

this address from 8:30 a.m. to 5:00 p.m., Monday–Friday.

**FOR FURTHER INFORMATION CONTACT:**

Ramona Williams, Child Protection Coordinator, Office of Mental Health/Social Services, Indian Health Service, 5300 Homestead Road, N.E., Albuquerque, New Mexico 87110, (505) 248–4245. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of March 25, 1999, the IHS published proposed regulations to implement section 408 of Pub. L. 101–630, the Indian Child Protection and Family Violence Prevention Act. The Act requires that tribes or tribal organizations who receive funds under the Indian Self-Determination and Education Assistance Act, Pub. L. 93–638, employ individuals in positions involving regular contact with or control over Indian children only if the individuals meet standards of character no less stringent than those prescribed under these regulations. Comments have been received on behalf of a number of tribes requesting an extension of the comment period for the proposed regulation ranging from 30 days to 2 months. For example, some of the tribes are currently engaged in contract/compact negotiations and need additional time to fully study the proposed regulations and consult with their tribal councils before submitting written comments. Some tribes have already adopted their detailed policies on this subject and need time to compare the proposed regulations to their policies. The IHS has considered these requests and determined that an additional 60 days would accommodate the need for additional time and be consistent with its policy of consultation with tribes.

All comments received during the public comment period will be given full consideration in the development of the final regulations.

Dated: May 21, 1999.

**Robert G. McSwain,**

*Acting Director.*

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AE92**

**Endangered and Threatened Wildlife and Plants; Proposed Establishment of Nonessential Experimental Population Status for Sixteen Freshwater Mussels (Alabama Lampmussel, Birdwing Pearlymussel, Clubshell, Cracking Pearlymussel, Cumberland Bean Pearlymussel, Cumberlandian Combshell, Cumberland Monkeyface Pearlymussel, Dromedary Pearlymussel, Fine-Rayed Pigtoe, Oyster Mussel, Purple Cat's Paw Pearlymussel, Shiny Pigtoe, Tubercled-blossom Pearlymussel, Turgid-blossom Pearlymussel, Winged Mapleleaf Mussel, and Yellow-blossom Pearlymussel) and One Freshwater Snail (Anthony's Riversnail) in the Free-flowing Reach of the Tennessee River below the Wilson Dam, Colbert and Lauderdale Counties, Alabama**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** The Fish and Wildlife Service (Service; also, “we”, “us”, “our”) proposes to reintroduce 16 federally listed endangered mussels (Alabama lampmussel (*Lampsilis virescens*), birdwing pearlymussel (*Conradilla caelata*), clubshell (*Pleurobema clava*), cracking pearlymussel (*Hemistena lata*), Cumberland bean pearlymussel (*Villosa trabalis*), Cumberlandian combshell (*Epioblasma brevidens*), Cumberland monkeyface pearlymussel (*Quadrula intermedia*), dromedary pearlymussel (*Dromus dromas*), fine-rayed pigtoe (*Fusconaia cuneolus*), oyster mussel (*Epioblasma capsaeformis*), purple cat's paw pearlymussel (*Epioblasma obliquata obliquata*), shiny pigtoe (*Fusconaia cor*), tubercled-blossom pearlymussel (*Epioblasma torulosa torulosa*), turgid-blossom pearlymussel (*Epioblasma turgidula*), winged mapleleaf mussel (*Quadrula fragosa*), and yellow-blossom pearlymussel (*Epioblasma florentina florentina*)) and 1 federally listed endangered aquatic snail (Anthony's riversnail (*Athearnia anthonyi*)) into historic habitat in the free-flowing reach of the Tennessee River from about 1.4 river miles (RM) (2.2 kilometers [km]) below Wilson Dam to the backwaters of Pickwick Reservoir (RM 258.0 [412.8 km]) to (RM 246.0 [393.6 km]) in Colbert and Lauderdale counties, Alabama. These reintroduced populations are proposed to be

classified as nonessential experimental populations (NEP) under section 10(j) of the Endangered Species Act of 1973, as amended (Act). Based on the evaluation of species experts and the State, none of these species are currently known to exist in this river reach or its tributaries. Ongoing surveys conducted by the Tennessee Valley Authority (TVA) and the State of Alabama over the past 20 years have failed to locate any individuals of the species proposed for NEP status under this rule.

To ensure that any reintroduced species that move upstream to Wilson Dam or into the tributaries are covered by these NEP designations, we propose that the geographic boundaries of the NEPs extend from the base of the Wilson Dam (RM 259.4 [414.0 km]) to the backwaters of the Pickwick Reservoir (RM 246.0 [393.6 km]) and include the lower 5 RM (8 km) of all tributaries that enter the Wilson Dam tailwater. In the future, if any of the aforementioned mollusks are found upstream beyond the lower 5 RM (8 km) of these tributaries, the animals will be presumed to have come from the reintroduced NEP, and the boundaries of the NEP will be enlarged to include the entire range of the expanded population. No designation of critical habitat will be made for any of these NEPs. Additionally, we do not intend to change these NEPs from “nonessential” to “essential” or to “threatened” or “endangered” without the full cooperation of the State of Alabama and other affected parties within the NEP areas. These proposed reintroductions are recovery actions and part of a series of reintroductions and other recovery actions the Service, Federal and State agencies, and other partners are considering and conducting throughout the species' historic ranges. The only change to the NEPs we foresee would be elimination of the designations if the species are recovered and removed from the Act's protection. This proposed rule sets forth a plan for establishing the nonessential experimental population and provides for limited allowable legal take of the aforementioned mollusks within the defined NEP areas.

**DATES:** Comments from all interested parties must be submitted on or before July 26, 1999.

**ADDRESSES:** Send comments and material concerning this proposal to the State Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801. Comments and material received will be available for public inspection, by appointment, during

normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard G. Biggins, Fish and Mollusk Recovery Coordinator (see **ADDRESSES** section), telephone 704/258-3939, Ext. 228, or facsimile 704/258-5330.

**SUPPLEMENTARY INFORMATION:**

**Background**

*Legislative:* The Endangered Species Act Amendments of 1982, Pub. L. 97-327, made significant changes to the Act, including the creation of section 10(j), which provides for the designation of specific populations of listed species as "experimental populations" (EP). Under previous authorities of the Act, the Service was permitted to reestablish (reintroduce) populations of a listed species into unoccupied portions of its historic range for conservation and recovery purposes. However, local opposition to reintroduction efforts, stemming from concerns by some about potential restrictions, and prohibitions on Federal and private activities contained in sections 7 and 9 of the Act, reduced the effectiveness of reintroduction as a management tool.

Under section 10(j), a population of a listed species reestablished outside its current range but within its probable historic range may be designated as "experimental," at the discretion of the Secretary of the Interior, if reintroduction of the EP furthers the conservation of the listed species. An EP must be separated geographically from nonexperimental populations of the same species. Designation of a population as an EP increases our management flexibility.

Additional management flexibility exists if the Secretary of the Interior finds the EP to be "nonessential" to the continued existence of the species. For purposes of section 7 (except section 7(a)(1), which requires Federal agencies to use their authorities to conserve listed species), NEPs located outside National Wildlife Refuge or National Park lands are treated under 50 CFR part 17.83(a) as if they are proposed for listing. This means that Federal agencies are obligated to confer (as if the species were only proposed for listing), as opposed to consult (required for a listed species), on any actions authorized, funded, or carried out by them that are likely to jeopardize the continued existence of the species (see "Management" section). NEPs located on National Wildlife Refuge or National Park lands are treated as threatened, and formal consultation may be required. Activities undertaken on private land are not affected by section 7 of the Act

unless they are authorized, funded, or carried out by a Federal agency.

