

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at the City of Merrill Building Inspector/Zoning Administrator's Office, Merrill City Hall, 1004 East First Street, Merrill, Wisconsin.

Send comments to The Honorable Patricia Woller, Mayor of the City of Merrill, 1004 East First Street, Merrill, Wisconsin 54452.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: March 19, 1998.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 98-8088 Filed 3-26-98; 8:45 am]

BILLING CODE 6718-04-P

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 228 and 252

[DFARS Case 98-D002]

#### Defense Federal Acquisition Regulation Supplement; Compliance with Spanish Laws and Insurance

**AGENCY:** Department of Defense (DoD).

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

**SUMMARY:** The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify requirements for use of a clause pertaining to compliance with Spanish laws and insurance under contracts for services or construction to be performed in Spain.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before May 26, 1998, to be considered in the formulation of the final rule.

**ADDRESSES:** Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (A&T) DP (DAR), IMB 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telefax (703) 602-0350.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 98-D002 in all correspondence related to this issue. E-mail comments should cite DFARS Case 98-D002 in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602-0131.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This proposed rule amends DFARS 228.370(f) to clarify the prescription for

use of the clause at 252.228-7006, Compliance with Spanish Laws and Insurance. The rule also amends the clause at 552.228-7006 to clarify that the requirements of the clause apply only if the contractor is not a Spanish concern; and that the requirements of the clause apply to subcontracts with non-Spanish concerns that will perform work in Spain under the contract.

#### B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule is a clarification of existing requirements and applies only to contracts for services or construction to be performed in Spain. An Initial Regulatory Flexibility Analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 98-D002 in correspondence.

#### C. Paperwork Reduction Act

The existing paperwork burden requirements of the clause at DFARS 252.228-7006 have been approved by the Office of Management and Budget under Clearance Number 0704-0229, which expires on September 30, 1998. This rule is not expected to result in a change in the estimated burden hours.

#### List of Subjects in 48 CFR Parts 228 and 252

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 228 and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 228 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 228—BONDS AND INSURANCE

2. Section 228.370 is amended by revising paragraph (f) to read as follows:

#### 228.370 Additional clauses.

\* \* \* \* \*

(f) Use the clause at 252.228-7006, Compliance with Spanish Laws and Insurance, in solicitations and contracts for services or construction to be performed in Spain, unless the contractor is a Spanish concern.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.228-7006 is amended by revising the clause date; and redesignating paragraphs (a) through (e) as paragraphs (b) through (f), respectively; adding a new paragraph (a); and revising newly designated paragraph (e) to read as follows:

#### 252.228-7006 Compliance with Spanish laws and insurance.

\* \* \* \* \*

#### COMPLIANCE WITH SPANISH LAWS AND INSURANCE (XXX 19XX)

(a) The requirements of this clause apply only if the Contractor is not a Spanish concern.

\* \* \* \* \*

(e) The Contractor shall provide the Contracting Officer with a similar representation for all subcontracts with non-Spanish concerns that will perform work in Spain under this contract.

\* \* \* \* \*

[FR Doc. 98-7712 Filed 3-26-98; 8:45 am]

BILLING CODE 5000-04-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018-AE86

#### Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Devils River Minnow (*Dionda diaboli*) as Endangered

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

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) proposes to list the Devils River minnow (*Dionda diabolii*) as an endangered species under authority of the Endangered Species Act of 1973, as amended (Act). The current range of the Devils River minnow is limited to three stream systems in Val Verde and Kinney counties, Texas, and one drainage in Coahuila, Mexico. The species' range has been significantly contracted and fragmented. In addition, the numbers of Devils River minnows collected during fish surveys has declined dramatically over the past 25 years; the species has declined from one of the most abundant fish to one of the least abundant. Based on the current information, the decline of the species in both distribution and abundance may be attributed in large part to the effects of habitat loss and modification and possibly predation by smallmouth bass (*Micropterus dolomieu*), an introduced game fish. This proposal, if made final, will implement Federal protection provided by the Act for the Devils River minnow.

**DATES:** Comments from all interested parties must be received by July 27, 1998. Public hearing requests must be received by May 11, 1998.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, Austin Ecological Services Field Office, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, Texas, 78758. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Nathan Allan, Fish and Wildlife Biologist (see **ADDRESSES** section) (telephone 512/490-0057; facsimile 512/490-0974).

