United States Department of Agriculture

Forest Service

Southwestern Region

Decision Notice and Finding of No Significant Impact

Gila Trout Restoration in the Upper West Fork Gila River Drainage Rotenone Use inside a Wilderness Area

Wilderness Ranger District, Gila National Forest, Catron County, New Mexico

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February 2009

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AND
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I. Decision Notice

A. Action and Its Purpose

The authorization for the recovery of endangered species is enabled through law, regulation and policy direction. Recovery efforts must be consistent with laws such as the Endangered Species Act (ESA), National Environmental Policy Act (NEPA), National Forest Management Act (NFMA), Clean Water Act (CWA), and other legal mandates.

The Supplemental Environmental Assessment for Gila Trout Restoration in the Upper West Fork Gila River Drainage proposes to allow for the use of rotenone, in the formulation of CFT Legumine™, in the Upper West Fork Gila River project area. The use of rotenone is needed due to the inability to acquire Fintrol with an acceptable level of quality and effectiveness. The original Decision Notice chose to employ Fintrol as the sole means to prepare project area streams for native fish restoration. Antimycin A (trade name Fintrol) and rotenone are the two existing registered piscicides for use in native fish restoration. The use of the CFT Legumine™ formulation of rotenone is needed to prepare for the establishment of secure, pure, reproductive, self-sustaining populations of Gila trout within their historic habitat. Actions chosen in the Decision Notice for the Environmental Assessment of 2003 will be implemented, with the addition of the use of CFT Legumine™, to assist in meeting Gila trout recovery criteria identified in the Recovery Plan (USFWS 2003). The actions will help move Gila trout closer to eventual delisting under the ESA. Failure to manage for recovery of Gila trout is not consistent with the Gila National Forest Land and Resource Management Plan (pages 12, 28, 29, 248, and 249).

B. Decision and Rationale

The Regional Forester has the only authority (FSM 2151.04a) to approve the use of a fish toxicant by the New Mexico Department of Game and Fish (NMDGF) within designated

wilderness areas. Therefore, based on the results of the analysis documented in the Supplement to the Environmental Assessment for Gila Trout Restoration in the Upper West Fork Gila River ("supplemental EA") and in the original environmental assessment, it is my decision to implement the Proposed Action to allow the use of CFT Legumine™ in the Upper West Fork Gila River watershed (within the Gila Wilderness) on 21 miles of stream. This will allow for effective piscicide treatment to remove non-native and hybrid trout from the headwaters of the West Fork Gila River; White Creek; Cub Creek; Packsaddle Canyon; Langstroth Canyon, Trail Creek, Rawmeat Creek, and lower White Creek. This action will assist in bringing Gila trout recovery efforts into compliance with law, regulation, and the Gila National Forest's Land and Resource Management Plan ("Forest Plan") direction.

Implementation of the proposed action is identical to Alternative 2 in the 2003 Environmental Assessment, with the addition of CFT Legumine™, as an option for the treatment chemical. The 2003 Environmental Assessment was reviewed to consider if additional new information or circumstances applied. New consultation for the Chiricahua leopard frog and the Gila trout have been completed (USFWS 2009) resulting in additional mitigation measures not identified in 2003. Those additional mitigations are detailed below. The project encompasses the following specific activities:

1. Under the direction of a USDA Forest Service (USFS) certified pesticide applicator, the Southwestern Region will authorize the application of CFT Legumine™ and potassium permanganate (KMn04) by New Mexico Department of Game and Fish (NMDGF) personnel. All certified applicators will be experienced in the use of Fintrol and/or rotenone. Certification is obtained through the State of New Mexico's Department of Agriculture under an EPA endorsed program for restricted use pesticides. Forest Service personnel may have additional certification through federal training. The U.S. Fish and Wildlife Service (USFWS) will also provide experienced, certified applicators.
2. NMDGF shall deploy piscicides in accordance with all applicable state and federals laws.
3. A portion of native speckled dace will be salvaged with electrofishing equipment and held temporarily for restocking. Restocking can take place once the appropriate stream segments are neutralized.
4. Personnel will chemically treat waters above an existing waterfall barrier according to label directions and after bioassays for CFT Legumine™ at a rate equal to or less than 1 part per million (ppm).
5. Personnel will set up and neutralize the CFT Legumine™ at one primary site near the barrier water fall. Neutralization shall be assessed with a livecar containing sentinel fish approximately one half hour flow time downstream of the neutralization station, and a secondary neutralization station and an additional livecar will be activated if fish in the first livecar exhibit symptoms of piscicide exposure. Effectiveness of detoxification will be determined by monitoring of live fish placed in a holding net in the stream below the detoxification station.

