

A public hearing has been scheduled for October 24, 2006, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by October 3, 2006. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

#### Drafting Information

The principal author of these regulations is Jefferson VanderWolk of the Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

#### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

#### Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

#### PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*  
Section 1.7874–2 also issued under 26 U.S.C. 7874(c)(6) and (g). \* \* \*

**Par. 2.** Section 1.7874–2 is added to read as follows:

#### § 1.7874–2 Surrogate foreign corporation.

[The text of proposed § 1.7874–2 is the same as the text of § 1.7874–2T

published elsewhere in this issue of the **Federal Register**].

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

[FR Doc. E6–8698 Filed 6–5–06; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### 49 CFR Part 604

[Docket No. FTA–2005–22657]

RIN 2132–AA85

#### Charter Service

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of additional committee members notice of and meeting dates and times.

**SUMMARY:** This notice lists the additional committee members as nominated by the Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC) and approved by the Deputy Administrator of the Federal Transit Administration (FTA). This notice also includes new meeting dates and times.

**DATES:** *Effective Date:* June 6, 2006. See **SUPPLEMENTARY INFORMATION** section for dates of future meetings.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Martineau, Attorney-Advisor, Office of the Chief Counsel, Federal Transit Administration, 202–366–1936 (*elizabeth.martineau@dot.gov*). Her mailing address at the Federal Transit Administration is 400 Seventh Street, SW., Room 9316, Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

#### New Members

April 10, 2006, FTA published a final notice establishing the Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC) (71 FR 18056). The CBNRAC held its first meeting in Washington, DC on May 8 and 9. During those meetings, the members of the CBNRAC nominated four additional members for inclusion on the CBNRAC. Those individuals are:

- (1) Michael Waters, Vice President and General Manager, Coach USA;
- (2) Dale Moser, Chief Operating Officer, Coach America;
- (3) Richard Ruddell, President and Executive Director, Fort Worth Transportation Authority;

(4) Sandy Drago, Executive Director, Capital Area Transportation Authority.

The Deputy Administrator considered these names, and, on May 26, 2006, approved the inclusion of these individuals on the CBNRAC.

#### Schedule of Meetings

As mentioned above, the first meetings of the CBNRAC occurred on May 8 and 9 in Washington, DC. During those meetings, the Committee agreed on the following schedule for future meetings:

June 19 from 9 a.m. to 4:30 p.m.  
June 20 from 8:30 a.m. to 4 p.m.  
July 17 from 9 a.m. to 4:30 p.m.  
July 18 from 8:30 a.m. to 4 p.m.  
September 12 from 9 a.m. to 4:30 p.m.  
September 13 from 8:30 a.m. to 4 p.m.  
October 25 from 9 a.m. to 4:30 p.m.  
October 26 from 8:30 a.m. to 4 p.m.  
December 6 from 9 a.m. to 4:30 p.m.  
December 7 from 8:30 a.m. to 4 p.m.

All of the above meetings will be held in room 2301 at 400 Seventh Street, SW., Washington, DC. Any changes in dates, times, or location, will be announced in a **Federal Register** notice in advance of the next meeting.

Issued this 31st day of May, 2006, in Washington, DC.

**Sandra K. Bushue,**

*Deputy Administrator.*

[FR Doc. 06–5133 Filed 6–5–06; 8:45 am]

**BILLING CODE 4910–57–M**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018–AU33

#### Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Spikedace and Loach Minnow

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

**ACTION:** Revised proposed rule; reopening of public comment period, notice of availability of draft economic analysis and draft environmental assessment, notice of public hearings, and updated legal descriptions for critical habitat units.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of the draft economic analysis and draft environmental assessment for the proposal to designate critical habitat for the spikedace (*Meda fulgida*) and loach minnow (*Tiaroga cobitis*) under the Endangered Species

Act of 1973, as amended (Act). The draft economic analysis finds that costs associated with spikedace and loachminnow conservation activities are forecast to range from \$25.2 million to \$100.3 million in constant dollars over the next 20 years. Adjusted for possible inflation the costs would range from \$19.0 million to \$83.6 million over 20 years, or \$1.3 million to \$5.7 million annually, using a three percent discount; or \$13.9 million to \$69.2 million over 20 years, or \$1.4 million to \$6.7 million over 20 years annually, using a seven percent discount rate.