**SUPPLEMENTARY INFORMATION:****Background**

The Devils River minnow (*Dionda diabolii* Hubbs and Brown) is classified in the Cyprinidae (Minnow) family. It was first collected from Las Moras Creek, near Brackettville, Texas, on April 14, 1951. The species was formally described by Hubbs and Brown (1956) from specimens collected in the Devils River; the holotype locality being Devils River at Baker's Crossing. The species occurs with *Dionda argentosa* (manantial roundnose minnow) and is also similar to *Dionda episcopa* (roundnose minnow). Devils River minnow is recognized as a distinct species by the American Fisheries

Society (Robins *et al.* 1991) based on morphological characteristics (Hubbs and Brown 1956), genetic markers (Mayden *et al.* 1992) and chromosome differences (Gold *et al.* 1992).

The Devils River minnow is a small fish, with adults reaching sizes of 25–53 millimeters (mm) (1.0–2.1 inches (in)) standard length. The fish has a wedge-shaped caudal spot and pronounced lateral stripe with double dashes extending through the eye to the snout but not reaching the lower lip. The species has a narrow head with prominent dark markings on scale pockets above the lateral line that produce a cross-hatched appearance when viewed from the top (Hubbs and Brown 1956).

No information is available on life history characteristics, feeding patterns, or reproductive behaviors of this species. However, based on the extended intestinal tract, species of the genus *Dionda* are considered to feed primarily on algae. *Dionda episcopa* have been observed to be broadcast spawners with nonadhesive eggs that sink to the substrate (Johnston and Page 1992).

General habitat associations for Devils River minnow have been described as channels of fast-flowing, spring-fed waters over gravel substrates (Harrell 1978). Although the species is closely associated with spring systems, it most often occurs where spring flow enters a stream, rather than in the spring outflow itself (Hubbs and Garrett 1990). The species is adapted to the hydrologic variations inherent in desert river systems (Harrell 1978), characterized by extended droughts and extreme flash floods (USGS 1989).

The Devils River minnow is part of a unique fish fauna in west Texas streams where a mixture of fishes occur, including Mexican peripherals, local endemics, and widespread North American fishes (Hubbs 1957). About half of the native fishes of the Chihuahuan Desert of Mexico and Texas are considered threatened by Hubbs (1990) and at least four species have been documented to already be extinct (Miller *et al.* 1989), primarily due to habitat destruction and introduced species.

The Devils River minnow is native to tributary streams of the Rio Grande River in Val Verde and Kinney counties, Texas, and Coahuila, Mexico. The known historic range of the species is based on collections from the 1950s and 1970s and includes—the Devils River from Beaver Lake downstream to near its confluence with the Rio Grande; San Felipe Creek from the springs in the headwaters to springs in Del Rio;

Sycamore Creek, in Kinney County; Las Moras Creek near Brackettville; and Rio Sabinas, Rio San Carlos, and Rio Alamo from the Rio Salado drainage in northern Mexico (Brown 1955; Hubbs and Brown 1956; Robinson 1959; Harrell 1978; Smith and Miller 1986; Garrett *et al.* 1992). Despite numerous collection efforts, the species has never been reported from the mainstem Rio Grande, the Rio Conchos drainage, or tributary streams other than those listed above. The range of the species prior to 1951 is unknown.

The current distribution of Devils River minnow in Texas was described by Garrett *et al.* (1992). This study documented the presence of the species in 1989 at two sites on the Devils River, two sites on San Felipe Creek, and one site on Sycamore Creek. Garrett *et al.* (1992) showed that Devils River minnow was very rare throughout its range in 1989 compared to past collections. At 24 sampling locations within the historic range, a total of only 7 individuals were collected from 5 sites. In addition to declines in the Devils River minnow populations, Garrett *et al.* (1992) also observed a general shift in community structure toward fishes that tend to occupy quiet water or pool habitat, conditions that are often limited in flowing spring runs. The authors hypothesized that this shift was the result of reduced stream flows from drought, exacerbated by human modification to stream habitats, especially in Sycamore and Las Moras creeks.

No published information has been found on the status of the Devils River minnow in Mexico. A review of museum records indicates the species may now occur in only two localities in Mexico. Populations there appear to be very depressed and face significant threats from industrial development (Contreras and Lozano 1994; S. Contreras-B., University of Nuevo Leon, *in litt.* 1997). Throughout the region of northern Mexico, fish species are severely threatened with habitat loss and modification. Of an approximate 200 species that may occur in the region, 135 are considered threatened (Williams *et al.* 1989; Contreras and Lozano 1994) and 15 are thought to already be extinct (Miller *et al.* 1989; Contreras and Lozano 1994).

