



# **WHITE MOUNTAIN APACHE TRIBE**

A Sovereign Tribal Nation

## **(Approving Formal Comments on Proposed Listing by the US Fish and Wildlife Service of the Roundtail Chub)**

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- WHEREAS,** The White Mountain Apache Tribe has an unbroken chain of title to its aboriginal lands that lie within the boundaries of its Fort Apache Indian Reservation, with bare legal title residing in the United States and full equitable title and the full bundle of vested property rights appurtenant thereto held in trust and residing in the White Mountain Apache Tribe; and
- WHEREAS,** The White Mountain Apache Tribe has by virtue of its inherent sovereignty, existing federal common law, and its Tribal Constitution, the sovereign authority to manage its tribal lands, to protect and preserve the wildlife, plant life, forest, and other natural resources therein, and the water rights of the Tribe, and to regulate hunting and fishing and visitation by non-members on its reservation; and
- WHEREAS,** The White Mountain Apache Tribe has a long-standing government-to-government relationship with the United States as a federally recognized Indian tribe and government; and
- WHEREAS,** The White Mountain Apache Tribe entered into a Statement of Relationship in 1994 and an Information Protocol in 1998 with the U.S. Fish and Wildlife Service to recognize the Tribe's and the FWS's common interest in promoting healthy ecosystems while respecting the Tribe's government-to-government relationship with the United States and the sovereignty of the White Mountain Apache Tribe over its aboriginal reservation land; and
- WHEREAS,** The White Mountain Apache Tribe has adopted myriad resolutions, policies, best management practices, logging restrictions and guidelines, grazing management reforms and ordinances for the management of the following programs: forestry, range, wildlife, fisheries, sensitive species, watershed and wetlands, water quality, conservation, hydrology, wilderness protection, environmental and cultural resources; and most recently in close collaboration with the Fish and Wildlife Service the White Mountain Apache Tribe Native Fishes Management Plan; and
- WHEREAS,** On October 7, 2015, the U.S. Fish and Wildlife Service published a proposal (*Federal Register* 80 FR 60754) to list the headwater chub (*Gila nigra*) and a distinct population segment (DPS) of the roundtail chub (*Gila robusta*) from the lower Colorado River basin, as threatened species under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.); and
- WHEREAS,** Subsequently, on October 16, 2015, the Service's Arizona Ecological Services Office (AESO) in Phoenix, Arizona, provided a letter to the White Mountain Apache Tribe

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requesting information and comments that might better inform the proposed listing of the two species, and soliciting the Tribe's participation in the rule-making process on a government-to-government basis; and

**WHEREAS,** On November 19, 2015, representatives of the Service's AESO met with the Tribal Council to discuss concerns the Tribe had with the proposed listing of the DPS of the roundtail chub only, as the headwater chub does not occur within the waters governed by the Tribe; and

**WHEREAS,** Subsequent to the Tribal Council meeting on November 19, 2015, with the Service, the Tribal Council directed that the Tribe's biologists and technical consultants review the proposed listing of the roundtail chub and prepare comments for review by the Tribal Council; and

**WHEREAS,** The Tribal Council has reviewed and discussed the comments prepared by the Tribe's biologists and consultants and concludes that the views, opinions and conclusions reached therein properly state the position of the White Mountain Apache Tribe.

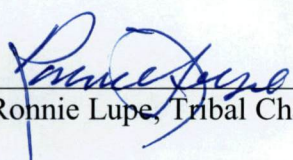
**BE IT RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby approves the attached comments on the proposed listing of the roundtail chub and directs that a copy of this resolution and the comments be submitted to the U.S. Fish and Wildlife Service as the formal comments of the White Mountain Apache Tribe in regards to the proposed listing as it pertains to the Tribe's lands.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event that this Resolution conflicts with a prior Resolution or Policy, this Resolution shall supersede and govern over the conflicting subject matter.

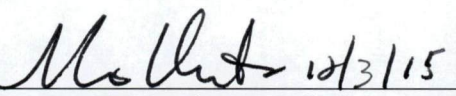
**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that it hereby directs that in the event this Resolution directly conflicts with the Tribal Constitution, Tribal Ordinances, or any material facts concerning the issues presented are later found to be false, this Resolution shall be deemed null and void and have no legal effect.

