
50 CFR Part 17**Endangered and Threatened Wildlife and Plants; Reproposal of Critical Habitat for the Leon Springs Pupfish; Meeting**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Reproposal of critical habitat.

SUMMARY: The Service reproposes Critical Habitat for the Leon Springs pupfish (*Cyprinodon bovinus*), a native Texas fish. The Endangered status and Critical Habitat were originally proposed for this species on August 15, 1978 (43 FR 36117-36120). The Critical Habitat portion of this proposal was withdrawn by the Service on March 6, 1979 (44 FR 12382-12384) because of the procedural and substantive changes in law made by the Endangered Species Act Amendments of 1978. This proposed rule conforms with the new requirements.

DATES: Comments from the public must be received by July 15, 1980. Comments from the Governor of Texas must be received by August 14, 1980. A public meeting on this proposal will be held in Fort Stockton, Texas on June 13, 1980.

ADDRESSES: Interested persons or organizations are requested to submit comments to Director (OES), U.S. Fish and Wildlife Service, Department of the

Interior, Washington, D.C. 20240. Comments and materials relating to this rule are available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 N. Glebe Road, Arlington, Virginia. A public meeting on this proposal will be held at 7:00 p.m. at the Fort Stockton Chamber of Commerce Building in Fort Stockton, Texas.

FOR FURTHER INFORMATION CONTACT: For further information on the original proposal, as well as this supplement, contact Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife, Washington, D.C. (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

The Leon Springs pupfish was proposed as Endangered with Critical Habitat on August 15, 1978. Subsequently, Congress passed the Endangered Species Act Amendments of 1978, which substantially modified the procedures the Service must follow when designating Critical Habitat. The present rulemaking will bring the Critical Habitat proposal into compliance with the amendments.

The Leon Springs pupfish was discovered in 1851 from Leon Springs, approximately 8 miles west of Fort Stockton, Texas. Since that time, Leon Springs has been radically modified (diverted, dammed, and poisoned) and ceased flowing in 1958 due to excessive groundwater removal. The pupfish disappeared from this locality prior to 1938 and was thought to be extinct. In 1965 the species was rediscovered by W. L. Minckley and W. E. Barber from Diamond Y Spring, located approximately 9 miles north of Fort Stockton, Texas.

The species is a small (1.5 inches in length) robust fish varying in body color from dusky gray to iridescent blue. Sexes can be readily distinguished by shape, color, and lateral markings. The Leon Springs pupfish inhabits lightly saline habitat preferring quiet waters near the edges of shallow pools with a minimal growth of vegetation. Male pupfish guard small territories in shallow waters, where the females are attracted by courtship behaviors, spawning takes place, and eggs are deposited. Pupfish do much of their feeding from the bottom mud or from vegetation consuming invertebrates, detritus, diatoms, and vascular plants. The population of Leon Springs pupfish existing in Diamond Y Spring and its outflow stream seems to be in good condition with summer densities

reaching more than 3 fish per square yard in shallow open habitats.

Much of the original habitat of this species was destroyed by diversion of water for irrigation, impoundment construction, and the desiccation of spring flows caused by excessive pumping of the underground aquifer. Currently, the single remaining pupfish habitat is threatened by oil pollution, diminishing spring flows, and the release of harmful exotic fishes.

Section 4(a) of the Act (16 U.S.C. 1531 et seq.) states: "General—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

(1) The present or threatened destruction, modification or curtailment of its habitat or range;

(2) Overutilization for commercial, sporting, scientific, or educational purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms; or

(5) Other natural or man-made factors affecting its continued existence."

This authority has been delegated to the Director.

Summary of Factors Affecting the Species

The Leon Springs pupfish was historically known only from Leon Springs, Leon Creek, and Diamond Y Spring, located west and north of Fort Stockton, Texas. The diversion of spring waters for irrigation and the excessive removal of ground water was responsible for the drying of Leon Springs and the upper portion of Leon Creek. Presently, this species is limited to Diamond Y Spring and its outflow into Leon Creek, approximately a 4 mile stretch of permanent aquatic habitat, which is threatened by several habitat and environmental disturbances.