The region of Texas where the Devils River minnow occurs is semi-arid, receiving an average of about 46 centimeters (cm) (18 in) of rainfall annually. Spring-fed streams of west Texas flow southerly through rocky, limestone soils and shrubby vegetation characteristic of desert hill country. The aquifer that sustains spring flows within

the range of the Devils River minnow is the Edwards-Trinity (Plateau) Aquifer. This major aquifer produces the largest number of springs in Texas (Brune 1975). The contributing recharge area for springs on the Devils River and San Felipe Creek is suspected to include a large area as far north as Sheffield in Pecos County and Eldorado in Schleicher County, although the subsurface hydrogeomorphology of the region is not well-defined (Brune 1981). The flow from springs tends to fluctuate considerably, depending on the amount of rainfall, recharge, and water in storage in the underground reservoirs. Conservation of this groundwater supply is essential for the continued existence of the Devils River minnow.

Areas where the Devils River minnow occurs are mostly in private ownership. Exceptions include the Devils River State Natural Area, owned by the Texas Parks and Wildlife Department (TPWD) (Baxter 1993), and land adjoining portions of San Felipe Creek, owned by the City of Del Rio (population of about 38,000). One important private holding is the Dolan Falls Preserve, owned by The Nature Conservancy (Baxter 1993). Primary land uses are cattle, sheep, and goat ranching. Generally, these areas are very remote with little human development, beyond those to support ranching operations. Primary communities within the Devils River watershed are Ozona in Crockett County and Sonora in Sutton County (each with a population of less than 5,000), in the upper portion of the drainage where flows in the Devils River are intermittent. The middle and lower portions of the Devils River are popular for recreational fishing and canoeing (Gough 1993), although public access is limited.

The Devils River minnow is currently listed as a threatened species by the State of Texas, the Texas Organization for Endangered Species (Hubbs *et al.* 1991), and the Endangered Species Committee of the American Fisheries Society (Williams *et al.* 1989).

#### Previous Federal Action

On August 15, 1978, the Service published a proposed rule (43 FR 36117) to list the Devils River minnow as a threatened species and to designate critical habitat. On March 6, 1979, the Service published a notice (44 FR 12382) to withdraw the critical habitat portion of the proposal in order to meet requirements set forth in the Endangered Species Act Amendments of 1978 (Public Law 95-632, 92 Stat. 3751). The Service repropose the designation of critical habitat for the Devils River minnow on May 16, 1980

(45 FR 32348). A notice of public hearing was published on July 9, 1980 (45 FR 46141), and the public hearing was held on July 23, 1980, in Del Rio, Texas. The Service gave notice that the listing and critical habitat proposals were withdrawn on September 30, 1980 (45 FR 64853), because the 2-year time limit on the proposal had expired.

The Service included the Devils River minnow as a category 2 candidate species in Notices of Review published December 30, 1982 (47 FR 38454), September 18, 1985 (50 FR 37958), and January 6, 1989 (54 FR 554). Category 2 taxa were those that the Service believed may be eligible for threatened or endangered status, but for which the available biological information in possession of the Service was insufficient to support listing the species. However, new information obtained in 1989 (and later published as Garrett *et al.* 1992) provided a basis for including the Devils River minnow as a category 1 candidate in Notices of Review published November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982). Category 1 taxa were those for which the Service had substantial biological information on hand to support proposing to list the species as threatened or endangered.

As announced in a notice published in the February 28, 1996, **Federal Register** (61 FR 7596), the designation of multiple categories of candidates has been discontinued, and only former category 1 species are now recognized as candidates for listing purposes. The Devils River minnow remained a candidate species with a listing priority of 2 in Notices of Review published February 28, 1996 (61 FR 7596), and September 19, 1997 (62 FR 49398). The listing priority numbers for candidate taxa range from 1 (highest priority) to 12 (lowest priority) and are assigned by the Service based on the immediacy and magnitude of threats, as well as taxonomic status (48 FR 43098).

#### Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Devils River minnow (*Dionda diaboli*) are as follows:

*A. The present or threatened destruction, modification, or curtailment of its habitat or range.*

##### (1.) Devils River

The Devils River constitutes the largest segment of the documented range of the Devils River minnow. Over 40 percent of the total length of the Devils River has been lost as potential habitat, representing a contraction of the range from the northern extent of the distribution of the species. The Devils River from Beaver Springs to its confluence with the Rio Grande is about 127 river-kilometers(km) (79 river-miles(mi)) long. The lower 29 km, downstream of Big Satan Creek, is inundated by Amistad Reservoir. The uppermost 26 km, between Pecan Springs and Beaver Springs, can no longer be considered suitable habitat because of the loss of permanent flows.

