

DELEGATION STATUS FOR NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR NEVADA—Continued

Subpart	Air Pollution Control Agency		
	Nevada DEP	Clark County	Washoe County
B Radon Emissions From Underground Uranium			
C Beryllium	X	X	X
D Beryllium Rocket Motor Firing	X	X	
E Mercury	X	X	X
F Vinyl Chloride	X	X	
G (Reserved)			
H Emissions of Radionuclides Other Than Radon From Department of Energy Facilities	X		
I Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H	X		
J Equipment Leaks (Fugitive Emission Sources) of Benzene	X		
K Radionuclide Emissions From Elemental Phosphorus Plants	X		
L Benzene Emissions from Coke By-Product Recovery Plants	X		
M Asbestos		X	X
N Inorganic Arsenic Emissions From Glass Manufacturing Plants	X		
O Inorganic Arsenic Emissions From Primary Copper Smelters	X		
P Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities	X		
Q Radon Emissions From Department of Energy Facilities			
R Radon Emissions From Phosphogypsum Stacks			
S (Reserved)			
T Radon Emissions From the Disposal of Uranium Mill Tailings			
U (Reserved)			
V Equipment Leaks (Fugitive Emission Sources)	X		
W Radon Emissions From Operating Mill Tailings			
X (Reserved)			
Y Benzene Emissions from Benzene Storage Vessels	X		
Z-AA (Reserved)			
BB Benzene Emissions From Benzene Transfer Operations	X		
CC-EE (Reserved)			
FF Benzene Waste Operations	X		

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[FR Doc. E7-12044 Filed 6-20-07; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AU87

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Five Endangered and Two Threatened Mussels in Four Northeast Gulf of Mexico Drainages

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; reopening of comment period, availability of draft economic analysis and revised proposed critical habitat units, and announcement of public hearings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are reopening the comment period on our proposed designation of critical habitat under the Endangered Species Act of 1973, as amended (Act) for seven southeastern

U.S. mussels. On June 6, 2006, we published our original proposed rule to designate critical habitat for five endangered mussel species—fat threeridge, shinyrayed pocketbook, Gulf moccasinshell, Ochlockonee moccasinshell, and oval pigtoe—as well as two threatened species—Chipola slabshell and purple bankclimber (in this document, we refer to all seven species collectively as the seven mussels). We propose the following changes to our original proposed rule: (1) We are enlarging two previously proposed critical habitat units, and (2) we are adding one of the mussels to the list of species associated with one of our previously proposed units. We also have corrected inadvertent oversights in our original proposal. The draft economic analysis estimates potential future impacts associated with conservation efforts for the seven mussels in areas proposed for designation to be \$42.7 million to \$67.9 million over the next 20 years (undiscounted). The present value of these impacts is \$33.0 million to \$52.1 million, using a discount rate of three percent (2.21 million to 3.49 million annually), or \$24.7 million to \$38.8 million, using a discount rate of seven percent (2.31 million to 3.63 million annually). All dollar amounts

include those costs coextensive with listing. We now announce public hearings and reopen the comment period to allow all interested parties an opportunity to comment simultaneously on the original proposed rule, the newly available associated draft economic analysis, and the changes to the original proposed rule included in this document. If you previously submitted comments, you need not resubmit them; they are already part of the public record that we will consider in preparing our final rule. With the inclusion of our newly proposed river lengths, our proposed critical habitat area totals 1,908.5 river kilometers (river km) (1,185.9 river miles (river mi)). Aside from the amendments we describe in this document, our original proposed rule of June 6, 2006, stands.

DATES: We will accept public comments until August 6, 2007. We will hold three public hearings, on July 9, 10, and 11, 2007, on the proposed critical habitat designation and the draft economic analysis. See “Public Hearings” under **SUPPLEMENTARY INFORMATION** for details.

ADDRESSES: If you wish to comment, you may submit your comments and information concerning this proposal by any one of the following methods:

1. Mail or hand-deliver written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Panama City Field Office, 1601 Balboa Avenue, Panama City, FL 32405.

2. Send comments by electronic mail (e-mail) to FW4ESFRPanamaCity@fws.gov. Please see the "Public Comments Solicited" under **SUPPLEMENTARY INFORMATION** for additional information about this method.

3. Provide oral or written comments at any of the public hearings.

4. Fax your comments to 850-763-2177.

5. Submit comments via the Federal Rulemaking portal at <http://www.regulations.gov>. Follow the instructions on the site.

Please see the "Public Comments Solicited" section below for more information about submitting comments or viewing our received materials.