We are also reopening the public comment period for the proposal to designate critical habitat to allow all interested parties an opportunity to comment on and request changes to the proposed critical habitat designation, as well as the associated draft economic analysis and draft environmental assessment. In addition, we are proposing corrected legal descriptions for some of the critical habitat units. Comments previously submitted on the December 20, 2005, proposed rule need not be resubmitted as they have been incorporated into the public record and will be fully considered in preparation of the final rule. We will hold two public informational sessions and hearings (see **DATES** and **ADDRESSES** sections).

**DATES:** Comments must be submitted directly to the Service (see **ADDRESSES**) on or before July 6, 2006, or at the public hearings.

We will hold a public informational session from 3 p.m. to 4:30 p.m., followed by a public hearing from 6:30 p.m. to 8 p.m., on each of the following dates:

1. June 13, 2006: Camp Verde, Arizona.
2. June 20, 2006: Silver City, New Mexico.

**ADDRESSES:**

**Information Sessions/Hearings**

The public informational sessions and hearings will be held at the following locations:

1. Camp Verde, AZ: Cliff Castle Casino Hotel & Conference Center, Tri-City Room, 555 Middle Verde Road.
2. Silver City, NM: Flame Convention Center, 2800 Pinos Altos Road.

For information on requesting reasonable accommodations to attend a session, see "Public Comments Solicited" under **SUPPLEMENTARY INFORMATION**.

**Comments**

If you wish to comment on the proposed rule, draft economic analysis,

or draft environmental assessment, you may submit your comments and materials identified by RIN 1018-AU33, by any of the following methods:

(1) E-mail: [SD\\_LMComments@fws.gov](mailto:SD_LMComments@fws.gov). Include RIN 1018-AU33 in the subject line. Please submit electronic comments in ASCII file format and avoid the use of special characters or any form of encryption. Please also include your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Arizona Ecological Services Field Office at (602) 242-0210.

(2) Fax: (602) 242-2513.

(3) Mail or hand delivery/courier: Steve Spangle, Field Supervisor, Arizona Ecological Services Field Office, 2321 W. Royal Palm Road, Suite 103, Phoenix, AZ 85021.

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

You may obtain copies of the proposed rule, draft economic analysis, and draft environmental assessment by mail or by visiting our Web site at <http://arizonaes.fws.gov/>. You may review comments and materials received and review supporting documentation used in preparation of this proposed rule by appointment, during normal business hours, at the Arizona Ecological Services Field Office (see **ADDRESSES**).

**FOR FURTHER INFORMATION CONTACT:**

Steve Spangle, Field Supervisor, Arizona Ecological Services Field Office (telephone, 602-242-0210; facsimile, 602-242-2513).

**SUPPLEMENTARY INFORMATION:**

**Public Comments Solicited**

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the proposed rule, the draft economic analysis, and the draft environmental assessment. Based on public comment on the proposed rule, the draft economic analysis, and the environmental assessment, as well as on the conclusions of the final economic analysis and environmental assessment, we may find during the development of our final determination that some areas proposed do not contain the features that are essential to the conservation of the species, are appropriate for exclusion under section 4(b)(2) of the

Act, or are not appropriate for exclusion. We particularly seek comments concerning:

(1) The reasons any habitat should or should not be determined to be critical habitat as provided by section 4 of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), including whether it is prudent to designate critical habitat;

(2) Specific information on the distribution of the spikedace and loach minnow, the amount and distribution of the species' habitat, and which habitat contains the necessary features (primary constituent elements) essential to the conservation of these species and why;

(3) Land-use designations and current or planned activities in the subject area and their possible impacts on these species or proposed critical habitat;

(4) Whether our approach to critical habitat designation 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;

(5) Any foreseeable environmental impacts directly or indirectly resulting from the proposed designation of critical habitat;

(6) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, and in particular, any impacts on small entities or families;

(7) Whether the economic analysis identifies all State and local costs, and if not, what other costs should be included;

(8) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(9) Whether the economic analysis correctly assesses the effect on regional costs associated with land- and water-use controls that derive from the designation;

(10) Whether the critical habitat designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation;

(11) Whether the economic analysis appropriately identifies all costs that could result from the designation or coextensively from the listing of these species in 1986;

(12) Based on the information in the draft economic analysis, we are considering excluding the Verde River Unit based on disproportionate costs from the final designation per our discretion under section 4(b)(2) of the Act. We are specifically seeking

comment along with additional information on the estimated costs, how these estimated costs are distributed within the Verde River Unit, and whether we should exclude all or a portion of the Verde River Unit based on disproportionate costs from the final designation per our discretion under section 4(b)(2) of the Act; and

(13) Whether the benefit of exclusion in any particular area outweigh the benefits of inclusion under Section 4(b)(2) of the Act.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. We will not consider anonymous comments and we will make all comments available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Arizona Ecological Services Field Office (see **ADDRESSES**).

