

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 17**

RIN 1018-AI76

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Five Endangered Mussels in the Tennessee and Cumberland River Basins**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose designation of critical habitat for five mussels in the Tennessee and Cumberland River Basins: the Cumberland elktoe (*Alasmidonta atropurpurea*), oyster mussel (*Epioblasma capsaeformis*), Cumberlandian combshell (*Epioblasma brevidens*), purple bean (*Villosa perpurpurea*), and rough rabbitsfoot (*Quadrula cylindrica strigillata*), all of which are species listed as endangered under the Endangered Species Act of 1973, as amended (Act or ESA). We propose to designate 13 geographic areas (units) that include rivers and streams in the Tennessee and/or Cumberland River Basins as critical habitat for these five mussel species. These 13 units encompass approximately 892 river kilometers (rkm) (544 river miles (rmi)). Proposed critical habitat includes portions of Bear Creek (Mississippi, Alabama), the Duck River (Tennessee), Obed River (Tennessee), Powell River (Tennessee, Virginia), Clinch River and its tributaries (Copper Creek and Indian Creek) (Tennessee, Virginia), Nolichucky River (Tennessee), and Beech Creek (Tennessee) in the Tennessee River System and portions of Rock Creek (Kentucky), the Big South Fork and its tributaries (Bone Camp Creek, White Oak Creek, North White Oak Creek, New River, Crooked Creek, Clear Fork, and North Prong Clear Fork) (Kentucky, Tennessee), Buck Creek (Kentucky), Marsh Creek (Kentucky), Sinking Creek (Kentucky), and Laurel Fork (Kentucky) in the Cumberland River System.

Critical habitat identifies specific areas that are essential to the conservation of a listed species, and that may require special management considerations or protection. If this proposal is made final, section 7(a)(2) of the Act requires that Federal agencies ensure that actions they fund, authorize, or carry out are not likely to jeopardize

the continued existence of an endangered or threatened species or result in the destruction or adverse modification of critical habitat. State or private actions, with no Federal involvement, are not affected.

Section 4 of the Act requires us to consider the economic and other relevant impacts of specifying any area as critical habitat. We will conduct an analysis of the economic impacts of designating these areas, 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*. We hereby solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the designation.

DATES: We will consider comments received by September 2, 2003. We must receive requests for public hearings, in writing, at the address shown in the **ADDRESSES** section by July 18, 2003.

ADDRESSES: If you wish to submit comments and information:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, TN 38501.

2. You may hand-deliver written comments and information to our Tennessee Field Office, at the above address, or fax your comments to (931) 528-7075.

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

All comments and materials received, as well as supporting documentation used in 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: Rob Tawes, at the above address (telephone (931) 528-6481, extension 213; facsimile (931) 528-7075).

SUPPLEMENTARY INFORMATION:**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 resulting from designation.

(2) Specific information on the amount and distribution of habitat for these five mussel and what habitat is essential to the conservation and why.

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

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

(5) Any foreseeable economic or other impacts resulting from the proposed designation, in particular, any impacts on small entities.

(6) Economic and other values associated with designating critical habitat for the mussels, such as those derived from nonconsumptive uses (e.g., hiking, camping, enhanced watershed protection, increased soil retention, "existence values," and reductions in administrative costs).

If you wish to comment on this proposed rule, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Electronic comments (e-mail) should avoid the use of special characters and encryption. Please also include "Attn: RIN 1018-AI76" and your name and return address in your e-mail message. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours.

Respondents may request that we withhold their home addresses, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, 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.

Disclaimer

Designation of critical habitat provides little additional protection to species. In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming