

1988). This recommended practice standardizes various terms, abbreviations, and acronyms associated with On-board diagnostics. Vehicle manufacturers shall comply with J1930 beginning with Model Year 2003.

(ii) For OBD vehicle communications, vehicle manufacturers shall comply with SAE Recommended Practice J2284, "High Speed CAN (HSC) for Vehicle Applications at 500 KBPS." (February 1999). This recommended practice defines a level of standardization in the implementation of a 500 KBPS vehicle communication network using the Controller Area Network (CAN) protocol. Vehicle manufacturers shall comply with J2284 beginning with Model Year 2003.

(iii) For pass-through reprogramming capabilities, vehicle manufacturers shall comply with SAE Recommended Practice J1962 (FEB 98), "Diagnostic Connector". This recommended practice specifies the boundaries within the passenger compartment where vehicle manufacturers may place the OBD diagnostic link connector. Vehicle manufacturers shall comply with J1962 beginning with model year 2003.

(iv) For pass-through reprogramming capabilities, vehicle manufacturers shall comply with SAE Recommended Practice J2534 (DEC 00), "Specifications for Pass-Through Reprogramming." This recommended practice provides technical specifications and information that vehicle manufacturers must supply to aftermarket tool and equipment companies to develop aftermarket pass-through reprogramming tools. Vehicle manufacturers shall comply with J2534 beginning with model year 2003.

(17) *Reporting Requirements.* Manufacturers shall provide to the Administrator reports on an annual basis and upon request of the Administrator, that describe the performance of their individual Web sites. These annual reports shall be submitted to the Administrator electronically utilizing non-proprietary software in the format as agreed to by the Administrator and the manufacturers. These annual reports shall include, at a minimum, monthly measurements of the following parameters:

(i) Total successful requests. This is measured in number of files (including graphic interchange formats (GIFs) and joint photographic expert group (JPEG) images, i.e. electronic images such as wiring or other diagrams or pictures). This is defined as the total successful requests counts all the files which have been requested, including pages, graphics, etc.

(ii) Average successful requests per day (measured in number of files). This is defined as reports of the average successful requests per day of all files which have been requested, including pages, graphics, etc.

(iii) Total successful requests for pages [report on number of pages (including graphic interchange formats (GIFs) and joint photographic expert group (JPEG) images, i.e. electronic images such as wiring or other diagrams or pictures). This is defined as the total successful requests counts all the documents that were returned or where the document was requested but was not needed because it had not been recently modified and the user could use a cached copy.

(iv) Total failed requests (measured in number of files). This is defined as the total failed requests counts all the files which were requested but failed requests because they could not be found or is read-protected. This includes pages, graphics, etc.

(v) Total redirected requests (measured in number of files). This is defined as redirected requests that indicate that the user was directed to a different file instead.

(vi) Number of distinct files requested (measured in number of files). This is defined as the number of different file types that were requested (i.e., html, pdf, txt).

(vii) Number of distinct hosts served (measured in number of files). This is defined as reports on the number of different computers where requests have come from.

(viii) Corrupt logfile lines (measured in number of lines). This is defined as the lines in the logfile that were unreadable by the computer.

(ix) Total data transferred (measured in bytes). This is defined as the total amount of data transferred from one place to another.

(x) Average data transferred per day (measured in bytes). This is defined as the average amount of data transferred per day from one place to another.

(xi) Daily Summary (measured in number of files/pages by day of week). This is defined as the total number of requests in each day of the week, over the time period given at the very top of the report.

(xii) Daily Report (measured in number of files/pages by day of month). This is defined as how many requests there were in each day of a specific month.

(xiii) Hourly Summary (measured in number of files/pages by hour of day). This is defined as the total number of requests for each hour of the day, over a specific time period.

(xiv) Request Report (measured in number of files/pages by individual URL). This is defined as which files were downloaded.

(xv) Referrer Report (measured in number of files/pages by individual referring URL). This is defined as which pages linked to your files.

(xvi) Browser Summary (measured in number of files/pages by browser type, i.e., Netscape, Internet Explorer). This is defined as the versions of browsers by vendor.

(xvii) Browser Report (measured in number of files/pages by browser type, i.e., Mozilla 4.0). This is defined as a list of the detailed versions of browsers used.

(18) *Prohibited Acts, Liability and Remedies.* (i) It is a prohibited act for any person to fail to promptly provide or cause a failure to promptly provide information as required by this paragraph (f) or to otherwise fail to comply or cause a failure to comply with any provision of this paragraph (f).