All previous comments and information submitted during the initial comment period on the proposed rule need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). Our final designation of critical habitat for the spikedace and loach minnow will take into consideration all comments and any additional information received during both comment periods.

Persons needing reasonable accommodations in order to attend and participate in a public hearing should contact the Field Supervisor, Arizona Ecological Services Field Office, at the address or phone number listed in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the hearing. Information regarding this proposal is available in alternative formats upon request.

**Background**

On December 20, 2005, we proposed to designate critical habitat for spikedace and loach minnow of approximately 633 stream miles (mi) (1018.7 stream kilometers (km)) of critical habitat, which includes various stream segments and their associated riparian areas, including the stream at bankfull width and a 300-foot buffer on either side of the stream banks (70 FR 75546). The proposed designation includes Federal, State, Tribal, and private lands in Arizona and New Mexico.

Critical habitat identifies specific areas containing features essential to the conservation of a listed species and that may require special management considerations or protection. If the proposed critical habitat designation is finalized, section 7(a)(2) of the Act would require that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of critical habitat.

Section 4 of the Act requires that we consider economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We may revise the proposal, or its supporting documents, to incorporate or address new information received during the comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species.

The draft economic analysis considers and attempts to quantify the potential economic effects of efforts to protect the spikedace and loach minnow and their habitat, collectively referred to as “spikedace and loach minnow conservation activities,” in the proposed critical habitat designation, as well as the economic effects of protective measures taken as a result of the listing or other Federal, State, and local laws

that aid habitat conservation in the areas proposed for designation. In the case of habitat conservation, these costs would reflect the costs associated with the commitment of resources to comply with habitat protection measures. The analysis also addresses how potential economic impacts are likely to be distributed.

We did not propose Bear Creek, a tributary of the Gila River in New Mexico, as critical habitat because there had been no information to indicate this area was occupied by either species. However, we have since received information to indicate this area is occupied by loach minnow. Due to our tight timeframe for completion of the final rule and associated documents we are not able to consider inclusion of Bear Creek at this time. However, if the critical habitat designation is amended in the future we will consider inclusion of this area at that time.

**Corrected Coordinates for Proposed Units of Critical Habitat**

Below we provide corrected legal descriptions for the spikedace and loach minnow proposed critical habitat designation. Following the publication of the proposed rule on December 20, 2005, and in part through comments we received during the subsequent comment period, we determined that some of the critical habitat units were incorrectly described. In particular, in Table 2, the column headings for Arizona and New Mexico were inadvertently switched. We have since corrected the descriptions and tables to accurately reflect what we are proposing as critical habitat, and we provide the corrected descriptions for all critical habitat units below. Table 1 below provides a corrected version of Table 2 from the December 20, 2005, proposed rule (70 FR 75546) with approximate distances by major landowner type. Corrected Geographic Information System (GIS) layers are available at <http://criticalhabitat.fws.gov/>.

**TABLE 1.—APPROXIMATE CRITICAL HABITAT IN STREAM KILOMETERS AND MILES**  
[7 River Units]

Land owner	New Mexico km (mi)	Arizona km (mi)	Total km (mi)
Federal .....	167.71 (269.90)	197.99 (318.63)	365.7 (588.53)
Tribal .....	0.0 (0.0)	33.00 (53.11)	33.00 (53.11)
State .....	1.32 (2.12)	8.32 (13.39)	9.64 (15.51)
County .....	0.0 (0.0)	0.0 (0.0)	0.0 (0.0)
Private .....	89.73 (144.40)	134.44 (216.36)	224.17 (360.76)
<b>Total .....</b>	<b>258.75 (416.42)</b>	<b>373.75(601.49)</b>	<b>632.51 (1017.91)</b>

No additional mileage was incorporated into the proposed designation through the corrections provided in Table 1. Mileage was reduced by approximately 0.51 mi (0.82 km) for Eagle Creek after correcting for a mapping error in the original proposal. Mileage was additionally modified for East Fork Black River and North Fork East Fork Black River due to a change in our determination of the confluence points of these two streams. Mileage that was previously attributed to North Fork East Fork Black River is now encompassed in the mileage for East Fork Black River. The overall mileage for these two streams remained the same. The majority of the changes correct errors in the Township, Range, and section descriptions provided for each proposed critical habitat unit.