The findings from recent studies and available literature are summarized herein under each of the five criteria of Section 4(a) of the Act. These factors, and their application to the Leon Springs pupfish, are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The present habitat of the Leon Springs pupfish is surrounded by an active oil and gas field. A refinery is located approximately 500 yards upstream of the main spring head that supplies permanent water to the pupfish habitat. In the past oil spills have occurred in this area and have caused considerable fish mortality. Although oil companies have taken actions to minimize leakage of petroleum and waste products into

Diamond Y Spring and Leon Creek, the potential for substantial oil spills still exist.

The pumping of groundwater in Pecos County, Texas, has resulted in the desiccation of several springs and has reduced the discharge from Diamond Y and associated springs supporting Leon Creek. If underground water supplies continue to be removed at excessive rates or are otherwise altered, the wild Leon Springs pupfish population and its essential natural habitat could be destroyed.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable.

3. *Disease or predation.* Not applicable.

4. *The inadequacy of existing regulatory mechanisms.* State laws concerning endangered species of Texas do not provide mechanisms to encourage habitat protection. Listing the Leon Springs pupfish would require Federal agencies to review their actions prior to the commitment of resources to assure that their proposals would either conserve listed species or are not likely to jeopardize the continued existence of listed species or both.

5. *Other natural or man-made factors affecting its continued existence.* The sheepshead minnow (*Cyprinodon variegatus*), which is closely related to the Leon Springs pupfish, was released into Leon Creek in 1974. This introduction resulted in the widespread hybridization between *Cyprinodon variegatus* and *Cyprinodon bovinus*, threatening the genetic purity of the Leon Springs pupfish. A carefully supervised fish poisoning program and intensive selective seining efforts successfully removed all exotic sheepshead minnows and hybrids from Diamond Y spring and Leon Creek by August of 1978. Although the present Leon Springs pupfish population seems to be genetically pure, many areas of its habitat are readily accessible and still vulnerable to the release of harmful exotics.

Critical Habitat

The Act defines "Critical Habitat" to include (a) areas within the geographical area occupied by the species at the time that species is listed which are essential to the conservation of the species and (b) which may require special management considerations or protection; and specific areas outside the geographic area occupied by the species at the time, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Sections 4(b)(4) and 4(f)(4) of the Act require, to the maximum extent prudent that any proposal to determine Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or those Federal actions which may be impacted by such designation. Such activities are identified below for this species. It should be emphasized that Critical Habitat designation may not affect each of the activities listed below, as Critical Habitat Designation only affects Federal agency activities, through Section 7 of the Act.

The petroleum production operations in the vicinity of Diamond Y Spring and Leon Creek could potentially affect the Leon Springs pupfish through an accidental oil spill or indirect modification of the underground water supply. These potential adverse impacts can be eliminated or minimized by implementing appropriate preventive measures. Oil companies involved have been receptive to recommendations concerning the protection of the Leon Springs pupfish habitat and the Service plans to encourage continued cooperation.

The land surrounding Diamond Y Spring and Leon Creek is also used for cattle grazing. However, the saline water from the springs is unsuitable for livestock consumption and the Leon Springs pupfish habitat is rarely disturbed by cattle. Any excessive groundwater pumping in the vicinity of the proposed Critical Habitat for agriculture or other purposes could be detrimental to the pupfish by reducing or eliminating spring flow.

No Federal agency has jurisdiction in the proposed Critical Habitat area, nor should any current or proposed Federal project affect the extant Leon Springs pupfish population.

Federal agencies (U.S. Department of Energy and Environmental Protection Agency) regulating the petroleum industry would be required to enter into Section 7 consultation if an action they license or authorize might affect the Critical Habitat. At this time the petroleum companies are not planning to construct new gas pipelines or other developments that would require Federal permits.