For the purposes of section 9 of the Act, endangered species designated as EPs or NEPs are treated as threatened species. Therefore, special rules can be written that lessen restrictions regarding take of the covered listed species from the EP or NEP area [see under "Special rules—invertebrates (3)(i-iii)" sections below].

Individual animals used in establishing an EP or NEP can be removed from a source population if their removal is not likely to jeopardize the continued existence of the species (see "Status of Reintroduced Populations" section of these rules) and a permit has been issued in accordance with 50 CFR part 17.22.

Justification for the proposal, listing history, and the dates of any recovery plans developed for the 16 mussels and 1 snail proposed for these NEPs are presented below in the "Biological" section. Recovery plans for these species guide recovery efforts, outline recommended recovery tasks, and set forth a series of recovery criteria (e.g., number of restored historic populations) that must be met before the species can be considered for removal from the Federal List of Endangered and Threatened Wildlife and Plants.

*Biological:* In a December 9, 1996, letter from the Director of the Alabama Division of Game and Fish (ADGF) to the Regional Director of the Service's Southeast Region, the ADGF Director stated:

Because of recent improvements in water quality, due primarily to the U.S. Environmental Protection Agency's Clean Water Act of 1971 and the Tennessee Valley Authority's committal to maintenance of good water quality below their dams, mollusk populations below Guntersville, Wheeler, and Wilson Dams are in excellent condition.

The Director of the ADGF further stated:

Although several species have been extirpated from these areas in the past, both mussels and snails which now occur there are abundant and a healthy range of size classes are present.

Based on the improving status of mollusks in these river reaches and the fact that recent advances in mussel culture techniques will likely lead to the availability of endangered juvenile mussels for release, the ADGF Director requested that we consider designating NEP status for the reintroduction of federally listed mussel and snail species that historically existed in the riverine habitat below these dams.

A Service biologist met with representatives of the ADGF in January

1997 to discuss the possibility of designating NEP status for the reintroduction of federally listed mollusks into the tailwaters of Guntersville, Wheeler, and Wilson Dams. The consensus at that meeting was that: (1) the tailwaters of Wilson Dam (the remains of Muscle Shoals) provided the best opportunity for successfully reestablishing federally listed mollusks; and (2) the tailwaters of Guntersville and Wheeler Dams should be considered for mussel reintroductions at a later time.

Muscle Shoals (sometimes referred to as Mussel Shoals), a 53-mile (85-km) reach of the Tennessee River in Colbert and Lauderdale Counties, Alabama, once supported the world's greatest assemblage of freshwater mussels (van der Schalie 1939) and was one of the finest mussel habitats ever known (Isom 1969). Ortmann (1924) stated that there was no other place on earth that could compare to this shoal with respect to freshwater mussels. This river reach historically contained nearly 80 percent of all the mussel taxa known from the entire Tennessee River system (ca. 100 taxa) and about 25 percent of the total North American mussel fauna (ca. 300 taxa). Ortmann (1925) listed 69 mussel species and varieties from this shoal complex. Stansbery (1964), using current nomenclatural concepts, excluding subspecies, and adding a species not reported by Ortmann (1925), reported the mussel diversity at 63 species. A biologist with the ADGF (J. Garner, personal communication, 1997) combined historic distribution records (Ortmann 1925, van der Schalie 1939, Scruggs 1960, Stansbery 1964, Gooch *et al.* 1979) with personal observations and the observations of malacologists (scientists who study molluscs) familiar with the area (P. Yokley and T. Richardson, University of North Alabama, and S. Ahlstedt, U.S. Geological Survey, personal communication, 1997) and found that a total of 78 mussel taxa had been reported from Muscle Shoals. Goodrich (1931) reported that Anthony's riversnail also occurred at Muscle Shoals. However, the species is no longer found in the area (Garner, personal communication, 1997).

With the completion of Wilson Dam (completed 1924), Wheeler Dam (completed in 1936), and Pickwick Dam (completed in 1938), about 41 RM (66 km) of shoal habitat were impounded. Although some mussel species survived in the remaining 12 RM (19 km) of shoal habitat between Wilson Dam and the backwaters of Pickwick Reservoir, much of the reach's mussel diversity and abundance began to disappear. Based

largely on a 1931 survey of Muscle Shoals, van der Schalie (1939) reported the resident mussel fauna at 40 species; Stansbery (1964) listed 30 species from a 1963 mussel survey of remaining shoal habitat; and Isom (1969) reported that 31 species existed on the shoal. Garner (personal communication, 1997) reviewed current and recent historic records (last 20 years) and concluded that possibly as many as 44 mussel species, including 6 federally listed mussels; fanshell (*Cyprogenia stegaria*), orange-foot pimple back pearl mussel (*Plethobasus cooperianus*), pink mucket (*Lampsilis abrupta*), ring pink (*Obovaria retusa*), rough pigtoe (*Pleurobema plenum*), and white wartyback pearl mussel (*Plethobasus cicatricosus*); are known or presumed to still exist in the free-flowing riverine habitat below Wilson Dam. (Note: As these six listed mollusks exist or are believed to still exist in this river reach, they cannot be included in the NEP. However, these populations could be augmented with artificially propagated juveniles.) Based on a review of the most recent records, it is presumed that 34 mussel species, including 16 federally listed mussels and the Anthony's riversnail, have been extirpated from the Muscle Shoals complex (Garner, personal communication, 1997).

Although many aquatic mollusks have been lost from Muscle Shoals, habitat quality has been improving in the remaining shoal habitat in recent years. The Tennessee Valley Authority (TVA) (1993), reporting on their Clean Water Initiative, rated macroinvertebrates below Wilson Dam as excellent. They stated: "The 1993 results indicate continued improvement in the benthos [bottom dwelling organisms]." The Reservoir Fish Assemblage Index, a measure TVA uses to rate the health of the fish fauna at sites throughout the Tennessee River valley, was rated as good in the Wilson Dam tailwater during 1993, 1994, and 1996; no figure was given for 1995 (E. Scott, TVA, personal communication, 1997). Additionally, the ADFG Director, in his December 9, 1996, letter to the Service, points to the improving water quality and the improved health of mussel and snail populations below Wilson Dam and other TVA dams on the Tennessee River in Alabama.

