Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and other supporting information used in developing the approval are available for inspection during normal business hours at the following location: EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois 60604. Please contact Genevieve Damico at (312) 353–4761 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Genevieve Damico, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4761, damico.genevieve@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: June 19, 2001.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 01–17073 Filed 7–10–01; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH31

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the Carolina Heelsplitter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to designate critical habitat for the Carolina heelsplitter (*Lasmigona decorata*), a freshwater mussel, under the Endangered Species Act of 1973, as amended (Act). The areas proposed for critical habitat designation include portions of a river and nine creeks in North Carolina and/or South Carolina. This action comes as a result of a lawsuit filed against us by the Southern Appalachian Biodiversity Project and the Foundation for Global Sustainability. If this proposal is made final, Federal agencies must ensure that actions they fund, permit, or carry out are not likely to result in the destruction or adverse modification of critical habitat. State or private actions, with no Federal involvement, would not be affected by this rulemaking action.

DATES: We will consider comments received by September 10, 2001. Requests for public hearings must be received, in writing, at the address shown in the **ADDRESSES** section by August 27, 2001.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and information to the State Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

2. You may hand-deliver written comments to our Asheville Field Office, at the above address, or fax your comments to 828/258–5330.

3. You may send comments by electronic mail (e-mail) to *john_fridell@fws.gov.* For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' section.

Comments and materials received, as well as supporting documentation used in the preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John A. Fridell, Fish and Wildlife Biologist (telephone 828/258–3939).

SUPPLEMENTARY INFORMATION:

Background

Lea (1852) originally described the Carolina heelsplitter, a freshwater mussel, as *Unio decoratus.* Johnson (1970) synonymized this species with *Lasmigona subviridis* (Conrad 1835). Clarke (1985) recognized the Carolina heelsplitter as a distinct species, *Lasmigona decorata,* and synonymized *Unio charlottensis* (Lea 1863) and *Unio insolidus* (Lea 1872) with *Lasmigona decorata.* A genetic comparison of a specimen of *L. decorata* with specimens of *L. subviridis* (Tim King, U.S. Geological Survey, Leetown, West Virginia, pers. comm. 2001) supports Clarke's (1985) position on the taxonomy (scientific classification) of this species.

The Carolina heelsplitter has an ovate, trapezoid-shaped, unsculptured (smooth with no noticeable bumps or protrusions) shell. The shell of the largest known specimen measures 11.5 centimeters (cm) (4.5 inches (in)) in length, 3.9 cm (1.5 in) in width, and 6.8 cm (2.7 inches) in height. The shell's outer surface varies from greenish brown to dark brown in color, and shells from younger specimens have faint greenish brown or black rays. The nacre (inside surface) is often pearly white to bluish white, grading to orange in the area of the umbo (bulge or beak, protrudes near the hinge of a mussel). However, in older specimens the entire nacre may be a mottled pale orange. The hinge teeth (pseudocardinal teeth and lateral teeth) of the species are well developed but thin and rather delicate. The left valve (half of a mussel shell) has two blade-like pseudocardinal teeth and two lateral teeth, and the right valve has one of each. The left valve may also have an interdental projection, a slight projection located between the lateral and pseudocardinal teeth (adapted from Keferl 1991). Clarke (1985) contains a detailed description of the species' shell, with illustrations.

Distribution, Habitat, and Life History

The Carolina heelsplitter currently has a very fragmented, relict distribution but historically was known from several locations within the Catawba and Pee Dee River systems in North Carolina and the Pee Dee and Savannah River systems, and possibly the Saluda River system, in South Carolina. Historically, the species was collected from the Catawba River, Mecklenburg County, North Carolina; several streams and ''ponds'' in the Catawba River system around the Charlotte area of Mecklenburg County, North Carolina; one small stream in the Pee Dee River system in Cabarrus County, North Carolina; one ''pond'' in the Pee Dee River system in Union County, North Carolina; and an area in South Carolina referred to only as the ''Abbeville District,'' a terminology no longer employed (Clarke 1985, Keferl and Shelly 1988, Keferl 1991). The records from the Abbeville District, South Carolina, were previously believed to have been from the Saluda River system (Clarke 1985, Keferl and Shelly 1988, Keferl 1991, Service 1993). However, biologists discovered a population of the Carolina heelsplitter in the spring of 1995 in the Savannah River system (Stevens Creek watershed) (Alderman 1995, 1998a, and 1998b). Therefore, the historic records from the Abbeville District may have been from either the Saluda River system or the Savannah River system or both. An additional historic record of the Carolina heelsplitter from the main stem of the Pee Dee River in Richmond County, North Carolina, was recently discovered (Art Bogan, North Carolina Museum of Science and Natural History, pers. comm. 2001); however, surveys by biologists with the North Carolina Wildlife Resources Commission (NCWRC) and North Carolina Department of Transportation have failed to turn up any evidence of a surviving population of the species at,

or in the vicinity of, the site of this record (John Alderman, NCWRC, personal communication 2001).

Recent collection records (Keferl and Shelly 1988; Keferl 1991; Alderman 1995, 1998a, and 1998b; North Carolina Wildlife Resources Commission 1999 and 2000) indicate that the Carolina heelsplitter has been eliminated from the majority of its historical range, and only six populations of the species are presently known to exist. In Union County, North Carolina, one small remnant population occurs in the Catawba River system in Waxhaw Creek, a tributary to the Catawba River, and another small population occurs in both Duck Creek (a tributary to Goose Creek) and Goose Creek, a tributary in the Pee Dee River system. In South Carolina, there are four small surviving populations—one each in the Pee Dee and Catawba River systems and two in the Savannah River system. The population in the Pee Dee River system occurs in a relatively short reach of the Lynches River in Chesterfield, Lancaster, and Kershaw Counties and extends into Flat Creek, a tributary to the Lynches River in Lancaster County. In the Catawba River system, the species survives only in a short reach of Gills Creek in Lancaster County. In the Savannah River system, one population is found in Turkey Creek and two of its tributaries, Mountain Creek and Beaverdam Creek in Edgefield County, and another smaller population survives in Cuffytown Creek, in Greenwood and McCormick Counties. No evidence of a surviving population has been found in recent years in the Saluda River system.

Historically, the Carolina heelsplitter was reported from small to large, moderate-gradient streams and rivers as well as ponds. The ''ponds'' referred to in historic records are believed to have been mill ponds on some of the smaller streams within the species' historic range (Keferl 1991). Presently, the species is known to occur in only ten small streams and one small river. It has been recorded from a variety of substrata including mud, clay, sand, gravel, cobble/boulder/bedrock without significant silt accumulations, along stable, well-shaded stream banks (Keferl and Shelly 1988, Keferl 1991). However, in Mountain Creek in Edgefield County, South Carolina, two young, live individuals were found near the center of the stream channel in a stable, relatively silt-free substrate comprised primarily of a mixture of coarse sand, gravel, and cobble, with scattered areas of exposed boulders/bedrock (J.A. Fridell, personal observation, 1995). It is conceivable that this is the preferred habitat type for the species and that in other areas scouring and degradation of the gravelly substrata has restricted the species to softer substrata found along the portions of the stream banks that receive less scouring. In either case, the stability of the stream banks and stream-bottom substrata appear to be critical to the species. Keferl (1991) noted that in his surveys of Goose, Waxhaw, and Flat Creeks and the Lynches River, he found the highest concentrations of the species in (bank) undercuts and along shaded banks stabilized with extensive tree roots, a buried log, and/or rocks.

Like other freshwater mussels, the Carolina heelsplitter feeds by filtering food particles from the water column. The specific food habits of the species are unknown, but other freshwater mussels have been documented to feed on detritus (decaying organic matter), diatoms (various minute algae), phytoplankton (microscopic floating aquatic plants), and zooplankton (microscopic floating aquatic animals). The reproductive cycle of the Carolina heelsplitter is likely similar to that of other native freshwater mussels. Males release sperm into the water column; the sperm are then taken in by the females through their siphons during feeding and respiration. The females retain the fertilized eggs in their gills until the larvae (glochidia) fully develop. The mussel glochidia are released into the water, and within a few days they must attach to the appropriate species of fish, which are then parasitized for a short time while the glochidia develop into juvenile mussels. They then detach from their ''fish host'' and sink to the stream bottom where they continue to develop, provided they land in a suitable substrate with the correct water conditions. The Carolina heelsplitter's life span, the fish host species, and many other aspects of its life history are unknown.

