating, wading, trapping or swimming), forestry, agriculture, and other activities that are in accordance with Federal, Tribal, State, and local laws and regulations. If this 10(j) rule is finalized, take of a Rio Grande silvery minnows within the experimental population area would be allowed provided that the take is unintentional and is not due to negligent conduct. However, if there is evidence of intentional take of a Rio Grande silvery minnow within the experimental population area, we would refer the matter to the appropriate entities for investigation. We expect levels of incidental take to be low since the reestablishment is compatible with existing human use activities and practices for the area. More specific information regarding take can be found in the Proposed Regulation Promulgation section of this proposed rule.

(b) *Special handling*: In accordance with 50 CFR 17.21(c)(3), any employee or agent of the Service, any other Federal land management agency, or State personnel, designated for such purposes, may, in the course of their official duties, handle Rio Grande

silvery minnows for scientific purposes; relocate Rio Grande silvery minnows to avoid conflict with human activities; relocate Rio Grande silvery minnows to other release sites for recovery purposes; aid sick or injured Rio Grande silvery minnows; and, salvage dead Rio Grande silvery minnows. However, non-Service personnel and their agents would need to acquire permits from the Service for these activities.

(c) *Coordination with landowners and land managers*: The Service and cooperators have identified issues and concerns associated with the proposed Rio Grande silvery minnow reestablishment through the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) scoping comment period. The proposed reestablishment also has been discussed with potentially affected State agencies and private landowners. Affected State agencies, landowners, and land managers have indicated support for the proposed reestablishment, provided a NEP is designated and land and water use activities in the proposed NEP area are not constrained.

(d) *Monitoring*: After the initial release of Rio Grande silvery minnows, we would monitor their presence or absence at least annually and document any spawning behavior or young-of-year fish that might be present. Depending on available resources, monitoring may occur more frequently, especially during the first few years of reestablishment efforts. This monitoring would be conducted primarily by seining and would be accomplished by Service, National Park Service, or State employees or by contracting with the appropriate species experts. Annual reports would be produced detailing stocking and monitoring activities that took place during the previous year. We would also fully evaluate these reestablishment efforts every 5 years to determine whether to continue or terminate them.

(e) *Public awareness and cooperation*: On August 9, 2005, we mailed letters to potentially affected Congressional offices, Federal and State agencies, local governments, landowners, and interested parties to notify them that we were considering proposing NEP status in the Rio Grande and Pecos River for the Rio Grande silvery minnow. We received a total of 10 responses during the September 2005 scoping meetings and comment period. The comments received are listed in the EA and have been considered in the formulation of alternatives considered in the NEPA process.

Public Hearings

The ESA provides for one or more public hearings on this proposed rule, if requested. Given the likelihood of a request, we have scheduled one public hearing. We will hold a public hearing as specified above in the **DATES** and **ADDRESSES** section above. Announcements for the public hearing will be made in local newspapers. Appropriate County and State officials, as well as Mexican officials, will be notified.

Public hearings are designed to gather relevant information that the public may have and that we should consider in our rulemaking. During the hearing, we will present information about the proposed action. We invite the public to submit information and comments at the hearing or in writing during the open public comment period. We encourage persons wishing to comment at the hearing to provide a written copy of their statement at the start of the hearing. This notice and public hearing will allow all interested parties to submit comments on the proposed NEP rule for the Rio Grande silvery minnow. 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 Austin Ecological Services Field Office (see **ADDRESSES** section) at any time during the open comment period (See **DATES** section). We will give equal consideration to oral and written comments.

Peer Review

In accordance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we will provide copies of this proposed rule to three appropriate and independent specialists in order to solicit comments on the scientific data and assumptions relating to the supportive biological and ecological information for this proposed NEP designation. The purpose of such review is to ensure that the proposed NEP designation is based on the best scientific information available. We will invite these peer reviewers to comment during the public comment period and will consider their comments and information on this proposed rule during preparation of a final determination.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, this proposed

rule to designate NEP status for the Rio Grande silvery minnow in the Big Bend reach of the Rio Grande, Texas, is not a significant regulatory action subject to Office of Management and Budget review. This rule will not have an annual economic effect of \$100 million or more on the economy and will not have an adverse effect on any economic sector, productivity, competition, jobs, the environment, or other units of government. Therefore, a cost-benefit and economic analysis is not required.