The most significant loss of Devils River minnow habitat occurred on the Devils River with the impoundment of Amistad Reservoir in 1968. Backwaters from Amistad Dam inundated the natural stream habitats (about 29 km), transforming the area from a riverine to lake environment. The area is no longer suitable for most native fishes, including Devils River minnow. Before construction of Amistad Dam, two smaller dams (Devils Lake and Wall Lake) were built in the 1920's in this lower portion of the stream. However, spring run habitat remained and Devils River minnow was collected there in 1953 and 1954. Amistad Reservoir, however, inundated these springs, eliminating the natural environment and suitable habitat for native fish. Also, the construction of the dam created a physical barrier to fish movement that permanently separated the Devils River population of the species from other populations.

In addition to habitat loss in the lower Devils River due to impoundment, habitat for the species has been lost from the lack of permanent spring flows in the upstream portion (about 26 km) of the river (Dietz 1955, Brune 1975, Harrell 1978). These springs historically provided a pristine source of significant flowing water. Brune (1981) indicates that agricultural land use practices both within and north of the watershed may affect aquifer levels and account for a lack of permanent flows from the northern-most springs. Heavy well pumping from groundwater reserves for irrigation (Dietz 1955) and long term overgrazing (that reduces recharge and enhances runoff) have been cited as possible causes for decreased spring flows in the upper Devils River (Brune 1981). Springs on the Devils River

(upstream of Pecan Springs) that no longer support permanent discharges include Beaver, Juno, Headwater, Stein, and San Pedro springs (Brune 1981).

Continued decline of permanent discharge from springs is a significant threat to Devils River minnow in the middle segment of the Devils River. This threat can be the result of drought and/or human activities that withdraw groundwater or prevent recharge. The remaining central portion of the Devils River continues to flow naturally, and has been referred to as one of the most pristine rivers in Texas. Because of large groundwater reservoirs that support the remaining spring systems, the river maintains a substantial perennial flow.

Historic stream flow analysis, however, indicates decreasing base flows during the 1960's that were independent of precipitation levels (suggesting human influences). Drought can further aggravate spring flow declines (Garrett 1992). Declining trends of stream flow during the 1950's and 1980's track a decrease in precipitation in the region, suggesting the effects of drought (USGS 1989).

When spring flows become seasonally intermittent, fish populations are unable to use the stream to fulfill their life history requirements. Declines in base flow of streams also affect fish populations by reducing the total available habitat and thereby intensifying competitive and predatory interactions. For Devils River minnow, decreased instream flows may lead to a population decline due to exclusion from preferred habitats and increased mortality from predation.

Using relative abundance as an indicator, the Devils River minnow has decreased in the Devils River over time. The Devils River minnow was the fifth most abundant species of 18 species collected in 1953 at Bakers Crossing (Brown 1955); the sixth most abundant of 23 species in the river in 1974 (Harrell 1978); and one of the least abundant of 16 species in 1989 (Garrett *et al.* 1992). Recent information from Cantu and Winemiller (1997) indicates that the species was still present in the Devils River at the confluence with Dolan Falls in 1994, but only in low numbers (thirteenth most abundant of 27 species). The four collections by Cantu and Winemiller (1997) were extensive surveys over 1 year at the one site near Dolan Falls. Even with this increased effort, only 28 individuals of Devils River minnow, out of 4,470 total fish, were documented.

New information on the distribution and abundance of Devils River minnow in the Devils River and San Felipe Creek was obtained from surveys conducted in

November 1997 by the TPWD. No Devils River minnow were collected from several locations on the Devils River from Pecan Springs downstream to Finegan Springs, just above Dolan Falls (Gary Garrett, TPWD, *in litt.* 1997). This indicates that, if the fish still persists in the Devils River, it is very rare.

The drastic decline in abundance within the Devils River can best be documented from collections at the site at Baker's Crossing. Over 60 individuals were collected there in 1953, only one was collected in 1989, and none were collected in 1997.

#### (2.) San Felipe Creek

San Felipe Creek constitutes the second largest segment of remaining habitat for Devils River minnow in Texas. Devils River minnow previously occurred in two areas on this stream. The upper area is associated with a series of headwater springs several miles upstream of the City of Del Rio and the lower area is associated with two large springs in Del Rio.

In 1979, Devils River minnow made up about 2 percent of all collections (total of 3,458 fish), and was the seventh most abundant of 16 species in the headwater springs in the upper portion of San Felipe Creek. In 1989, no Devils River minnow were collected from this site (Garrett *et al.* 1992). No known collections have been made in this area since 1989. This area of San Felipe Creek (upstream of Del Rio) is privately owned and no information is available to discern why the populations of Devils River minnow in this area have significantly declined.