6. NMDGF shall conduct a bioassay, using label procedures, to determine the concentration of the piscicide required for successful removal and optimum distance between treatment drip stations.
7. Personnel will provide notice to downstream users within 10 miles of the treatment area at least 48 hours prior to deployment of CFT Legumine™, including signs posted at trailheads advising recreationists that the stream is fishless and has been treated with a fish toxicant, and providing additional information about the treatment and the restocking objectives.
8. Prior to reintroduction of Gila trout, personnel will assess the effectiveness of the treatment by performing a complete electrofishing survey.
9. Personnel will treat two times in the period of one year. Application of CFT Legumine™ will occur during suitable periods after snowmelt and before or after monsoon rains. The first treatment is proposed for early summer 2009 followed by a second application in late summer 2009. If a survey determines that a 3rd application is necessary the same protocol will be used.
10. NMDGF and FWS will introduce the appropriate stock of Gila trout following confirmation of a successful renovation.

C. Mitigation Measures

1. NMDGF and the USFS shall follow all orders recommended or directed in the Biological Opinion prepared by the USFWS.
2. All project work that may result in forms of take of regulated native and exotic species will be conducted under Service and NMDGF permits, and will conform to all conditions of those permits.
3. All field work shall conform to amphibian disease prevention protocols in the Chiricahua leopard frog Recovery Plan (Service 2007). Equipment will be disinfected between uses at different sites. Precautions will be taken to prevent spread or infection with chytrid fungus by not moving mud, water, or frogs from one site to another. If Chiricahua leopard frogs are handled, field personnel will disinfect their hands, as well. Equipment and personnel will be disinfected by rinsing with either: 1) 10 percent sodium hypochlorite (household bleach) or 2) quaternary ammonia (Service 2007).
4. Rotenone will only be applied in accordance with a Pesticide Use Proposal and by certified pesticide use applicators. Pesticide Use Proposals are required by National Forest regulations and identify methods, sensitive areas, and precautions that will be taken to minimize or eliminate adverse effects to non-target species, resources, and people.
5. Forest Service will designate a Chiricahua leopard frog coordinator who will organize and oversee all conservation measures related to the frog including coordination of the diurnal and nocturnal surveys, ensuring appropriate equipment and disinfectant is available for all activities, collection of chytrid fungus samples, repatriation of captured individuals, salvage of rotenone-exposed individuals, documentation of all occupied sites, and documentation of take.

6. Pre-application Chiricahua leopard frog surveys will be conducted by expert personnel from Western New Mexico University, NMDGF, and/or Forest Service. These surveys will be conducted approximately two weeks prior to each piscicide application. Areas of suitable or occupied habitat will be recorded with GPS. Diurnal and nocturnal surveys will be performed. Water quality and number of each life stage observed or collected will be recorded at each sample location. One to two days before any rotenone application the occupied sites will be revisited to capture and hold adults, tadpoles, or egg masses in safe enclosures (described below).
    a. Adult frogs collected will be swabbed for chytrid fungus samples.
    b. Any egg masses, tadpoles, or adults discovered during pre-treatment surveys will be removed and temporarily held on-site to minimize piscicide impacts and repatriated after project completion.
    c. All frogs will be transported and held according to guidelines in the Chiricahua Leopard Frog Recovery Plan (Service 2007). Plastic kiddy pools will be used as holding enclosures. All containers will have approximately 13 cm of water and covering screens to prevent escapement and predation. Hiding and basking microhabitats will be provided using rocks and plant material. Each site locality of frogs would be held in a separate enclosure. After application of rotenone is complete, frogs would be returned to the original sample location.
    d. Off-channel aquatic habitat that might support frogs will be included in the pre-treatment surveys. Prior to the treatment, the off-channel habitats will be electrofished. Any habitat sampled and determined to be fishless will not have piscicide applied. Any frogs that are discovered through electrofishing will be captured and held as described above.
7. During treatment it is possible that tadpoles not collected during pre-treatment surveys will be discovered. Some ability exists to salvage rotenone-affected individuals and revive them by placing them in fresh water. This technique will be implemented for the project.
8. Within 24 hours of the rotenone treatment any backwater areas that were treated with rotenone will be surveyed to look for dead tadpoles or frog adults that may have not been detected in pre-treatment surveys and were subsequently killed by the treatment.
9. All personnel must have or receive training on the importance and methods required to avoid transferring chytrid fungus among sites.
10. To minimize adverse effects to Gila trout, pre-treatment surveys will be conducted in the upper West Fork Gila River and all captured Gila trout will be either held in temporary, off-stream refugia or relocated to Whiskey Creek. Lower Whiskey Creek is intermittent and translocated Gila trout from the upper West Fork Gila River will be transported via oxygenated container to Whiskey Creek and released in suitable habitat. Gila trout collected in the White Creek drainage (including lower Langstroth and Rawmeat creeks) will not be protected due to potential genetic contamination by rainbow trout.