The Tennessee River from about 1.4 RM (2.2 km) below Wilson Dam to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] now appears suitable for a mollusk reintroduction effort for several reasons, as follows: (1) habitat quality in the Wilson Dam tailwater has improved; (2) existing aquatic mollusk populations have responded positively

to the improved habitat quality; (3) Muscle Shoals historically contained a rich mollusk fauna, and some of the shoal habitat that once supported this fauna still remains; and (4) the reestablishment of listed mollusks to historic habitat is identified as a high-priority task in listed aquatic mollusk recovery plans. Based on these factors and discussions with knowledgeable individuals with regard to the endangered mollusks of the Tennessee River, we propose to reintroduce 16 federally endangered mussels (Alabama lamp mussel (*Lampsilis virescens*), birdwing pearl mussel (*Conradilla caelata*), clubshell (*Pleurobema clava*), cracking pearl mussel (*Hemistena lata*), Cumberland bean pearl mussel (*Villosa trabalis*), Cumberlandian combshell (*Epioblasma brevidens*), Cumberland monkeyface pearl mussel (*Quadrula intermedia*), dromedary pearl mussel (*Dromus dromas*), fine-rayed pigtoe (*Fusconaia cuneolus*), oyster mussel (*Epioblasma capsaeformis*), purple cat's paw pearl mussel (*Epioblasma obliquata*), shiny pigtoe (*Fusconaia cor*), tubercled-blossom pearl mussel (*Epioblasma torulosa torulosa*), turgid-blossom pearl mussel (*Epioblasma turgidula*), winged mapleleaf mussel (*Quadrula fragosa*), and yellow-blossom pearl mussel (*Epioblasma florentina florentina*)) and 1 federally listed endangered aquatic snail (Anthony's riversnail (*Athearnia anthonyi*)) into historic habitat in the free-flowing reach of the Tennessee River from about 1.4 RM (2.2 km) below Wilson Dam to the backwaters of Pickwick Reservoir, Tennessee River, Colbert and Lauderdale counties, Alabama. These reintroduced populations are proposed to be classified as NEPs under section 10(j) of the Act (see the "Status of Reintroduced Populations" section for a description of the proposed NEPs).

The Alabama lamp mussel (*Lampsilis virescens*) (Lea 1858), a Tennessee River system endemic, was listed as an endangered species on June 14, 1976 (41 FR 24062). A recovery plan for this species was completed in July 1985 (Service 1985a). The Alabama lamp mussel was historically known from seven rivers in the Tennessee River system (Ortmann 1918, Bogan and Parmalee 1983, Service 1985a). The species was last collected at Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. Currently, the species is known to survive only in the upper Paint Rock River system, Jackson County, Alabama (Service 1985a). The delisting objectives in the recovery plan

call for: (1) restoring the viability of the population in the Paint Rock River and its tributaries; (2) reestablishing or discovering viable populations in two additional rivers; and (3) ensuring there are no foreseeable threats to the continued existence of any of the populations. No downlisting criteria are provided in the recovery plan.

The birdwing pearl mussel (*Conradilla caelata*) (Conrad 1834) was listed as an endangered species on June 14, 1976 (41 FR 24064), and a recovery plan for the species was finalized in July 1984 (Service 1984a). This species was originally known from 11 rivers in the Tennessee River system, and one record exists from an unknown location in the Cumberland River. The species was last collected from Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. It currently survives in the Clinch and Powell Rivers in Tennessee and Virginia, and in the Duck and Elk Rivers, Tennessee (Service 1984a). The delisting objectives presented in the recovery plan call for: (1) restoring the viability of the populations in the Clinch and Powell Rivers; (2) reestablishing or discovering viable populations in three additional rivers (only two rivers if Columbia Dam on the Duck River is not built); (3) ensuring there are no foreseeable threats to the continued existence of any of the populations; and (4) noticeable improvements in coal-related problems and substrate quality in the Powell River and no increase in coal-related sedimentation in the Clinch River. No downlisting criteria are given in the recovery plan.

The clubshell (*Pleurobema clava*) (Lamarck 1819) was listed as an endangered species on January 22, 1993 (58 FR 5642). A recovery plan for the species was finalized in September 1993 (Service 1993a). This widespread species occurred in the Ohio River and Lake Erie basins but now survives in only a few small and isolated populations in both basins (Service 1993a). It was last found at Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to no longer survive in this river reach. The downlisting objectives in the recovery plan call for the establishment of ten viable populations and ensuring there are no foreseeable threats to the continued existence of any of the populations. The delisting objectives call for: (1) the establishment of ten viable populations; (2) populations to be large enough to survive a single adverse ecological event; and (3) ensuring that there are no foreseeable threats to the continued existence of any of the populations.

The cracking pearl mussel (*Hemistena lata*) (Rafinesque 1820) was listed as an endangered species on September 28, 1989 (54 FR 39853). A recovery plan for the species was finalized in July 1991 (Service 1991). This widespread species historically occurred in the Ohio, Cumberland, and Tennessee River systems (Bogan and Parmalee 1983, Service 1991). It has been extirpated throughout much of its range. It was last collected at Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to no longer survive in this river reach. It is presently known to survive at only a few shoals in the Clinch and Powell Rivers in Tennessee and Virginia (Bogan and Parmalee 1983, Neves 1991). This species possibly survives in the Green River, Kentucky, and below Pickwick Reservoir in the Tennessee River, Tennessee (Service 1991). The downlisting objectives in the recovery plan call for the establishment of five viable populations and ensuring that there are no foreseeable threats to the continued existence of any of the populations. The delisting objectives call for the establishment of eight viable populations.

The Cumberland bean pearl mussel (*Villosa trabalis*) (Conrad 1834) was listed as an endangered species on June 14, 1976 (41 FR 24064). A recovery plan for the species was approved August 22, 1984 (Service 1984b). This species was historically known from ten river systems in the Cumberland and Tennessee river basins (Service 1984b). It was last collected at Muscle Shoals, which may represent its type locality, prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. The Cumberland bean currently survives only in the Hiwassee River in Tennessee and in Buck Creek, the Little South Fork of the Cumberland River, and the Rockcastle River system in Kentucky (Service 1984b). The delisting objectives in the recovery plan call for: (1) restoring the viability of its populations in Buck Creek, the Rockcastle River, and the Little South Fork River in Kentucky; (2) reestablishing or discovering viable populations in two additional rivers; and (3) ensuring that there are no foreseeable threats to the continued existence of any of the populations. No downlisting criteria are given in the recovery plan.

The Cumberland monkeyface pearl mussel (*Quadrula intermedia*) (Conrad 1836) was listed as an endangered species on June 24, 1976 (41 FR 24064). A recovery plan for the species was completed in November 1983 (Service 1983a). This species was historically known from 11 rivers in the

Tennessee River system (Service 1983a). It was last collected from Muscle Shoals around 1900 by R.E. Call and A.A. Hinkley (Ortmann 1925) and is presumed to be extirpated from the shoal. Currently, the species survives only at a few shoals in the Powell River, Tennessee and Virginia, and the Elk and Duck Rivers, Tennessee (Service 1983a). The delisting objectives presented in the recovery plan call for: (1) restoring the viability of the populations in the Powell and Elk Rivers; (2) reestablishing or discovering viable populations in two additional rivers; and (3) ensuring that there are no foreseeable threats to the continued existence of any of the populations. No downlisting criteria are given in the recovery plan.

The Cumberlandian combshell (*Epioblasma brevidens*) (Lea 1831) was listed as an endangered species on January 10, 1997 (62 FR 1647). This mussel was historically distributed throughout much of the Cumberlandian Region of the Tennessee and Cumberland River drainages in Alabama, Kentucky, Tennessee, and Virginia (Gordon 1991). Currently, only small populations survive in a few river reaches in both river systems (Gordon 1991). The species was last collected from Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. Although no Cumberlandian combshell recovery plan has been developed, a recovery outline, which briefly enumerates anticipated recovery actions, was developed prior to the final listing decision. The recovery outline identified reintroduction into historic habitat as a method that would likely be needed to recover the species.