All legal descriptions for New Mexico and Arizona are based on the Public Lands Survey System (PLSS). Within this system, all coordinates reported for New Mexico are in the New Mexico Principal Meridian (NMPM), while those in Arizona are in the Gila and Salt River Meridian (GSRM). All mileage calculations were performed using GIS.

#### **Required Determinations—Amended**

This revised proposed rule affirms the information contained in the December 20, 2005, proposed rule (70 FR 75546) concerning Executive Orders (EO) 13132 and EO 12988; the Paperwork Reduction Act; the National Environmental Policy Act; and the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951). Based on the draft economic analysis, we are amending our required determinations, as provided below, concerning EO 12866 and the Regulatory Flexibility Act; EO 13211 and 12630; and the Unfunded Mandates Reform Act.

#### **Regulatory Planning and Review**

In accordance with EO 12866, this document is a significant rule because it may raise novel legal and policy issues. However, based on our draft economic analysis, it is not anticipated that the proposed designation of critical habitat for the spikedace and loach minnow would result in an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed the proposed rule or accompanying economic analysis.

Further, EO 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (OMB,

Circular A-4, September 17, 2003). Pursuant to Circular A-4, once it has been determined that the Federal regulatory action is appropriate, the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts under section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat, provided that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

#### **Regulatory Flexibility Act (5 U.S.C. 601 et seq.)**

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)) (SBREFA), whenever an 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 the rule will not have a significant economic impact on a substantial number of small entities. Based upon our draft economic analysis of the proposed designation, we provide our factual basis for determining that this rule will not result in a significant economic impact on a substantial number of small entities. This determination is subject to revision based on comments received as part of the final rulemaking.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small

businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if this proposed designation of critical habitat for the spikedace and loach minnow would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, water management and use, livestock grazing, residential and related development, spikedace- and loach minnow-specific management activities, recreation activities, fire management activities, mining, and transportation). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

If this proposed critical habitat designation is made final, Federal agencies must consult with us if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

Our economic analysis of this proposed designation evaluated the potential economic effects on small business entities and small governments resulting from conservation actions related to the listing of this species and proposed designation of its critical habitat. We evaluated small business entities in nine categories: water management and use, livestock grazing activities, mining operations, spikedace

and loach minnow-specific management activities, recreation, residential and commercial development, Tribal activities, transportation activities, and fire management activities. Based on our analysis, impacts associated with small entities are anticipated to occur to water management and use, livestock grazing, residential and commercial development, Tribal businesses, transportation, and fire management. It should be noted that the majority of Tribal lands are under consideration for exclusion at this time. The following is a summary of the information contained in the draft economic analysis:

*(a) Water Management and Use Related to Agricultural Production*

According to the draft economic analysis, spikedace and loach minnow conservation activities have not impacted private crop production since the listing of the species in 1986. However, because agricultural water use comprises 98 percent of surface water use and 81 percent of groundwater use in counties that contain proposed critical habitat, it appears most likely that any additional water supplies needed for the species would potentially come from agriculture. The economic analysis estimates that only 810 acres of cropland are included within proposed critical habitat, and only 6,310 acres of cropland are in the vicinity of critical habitat. The average small farm includes 4,600 acres, and farms vary between 1,300 and 8,000 acres. Based on the fact that at most 9,000 acres of cropland are involved, and small farms vary in size, we believe that there are not many farms located along the streams proposed for the designation. Additionally, under the assumption that all farms are small (1,884 small business farming operations across five affected counties), there would be well less than one percent of small farm businesses impacted by this proposed designation. As a result of this information, we have determined that this proposed designation will not have an effect on a substantial number of small business farming operations.