Reasons for Decline and Threats to Surviving Populations

Available information indicates that several factors adversely affect the water and habitat quality of our creeks and rivers and have contributed to the decline and loss of populations of the Carolina heelsplitter and threaten the remaining populations. These factors include pollutants in wastewater discharges (sewage treatment plants and industrial discharges); habitat loss and alteration associated with impoundments, channelization, and dredging operations; increased storm-water run-off; and the run-off of silt, fertilizers, pesticides, and other pollutants from poorly implemented land-use activities (Service 1993 and 1997). Many of the streams in the area of Charlotte, North Carolina, that are known to have historically supported the Carolina heelsplitter, but which no longer do, have been degraded by a combination of the factors listed above and appear to no longer support, or be capable of supporting, any species of native mussels. Additionally, large reaches of the main stems of the Pee Dee, Catawba, Saluda, and upper Savannah Rivers, that likely once supported the Carolina heelspitter, have been affected by impoundments, as well as the other factors listed above, and have lost much of their historic freshwater mussel abundance and diversity.

Freshwater mussels, especially in their early life stages, are extremely sensitive to many pollutants (chlorine, ammonia, heavy metals, high concentrations of nutrients, etc.) commonly found in municipal and industrial wastewater effluents (Havlik and Marking 1987, Goudreau *et al.* 1988, Keller and Zam 1991). In the early 1900s, Ortmann (1909) noted that the disappearance of mussels is one of the first and most reliable indicators of stream pollution.

Activities such as impoundments, channelization projects, and in-stream dredging operations eliminate mussel habitat. These activities can also alter the quality and stability of the remaining stream reaches by affecting the flow regimes, water velocities, and water temperature and chemistry.

Agriculture (both crop and livestock) and forestry operations, highway and road construction, residential and industrial developments, and other construction and land-use activities that do not adequately control soil erosion and storm-water run-off contribute excessive amounts of silt, pesticides, fertilizers, heavy metals, and other pollutants. These pollutants suffocate and poison freshwater mussels. The run-off of storm water from cleared areas, roads, rooftops, parking lots, and other developed areas, that is often ditched or piped directly into streams, not only results in stream pollution but also results in increased water volume and velocity during heavy rains. This change in water volume and velocity causes channel and stream-bank scouring that leads to the degradation and elimination of mussel habitat. Construction and land-clearing operations are particularly detrimental when they result in the alteration of flood plains or the removal of forested stream buffers that ordinarily would help maintain water quality and the stability of stream banks and channels by absorbing, filtering, and slowly

releasing rainwater. Also, when storm water run-off increases from land-clearing activities, less water is absorbed to recharge ground water levels. Therefore, flows during dry months can decrease and adversely affect mussels and other aquatic organisms.

Previous Federal Actions

We recognized the Carolina heelsplitter in the Animal Notice of Review published in the January 6, 1989, **Federal Register** (54 FR 579) as a species under review for potential addition to the Federal List of Endangered and Threatened Wildlife and Plants. In that document, we designated the Carolina heelsplitter as a category 2 candidate for Federal listing. We no longer maintain a list of category 2 candidate species. At that time, category 2 represented those species for which we had some information indicating that the taxa may be under threat, but sufficient information was lacking to determine if they warranted Federal listing and to prepare a proposed rule. Subsequently, surveys of historical and potential Carolina heelsplitter habitat were conducted and revealed that the species had undergone a significant decline throughout its historical range and that the remaining known occurrences were threatened by many of the same factors that are believed to have resulted in this decline.

On May 26, 1992, we published in the **Federal Register** (57 FR 21925) a proposed rule to list the Carolina heelsplitter as an endangered species. The proposed rule provided information on the species' biology, status, and threats to its continued existence and included our proposed determination that the designation of critical habitat was not prudent for the Carolina heelsplitter. We solicited comments and suggestions concerning the proposed rule from the public, concerned governmental agencies, the scientific community, industry, and other interested parties.

Following our review of all the comments and information received throughout the listing process, by final rule (58 FR 34926) dated June 30, 1993, we listed the Carolina heelsplitter as endangered. We addressed the comments received throughout the listing process and incorporated appropriate changes into the final rule. That decision included our determination that the designation of critical habitat was not prudent for the Carolina heelsplitter because, after a review of all the available information, we determined that the Carolina heelsplitter was threatened by taking and that the designation of critical habitat could be expected to increase the degree of such threat to the species and would not be beneficial to the species (see ''Prudency Determination'' section below).

On June 30, 1999, the Southern Appalachian Biodiversity Project and the Foundation for Global Sustainability filed a lawsuit in United States District Court for the District of Columbia against the Service, the Director of the Service, and the Secretary of the Department of the Interior, challenging the Service's ''not prudent'' critical habitat determinations for four species in North Carolina—the Carolina heelsplitter (*Lasmigona decorata*), spruce-fir moss spider (*Microhexura montivaga*), Appalachian elktoe (*Alasmidonta raveneliana*), and rock gnome lichen (*Gymnoderma lineare*). On February 29, 2000, the U.S. Department of Justice entered into a settlement agreement with the plaintiffs in which we agreed to reexamine our prudency determination and submit to the **Federal Register**, by July 1, 2001, a withdrawal of the existing not prudent determination for the Carolina heelsplitter, together with a new proposed critical habitat determination if appropriate. We agreed further that if, upon consideration of all the available information and comments, we determine that designating critical habitat is not prudent for the Carolina heelsplitter, we will submit a final rule of that finding to the **Federal Register** by January 1, 2002. On the other hand, if we determine that the designation of critical habitat is prudent for the Carolina heelsplitter, we will send a final rule of this finding to the **Federal Register** by April 1, 2002.

This proposal is the product of our reexamination of our prudency determination for the Carolina heelsplitter and reflects our interpretation of the recent judicial opinions on critical habitat designation and the standards placed on us for making a not prudent determination. If additional information becomes available on the species' biology and distribution and threats to the species, we may reevaluate this proposal to designate critical habitat, including proposing additional critical habitat, proposing the deletion or boundary refinement of existing proposed critical habitat, or withdrawing our proposal to designate critical habitat.

Prudency Determination

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time a species is determined to be endangered or threatened. Regulations under 50 CFR 424.12(a)(1) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. In our June 30, 1993, final rule, we determined that the designation of critical habitat was not prudent for the Carolina heelsplitter for both of these reasons.

A critical habitat designation has no effect on actions on private or State land unless these actions require Federal funds or a Federal permit. Section 7 of the Act, and the implementing regulations, provide for the protection of designated critical habitat as they require Federal agencies to ensure, in consultation with us, that activities they fund, authorize, or carry out are not likely to result in the destruction or adverse modification of designated critical habitat. Section 7 also requires Federal agencies to ensure, in consultation with us, that activities they fund, authorize, or carry out are not likely to jeopardize the continued existence of listed species. Regulations for the implementation of section 7 of the Act (50 CFR 402.2) provide for both a ''jeopardy'' standard and an ''adverse modification or destruction of critical habitat'' standard. The regulations at 50 CFR 402.2 define ''jeopardize the continued existence of'' as meaning to engage in an action that would reasonably be expected, directly or indirectly, to appreciably reduce the likelihood of both the ''survival and recovery'' of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species. ''Destruction or adverse modification'' is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the ''survival and recovery'' of a listed species. These regulations require that the analysis of adverse modification or destruction of critical habitat, like the jeopardy analysis, consider the detrimental effects of a proposed Federal action to both the survival and recovery of the listed species. Because of the restricted range and limited amount of suitable habitat available to the Carolina heelsplitter, we determined in the June 30, 1993, final rule that any action that would likely result in the destruction or adverse modification of the species' habitat would also likely jeopardize the species' continued existence. Because

Federal actions resulting in jeopardy are also prohibited by section 7, we determined that the designation of critical habitat would not provide any additional protection benefitting the species beyond that provided by the jeopardy standard.

In addition, we were concerned that the rarity and uniqueness of the Carolina heelsplitter could generate interest in the species and that the publicity associated with the designation of critical habitat, together with the publication of maps and descriptions of critical habitat, could increase the vulnerability of the species. The majority of the streams that support surviving populations of the species are small creeks, and the species is basically immobile and cannot escape collectors or vandals. Because all of the surviving populations are small, collection of the Carolina heelsplitter or other take would have a severe adverse effect on the species.

However, in the past few years, several of our determinations that the designation of critical habitat would not be prudent have been overturned by court decisions. For example, in *Conservation Council for Hawaii* v. *Babbitt,* the United States District Court for the District of Hawaii ruled that the Service could not rely on the ''increased threat'' rationale for a ''not prudent'' determination without specific evidence of the threat to the species at issue (2 F. Supp. 2d 1280 [D. Hawaii 1998]). Additionally, in *Natural Resources Defense Council* v. *U.S. Department of the Interior,* the United States Court of Appeals for the Ninth Circuit ruled that the Service must balance, in order to invoke the ''increased threat rationale,'' the threat against the benefit to the species of designating critical habitat 113 F. 3d 1121, 1125 (9th Cir. 1997).