FOR FURTHER INFORMATION CONTACT: Gail Carmody, Field Supervisor, U.S. Fish and Wildlife Service, Panama City, FL 32405; telephone 850-769-0552; facsimile 850-763-2177. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Hearings

We will hold three public hearings on the proposed critical habitat designation and the draft economic analysis. At each location, an information session from 5 p.m. to 6:30 p.m. will precede the hearing. The public hearing will then run from 6:30 p.m. to 8:30 p.m.:

(1) July 9, 2007, Elizabeth Bradley Turner Center, Auditorium, Columbus State University, 4225 University Avenue, Columbus, GA 31807.

(2) July 10, 2007, Academic Auditorium, Room 150, Albany State University, 504 College Drive, Albany, GA 31705.

(3) July 11, 2007, Economic and Workforce Development, Building 38, Tallahassee Community College, 444 Apleyard Drive, Tallahassee, FL 32304.

Public Comments Solicited

We intend that any final action resulting from this proposal 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 particularly seek comments concerning:

(1) The reasons why habitat should or should not be designated as critical

habitat under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh threats to the species caused by designation such that designation of critical habitat is prudent;

(2) Specific information on the amount and distribution of habitat for the seven mussels, particularly what areas we should include in our designations that the species occupied at the time of listing that contain features that are essential for the conservation of the species and why; and what areas the species did not occupy at the time of listing are essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts;

(5) Information from the Department of Defense to assist the Secretary of the Interior in evaluating critical habitat on lands administered by or under the control of the Department of Defense based on any benefit provided by an Integrated Natural Resources Management Plan (INRMP) to the conservation of the seven mussels; and information regarding impacts to national security associated with the proposed designation of critical habitat;

(6) Whether the draft economic analysis identifies all State and local costs attributable to the proposed critical habitat designation, and information on any costs that we could have inadvertently overlooked;

(7) Whether the draft economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(8) Whether the draft economic analysis correctly assesses the effect on regional costs associated with any land use controls that may derive from the designation of critical habitat;

(9) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, and in particular, any impacts on small entities or families; and other information that would indicate that the designation of critical habitat would or would not have any impacts on small entities or families;

(10) Whether the draft economic analysis appropriately identifies all

costs and benefits that could result from the designation;

(11) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments;

(12) Whether the benefits of exclusion in any particular area outweigh the benefits of inclusion under section 4(b)(2) of the Act; and

(13) Economic data on the incremental effects that would result from designating any particular area as critical habitat.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES**). Please submit comments electronically to FW4ESFRPanamaCity@fws.gov. Please also include "Attn: 7 mussels critical habitat" in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your electronic message, contact us directly by calling the Panama City U.S. Fish and Wildlife Service Office at 850-769-0552. Please note that at the termination of the public comment period we will close out the e-mail address

FW4ESFRPanamaCity@fws.gov.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Copies of the draft economic analysis and the proposed rule for critical habitat designation are available on the Internet at <http://www.fws.gov/panamacity> or from the Panama City U.S. Fish and Wildlife Service Office at the address and contact numbers above.

Our final designation of critical habitat will take into consideration all comments and any additional information we received during both comment periods. If you submitted previous comments and information during the initial comment period on the June 6, 2006, proposed rule (71 FR 32746), you need not resubmit them, because they are currently part of our record and we will consider them in our development of our final rule. On the basis of public comment on this analysis and on the critical habitat proposal, and

the final economic analysis, we may, during the development of our final determination, find that areas proposed are not essential, are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion. We may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of including a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or any other relevant impact.

Background

On June 6, 2006, we published a proposed rule to designate a total of 1,864 river km (1,158 river mi) in Alabama, Florida, and Georgia as critical habitat for seven mussels (71 FR 32746). These seven mussels are the fat threeridge (*Amblema neislerii*), shinyrayed pocketbook (*Lampsilis subangulata*), Gulf moccasinshell (*Medionidus penicillatus*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), oval pigtoe (*Pleurobema pyriforme*), Chipola slabshell (*Elliptio chipolaensis*), and purple bankclimber (*Elliptoideus sloatianus*). For more information about each of these species, and our previous Federal actions concerning them, see our original proposed critical habitat rule (June 6, 2006; 71 FR 32746). We will submit for publication in the **Federal Register** a final critical habitat designation for the seven mussels on or before October 31, 2007.

Critical habitat is defined in section 3 of the Act as the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection, and specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Changes to the Proposed Rule

We announce the following changes to the June 6, 2006, proposed rule (71 FR 32746). We propose to modify the boundaries of 2 of the 11 proposed critical habitat units (Unit 2—Chipola

River, and Unit 8—Apalachicola River) based upon new information we received from the States of Alabama and Florida during our first public comment period. We are also adding the fat threeridge to the list of species associated with proposed Unit 7 (Lower Flint River, Georgia), based on new information.