We do not expect this rule to have significant impacts to existing human activities (e.g., agricultural activities, ranching, grazing, salt cedar and giant river cane control, forestry, fishing, boating, wading, swimming, trapping) in the watershed. The reestablishment of this federally listed species, which will be accomplished under NEP status with its associated regulatory relief, is not expected to impact Federal agency actions. Because of the substantial regulatory relief, we do not believe the proposed reestablishment of this species would conflict with existing or proposed human activities or hinder public use of the Big Bend reach of the Rio Grande or its tributaries.

This rule will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. Federal agencies most interested in this rulemaking are primarily the National Park Service and the International Boundary and Water Commission. Both Federal agencies support the reestablishment. Because of the substantial regulatory relief provided by the NEP designation, we believe the reestablishment of the Rio Grande silvery minnow in the areas described would not conflict with existing human activities or hinder public utilization of the area.

This rule will not materially affect entitlements, grants, user fees, or loan programs, or the rights and obligations of their recipients. Because there are no expected impacts or restrictions to existing human uses of the Big Bend reach of the Rio Grande or its tributaries as a result of this rule, no entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients are expected to occur.

This rule does not raise novel legal or policy issues. Since 1984, we have promulgated section 10(j) rules for many other species in various localities.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*,

whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We are certifying that this rule will not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The area that would be affected if this proposed rule is adopted includes the Big Bend reach of the Rio Grande in Texas. Because of the substantial regulatory relief provided by NEP designations, we do not expect this rule to have any significant effect on recreational, agricultural, or development activities within the NEP area. In addition, when NEPs are located outside a National Wildlife Refuge or unit of the National Park System, we treat the population as proposed for listing and only two provisions of section 7 would apply: section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(1) requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species. Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a proposed species. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

If finalized, this rule would authorize incidental take of Rio Grande silvery minnows within the NEP area. The regulations implementing the Act define "incidental take" as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity such as military training, livestock grazing, recreation, and other activities that are in accordance with Federal, Tribal, State, and local laws and regulations. Intentional take for purposes other than authorized data

collection would not be permitted. Intentional take for research or educational purposes would require a section 10 recovery permit under the ESA.

This action would not affect recreational fishing or conservation actions, including removal of nonnative vegetation along the Rio Grande, such as salt cedar and giant river cane. The principal activities on private property near the NEP are agriculture, ranching, and recreation. We believe the presence of the Rio Grande silvery minnow would not affect the use of lands for these purposes because there would be no new or additional economic or regulatory restrictions imposed upon States, non-federal entities, or members of the public due to the presence of the Rio Grande silvery minnow and Federal agencies would only have to comply with sections 7(a)(2) and 7(a)(4) of the ESA. Therefore, this rulemaking is not expected to have any significant adverse impacts to recreation, agriculture, or any development activities.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

1. On the basis of information contained in the "Required Determinations" section above, this rule will not "significantly or uniquely" affect small governments. We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this proposed rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments would not be affected because the proposed NEP designation will not place additional requirements on any city, county, or other local municipalities.

2. This rule will not produce a Federal mandate of \$100 million or greater in any year (i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act). This proposed NEP designation for the Rio Grande silvery minnow would not impose any additional management or protection requirements on the States or other entities.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the proposed rule does not have significant takings implications. When reestablished populations of federally listed species are designated as NEPs, the ESA's regulatory requirements

regarding the reestablished listed species within the NEP are significantly reduced. Section 10(j) of the ESA can provide regulatory relief with regard to the taking of reestablished species within an NEP area. For example, this rule would allow for the taking of reestablished Rio Grande silvery minnows when such take is incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, swimming), forestry, agriculture, salt cedar and giant river cane control, and other activities that are in accordance with Federal, State, and local laws and regulations. Because of the substantial regulatory relief provided by NEP designations, we do not believe the reestablishment of this fish would conflict with existing or proposed human activities or hinder public use of the Big Bend reach of the Rio Grande and its tributaries.

A takings implication assessment is not required because this rule (1) will not effectively compel a property owner to suffer a physical invasion of property and (2) will not deny all economically beneficial or productive use of the land or aquatic resources. This rule would substantially advance a legitimate government interest (conservation and recovery of a listed fish species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed rule has significant Federalism effects and have determined that a Federalism assessment is not required. This rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed rule with the affected resource agencies in Texas. Achieving the recovery goals for this species would contribute to its eventual delisting and its return to State management. No intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments would not change; and fiscal capacity would not be substantially directly affected. The special rule operates to maintain the existing relationship between the State and the Federal Government and is being undertaken in coordination with the State of Texas. Therefore, this rule

does not have significant Federalism effects or implications to warrant the preparation of a Federalism Assessment under the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988 (February 7, 1996; 61 FR 4729), the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and would meet the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. The Office of Management and Budget has approved our collection of information associated with reporting the taking of experimental populations (50 CFR 17.84(p)(6)) and assigned control number 1018-0095. We may not collect or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have prepared a draft EA as defined under the authority of the National Environmental Policy Act of 1969. It is available from the Austin Ecological Services Field Office (see **ADDRESSES** section) and from our Web site at <http://www.fws.gov/southwest/es/Library/>. We published a notice of intent to prepare an EA and a notice of public scoping meetings in the August 3, 2005, **Federal Register** (70 FR 44681).

Government-to-Government Relationship With Tribes

In accordance with 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 Manual Chapter 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects because there is no tribal land within the NEP.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare

Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Because this action is not a significant energy action, no Statement of Energy Effects is required.

Clarity of This Regulation (E.O. 12866)

Executive Order 12866 requires each agency to write regulations 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 proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the proposed rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the proposed rule in the Supplementary Information section of the preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand? Send your comments concerning how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail your comments to: Exsec@ios.doi.gov.

References Cited

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

Authors

The primary authors of this proposed rule are staff of the Austin Ecological Services Field Office (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 set forth below:

PART 17—[AMENDED]

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

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

2. Amend § 17.11(h) by revising the entry for “Minnow, Rio Grande silvery”

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	*	*	*	*	*		*
* Minnow, Rio Grande silvery.	* <i>Hybognathus amarus.</i>	* U.S.A. (NM, TX), Mexico.	* Entire, except where listed as an experimental population.	* E	* 543		* NA
* Minnow, Rio Grande silvery.	* <i>Hybognathus amarus.</i>	* U.S.A. (NM, TX), Mexico.	* Rio Grande, from Little Box Canyon (approximately 10.4 river miles downstream of Ft. Quitman, TX) to Amistad Dam and the nearby railroad bridge; and on the Pecos River, from its confluence with Independence Creek to its confluence with the Rio Grande.	* XN	*	* NA	* 17.84(u)
*	*	*	*	*	*		*

3. Amend § 17.84 by adding a new paragraph (u) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(u) Rio Grande silvery minnow (*Hybognathus amarus*).

(1) *Where are populations of this fish designated as nonessential experimental populations (NEP)?*

(i) The NEP area for the Rio Grande silvery minnow is within the species' historic range and is defined as follows: Rio Grande, from Little Box Canyon downstream of Ft. Quitman, Hudspeth County, Texas, through Big Bend National Park and the Rio Grande Wild and Scenic River, to Amistad Dam and the nearby railroad bridge; and on the Pecos River, from its confluence with Independence Creek to its confluence with the Rio Grande.

(ii) The Rio Grande silvery minnow is not currently known to exist in the Rio Grande or Pecos River in Texas. Based on the habitat requirements of this fish, we do not expect it to become established outside the NEP area. However, if any individuals of this species move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reestablished

populations. We would then amend paragraph (u)(1)(i) of this section to enlarge the boundaries of the NEP to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designation to “essential experimental,” “threatened,” or “endangered” within the NEP area. Additionally, we will not designate critical habitat for this NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What take is allowed of this species in the NEP area?*

(i) A Rio Grande silvery minnow may be taken within the NEP area, provided that such take is not willful, knowing, or due to negligence, or is incidental to and not the purpose of the carrying out of an otherwise lawful activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations; and provided that such taking is reported within 24 hours, as provided under paragraph (u)(2)(iii) of this section.

(ii) Any person with a valid permit issued by the U.S. Fish and Wildlife Service (Service) under 50 CFR 17.32 may take Rio Grande silvery minnows

for 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 (ESA);

(iii) Any taking pursuant to paragraph (u)(2)(i) or (ii) of this section must be reported within 24 hours by contacting the Service, Austin Ecological Services Field Office, 107011 Burnet Road, Suite 200, Austin, TX 78758; (512) 490–0057. Once the Service is contacted, a determination will be made as to the disposition of any live or dead specimens.

(3) *What take of this species is not allowed in the NEP area?*

(i) Except as expressly allowed in paragraph (u)(2) of this section, all the provisions of 50 CFR 17.31(a) and (b) apply to the fish identified in paragraph (u)(1) of this section.

(ii) Any manner of take not described under paragraph (u)(2) of this section is prohibited in the NEP area.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (u)(3) of this section or in

violation of the applicable State or local fish and wildlife laws or regulations or the ESA.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (u)(3) of this section.

