

## **Finding of No Significant Impact Designation of Critical Habitat for the Spikedace and Loach Minnow**

The U.S. Fish and Wildlife Service (Service) is designating critical habitat for the spikedace (*Meda fulgida*) and loach minnow (*Tiaroga cobitis*), pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 838.5 kilometers (521 miles) of linear distance of rivers, including 91.4 meters (300 feet) of adjacent riparian areas measured laterally from each bank are included within the boundaries of the critical habitat designation. The areas that we have determined to be essential to the conservation of the spikedace and/or loach minnow include portions of the Verde River, Black River Complex, Middle Gila/Lower San Pedro/Aravaipa Creek Complex, and San Francisco and Blue Rivers Complex in Arizona, and portions of the San Francisco and Blue Rivers Complex and Upper Gila River Complex in New Mexico. We have excluded lands of the San Carlos Apache, White Mountain Apache, and Yavapai-Apache Tribes, lands owned by the Phelps Dodge Corporation on the Gila River and Eagle Creek, and a portion of the Verde River pursuant to section 4(b)(2) of the Act. We removed Eagle Creek from the designation of critical habitat for the spikedace, as further review of the available information shows this area does not meet our definition of occupied, and therefore does not meet our criteria for defining critical habitat for the spikedace.

### **General description of designated critical habitat**

The critical habitat designation for both spikedace and loach minnow includes five complexes totaling approximately 521 mi (838.8 km) of stream reaches in the Black River, Verde River, Lower San Pedro/Gila River/Aravaipa Creek, Gila Box/San Francisco River, and Upper Gila River.

### **General description of areas excluded from designation of critical habitat**

#### Tribal Lands

##### *San Carlos Apache Tribe-Eagle Creek*

The San Carlos Apache Tribe has one stream within its tribal lands, Eagle Creek, which is known to be currently occupied by the spikedace and loach minnow and contains features that are essential to the conservation of both species. The Tribe has completed and is implementing a Fisheries Management Plan (FMP) that includes specific management actions for the spikedace and loach minnow and conserves the PCEs. In this exclusion, we considered several factors, including our relationship with San Carlos Apache Tribe, and the degree to which the Tribe's FMP provides specific management for the spikedace and loach minnow. Tribal governments protect and manage their resources in the manner that is most beneficial to them. The San Carlos Apache Tribe exercises legislative, administrative, and judicial control over activities within the boundaries of its lands. Additionally, the Tribe has natural resource programs and staff and has enacted the FMP. As trustee for land held in trust by the United States for Indian Tribes, the Bureau of Indian Affairs (BIA) provides technical assistance to the San Carlos Apache Tribe on management planning and oversees a variety of programs on their lands. Spikedace and loach minnow conservation activities have been ongoing on San Carlos Apache tribal lands, and, prior to the completion of their FMP, their natural resource management was consistent with

management of habitat for this species. The development and implementation of the efforts formalized in the San Carlos Apache Tribes FMP will continue with or without critical habitat designation.

*White Mountain Apache Tribe- East Fork White River*

The White Mountain Apache Tribe has one stream within its tribal lands, East Fork White River, that is known to be currently occupied by loach minnow and its tribal lands contain features that are essential to the conservation of the loach minnow. The White Mountain Apache Tribe currently has a management plan in place for loach minnow. The plan was completed in 2000 and provides for, among other conservation measures, inventory and monitoring, water quality protection ordinance, captive propagation, and relocation to minimize loss from catastrophic events such as fire and drought. Prior to and since the plan was developed, the Tribe has actively managed for loach minnow. In this exclusion, we considered several factors, including our relationship with the White Mountain Apache Tribe, and the degree to which the Tribe's management plan provides specific management for the loach minnow and conserves its PCEs. Tribal governments protect and manage their resources in the manner that is most beneficial to them. The White Mountain Apache Tribe exercises legislative, administrative, and judicial control over activities within the boundaries of its lands. Additionally, the Tribe has natural resource programs and staff and has been managing for the conservation of the loach minnow. As trustee for land held in trust by the United States for Indian Tribes, the BIA provides technical assistance to the White Mountain Apache Tribe on management planning and oversees a variety of programs on their lands. The development and implementation of the efforts formalized in the management plan will continue with or without critical habitat designation.

