SUMMARY: In the Order, Oversight of the Radio and TV Broadcast Rules, Mimeo No. 7001, published in the **Federal Register** on September 23, 1985 at 50 FR 38529, there is an error in the Alphabetical Index for Part 76 which omits the listing "Must carry requirements". It is changed to add the omitted listing.

ADDRESS: Federal Communications Commission, Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Mass Media Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 76

Cable television service.

Erratum

In the matter of Oversight of the Radio and TV Broadcast Rules.

Released: September 24, 1985.

In the above captioned *Order*, (Mimeo No. 7001) released September 18, 1985 and published in the **Federal Register** on September 23, 1985 at 50 FR 38529, the Alphabetical Index to Part 76 (47 CFR Part 76) omitted the listing of the Must Carry requirement.

It is added herein to follow the listing, Monitoring, CATV system, and will read as follows:

Must carry requirements...76.7, 76.55, 76.57, 76.59, 76.61, 76.64

Federal Communications Commission.

William J. Tricario,

Secretary.

[FR Doc. 85-23110 Filed 9-26-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-09; Notice 19]

Federal Motor Vehicle Safety Standards; Child Restraint Systems; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Correction of final rule.

SUMMARY: NHTSA published a notice in the **Federal Register** on April 17, 1985, which added a new Figure 6 to Standard No. 213, *Child Restraint Systems*. Subsequently, the agency published a notice in the August 21, 1985 edition of the **Federal Register**, which added two new figures at the end of Standard No. 213. These two new figures were erroneously designated Figures 6 and 7. This notice corrects that error by designating the figures added in the August 21, 1985 rule as Figures 7 and 8. No new obligations or requirements are imposed on any party as a result of this correction.

EFFECTIVE DATE: February 18, 1986.

FOR FURTHER INFORMATION CONTACT: Stephen Kratzke, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590 (202-426-2992).

SUPPLEMENTARY INFORMATION: This agency published a final rule amending the inversion test in Standard No. 213, *Child Restraint Systems* (49 CFR 571.213) at 50 FR 15154, April 17, 1985. Among other things, that rule added a new Figure 6 at the end of Standard No. 213. Subsequently, the agency published a final rule amending the requirements of Standard No. 213 applicable to the buckles used in child restraint systems (50 FR 33722, August 21, 1985). That rule added two new figures at the end of Standard No. 213, erroneously designating them as Figures 6 and 7.

This oversight in the August 21 final rule gives rise to a situation where the next edition of the Code of Federal Regulations would show two Figure 6's at the end of Standard No. 213. Additionally, it would be unclear to which Figure 6 the text of Standard No. 213 was referring. To avoid such confusion, this notice designates the two figures added to Standard No. 213 in the August 21 rule as Figures 7 and 8, and makes the corresponding changes in the text of the standard.

Publication of this correction imposes no duties or obligations on any party nor does it alter existing obligations. This notice simply ensures that the public will have an accurate version of Standard No. 213 in the Code of Federal Regulations. Accordingly, the agency finds for good cause that notice and opportunity for comment on this correction are unnecessary.

List of subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the version of 49 CFR 571.213 published at 50 FR 33722, August 21, 1985, is amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, and 1407; delegation of authority at 49 CFR 1.50.

2. In § 571.213, paragraph S6.2.1. is corrected to read as follows:

S6.2 Buckle release test procedure.

* * * * *

S6.2.1. Before conducting the testing specified in S6.1, place the loaded buckle on a hard, flat, horizontal surface. Each belt end of the buckle shall be pre-loaded in the following manner. The anchor end of the buckle shall be loaded with a two pound force in the direction away from the buckle. In the case of buckles designed to secure a single latch plate, the belt latch plate end of the buckle shall be pre-loaded with a two pound force in the direction away from the buckle. In the case of buckles designed to secure two or more latch plates, the belt latch plate ends of the buckle shall be loaded equally so that the total load is two pounds, in the direction away from the buckle. For pushbutton-release buckles, the release force shall be applied by a conical surface (cone angle not exceeding 90 degrees). For pushbutton-release mechanisms with a fixed edge (referred to in Figure 7 as "hinged button"), the release force shall be applied at the centerline of the button, 0.125 inches away from the movable edge directly opposite the fixed edge, and in the direction that produces maximum releasing effect. For pushbutton-release mechanisms with no fixed edge (referred to in Figure 7 as "floating button"), the release force shall be applied at the center of the release mechanism in the direction that produces the maximum releasing effect. For all other buckle release mechanisms, the force shall be applied on the centerline of the buckle lever or finger tab in the direction that produces the maximum releasing effect. Measure the force required to release the buckle. Figure 7 illustrates the loading for the different buckles and the point where the release force should be applied, and Figure 8 illustrates the conical surface used to apply the release force to pushbutton-release buckles.

3. Paragraph S6.2.4 is corrected to read as follows:

S6.2.2 * * *

S6.2.3 * * *

S6.2.4 While applying the force specified in S6.2.3, and using the device shown in Figure 8 for pushbutton-release buckles, apply the release force in the manner and location specified in S6.2.1. for that type of buckle. Measure the force required to release the buckle.

