

nutrients into the surface water or connected groundwater at a point source or by dispersed release (non-point).

(5) Actions that would significantly alter channel morphology or geometry to a degree that appreciably reduces the value of the critical habitat for both the longterm survival and recovery of the species. Such activities could include, but are not limited to, channelization, impoundment, road and bridge construction, mining, destruction of riparian vegetation.

(6) Actions that would introduce, spread, or augment nonnative aquatic species into critical habitat to a degree that appreciably reduces the value of the critical habitat for both the longterm survival and recovery of the species. Such activities could include, but are not limited to, stocking for sport, biological control, or other purposes; aquaculture; and construction and operation of canals.

Previous Section 7 Consultations

Federal actions that we have reviewed since these 11 mussel species received protection under the Act include Federal land management plans, Federal land acquisition and disposal, road and bridge maintenance and construction, water diversion, timber harvest on Federal land, channelization, flood control, channel maintenance, water quality standards, dam construction and operation, and issuance of permits under section 404 of the Clean Water Act. Federal agencies involved with these activities included the Army Corps of Engineers (COE), U.S. Forest Service, Natural Resources Conservation Service, Environmental Protection Agency, and Federal Highway Administration. Since the original listing of these 11 mussel species, seven formal consultations have been conducted. None of these resulted in a finding that the proposed action would jeopardize the continued existence of any of the 11 species.

In each of the biological opinions resulting from these consultations, we included discretionary conservation recommendations to the action agency. Conservation recommendations are activities that would avoid or minimize the adverse effects of a proposed action on a listed species or its critical habitat, help implement recovery plans, or develop information useful to the species' conservation.

Previous biological opinions also included nondiscretionary reasonable and prudent measures, with implementing terms and conditions, which are designed to minimize the proposed action's incidental take of

these 11 mussels. Section 3(18) of the Act defines the term take as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct." Harm is further defined in our regulations (50 CFR 17.3) to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

Conservation recommendations and reasonable and prudent measures provided in previous biological opinions for these mussels have included maintaining State water quality standards, maintaining adequate stream flow rates, minimizing work in the wetted channel, restricting riparian clearing, monitoring channel morphology and mussel populations, installing signage, protecting buffer zones, avoiding pollution, using cooperative planning efforts, minimizing ground disturbance, using sediment barriers, relocating recreational trails, using best management practices to minimize erosion, and funding research useful for mussel conservation. In reviewing past formal consultations, we find that only one may need to be reinitiated as a result of this proposed designation.

On October 3, 1994, we presented a Biological Opinion to the COE and Tennessee Valley Authority (TVA) concluding that the proposed construction and operation of the Tom Bevill Reservoir on the North River, Fayette County, Alabama, would not jeopardize the continued existence of the dark pigtoe and orange-nacre mucket (U.S. Fish and Wildlife Service 1994). The dam site lies within proposed critical habitat Unit 11. This dam has not been constructed. If the applicants determine to proceed with, construction plans, this dam may adversely modify critical habitat in the North River (Unit 11), and consultation should be reinitiated.

The designation of critical habitat will have no impact on private landowner activities that do not require Federal funding or permits. Designation of critical habitat is only applicable to activities approved, funded, or carried out by Federal agencies.

If you have questions regarding whether specific activities would constitute adverse modification of critical habitat, you may contact the following Service offices:

Alabama—Daphne, FWS Ecological Services Office (251/441–5181)
Georgia—Athens, FWS Ecological Services Office (706/613–9493)

Mississippi—Jackson, FWS Ecological Services Office (601/965–4900)
Tennessee—Cookeville, FWS Ecological Services Office (931/528–6481)

Exclusions Under Section 4(b)(2)

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific and commercial information available, and that we consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat if the benefits of exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. That economic analysis will be conducted in a manner that is consistent with the ruling of the 10th Circuit Court of Appeals in *N.M. Cattle Growers Ass'n v. USFWS*. When the draft economic analysis is completed, we will announce its availability with a notice in the **Federal Register**. With publication of the notice of availability, a comment period will be opened for a minimum of 30 days to allow for public comments on the draft economic analysis and proposed rule concurrently.

Public Comments Solicited

We intend for any final action resulting from this proposal to 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 are particularly interested in comments concerning:

(1) The reasons why any area should or should not be determined to be critical habitat as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including whether the benefits of designation will outweigh any threats to the species due to designation;

(2) Specific information on the amount and distribution of habitat for these 11 mussel species, population numbers, and what habitat is essential to their conservation and why;

(3) Whether areas within proposed critical habitat are currently being managed to address conservation needs of these mussel species;

(4) Current or planned activities in the subject areas and their possible impacts on proposed critical habitats;

(5) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in