*Yavapai Apache Tribe-Verde River*

The Yavapai Apache Tribe has long worked to protect the Verde River and its surrounding habitat as it flows on the lands of the Nation. The Nation is implementing strong conservation measures designed to preserve the Verde River and its riparian corridor for the benefit of all species, and in order to protect the traditional and cultural practices of the Nation. The Nation's continued efforts to work cooperatively with the Service to protect federally listed species have previously been demonstrated through adoption of a recent Southwestern Willow Flycatcher Management Plan, dated May 25, 2005. This document provides realistic and practicable objectives for protection of the riparian community on tribal lands. This habitat is coexistent with the habitat that was proposed for the spikedace. Because the existing Management Plan requires that the habitat of the Verde River be protected and preserved for the flycatcher, its protections similarly extend to the spikedace. In addition, the Tribe passed a resolution on June 15, 2006, confirming and declaring a riparian conservation corridor along the Verde River including 300 ft (91.4 m) on either side of the river. Within the conservation corridor stocking of non-native fishes is prohibited, and livestock grazing, construction and other activities shall be minimized to assure that no net loss of habitat for federally listed species such as the spikedace and loach minnow shall occur, and that no permanent modification of habitat important to listed species is allowed. The Tribe will also take all reasonable steps to coordinate with the Service regarding recreational activities, habitat restoration activities, or other activities that may impact the habitat important to the spikedace and loach minnow. The Tribe will

monitor habitat, including surveys for these fish and conduct research or other activities to provide a conservation benefit.

We have excluded the river reaches on Tribal lands because we believe the benefits of excluding these units from this final critical habitat designation outweigh the benefits of designating the units as critical habitat. The benefits of excluding San Carlos Apache, White Mountain Apache, and the Yavapai Apache tribal lands from critical habitat include: (1) The advancement of our Federal Indian Trust obligations and our deference to Tribes to develop and implement tribal conservation and natural resource management plans for their lands and resources, which includes the spinedace and loach minnow and other Federal trust species; (2) the maintenance of effective working relationships to promote the conservation of the spinedace and loach minnow and their habitats; (3) the allowance for continued meaningful collaboration and cooperation on spinedace and loach minnow management and other resources of interest to the Federal government; and (4) the provision of conservation benefits to riparian ecosystems and a host of species, including the spinedace and loach minnow and their habitat, that might not otherwise occur.

#### Partnerships and Management Plans on Private Lands

##### *Eagle Creek – Phelps Dodge*

Phelps Dodge's lands along Eagle Creek are comprised of individual land parcels adjoining the southern boundary of the Apache-Sitgreaves National Forests and the eastern boundary of San Carlos Apache Tribe lands. The parcels are not entirely connected; there are intervening portions of Forest Service and other private lands between parcels of Phelps Dodge's lands. The management plan would affect only those lands owned by Phelps Dodge. Phelps Dodge owns approximately 34 square miles of land around the upper portions of Eagle Creek; however, not all of lands encompass or are adjacent to Eagle Creek. Phelps Dodge owns land along approximately 11.0 mi (17.8 km) of Eagle Creek, which are covered by the management plan. The Service has determined that Eagle Creek currently supports one of more of the PCEs for loach minnow and is occupied by loach minnow. In addition, we determined (see Table 1) that nonnative aquatic species, water diversions, and mining are all potential threats within this area.

##### *Gila River – Phelps Dodge*

The Gila River Management Plan covers riparian lands owned by Phelps Dodge in the middle reach of the mainstem Gila River south of Mogollon Creek in New Mexico. Land ownership in this area is principally Federal, with irregularly dispersed private and State lands. The management plan would affect only those lands owned by Phelps Dodge. Phelps Dodge owns lands surrounding or bordering approximately 7.3 mi (11.7 km) of the mainstem Gila River. Some of the lands owned by Phelps Dodge in this area are leased for ranching and agriculture purposes, including the U-Bar Ranch. The Service has determined that these areas currently support one or more of the PCEs for spinedace and loach minnow, and both species currently occupy this portion of the stream. Those portions of the mainstem Gila River on Phelps Dodge lands support diversity and abundance of native fishes. In addition, this reach contains a high proportion of favorable habitat types for spinedace and loach minnow, including low

gradient riffles and glide-runs. In addition, we determined (see Table 1) that recreation, roads, grazing, nonnative aquatic species, and water diversions are potential threats in this area that may require special management or protections.