(4) *How will the effectiveness of the re-establishment be monitored?* After the initial stocking of this fish, we will monitor their presence or absence at least annually and document any

spawning behavior or young-of-year fish that might be present. Depending on available resources, monitoring may occur more frequently, especially during the first few years of re-establishment efforts. This monitoring will be conducted primarily by seining and will be accomplished by Service, National Park Service, or State employees or by contracting with the appropriate species experts. Annual reports will be

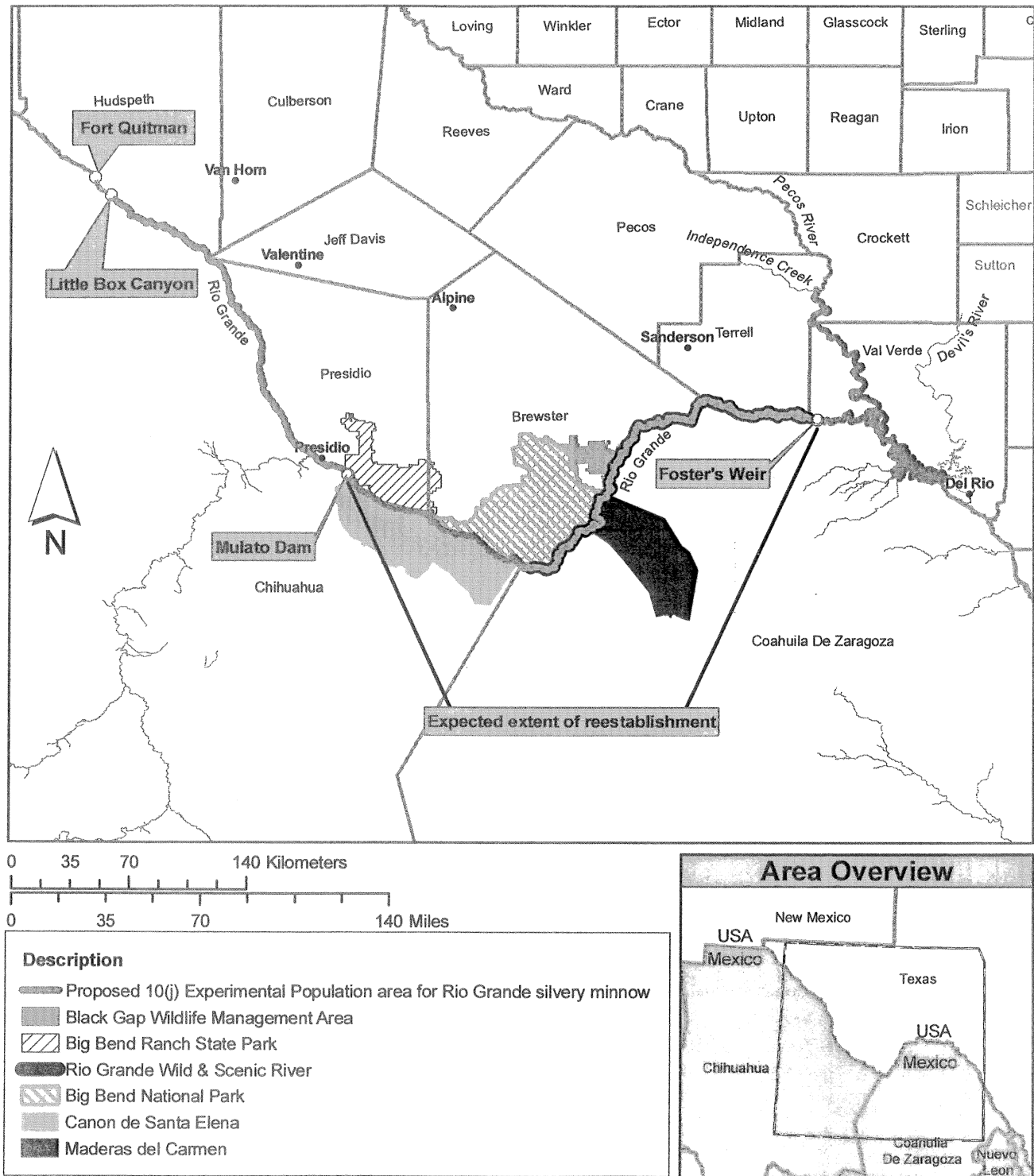
produced detailing stocking and monitoring activities that took place during the previous year.

(5) The Service will also fully evaluate these re-establishment efforts every 5 years to determine whether to continue or terminate them.

(6) Note: Map of the proposed NEP area for the Rio Grande silvery minnow in Texas:

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Proposed 10(j) Experimental Population area for Rio Grande silvery minnow



Dated: August 15, 2007.