11. To reduce adverse effects to aquatic invertebrates, headwaters of tributaries, where fish are absent, will not be treated. Headwaters of tributaries of Rawmeat, Trail Canyon, Langstroth, White, and Whiskey Creeks will not be treated and will provide source populations of aquatic invertebrates for recolonization of species affected by rotenone.
12. To mitigate indirect effects (inadequate food base) to Gila trout, fish will not be stocked until the macroinvertebrate community has recovered. Determination of recovery will be accomplished by monitoring pre- and post-treatment throughout the project area.

D. Public Involvement

A petition, specific to this project, was filed by the NMDGF with the New Mexico Water Quality Control Commission and a public hearing held before a hearing officer on May 28, 2008. As a requirement of the NMWQCC petition and hearing the NMDGF provided extensive information regarding CFT Legumine including deployment and monitoring protocols, NM Department of Agriculture Certificate of Product Registration, and the product label. The project was placed in the Gila National Forest Schedule of Proposed Actions (SOPA) on December 8, 2008. A letter containing background information was sent on January 12, 2009, along with the supplemental Environmental Assessment (EA), to six parties who previously commented on the original EA. A legal notice was published in the Regional Forester's official paper of publication (the Albuquerque Journal) on January 12, 2009. All comments received through the public involvement in 2008 and 2009 were considered in this decision. Three letters of response to the notification were received from the public. Two letters were in support of the project and did not contain any questions. One of the three letters received within the comment period contained fifteen comments or questions that are summarized and addressed in the project record. Those comments were also referred to specialists who reviewed them and provided information in the project record to address them. These comments did not result in any substantial changes to the final supplemental EA. All comments receive throughout the analysis were considered in this decision.

E. Issues

As a result of public input comments were analyzed and reviewed for applicability to the analysis [40 CFR 1501.7 (a) (3)]. Review of the comments determined that they fell within the previous scope of the 2003 decision and included:

1. Effects of renovation to recreational fishing opportunities.
2. Effects to human health through consumption of treated water.
3. Effects of treated water on aquatic invertebrates, amphibians, native fish, and terrestrial wildlife.

F. Alternatives

The alternatives considered in detail (No Action and Proposed Action) were previously analyzed in the 2003 EA and 2003 Decision Notice and Finding of No Significant Impact (DN/FONSI), with the exception of the proposed use of CFT Legumine™. The additional alternative as analyzed in the supplement was to use CFT Legumine™, if Fintrol is not available in the quality or quantity needed for removal of non-native and hybrid trout.