* * * * *

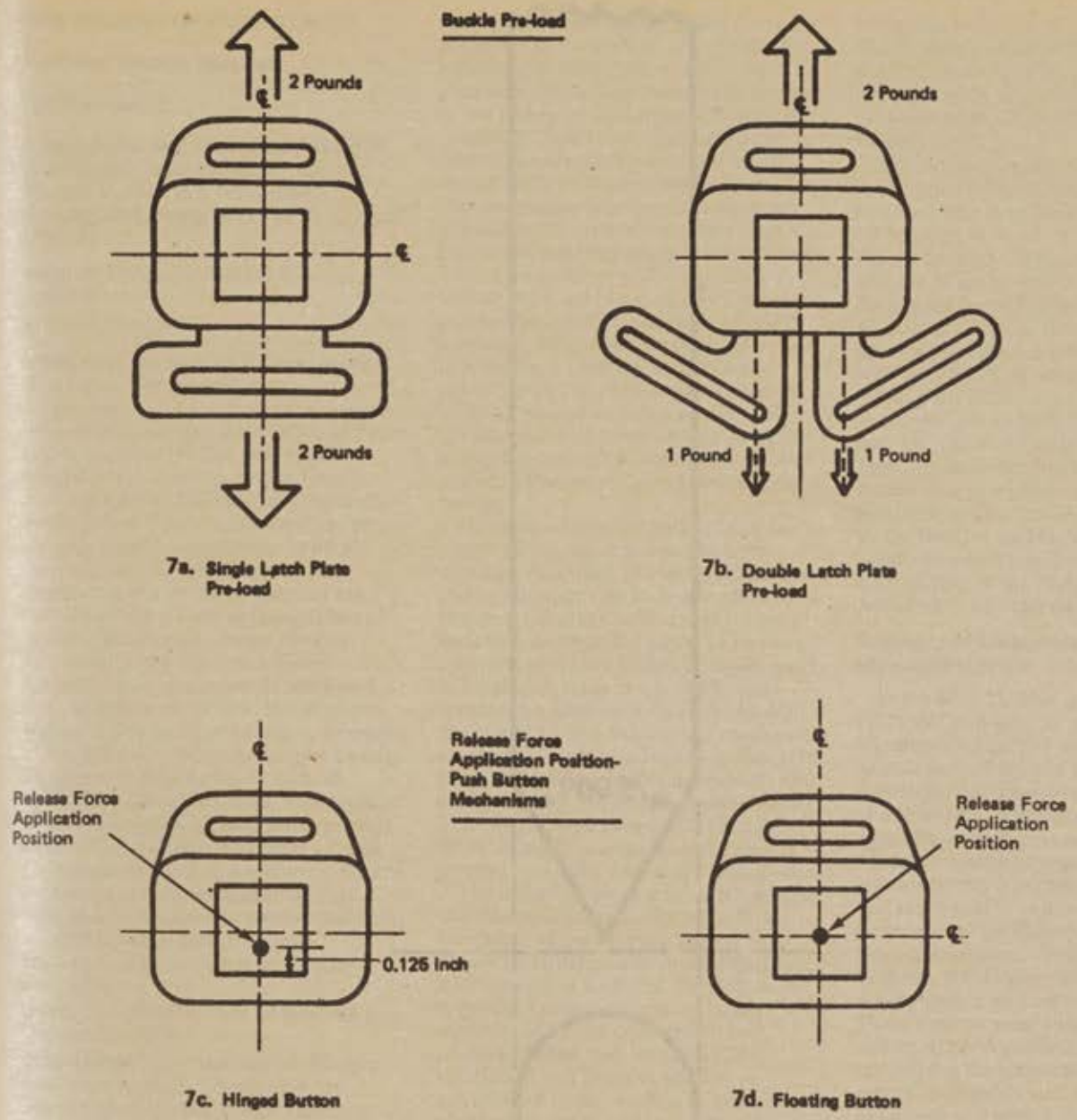
4. Figure 6, Pre-impact Buckle Release Force Test Set-up, and Figure 7, Release Force Application Device—Push Button Release Buckles, are redesignated as Figures 7 and 8, respectively, appearing as follows:

Issued: September 23, 1985.

Diane K. Steed,

Administrator.