We continue to be concerned that the Carolina heelsplitter is vulnerable to unrestricted collection, vandalism, or disturbance of its habitat and that these threats might be increased by the designation of critical habitat, publication of critical habitat maps, and further dissemination of location and habitat information. The low numbers and restricted range of the Carolina heelsplitter make it unlikely that its populations could withstand even moderate collecting pressure, habitat disturbance, or other take. However, at this time we do not have specific evidence for the taking, collection, trade, vandalism, or other unauthorized human disturbance specific to the Carolina heelsplitter. Consequently, we propose to withdraw our previous determination that the identification of critical habitat can be expected to increase the degree of threat to the species.

The courts also have ruled that, in the absence of a finding that the designation of critical habitat would increase threats to a species, the existence of another type of protection, even if it offers potentially greater protection to the species, does not justify a ''not prudent'' finding (*Conservation Council for Hawaii* v. *Babbitt* 2 F. Supp. 2d 1280). We are already working with Federal and State agencies, private individuals, and organizations in carrying out conservation activities for the Carolina heelsplitter and in conducting surveys for additional occurrences of the species and to assess habitat conditions. These entities are fully aware of the distribution, status, and habitat requirements for the Carolina heelsplitter, as currently known. However, the designation may provide some benefit to individuals, local and state governments, and others that join conservation efforts for the species, in that the designation may provide additional information to assist these entities in long-range planning since areas essential to the conservation of the species are more clearly defined and, to the extent currently feasible, the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. Accordingly, we withdraw our previous determination that the designation of critical habitat will not benefit the Carolina heelsplitter. Therefore, we propose that the designation of critical habitat is prudent for the Carolina heelsplitter.

Proposed Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as (i) the specific areas within the geographic area occupied by the species on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Areas outside the geographic area currently occupied by the species shall be designated as critical habitat only when a designation limited to its present range would be inadequate to ensure the conservation of the species. ''Conservation'' is defined in section 3(3) of the Act as the use of all methods and procedures necessary to bring endangered or threatened species to the point where listing under the Act is no longer necessary. Regulations under 50 CFR 424.02(j) define ''special management considerations or protection'' to mean any methods or procedures useful in protecting the physical and biological features of the environment for the conservation of listed species.

In order to be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Section 4 requires that we designate critical habitat at the time of listing and based on what we know at the time of the designation. When we designate critical habitat at the time of listing or under short court-ordered deadlines, we will often not have sufficient information to identify all areas of critical habitat. We are required, nevertheless, to make a decision and thus must base our designations on what, at the time of designation, we know to be critical habitat.

Within the geographic area occupied by the species, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain the species. We will not speculate about what areas might be found to be essential if better information became available or what areas may become essential over time. If the information available at the time of designation does not show that an area provides essential life cycle needs for the species, then the area should not be included in the critical habitat designation. Within the geographical area occupied by the species, we will not designate areas that do not now have the primary constituent elements, as defined at 50 CFR 424.12(b), and that do not now provide essential life cycle needs for the species.

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data demonstrate that the conservation needs of the species require the designation of critical habitat outside of occupied areas, we will designate critical habitat in areas outside the geographical area occupied by the species.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires Service biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials (i.e., gray literature).

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that the designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, it should be understood that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Section 4(b)(2) of the Act requires us to base critical habitat proposals on the best scientific and commercial data available after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of excluding those areas outweigh the benefits of including the areas within the critical habitat, provided the exclusion will not result in the extinction of the species.

Methods

The proposed areas of critical habitat described below constitute our best assessment of the areas needed for the conservation and recovery of the Carolina heelsplitter in accordance with the goals outlined in our recovery plan for the species (Service 1997) and are based on the best scientific and commercial information currently available to us concerning the species' known present and historical range, habitat, biology, and threats. All of the areas we propose to designate as critical habitat are within what we believe to be the geographical area occupied by the Carolina heelsplitter, include all known surviving occurrences of the species, and are essential for the conservation of the species. These proposed areas are distributed throughout the species' range with at least one occurring in the Catawba, Pee Dee, and Savannah river systems. To the extent feasible, we will continue, with the assistance of other Federal, State, and private researchers, to conduct surveys and research on the species and its habitat. If new information becomes available indicating that other areas within the Carolina heelsplitter's historical range are essential to the conservation of the species, we will revise the proposed critical habitat or designated critical habitat for the Carolina heelsplitter accordingly.

Primary Constituent Elements

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species.

When considering areas for designation as critical habitat, we are required to focus on the principal biological and physical constituent elements within the defined area that are essential to the conservation of the species (50 CFR 424.12 (b)). Although additional information is needed to better define the habitat requirements of the species, particularly the microhabitat requirements, all of the stream reaches that support occurrences of the Carolina heelsplitter are free flowing (no major impoundments) and natural (have not been channelized or otherwise significantly altered), and are not associated with (located a substantial distance from) significant point (discharges) and non-point (runoff) sources of pollutants. Although the species has been observed in a variety of substrata (see ''Background'' section), it has only been recorded from stable pockets of substrata in stream reaches with stable, well-vegetated stream bank and riparian areas, and in substrata without heavy accumulations of silt. Based on the best available information, the primary constituent elements essential for the conservation of the Carolina heelsplitter are:

1. Permanent, flowing, cool, clean water;
2. Geomorphically stable stream and river channels and banks;
3. Pool, riffle, and run sequences within the channel;
4. Stable substrata with no more than low amounts of fine sediment;
5. Moderate stream gradient;
6. Periodic natural flooding; and
7. Fish hosts, with adequate living, foraging, and spawning areas for them.

Areas Proposed for Designation as Critical Habitat

The Service's recovery plan (1997) for the Carolina heelsplitter states that the species will be considered for delisting (recovered) when there exists a total of six distinct, viable populations of the species that meet the criteria outlined in the recovery plan. Based on the most recent survey data for the Carolina heelsplitter (Keferl and Shelly 1988; Keferl 1991: Alderman 1995, 1998a, and 1998b; North Carolina Wildlife Resources Commission 1999 and 2000), there are currently six surviving populations: the Goose Creek/Duck Creek population, Waxhaw Creek population, Gills Creek population, Flat Creek/Lynches River population, Turkey Creek/Mountain Creek/Beaverdam Creek population, and Cuffeytown Creek population (see ''Background'' section). The areas that

we are proposing for designation as critical habitat for the Carolina heelsplitter include habitat for each of these populations. The lateral extent of proposed critical habitat is up to the ordinary high-water line on each bank. In addition, given the threats to the species' habitat discussed in the final listing rule (58 FR 34926) and summarized in the ''Background'' section, we believe these areas may need special management considerations or protection. We are proposing the following areas for designation as critical habitat for the Carolina heelsplitter (see Table 1 below for approximate stream lengths):

Unit 1. Goose Creek and Duck Creek (Pee Dee River System), Union County, North Carolina

Unit 1 encompasses the main stem of Goose Creek, Union County, North Carolina, from the N.C. Highway 218 Bridge, downstream to its confluence with the Rocky River, and the main stem of Duck Creek, Union County, North Carolina, from the Mecklenburg/Union County line downstream to its confluence with Goose Creek. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. In accordance with the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

Unit 2. Waxhaw Creek (Catawba River System), Union County, North Carolina

Unit 2 encompasses the main stem of Waxhaw Creek, Union County, North Carolina, from the N.C. Highway 200 Bridge, downstream to the North Carolina/South Carolina State line. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. In accordance with the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

Unit 3. Gills Creek (Catawba River System), Lancaster County, South Carolina

Unit 3 encompasses the main stem of Gills Creek, Lancaster County, South Carolina, from the County Route S–29–875, downstream to the S.C. Route 51 Bridge, east of the city of Lancaster. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. In accordance with the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

Unit 4. Flat Creek (Pee Dee River System), Lancaster County, South Carolina, and the Lynches River (Pee Dee River System), Lancaster, Chesterfield, and Kershaw Counties, South Carolina

Unit 4 encompasses the main stem of Flat Creek, Lancaster County, South Carolina, from the S.C. Route 204 Bridge, downstream to its confluence with the Lynches River, and the main stem of the Lynches River, Lancaster and Chesterfield Counties, South Carolina, from the confluence of Belk Branch, Lancaster County, northeast (upstream) of the U.S. Highway 601 Bridge, downstream to the S.C. Highway 903 Bridge in Kershaw County, South Carolina. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. In accordance with the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

Unit 5. Mountain and Beaverdam Creeks (Savannah River System), Edgefield County, South Carolina, and Turkey Creek (Savannah River System), Edgefield and McCormick Counties, South Carolina

Unit 5 encompasses the main stem of Mountain Creek, Edgefield County, South Carolina, from the S.C. Route 36 Bridge, downstream to its confluence with Turkey Creek; Beaverdam Creek, Edgefield County, from the S.C. Route 51 Bridge, downstream to its confluence with Turkey Creek; and Turkey Creek, from the S.C. Route 36 Bridge, Edgefield County, downstream to the S.C. Route 68 Bridge, Edgefield and McCormick Counties, South Carolina. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. In accordance with the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

Unit 6. Cuffytown Creek (Savannah River System), Greenwood and McCormick Counties, South Carolina

Unit 6 encompasses the main stem of Cuffytown Creek, from the confluence of Horsepen Creek, northeast (upstream) of the S.C. Route 62 Bridge in Greenwood County, South Carolina, downstream to the U.S. Highway 378 Bridge in McCormick County. This unit is part of the currently occupied range of the Carolina heelsplitter and, based on the best available information, provides the physical and biological habitat elements necessary for the life cycle needs of the species. In accordance with the recovery goals and criteria outlined in the recovery plan for the Carolina heelsplitter (Service 1997), protection of this unit is essential to the conservation of the species.