*(b) Livestock Grazing Activities*

Ranching operations that hold grazing allotment permits are anticipated to be impacted by conservation activities for the spikedace and loach minnow. The costs assumed to be incurred by livestock operations are primarily due to anticipated installation and maintenance of riparian fencing. The economic analysis concluded that approximately 76 ranches—or 4.7 percent of ranches in affected counties

that contain proposed critical habitat, or 1 percent of ranches in New Mexico and Arizona—could be impacted by conservation activities. Annual costs to each of these 76 ranching operations may be between \$390 and \$9,200 per ranch. Average revenues of a ranch in the proposed critical habitat region are \$133,000, or between 0.3 and 7 percent of a ranch's estimated average revenue. Approximately 94 percent of beef cattle ranching and farming operations in counties containing spikedace and loach minnow critical habitat are small businesses; thus approximately 72 small ranching operations may experience a reduction in revenues. Because only 1 percent of ranches in New Mexico and Arizona, or 4.7 percent of ranches, in affected counties are estimated to be impacted by this proposal, we have determined that this proposed designation will not have an effect on a substantial number of small business ranching operations. From this analysis, we also have determined that this proposed designation would also not result in a significant effect to the annual sales of these small businesses impacted by this proposed designation because the above analysis has determined that annual costs may represent between 0.3 and 7 percent of a ranch's estimated average revenue.

*(c) Residential and Commercial Development*

The draft economic analysis concludes that the most likely location for development activities within the proposed critical habitat designation is within the Verde River Complex, which contains a large amount of private land, has a large population, and is projected to have substantial human population growth over the next 20 years. No North American Industry Classification System (NAICS) code exists for landowners, and the Small Business Administration does not provide a definition of a small landowner. However, recognizing that it is possible that some of the landowners may be small businesses, this analysis provides information concerning the number of landowners potentially affected and the size of the impact on those owners. The draft economic analysis (section 7) estimates that 1,646 housing units could be built on the approximately 2,880 privately owned acres within proposed critical habitat over the next 20 years. Impacts to developers are estimated to include fencing costs, scientific studies, surveying and monitoring requirements, and possibly off-setting mitigation (habitat set-aside). Costs are estimated to range from \$3.1 million to \$4.8 million per large development, or \$3,900 to

\$5,900 per housing unit (\$190 to \$300 annually, if costs are distributed evenly over 20 years). Actual conservation requirements undertaken by an individual landowner will depend on how much of a parcel crosses proposed critical habitat. It is important to note that it is likely that some or all housing subdivisions may be developed by large corporations which do not qualify as small businesses under RFA/SBRFA. Furthermore, because there is no loss in housing units estimated, there would likely not be any impact to small businesses that are residential housing sub-contractors. In addition, individual single-family home development has not historically been subject to consultation or habitat conservation requirements for the spikedace and loach minnow in Arizona or New Mexico, although consultation could be required if Federal permits from the Army Corps of Engineers, Environmental Protection Agency, or Federal Emergency Management Agency are required.

Because individual single-family home development has not historically been subject to consultation or habitat conservation requirements as described above, the probability that single-family home development will involve many larger businesses, as opposed to small businesses, and because the impacts will not reduce the number of housing units, we have determined that this proposed designation will not have an effect on a substantial number of small businesses that are part of residential and commercial development. From this analysis, we also have determined that this proposed designation would also not result in a significant effect to the annual sales of these small businesses impacted by this proposed designation. This is because of the above analysis which has determined that each housing unit would bear at most a cost of \$190 to \$300 annually, if costs are distributed evenly over 20 years.

*(d) Tribal Businesses*

The proposed critical habitat development includes lands of the Yavapai-Apache Nation (1.6 km (1 mi) of tributary proposed as critical habitat), San Carlos Apache Tribe (17.2 km (27.7 mi) of tributary proposed as critical habitat), and White Mountain Apache Tribe (12.5 km (20.1 mi) of tributary proposed as critical habitat). The Tribes have expressed concerns that critical habitat on their lands will have a disproportionate impact on their ability to use resources on their sovereign lands and to successfully achieve economic self-sufficiency. However, Tribal governments are not classified as small

businesses under RFA/SBRFA, whereas Tribal corporations may qualify as small businesses under RFA/SBRFA. The draft economic analysis concluded that future economic costs of implementing spikedace and loach minnow conservation efforts on Tribal lands could include administrative costs of consultation, surveys and monitoring, modifications to grazing, fire management, and recreation activities, and potential project modifications to grazing, fire management, and recreation activities, and potential project modifications to restoration activities. Impacts in each of these areas could affect the Tribes' revenues and employment in the future; however, many of these impacts may not fall on Tribal corporations, as opposed to the Tribal governments in question. It should be noted that the lands of both the White Mountain Apache Tribe and the San Carlos Apache Tribe are proposed for exclusion from the critical habitat designation in the proposed rule. Because both White Mountain Apache Tribe and the San Carlos Apache Tribe are proposed for exclusion from the critical habitat designation in the proposed rule and only 1.6 km (1 mi) of stream tributary is proposed as critical habitat on Yavapai-Apache Nation, we have determined this proposed designation will not have an effect on a substantial number of small businesses on Tribal lands.