The dromedary pearl mussel (*Dromus dromas*) (Lea 1845) was listed as an endangered species on June 24, 1976 (41 FR 24064). A recovery plan for the species was completed in November 1983 (Service 1983b). This species was historically widespread in the Cumberland and Tennessee River systems (Bogan and Parmalee 1983). It was last collected at Muscle Shoals prior to 1931 (van der Schalie 1939) and is presumed to be extirpated from the shoal. The species survives at a few shoals in the Powell and Clinch Rivers, Tennessee and Virginia, and possibly in the Cumberland River, Tennessee (Service 1983b, Neves 1991). The delisting objectives in the recovery plan call for: (1) restoring the viability of the populations in the Clinch and Powell Rivers; (2) reestablishing viable populations in three additional rivers; and (3) ensuring there are no foreseeable threats to the continued existence of any of the populations. No downlisting

criteria are provided in the recovery plan.

The fine-rayed pigtoe (*Fusconaia cuneolus*) (Lea 1840) was listed as an endangered species on June 14, 1976 (41 FR 24064). A recovery plan for the species was approved in September 1984 (Service 1984c). This species was historically known from 15 Tennessee River tributaries and is currently known from seven rivers (Service 1984c). The species was last collected from Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. The recovery objectives call for: (1) restoring the viability of the populations in the Clinch, Powell, and North Fork Holston Rivers and in the Little River and Copper Creek (Clinch River tributaries); (2) reestablishing or discovering one additional viable population; and (3) ensuring there are no foreseeable threats to the continued existence of any of the populations. No downlisting criteria are given.

The oyster mussel (*Epioblasma capsaeformis*) (Lea 1834) was listed as an endangered species on January 10, 1997 (62 FR 1647). This mussel was historically distributed throughout much of the Cumberlandian Region of the Tennessee and Cumberland River drainages (Gordon 1991). Currently, only small populations survive in a few river reaches in both river systems (Gordon 1991). The species was last collected from Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. Although no oyster mussel recovery plan has been developed, a recovery outline, which briefly enumerates anticipated recovery actions, was developed prior to the final listing decision. The recovery outline identified reintroduction into historic habitat as a method that would likely be needed to recover the species.

The purple cat's paw pearl mussel (*Epioblasma obliquata obliquata*) (Rafinesque 1820) was listed as an endangered species on July 10, 1990 (55 FR 28210). A recovery plan for the species was finalized in March 1992 (Service 1992). This once widespread species historically occurred in the larger rivers of the Ohio River system (Service 1992). The species is currently known from two apparently nonreproducing populations (Green River, Kentucky, and Cumberland River, Tennessee) and one reproducing population in Killbuck Creek, Muskingum River system, Ohio. It was last collected at Muscle Shoals by A. E. Ortmann sometime prior to 1925 (Ortmann 1925) and is presumed to no longer survive in this river reach. The downlisting objectives in the recovery

plan call for: (1) the establishment of four viable populations; (2) two naturally produced year classes to exist in each of the four populations; (3) biological studies on the species to have been completed; and (4) recovery measures to have resulted in an increase in population density and/or length of the river inhabited. The delisting objectives call for the establishment of six viable populations in addition to criteria (2) through (4) above.

The shiny pigtoe (*Fusconaia cor*) (Conrad 1834) was listed as an endangered species on June 14, 1976 (41 FR 24064). A recovery plan for the species was completed in July 1984 (Service 1984d). This species was historically known from the Tennessee River and ten of its tributaries. It is currently known from five river systems; the Clinch, Powell, North Fork Holston, Elk, and Paint Rock (Service 1984d). The species was last collected at Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. The delisting objectives call for: (1) restoring the viability of the populations in the Clinch, Powell, North Fork Holston, and Paint Rock Rivers; (2) reestablishing or discovering one additional viable population; and (3) ensuring there are no foreseeable threats to the continued existence of any of the populations. No downlisting criteria are provided in the recovery plan.

The tubercled-blossom pearl mussel (*Epioblasma torulosa torulosa*) (Rafinesque 1820) was listed as an endangered species on June 14, 1976 (41 FR 24062). A recovery plan for the species was completed in January 1985 (Service 1985b). This species was historically known from nine rivers in the Ohio River system (Service 1985b). The species was last collected at Muscle Shoals around 1900 by A. A. Hinkley (Ortmann 1925); it has not been collected anywhere since 1969 (Stansbery 1976, Service 1985b). However, the Service continues its efforts to determine whether any extant populations occur and the species is therefore included in these NEP proposals. If the species is found and can be propagated, the area below Wilson Dam could be considered for a reintroduction effort without going through a separate NEP rulemaking. No downlisting or delisting criteria are presented in the recovery plan. However, the plan does call for recovery efforts to be reevaluated if the species is found.

The turgid-blossom pearl mussel (*Epioblasma turgidula*) (Lea 1858) was listed as an endangered species on June 14, 1976 (41 FR 24062). A recovery plan

for the species was completed in January 1985 (Service 1985b). This widespread species was historically known from 12 rivers in Arkansas, Missouri, Tennessee, and Alabama (Service 1985b). The species was last collected at Muscle Shoals (its type locality, along with the Cumberland River, Tennessee) prior to 1925 (Ortmann 1925); it has not been collected anywhere since the early 1960s (Stansbery 1971, Service 1985b). However, the Service continues its efforts to determine whether any extant populations occur and the species is therefore included in these NEP proposals. If the species is found and can be propagated, the area below Wilson Dam could be considered for a reintroduction effort without going through a separate NEP rulemaking. No downlisting or delisting criteria are presented in the recovery plan. However, the plan does call for recovery efforts to be reevaluated if the species is found.

The winged mapleleaf mussel (*Quadrula fragosa*) (Conrad 1835) was listed as an endangered species on June 20, 1991 (56 FR 28349). The final recovery plan for the species was completed in June 1997 (Service 1997). This species was historically reported from 34 rivers in 12 states in the Mississippi River drainage (Service 1997). It is now believed to be extirpated from all but one remnant population in the St. Croix River between Minnesota and Wisconsin. The species was reported from the Tennessee River below Wilson Dam by Scruggs (1960). However, our 1997 Recovery Plan reports that the record may be the mapleleaf (*Q. quadrula*) instead of the winged mapleleaf. As the winged mapleleaf was historically reported from the Wilson Dam tailwater, it is included in this proposed NEP. However, because of the question regarding the identification of the collection, the winged mapleleaf will not be released into the NEP area until this question is resolved. The downlisting objectives in the recovery plan call for: (1) the existence of three distinct viable populations in at least two tributaries of the Mississippi River basin; and (2) the long-term protection of all three populations. Delisting objectives call for: (1) the existence of five distinct viable populations; and (2) the long-term protection of all five populations.

The yellow-blossom pearl mussel (*Epioblasma florentina florentina*) (Lea 1857) was listed as an endangered species on June 14, 1976 (41 FR 24062). A recovery plan for the species was completed in January 1985 (Service

1985b). This species was historically known from 13 rivers in the Cumberland and Tennessee River systems (Service 1985b). The species was last collected at Muscle Shoals, its type locality, prior to 1925 (Ortmann 1925); it has not been collected anywhere in over 50 years (Stansbery 1971, Service 1985b). However, the Service continues its efforts to determine whether any extant populations occur and the species is therefore included in these NEP proposals. If the species is found and can be propagated, the area below Wilson Dam could be considered for a reintroduction effort without going through a separate NEP rulemaking. No downlisting or delisting criteria are presented in the recovery plan; however, it does call for the recovery efforts to be reevaluated if the species is found.