BILLING CODE 4910-59-M



7a. Single Latch Plate Pre-load

7b. Double Latch Plate Pre-load

7c. Hinged Button

7d. Floating Button

Figure 7. Pre-impact Buckle Release Force Test Set-up

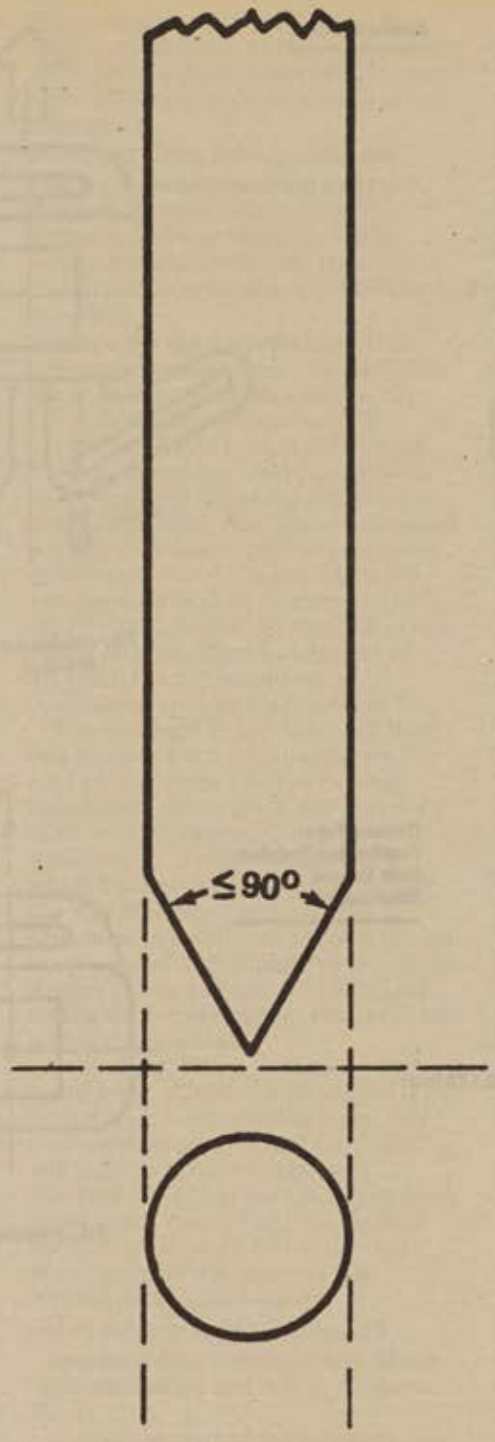


Figure 8. Release Force Application Device — Push Button Release Buckles

[FR Doc. 85-23083 Filed 9-26-85; 8:45 am]
BILLING CODE 4910-59-C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination That the Warner Sucker Is a Threatened Species and Designation of Its Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Warner sucker (*Catostomus warnerensis*) to be a threatened species, with critical habitat. This action is being taken because: (1) The range and numbers of this species have been reduced substantially; (2) predation by exotic fishes has reduced survival of juvenile suckers, especially in lake habitats; and (3) instream water diversions and artificial barriers are restricting movement and migration of suckers within and among streams. Historically, the Warner sucker occurred in several natural lakes and their tributary streams in the Warner Valley of south-central Oregon. Portions of the following habitats in Lake County, Oregon, are designated as critical habitat: Twelvemile Creek, Twentymile Creek, the spillway canal north of Hart Lake, Snyder Creek, and Honey Creek. A determination that the Warner Sucker is threatened and designation of its critical habitat provide the species with the protection pursuant to the Endangered Species Act of 1973, as amended.

DATE: The effective date of this rule is October 28, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The Warner sucker (*Catostomus warnerensis*) is endemic to the streams and lakes of the Warner Basin in south-central Oregon. It was first described by Snyder (1908). This species is particularly interesting in that it is part of a relict fauna isolated in remaining waters of a larger Pleistocene lake that previously covered much of the basin floor (Hubbs and Miller, 1948). Early residents of the area recalled when the suckers and other fishes were very abundant and would ascend the creeks in the spring for spawning (Coombs *et al.*, 1979). Cope (1883) also noted the great abundance of fishes and fish-eating birds in Warner Basin. The Warner sucker is presently known to occur in portions of Crump and Hart Lakes, the spillway canal north of Hart Lake, and portions of Snyder, Honey, Twentymile, and Twelvemile Creeks (Andreasen, 1975; Coombs *et al.*, 1979; Swenson, 1978) Land on the valley floor is primarily in private ownership, although the Hart Mountain National Wildlife Refuge includes portions of Crump and Hart Lakes. Away from the valley floor, much of the stream habitat is within Bureau of Land Management holdings.

Habitats of Warner sucker include large natural lakes and associated marshes. Although primarily lacustrine, this species spawns in headwaters of streams, tributary to lakes. Warner suckers mature at 3–4 years of age at approximately 5–6 inches (130–160 mm) in length (Coombs *et al.*, 1979). The species is a moderate-sized member of the family Catostomidae and reaches a maximum length of about 20 inches (510 mm). Lateral-line scales average 76 and scales around the caudal peduncle vary from 18–22 (Andreasen, 1975; Bond, 1973). A bright orange lateral stripe is present on adults during spawning runs.

The introduction of exotic fish species and the modification of stream flows into lakes of the Warner Valley by diversion structures have modified the Warner sucker's habitat. Predation on juvenile Warner suckers by large numbers of exotic centrarchid and ictalurid fishes may be particularly significant. All these actions have contributed to the decline in Warner sucker populations (Bond, 1974; Coombs and Bond, 1980; Coombs *et al.*, 1979; Kobetich, 1977). The water diversion structures are especially significant in that they prevent this obligatory stream-spawning sucker from reaching its spawning and rearing areas. Water pollution and siltation of gravel beds needed by the fish for spawning are also adversely affecting the lake and stream habitats. This species spawns in silt-free, gravel-bottomed flowing sections of creeks.

The depleted status of the Warner sucker has been recognized by the scientific community. The Warner sucker was listed as endangered in Bond's 1974 publication, "Endangered Plants and Animals of Oregon: I. Fishes." The species is also listed as endangered by Deacon *et al.*, (1979). However, recent work of Coombs and Bond (1980) and Coombs *et al.*, (1979) documented continued, although reduced, spawning of this species and recommended a threatened classification.

The Warner sucker was included in the Service's Vertebrate Notice of Review published December 30, 1982 (47 FR 58454). On April 12, 1983, the Desert Fishes Council petitioned the Service to add the Warner sucker to the List of Endangered and Threatened Wildlife. After evaluation of the petition, the Service published a notice on June 14, 1983 (48 FR 27273), which found that substantial information was presented in the petition to indicate that action may be warranted to list the species. The proposed rule to list the Warner sucker as a threatened species and to designate critical habitat was published by the Service on May 21, 1984 (49 FR 21383), in accordance with section 4(b)(3)(B)(ii) of the Endangered Species Act of 1973, as amended.