In the original proposed rule, we delineated the full extent of the known post-1990 live occurrence records for the seven mussels in flowing streams as critical habitat. Barriers to the movement of potential fish hosts of the larval life stage of the mussels (dams and salt water) divided the collective extent of occurrence for the 7 species into 11 units, and we proposed each of these 11 units as critical habitat for whichever of the seven species occupy that particular unit. The upstream boundary of a unit in an occupied stream was the first perennial tributary confluence or first permanent barrier to fish passage (such as a dam) upstream of the upstream-most current occurrence record. The downstream boundary of a unit in an occupied stream was the mouth of the stream, the upstream extent of tidal influence, or the upstream extent of an impoundment, whichever comes first, downstream of the downstream-most occurrence record.

Chipola River (Unit 2) Proposed Changes

By letter dated July 28, 2006, the Wildlife and Freshwater Fisheries Division of the Alabama Department of Conservation and Natural Resources (ADCNR) provided survey data for the shiny-rayed pocketbook and the oval pigtoe within the Chipola River Basin in Alabama. In June 2006, ADCNR surveyors found live oval pigtoes and a single live shiny-rayed pocketbook at a site in Big Creek approximately 3.7 river km (2.3 river mi) upstream of the proposed boundary for critical habitat Unit 2. ADCNR surveyors also found live oval pigtoes and shiny-rayed pocketbooks at three sites in Cowarts Creek, which we did not include in the originally proposed Unit 2. These sites are located in Houston County, Alabama, in stream segments that are contiguous with the stream segments we proposed for inclusion in Unit 2—Chipola River.

The mussel survey data provided by ADCNR show that the extent of occurrence of the listed mussels in the Chipola River Basin includes Cowarts Creek and an additional portion of Big Creek that we did not include within our originally proposed boundaries of critical habitat Unit 2. These stream

reaches are perennially flowing streams that support two of the seven mussels and are contiguous for the movement of potential fish hosts within Unit 2. Therefore, consistent with the methods we employed in the original proposal, we propose to revise the boundaries of Unit 2 to include an additional portion of Big Creek (5.1 river km (3.2 river mi)) and a portion of Cowarts Creek (33.5 river km (20.8 river mi)). With these revisions, the total stream length we propose for Unit 2 increases from 190.0 river km (118.1 river mi) to 228.7 river km (142.1 river mi). Unit 2 will now include the main stem of the Chipola River and seven of its tributaries. Please see the “Proposed Regulation Promulgation” section below for a complete description of Unit 2.

Apalachicola River (Unit 8) Proposed Changes

By letter dated August 4, 2006, the Florida Fish and Wildlife Conservation Commission (FFWCC) provided survey data for the fat threeridge and purple bankclimber within the Apalachicola River Basin in Florida. On June 7, 2000, FFWCC and Florida Department of Environmental Protection (FDEP) biologists found a single live purple bankclimber in the River Styx about 1.21 river km (0.75 river mi) upstream of its confluence with the Apalachicola River, and found live fat threeridges in Kennedy Slough/Kennedy Creek, another tributary of the lower Apalachicola River (EnviroScience 2006). The FFWCC letter also identified two additional unnamed distributaries of the Apalachicola River (small streams flowing from the main channel to Brushy Creek) as streams containing the purple bankclimber and fat threeridge. However, FFWCC staff found only dead shells of both species in one of these two distributaries, and EnviroScience (2006) found only dead shells of the purple bankclimber in the other. All of these sites are located in Liberty County, Florida, in stream segments that are contiguous with the stream segments proposed for inclusion in Unit 8—Apalachicola River.

From the survey data provided by FFWCC, we have determined that the extent of occurrence of the listed mussels in the Apalachicola River Basin includes the River Styx, Kennedy Slough, and Kennedy Creek, which we did not include within our originally proposed boundaries of Unit 8. These stream reaches are perennially flowing streams that support two of the seven mussels and are contiguous for the movement of potential fish hosts with Unit 8. The FFWCC data do not constitute evidence that the two

unnamed tributaries of the Apalachicola River (feeder streams to Brushy Creek) support listed species. Only dead shells of the listed species were found in these streams a relatively short distance from the main channel of the Apalachicola River, where live fat threeridge and purple bankclimber were found. Therefore, consistent with the methods we employed in the original proposal, we propose to revise the boundaries of Unit 8 to include a portion of the River Styx (3.8 river km (2.4 river mi)), Kennedy Slough (0.9 river km (0.5 river mi)), and Kennedy Creek (1.1 river km (0.7 river mi)). With these revisions, the total stream length we propose for Unit 8 increases from 155.4 river km (96.6 river mi) to 161.2 river km (100.2 river mi). Unit 8 will now include the main stem of the Apalachicola River, two of its tributaries, Chipola Cutoff and Swift Slough, and three of its tributaries, River Styx, Kennedy Slough, and Kennedy Creek. Please see the "Proposed Regulation Promulgation" section below for a complete description of Unit 8.