Anthony's riversnail (*Athearnia anthonyi*) was listed as an endangered species on April 15, 1994 (59 FR 17994). The final recovery plan for the species was completed in August 1997 (Service 1997). This snail was historically found in the Tennessee River and the lower reaches of some of its tributaries from Muscle Shoals, Colbert and Lauderdale counties, Alabama, upstream to the Clinch and Nolichucky Rivers, Tennessee (Bogan and Parmalee 1983). Currently, two populations are known to survive; one in Limestone Creek, Limestone County, Alabama, and one in the Tennessee River and the lower portion of the Sequatchie River (a tributary to this reach of the Tennessee River), Marion County, Tennessee, and Jackson County, Alabama (Service 1996). It is apparently extirpated from Muscle Shoals (Garner, personal communication, 1997). The downlisting objectives in the recovery plan call for: (1) the establishment of four viable populations; (2) two naturally produced year classes to exist in each of the four populations; (3) biological studies on the species to have been completed; (4) noticeable improvements in water and substratum quality where habitat is degraded; (5) each of the populations to be protected from present and foreseeable threats; and (6) all four populations to remain stable or increase over a 10-year period. The delisting objectives call for the establishment of six viable populations in addition to criteria (2) through (5) above and for six populations to remain stable or increase over a 15-year period.

The recovery objectives in the recovery plans and recovery outlines for the aforementioned species generally agree that, to reach recovery: (1) existing populations should be restored to viable

levels; (2) the species should be protected from threats to their continued existence; and (3) viable populations should be reestablished in historic habitat. The number of secure, viable populations (existing and restored) needed to achieve recovery varies from species to species, depending on the extent of the species' former range (i.e., species that were once widespread require a greater number of populations for recovery than species that were historically more restricted in distribution). However, the reestablishment of historic populations is a critical component to the recovery of all these species.

#### Preliminary Notification and Comment

On June 18, 1997, we notified (by mail, 54 letters) potentially affected congressional offices, Federal and State agencies, local governments, and interested parties that we were considering proposing NEP status for 17 mollusks. We received six written responses.

TVA suggested that although reintroduced Cumberlandian mussel species might survive below Wilson Dam, they might not be able to reproduce there. Based on the improved reproductive success of the mussel fauna below Wilson Dam, we are optimistic that at least some of the Cumberlandian species will reproduce. However, even if these species are unable to reproduce, the establishment of nonreproducing populations of listed Cumberlandian mussels will assist in the recovery effort. Mussels are long-lived (40 years or more); thus, any surviving mussels could be available to researchers and managers for a number of years after they are reintroduced.

TVA cautioned that current conditions (i.e., variations in hydro power discharges, seasonal low dissolved oxygen levels, urban related impacts) and potential impacts (i.e., invasion of zebra mussels, navigation improvements, and additional municipal developments) are likely to limit the success of mollusk reintroductions below Wilson Dam. We agree that there are many factors that could limit the success of these proposed mollusk reintroductions, but there is always a risk of failure with any EP reintroduction. There are only a few river reaches in the Tennessee River basin that appear to have suitable habitat for reintroductions. Our goal is to recover the region's federally listed mussels; therefore, we will attempt to reestablish populations in as many reaches as possible.

TVA encouraged us to evaluate the reintroduction sites before any mollusks

are released. The ADGF, in cooperation with the Service, is evaluating specific reaches of the Wilson Dam tailwaters for reintroductions.

Although TVA expressed some concerns regarding the potential success of reintroducing listed mollusks below Wilson Dam, their response to the notice was generally positive. They agreed that now (because of advances in mussel propagation technology and water quality improvements below many of their reservoirs) " \* \* \* may be an appropriate time to start reintroducing and augmenting mussel stocks within their historic ranges \* \* \*" in the Tennessee River system. They further stated that designating NEPs below Wilson Dam would not result " \* \* \* in any additional regulatory burden for TVA," and they offered to assist in reintroducing mollusks below Wilson Dam. We appreciate TVA's comments and their generally positive assessment of the notice, and we especially appreciate their offer to assist in mussel reintroductions below Wilson Dam. Our agencies have had a long and productive relationship with regard to mussel recovery issues, and we look forward to a continued partnership that will work toward recovering the Tennessee River valley's aquatic mollusk resources.

The Director of the ADGF reconfirmed his support for the project and stated: "This is an opportunity to take a major step towards restoring the native fauna of our rivers to their historic diversity."

Although the proposed action will not occur within the State of Tennessee, the Executive Director of the Tennessee Wildlife Resources Agency (TWRA) supported the designation of NEPs and mollusk reintroductions below Wilson Dam. He stated:

We understand that this is part of the ongoing program conducted by state and federal agency partners to improve the status of these mollusks where they no longer need endangered species protection.

A consulting firm (Firm) for the City of Florence, Alabama, (City) provided information on the City's plans to construct a submerged muliport diffuser in the Tennessee River below Wilson Dam as part of a sewer system improvement project. The Firm stated:

We hope that you will coordinate your department's restocking program with the City's plans to avoid the areas that may be affected by both the relocation program and subsequent diffuser construction.

We are aware of the City's proposed construction project, and we assured the Firm and the City that the reintroduction of endangered mollusks under this proposed NEP designation

would not negatively impact the City's proposed sewer system improvement project.

Letters of support were also received from the University of North Alabama and a local chapter of the Sierra Club.

#### Status of Reintroduced Populations

We propose to reintroduce populations of 16 mussels (Alabama lampmussel, birdwing pearlymussel, clubshell, cracking pearlymussel, Cumberland bean pearlymussel, Cumberlandian combshell, Cumberland monkeyface pearlymussel, dromedary pearlymussel, fine-rayed pigtoe, oyster mussel, purple cat's paw pearlymussel, shiny pigtoe, tubercled-blossom pearlymussel, turgid-blossom pearlymussel, winged mapleleaf mussel, and yellow-blossom pearlymussel) and 1 freshwater snail (Anthony's riversnail) in the free-flowing reach of the Tennessee River from about 1.4 river miles (RM) (2.2 kilometers [km]) below Wilson Dam to the backwaters of Pickwick Reservoir (RM 258.0 [412.8 kilometers [km]) to RM 246.0 [393.6 km]) in Colbert and Lauderdale counties, Alabama.

These populations are proposed to be designated NEPs according to the provisions of section 10(j) of the Act. None of these species are known to currently exist in this river reach or in tributaries to this reach nor are they expected to populate the area immediately below Wilson Dam. Thus, to give the regulatory relief provided by a NEP designation for any reintroduced listed mollusk that may move upstream to the base of Wilson Dam or into tributaries of this reach, we propose that the geographic boundaries of the NEP designation extend from the base of the Wilson Dam (RM 259.4 [414.0 km]) to the backwaters of the Pickwick Reservoir (RM 246.0 [393.6 km]) and include the lower 5 RM (8 km) of all tributaries that enter the river reach from the tailwaters of Wilson Dam to the backwaters of Pickwick Reservoir. Additionally, if any of the reintroduced endangered mollusks move upstream beyond the lower 5 RM (8 km) of these tributaries, the animals will be presumed to have come from the reintroduced NEP, and the boundaries of the NEP will be enlarged to include the entire range of the expanded population. Thus, the proposed NEP designation includes the following: the free-flowing reach of the Tennessee River from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir (about 12 RM [19 km]) and 5 RM (8 km) upstream of all tributaries to this reach in Colbert and Lauderdale Counties, Alabama.