(ii) Any person who fails or causes the failure to comply with any provision of this subsection is liable for a violation of that provision. A corporation is presumed liable for any violations of this subpart that are committed by any of its subsidiaries, affiliates or parents that are substantially owned by it or substantially under its control.

(iii) Any person who violates a provision in this paragraph (f) shall be subject to a civil penalty of not more than \$27,500 per day for each violation. In addition, such person shall be liable for all other remedies set forth in Title II of the Clean Air Act, remedies pertaining to provisions of Title II of the Clean Air Act, or other applicable provisions of law.

[FR Doc. 01-14471 Filed 6-7-01; 8:45 am]

BILLING CODE 6560-50-P

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018-AF96

### Endangered and Threatened Wildlife and Plants; Proposed Establishment of Nonessential Experimental Population Status for 4 Fishes Into the Tellico River, From the Backwaters of Tellico Reservoir Upstream to Tellico River Mile 33, in Monroe County, Tennessee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

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**SUMMARY:** We, the Fish and Wildlife Service (Service), propose to reintroduce two federally listed endangered fishes—the duskytail darter (*Etheostoma percnurum*) and smoky madtom (*Noturus baileyi*)—and two federally listed threatened fishes—the yellowfin madtom (*Noturus flavipinnis*) and spotfin chub (=turquoise shiner) (*Cyprinella (=Hybopsis) monacha*)—into the Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile (TRM) 19 (30.4 kilometers (km))) and TRM 33 (52.8 km), near the Tellico Ranger Station, in Monroe County, Tennessee. These populations would be established as nonessential experimental populations (NEPs) in accordance with section 10(j) of the Endangered Species Act of 1973, as amended (Act). This area is identified as the proposed NEP Area. We would manage these populations under provisions of this special rule.

**DATES:** Comments must be received by August 7, 2001.

**ADDRESSES:** Send comments and information concerning this proposal to the State Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard G. Biggins at 828/258-3939, ext. 228; facsimile 828/258-5330; or e-mail richard\_biggins@fws.gov.

**SUPPLEMENTARY INFORMATION:**

**Background**

1. *Legislative:* Congress made significant changes to the Endangered Species Act of 1973, as amended (Act), with the addition of section 10(j), which provides for the designation of specific reintroduced populations of listed species as “experimental populations.” Previously, we had authority to reintroduce populations into unoccupied portions of a listed species’ historical range when doing so would foster the conservation and recovery of the species. However, local citizens often opposed these reintroductions because they were concerned about the placement of restrictions and prohibitions on Federal and private activities. Under section 10(j), the Secretary of the Department of the Interior can designate reintroduced populations established outside the species’ current range, but within its historical range, as “experimental.”

Under the Act, species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of a listed species. “Take” is defined by the Act as harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitats. It mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species. It also states that Federal agencies will, in consultation with the Service, insure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency.

Section 10(j) is designed to increase our flexibility in managing an experimental population by allowing us to treat the population as threatened, regardless of the species’ designation elsewhere in its range. Threatened designation gives us more discretion in developing and implementing management programs and special regulations for such a population and allows us to develop any regulations we consider necessary to provide for the conservation of a threatened species. In situations where we have experimental populations, most of the section 9 prohibitions that apply to threatened species no longer apply, and the special rule contains the prohibitions and exceptions necessary and appropriate to conserve that species. Regulations for NEPs may be developed to be more compatible with routine human activities in the reintroduction area.

Based on the best available information, we must determine whether experimental populations are “essential,” or “nonessential,” to the continued existence of the species. An experimental population that is essential to the survival of the species is treated as a threatened species. An experimental population that is nonessential to the survival of the species is also treated as a threatened species. However, for section 7 interagency cooperation purposes, if the NEP is located outside of a National Wildlife Refuge or National Park, it is treated as a species proposed for listing.

For the purposes of section 7 of the Act, in situations where there is a nonessential experimental population located within a National Wildlife Refuge or National Park (treated as threatened), section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act would apply. Section 7(a)(1) requires all Federal agencies to use their authorities to conserve listed species. Section 7(a)(2) requires that Federal agencies consult with the Service before authorizing, funding, or carrying out any activity that would likely jeopardize the continued existence of a listed species or adversely modify its critical habitats. When NEPs are located outside a National Wildlife Refuge or National Park, only two provisions of section 7 would apply; section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to informally confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. However, since we determined that the NEP is not essential to the continued existence of the species, it is very unlikely that we would ever determine jeopardy for a project impacting a species within an NEP.