Lower Flint River (Unit 7) Proposed Change

We are adding the fat threeridge to the list of species associated with proposed Unit 7 (Lower Flint River, Georgia). Fat threeridges were considered extirpated from the Flint River Basin; however, in August 2006, live individuals were found in the mainstem of the Flint River in Mitchell and Baker Counties, Georgia. This revision does not alter the proposed boundaries of Unit 7, only the listed species for which we consider Unit 7 to be critical habitat. This addition is consistent with our 2003 recovery plan for the seven mussels, in which we stated that reintroduction into a portion of the Flint Basin was necessary for the recovery of the fat threeridge.

In addition to the above substantive revisions to our proposal, we have removed Clayton County, Georgia, from the list of counties that contain proposed critical habitat. Because none of the stream segments we proposed, either originally or now, for designation is located within Clayton County, Georgia, this change is merely an editorial correction.

Summary of Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific data available, after taking into consideration the economic or any other relevant impact of specifying any particular area as critical habitat. We will continue to review any conservation or management

plans that address the species within the areas we have proposed for designation, pursuant to section 4(b)(2) and based on the definition of critical habitat provided in section 3(5)(A) of the Act.

Based on the June 6, 2006, proposed rule (71 FR 32746) to designate critical habitat for the seven mussels, we prepared a draft economic analysis of the proposed critical habitat designation (see "Public Comments Solicited" for how to obtain a copy). The draft economic analysis considers the potential economic effects of actions relating to the conservation of the seven mussels, including costs associated with sections 4, 7, and 10 of the Act, which would include costs attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for the seven mussels in critical habitat areas. The draft analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the "opportunity costs" associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use). This analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, this draft analysis looks retrospectively at costs that have been incurred since the date we listed these species as endangered or threatened (March 16, 1998; 63 FR 12664; effective date of listing was April 15, 1998) and considers costs that may occur in the 20 years following a designation of critical habitat.

As stated earlier, we solicit data and comments from the public on this draft economic analysis, as well as on all aspects of our proposal. We may revise the proposal, or its supporting documents, to incorporate or address new information we receive during this comment period.

The draft economic analysis is intended to quantify the economic impacts of all potential conservation efforts for the seven mussels; some of these costs will likely be incurred regardless of whether critical habitat is designated. It estimates potential future

impacts associated with conservation efforts for the seven mussels in areas we have proposed for designation to be \$42.7 million to \$67.9 million over the next 20 years (undiscounted). The present value of these impacts is \$33.0 million to \$52.1 million, using a discount rate of 3 percent (2.21 million to 3.49 million annually), or \$24.7 million to \$38.8 million, using a discount rate of 7 percent (2.31 million to 3.63 million annually). All dollar amounts include those costs coextensive with listing. The analysis measures lost economic efficiency associated with water management and use changes, in the event that flow regimes are modified to provide sufficient flow to conserve the seven mussels. These water management and use changes include agricultural irrigation and recreation. Up to 82 percent of the total impacts estimated in this report are associated with these water management and use changes to conserve the seven mussels. This analysis assumes that conservation efforts for the seven mussels may result in changes to water management and use, and that these changes may result in both economic efficiency and regional economic impacts. This analysis does not, however, make assumptions or recommendations regarding whether or how such water diversions could occur.

Required Determinations—Amended

In our June 6, 2006, proposed rule (71 FR 32746), we indicated that we would be deferring our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders was available in the draft economic analysis. Those data are now available for our use in making these determinations. We now affirm the information contained in original proposed rule concerning Executive Order (E.O.) 13132 (Federalism); E.O. 12988 (Civil Justice Reform); the Paperwork Reduction Act; the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951); and the National Environmental Policy Act. Based on the information made available to us in the draft economic analysis, we are amending our Required Determinations, as provided below, concerning E.O. 12866 and the Regulatory Flexibility Act, E.O. 13211 (Energy Supply, Distribution, or Use), E.O. 12630 (Takings), and the Unfunded Mandates Reform Act.

Regulatory Planning and Review

In accordance with E.O. 12866, this document is a significant rule, because it may raise novel legal and policy issues. However, we do not anticipate that it will have an annual effect on the economy of \$100 million or more or affect the economy in a material way. Due to the timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) did not formally review the proposed rule.

Further, E.O. 12866 directs Federal agencies promulgating regulations to evaluate regulatory alternatives (OMB, Circular A-4, September 17, 2003). Pursuant to Circular A-4, if the agency determines that a Federal regulatory action is appropriate, the agency will need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Act, we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat, providing that the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. We believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 802(2)), whenever an agency is required to publish a proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. In our proposed rule, we withheld our determination of whether this designation would result in a significant effect as defined under SBREFA until

we completed our draft economic analysis of the proposed designation so that we would have the factual basis for our determination.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than \$5 million in annual sales, general and heavy construction businesses with less than \$27.5 million in annual business, special trade contractors doing less than \$11.5 million in annual business, and agricultural businesses with annual sales less than \$750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation, as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the seven mussels would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (such as residential and commercial development). We considered each industry or category individually to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by the designation of critical habitat. Designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies; non-Federal activities are not affected by the designation.