We have excluded areas under ownership of Phelps Dodge because we believe that significant benefits would be realized by excluding these areas from the final critical habitat designation: (1) the continuance and strengthening of our relationship with Phelps Dodge to promote the conservation of the spikedace and loach minnow and their habitat; (2) the allowance for collaboration and cooperation in surveys, monitoring, and research as we work towards recovery of these species; and (3) the conservation benefits to the Gila River and Eagle Creek ecosystems and spikedace and loach minnow habitat that might not otherwise occur. The benefits of including lands owned by Phelps Dodge in the final critical habitat designation are small, and are limited to minimal educational benefits and potentially some benefits through section 7 consultations. We find that the benefits of excluding these areas from the final critical habitat designation outweigh the benefits of their inclusion.

### Economic Exclusions

#### *Verde River*

We have determined that proposed critical habitat on those portions of the Verde River below the Prescott and Coconino National Forest boundary with private lands will not be designated as final critical habitat due to the potential economic impact of designation. The economic analysis estimates the potential future impacts (2006-2025) associated with the entire stretch of the Verde River to be \$64.59 million (undiscounted dollars). Although these costs do not account for variance in river miles or population, they are a full order of magnitude larger than the estimated impacts for any other stretch of river proposed as critical habitat, and represent more than half of the total estimated impacts (\$100.3 million) for the entire proposed critical habitat designation. Estimated quantified costs on this reach primarily stem from potential impacts to agriculture, but also include impacts on development and recreation activities. Unquantified potential impacts could include impacts to water users, including Verde Valley municipalities and the City of Prescott.

We find that the benefits of designating final critical habitat for the spikedace on the lower portion of the Verde River are small in comparison to the benefits of exclusion. As indicated above, we believe that designation of final critical habitat of the lower Verde River will provide only minimal benefit to the species. In making this finding, we have weighed the benefits of including the lower Verde River as final critical habitat against the possible costs imposed on private parties as a result of the final critical habitat designation.

### **Background**

We previously published a final critical habitat designation on April 25, 2000 (65 FR 24328). In New Mexico Cattle Growers' Association and Coalition of Arizona/New Mexico Counties for Stable Economic Growth v. United States Fish and Wildlife Service, CIV 02-0199 JB/LCS (D.N.M), the plaintiffs challenged the April 25, 2000, critical habitat designation for the

spikedace and loach minnow because the economic analysis had been prepared using the same methods which the Tenth Circuit had held to be invalid. The Center for Biological Diversity joined the lawsuit as a Defendant-Intervenor. The Service agreed to a voluntary vacatur of the critical habitat designation, except for the Tonto Creek Complex. On August 31, 2004, the United States District Court for the District of New Mexico set aside the April 25, 2000, critical habitat designation in its entirety and remanded it to the Service for preparation of a new proposed and final designation. On December 20, 2005, we published a proposed critical habitat designation (70 FR 75546). Critical habitat was initially designated for both species in 1994 (59 FR 10898).

### **Environmental Assessment**

Three alternatives were considered: Alternative A, Proposed Rule with Exclusions; Alternative B, Proposed Rule without Exclusions; and the No Action Alternative. Alternative A would designate 521 miles of selected stream segments as critical habitat within Arizona and New Mexico. Under Alternative A, approximately 30 miles of stream segments on Tribal lands and approximately 18 miles of land on Phelps-Dodge lands identified as critical habitat will be excluded from designation. The designation includes 10 stream segments for the spikedace and 23 stream segments for the loach minnow. Critical habitat includes the riverine ecosystem formed by the wetted channel and the adjacent floodplains within 300 lateral feet on either side of bankfull stage. This 300-foot width defines the lateral extent of each area of critical habitat that contains sufficient primary constituent elements to provide for one or more of the life history functions of the spikedace and loach minnow and was set to accommodate stream meandering and high flows. Streams are not isolated but are connected with other streams to form "complexes." Five complexes have been identified for critical habitat designation. Under Alternative B, approximately 662 miles of stream segments are proposed for critical habitat designation, including those stream segments occurring on the White Mountain Apache, San Carlos Apache, and Yavapai Apache Tribal lands. The No Action Alternative is required by the National Environmental Policy Act (NEPA) for comparison to the other alternative analyzed in the EA.