TABLE 1.—APPROXIMATE LENGTHS OF STREAM PROPOSED AS CRITICAL HABITAT FOR THE CAROLINA HEELSPLITTER

State	County	Stream	Length in kilometers (miles)
North Carolina	Union	Goose Creek	7.2 (4.5)
		Duck Creek	8.8 (5.5)
		Waxhaw Creek	19.6 (12.2)
South Carolina	Lancaster	Flat Creek	18.4 (11.4)
		Gills Creek	9.6 (6.0)
	Lancaster, Chesterfield, and Kershaw	Lynches River	23.6 (14.6)
	Edgefield	Mountain Creek	11.2 (7.0)
		Beaverdam Creek	10.8 (6.7)
	Edgefield and McCormick	Turkey Creek	18.4 (11.4)

TABLE 1.—APPROXIMATE LENGTHS OF STREAM PROPOSED AS CRITICAL HABITAT FOR THE CAROLINA HEELSPLITTER—Continued

State	County	Stream	Length in kilometers (miles)
	Greenwood and McCormick	Cuffytown Creek	20.8 (12.9)

Land Ownership

Approximately 6.0 km (3.7 mi) of Beaverdam Creek and 13.6 km (8.5 mi) of Turkey Creek that we are proposing for designation as critical habitat, are bordered by the Sumter National Forest in South Carolina, and 2.4 km (1.5 mi) of Flat Creek that we are proposing for designation as critical habitat, are bordered by the Flat Creek Heritage Preserve, which is managed by the State of South Carolina. The remainder of the areas that we are proposing for designation as critical habitat for the Carolina heelsplitter, with the exception of State road and highway rights-of-way, are under private ownership.

Effects of Critical Habitat Designation

Designating critical habitat does not, in itself, lead to the recovery of a listed species. The designation does not establish a reserve, create a management plan, establish numerical population goals, prescribe specific management practices (inside or outside of critical habitat), or directly affect areas not designated as critical habitat. Specific management recommendations for areas designated as critical habitat are most appropriately addressed in recovery and management plans and through section 7 consultation and section 10 permits.

Critical habitat receives regulatory protection only under section 7 of the Act through the prohibition against destruction or adverse modification of designated critical habitat by actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the adverse modification or destruction of proposed critical habitat. Aside from the protection that may be provided under section 7, the Act does not provide other forms of protection to land designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal land that do not involve a Federal action, the critical habitat designation would not afford any protection under the Act against such activities. Accordingly, the designation of critical habitat on private land will not have any regulatory effect on private or State activities in these areas unless those activities require a Federal permit, authorization, or funding.

Section 7(a)(4) of the Act and regulations at 50 CFR 402.10 require Federal agencies to confer with us on any action that is likely to result in the destruction or adverse modification of proposed critical habitat. ''Destruction or adverse modification'' is defined as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. These conferences, which consist of informal discussions, are intended to assist responsible agencies and the applicant, if applicable, in identifying and resolving potential conflicts. Conference reports resulting from these discussions provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference opinion if requested by a Federal agency. Formal conference opinions on proposed critical habitat are prepared according to 50 CFR 402.14 as if critical habitat were designated. We may adopt the formal conference opinion as the biological opinion when the critical habitat is designated if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If this proposal is finalized, activities on Federal land, activities on private or State land carried out by a Federal agency, or activities receiving funding or requiring a permit from a Federal agency that may affect the designated critical habitat of the Carolina heelsplitter will require consultation under section 7 of the Act. However, section 7 of the Act also requires Federal agencies to ensure that actions they authorize, fund, or carry out do not jeopardize the continued existence of listed species and to consult with us on any action that may affect a listed species. Activities that jeopardize listed species are defined as actions that ''directly or indirectly, reduce appreciably the likelihood of both the survival and recovery of a listed species'' (50 CFR 402.02). Federal agencies are prohibited from jeopardizing listed species through their actions, regardless of whether critical habitat has been designated for the species. Where critical habitat is designated, section 7 also requires Federal agencies to ensure that activities they authorize, fund, or carry out do not result in the destruction or adverse modification of designated critical habitat. Activities that destroy or adversely modify critical habitat are defined as an action that ''appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species'' (50 CFR 402.02). Common to the definitions of both ''jeopardy'' and ''destruction or adverse modification of critical habitat'' is the concept that the likelihood of both the survival and recovery of the species are appreciably reduced by the action. Because of the small size of the majority of the surviving populations of the Carolina heelsplitter, the species' restricted range, and the limited amount of suitable habitat available to the species, actions that are likely to destroy or adversely modify critical habitat are also likely to jeopardize the species. Accordingly, even though Federal agencies will be required to evaluate the potential effects of their actions on any habitat that is designated as critical habitat for the Carolina heelsplitter, this designation would not be likely to change the outcome of section 7 consultations.

Section 4(b)(8) of the Act requires us to briefly evaluate, in any proposed or final regulation that designates critical habitat, those activities that may adversely modify such habitat or may be affected by such designation. Activities that may destroy or adversely modify critical habitat are, as discussed above, those that alter the primary constituent elements to the extent that the value of critical habitat for both the survival and recovery of the Carolina heelsplitter is appreciably diminished. This may include any activity, regardless of the activity's location in relation to designated or proposed critical habitat, that would significantly alter the natural flow regime, channel morphology or geometry, or water chemistry or temperature of any of the six proposed critical habitat units, as described by the constituent elements, or any activity that could result in the significant discharge or deposition of sediment, excessive nutrients, or other organic or

chemical pollutants into any of the six proposed critical habitat units. Such activities include (but are not limited to) carrying out or issuing permits, authorization, or funding for reservoir construction; stream alterations; wastewater facility development; hydroelectric facility construction and operation; pesticide/herbicide applications; forestry operations; and road, bridge, and utility construction. These same activities also have the potential to jeopardize the continued existence of the Carolina heelsplitter, and Federal agencies are already required to consult with us on these types of activities, or any other activity, that may affect the species.

Send your requests for copies of the regulations on listed wildlife, inquiries about prohibitions and permits, or questions regarding whether specific activities will constitute adverse modification of critical habitat, to the U.S. Fish and Wildlife Service, Asheville Field Office, 160 Zillicoa Street, Asheville, North Carolina 28801.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas as critical habitat upon reaching a determination that the benefits of such exclusion outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will conduct an analysis of the economic impacts of designating the areas identified above as critical habitat prior to a final determination. When a draft economic analysis is completed, we will announce its availability with a notice in the **Federal Register** and will open a 30-day comment period at that time.

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

1. The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

2. Specific information on the numbers and distribution of the Carolina heelsplitter and what habitat is essential to the conservation of the species and why;

3. Information on specific characteristics of habitat essential to the conservation of the Carolina heelsplitter;

4. Land-use practices and current or planned activities in the subject areas and their possible effects on proposed critical habitat;

5. Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

6. Economic and other values associated with designating critical habitat for the Carolina heelsplitter, such as those derived from nonconsumptive uses (e.g., hiking, camping, bird-watching, enhanced watershed protection, improved air quality, ''existence values,'' and reductions in administrative costs); and

7. Potential adverse effects to the Carolina heelsplitter and/or its habitat associated with designating critical habitat for the species; e.g., increased risk to the species from collecting, vandalism, or the destruction of its habitat.

Please submit electronic comments in ASCII file format and avoid the use of special characters and encryption. Please also include ''Attn: [RIN 1018–AH31]'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Asheville Field Office (see **ADDRESSES** section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold also from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of this review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. If you wish to request a hearing, you must file your request in writing within 45 days of the date of this proposal. Send your request to the State Supervisor, Asheville Field Office (see ''Addresses'' section). We will give written comments submitted during the comment period equal consideration with those comments presented at a public hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this notice easier to understand, including answers to questions such as the following: (1) Are the requirements in the notice clearly stated? (2) Does the notice contain unnecessary technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the notice? (5) What else could we do to make the notice easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to the Asheville Field Office (see **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is a

significant regulatory action and has been reviewed by the Office of Management and Budget (OMB).