The proposed Critical Habitat for the Leon Springs pupfish is as follows: Diamond Y Spring and its outflow stream, Leon Creek; from the head of Diamond Y Spring downstream in Leon Creek to a point 1 mile northeast of the Texas Highway 18 crossing, approximately 10 miles north of Fort Stockton, Texas. This watercourse is

located in Sections 506, 507, 508, 509, 552, and 553 of the Garcia, Montez, and Duran Land Grant in Pecos County, Texas.

The Service is required to consider economic and other impacts of specifying a particular area as Critical Habitat and has prepared a draft impact analysis. The Service is notifying Federal agencies that may have jurisdiction over the land and water under consideration in this proposed action. These Federal agencies and other interested persons or organizations are requested to submit information on economic or other impacts of this proposed action (see below).

The Service will prepare a final impact analysis prior to the time of preparing a final rule, and will use this document as the basis for its decision as to whether or not to exclude any area from Critical Habitat for the Leon Springs pupfish.

Effect of This Proposal if Published as a Final Rule

Section 7(a) of the Act provides: "(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of Endangered species and Threatened species listed pursuant to Section 4 of this Act. (2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to jeopardize the continued existence of any Endangered species or Threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant Subsection (h) of this section." * * *

Provisions for Interagency Cooperation are codified at 50 CFR Part 402. If published as a final rule this proposal would require Federal agencies not only to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the Leon Springs pupfish, but also insure that their actions are not likely to result in the destruction or adverse modification of these Critical

Habitats which have been determined by the Secretary.

Public Comments Solicited

The Director intends that rules finally adopted will be as accurate and effective as possible in the conservation of the Leon Springs pupfish. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial, or other relevant data concerning any threat (or the lack thereof) to the species included in this proposal.

(2) The location of and the reasons why any habitat of this species should or should not be determined to be Critical Habitat as provided for by Section 7 of the Act;

(3) Additional information concerning the range and distribution of this species;

(4) Current or planned activities in the subject areas;

(5) The probable impacts on such activities if the area is designated as Critical Habitat; and

(6) The foreseeable economic and other impacts of the Critical Habitat designation on Federally funded or authorized projects.

Public Meeting

The Service hereby announces that public meetings will be held on this proposed rule. The public is invited to attend these meetings and to present opinions and information on the proposal. Specific information relating to the public meetings is set out below:

Place	Date	Time	Subject
1. Fort Stockton, Texas Chamber of Commerce Building.	June 13, 1980.	7:00 p.m.	Leon Springs pupfish.

National Environmental Policy Act

A draft Environmental Assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment will be the basis for a decision as to whether this determination is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this rule is Jim Bednarz, under contract to the Fish and

Wildlife Service, Regional Office,
Albuquerque, New Mexico.

Regulations Promulgation

Accordingly, it is hereby proposed to amend 50 CFR 17.95(e), Fishes, by adding the following Critical Habitat after that of the yellowfin madtom.

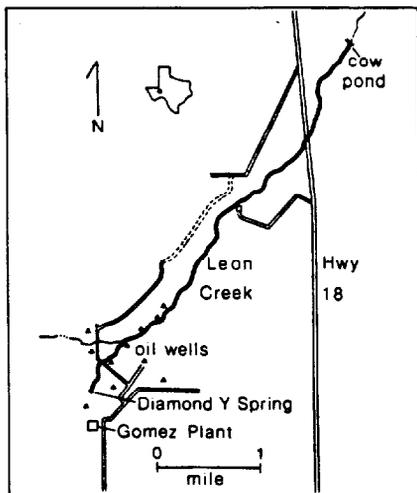
Leon Springs Pupfish

(*Cyprinodon bovinus*)

Texas, Pecos County, Diamond Y Spring and its outflow stream, Leon Creek; from the head of Diamond Y Spring downstream in Leon Creek to a point 1 mile northeast of the Texas Highway 18 crossing, approximately 10 miles north of Fort Stockton.

Leon Springs Pupfish

Pecos Co., Tex.



Note.—The Department of the Interior has determined that this proposal is not significant and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Dated: May 12, 1980.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

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