We considered designating EP status instead of NEP status for these reintroductions. However, the designation of NEP status, which provides for the maximum degree of management flexibility and regulatory relief was necessary to gain the support of local governments, State agencies, industry, local communities, and landowners. Therefore, we believe it is the appropriate designation for reintroducing these species under section 10(j). We will ensure, through our section 10 permit authority and section 7 consultation process, that the use of animals from any donor population for this proposed reintroduction project is not likely to jeopardize the continued existence of the species or the donor population. Therefore, if any introduced populations become established and are subsequently lost, it would not reduce the likelihood of the species' survival in the wild or jeopardize its continued existence. In fact, the anticipated success of these reintroductions will enhance the species' conservation status by extending their present range into currently unoccupied historic habitat.

#### Location of Reintroduced Population

The sites for the proposed reintroductions (free-flowing reach of the Tennessee River between Wilson Dam and the backwaters of Pickwick Reservoir, Colbert and Lauderdale Counties, Alabama) are within the proposed NEP areas; these NEP areas are totally isolated from existing populations of these species by large reservoirs; and none of these mollusks are known to occur in reservoir habitat. These reservoirs will, therefore, act as barriers to the expansion of these species upstream or downstream in the main stem of the Tennessee River and ensure that these proposed NEPs remain geographically isolated and easily identifiable as distinct populations.

#### Management

The proposed dates for these reintroductions, the specific sites (between about 1.4 river miles RM [2.2 km] below Wilson Dam to the backwaters of Pickwick Reservoir RM 258.0 (412.8 km) to RM 246.0 (393.6 km) in Colbert and Lauderdale counties, Alabama) where the mussel and snail species will be released, and the actual number of individuals to be released cannot be determined at this time. Individual endangered mussels to be used in the proposed NEP reintroductions will be, primarily, artificially propagated juveniles. However, it is possible that wild adult stock of some mussels could be released

into the area (see below). Mussel propagation and juvenile rearing technology are currently being developed using nonendangered surrogate species, and it is expected that juvenile endangered mussels of some species will be available for the reintroduction effort within 2 to 3 years. The parent stock for juveniles to be used for the NEPs will come from existing wild populations, and in most cases they will be returned live to that wild population. Under some circumstances, adult endangered mussels could be permanently relocated to propagation facilities or be moved directly into the NEP areas. Anthony's riversnails will be collected from a large naturally reproducing population located in the Tennessee River, Jackson County, Alabama, and Marion County, Tennessee, and relocated directly into the NEP area.

The permanent removal of adults from the wild for their use in reintroduction efforts could occur when one or more of the following conditions exists: (1) sufficient adult endangered mussels and Anthony's riversnails are available within a donor population to withstand the loss without jeopardizing their continued existence; (2) the species must be removed from an area because of an imminent threat that is likely to eliminate the population or specific individuals present; or (3) when the donor population is not reproducing. To ensure that the nonlethal use of a parent stock or the permanent removal of adults is not likely to jeopardize the continued existence of the donor population of the species, a section 10 (a)(1)(A) permit will be issued before any take occurs. We will coordinate these actions with the appropriate lead Regions and State natural resources agencies.

We do not believe these proposed reintroductions would conflict with existing or proposed human activities or hinder public utilization of the proposed NEP areas. If this proposed rule is finalized, the NEPs would be treated as threatened species under all provisions of the Act, except section 7 (see "Legislative" section of these rules). The NEPs are treated under section 7(a)(4) of the Act as species proposed to be listed under the Act. For proposed species, section 7(a)(4) requires that Federal agencies confer with the Service on actions that the Federal agency itself finds are likely to jeopardize a species' continued existence. We then produce a conference report outlining measures that could be taken to avoid jeopardy. However, the measures we recommend are only advisory. The Federal agency is not required to implement any of the

recommended measures, and the Act does not prohibit the Federal agency from implementing the Federal action as was originally planned. Therefore, these proposed reintroductions are not expected to conflict with existing or proposed Federal activities in the NEP areas.

The Act, under section 10(j), allows special rules (protective regulations), which contain all prohibitions and exceptions regarding the taking of individual animals, to be written for experimental populations. Thus, section 17.85 (a)(3) of the proposed special rule defines the circumstances under which it will be a violation of the Act to take animals from these introduced populations. We do not expect these proposed reintroductions to conflict with existing or proposed Federal activities or to hinder the public's utilization of the NEP areas. We will work cooperatively with private landowners and will not impose any land-use restrictions on private lands for the recovery of these species without prior concurrence from the landowners.

#### Public Comments Solicited

We intend for any rule that is finally adopted to be as effective as possible. Therefore, we invite the public, concerned government agencies, the scientific community, industry, and other interested parties to submit comments or recommendations concerning any aspect of this proposed rule (see "Addresses" section).

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to questions such as the following: (1) Are the requirements in the rule clearly stated?, (2) Does the rule contain technical language or jargon that interferes with its clarity?, (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?, (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" is preceded by the symbol "\$" and a numbered heading; for example, § 17.11 Endangered and threatened wildlife), (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-

mail the comments to this address:  
Exsec@ios.doi.gov

However, as noted earlier, all comments related to the proposed reintroduction to establish the nonessential experimental populations should be directed to the Service's Asheville, North Carolina Field Office (see ADDRESS section). Comments must be received within 60 days of publication of this proposed rule in the **Federal Register**.

Any final decision on this proposed rule will take into consideration the comments and any additional information received. These may lead to a final rule that differs from this proposal.

#### **National Environmental Policy Act**

We have determined that the issuance of a proposed rule for these NEPs is categorically excluded under our National Environmental Policy Act procedures (516 DM 6, Appendix 1.4 B (6)), which states:

\* \* \* The reintroduction or supplementation (e.g., stocking) of native, formerly native, or established species into suitable habitat within their historical or established range, where no or negligible environmental disturbances are anticipated \* \* \*

#### **Paperwork Reduction Act**

This proposed rule contains no collections of information requiring approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

#### **Required Determinations**

This proposed rule to designate NEP status for 16 mussels and 1 freshwater snail in the free-flowing reach of the Tennessee River below Wilson Dam in Colbert and Lauderdale Counties, Alabama, will not have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*).

Shellfish harvesting in the United States is dominated by small firms. Of the 441 firms included in Standard Industrial Code 0913 for "establishments primarily engaged in the catching or taking of shellfish," 421 have fewer than 20 employees, 353 have fewer than five employees. These figures include saltwater shellfishing (lobsters, crabs, clams, etc.) so freshwater mussel harvesting is only a fraction of this small industry (Office of Advocacy, U.S. Small Business Administration based on data provided by the Department of Commerce, Bureau of the Census).

The rule is not expected to have any impact on the use of the river. Mussels

are harvested from the relevant reach primarily by diving from one or two person boats. Harvesters are seeking larger mussels of a dozen specific permitted species to be used as seed in the Japanese cultured pearl industry. Two endangered species are already present in the area and divers are careful to identify species in situ to avoid carrying extra weight to the surface. The added species are not expected to complicate this task. Other river activities will not be affected.

The final rule will not significantly change costs to industry or government. Furthermore, this rule produces no adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule is not a significant regulatory action and was not subject to review by the Office of Management and Budget under Executive Order 12866. It is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis not required. The area affected by this rule consists of a very limited and discrete geographic segment (only 12 river miles) of the Tennessee River in northern Alabama. Therefore no significant impacts on existing economic activities associated with this stream reach as a result of this rule are anticipated.