(a) In the economic analysis, we will determine whether this rule will have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The Carolina heelsplitter was listed as an endangered species in 1993. Since that time we have conducted, and will continue to conduct, formal and informal section 7 consultations with other Federal agencies to ensure that their actions will not jeopardize the continued existence of the Carolina heelsplitter.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency (see Table 1 below). Section 7 of the Act requires Federal agencies to ensure that they do not jeopardize the continued existence of the species. Based on our experience with the species and its needs, we believe that any Federal action or authorized action that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as ''jeopardy'' to the species under the Act.

Accordingly, we do not expect the designation of areas as critical habitat within the geographical range occupied by the species to have any incremental impacts on what actions may or may not be conducted by Federal agencies or non-Federal persons that receive Federal authorization or funding. Non-Federal persons who do not have a Federal ''sponsorship'' of their actions are not restricted by the designation of critical habitat. (However, they continue to be bound by the provisions of the Act concerning ''take'' of the species, which came into play in 1993 when the species was listed as endangered.)

(b) This rule will not create inconsistencies with other agencies' actions. Federal agencies have been required to ensure that their actions do not jeopardize the continued existence of the Carolina heelsplitter since the listing in 1993. As shown in Table 2 (below), no additional effects on agency actions are anticipated to result from the critical habitat designation. However, we will continue to review this proposed action for any inconsistencies with other Federal agency actions.

TABLE 2.—IMPACTS OF CAROLINA HEELSPLITTER LISTING AND CRITICAL HABITAT DESIGNATION

Categories of activities	Activities potentially affected by species listing only [1]	Additional activities potentially affected by critical habitat designation [2]
Federal Activities Potentially Affected.[3]	Activities such as carrying out or issuing permits, authorization, or funding for reservoir construction; stream alterations; wastewater facility development; hydroelectric facility construction and operation; pesticide/herbicide applications; forestry operations; road, bridge, and utility construction; or other activities that could result in direct or indirect impacts to the Carolina heelsplitter and/or its habitat.	None.
Private and other non-Federal Activities Potentially Affected.[4]	Activities occurring on Federal land or that require a Federal action (permit, authorization, or funding) and that involve activities such as those listed above that could result in ''take'' of the Carolina heelsplitter or damage or destruction of its habitat.	None.

[1] This column represents the activities potentially affected by listing the Carolina heelsplitter as an endangered species (June 30, 1993; 58 FR 34926) under the Endangered Species Act.
[2] This column represents the effects on activities resulting from critical habitat designation beyond the effects attributable to the listing of the species.
[3] Activities initiated by a Federal agency.
[4] Activities initiated by a private or other non-Federal entity that may need Federal authorization or funding.

(c) The proposed rule, if made final, will not significantly impact entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies currently are required to ensure that their activities do not jeopardize the continued existence of the species, and we do not anticipate that the adverse modification prohibition (resulting from the critical habitat designation) will have any incremental effects in areas of proposed critical habitat.

(d) OMB has determined that this rule will raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

In the draft economic analysis (under section 4 of the Act), we will determine whether the designation of critical habitat will have a significant effect on a substantial number of small entities. As discussed under ''Regulatory Planning and Review'' above, this rule is not expected to result in any restrictions in addition to those currently in existence for areas of proposed critical habitat.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

In the economic analysis, we will determine whether the designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographical regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As discussed above, we anticipate that the designation of critical habitat will not have any additional effects on these activities in areas of critical habitat that are within the geographical range occupied by the species.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits, or other authorization. Any such activity will require that the involved Federal agency ensure that the action will not adversely modify or destroy designated critical habitat.

b. This rule will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no new obligations on State or local governments.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications, and a takings implication assessment is not required. This proposed rule, if made final, will not ''take'' private property. The designation of critical habitat affects only Federal agency actions. Federal actions on private land could be affected by the critical habitat designation; however, we expect no regulatory effect from this designation because all proposed areas are considered to be within the geographical range occupied by the species and would be reviewed under both the jeopardy and adverse modification standards under section 7 of the Act.

This rule will not increase or decrease the current restrictions on private property concerning taking of the Carolina heelsplitter as defined in section 9 of the Act and its implementing regulations (50 CFR 17.31). Additionally, critical habitat designation does not preclude the development of habitat conservation plans and the issuance of incidental take permits. Any landowner in areas that are included in the designated critical habitat will continue to have opportunity to use his or her property in ways consistent with the survival of the Carolina heelsplitter.

Federalism

In accordance with Executive Order 13132, this rule does not have significant federalism effects. A Federalism Assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated the development of this critical habitat proposal with, appropriate State natural resources agencies in North Carolina and South Carolina. We will continue to coordinate any future designation of critical habitat for the Carolina heelsplitter with the appropriate State agencies. The designation of critical habitat for the Carolina heelsplitter imposes few, if any, additional restrictions to those currently in place and therefore has little incremental impact on State and local governments and their activities. The designation may provide some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined and, to the extent currently feasible, the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, doing so may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The Office of the Solicitor will review the final determination for this proposal. We will make every effort to ensure that the final determination contains no drafting errors, provides clear standards, simplifies procedures, reduces burdens, and is clearly written, such that the risk of litigation is minimized.

Paperwork Reduction Act

This rule does not contain any new collections of information that require approval by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq*. This rule will not impose new record-keeping or reporting requirements on State or local governments, individuals, businesses, or organizations.

National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we understand that federally recognized Tribes must be related to on a Government-to-Government basis. We are not aware of any Tribal lands essential for the conservation of the Carolina heelsplitter. Therefore, we are not proposing to designate critical habitat for the Carolina heelsplitter on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Asheville Field Office (see **ADDRESSES** section).

Author

The primary author of this document is John Fridell (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record-keeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we 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. Amend § 17.11(h), by revising the entry for the ''Heelsplitter, Carolina'' under ''CLAMS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Cricital habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
CLAMS							
*	*	*	*	*	*		*
Heelsplitter, Carolina	*Lasmigona decorata*	U.S.A. (NC, SC)	Entire	E	505	17.95(f)	NA
*	*	*	*	*	*		*

3. Amend § 17.95(f) by adding critical habitat for the Carolina heelsplitter (*Lasmigona decorata*) in the same alphabetical order as the species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and snails.*