G. Monitoring

In accordance with the USFWS Biological Opinion, monitoring of invertebrate communities prior to and after treatment will continue to be undertaken. Reinitiation of consultation for Gila trout, Chiricahua leopard frog, and Mexican Spotted Owl resulted in a Biological Opinion signed by the USFWS on February 18, 2009. NMDGF will implement all appropriate monitoring indentified in the August 11, 2008 NMWQCC order

H. Findings Required By Other Laws

Implementation of the selected alternative is consistent with applicable law. Including the Wilderness Act (Public Law 88-577) designating the Gila Wilderness and which provides for wilderness to be devoted to public purposes including conservation and scientific uses; ESA section 7(a)(1) direction to Federal agencies to utilize their authorities to carry out affirmative conservation programs that would recover endangered and threatened species (50 CFR 402.01) and the population viability and biological diversity requirements of NFMA (36 CFR 219.10b(1)(2)). Additional examples are 1) the Forest Service is directed to encourage or initiate the reintroduction of listed wildlife, fish and plants onto suitable unoccupied habitat when such actions promote recovery of the species [FSM 2674 (6/90)], and 2) the Gila NF Forest Plan (pgs 12, 28, 29, 248 and 249) has identified the need to recover species that are listed under the ESA. This management direction, in part, entails implementing recovery plans developed for species protected under the ESA and cooperating with the NMDGF on proposals to reintroduce species into suitable habitat.

Based on the Supplement and the EA, a Finding of No Significant Impact was made.

II. Finding of No Significant Impact

I have considered the significance of the effects of this project upon the quality of the human environment in terms of both context and intensity of those effects.

I have determined that this is not a major federal action, individually or cumulatively, and it will not significantly affect the quality of the human environment. Therefore, an Environmental Impact Statement is not warranted. The determination is based upon the

following findings documented in the Supplement to the EA, the EA and the Project Record.

A. Context

This project is a site-specific action that by itself does not have international, national, regional, or statewide importance environmentally. The intended decision to renovate approximately 21 miles of steam and place Gila trout back into their historic habitat is within the context of local importance in the area associated with the Gila NF. Overall, this project will affect roughly 4.2 % of the total stream miles within the GNF.

However, this project does have national, regional, and statewide importance in regards to, 1) the recovery and management of Gila trout, and 2) progress towards the declassification of Gila trout as a threatened or endangered species under the Endangered Species Act.

B. Intensity

1. Impacts from this site-specific project are both beneficial and adverse.
2. The adverse effects are short term in nature and do not pose a threat to public health or safety, and will not impair soil or water productivity (Supplement PR-49.0, EA Chapters 1 and 3 PR-20.0). The long-term effects are considered to be beneficial, especially for Gila trout as a species, and to help support Gila trout recreational fishing opportunities.
3. There will be no significant irreversible resource commitments or irretrievable loss of vegetation production, wildlife habitat, soil productivity, water quality, or unique water status of the West Fork Gila River, Cub Creek, Packsaddle Canyon, Langstroth Canyon, Trail Creek, Rawmeat Creek, or lower White Creek (EA Chapter 3, Project Record). This action is in compliance with the Wilderness Act and FSM 2300 direction. There are no wetlands, floodplains, ecologically critical areas, or other unique characteristics within the geographic area that would be adversely affected by this activity (Supplement PR-49.0, EA Chapter 3 PR-20.0).
4. There is no scientific controversy regarding the effects of this project on the quality of the human environment (Supplement PR-49.0, EA Chapter 3 PR-20.0).
5. There are no known effects upon the human environment that are highly uncertain or involve unique or unknown risks. CFT Legumine is registered by the EPA as a fish toxicant. In addition, the use of piscicides is recognized by the NMDEQ as acceptable under the conditions of the NM Water Quality Standards for Surface Waters (Supplement PR-49.0, NMWQCC Order PR-48.0).
6. This is not a precedent setting decision. Similar actions (renovation and fish stocking) have occurred within the Gila NF. Recovery of T&E species is broadly evaluated and specifically directed in the Gila NF Plan, particularly the recovery of Gila trout. Future actions of this nature will be evaluated through the NEPA process and will stand on their own merits as to environmental effects and project feasibility.