In our draft economic analysis of the proposed critical habitat designation, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the seven mussels and proposed designation of their critical habitat. This analysis estimated prospective economic impacts due to the implementation of conservation efforts for the seven

mussels in three categories: agricultural irrigation, recreation, and other economic activities (changes in water management facilities, transportation, water quality, species management, and administrative costs of section 7 consultations). The types of small entities that may bear the regulatory costs are associated with these land use activities: irrigated agriculture; recreation; water supply, hydropower, and other impoundment projects; and deadhead logging. The draft economic analysis includes an Initial Regulatory Flexibility Analysis to identify opportunities and minimize the impacts in the final rulemaking. The number of potentially affected small entities for irrigated agriculture is between 4 (a few farms bearing all the impact) and 1,096 (all farms bearing a portion of the impact) with an estimated impact per small entity of \$78 to \$87,000. Recreation could impact up to 5,100 regional small businesses at an estimated \$2,700 per business. Water supply, hydropower, and other impoundment projects could have one hydropower operation affected for an estimated impact of \$5,600. Deadhead logging could have ten logging businesses affected for an estimated impact of \$2,500 per business. Based on currently available information, the Service believes that this is not a significant economic impact.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), we make the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)-(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments," with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide

funding” and the State, local, or Tribal governments “lack authority” to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. “Federal private sector mandate” includes a regulation that “would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.”

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(b) As discussed in the draft economic analysis of the proposed designation of critical habitat for the seven mussels, we expect the impacts on nonprofits and small governments to be negligible. It is likely that small governments involved with developments and infrastructure projects will be interested parties or involved with projects involving section

7 consultations for the seven mussels within their jurisdictional areas. Any costs associated with this activity are likely to represent a small portion of a local government’s budget. Consequently, we do not believe that the designation of critical habitat for the seven mussels will significantly or uniquely affect these small governmental entities. As such, a Small Government Agency Plan is not required.

Takings

In accordance with E.O. 12630 (“Government Actions and Interference with Constitutionally Protected Private Property Rights”), we have analyzed the potential takings implications of proposing critical habitat for the seven mussels. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. In conclusion, the designation of critical habitat for the seven mussels does not pose significant takings implications.

Author

The primary author of this notice is the Panama City (Florida) Field Office of the U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to further amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as proposed to be amended at 71 FR 32746, June 6, 2006, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Critical habitat for the seven mussel species (in four northeastern Gulf of Mexico drainages) in § 17.95, which was proposed to be added to the end of paragraph (f) on June 6, 2006, at 71 FR 32746, is proposed to be amended by revising paragraph (f)(1)(iii), the table in paragraph (6), paragraph (8), the introductory text of paragraph (13), and paragraph (14) in the entry for “Seven mussel species (in four northeast Gulf of Mexico drainages): purple bankclimber (*Elliptoideus sloatianus*), Gulf moccasinshell (*Medionidus penicillatus*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), oval pigtoe (*Pleurobema pyriforme*), shinyrayed pocketbook (*Lampsilis subangulata*), Chipola slabshell (*Elliptio chipolaensis*), and fat threeridge (*Amblema neislerii*),” to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(f) *Clams and snails.*

* * * * *

Seven mussel species (in four northeast Gulf of Mexico drainages): purple bankclimber (*Elliptoideus sloatianus*), Gulf moccasinshell (*Medionidus penicillatus*), Ochlockonee moccasinshell (*Medionidus simpsonianus*), oval pigtoe (*Pleurobema pyriforme*), shinyrayed pocketbook (*Lampsilis subangulata*), Chipola slabshell (*Elliptio chipolaensis*), and fat threeridge (*Amblema neislerii*).

(1) * * *

(iii) *Georgia:* Baker, Calhoun, Coweta, Crawford, Crisp, Decatur, Dooly, Dougherty, Early, Fayette, Grady, Lee, Macon, Marion, Meriwether, Miller, Mitchell, Peach, Pike, Schley, Spalding, Sumter, Talbot, Taylor, Terrell, Thomas, Upson, Webster, and Worth.