*(e) Recreation*

Areas currently stocked with non-native rainbow trout include the Camp Verde area of the Verde River in Complex 1 and East Fork Gila River in complex 5. The future impact of proposed critical habitat on the stocking regimes in these reaches is unknown, as is the reduction in fishing activity that would occur if stocking is curtailed. Further, it is unknown whether nonnative fish stocking may be replaced with catchable native fish stocking (e.g. Apache trout). Thus, the analysis in the economic analysis estimates the value of angler days at risk if sportfish stocking were discontinued on these reaches as part of the high-end estimates. Angling trips are valued at approximately \$8.6 million over 20 years (or \$816,000 annually), assuming a discount rate of 7 percent. It should be noted that because State fish managers typically identify alternative sites for stocked fish when areas are closed to stocking, these angler days are likely to be redistributed to other areas rather than lost altogether. Thus, the high-end estimate does not consider the possibility that rather than not fishing at all, recreators will visit alternative, less desirable fishing sites.

Existing models of angler behavior in these areas were not available to refine this estimate.

The two stream reaches where impacts on recreation are anticipated are located in Yavapai County, Arizona, and Catron County, New Mexico. If, as in the low-end estimate of impacts, angler trips are not lost, but instead are redistributed to other streams, then regional impacts on small businesses are likely to be minimal. If, as in the high-end estimate of impacts, angler trips to the two stream reaches that currently stock nonnative fish are not undertaken, localized impacts on anglers and, in turn, small businesses that rely on fishing activities could occur. These impacts would be spread across a variety of industries, including food and beverage stores, food service and drinking places, accommodations, transportation, and sporting goods. These industries generate approximately \$829 million in total annual sales for these two counties. The high-end estimate of annual loss of \$485,000 in trip expenditures would therefore represent a loss of approximately 0.06 percent of annual revenues for these businesses.

We have determined that this proposed designation will not have an effect on a substantial number of small businesses that may be impacted from lost recreation because these angler days are likely to be redistributed to other areas rather than lost altogether. From this analysis, we also have determined that this proposed designation would not result in a significant effect to the annual sales of these small businesses impacted by this proposed designation because any potential impact to small businesses from lost anglers not fishing in an area is likely to be redistributed to other areas and, if they are not redistributed, then they would represent a loss of approximately 0.06 percent of annual revenues for these businesses.

**E.O. 13211**

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule is considered a significant regulatory action under E.O. 12866 due to its potentially raising novel legal and policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Appendix B of the draft economic analysis provides a discussion and analysis of this determination. The OMB has provided guidance for implementing this

Executive Order that outlines nine outcomes that may constitute "a significant adverse effect" when compared without the regulatory action under consideration. The draft economic analysis finds that none of these criteria are relevant to this analysis; thus, energy-related impacts associated with spikedace and loach minnow conservation activities within proposed critical habitat are not expected.

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

*In Accordance With the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service Makes the Following Findings*

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments," with the following two exceptions: It excludes "a condition of federal assistance" and "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or

private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) The draft economic analysis discusses potential impacts of critical habitat designation for the spikedace and loach minnow on water management activities, livestock grazing, Tribes, residential and commercial development activities, recreation activities, fire management activities, mining, and transportation activities. The analysis estimates that annual costs of the rule could range from \$25.2 million to \$100.3 million in constant dollars over 20 years. Impacts are largely anticipated to affect water operators and Federal and State agencies, with some effects on livestock grazing operations, residential and commercial development, and transportation. Impacts on small governments are not anticipated, or they are anticipated to be passed through to consumers. For example, costs to water operations would be expected to be passed on to consumers in the form of price changes. Consequently, for the reasons discussed above, we do not believe that the designation of critical habitat for the spikedace and loach minnow will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

**Takings**

In accordance with E.O. 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing critical habitat for the spikedace and loach minnow in a takings implications assessment. The takings implications assessment concludes that this proposed designation of critical habitat for the

spikedace and loach minnow does not pose significant takings implications.