Individuals used to establish an experimental population may come from a donor population, provided their removal is not likely to jeopardize the continued existence of the species, and appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal.

2. *Biological:* Since the mid-1980s, Conservation Fisheries, Inc. (CFI), with support from us, the Tennessee Wildlife Resources Agency (TWRA), U.S. Forest Service (USFS), National Park Service, Tennessee Valley Authority (TVA), and Tennessee Aquarium (TA), has reintroduced the smoky madtom, duskytail darter, yellowfin madtom, and spotfin chub into Abrams Creek, within the Great Smoky Mountains National Park, Blount County, Tennessee. We have evidence that all four species are becoming reestablished in Abrams Creek (Rakes *et al.* 1998). Based on this success and CFI’s intimate knowledge of the fishes’ habitat needs, we contracted them to survey the Tellico River to determine if we could expand the recovery program for these fishes into the Tellico River.

CFI determined that the Tellico River appears to contain ideal habitat for the reintroduction of the four fishes, between the backwaters of the Tellico Reservoir (approximately Tellico River

mile (TRM) 19 (30.4 kilometers (km))) and TRM 33 (52.8 km), near the Tellico Ranger Station, in Monroe County, Tennessee (Rakes and Shute 1998). CFI concluded that the Tellico River's overall water quality and clarity, combined with substrate quality, were somewhat less optimal than Citico Creek, where three of the four species currently exist. However, they also concluded that the Tellico River contains as good or better habitat than that which exists in Abrams Creek, where reintroductions of all four species are apparently succeeding.

Rakes and Shute (1998) reported that there are no confirmed historical collection records for these fishes from the Tellico River. However, they believe that all four species probably occurred in the river historically. They based their conclusion on two facts—(1) That the Tellico River is a Little Tennessee tributary just downstream from the mouths of Abrams and Citico Creeks (all four fishes historically occurred in these creeks) and (2) that all three streams drain the same physiographic provinces (Blue Ridge and Ridge and Valley). Additionally, all four species historically had access to the Tellico River. Prior to the construction of reservoirs on the main stem of the Little Tennessee River, no physical barriers prevented the movement of these fishes among Abrams Creek, Citico Creek, and the Tellico River (Peggy Shute, TVA, personal communication, 1998).

3. *Recovery Efforts:* We listed the duskytail darter (*Etheostoma percnurum*) (Jenkins 1994) as an endangered species on April 27, 1993 (58 FR 25758), and completed the recovery plan for this species in March 1994 (Service 1994). Although likely once more widespread in the upper Tennessee and middle Cumberland River systems, the species was historically known from only six populations—Little River and Abrams Creek, Blount County, Tennessee; Citico Creek, Monroe County, Tennessee; Big South Fork Cumberland River, Scott County, Tennessee, and McCreary County, Kentucky; Copper Creek and the Clinch River (this is one population), Scott County, Virginia; and the South Fork Holston River, Sullivan County, Virginia (Service 1994). The South Fork Holston River population is apparently extirpated. The Little River, Copper Creek/Clinch River, and Big South Fork Cumberland River populations are extant but small. CFI has reintroduced the duskytail darter into Abrams Creek, where a population is apparently becoming reestablished (Rakes *et al.* 1998).

The downlisting criteria (reclassification from endangered to threatened status) in the Duskytail Darter Recovery Plan are: (1) Protect and enhance existing populations and reestablish a population so that at least three distinct viable duskytail darter populations exist, (2) complete studies of the species' biological and ecological requirements, (3) develop management strategies from these studies that are or are likely to be successful, and (4) ensure that no foreseeable threats exist which would likely threaten the continued existence of the three aforementioned viable populations. The delisting criteria in the recovery plan are: (1) Protect and enhance existing populations and reestablish populations so that at least five distinct viable duskytail darter populations exist, (2) complete studies of the species' biological and ecological requirements, (3) develop management strategies from these studies that are or are likely to be successful, and (4) ensure that no foreseeable threats exist which would likely threaten the continued existence of the five aforementioned viable populations.

We listed the smoky madtom (*Noturus baileyi*) (Taylor 1969) as an endangered species on October 26, 1984 (49 FR 43065), and finalized the recovery plan for this species in August 1985 (Service 1985). Although once probably more widespread in tributaries to the lower Little Tennessee River system, this species was historically collected from only two creeks—Abrams Creek, Blount County, Tennessee, and Citico Creek, Monroe County, Tennessee (Service 1985). The Citico Creek population is still extant. CFI has reintroduced smoky madtom into Abrams Creek, and a population is apparently becoming reestablished (Rakes *et al.* 1998).