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(6) * * *

SEVEN MUSSEL SPECIES, THEIR CRITICAL HABITAT UNITS, AND STATES CONTAINING THOSE CRITICAL HABITAT UNITS

Species	Critical habitat units	States
Purple bankclimber (<i>Elliptoideus sloatianus</i>)	Units 5, 6, 7, 8, 9, 10	AL, FL, GA.
Gulf moccasinshell (<i>Medionidus penicillatus</i>)	Units 1, 2, 4, 5, 6, 7	AL, FL, GA.
Ochlockonee moccasinshell (<i>Medionidus simpsonianus</i>)	Unit 9	FL, GA.
Oval pigtoe (<i>Pleurobema pyriforme</i>)	Units 1, 2, 4, 5, 6, 7, 9, 11	AL, FL, GA.
Shinyrayed pocketbook (<i>Lampsilis subangulata</i>)	Units 2, 3, 4, 5, 6, 7, 9	AL, FL, GA.
Chipola slabshell (<i>Elliptio chipolaensis</i>)	Unit 2	AL, FL.
Fat threeridge (mussel) (<i>Amblema neislerii</i>)	Units 2, 7, 8	AL, FL, GA.

* * * * *

(8) Unit 2. Chipola River and Dry, Rocky, Waddells Mill, Baker, Marshall, Big, and Cowarts Creeks; Houston County, Alabama; and Calhoun, Gulf, and Jackson Counties, Florida. This is a critical habitat unit for the fat threeridge, shinyrayed pocketbook, Gulf moccasinshell, oval pigtoe, and Chipola slabshell.

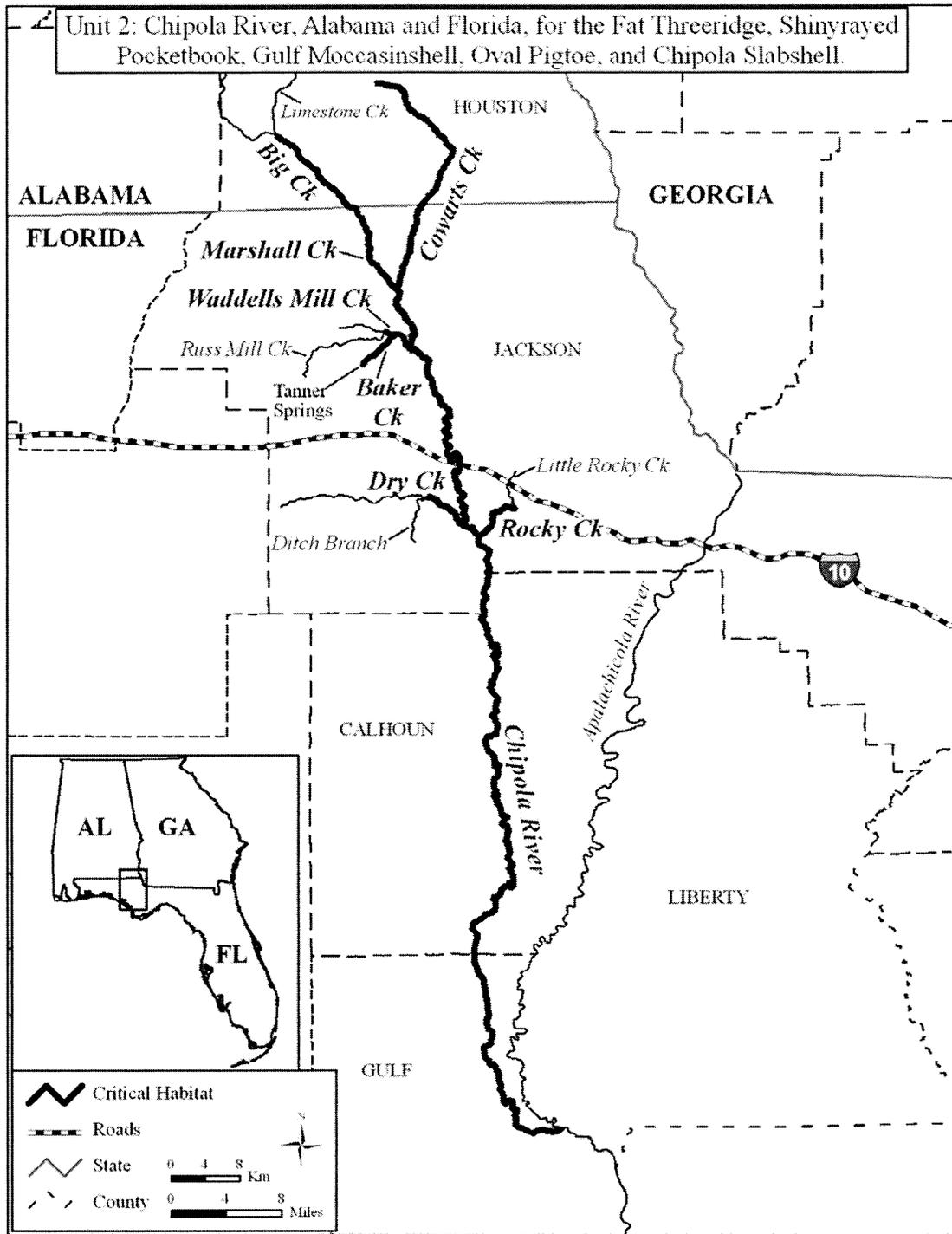
(i) *General Description:* Unit 2 includes the main stem of the Chipola River and seven of its tributaries, encompassing a total length of 228.7 river km (142.1 river mi). In the original proposed rule, we delineated the full extent of post-1990 live occurrence records for the seven mussels in flowing streams as critical habitat. Barriers to the movement of potential fish hosts of the larval life stage of the mussels (dams and salt water) divided the collective extent of occurrence for the 7 species into 11 units, and we proposed each of these 7 units as critical habitat for whichever of the seven species occupy that particular unit. The upstream boundary of a unit in an occupied stream was the first perennial tributary