Mitchell Butler,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 07-4286 Filed 9-4-07; 8:45 am]

BILLING CODE 4310-55-C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AU37; RIN 1018-AU91

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Marbled Murrelet (*Brachyramphus marmoratus*), Designation of Critical Habitat for the Northern Spotted Owl (*Strix occidentalis caurina*), Draft Recovery Plan for the Northern Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reopening of comment periods for two proposed revised critical habitat rules and a draft recovery plan.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of comment periods for three actions that are being promulgated under the Endangered Species Act of 1973, as amended (Act): (1) A proposed revision of critical habitat for the marbled murrelet (*Brachyramphus marmoratus*) and its associated draft economic analysis; (2) a proposed revision of critical habitat for the northern spotted owl (*Strix occidentalis caurina*); and (3) the development of a recovery plan for the northern spotted owl. In order to provide a combined comment period for these three actions, we are reopening the comment periods to allow additional time for interested parties to comment on any or all of these actions. Comments previously submitted need not be resubmitted as they are already part of the public record and will be fully considered in preparation of any critical habitat rule(s) and the recovery plan.

DATES: We will accept public comments on any of the above actions until October 5, 2007.

ADDRESSES: If you wish to comment, you may submit your comments and materials by any one of several methods:

1. By mail or hand-delivery to Patrick Sousa, Chief, Endangered Species, U.S. Fish and Wildlife Service, Ecological Services, Pacific Regional Office, 911 NE. 11th Avenue, Portland, OR 97232.
2. By electronic mail (e-mail) to: owl-murrelet@fws.gov. Please see the Public Comments Solicited section below for

other information about electronic filing.

3. By fax to: the attention of Patrick Sousa at (503) 231-6243.

4. Via the Federal eRulemaking Portal at: <http://www.regulations.gov>. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT:

Patrick Sousa, Chief, Endangered Species, Pacific Regional Office, U.S. Fish and Wildlife Service, Ecological Services, 911 NE. 11th Avenue, Portland, OR 97232 (telephone: 503-231-6158; facsimile: 503-231-6243). If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

We solicit comments on the following three actions:

(1) Our proposal to revise currently designated critical habitat for the marbled murrelet published in the **Federal Register** on September 12, 2006 (71 FR 53838), and on our associated draft economic analysis of the proposed revision that was made available on June 26, 2007 (72 FR 35025);

(2) Our proposal to revise currently designated critical habitat for the northern spotted owl published in the **Federal Register** on June 12, 2007 (72 FR 32450); and

(3) Our draft recovery plan for the northern spotted owl announced in the **Federal Register** on April 26, 2007 (72 FR 20865), including the associated peer review.

We will consider information and recommendations from all interested parties. For the marbled murrelet and northern spotted owl proposed revised critical habitat rules, we particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as "critical habitat" under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefits of designation would outweigh threats to the species caused by designation such that the designation of critical habitat is prudent;

(2) Specific information on the amount and distribution of marbled murrelet and/or northern spotted owl habitat, what areas occupied at the time of listing that contain features essential to the conservation of the species should be included in the revised designation and why, and what areas not occupied at the time of listing are essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas

and their possible impacts on proposed revised critical habitat;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed revised designation, and in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts;

(5) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments; and

(6) Whether the benefits of exclusion in any particular area outweigh the benefits of inclusion under section 4(b)(2) of the Act.

For the proposed marbled murrelet critical habitat revision, we are also interested in comments on the draft economic analysis, including:

(1) The extent to which the description of economic impacts in the draft economic analysis is complete and accurate;

(2) The likelihood of adverse social reactions to the designation of revised critical habitat, as discussed in the draft economic analysis, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed revised critical habitat designation; and

(3) Economic data on the incremental effects that would result from designating any particular area as revised critical habitat, since it is our intent to include the incremental costs attributed to the revised critical habitat designation in the final economic analysis.

A draft economic analysis of the proposed revision of critical habitat for the northern spotted owl is not yet available. Public comment will be solicited separately at the time the availability of a draft economic analysis for the proposed northern spotted owl critical habitat revision is published in the **Federal Register**.

For the draft recovery plan for the northern spotted owl, we particularly seek comments concerning:

(1) The methods used to determine desired habitat percentages listed in Recovery Criterion 4. If recommendations are offered, respondents are asked to explain the scientific foundation supporting their comments;

(2) The biological need, design and feasibility of attempting to provide connectivity between the Olympic Peninsula and central Washington northern spotted owl populations;