

Defense Department and the provisions of Executive Order 12866 do not apply.

*b. Review Under the Regulatory Flexibility Act*

These proposed rules have been reviewed under the Regulatory Flexibility Act (Public Law 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small governments). The Corps expects that the economic impact of the identification of this area as a Danger Zone would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and, accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

*c. Review Under the National Environmental Policy Act*

A preliminary draft environmental assessment has been prepared for this action. Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact on the quality of the human environment and therefore preparation of an environmental impact statement will not be required. The environmental assessment will be finalized after the public notice period is closed and all comments have been received and considered. It may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT** above.

*d. Unfunded Mandates Act*

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

**List of Subjects in 33 CFR Part 334**

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334, as follows:

**PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS**

1. The authority citation for 33 CFR 334 continues to read as follows:

**Authority:** 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Section 334.845 would be added to read as follows:

**§ 334.845 Wisconsin Air National Guard Danger Zone, Volk Field Military Exercise Area, Lake Michigan offshore Manitowoc and Sheboygan Counties.**

(a) *The area.* The waters within an area beginning at a point at latitude 43°19'00" N., longitude 87°41'00" W.; to latitude 44°05'30" N, longitude 87°29'45" W.; to latitude 44°02'00" N., longitude 87°02'30" W.; to latitude 43°15'30" N., longitude 87°14'00" W.; thence to the point of beginning, as shown on NOAA Chart 14901 (1999) and existing aeronautical charts.

(b) *The regulation.* During specific, infrequent periods when military exercises will be conducted, as promulgated in the local notice to mariners published by the United States Coast Guard (USCG), all vessels entering the Danger Zone are advised to proceed across the area by the most direct route and without unnecessary delay. No vessel or craft of any size shall lie-to or anchor in the Danger Zone, other than a vessel operated by or for the USCG, or any other authorized agency.

(c) *Normal use.* At all other times, nothing in this section shall prohibit any lawful uses of this area.

(d) *Enforcement.* The regulation in this section shall be enforced by the Commanding Officer, VOLK Field, WI, and/or persons or agencies as he/she may designate.

Dated: September 3, 2003.

**Michael B. White,**

*Chief, Operations Division, Directorate of Civil Works.*

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-A176**

**Technical Correction; Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for Five Endangered Tennessee and Cumberland River Basin Mussels**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period, announcement of public hearing, availability of draft economic analysis, possible

modification of Unit 8 (Rock Creek); correction.

**SUMMARY:** We, the Fish and Wildlife Service, announce the availability of the draft economic analysis of this proposed critical habitat designation, and that we will hold a public hearing regarding the proposal on October 29, 2003, at Southwest Virginia Community College in Tazewell County, Virginia. This document makes a correction to the critical habitat legal description and gives notice of a possible 6.4-river-kilometer (rkm) (4-river-mile (rmi)) upstream extension of Unit 8 (Rock Creek). We are reopening the comment period for the proposal to designate critical habitat for these species to accommodate the public hearing and to allow all interested parties to comment on the proposed rule, including the new information presented for consideration regarding Unit 8 and the associated draft economic analysis. Comments previously submitted need not be resubmitted, because they will be fully considered in the final determination of the proposal.

**DATES:** *Public hearing:* The public hearing will be held from 7 to 10 p.m. Eastern Standard Time (EST) on October 29, 2003, at Southwest Virginia Community College on U.S. Highway 19, in Tazewell County, Virginia. The hearing will consist of an informational meeting in the lobby from 5:30 to 6:30 p.m. EST followed by the formal hearing, held in the main auditorium. Maps of the critical habitat units and information on the species will be available for public review one hour prior to the hearing (between 5:30 and 6:30 p.m.).

*Comment submission:* The comment period is hereby reopened until December 5, 2003. We must receive comments from all interested parties by the closing date. Any comments that we receive after the closing date will not be considered in the final decision on this proposal.

**ADDRESSES:** The public hearing will be held at Southwest Virginia Community College on U.S. Highway 19, in Tazewell County, Virginia. Copies of the draft economic analysis are available on the Internet at <http://cookeville.fws.gov/>; also, you may request copies by writing to the Field Supervisor, U.S. Fish and Wildlife Service, 446 Neal Street, Cookeville, TN 38506, or by calling Rob Tawes, Tennessee Field Office, telephone 931/528-6481, extension 213.

Written comments and materials may be submitted to us at the hearing or by any one of the following methods:

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](mailto:robert_tawes@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 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:**

##### **Background**

We listed the Cumberland elktoe (*Alasmidonta atropurpurea*), oyster mussel (*Epioblasma capsaeformis*), Cumberlandian combshell (*Epioblasma brevidens*), purple bean (*Villosa perpurpurea*), and rough rabbitsfoot (*Quadrula cylindrica strigillata*) as endangered on January 10, 1997 (62 FR 1647).

We published a proposed critical habitat designation for these five mussels in the June 3, 2003, **Federal Register** (68 FR 33234). The proposed designation 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. This proposal encompasses a total of approximately 892 rkm (544 rmi) of river and stream channels. The proposed designation and associated materials can be viewed at <http://cookeville.fws.gov/>.

Section 4(b)(2) of the Act requires that we designate critical habitat on the basis of the best scientific data available and after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided that such exclusion will not result in the extinction of the species. We have prepared a draft economic analysis concerning the proposed critical habitat designation, which is available for review and comment (see **ADDRESSES** section).

##### **Public Hearing**

Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that a public hearing be held if it is requested within 45 days of the publication of the proposed rule. The Board of Supervisors of Tazewell County, Virginia, requested a public hearing within the allotted time period. Public hearings are designed to gather relevant information that the public may have that we should consider in the proposed designation of critical habitat or the draft economic analysis.

We will hold a public hearing in Tazewell County, Virginia, on October 29, 2003, from 7 to 10 p.m. The hearing location will be Southwest Virginia Community College on U.S. Highway 19, located in Tazewell, Virginia. All

comments presented at the public hearing will be recorded by a court reporter. Maps of the critical habitat units and information on the species will be available for public review prior to the public hearing (between 5:30 and 6:30 p.m.).

#### **Correction to Proposed Critical Habitat Designation (68 FR 33234)**

##### **PART 17—[CORRECTED]**

In proposed rule FR Doc. 03-33234 published on June 3, 2003 (68 FR 33234), make the following corrections.

1. Amend the description of Unit 8 on page 33244, changing "Dolan" to "Dolen" in column 3.

##### **§ 17.11 [Corrected]**

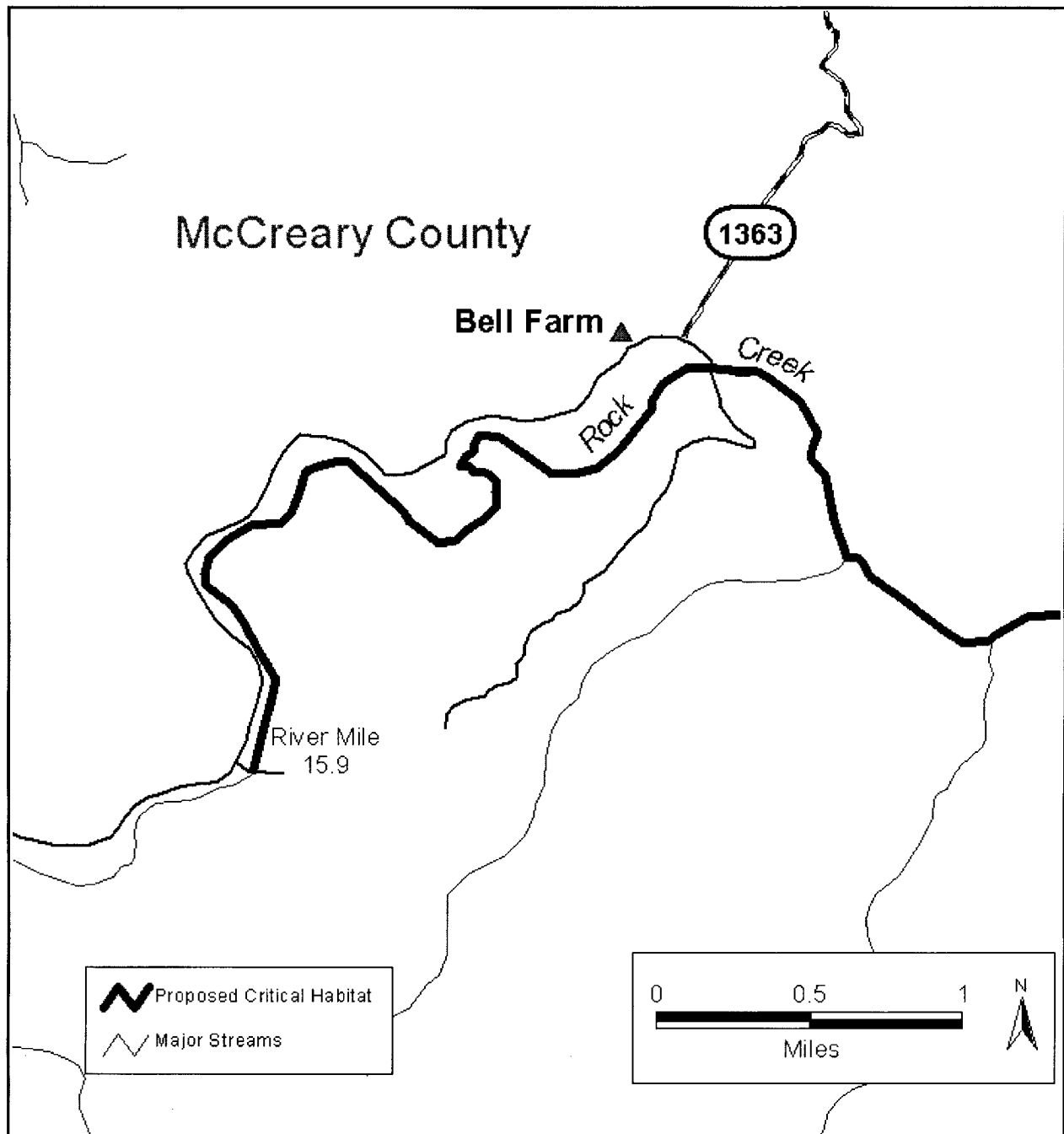
2. Amend the description of Unit 8 on page 33268, changing "Sinking Creek" to "Dolen Branch" starting in column 2.

#### **Consideration of Additional Stream Mileage in Rock Creek**

Since the publication of this proposed critical habitat rule, we have been informed by the U.S. Forest Service that we did not include a reach of Rock Creek (see "Proposed Critical Habitat Designation" section, Unit 8) upstream of Dolen Branch, in which there is a 1998 record of a live Cumberland elktoe. This specimen was collected approximately 5 rkm (3 rmi) upstream of Dolen Branch, southwest of Bell Farm. We will conduct an analysis on this reach prior to making a final determination on this proposed rule. If we determine this reach to be essential, then we intend to include it in the final designation. Inclusion of this reach would add approximately 6.4 rkm (4 rmi) to the upstream terminus of Unit 8 (Rock Creek). The new upstream terminus would be a driveway crossing of Rock Creek at rkm 25.6 (rmi 15.9) (approximately 2.6 kilometers (1.6 miles) southwest of Bell Farm). The map reflecting this extended area follows:

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## Unit 8a- Rock Creek: Upstream extension of approximately 4 miles to river mile 15.9. Critical Habitat for Cumberland elktoe



This map is provided for illustrative purposes of critical habitat only.