Summary of Comments and Recommendations

In the May 21, 1984, proposed rule (49 FR 21383) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *Lake County Examiner, Medford Mail Tribune,* and *Eugene Register-Guard,* which invited general public comment. These notices were published on June 20 and 21, 1984. A public hearing concerning the proposed listing and critical habitat determination was held in Lakeview, Oregon, on August 29, 1984. The period for accepting written comments was extended for 60 days following the hearing and closed on October 29, 1984 (49 FR 36667).

Seventeen written comments were received in response to the proposed rule. Seven of these comments were not substantive as they offered no information regarding the status of the Warner sucker, nor did they offer an opinion on whether the species should be protected under the Endangered Species Act of 1973, as amended. Of the ten respondents providing an opinion on the listing, five were opposed and five were in favor of the proposed action. Five individuals presented testimony at the August 29, 1984, public hearing. Four individuals presented testimony on behalf of the Warner Valley Association

in opposition to the listing. Written comments were received from two of the four individuals and are included in the tally of written letters referenced above. The fifth individual provided no formal statement, but later submitted one of the five letters referenced above in opposition to the listing. The comments of all individuals and agencies are discussed below.

Six individuals, all landowners in Warner Valley, mentioned that Hart Lake and a portion of Crump Lake were dry in the early 1930's and early 1960's. They questioned how the Warner sucker survived then, and, because it had survived, they felt the species must be adaptable and not in need of Federal protection. The periodic fluctuation in lake levels appears to be a natural feature of the Valley hydrology. The Warner sucker is able to survive such periods by seeking refuge in streams tributary to the lake. However, natural population numbers decrease dramatically during such periods. Also, increased irrigation demands during such periods may aggravate the natural drought conditions and cause the lakes to remain dry for longer periods than would otherwise naturally occur. The presence of drought cycles argues for proper management of the stream resources, which serve as the only refugium for the Warner sucker at these times.

One local individual questioned why the U.S. Fish and Wildlife Service introduced crappies into the Warner Valley lakes. To the Service's knowledge, all introductions of exotic fishes have been made by State agencies. The consequences of these introductions are addressed in the next response.

Four individuals (all landowners or their representatives) stated that the introductions of crappie and other exotic fishes are a much greater threat then any other factor (e.g., irrigation practices) and that there is no use in listing the Warner sucker until everyone agrees to remove the exotic fishes. The Service agrees that interactions (primarily in the form of predation) between exotic fishes and the Warner sucker are a serious problem (see "Summary of Factors Affecting the Species" section), but the Service does not see the exotic fish problem as a reason for postponing listing. Listing the fish will likely bring additional attention to the fish and increase the likelihood of addressing the exotic fish problem. The Service will work closely with the State of Oregon to determine the severity of the problem. Courses of action ranging from no further introductions of exotic fishes to partial or total control of the exotics will be investigated.

One individual argued that there have been no new dams or weirs in the Valley in the past 30 years. Therefore, agricultural practices should not be criticized as causing a decline of the species. The Service agrees that irrigation has been practiced by Warner Valley landowners over the past 100 years. Many dams and other diversion structures were in place prior to 1950. However, the Service believes that the cumulative impact of past agricultural irrigation practices, more recent additions and modifications to these practices, and the effects of introduced fishes have combined to warrant threatened status for the Warner sucker.

One individual argued that the Valley has not changed for hundreds of years and therefore the sucker should be able to continue to survive. The Service agrees that in several respects the Valley has changed little over the past two hundred years. However, the stream and lake habitats of the Warner sucker have sustained a large number of changes over this time. All agricultural and water diversion practices have occurred within the past 150 years. Establishment of exotic fishes has occurred within the past 30 years. The life cycle of the Warner sucker requires movement from lakes to headwaters of tributary streams for spawning and then back to the lakes. Dams, water diversions, and other modifications have made such movement difficult or impossible.

Two individuals suggested that the Warner sucker population level may be more closely correlated to climatic cycles than to human-induced habitat changes. The Service responds that historically such was indeed the case. Drought conditions greatly reduce the population of Warner suckers. In more recent times, climatic cycles still undoubtedly affect population numbers, but, other factors have become more important. For example, with large numbers of predatory exotic fishes in the Warner Valley lakes, these waters provide poor conditions for the Warner sucker even in years of substantial precipitation. The effects of human habitat changes are even more serious during drought years, when habitat is already reduced. Therefore, conservation measures are needed so that natural climatic cycles and habitat alterations do not combine to eliminate the species.

One individual described the present high-water conditions that exist in the Valley and stated that the Warner sucker is in fine condition. The Service agrees that weather cycles do influence the Warner sucker population. However, past climatic data indicate that annual precipitation is cyclic in amount and that a series of wet years is usually followed by a series of dry years. Thus, present climatic conditions should have little influence on the decision to list the species.

Two individuals argued that there is no justification for spending Federal dollars for this species when our national budget is so far in debt. The Department of the Interior has a legal responsibility to carry out provisions of the Act. Decisions regarding the addition of species to the List of Endangered and Threatened Wildlife are to be made on the best available scientific and commercial data.

One individual landowner argued that threatened status and critical habitat designations would service no useful purpose. The Service responds that such designations would afford the Warner sucker protection under the Act. Various provisions of the Act are discussed elsewhere and will not be repeated here. It is the Service's belief that threatened status and critical habitat designation will result in improved conditions for the Warner sucker and could eventually lead to its recovery.