confluence or first permanent barrier to fish passage (such as a dam) upstream of the upstream-most current occurrence record. The downstream boundary of a unit in an occupied stream was the mouth of the stream, the upstream extent of tidal influence, or the upstream extent of an impoundment, whichever comes first, downstream of the downstream-most occurrence record. The main stem of the Chipola River extends from its confluence with the Apalachicola River (–85.09 longitude, 30.01 latitude) in Gulf County, Florida, upstream 144.9 river km (90.0 river mi), including the reach known as Dead Lake, to the confluence of Marshall and Cowarts creeks (–85.27 longitude, 30.91 latitude) in Jackson County, Florida; Dry Creek from the Chipola River upstream 7.6 river km (4.7 river mi) to Ditch Branch (–85.24 longitude, 30.69 latitude), Jackson County, Florida; Rocky Creek from the Chipola River upstream 7.1 river km (4.4 river mi) to Little Rocky Creek (–85.13 longitude, 30.68 latitude), Jackson County, Florida; Waddells Mill Creek from the Chipola River upstream

3.7 river km (2.3 river mi) to Russ Mill Creek (–85.29 longitude, 30.87 latitude), Jackson County, Florida; Baker Creek from Waddells Mill Creek upstream 5.3 river km (3.3 river mi) to Tanner Springs (–85.32 longitude, 30.83 latitude), Jackson County, Florida; Marshall Creek from the Chipola River upstream 13.7 river km (8.5 river mi) to the Alabama-Florida State line (–85.33 longitude, 31.00 latitude), Jackson County, Florida; Cowarts Creek from the Chipola River in Jackson County, Florida, upstream 33.5 river km (20.8 river mi) to the Edgar Smith Road bridge (–85.29 longitude, 31.13 latitude), Houston County, Alabama; and Big Creek from the Alabama-Florida State line upstream 13.0 river km (8.1 river mi) to Limestone Creek (–85.42 longitude, 31.08 latitude), Houston County, Alabama. The short segment of the Chipola River that flows underground within the boundaries of Florida Caverns State Park is not included within this unit.

(ii) *Note:* Unit 2 map follows:

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(13) Unit 7. Lower Flint River and Spring, Aycocks, Dry, Ichawaynochaway, Mill, Pachitla, Little Pachitla, Chickasawhatchee, and Cooleewahee creeks in Baker, Calhoun, Decatur, Dougherty, Early, Miller, Mitchell, and Terrell Counties, Georgia. This is a critical habitat unit for the fat threeridge, shinyrayed pocketbook, Gulf

moccasinshell, oval pigtoe, and purple bankclimber. * * *

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(14) Unit 8. Apalachicola River, Chipola Cutoff, Swift Slough, River Styx, Kennedy Slough, and Kennedy Creek in Calhoun, Franklin, Gadsden, Gulf, Jackson, and Liberty Counties, Florida. This is a critical habitat unit for the fat threeridge and purple bankclimber.