In San Felipe Springs (in Del Rio) in 1989, the fish was very rare (less than 1 percent of 1,651 fish collected, and the tenth most abundant of 12 species collected) (Garrett *et al.* 1992). Data from 1997 suggest that the Devils River minnow is common in the San Felipe Springs and the urban section of the creek (about 50 individuals were collected for captive study) (Gary Garrett, TPWD, *in litt.* 1997).

The San Felipe Springs are located within the City of Del Rio and may be threatened with future habitat changes from continued urban development. Brune (1975) lists San Felipe Springs as one of the four largest springs in Texas. The City draws water directly from the springs which are the sole source of the City's municipal water supply. The expected population growth of Del Rio is projected to be low (0.5 to 1 percent annual growth). With some water conservation measures in place to reduce per capita water use, the City could reduce its water consumption in coming decades. However, any future

declines in spring flows due to increased withdrawals could affect the Devils River minnow population in this location. Presently, Amistad Reservoir is thought to increase spring flows from San Felipe Springs because the pool elevation of the reservoir is often higher than that of the spring outlet. This situation places hydrostatic pressure on San Felipe Springs through inundated spring openings within the reservoir (Brune 1981).

Water quality and contamination are constant threats to the population in San Felipe Creek because of the urban setting. Recent studies by the Texas Natural Resource Conservation Commission (TNRCC) (1994) found elevated levels of nitrates, phosphates and orthophosphates in San Felipe Creek, indicating potential water quality problems. Land uses in the immediate area of the springs, such as runoff from the municipal golf course near the spring, may be contributing to these conditions. Other threats from catastrophic events such as contaminant spills could affect the species.

Based on the current abundance of the Devils River minnow in San Felipe Creek, it appears that existing practices that could impact the aquatic habitat are not yet serious enough to significantly reduce the local population. Aquatic habitat conservation measures (such as water use conservation and water quality protection) in this section of San Felipe Creek could help ensure survival of the species there.

#### (3.) Sycamore Creek

Sycamore Creek constitutes a relatively small portion of the range of the species. There is only one published account of fishes in this stream from one site, at the State Highway 277 crossing near the Rio Grande River (Garrett *et al.* 1992), although Harrell (1980) references the species' occurrence there. Garrett *et al.* (1992) found very few individuals at this location. Sycamore Creek is an ungaged stream, and there is little information available on habitat conditions. However, the Devils River minnow in this stream is evidently very rare and faces increased risks for extirpation because of the apparent small population size. Devils River minnow in Sycamore Creek likely face potential threats from decreasing spring and stream flows due to groundwater withdrawals and some land use practices in the watershed.

#### (4.) Las Moras Creek

Las Moras Creek represents the eastern extent of the range of the species. Although the populations there may have been restricted to the spring

area in Brackettville, the number of fish in historic collections was relatively large (54 individuals were collected in 1953) (Hubbs and Brown 1956). The natural spring system in Brackettville that supports Las Moras Creek is the location of the earliest collection of Devils River minnow. The species has not been collected from these springs since the 1950s and is believed to be extirpated from that stream, based on several sampling efforts in the late 1970's and 1980's (Smith and Miller 1986; Hubbs *et al.* 1991; Garrett *et al.* 1992).

Habitat for the Devils River minnow was lost when the spring was altered by damming the outflow and removing streambank vegetation to create a recreational swimming pool. Garrett *et al.* (1992) reported that the creek smelled of chlorine, indicating that the swimming pool may be maintained with chlorination (a toxin to fish). Garrett *et al.* 1992 also indicates that spring flow has been drastically reduced by drought and diversion of water for human consumption. This combination of habitat loss and alteration and the resulting water quality problems appears to be the most likely cause for the apparent extirpation of the species from Las Moras Creek.

#### (5.) Rio Salado

The populations of Devils River minnow in the Rio Salado Drainage of northern Mexico represent a critical portion of the range. These streams are southern tributaries of the Rio Grande and are geographically distinct from the tributaries where the fish occurs in Texas. Garrett *et al.* (1992) cites that the Devils River minnow occurs in low numbers in the Rio San Carlos and Rio Sabinas. The species may also occur in the Rio Alamo (S. Contreras-B., University of Nuevo Leon, *in litt.* 1997).

The condition of aquatic habitats in the Rio Salado drainage in Mexico is extremely poor. Contreras and Lozano (1994) report that aquatic ecosystems in this region of Mexico face significant threats due to groundwater and surface water withdrawals, as well as air and water pollution. Watersheds in northern Mexico have been heavily impacted by land uses and industrial development (S. Contreras-B., University of Nuevo Leon, *in litt.* 1997). The Rio Sabinas, in particular, has been noted for decreasing flows; and spring systems within Coahuila have been extensively exploited (Contreras and Lozano 1994).