Two individuals questioned whether such designation would jeopardize their agricultural-based livelihood. The Service firmly believes that existing agricultural practices and enhanced conservation of the species are compatible. Modifications to existing diversion structures could be incorporated to enhance movement and survival of the species without changing the purpose or function of the structures. For example, fish screens could prevent diversion of adult and juvenile suckers into agricultural fields. Fish ladders or other passage structures could facilitate movement of the species within streams. The Service will work with the landowners on conservation and recovery of the Warner sucker.

Three individuals questioned the Service's conclusion that the Warner sucker had declined. They also suggested that the Service had not presented any proof to indicate that the Warner sucker was ever abundant. Conversely, one individual suggested that the sucker population may be increasing. The Service must base its decisions on the best available scientific and commercial data. Prior to 1900, many scientists were impressed by the large numbers of fishes in the Valley (Cope, 1883; Gilbert, 1897; Snyder, 1908). The Warner sucker, as such, was not mentioned by many of the early

scientists because it was not recognized as distinct from other species of *Catostomus* until 1908. However, only two species of native fish, the Warner sucker and redband trout (*Salmo* sp.), are large enough to be readily noticed. Both species would have been particularly evident during their spring spawning runs. The implication that the Warner sucker was abundant historically is supported by claims of local residents (Coombs *et al.*, 1979). Although there are no historic population estimates to compare with recent data, the best scientific data available indicate that suckers were abundant, and only one species of sucker occurs in Warner Valley. Also, it should be noted that Snyder (1908) described Warner suckers collected from Warner Creek, a tributary of Deep Creek near Adel, Oregon. Recent surveys have failed to find this species near Adel or in any portion of the Deep Creek drainage.

One representative of the Warner Valley Association claimed that the Warner sucker is found in the Lahontan Basin of Nevada as well as in Oregon. The Service believes that this comment resulted from confusion in understanding some of the early ichthyological literature. Prior to 1908 when the species was described as *Catostomus warnerensis*, the sucker in Warner Valley was assumed to be the same as *C. tahoensis* of the Lahontan Basin. However, when the morphology of the Warner Valley form was closely examined by Snyder (1908), the Warner sucker was found to be unique and easily separable from *C. tahoensis* of the Lahontan Basin. The taxonomy of the Warner sucker has not been questioned since that time, and no individuals of *C. warnerensis* have ever been collected from outside the Warner Basin.

One individual questioned whether the recent studies (particularly Coombs *et al.*, 1979) were conducted under optimal conditions. If conditions were not optimal, the commenter felt that the studies were flawed. The Service responds that this comment is referencing conditions of high stream flow, poor roads, and cold weather encountered by recent investigators. Although conditions are not always ideal, valuable scientific data can be collected nonetheless. For example, Coombs *et al.* (1979) collected sufficient scientific data to determine the spawning sites, age and condition of spawners, and distribution of the species, despite less than perfect weather conditions during the study. Less than optimal weather did not seem to hamper adequate data collection by most recent investigators.

Four individuals, representing Oregon State University, the Oregon Cooperative Fishery Unit, the International Union for Conservation of Nature and Natural Resources, and the Oregon Department of Fish and Wildlife, and a private scientist, supported the proposed threatened status and critical habitat designation. Opinions were presented that agreed with the Service's analysis that the Warner sucker has become depleted since historic times. Other statements are similar to those presented in the "Summary of Factors Affecting the Species" section and will not be repeated here.

The Oregon Department of Fish and Wildlife recommended adding the upstream spring-source area of Snyder Creek to the critical habitat designation. Although this area is important for providing downstream habitat on Snyder Creek, the Service believes that flows from the spring-source area will be protected by downstream critical habitat designations. That is, a significant upstream water diversion would adversely modify critical habitat downstream on Snyder Creek, and thus could be dealt with in the manner described below under "Available Conservation Measures."

The Bureau of Land Management questioned why the proposed critical habitat on Twelvemile Creek stopped at the Oregon-Nevada border. The Service concurs that habitat in the Nevada portion appears as capable of supporting Warner suckers as does the Oregon portion. However, Warner suckers have not been collected from the Nevada portion of the creek, and the Service therefore extended critical habitat designation only to the border. The Bureau also questioned why the upper portion of Twentymile Creek was included as critical habitat. In question is the species' ability to ascend the steep canyon area in Twentymile Creek. The Service acknowledges that the pricise upstream distribution limit within Twentymile Creek is uncertain. Adult and juvenile Warner suckers have been collected in Twentymile Creek near its confluence with Twentymile Creek (Coombs *et al.* 1979). Based on our knowledge of the species' life history, it is likely that adult Warner suckers move upstream in Twentymile Creek during their spring spawning run. The Service has no evidence to indicate that the canyon area addressed in BLM's comment is a limiting factor in movement of adults. Further, information in our files indicates that some of the upstream area may provide habitat for the Warner sucker. Therefore, lacking scientific data to the contrary, we have adopted the proposed critical habitat designation for 9 miles of Twentymile Creek upstream of its confluence with Twentymile Creek.