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

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

**Proposed Rule 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. Critical habitat for the loach minnow (*Tiaroga cobitis*) and spikedace (*Meda fulgida*) in § 17.95(e), which was proposed on December 20, 2005, at 70 FR 75546, is proposed to be amended by revising some of the critical habitat unit descriptions as follows:

**§ 17.95 Critical habitat—fish and wildlife.**

\* \* \* \* \*

(e) *Fishes.*

\* \* \* \* \*

Loach minnow (*Tiaroga cobitis*)

1. Critical habitat for the loach minnow in Arizona and New Mexico is described in detail as follows.

\* \* \* \* \*

(6) Complex 2—Black River, Apache and Greenlee Counties, Arizona.

(i) East Fork Black River—12.2 miles (19.7 km) of the river extending from the confluence with the West Fork Black River at Township 4 North, Range 28 East, section 11 upstream to the confluence with an unnamed tributary approximately 0.51 miles (0.82 km) downstream of the Boneyard Creek confluence at Township 5 North, Range 29 East, section 5. Land ownership: U.S. Forest Service (Apache-Sitgreaves National Forest).

(ii) North Fork East Fork Black River—4.4 miles (7.1 km) of river extending from the confluence with East Fork Black River and an unnamed drainage at Township 5, Range 29, section 5 upstream to the confluence with an unnamed tributary at Township 6 North, Range 29 East, section 30. Land ownership: U.S. Forest Service (Apache-Sitgreaves National Forest).

(iii) Boneyard Creek—no changes from proposed rule at this time.

\* \* \* \* \*

(7) Complex 3—Middle Gila/Lower San Pedro/Aravaipa Creek, Pinal and Graham counties, Arizona.

(i) Aravaipa Creek—no changes from the proposed rule at this time.

(ii) Turkey Creek—2.7 miles (4.3 km) of creek extending from the confluence with Aravaipa Creek at Township 6 South, Range 19 East, section 19 upstream to the confluence with Oak Grove Canyon at Township 6 South, Range 19 East, section 32. Land ownership: Bureau of Land Management.

(iii) Deer Creek—no changes from the proposed rule at this time.

\* \* \* \* \*

(8) Complex 4—San Francisco and Blue Rivers, Pinal and Graham counties, Arizona and Catron County, New Mexico.

(i) Eagle Creek—44.7 miles (71.9 km) of creek extending from the Phelps-Dodge Diversion Dam at Township 4 South, Range 28 East, section 23 upstream to the confluence of Dry Prong and East Eagle creeks at Township 2 North, Range 28 East, section 29. Land ownership: U.S. Forest Service (Apache-Sitgreaves National Forest), Tribal (San Carlos) lands, and private.

(ii) San Francisco River—126.5 miles (203.5 km) of river extending from the confluence with the Gila River at Township 5 South, Range 29 East, section 21 upstream to the mouth of the Box, a canyon above the town of Reserve, at Township 6 South, Range 19 West, section 2. Land ownership: Bureau of Land Management, U.S. Forest Service (Apache-Sitgreaves National Forest), State, and private in Arizona, and U.S. Forest Service (Gila National Forest) and private in New Mexico.

(iii) Tularosa River—no changes from the proposed rule at this time.

(iv) Negrito Creek—4.2 miles (6.8 km) of creek extending from the confluence with the Tularosa River at Township 7 South, Range 18 West, section 19 upstream to the confluence with Cerco Canyon at Township 7 South, Range 18 West, section 21. Land ownership: U.S. Forest Service (Gila National Forest), and private lands.

(v) Whitewater Creek—no changes from the proposed rule at this time.

(vi) Blue River—51.1 miles (82.2 km) of river extending from the confluence with the San Francisco River at Township 2 South, Range 31 East, section 31 upstream to the confluence of Campbell Blue and Dry Blue Creeks at Township 7 South, Range 21 West, section 6. Land ownership: U.S. Forest Service (Apache-Sitgreaves National Forest) and private lands in Arizona;

U.S. Forest Service (Gila National Forest) in New Mexico.

(vii) Campbell Blue Creek—no changes from the proposed rule at this time.

