

species can be reintroduced into these areas to create the additional viable populations necessary to conserve and recover the species. We have therefore concluded that these four reaches are also essential to the conservation of the oyster mussel and Cumberlandian combshell.

Although we have concluded that they are essential, we are not proposing to designate critical habitat in each of these 4 reaches, due to their current or potential status as nonessential experimental population areas. Section 10(j) of the Act states critical habitat shall not be designated for any experimental population determined to be not essential to the continued existence of the species. On June 14, 2001, we published a final rule to designate nonessential experimental population status under section 10(j) of the Act for the reintroduction of 17 Federally listed species (including the oyster mussel and Cumberlandian combshell) to the free-flowing reach below Wilson Dam, in the Tennessee River (66 FR 32250). Therefore, we are not proposing critical habitat for the oyster mussel and Cumberlandian combshell in the Tennessee River mainstem below Wilson Dam in Colbert and Lauderdale Counties, Alabama.

In addition, we are actively considering the remaining three reaches (the lower French Broad, lower Holston, and Rockcastle Rivers) for designation as nonessential experimental populations in order to facilitate the reintroduction of the oyster mussel and Cumberlandian combshell, as well as numerous other listed mussels, fishes, and snails. Therefore, while we recognize their likely importance to our recovery strategy for these species, we are not proposing these three river reaches as critical habitat. A further discussion of these areas can be found

below (*see* Exclusions under 4(b)(2) section).

In summary, the habitat contained within the 13 proposed units described below and the habitat within the 4 historic reaches designated or under consideration for nonessential experimental population status constitute our best determination of areas essential for the conservation, and eventual recovery, of these 5 Cumberlandian mussels. We are proposing as critical habitat only 13 habitat units encompassing approximately 849 rkm (528 rmi) of stream and river channels in Alabama, Mississippi, Tennessee, Kentucky, and Virginia. Each of these units is occupied by one or more of the 5 mussels. Although these 13 areas represent only a small proportion of each species' historic range, these habitat units include a significant proportion of the Cumberlandian Region's remaining highest-quality free-flowing rivers and streams, and reflect the variety of small-stream-to-large-river habitats historically occupied by each species. Because mussels are naturally restricted by certain physical conditions within a stream or river reach (*e.g.*, flow, substrate), they may be unevenly distributed within these habitat units. Uncertainty on upstream and downstream distributional limits of some populations may have resulted in small areas of occupied habitat excluded from, or areas of unoccupied habitat included in, the designation. Proposed critical habitat may be revised for any or all of these species should new information become available prior to the final rule, and existing critical habitat may be revised if new information becomes available after the final rule.

Need for Special Management Consideration or Protection

An area designated as critical habitat contains one or more of the primary constituent elements that are essential to the conservation of the species (*see* "Primary Constituent Elements" section), and that may require special management considerations or protection. Various activities in or adjacent to each of the critical habitat units described in this proposed rule may affect one or more of the primary constituent elements that are found in the unit. These activities include, but are not limited to, those listed in the "Effects of Critical Habitat" section as "Federal Actions That May Affect Critical Habitat and Require Consultation." None of the proposed critical habitat units is presently under special management or protection provided by a legally operative plan or agreement for the conservation of the five mussel species. Therefore, we have determined that the proposed units require special management or protection.

Proposed Critical Habitat Designation

The areas that we are proposing for designation as critical habitat for the five mussels provide one or more of the primary constituent elements described above. Table 2 summarizes the location and extent of proposed critical habitat, and whether or not that critical habitat is currently occupied or unoccupied. These areas require special management considerations to ensure their contribution to the conservation of these mussels. For each stream reach proposed as a critical habitat unit, the up-stream and downstream boundaries are described in general detail below; more precise estimates are provided in the Regulation Promulgation section of this rule.

TABLE 2*.—APPROXIMATE RIVER DISTANCES, BY DRAINAGE AREA, FOR OCCUPIED AND UNOCCUPIED PROPOSED CRITICAL HABITAT FOR THE FIVE ENDANGERED MUSSEL SPECIES

Species	Approximate river distances currently occupied by the species		Approximate river distances currently unoccupied by the species	
	River kilometers	River miles	River kilometers	River miles
Cumberland elktote	204	128		
Oyster mussel	511	322	119	74.5
Cumberlandian combshell	527	330	82	51
Purple bean	330	216	154	94
Rough rabbitsfoot	390	244.5	21	13
Total	1962	1240.5	376	232.5

* Table 2 refers to the location and extent of proposed critical habitat for each species. For more detail, refer to § 17.95