This rule will not create inconsistencies with other agencies' actions. Designating reintroduced populations of federally listed species as NEPs significantly reduces the Act's regulatory requirements regarding the reintroduced listed species within the NEP. Because of the substantial regulatory relief provided by NEP designations, the Service does not believe the reintroduction of these mollusks would conflict with existing or proposed human activities or hinder public utilization of the Tennessee River system.

This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Because there are no expected impacts or restrictions to existing human uses of the Tennessee River as a result of this rule, no entitlements, grants, user fees, loan programs or the rights and obligations of their recipients are expected to occur.

This rule will not raise novel legal or policy issues. The Service has previously promulgated more than a dozen section 10 (j) rules for experimental populations of other listed threatened and endangered species in various localities since 1984. The rules are designed to reduce the regulatory burden that would otherwise exist when reintroducing listed species to the wild.

We have determined and certified, pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. Further, this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The ADGF, which manages the aquatic mollusks in the Tennessee River below Wilson Dam, requested the Service consider this reintroduction under a NEP designation. However, they will not be required by the Act to specifically manage for any reintroduced species.

This proposed rule has been reviewed under Executive Order 12630, the Attorney General Guidelines, Departmental Guidelines, and the Attorney General Supplemental Guidelines to determine the taking implications of this proposed rule if it were promulgated as currently drafted. The implementation of this proposed rule will not result in any "taking" under the 5th Amendment. In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required.

Designating reintroduced populations of federally listed species as NEPs significantly reduces the Act's regulatory requirements regarding the reintroduced listed species within the NEP. Under NEP designations, the Act requires a Federal agency to confer with the Service if the agency determines that its action within the NEP is likely to jeopardize the continued existence of the reintroduced species. However, even if an agency action would totally eliminate a reintroduced species from a NEP and jeopardize the species continued existence, the Act does not compel a Federal agency to stop a project, deny issuing a permit, or cease any activity. Additionally, regulatory relief can be provided here regarding take of reintroduced species within NEP areas, and the special rule has been proposed stipulating that there would be no violation of the Act for unavoidable and unintentional take (including killing or injuring) of these reintroduced mollusks, when such take

is non-negligent and incidental to a legal activity (e.g., boating, commercial navigation, commercial musseling, fishing) and the activity is in accordance with State laws or regulations. Because of the substantial regulatory relief provided by NEP designations, the Service does not believe the reintroduction of these mollusks would conflict with existing or proposed human activities or hinder public utilization of the Tennessee River system.

This proposed rule has been reviewed under Executive Order 12612 to determine Federalism considerations in policy formulation and implementation. This proposed rule does not require a Federalism assessment under Executive Order 12612 since it will not have any significant Federalism effects as described in the order. Nevertheless, we have endeavored to cooperate with the Alabama Division of Game and Fish in the preparation of this proposed rule.

The Department of the Interior has determined that this proposed regulation meets the applicable standards provided in sections (3)(a) and (3)(b)(2) of Executive Order 12988.

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**Author**

The principal author of this proposed rule is Richard G. Biggins (see ADDRESSES section).

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

**PART 17—[AMENDED]**

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

**Authority:** 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.11(h), revise the entries in the table under CLAMS for "Clubshell"; "Combshell, Cumberlandian"; "Lampmussel, Alabama"; "Mussel, Oyster"; "Mussel, winged mapleleaf"; "Pearlymussel, birdwing"; "Pearlymussel, cracking"; "Pearlymussel, Cumberland bean"; "Pearlymussel, Cumberland monkeyface"; "Pearlymussel, dromedary"; "Pearlymussel, purple cat's paw"; "Pearlymussel, tubercled-blossom"; "Pearlymussel, turgid-blossom"; and "Pearlymussel, yellow-blossom"; "Pigtoe, fine-rayed"; "Pigtoe, shiny"; and the table entry under SNAILS for "Riversnail, Anthony's" to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
 (h) \* \* \*

Species		Historic range	Experimental population or vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						

\* \* \* \* \*  
 CLAMS

Species		Historic range	Experimental population or vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* Clubshell .....	* <i>Pleurobema clava</i> ...	* U.S.A. (AL, IL, IN, KY, MI, OH, PA, TN, WV).	* NA .....	* E	* 488	* NA	* NA
Do .....	do .....	do .....	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and 5 RM [8 km] upstream of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN	488, ____	NA	17.85(a)
* Combshell, Cumberlandian. Do .....	* <i>Epioblasma brevidens</i> . do .....	* U.S.A. (AL, KY, TN, VA). do .....	* NA .....	* E XN	* 602 602, ____	* NA NA	* NA 17.85(a)
* Lampmussel, Alabama. Do .....	* <i>Lampsilis virescens</i> do .....	* U.S.A. (AL, TN) ..... do .....	* NA .....	* E XN	* 15 15, ____	* NA NA	* NA 17.85(a)
* Mussel, oyster .....	* <i>Epioblasma capsaeformis</i> . do .....	* U.S.A. (AL, KY, TN, VA). do .....	* NA .....	* E XN	* 602 602, ____	* NA NA	* NA 17.85(a)
* Mussel, winged mapleleaf. Do .....	* <i>Quadrula fragosa</i> .... do .....	* U.S.A. (AL, IA, IL, IN, KY, MN, MO, NE, OH, OK, TN, WV). do .....	* NA .....	* E XN	* 426 426, ____	* NA NA	* NA 17.85(a)
* Pearlymussel, birdwing. Do .....	* <i>Conradilla caelata</i> ... do .....	* U.S.A. (AL, TN, VA) do .....	* NA .....	* E XN	* 15 15, <sup>9</sup> / <sub>16</sub> ____	* NA NA	* NA 17.85(a)
* Pearlymussel, cracking. Do .....	* <i>Hemistena (=Lastena) lata</i> . do .....	* U.S.A. (AL, IL, IN, KY, OH, TN, VA). do .....	* NA .....	* E XN	* 366 366, <sup>9</sup> / <sub>16</sub> ____	* NA NA	* NA 17.85(a)