**BE IT FURTHER RESOLVED** by the Tribal Council of the White Mountain Apache Tribe that the Chairman, or in his absence, the Vice-Chairman, is hereby authorized to execute any and all documents necessary to effectuate the intent of this Resolution.

The foregoing resolution was on **DECEMBER 2, 2015** duly adopted by a vote of **NINE** for, **ZERO** against, and **ZERO** abstentions by the Tribal Council of the White Mountain Apache Tribe, pursuant to authority vested in it under the enumerated powers listed in Article IV, Section 1 of the WMAT Constitution, so ratified on September 30, 1993, and federally recognized pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984).

  
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Ronnie Lupe, Tribal Chairman

12/3/15  
Date

  
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Doreen T. Numkena, Tribal Secretary

12/3/15  
Date

**From:** Ronnie Lupe, Tribal Chairman of the White Mountain Apache Tribe, Whiteriver, Arizona

**To:** Public Comments Processing, Attention: FWS-R2-ES-2015-0148; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service; 5275 Leesburg Pike MS: BPHC, Falls Church, VA 22041-3803.

**Re:** Formal comments of the White Mountain Apache Tribe, Whiteriver, Fort Apache Indian Reservation, Arizona on the proposed listing by the US Fish and Wildlife Service of the roundtail chub as a threatened species under the Endangered Species Act of 1973, as amended:

On October 7, 2015, the U.S. Fish and Wildlife Service (Service) published a proposal (*Federal Register* 80 FR 60754) to list the headwater chub (*Gila nigra*) and a distinct population segment (DPS) of the roundtail chub (*Gila robusta*) from the lower Colorado River basin, as threatened species under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 et seq.). Subsequently, on October 16, 2015, the Service's Arizona Ecological Services Office (AESO) in Phoenix, Arizona, provided a letter to the White Mountain Apache Tribe (Tribe) requesting information and comments that might better inform the proposed listing of the two species, and soliciting the Tribe's participation in the rule-making process on a government-to-government basis. On November 19, 2015, representatives of the Service's AESO met with the Tribal Council to discuss concerns the Tribe has with the proposed listing of the DPS of the roundtail chub.

The headwater chub does not occur within waters governed by the Tribe. Conversely, the roundtail chub has historically and contemporaneously been found to be a common component of the ichthyofauna within Tribal waters on the Fort Apache Indian Reservation (Reservation). Accordingly, the Tribe's comments are limited to assertions made by the Service regarding the roundtail chub in the proposed rule, and the Service's Species Status Assessment (SSA) Report from which the proposed rule was developed.

As declared by the Service (*Federal Register* 80 FR, page 60759), the SSA Report purportedly documents the results of a comprehensive biological status review for the roundtail chub, and a thorough account of the species' overall viability. Specifically, the Service evaluates the risk of extirpation of individual analysis units (AUs) in the SSA Report which provides the scientific basis that informs the regulatory decision regarding whether the roundtail chub should be listed as an endangered or threatened species under the Act. Notwithstanding that assertion, the Service admits that the available data for the Upper Salt River AU encompassing all of the significant occupied roundtail chub waters of the White Mountain Apache Tribe's Reservation are dated and limited. However, in its analysis, the Service asserts that the waters of this AU are considered occupied, and the status of the species is considered "highly uncertain" (*Federal Register* 80 FR, page 60765).

Given the doubtful "scientific basis" underlying its assertions as more fully discussed below, the SSA Report provides neither a comprehensive status review of the roundtail chub or a thorough account of the species' overall viability. It follows that the Service is also unable to reliably evaluate the risk of extirpation of roundtail chub populations in the Upper Salt River AU. As a consequence, findings presented within the proposed rule supporting threatened status for the DPS of roundtail chub from the lower Colorado River basin are speculative and not supported by the best commercial and scientific data available.

In a good faith effort to provide the Service with information to better inform its proposed rule-making process for the roundtail chub, the Tribe provides the following information specific to the request set forth in the Service's October 16, 2015 letter:

- (1) Roundtail chub biology, range, and population trends

#### Historical and Current Range

On the Reservation, the roundtail chub currently inhabit all streams historically occupied by the species, with the exception of Cedar Creek (correctly identified as "extirpated" in the SSA Report, page 27). Standardized surveys described in the following stream-specific accounts include all habitats relevant to the various life stages of roundtail chub, including pools, runs, glides, eddies, backwaters, and vegetated shoreline areas.