The Service requested information from, and coordinated development of this critical habitat designation with, appropriate State resource agencies in Arizona and New Mexico. The impact of the designation on State and local governments and their activities was fully considered in the economic analysis. In the final rule we categorized and responded to all applicable, substantive comments received during the public comment periods. All comments received were analyzed and, where appropriate, changes were incorporated into the final environmental assessment, economic analysis, and/or the final rule.

Section 4(b) of the Act states "The Secretary shall make determinations [of critical habitat] ... solely on the basis of the best scientific data available . . ." We considered the best scientific information available to us at this time, as required by the Act. This designation is based upon our most current understanding of the biology and requirements of the spikedace and loach minnow. Based upon newly available information, coordination with land managers and stakeholders, and input received during the public comment period, we have made revisions to the areas designated as critical habitat, which will be reflected in the final rule. We are not aware

of any reliable information that is currently available to us that was not considered in this designation process. This final determination constitutes our best assessment of areas needed for the conservation of the species.

One of the purposes of an environmental assessment is to briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement (EIS) or a finding of no significant impact (40 CFR 1508.9). An EIS is required only in instances where a proposed Federal action is expected to have a significant impact on the human environment. In order to determine whether designation of critical habitat would have such an effect, we prepared an environmental assessment that analyzes the effects of the designation. On June 6, 2006, we announced the availability in the Federal Register of the draft economic analysis and draft environmental assessment for the proposal to designate critical habitat for the spikedace and loach minnow (71 FR 32496). We solicited data and comments from the public on these draft documents, as well as on all aspects of our proposal, so that we could consider these in this final determination.

Based on a review and evaluation of the information contained in the environmental assessment, it is my determination that the designation of critical habitat for the spikedace and loach minnow does not constitute a major Federal action having a significant impact on the human environment under the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (as amended). Significance is determined by analyzing the context and intensity of a proposed action (40 CFR 1508.27).

Context refers to the setting of the proposed action and includes consideration of the affected region, affected interests, and locality (40 CFR 1508.27[a]). The context for both the short- and long-term effects of proposed designation of critical habitat includes the local areas that encompass the critical habitat units. The effects of proposed critical habitat designation, although long-term, would be small.

Intensity refers to the severity of an impact and is evaluated by considering ten factors (40 CFR 1508.27[b]). The intensity of potential impacts that may result from proposed designation of critical habitat for the spikedace and loach minnow is low.

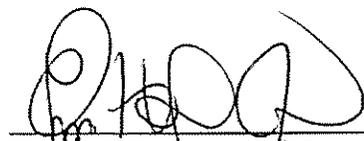
- The potential impacts may be both beneficial and adverse, but minor.
- There would be no effects to public health or safety from proposed designation of critical habitat, and the proposed action would not affect unique characteristics of the geographic area.
- Potential impacts from critical habitat designation on the quality of the environment are unlikely to be highly controversial and do not involve any uncertain, unique, or unknown risks.
- Proposed designation of critical habitat for spikedace and loach minnow does not set a precedent for future actions with significant effects and would not result in significant

cumulative impacts.

- Significant cultural, historical, or scientific resources are not likely be affected by proposed designation of critical habitat.
- Proposed critical habitat designation would have a beneficial effect on spikedace and loach minnow.
- Proposed critical habitat designation would not violate any federal, state, or local laws or requirements imposed for the protection of the environment.

As such, an environmental impact statement is not required.

ACTING



Regional Director, Region 2  
U.S. Fish and Wildlife Service

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Date