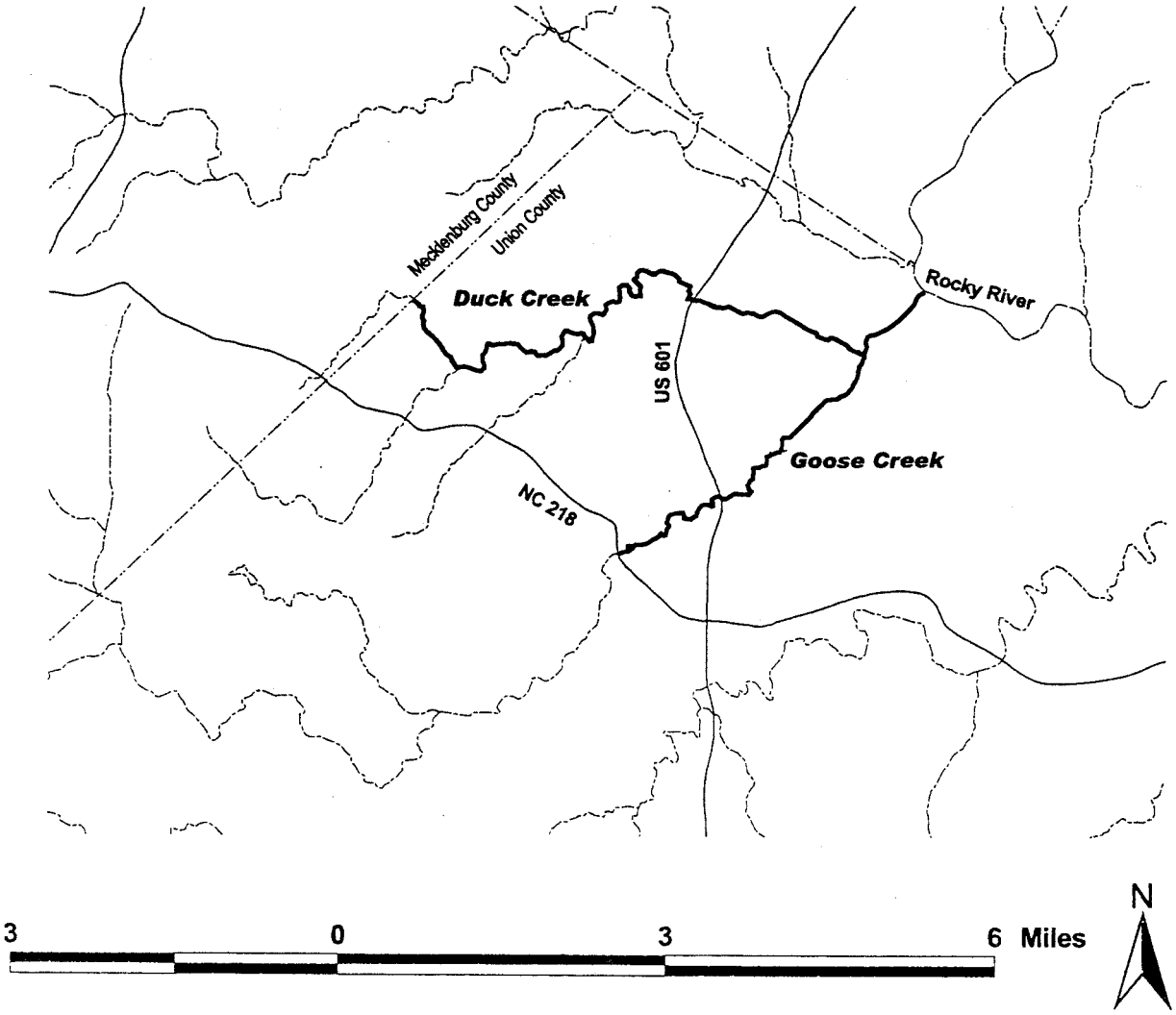
* * * * *

Carolina Heelsplitter *(Lasmigona decorata)*

1. Critical habitat units are described below and depicted in the maps that follow, with the lateral extent of each designated unit bounded by the ordinary high-water line:

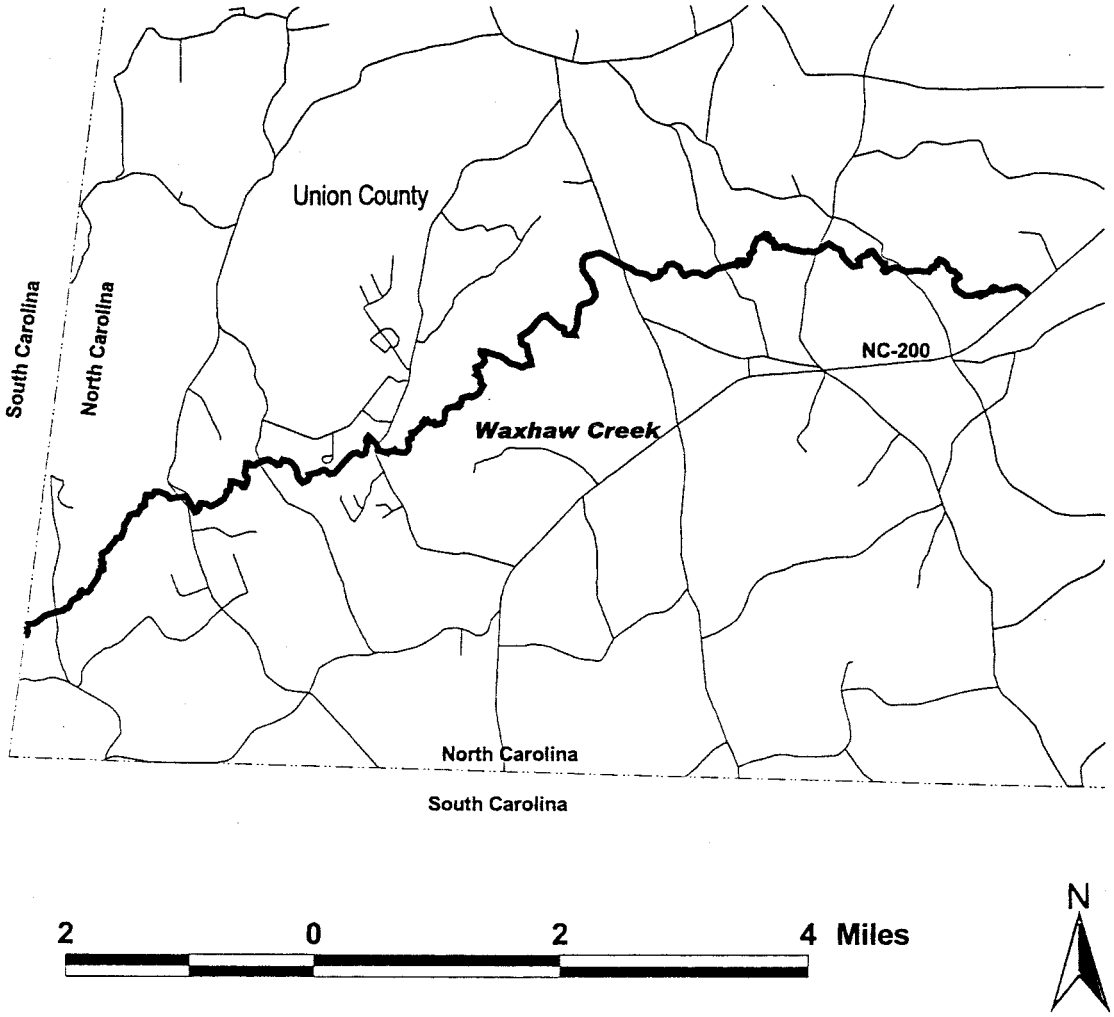
Unit 1: Union County, North Carolina—main stem of Goose Creek (Pee Dee River system) from the N.C. Highway 218 Bridge, downstream to its confluence with the Rocky River, and the main stem of Duck Creek, from the Mecklenburg/Union County line, downstream to its confluence with Goose Creek.

Unit 1. Goose Creek and Duck Creek (Pee Dee River System), Union County, North Carolina.



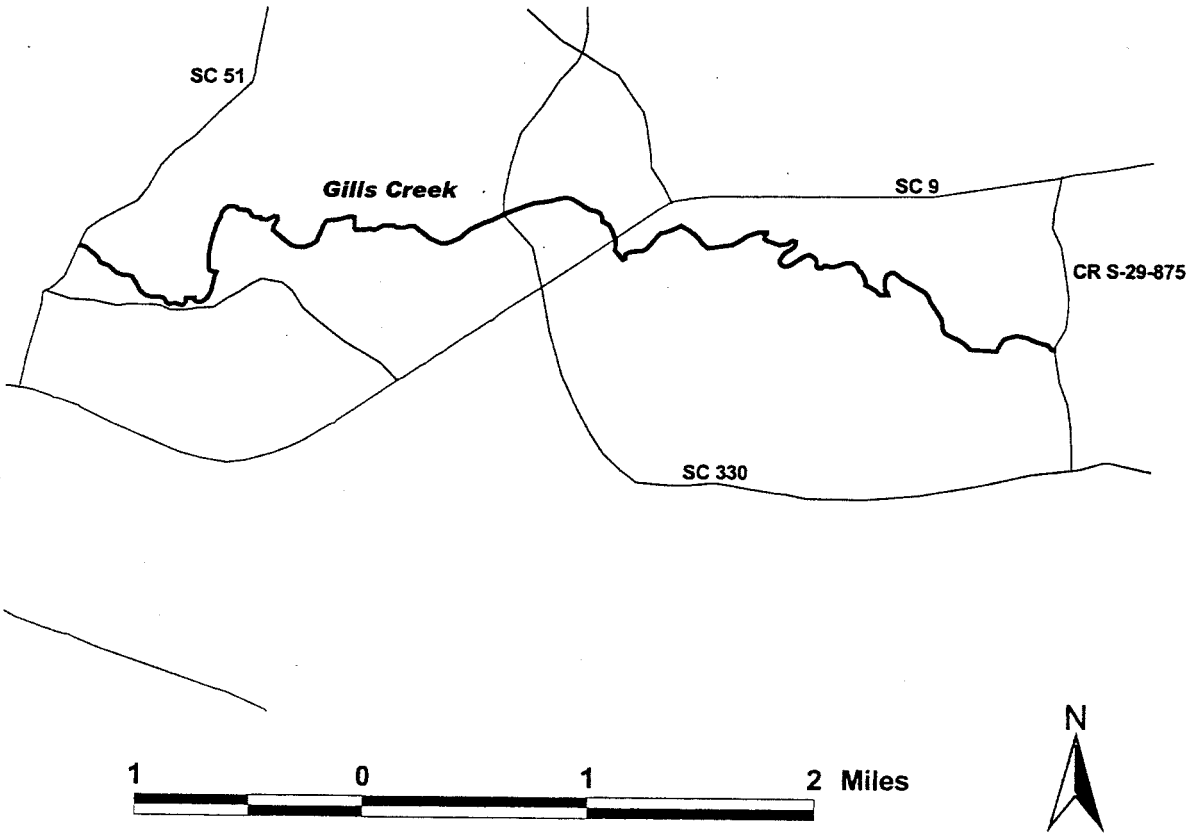
Unit 2. Union County, North Carolina—main stem of Waxhaw Creek (Catawba River system) from the N.C. Highway 200 Bridge, downstream to the North Carolina/South Carolina State line.