*North Fork White River:* Surveys conducted in 1999, 2005, 2006, 2012, and 2014. Native fish (roundtail chub; Sonora sucker, *Catostomus insignis*; desert sucker, *Pantosteus clarki*; speckled dace, *Rhinichthys osculus*; Apache trout, *Oncorhynchus apache*) comprised 94% of all fishes sampled, with roundtail chub comprising 12.5% of the total number. In 2014, no non-native fishes occurred in samples. Multiple age classes of roundtail chub were recorded in all surveys.

*East Fork White River:* Surveys conducted in 1994, 2001, 2012, and 2014. Native fish comprised 96% of all fishes sampled, with roundtail chub comprising 6% of the total number. Multiple age classes of roundtail chub were recorded.

*White River mainstem:* Surveys conducted in 2005, 2011, and 2012. Native fish comprised 79% of all fishes sampled, with roundtail chub comprising 7% of the total number. Green sunfish (*Lepomis cyanellus*) and smallmouth bass (*Micropterus dolomieu*) were the predominant non-native fishes present, representing about 21% of the total number. In 2012, multiple age classes of roundtail chub were recorded.

*Corduroy Creek:* Surveys conducted in 1996, 2012, and 2014. Native fish comprised 92% of all fishes sampled, with roundtail chub comprising 22% of the total number. Green sunfish were the predominant non-native species present, representing nearly 8% of the total number. In 2014, as in all previous survey years, multiple age classes of roundtail chub were recorded.

*Carrizo Creek:* Surveys conducted in 2009 and 2012. Native fish comprised 71% of all fishes sampled, with roundtail chub comprising 42% of the total number. Green sunfish, and to a much lesser extent, fathead minnow (*Pimephales promelas*), were the only non-native fishes recorded. In both survey years, multiple age classes of roundtail chub were recorded in both survey years.

*Cibecue Creek:* Recent reports (2015) of Tribal anglers catching and releasing roundtail chub in the lower two kilometers of Cibecue Creek (T. Gatewood, Tribal Fisheries Biologist,

pers. comm.). The SSA Report, Table 3.3-1, page 27, erroneously attributes 75 kilometers (km) of stream length within Cibecue Creek as historical roundtail chub waters, and only 2 km stream length as roundtail chub habitat in 2015. This is a misleading comparison, since roundtail chub were never a component of the Cibecue Creek fish fauna above the natural barrier located 2 km upstream of its confluence with the Salt River mainstem.

*Canyon Creek:* Surveys conducted in 1996. Native fish comprised 100% of all fishes sampled, with roundtail chub comprising 49% of the total number. Multiple age classes of roundtail chub were recorded. The remoteness of Canyon Creek and inadequate funding for surveys has precluded the ability to conduct additional surveys.

## (2) Ongoing Conservation Measures

On October 6, 2014, the Tribal Council approved the White Mountain Apache Tribe Native Fishes Management Plan (Plan). The Plan was developed in close collaboration with the Service's AESO, and sets forth a comprehensive set of management objectives and measurable criteria for the management of native fishes within the waters of the Reservation, including the roundtail chub. Implementation of the Plan is underway with increased stream surveys to document the current status of native fish species on the Reservation.

## (3) Factors that may Affect the Continued Existence of the Roundtail Chub

*Current Condition:* Within the proposed rule (*Federal Register* 80 FR, page 60765), current condition is expressed as the Service's current understanding of risk of extirpation now or in the near future (next five years). Four categories were identified to communicate how the Service defines these risks: minor, low, moderate, and high. Condition categories used to qualitatively define the risk of extirpation include roundtail chub population structure, non-native species, and water availability (SSA Report, page 65). The Tribe asserts that the Service has overestimated the reduction in range of the roundtail chub because of the agencies' use of different approaches for determining current range and historic range (e.g., Cibecue Creek). Although the Service recognizes this possibility in its SSA Report (page 21), it does little to effectively ameliorate the condition, which calls into question the validity of findings throughout the entire analysis.

Condition Category: Chub Population Structure: Roundtail chub streams within the Reservation have a 100% presence of chub in datasets over time, maintain a relatively high abundance of roundtail chub in each stream through time, and all streams exhibit the presence of multiple size classes of roundtail chub.