7. Cumulative effects of piscicide treatment for both wildlife and watershed issues were considered in the environmental assessment (EA Chapter 3 PR-20.0). There will not be a significant cumulative impact from this action individually or in concert with other related actions, past, present or in the foreseeable future (EA Chapter 3 PR-20.0).
8. No impacts are foreseen on any proposed or listed National Historic Places nor any loss or destruction of scientific, cultural or historic places expected (Supplement PR-49.0, EA Chapter 3 PR-20.0). No concerns were expressed by Indian tribes or other interested parties regarding traditional uses or significant places within the project area. This project is in compliance with section 106 of the NHPA, as amended, and with Section 101 (b)(4) of the NHPA.
9. There are no foreseeable significant adverse impacts upon any threatened or endangered species or their habitat. Biological assessments and evaluations were completed for this project, and the USFWS has issued Biological Opinions in 2003 and 2009 (PR-32, PR-47.).
10. The actions implemented by this decision do not threaten a violation of federal, state, or local law or requirements imposed for the protection of the environment. This action is consistent with the Gila NF Plan.

III. Decision Implementation Date

This project will not be implemented earlier than five business days following the close of the appeal filing period established in the notice of decision published in the Albuquerque Journal. If an appeal is filed, implementation will not begin earlier than 15 calendar days following final decision on the appeal. Implementation means the actual application of piscicide in the project area. Field project preparation work may proceed (identifying access, drip station locations, difficult treatment sites, detoxification site, ect.) implementation.

A. Other Conditions That Control Implementation Of This Decision

There are no other incomplete conditions based on approval by the New Mexico Water Quality Control Commission's (NMWQCC) approval of the petition filed by NMDGF for the use of rotenone pursuant to state law and regulation. During that approval process information regarding CFT Legumine™ was provided to the NMWQCC. NMDGF petition to the NMWQCC was approved on August 11, 2008 and orders directed in the approval are incorporated into this decision. In addition, consultation for listed species was completed and documented in a Biological Opinion by the USFWS on February 18, 2009. Conservation and mitigation measures directed in the BO are incorporated into this decision.

IV. Appeal Rights Statement

This decision is subject to administrative review (appeal) pursuant to 36 CFR Part 215. It should be noted that in accordance with 36 CFR 215.11 (b) this decision is subject to appeal as: "A new DN after revision of an environmental assessment (EA), or a new ROD after supplementation or revision of an environmental impact statement (EIS) pursuant to FSH 1901.15, Chapter 10, section 18. However, only that portion of the decision that is changed is subject to appeal."

Individuals or organizations who provided comment or otherwise expressed interest in the proposed action during the comment period may appeal. Interest expressed or comments provided in this project prior to of after the close of the comment period do not have standing for appeal purposes. The appeal must be filed (regular mail, fax, email, hand-delivery, or express delivery) with the Appeal Deciding Officer, Abigail Kimball, Chief of the Forest Service, at:

Regular Mail:

USDA Forest Service
Attn: EMC Appeals
Mail Stop 1104
1400 Independence Ave., SW
Washington, DC 20250-1104

Phone:** 202-205-0895

Fax: 202-205-1012

Email: appeals-chief@fs.fed.us

Private Carrier or Hand Delivery*:

USDA Forest Service
Ecosystem Management Coordination
Attn: Appeals
Yates Bldg., 3CEN
201 14th Street, SW
Washington, DC 20250

*Appeals may be hand delivered to this address above between the hours of 8:00 AM and 5:00 PM, Monday through Friday, excluding federal holidays. The appeal must have an identifiable name attached or verification of identify will be required. A scanned signature may serve as verification on electronic appeals.

Appeals, including attachments, must be in writing, fully consistent with 36CFR 215.14 and filed (postmarked) within 45 days following the date this notice is published in the Albuquerque Journal, the newspaper of record. This publication date is the exclusive means for calculating the time to file an appeal. Those wishing to appeal this decision should not rely upon dates or timeframe information provided by any other source.

If no appeals are filed within the 45-day time period, implementation of the decision may occur on, but not before, 5 business days from the close of the appeal filing period.

When appeals are filed, implementation may occur on, but not before the 15th business day following the date of the last appeal disposition.

V. Information Contact Person

For additional information concerning this decision contact Amy Unthank, Regional Fisheries Program Manager (505) 842-3263, U.S. Forest Service, Southwestern Region, 333 Broadway SE, Albuquerque, NM 87102.

/s/ Karen Carter — 2/24/09

for **CORBIN L. NEWMAN, Jr**. — Date
Regional Forester
Southwestern Region