#### (6.) Range-Wide

Habitat loss and modification throughout a significant portion of the range of the Devils River minnow has

resulted in both the fragmentation and contraction of the range of the species. The previous occurrences of known populations of Devils River minnow in Texas can be grouped into nine geographic areas, primarily associated with spring systems: five areas in the Devils River (lower Devils River, Dolan Falls, Baker's Crossing, Pecan Springs, Juno to Beaver Lake); two areas in San Felipe Creek (headwater springs and Del Rio); one area in Sycamore Creek; and one area in Las Moras Creek. Of these nine areas, the best available information indicates that a viable population may exist only in San Felipe Creek in Del Rio. The known existence of only one viable population located in an urban setting makes the threat of extinction of the species within the U.S. very high. Although detailed information is limited regarding the status of the species in Mexico, its condition there is likely at least to be threatened.

The construction of Amistad Dam has separated the two primary populations of Devils River minnow in Texas (Devils River and San Felipe Creek) and assured they will be permanently isolated from one another. This population fragmentation has significant conservation implications (Gilpin 1987). Determining and monitoring the genetic structure of the different Devils River minnow populations will be needed to ensure the necessary genetic variation within and among populations is not lost (Meffe 1986; Minckley *et al.* 1991).

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

Overutilization is not considered a significant threat to the Devils River minnow. However, there is a potential for impacts should this species be harvested as a baitfish (either commercially or non-commercially).

#### C. Disease or Predation

The Devils River minnow may be affected by the presence of introduced fishes within its range. Of special concern is the threat of predation by smallmouth bass (*Micropterus dolomieu*), a game fish introduced to Amistad Reservoir in about 1975. The smallmouth bass is native to eastern North America but has been widely introduced as a sport fish to reservoirs and streams outside its natural range. It is believed smallmouth bass gained access to the upper portions of the Devils River (upstream of Dolan Falls) in the early to mid-1980's (Gary Garrett, TPWD, pers. comm. 1997). This species is now the dominant predator in the fish community of the Devils River. The

TPWD is currently managing the Devils River as a trophy smallmouth bass fishery.

The Devils River minnow evolved in the presence of native piscivores such as channel catfish (*Ictalurus punctatus*) and largemouth bass (*Micropterus salmoides*) and is adapted to persist with these species. However, smallmouth bass are not native, are aggressive predators, and are known to impact other native fish communities (Taylor *et al.* 1984, Moyle 1994). The Devils River minnow falls within the size class of small fishes that are susceptible to predation by smallmouth bass. The scarcity of Devils River minnow in the Devils River (where smallmouth bass are prominent) and the abundance of Devils River minnow in San Felipe Creek (where smallmouth bass are not known to occur) provides circumstantial evidence of the likely impacts of this introduced predator. The establishment of smallmouth bass in San Felipe Creek is another potential threat to that Devils River minnow population.

The release (intentional or unintentional) of other minnows into areas inhabited by Devils River minnow is another potential threat. Live bait fish are commonly discarded by anglers resulting in introductions of nonnative species. This situation has occurred in many streams in the southwestern U.S. with considerable impacts to the native fish community (Moyle 1994). Exotic fishes from aquariums can also be introduced into local waters. Currently, only a small number of introduced fishes occur within the range of the Devils River minnow, but the potential for bait bucket introductions is high because of the number of anglers on the Devils River. Threats to the populations of Devils River minnow from possible introduction and establishment of nonnative fishes include diseases, parasites, competition for food and space, and hybridization.

#### D. The Inadequacy of Existing Regulatory Mechanisms

The Devils River minnow is listed as a threatened species by the State of Texas. This provides some protection from collecting, as a permit is required to collect listed species in Texas. However, there is no State or local mechanism to protect habitat for the conservation of the species. In addition, limited regulations exist to prevent unintentional releases of exotic species by the baitfish industry and anglers.

Limited State regulations exist that serve to protect instream flows for surface water rights and water quality for wildlife and human uses. However,

these regulations were not designed to conserve habitat for native fishes and currently no minimum instream flows are required on streams where Devils River minnow occur. Surface water rights along the Rio Grande in Texas and its U.S. tributaries are administered by the State of Texas. Groundwater withdrawals that could be affecting stream flows within the range of the Devils River minnow are unregulated. Texas courts have held that, with few exceptions, landowners have the right to take all the water that can be captured under their land (right of capture). Therefore, there is little opportunity to protect groundwater reserves within existing regulations.