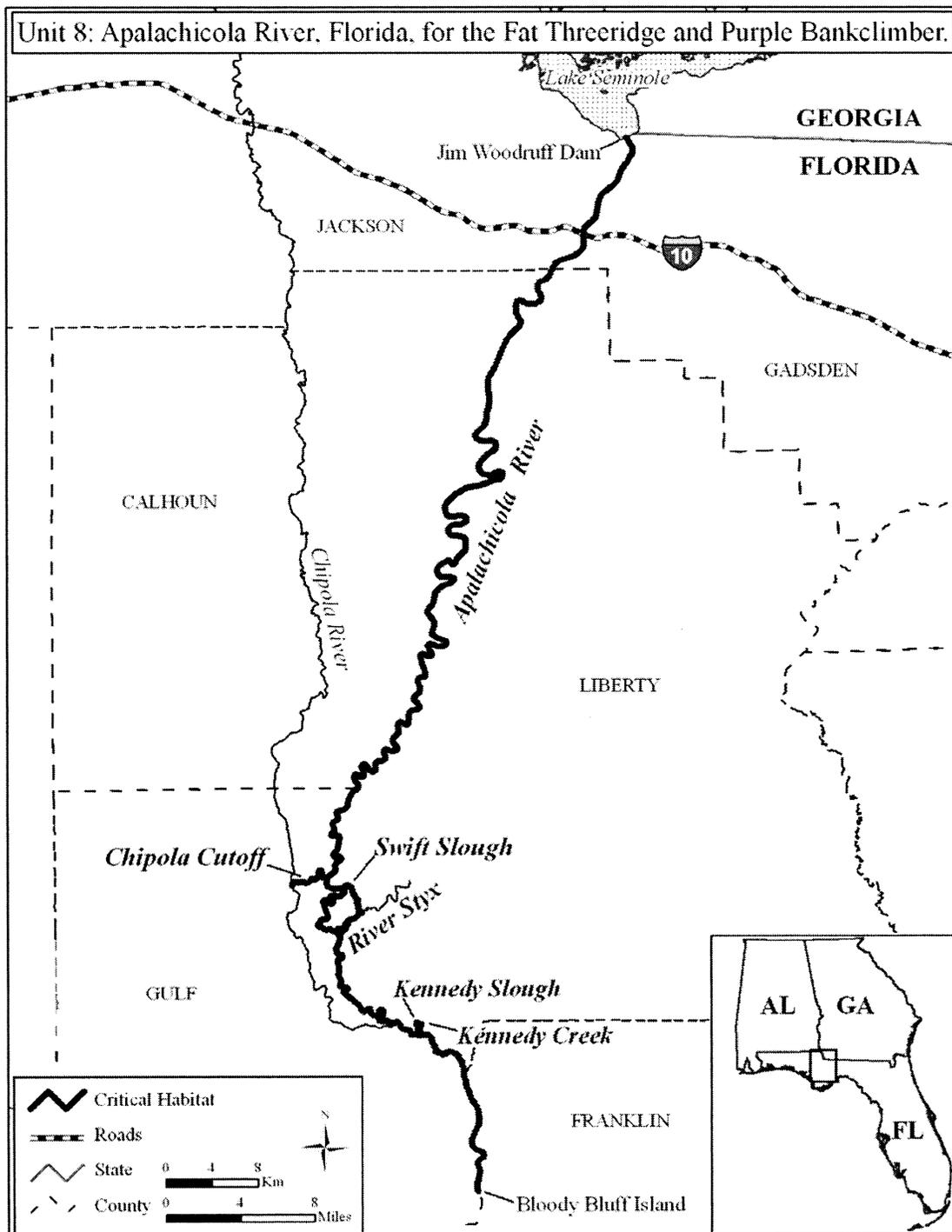
(i) *General Description:* Unit 8 includes the main stem of the Apalachicola River, two of its distributaries, Chipola Cutoff and Swift Slough, and three of its tributaries, River Styx, Kennedy Slough, and Kennedy Creek, encompassing a total length of 161.2 river km (100.2 river mi). The main stem of the Apalachicola River extends from the downstream end of Bloody Bluff Island (river mile 15.3 on U.S. Army Corps of Engineers

Navigation Charts) (-85.01 longitude, 29.88 latitude), Franklin County, Florida, through Calhoun and Liberty Counties, Florida, upstream to the Jim Woodruff Lock and Dam (which impounds Lake Seminole) (-84.86 longitude, 30.71 latitude), Gadsden and Jackson Counties, Florida; Chipola Cutoff from the Apalachicola River in Gulf County, Florida, downstream 4.5 river km (2.8 river mi) to its confluence

with the Chipola River; Swift Slough from the Apalachicola River in Liberty County, Florida, downstream 3.6 river km (2.2 river mi) to its confluence with the River Styx (-85.12 longitude, 30.10 latitude); River Styx from the mouth of Swift Slough (-85.12 longitude, 30.10 latitude) in Liberty County, Florida, downstream 3.8 river km (2.4 river mi) to its confluence with the Apalachicola River; Kennedy Slough from (-85.07

longitude, 30.01 latitude) in Liberty County, Florida, downstream 0.9 river km (0.5 river mi) to its confluence with Kennedy Creek; and Kennedy Creek from Brushy Creek Feeder (-85.06 longitude, 30.01 latitude) in Liberty County, Florida, downstream 1.1 river km (0.7 river mi) to its confluence with the Apalachicola River.

(ii) Note: Unit 8 map follows:



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Dated: June 12, 2007.

David M. Verhey,

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

[FR Doc. E7-11897 Filed 6-20-07; 8:45 am]

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