Unit 2. Waxhaw Creek (Catawba River System), Union County, North Carolina.



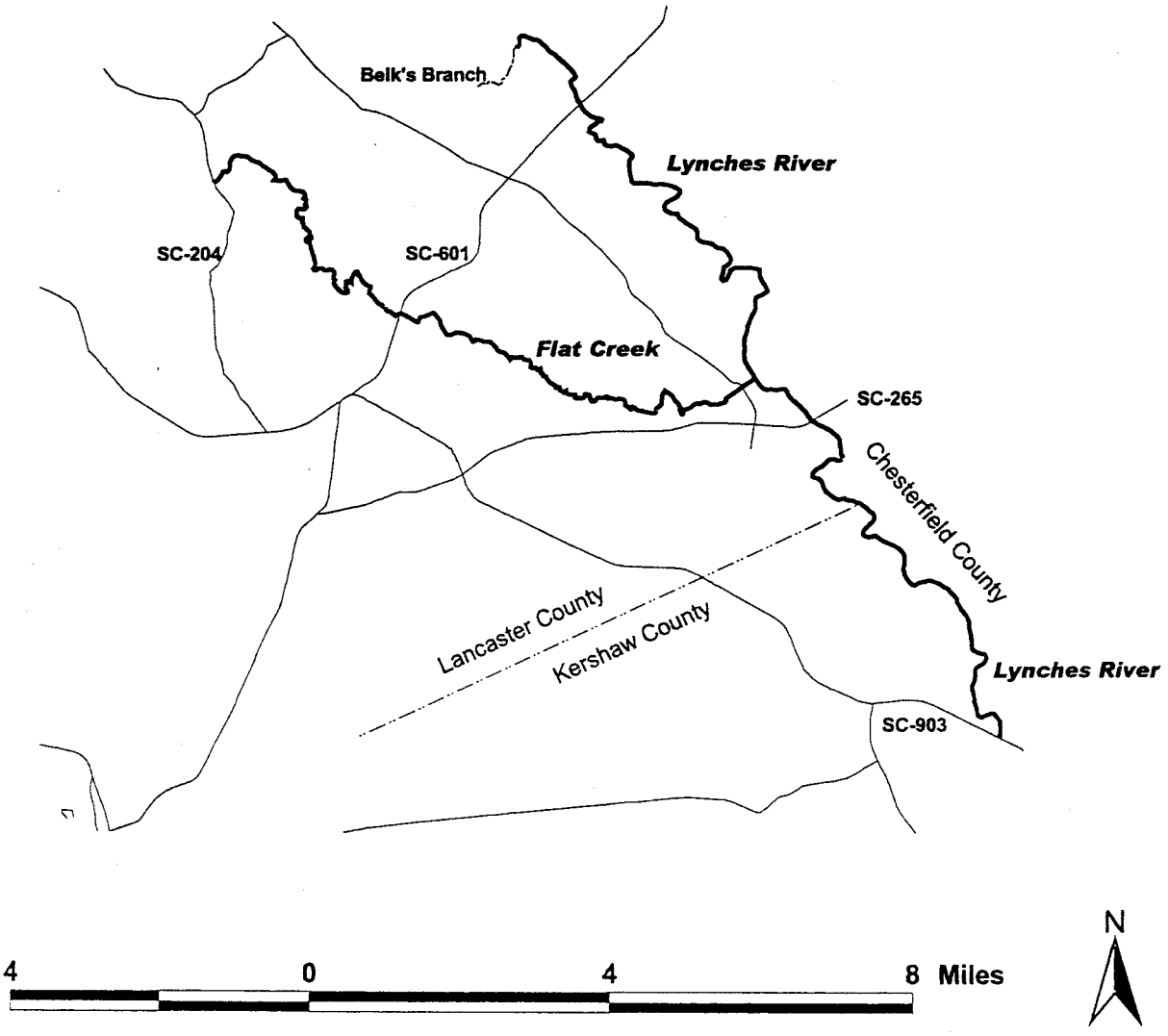
Unit 3. Lancaster County, South Carolina—main stem of Gills Creek (Catawba River system) from the County Route S–29–875, downstream to the S.C. Route 51 Bridge, east of the city of Lancaster.

Unit 3. Gills Creek (Catawba River System), Lancaster County, South Carolina.



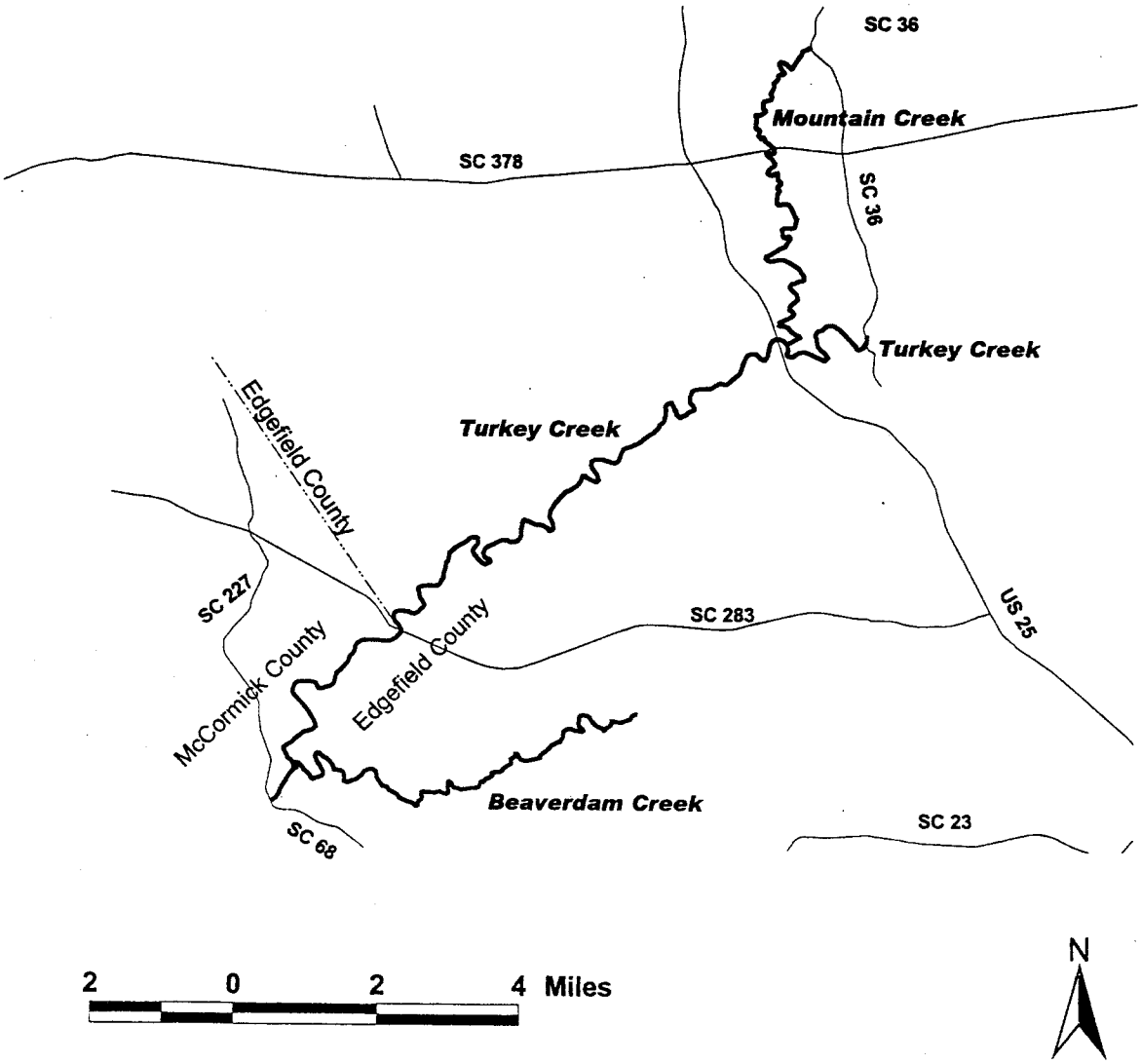
Unit 4. Lancaster, Chesterfield, and Kershaw Counties, South Carolina—main stem of Flat Creek (Pee Dee River system), Lancaster County, from the S.C. Route 204 Bridge, downstream to its confluence with Lynches River, and the main stem of the Lynches River, Lancaster and Chesterfield Counties, from the confluence of Belk Branch, Lancaster County, northeast (upstream) of the U.S. Highway 601 Bridge, downstream to the S.C. Highway 903 Bridge in Kershaw County.