State Water Quality Standards, though primarily concerned with protecting human health, may provide some protection to the Devils River minnow and its habitat. The classification of the Devils River and San Felipe Creek under the Texas Surface Water Quality Standards requires maintenance of existing water quality. Sycamore and Las Moras Creeks are not classified under these standards

#### *E. Other Natural or Manmade Factors Affecting Its Continued Existence.*

The destruction of habitat throughout the range of the Devils River minnow has reduced the number of viable populations of the species, perhaps down to as few as one. The restricted range makes the species especially vulnerable to extinction. The Devils River minnow is currently known to be common in only one location, San Felipe Creek in Del Rio, and this population is threatened due to its proximity to the urban environment.

Populations of Devils River minnow in Sycamore Creek, and possibly the Devils River, may have so few individuals that they may no longer constitute viable populations (Caughley and Gunn 1996). Small populations can lead to genetic erosion through inbreeding and are more vulnerable to loss from random natural events than larger populations (Meffe 1986).

The overall decline in abundance of Devils River minnow is likely the result of several cumulative factors. For example, subtle changes in stream flows could produce small shifts in habitat use that make the species more vulnerable to competition and predation by native predators and nonnative smallmouth bass. In addition, long-term drought can have a major effect on the habitat of the species, particularly when combined with impacts of human water use. This species has adapted to the historic natural climatic variations (such as large floods and prolonged droughts).

However, in conjunction with other threats to the species (primarily existing habitat loss and exotic predators), a drought could significantly increase the threat of extinction. The use of water supplies for human needs (municipal or agricultural) serves to worsen the effects of drought on the natural environment.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Devils River minnow as endangered. The species currently inhabits a very limited range and the best scientific information available indicates a decline in abundance throughout the range of the species. The species is in danger of becoming extinct in the foreseeable future throughout all or a significant portion of its range. Threatened status would not accurately reflect the vulnerability of the species due to its restricted range and low numbers. Critical habitat is not being proposed for the reasons discussed below.

#### **Critical Habitat**

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (2) such designation of critical habitat would not be beneficial to the species.

The Service finds that the designation of critical habitat for the Devils River minnow is not prudent due to lack of benefit. The section 7 prohibitions against adverse modification of critical habitat apply to Federal actions only (see Available Conservation Measures section). The watersheds in the U.S. in which the Devils River minnow occurs are almost entirely in private ownership, and no significant Federal actions affecting the species' habitat are likely to occur in the area. Therefore, the designation of critical habitat would provide no benefit to the species.

In addition, any Federal action which would cause adverse modification of critical habitat for the Devils River Minnow likely would also cause jeopardy. Under section 7, actions funded, authorized, and carried out by Federal agencies may not jeopardize the continued existence of a species or result in the destruction or adverse modification of critical habitat. To "jeopardize the continued existence" of a species is defined as an action that appreciably reduces the likelihood of its survival and recovery. "Destruction or adverse modification of critical habitat" is defined as an appreciable reduction in the value of critical habitat for the survival and recovery of a species. Given the imperiled status of the Devils River minnow, it is likely that a Federal action that would destroy or adversely modify the species' critical habitat would also jeopardize its continued existence. Thus, prohibitions associated with critical habitat would be duplicative and superfluous, and would, therefore, provide no benefit to the species.

Finally, critical habitat designation can sometimes serve to highlight areas that may be in need of special management considerations or protection. The continued existence of the Devils River minnow is dependent upon the efforts of the TPWD and local land owners, and those parties are aware of the areas in need of special management considerations or protection. For these reasons, the designation of critical habitat for the Devils River minnow would provide no benefit to the species beyond that conferred by listing alone and is, therefore, not prudent.

#### **Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation

actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species.

The State of Texas is currently working on a conservation agreement for the Devils River minnow. Because the agreement has not yet been finalized, the Service did not consider it in determining whether to issue this listing proposal. Should this agreement be finalized within a reasonable period of time, and should the Service decide that it potentially removes the need to list the species, the Service will extend or reopen the comment period for this proposal to accept comments on the agreement and its ability to remove the need to list the species.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing these interagency cooperation provisions of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat, if any has been designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions that may require conference and/or consultation as described in the preceding paragraph include Army Corps of Engineers review and approval of activities such as the construction of roads, bridges, and dredging projects subject to Section 404 of the Clean Water Act (33 U.S.C. 1344 *et seq.*) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*) and U.S. Environmental Protection Agency authorization of discharges under the National Pollutant Discharge Elimination System. Other Federal agencies whose actions could require consultation include the Department of Defense, Natural Resources Conservation Service, the Federal Highways Administration, and the

Department of Housing and Urban Development.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, in part, make it illegal for any person subject to the jurisdiction of the U.S. to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018-0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.22.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and on-going activities within a species' range. The Service believes that, based on the best available information, the following actions will not result in a violation of section 9:

(1) Normal livestock grazing and other standard ranching practices which do not destroy or significantly degrade Devils River minnow habitat.