Condition Category: Nonnative Species: Non-native species have a comparably low abundance in these streams and are not likely to impact the roundtail chub at a population level. The proposed rule (*Federal Register* 80 FR, page 60762) and the SSA Report (page 39) both state that there are streams where roundtail chub has maintained populations in the presence of one or more non-native aquatic species, but the mechanisms providing for that coexistence are unknown. The fact remains that roundtail chub populations within the Reservation have persisted for decades in the presence of low numbers of non-native species, and there is no

evidence that roundtail chub numbers will diminish to the point of extirpation in the future because of the presence of these non-native species. Any conclusion to the contrary is speculative at best. Additionally, the potential expansion of new non-natives into the roundtail chub streams within the Reservation is highly unlikely, since the Tribe does not stock non-native fishes within its streams.

Condition Category: Water Availability: According to the definitions set forth in the Service's SSA Report (pages 20-21), streams within the Reservation that are occupied by roundtail chub are typically perennial, where long stream reaches maintain the greatest surface water presence during the driest periods. In a few occupied stream segments where the definition of perennial stream segments are not met, the stream segments may be categorized as interrupted perennial, wherein at least some of these segments are connected long enough to benefit the larger chub population over the whole stream. The reliability of continuous or near continuous surface water in occupied stream segments within the Reservation is confirmed by the relative abundance, persistence, and multiple age classes of roundtail chub.

Consideration of Wildfire: In 2002, Arizona experienced its second worst wildland fire in history – the Rodeo-Chediski Fire, with hundreds of thousands of acres (about 460,000 acres total) scorched within the watersheds of Cibecue, Carrizo, and Corduroy creeks of the Reservation. Surveys of these streams since have revealed persistence of roundtail chub populations with reproduction and recruitment sufficient to maintain population sizes. The Service recognizes that impacts from fire do not always result in adverse impacts to roundtail chub (*Federal Register* 80 FR, page 60766). Clearly, the Rodeo-Chediski Fire did not significantly impact the redundancy and representation of roundtail chub within Reservation streams.

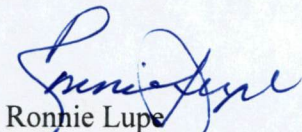
Conclusion for Current Condition: The Service's proposed rule identifies the occupied roundtail chub streams within the Upper Salt River AU, and more specifically, those streams within the Reservation, as having a *moderate risk* of extirpation within the next five years (*Federal Register* 80 FR, Table 5, page 60766). Clearly, the model is based on erroneous assumptions. Given the appropriate analysis of condition categories outlined above, and accounting for potential risks from wildfire, roundtail chub streams within the Reservation should be categorized as having a *minor risk* of extirpation within the next five years.

Future Condition: The Service analyzed the future risk of extirpation of roundtail chub within the Upper Salt River AU using the same model the agency used to assess current condition (*Federal Register* FR 80, page 60767). In this analysis, the Service adds a metric to assess conservation measures. Future risk was projected to the year 2046, or about 30 years from the present time. Given the erroneous assumptions employed by the Service in its determination of the current risk of extirpation, the uncertainties in climate models that may or may not accurately predict measurable impacts to the currently perennial roundtail chub streams of the Reservation, and the lack of consideration of the White Mountain Apache Tribe Native Fish Management Plan as a significant conservation measure, there is no reason to believe that the Service's determination of a future moderate risk of extirpation to roundtail chub populations within the Reservation is accurate.

The White Mountain Apache Tribe has been a nationally known leader in conservation for decades. The Tribe was instrumental in bringing the Apache trout back from certain extinction in the 1950s, and since then has initiated management practices that benefit all native species, including species of special concern as well as threatened and endangered species, within its lands. The Tribe has adopted myriad resolutions, policies, best management practices, logging restrictions and guidelines, grazing management reforms, and ordinances for the management of the following programs: forestry, range, wildlife, fisheries, sensitive species, watershed and wetlands, water quality, hydrology, wilderness protection, and environmental and cultural resources.

The White Mountain Apache Tribe values its long-standing government-to-government relationship with the Service, and stands ready to assist the Service with conservation measures that would ensure the viability of the roundtail chub now, and in the future. Notwithstanding our continued willingness to be a valuable partner in the conservation of the chub and other native species, the Tribe requests the Service withdraw the proposal to list the roundtail chub as a threatened species under the Act.

Respectfully submitted,



Ronnie Lupe  
Tribal Chairman