Unit 4. Flat Creek and Lynches River (Pee Dee River System), Lancaster and Kershaw Counties, South Carolina.



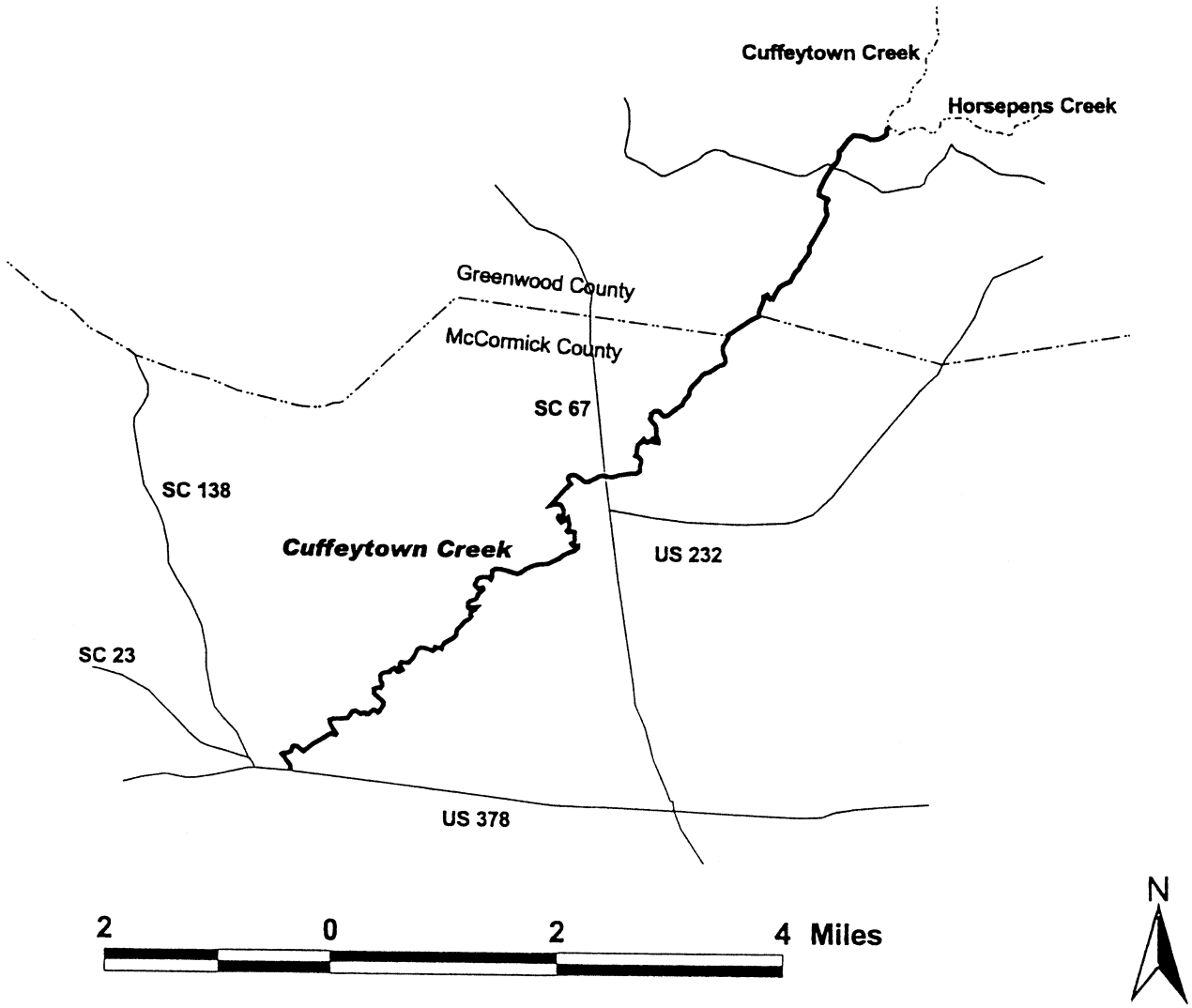
Unit 5. Edgefield and McCormick Counties, South Carolina, main stem of Mountain Creek (Savannah River system), Edgefield County, South Carolina, from the S.C. Route 36 Bridge, downstream to its confluence with Turkey Creek; Beaverdam Creek, Edgefield County, from the S.C. Route 51 Bridge, downstream to its confluence with Turkey Creek; and Turkey Creek, from the S.C. Route 36 Bridge, Edgefield County, downstream to the S.C. Route 68 Bridge, Edgefield and McCormick Counties.

Unit 5. Mountain and Beaverdam Creeks (Savannah River system), Edgefield County, South Carolina, and Turkey Creek (Savannah River system) , Edgefield and McCormick Counties, South Carolina.



Unit 6. Greenwood and McCormick Counties, South Carolina—main stem of Cuffytown Creek (Savannah River system), from the confluence of Horsepen Creek, northeast (upstream) of the S.C. Route 62 Bridge in Greenwood County, downstream to the U.S. Highway 378 Bridge in McCormick County.

Unit 6. Cuffeytown Creek (Savannah River System), Greenwood and McCormick Counties, South Carolina.



2. Within these areas, the primary constituent elements include:

(i) Permanent, flowing, cool, clean water;

(ii) Geomorphically stable stream and river channels and banks;

(iii) Pool, riffle, and run sequences within the channel;

(iv) Stable substrata with no more than low amounts of fine sediment;

(v) Moderate stream gradient;

(vi) Periodic natural flooding; and

(vii)Fish hosts, with adequate living, foraging, and spawning areas for them.

Dated: June 28, 2001.

Joseph E. Doddridge,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 01–16867 Filed 7–10–01; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 062901B]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3-day Council meeting, on July 24 through July 26, 2001, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, Wednesday, and Thursday, July 24, 25, and 26, 2001. The meeting will begin at 1:00 p.m. on Tuesday and 8:30 a.m. on Wednesday and Thursday.

ADDRESSES: The meeting will be held at the Holiday Inn by the Bay, 88 Spring Street, Portland, ME 04101; telephone (207) 775–2311. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, July 24, 2001

After introductions, the Council meeting will begin with reports on recent activities from the Council Chairman and Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, NOAA General Counsel and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. A brief period will be held for public comment on any relevant subject related to Council business. The Herring Committee will discuss and ask the Council to approve initial action on Framework Adjustment 1 to the Atlantic Herring Fishery Management Plan (FMP). The primary measures under consideration would split the total allowable catch (TAC) for Management Area 1A into two periods: January through May (6,000 mt) and June through December (54,000 mt plus any unused portion from January to May). When 95 percent of the quota for either period is projected to be reached, directed fishing would cease in Area 1A and a 2,000-pound trip limit would take effect. A review of the discussions between U.S. and Canadian fisheries representatives serving on the Transboundary Management Guidance Committee will follow the Herring Committee Report.

Wednesday, July 25, 2001

The day will start with a presentation on bioeconomic modeling and its application to fisheries management, using the American lobster fishery as a case study. Northeast Fisheries Science Center staff will hold a public review workshop to present the advisory from the 33rd Stock Assessment Workshop concerning the status of Gulf of Maine cod, redfish, and white hake. In its report, the Groundfish Committee intends to ask the Council to approve final action on Framework Adjustment 36 to the Northeast Multispecies FMP. Measures under consideration would address Gulf of Maine cod discards and mortality, an extension of or adjustment to the Western Gulf of Maine Closed Area, tuna purse seine access to the groundfish closed areas, and an expansion of the area in which the northern shrimp fishery is allowed.

Thursday, July 26, 2001

During Thursday's session, the Sea Scallop Committee will ask the Council to approve draft management measures to be analyzed in the Draft Supplemental Environmental Impact Statement for Amendment 10 to the Sea Scallop FMP. The discussion will include review of Scallop Committee, Plan Development Team and Advisory Panel recommendations. Measures under consideration include options that would address scallop area rotation and management; managing scallop catch from re-opened and open fishing areas; gear modifications to reduce scallop and finfish bycatch; general category permit management proposals; framework adjustments and annual specifications; programs to fund and administer scallop research and on-board observers; data collection and monitoring; and other measures. The Council also will discuss and may approve a control date for scallop fishing by vessels not on a scallop day-at-sea. A control date may be necessary because the Council is considering whether to limit the access of vessels holding general category permits as part of Amendment 10 to the Scallop FMP. The control date could apply to any vessel with or without a general category permit and/or to vessels that have a limited access scallop permit and that fish for sea scallops while not on a day-at-sea. Prior to meeting adjournment, the Red Crab Committee will provide an update on progress concerning development a Red Crab FMP, including management alternatives, an overfishing definition, and the collection of social and economic information.

Although other non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

The New England Council will consider public comments at a minimum of two Council meetings before making recommendations to the National Marine Fisheries Service Regional Administrator on any framework adjustment to a fishery