(2) Federally-approved projects that involve activities conducted in accordance with any reasonable and prudent measures given by the Service in accordance with section 7 of the Act.

Activities the Service believes could potentially harm the Devils River minnow and result in "take" include, but are not limited to:

(1) Unauthorized collecting or handling of the species.

(2) Any activities that may result in destruction or significant alteration of habitat occupied by Devils River minnow including, but not limited to, the discharge of fill material, the diversion or alteration of spring and stream flows or withdrawal of groundwater to the point at which habitat becomes unsuitable for the species, and the alteration of the physical channels within the spring runs and stream segments occupied by the species;

(3) Discharge or dumping of pollutants such as chemicals, silt, household or industrial waste, or other material into the springs or streams occupied by Devils River minnow or into areas that provide access to the aquifer and where such discharge or dumping could affect water quality in spring outflows;

(4) Herbicide, pesticide, or fertilizer application in violation of label restrictions in or near the springs containing the species; and

(5) Introduction of certain non-native species (fish, plants, and other) into occupied habitat of the Devils River minnow or areas connected to these habitats.

In the descriptions of activities above, a violation of section 9 would occur if those activities occur to an extent that would result in "take" of Devils River minnow. Not all of the activities mentioned above will result in violation of section 9 of the Act; only those activities which result in "take" of Devils River minnow would be considered violations of section 9. Questions regarding whether specific activities would constitute a violation of section 9 should be directed to the Field Supervisor, Austin Ecological Services Field Office (see **ADDRESSES** section).

Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to U.S. Fish and Wildlife Service, Region 2, Endangered Species Listing Coordinator, 500 Gold Avenue SW., Room 4012, Albuquerque, New Mexico 87103-1306 (telephone 505/248-6655; facsimile 505/248-6922).

#### Public Comments Solicited

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

(1) Biological, commercial trade, or other relevant data concerning any



threat (or lack thereof) to the Devils River minnow;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of the species;

(4) Current or planned activities in the subject area and their possible impacts on this species.

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

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Austin Ecological Services Field Office (see ADDRESSES section).

### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

### Required Determinations

This rule does not contain collections of information that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

### References Cited

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

### Author

The primary author of this proposed rule is Nathan Allan (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, the Service hereby proposes 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 section 17.11(h) by adding the following, in alphabetical order under “Fishes,” to the List of Endangered and Threatened Wildlife:

### § 17.11 Endangered and threatened wildlife.

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate popu- lation where endan- gered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
FISHES							
*	*	*	*	*	*		*
Minnow, Devils River	Dionda diaboli .....	U.S.A. (TX), Mexico	Entire .....	E	.....	NA	NA
*	*	*	*	*	*		*

Dated: March 17, 1998.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 98–7997 Filed 3–26–98; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018–AE56

### Endangered and Threatened Wildlife and Plants; Extension of Public Comment Period on Proposed Endangered Status for the Pecos Pupfish (*Cyprinodon pecosensis*) and Notice of Public Hearing

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

**ACTION:** Proposed rule, extension of public comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) gives notice that the comment period is extended on the proposed rule to list the Pecos pupfish (*Cyprinodon pecosensis*) as an endangered species. The Service is working with the New Mexico Department of Game and Fish, the New Mexico State Parks Department, the Texas Department of Parks and Wildlife, and the Bureau of Land Management to assess potential conservation actions for the species. The extension of the comment period will allow these entities and all other interested parties to continue to work with the Service and to submit comments on the proposal.

The Eddy County Board of Commissioners, Eddy County, New Mexico, has requested that a public hearing be held on this proposal. The Service gives notice that a public hearing will be held on the proposed rule.

**DATES:** The comment period for this proposal, originally opened from January 30 through March 31, 1998, will be extended to November 20, 1998. Comments must be received by the closing date. The public hearing will be held from 5 p.m. to 8 p.m. on April 9, 1998, in Carlsbad, New Mexico (see ADDRESSES section).

**ADDRESSES:** The public hearing will be held at the Pecos River Village Conference Center, 711 Muscatel, Carlsbad, New Mexico. Written comments and materials should be sent to the Field Supervisor, New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, 2105 Osuna NE., Albuquerque, New Mexico 87113. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Fowler-Propst, Field