## Public Comments Solicited

We solicit comments on the draft economic analysis referred to in this document, as well as on any other aspect of the proposed critical habitat designation for the five Tennessee and Cumberland River Basin mussels. In order to accommodate the public hearing and public review of the draft economic analysis, we are now closing the comment period for both the proposed rule and the draft economic analysis on December 5, 2003. All previous comments and information submitted during the comment period need not be resubmitted. Refer to the **ADDRESSES** section for information on how to submit written comments and information. Our final determination on the proposed critical habitat will take into consideration comments and any additional information received.

Please submit electronic comments in an ASCII file format and avoid the use of special characters and encryption. Please also include "Attn: RIN 1018-A176" 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, please contact us directly by calling our Tennessee 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 addresses from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold 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.

We particularly seek comments concerning:

(1) Are there other types of activities, such as habitat conservation plans, related to this proposed designation of critical habitat whose costs are not reflected in the draft economic analysis? If so, please provide as much information as possible to enable us to identify those activities and address those costs.

## Author

The primary author of this document is Rob Tawes (see **ADDRESSES** section).

## Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: September 29, 2003.

**Julie MacDonald,**

*Acting Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 03-25184 Filed 10-3-03; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

**RIN 1018-AF49**

#### Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding and Proposed Rule To List the Tibetan Antelope as Endangered Throughout Its Range

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the 12-month finding that a petition to list the Tibetan antelope (*Pantholops hodgsonii*) as endangered throughout its range pursuant to the Endangered Species Act of 1973, as amended (Act, or ESA), is warranted. The best available information indicates that the total population of Tibetan antelope has declined drastically over the past three decades. This decline has resulted primarily from overutilization for commercial purposes and the inadequacy of existing regulatory mechanisms. Habitat impacts, especially those caused by domestic livestock grazing, appear to be a contributory factor in the decline, and could have potentially greater impacts in the near future. Accordingly, we herein propose to list the Tibetan antelope as endangered, pursuant to the Act. This proposed rule, if made final, would extend the Act's protection to this species. The Service seeks data and comments from the public on this proposal.

**DATES:** Comments and information may be submitted until January 5, 2004. Public hearing requests must be received by November 20, 2003.

**ADDRESSES:** Submit comments, information, and questions to the Chief, Division of Scientific Authority, U.S.

Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, VA 22203 USA; or by fax, 703-358-2276; or by e-mail, [Scientificauthority@fws.gov](mailto:Scientificauthority@fws.gov). Comments and supporting information will be available for public inspection, by appointment, from 8 a.m. to 4 p.m. at the above address.

To request copies of the regulations regarding listed wildlife or inquire about prohibitions or permits, write to: Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203 USA.

Alternatively, you may contact us by telephone, 703-358-2104 or toll free at 1-800-358-2104; or by fax, 703-358-2276; or by e-mail, [Managementauthority@fws.gov](mailto:Managementauthority@fws.gov).

#### FOR FURTHER INFORMATION CONTACT:

Eleanora Babij at the above address; or by telephone, 703-358-1708; or by fax, 703-358-2276; or by e-mail, [Scientificauthority@fws.gov](mailto:Scientificauthority@fws.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the U.S. Fish and Wildlife Service (Service) to make a finding on whether a petition to list, delist, or reclassify a species has presented substantial information indicating that the requested action may be warranted. To the maximum extent practicable, the finding shall be made within 90 days following receipt of the petition (this finding is referred to as the "90-day finding") and published promptly in the **Federal Register**. If the 90-day finding is positive (*i.e.*, the petition has presented substantial information indicating that the requested action may be warranted), Section 4(b)(3)(A) of the Act requires the Service to commence a status review of the species if one has not already been initiated under the Service's internal candidate assessment process. In addition, Section 4(b)(3)(B) of the Act also requires the Service to make a finding within 12 months following receipt of the petition on whether the requested action is warranted, not warranted, or warranted but precluded by higher priority listing actions (this finding is referred to as the "12-month finding"). The 12-month finding is also to be published promptly in the **Federal Register**.

##### Natural History

The Tibetan antelope (*Pantholops hodgsonii* sensu Wilson and Reeder 1993) is a medium-sized bovid endemic to the Tibetan Plateau in China (Tibet Autonomous Region, Xinjiang/Uygur