(viii) Dry Blue Creek—3.0 miles (4.8 km) of creek extending from the confluence with Campbell Blue Creek at Township 7 South, Range 21 West, section 6 upstream to the confluence with Pace Creek at Township 6 South, Range 21 West, section 28. Land ownership: U.S. Forest Service (Gila National Forest).

(ix) Pace Creek—no changes from the proposed rule at this time.

(x) Frieborn Creek—1.1 miles (1.8 km) of creek extending from the confluence with Dry Blue Creek at Township 7 South, Range 21 West, section 6 upstream to an unnamed tributary at Township 7 South, Range 21 West, section 8. Land ownership: U.S. Forest Service (Gila National Forest).

(xi) Little Blue Creek—no changes from the proposed rule at this time.

\* \* \* \* \*

(9) Complex 5—Upper Gila River Complex, Catron, Grant, and Hidalgo counties, New Mexico.

(i) Upper Gila River—no changes from the proposed rule at this time.

(ii) East Fork Gila River—26.1 miles (42.0 km) of river extending from the confluence with the West Fork Gila River at Township 13 South, Range 13 West, section 8 upstream to the confluence of Beaver and Taylor Creeks at Township 11 South, Range 12 West, section 17. Land ownership: U.S. Forest Service (Gila National Forest) and private lands.

(iii) Middle Fork Gila River—no changes from the proposed rule at this time.

(iv) West Fork Gila River—no changes from the proposed rule at this time.

\* \* \* \* \*

Spikedace (*Meda fulgida*)

1. Critical habitat for the spikedace in Arizona and New Mexico is depicted on the following overview map and described in detail following the map.

\* \* \* \* \*

(6) Complex 1—Verde River, Yavapai County, Arizona.

(i) Verde River—106.5 miles (171.4 km) of river extending from the confluence with Fossil Creek at Township 11 North, Range 6 East, section 25 upstream 106.5 (171.4 km) miles to Sullivan Dam at Township 17 North, Range 2 West, section 15. Land ownership: U.S. Forest Service (Coconino, Prescott, and Tonto National Forests), Tribal (Yavapai Apache Nation), State, and private lands.

\* \* \* \* \*

(7) Complex 3—Middle Gila/Lower San Pedro/Aravaipa Creek, Pinal and Graham counties, Arizona.

(i) Gila River—no changes from the proposed rule at this time.

(ii) Lower San Pedro River—no changes from the proposed rule at this time.

(iii) Aravaipa Creek—28.1 miles (45.3 km) of creek extending from the confluence with the San Pedro River at Township 7 South, Range 16 East, section 9 upstream to the confluence with Stowe Gulch at Township 6 South, Range 19 East, section 35. Land ownership: Bureau of Land Management, Tribal, State, and private lands.

\* \* \* \* \*

(8) Complex 4—San Francisco and Blue Rivers, Pinal and Graham counties, Arizona.

(i) Eagle Creek—44.7 miles (71.9 km) of creek extending from the Phelps-Dodge Diversion Dam at Township 4 South, Range 28 East, section 23 upstream to the confluence of Dry Prong

and East Eagle Creeks at Township 2 North, Range 28 East, section 29. Land ownership: Bureau of Land Management, U.S. Forest Service (Apache-Sitgreaves National Forest), Tribal (San Carlos), and private lands.

\* \* \* \* \*

(9) Complex 5—Upper Gila River Complex, Catron, Grant, and Hidalgo counties, New Mexico.

(i) Upper Gila River—no changes from the proposed rule at this time.

(ii) East Fork Gila River—26.1 miles (42.0 km) of river extending from the confluence with the West Fork Gila River at Township 13 South, Range 13 West, section 8 upstream to the confluence of Beaver and Taylor creeks at Township 11 South, Range 12 West, section 17. Land ownership: U.S. Forest Service (Gila National Forest) and private lands.

(iii) Middle Fork Gila River—7.7 miles (12.3 km) of river extending from the confluence with the West Fork Gila River at Township 12 South, Range 14 West, section 25 upstream to the confluence with Big Bear Canyon at Township 12 South, Range 14 West, section 2. Land ownership: U.S. Forest Service (Gila National Forest) and private lands.

(iv) West Fork Gila River—no changes from the proposed rule at this time.

\* \* \* \* \*

#### Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: May 25, 2006.

**Matt Hogan,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

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