Comments were received from the Director of the Bureau of Land Management, Supervisor of the Fremont National Forest, and the Oregon State Forester that offered guidance in management of the Warner sucker but offered no opinion as to whether the species should be listed or not. An error in the "Critical Habitat" section of the proposed rule was discovered during the comment period. In that section, the description of the proposed critical habitat did not agree with the actual metes and bounds as given in the "Proposed Regulations Promulgation" section of the rule. Service personnel prepared a handout for the public hearing that clarified the proposed critical habitat, and the critical habitat description is corrected in this final rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Warner sucker (*Catostomus warnerensis)* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424) were followed. 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 Warner sucker (*Catostomus warneresis)* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Warner sucker is endemic to the Warner Valley in south-central Oregon. It inhabits portions of Crump and Hart Lakes, the spillway north of Hart Lake, and some sections of Snyder, Honey, Twentymile, and Twelvemile Creeks (Andreasen, 1975; Coombs *et al.*, 1979; Swenson, 1978). The species typically ascends streams tributary to lakes in the Warner Basin to spawn. However, instream barriers and diversion structures have often prohibited the movement of suckers into spawning streams during recent years. During years with high precipitation, enough water flows by the diversion structures so that the suckers can utilize limited reaches of the streams for spawning. However, during periods of low flows, all water is often

diverted, thereby eliminating any change for the fish to spawn. If suckers are successful in ascending the barriers, spawned-out fish and progeny are likely to be restricted to small areas of streams because of instream barriers, or sometimes diverted into agricultural fields where they die. Water diversion, used to promote farming activites, exists on all streams occupied by this species. Such water barriers and diversions are particulary detrimental to this obligatory stream-spawning species. Spawning habitat consists of silt-free gravel areas with moderate flows. Postlarval and young-of-the-year Warner suckers utilize shallow backwater pools and stream margins where current is slight or nonexistent.

In addition to water diversions, channelization of streams and overgrazing have disturbed soils in the watershed and degraded streams even further by allowing siltation of gravel beds normally used for spawning. Runoff and leachates containing fertilizers and pesticides from certain agricultural and ranching activities in the Warner Valley watershed further degrade water quality of the lakes and streams.

B. *Overutilization of commercial, recreational, scientific, or educational purposes.* There is no evidence to suggest overutilization of the Warner sucker for any of these purposes.

C. *Disease or predation.* Exotic centrarchid (sunfishes and freshwater basses) and ictalurid (catfishes) fishes have been stocked into lakes in the Warner Basin. Large centrarchids and ictalurids are capable of preying on Warner suckers. Of particular concern are large numbers of crappie (*Pomoxis* spp.) in Hart and Crump Lakes. Exotic fishes also may introduce new parasites and disease organisms to which the sucker might be susceptible. Exotic salmonid fishes (trouts) introduced into the steams may also exert predation pressures.

D. *The inadequacy of existing regulatory mechanisms.* Oregon State law provides protection against taking of the Warner sucker by requiring a collecting permit, but the State has no provisions for the protection of habitat.

E. *Other natural or manmade factors affecting its continued existence.* Any prolonged drought will hasten the demise of the Warner sucker if all or most of the water in the streams is diverted. During droughts of the 1930's and early 1960's, Hart and Crump Lakes were almost dry. During such times, maintenance of adequate stream habitat is critical to survival of the species and any diversion of stream flow would be particularly deterimental. The reduced numbers of populations and individuals make this species especially susceptible to any natural or manmade factors that adversely affect it.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in deciding to make this rule final. Based on the evaluation, the preferred action is to list the Warner sucker as threatened. The range and number of the species have been reduced substantially and alteration of habitat continues. Proper and adequate management could prevent the species from becoming endangered. Recent status information has provided essential habitat data and indicates that overcollecting is not a major threat. It appears prudent to propose critical habitat for the Warner sucker.

Critical Habitat

Critical habitat, as defined by section 3 of the Act, means: (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.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat is being designated for the Warner sucker to include the following streams in Lake County, Oregon, and 50 feet on either side of the stream banks: 4 stream miles of Twelvemile Creek, 18 stream miles of Twentymile Creek, 2 stream miles of the spillway canal north of Hart Lake, 3 stream miles of Snyder Creek, and 16 stream miles of Honey Creek. The 50-foot riparian zone on each side of the streams is included to protect the integrity of the stream ecosystem. The Service determines that the maintenance of this riparian zone is essential to the conservation of the Warner sucker. Riparian vegetation helps prevent siltation and run-off of other pollutants. Shading from small trees and shrubs in the riparian zone helps maintain suitable water temperature and dissolved oxygen levels in the streams. These stream areas include spawing and rearing habitat for the species. The areas proposed did not include the entire historic or present habitat of the fish and modifications to critical habitat descriptions may be proposed in the future. No data were received during the comment period or from the public hearing that resulted in changes to the critical habitat as proposed on May 21, 1984 (49 FR 21383).

Section 4(b)(8) requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) which may adversely modify such habitat or may be affected by such designation. These activities are: (1) Overgrazing by livestock, which would eliminate riparian vegetation and lead to streambank erosion and subsequent siltation of the stream and lake environment; (2) introduction of exotic fishes into streams or lakes of the Warner Valley, which might compete with or prey on Warner suckers; (3) construction of additional diversion dams, that do not have adequate fish-passage facilities, on streams inhabited by the Warner sucker; (4) channelization or diversion of streams inhabited by the Warner sucker; (5) application of herbicide or insecticide along stream courses or lakes inhabited by the Warner sucker, which could be toxic to the species or food; (6) pollution of stream or lake habitat by silt or other pollutants; and (7) removal of natural vegetation within or along streams.

Consultations with the U.S. Bureau of Land Management may be necessary for actions involving grazing leases along streams designated as critical habitat. Consultations with the U.S. Forest Service will be unlikely as no Warner sucker habitat occurs on National Forest lands. However, much of the watershed for streams designated as critical habitat is within Forest Service jurisdiction. Substantial increases in timber harvest and/or road construction in the Honey Creek drainage may require section 7 consultation. In addition to grazing leases and timber sales, habitat of forest management plans of the Bureau of Land Management of Forest Service will require consultations if their implementation may affect the Warner sucker. Also, consultation with the U.S. Army Corps of Engineers (Corps) may be necessary for any stream bank work under permits pursuant to section 404 of the Clean Water Act or permits pursuant to section 10 of the Rivers and Harbors Act on streams designated as critical habitat.

