

exclusion outweigh the benefits of designation, provided the exclusion will not result in the extinction of the species. Our preliminary analysis (discussed below) of the following three river reaches: the free-flowing reach of the French Broad River below Douglas Dam to its confluence with the Holston River, Sevier and Knox Counties, Tennessee; the free-flowing reach of the Holston River below Cherokee Dam to its confluence with the French Broad River, Jefferson, Grainger, and Knox Counties, Tennessee; and the free flowing reach of the Rockcastle River from the backwaters of Cumberland Lake upstream to Kentucky Route 1956 Bridge, in Laurel, Rockcastle, and Pulaski Counties, Kentucky, finds that the benefits of excluding these areas from the designation of critical habitat for the oyster mussel and Cumberlandian combshell outweighs the benefits of including them. Therefore, on the basis of our analysis below, we are proposing to exclude these three river reaches from critical habitat.

Benefits of Inclusion

The principal benefit of designating these portions of the lower French Broad, lower Holston, and Rockcastle Rivers as critical habitat would result from the requirement under section 7(a)(2) of the Act that Federal agencies consult with us to ensure that any actions that they fund, authorize, or carry out do not destroy or adversely modify critical habitat. No consultations have occurred for the oyster mussel and Cumberlandian combshell in these areas since they are not occupied by these two species. However, consultations are already occurring for other federally listed species, like the endangered pink mucket (*Lampsilis abrupta*) mussel (found in the Holston River), the threatened snail darter (*Percina tanasi*) (found in both the French Broad and Holston Rivers), and the Cumberland bean (*Villosa trabalis*) mussel (found in the Rockcastle River) in these areas. Even though these species do not have designated critical habitat, consultations evaluating impacts to the species would still take into consideration habitat and habitat impacts which may constitute take of the species. Projects that would adversely affect critical habitat for the Cumberlandian combshell and oyster mussel (if it were designated) would likely also trigger consultation with us under section 7 of the Act because of their potential to adversely affect the listed species already present. Thus, we find that the additional benefit through section 7 consultation due to designation of critical habitat for the

oyster mussel and Cumberlandian combshell would be minimal.

Since 1997, we have been involved in 25 consultations regarding the snail darter and pink mucket in the lower French Broad and Holston Rivers. Approximately 10 of these consultations have involved the Tennessee Valley Authority (TVA). TVA manages the dams upstream of the area on the lower French Broad and Holston Rivers, and issues permits for docks and recreational structures along these two river reaches. The TVA has improved water quality in the two subject reaches by instituting minimum flows for the protection of aquatic life and by increasing the dissolved oxygen content of the water. In a letter to us dated December 9, 1998, TVA expressed its support for mussel recovery efforts in the Tennessee Valley streams and tailwaters. TVA would likely be involved in consultations regarding critical habitat (if it were designated) on the Holston and French Broad Rivers. Because TVA is already working with us to improve water quality in the two subject reaches and below other dams in Tennessee, designation may reduce the success of these continued cooperative efforts.

Similarly, the segment of the Rockcastle River is listed as a State Scenic River and designated as an "Outstanding State Resource Water" (OSRW) by the State of Kentucky because of the presence of federally protected species. OSRWs are given more consideration during the State environmental review process, and their designation provides some additional protections for streams from proposed development activities, all of which affords them increased recognition and additional protections under the State's environmental review process. Since 1994, we have had only 12 informal consultations on this stretch of the Rockcastle River, all involving the Cumberland bean. These consultations included a forest management plan for the Daniel Boone National Forest. Oyster mussels and Cumberlandian combshells placed into the Rockcastle River through NEP designations would be treated as species proposed for listing by the Forest Service, and therefore would still be considered during Federal management actions under section 7 of the Act. Because this stretch has very little consultation history and possesses current protections from existing State designations and the presence of the Cumberland bean, the benefit that would be gained for the oyster mussel and Cumberlandian combshell through section 7 protections

provided by a critical habitat designation is relatively minor.

The identification of habitat essential to the conservation of the species can provide some informational benefits to the public, State and local governments, scientific organizations, and Federal agencies, and may facilitate conservation efforts. However, we believe that there would be little additional informational benefit from including the lower Holston, lower French Broad River, and Rockcastle Rivers as critical habitat, because this proposal identifies all areas that are essential to the conservation of the species, regardless of whether all of these areas are designated as critical habitat. Consequently, we believe that informational benefits will be provided to the lower Holston, French Broad, and Rockcastle Rivers, even though these areas are not proposed as critical habitat.

Benefits of Exclusion

Congress made significant changes to the Act, with the addition of section 10(j) in 1982, which provides for the designation of specific reintroduced populations of listed species as "experimental populations." This section was designed to provide us with innovative means to introduce a listed species into unoccupied habitat within its historic range when doing so would foster the conservation and recovery of the species. Experimental populations provide us with a flexible, proactive means to meet recovery criteria while not alienating stakeholders, such as municipalities and landowners, whose cooperation is essential for eventual success of the reintroduced population.

Section 10(j) increases our flexibility in managing an experimental population by allowing us to treat the population as threatened, regardless of the species' status elsewhere in its range. Threatened status gives us more discretion in developing and implementing management programs and special regulations for a population and allows us to develop any regulations we consider necessary to provide for the conservation of a threatened species. This flexibility allows us to manage the experimental population in a manner that will ensure that current and future land, water, or air uses and activities will not be unnecessarily restricted and the population can be managed for recovery purposes.

When we designate a population as experimental, section 10(j) of the Act requires that we determine whether that population is either essential or nonessential to the continued existence