Species		Historic range	Experimental population or vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
Pearlymussel, Cumberland bean.	<i>Villosa (= Micromya) trabalis.</i>	U.S.A. (AL, KY, TN, VA).	NA .....	E	15	NA	NA
Do .....	.....do .....	.....do .....	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	15, _____	NA	17.85(a)
Pearlymussel, Cumberland monkeyface.	<i>Quadrula intermedia</i>	U.S.A. (AL, TN, VA)	NA .....	E	15	NA	NA
Do .....	.....do .....	.....do .....	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	15, _____	NA	17.85(a)
*	*	*	*	*	*		*
Pearlymussel, dromedary.	<i>Dromus Dromas</i> .....	U.S.A. (AL, KY, TN, VA).	NA .....	E	15	NA	NA
Do .....	.....do .....	.....do .....	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN 1	5, _____	NA	17.85(a)
*	*	*	*	*	*		*
Pearlymussel, purple cat's paw.	<i>Epioblasma obliquata obliquata.</i>	U.S.A. (AL, IL, IN, KY, OH, TN).	NA .....	E	394	NA	NA
Do .....	.....do .....	.....do .....	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	394, _____	NA	17.85(a)
*	*	*	*	*	*		*
Pearlymussel, tubercled-blossom.	<i>Epioblasma (=Dysnomia) torulosa torulosa.</i>	U.S.A. (AL, IL, IN, KY, TN, WV).	NA .....	E	15	NA	NA
Do .....	.....do .....	.....do .....	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	15, _____	NA	17.85(a)
Pearlymussel, turgid-blossom.	<i>Epioblasma (=Dysnomia) turgidula.</i>	U.S.A. (AL, TN) .....	NA .....	E	15	NA	NA
Do .....	.....do .....	.....do .....	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	15, _____	NA	17.85(a)
*	*	*	*	*	*		*
Pearlymussel, yellow-blossom.	<i>Epioblasma florentina florentina.</i>	U.S.A. (AL, TN) .....	NA .....	E	15	NA	NA
Do .....	.....do .....	.....do .....	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	15, _____	NA	17.85(a)
*	*	*	*	*	*		*
Pigtoe, fine-rayed .....	<i>Fusconaia cuneolus</i>	U.S.A. (AL, TN, VA)	NA .....	E	15	NA	NA
Do .....	.....do .....	.....do .....	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	15, _____	NA	17.85(a)
*	*	*	*	*	*		*
Pigtoe, shiny .....	<i>Fusconaia cor (= edgariana).</i>	U.S.A. (AL, TN, VA)	NA .....	E	15	NA	NA

Species		Historic range	Experimental population or vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do .....	.....do .....	.....do .....	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	15, ____	NA	17.85(a)
*	*	*	*	*	*	*	*
SNAILS							
Riversnail, Anthony's	<i>Athearnia anthonyi</i> ..	U.S.A. (AL, GA, TN)	NA .....	E	538	NA	NA
Do .....	.....do .....	.....do .....	U.S.A. (AL—deregulated zone in the Tennessee R., see 17.85(a)).	XN	538, ____	NA	17.85(a)
*	*	*	*	*	*	*	*

3. Section 17.85 is amended by adding text to read as follows:

**§ 17.85 Special rules—invertebrates.** (i)  
(a)(1) What species are covered by this special rule?

Common name	Scientific name
Alabama lampmussel .....	<i>Lampsilis virescens.</i>
Anthony's riversnail .....	<i>Athearnia anthonyi.</i>
birdwing pearl mussel .....	<i>Conradilla caelata.</i>
clubshell .....	<i>Pleurobema clava.</i>
cracking pearl mussel .....	<i>Hemistena lata.</i>
Cumberland bean pearl mussel .....	<i>Villosa trabalis.</i>
Cumberlandian combshell .....	<i>Epioblasma brevidens.</i>
Cumberland monkeyface pearl mussel .....	<i>Quadrula intermedia.</i>
dromedary pearl mussel .....	<i>Dromus dromas.</i>
fine-rayed pigtoe .....	<i>Fusconaia cuneolus.</i>
oyster mussel .....	<i>Epioblasma capsaeformis.</i>
purple cat's paw pearl mussel .....	<i>Epioblasma o. obliquata.</i>
shiny pigtoe .....	<i>Fusconaia cor.</i>
tubercled-blossom pearl mussel .....	<i>Epioblasma torulosa torulosa.</i>
turgid-blossom pearl mussel .....	<i>Epioblasma turgidula.</i>
winged mapleleaf mussel .....	<i>Quadrula fragosa.</i>
yellow-blossom pearl mussel .....	<i>Epioblasma f. florentina.</i>

(ii) [Reserved]  
(2) Where does this special rule apply?  
(i) The designated recovery areas classified as NEPs for the aforementioned 17 mollusks in paragraph (a)(1)(i) of this section are within the species' historic ranges and are defined as follows:

The free-flowing reach of the Tennessee River from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir (RM 258.0 [412.8 km] to RM 246.0 [393.6 km] about 12 RM [19 km]) and 5 RM (8 km) upstream of all tributaries to this reach in Colbert and Lauderdale Counties, Alabama.

(ii) None of the aforementioned species is known from any of the tributaries to the free-flowing reach of the Tennessee River below Wilson Dam, Colbert and Lauderdale Counties,

Alabama. In the future, if any of the aforementioned 17 mollusks are found upstream beyond the lower 5 RM (8 km) of these tributaries, we will presume the animals to have come from the reintroduced NEP, and the boundaries of the NEP will be enlarged to include the entire range of the expanded population.

(3) What is the legal status of the species described in the rule?  
(i) The species identified for reintroduction in paragraph (a)(1) of this section are listed as "endangered" and protected under 50 CFR 17.11 (h). The Alabama lampmussel, birdwing pearl mussel, clubshell, cracking pearl mussel, Cumberland bean pearl mussel, Cumberlandian combshell, Cumberland monkeyface pearl mussel, dromedary pearl mussel, fine-rayed pigtoe, oyster mussel, purple

cat's paw pearl mussel, shiny pigtoe, tubercled-blossom pearl mussel, turgid-blossom pearl mussel, winged mapleleaf mussel, yellow-blossom pearl mussel, and Anthony's riversnail, identified in paragraph (a)(2) of this section, are nonessential experimental populations. These NEPs will be managed in accordance with these provisions.

(ii) We find, under 50 CFR 17.81 (b), that the reintroduction of an experimental population of the aforementioned 17 mollusks into their historic range will further their conservation. We also find, under 50 CFR 17.81(c)(2) that the experimental population is not essential to the continued existence of the species in the wild.

(4) What activities are prohibited?

(i) You may not take any of the aforementioned 17 mollusks in the wild within these species' NEP areas except in accordance with the applicable laws or regulations of the State of Alabama and as provided by these rules. We may refer unauthorized take of these species to the appropriate authorities for prosecution.

(ii) This provision does not exempt Federal agencies from complying with section 7(a)(4) of the Act, which requires them to confer with the Service if they propose an action that is likely to jeopardize the continued existence of one or more of these species.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the aforementioned 17 mollusks, or parts thereof, from these NEPs that are taken or possessed in violation of these regulations or in violation of the applicable laws or regulations of the State of Alabama.

(iv) You may not attempt to commit, solicit another to commit, or cause to be

committed any offense defined in this paragraph (a).

(5) What activities are allowed?

(i) Throughout the entire NEP areas for the aforementioned 17 mollusks, you will not be in violation of the Act for unavoidable and unintentional take (including killing or injuring) of these species when such take is incidental to a legal activity, such as fishing, boating, commercial navigation, trapping, wading, mussel harvesting, or other activities, and the activity is in accordance with the laws or regulations of the State of Alabama.

(ii) Throughout the entire NEP areas for the aforementioned 17 mollusks, no Federal agency or its contractors will be in violation of the Act for take of these species resulting from any authorized agency action.

(6) What are we doing for these species?

(i) We will continuously evaluate the progress of the aforementioned 17 mollusk reintroductions. We will prepare periodic progress reports and fully evaluate these reintroduction

efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

(ii) We will work cooperatively with private landowners and will not impose any land-use restrictions on private lands for the recovery of these species without prior concurrence from the landowners.

(iii) We do not intend to change the NEP designations to "essential experimental," "threatened," or "endangered" without the full cooperation of the State of Alabama and the affected parties within the NEP areas. Additionally, we will not designate critical habitat for these NEPs. We cannot designate critical habitat under the NEP classification, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(b) [Reserved]

Dated: April 30, 1999.

**Donald J. Barry,**

*Assistant Secretary for Fish and Wildlife and Parks.*

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