Section 4(b)(2) of the Act requires the Service to consider economic and other

impacts of designating a particular area as critical habitat. The Service has considered the critical habitat designation in light of relevant additional information obtained and concludes that no significant economic or other impacts are expected to result from the designation. The Bureau of Land Management has already reduced or eliminated cattle grazing along portions of some streams herein designated as critical habitat. Such action was taken to protect riparian habitats rather than to exclusively conserve Warner suckers. Both the Forest Service and the Corps have indicated that they do not expect their activities to affect or be affected by the critical habitat designation. In addition, there is no known involvement of Federal funds or permits for the private land within the critical habitat. For these reasons, no adjustments to the boundaries of the proposed critical habitat were warranted.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

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 this interagency cooperation provision of the Act are codified at 50 CFR Part 402 and are now under revision (see proposal at 48 FR 29990; June 29, 1983). 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 a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Federal activities which may be affected by the determination of critical habitat for the Warner Sucker were discussed above in the "Critical Habitat" section of this rule.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of prohibitions and exceptions that generally apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate of foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally. Certain exceptions would apply to agents of the Service and State conservation agencies. General regulations governing the issuance of permits to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances are set out at 50 CFR 17.32.

The Secretary has discretion under section 4(d) of the Act to issue such special regulations as are necessary and advisable for the conservation of a threatened species. The Warner sucker is threatened primarily by habitat disturbance or alterations, not by intentional, direct taking of the species or by commercialization. Given this fact, and the fact that the State of Oregon regulates direct taking of the species through the requirement of State collecting permits, the Service has concluded that the State's collection permit system is adequate to protect the species from excessive taking, so long as such takes are limited to: educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act.

Therefore, the special rule adopted herein allows take of the Warner sucker for the above-stated purposes without the need for a Federal permit if a State collection permit is obtained and all other State wildlife conservation laws and regulations are satisfied. Rules are also promulgated to allow incidential take of the species during recreational fishing activities if the fishing is conducted in accordance with State law and if the Warner suckers are returned immediately into their habitat. The Service acknowledges that incidental take of the species by State-licensed recreational fishermen is not a significant threat to the Warner sucker. It should be recognized that any activities involving the taking of this species not otherwise enumerated in the special rule are prohibited. Without this special rule, all of the prohibitions under 50 CFR 17.31 would apply. The Service believes that this special rule will allow for more efficient management of this species, thereby facilitating its conservation. For these reasons, the Service has concluded that this regulatory action is necessary and advisable for the conservation of the Warner sucker.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under 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).

Regulatory Flexibility Act and Executive Order 12291

The Department of the Interior has determined that designation of critical habitat for this species will not constitute a major action under Executive Order 12291 and certifies that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The critical habitat is found in the Warner Valley, Oregon, and is composed of approximately 43 stream miles and 50 feet on either side of the stream channel. The lands are federally and privately owned and are used for cattle grazing and crop production. No Federal involvement is expected to affect or be affected by this designation. Therefore, no significant economic or other impacts are anticipated to result from the critical habitat designation. In addition, no direct costs, enforcement costs, or information collection or recordkeeping requirements are imposed on small entities by this designation. These determinations are based on a Determination of Effects that is available from the U.S. Fish and Wildlife Service, at the address in the **"ADDRESSES"** section.

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Author

The primary author of this final rule is Dr. Jack E. Williams, U.S. Fish and Wildlife Service, Sacramento Endangered Species Office, 2800 Cottage Way, Room E–1823, Sacramento, California 95825 (916/978–4866 or FTS 460–4866).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*).

2. Amend § 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							
Common name	Scientific name	Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Fishes							
Sucker, Warner	*Catostomus warnerensis*	U.S.A. (OR)	Entire	T	205	17.95(e)	17.44(l)

3. Add the following as special rules to Section 17.44:

§ 17.44 Special rules—fishes.

* * * * *

(l) Warner sucker (*Catostomus warnerensis*)

(1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: (i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; (ii) incidental to State-permitted recreational fishing activities, provided that the individual fish taken is immediately returned to its habitat.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry, transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (l) (1) through (3) of this section.

* * * * *

4. Amend § 17.95(e) by adding critical habitat of the Warner sucker as follows: (The position of this entry under § 17.95(e) will follow the same sequence as the species occurs in § 17.11.)

§ 17.95 Critical habitat—fish and wildlife.

(e) * * *

* * * * *

Warner Sucker (Catostomus warnerensis)

Oregon: Lake County.

1. *Twelvemile Creek*—Approximately 4 stream miles and 50 feet on either side of the stream commencing at the confluence of Twelvemile Creek and Twentymile Creek and extending upstream, and including those portions of Twelvemile Creek in T40S, R23E, Section 35; and T41S, R23E, Sections 1, 2, 12, 13, 23, and 24.

2. *Twentymile Creek*—Approximately 18 stream miles and 50 feet on either side of the stream commencing about 9 miles upstream of the junction of Twelvemile and Twentymile Creeks and extending to a point about 9 miles downstream of the junction, and including those portions of Twentymile Creek in T40S, R22E, Sections 25, 35, and 36; T40S, R23E, Sections 19, 20, 24, 25, 28, 29, 30, 33, 34, 35 and 36; T40S, R24E, Sections 15, 16, 19, 20, 21, 22, 28, 29, 30; and T41S, R23E, Sections 2 and 3.

3. *Spillway Canal north of Hart Lake*—Approximately 2 stream miles and 50 feet on either side of the waterway commencing at its confluence with Hart Lake and extending to a point about 2 miles downstream, and including those portions of the waterway in T36S, R24E, Sections 7, 18, and 19.

4. *Snyder Creek*—Approximately 3 stream miles and 50 feet on either side of the stream commencing at the confluence of Snyder Creek and Honey Creek and extending to a point about 3 miles upstream on Snyder Creek, and including those portions of Snyder Creek in T36S, R22E, Sections 1 and 12; and T36S, R23E, Sections 7, 17, and 18.

5. *Honey Creek*—Approximately 16 stream miles and 50 feet on either side of the stream commencing at the confluence of Honey Creek with Hart Lake and extending to a point about 16 miles upstream on Honey Creek, and including those portions of Honey Creek in T36S, R24E, Sections 19, 20, 27, 28, 29, 30, 33, 34, and 35; T36S, R23E, Sections 17, 18, 20, 21, 22, 23, 24, 26, 27, and 28; and T36S, R22E, Sections 13, 14, 22, and 23.

Constituent elements of all areas proposed as critical habitat include streams 15 feet to 60 feet wide with gravel-bottom shoal and riffle areas with intervening pools. Streams should have clean, unpolluted flowing water and a stable riparian zone. The streams should support a variety of aquatic insects, crustaceans, and other small invertebrates for food.

* * * * *

Dated: September 3, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-23075 Filed 9-26-85; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine Endangered Status and Critical Habitat for the White River Springfish and the Hiko White River Springfish

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status and critical habitat for the White River springfish (*Crenichthys baileyi baileyi*) and Hiko White River springfish (*Crenichthys baileyi grandis*). This action is being taken because the one known population of the White River springfish and the single remaining population of the Hiko White River springfish are threatened by habitat alteration and the presence of exotic species, which compete with and prey upon the springfishes. These springfishes occur in remnant waters of the Pluvial White River system in eastern Nevada. The White River springfish is presently known to occur only in Ash Springs while the Hiko White River springfish, extirpated from Hiko Spring, now exists as a single, small population in Crystal Springs. These spring areas are located in the Pahranagat Valley of Lincoln County, Nevada. This final rule implements Federal protection provided by the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is October 28, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Suite 1692, Lloyd 500 Building, 500 NE. Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

Crenichthys baileyi is one of the two species within the genus *Crenichthys*. Hubbs (1932) recognized the distinct qualities of these fishes when he described *Crenichthys* and *C. nevadae* from Railroad Valley in central Nevada. Distinctive characteristics of the genus include a lack of pelvic fins, uniserial bifid teeth, a long and coiled intestine, and restricted range. Fishes of the genus *Crenichthys* have been of particular scientific interest because of their adaptation to extermely high temperatures and low dissolved oxygen (Hubbs and Hettler 1964, Hubbs *et al.* 1967, Sumner and Sargent 1940).

Crenichthys baileyi is endemic to the remnant waters of the White River system in eastern Nevada. During pluvial times, 10,000 to 40,000 years ago, the White River was a much larger river that flowed into the Colorado River by way of the Virgin River (Hubbs and Miller 1948). As the White River desiccated in response to the more xeric Recent climate, the springfishes were restricted to remaining permanent waters, such as springs.

The White River springfish (*C. b. baileyi*) and Hiko White River springfish (*C. b. grandis*) were described by Williams and Wilde (1981) as two of five subspecies of *C. baileyi* restricted to the Pahranagat Valley of Lincoln County. Both of these subspecies are threatened by habitat alteration, as well as the presence of exotic species, that are detrimental to the springfishes because of increased competition, predation, and parasitism (Hubbs and Deacon 1964, Wilson *et al.* 1966 Deacon 1979).

Habitats occupied by these taxa are extremely localized and vulnerable to alteration. During the past 20 years these habitats have been impounded to facilitate agricultural diversion and create recreational swimming facilities. Whereas historic records document the subspecies' presence in several areas (Gilbert 1893), recent investigations (Courtenay *et al.* ms.) indicate the current absence from formerly occupied habitats and/or a severe reduction in numbers. The White River springfish is presently found in a single, small locality (surface area less than 2 acres) used by the public as a swimming facility and principally occupied by exotic fishes.

The Hiko White River springfish was extirpated from one of its two known habitats in 1967 when exotic game fishes gained entrance resulting from upstream migration. Efforts to restock the springfish in Hiko Spring have occurred in recent years; the long-term viability of this population is, however, questionable. The remaining population is extremely small (less than 100 individuals) and threatened by the presence of exotic fishes, such as the convict cichlid (*Cichlasoma nigrofasciatum*) and mosquitofish (*Gambusia affinis*).

On December 30, 1982, the Service published a Review of Vertebrate Wildlife (47 FR 58454) and included the White River springfish and the Hiko White River springfish as category 1 species. Category 1 indicates that the Service has substantial information to support the biological appropriateness of listing the species as threatened or endangered.

On April 12, 1983, the Service received a petition from the Desert Fishes Council requesting that the White River springfish and the Hiko White River springfish, along with 15 other fish species, be added to the List of Endangered and Threatened Wildlife. The Service published in the **Federal Register** (48 FR 27273) on June 14, 1983, a finding that the petition presented substantial information and that the petitioned action may be warranted. The