The downlisting criteria in the Smoky Madtom Recovery Plan are: (1) Protect the existing Citico Creek population and reintroduce the species into Abrams Creek so that at least two distinct viable smoky madtom populations exist and (2) eliminate threats to the species by implementing management activities. The delisting criteria in the recovery plan are to: (1) Protect and enhance existing populations and reestablish populations so that at least four distinct viable smoky madtom populations (Abrams and Citico Creeks, plus two others) exist; (2) implement successful management plans for the populations in Abrams and Citico Creeks; and (3) protect all four populations and their habitat from present and foreseeable threats that could interfere with the survival of any of the populations.

We listed the yellowfin madtom (*Noturus flavipinnis*) (Taylor 1969) as a threatened species on September 9, 1977 (42 FR 45527), and finalized the recovery plan for this species in June 1983 (Service 1983a). This fish was probably once widely distributed in the Tennessee drainage, from the Chickamauga system upstream (Service 1983a). However, the yellowfin madtom was historically known from only six streams—South Chickamauga Creek, Catoosa County, Georgia; Hines Creek, a Clinch River tributary, Anderson County, Tennessee; North Fork Holston River, Smyth County, Virginia; Copper Creek, Scott and Russell Counties, Virginia; Powell River, Hancock County, Tennessee; and Citico Creek, Monroe County, Tennessee (Service 1983a). Although there are no historical yellowfin madtom records from Abrams Creek, Blount County, Tennessee, Lennon and Parker (1959) reported that the brindled madtom (the name given by early collectors for the yellowfin) was collected during a reclamation project of lower Abrams Creek in 1957. Based on this observation, Dinkins and Shute (1996) and others believe the species once occurred in the middle and lower reaches of Abrams Creek. Three small populations still persist—Citico Creek, Copper Creek, and the Powell River. CFI has reintroduced the species into Abrams Creek, and a population is apparently becoming reestablished (Rakes *et al.* 1998).

The delisting criteria in the Yellowfin Madtom Recovery Plan are to: (1) Protect and enhance existing populations and/or reestablish populations so viable populations exist in Copper Creek, Citico Creek, and the Powell River; (2) recreate and/or discover two additional viable populations; (3) ensure that noticeable improvements in coal-related problems and substrate quality exist in the Powell River; and (4) protect the species and its habitat in all five rivers from present and foreseeable threats that may adversely affect essential habitat or the survival of any of the populations.

We listed the spotfin chub (=turquoise shiner) (*Cyprinella (=Hybopsis) monacha*) (Cope 1868) as a threatened species on September 9, 1977 (42 FR 45527), and finalized the recovery plan for this species in November 1983 (Service 1983b). This once widespread species was historically known from 24 streams in the upper and middle Tennessee River system. It is now extant in only four rivers/river systems—the Buffalo River at the mouth of Grinders Creek, Lewis County, Tennessee; Little Tennessee River, Swain and Macon Counties, North Carolina; Emory River

system (Obed River, Clear Creek, and Daddys Creek) Cumberland and Morgan Counties, Tennessee; Holston River and its tributary, the North Fork Holston River, Hawkins and Sullivan Counties, Tennessee, and Scott and Washington Counties, Virginia (Service 1983b; P. Shute, TVA, personal communication, 1998). CFI has reintroduced the species into Abrams Creek, and there are indications that it may become reestablished (Rakes *et al.* 1998).

The delisting criteria in the Spotfin Chub Recovery Plan are to: (1) Protect and enhance existing populations and/or reestablish populations so that viable populations exist in the Buffalo River system, upper Little Tennessee River, Emory River system, and lower North Fork Holston River and (2) ensure, through reintroductions and/or the discovery of new populations, that two other viable populations exist.

The recovery criteria for all four of these fishes generally agree that, to reach recovery, we must: (1) Restore existing populations to viable levels, (2) reestablish viable populations in historical habitats, and (3) eliminate foreseeable threats that would likely threaten the continued existence of any viable populations. The number of secure, viable populations (existing and restored) that are needed to achieve recovery varies by species and depends on the extent of the species' probable historical range (i.e., species that were once widespread require a greater number of populations for recovery than species that were historically more restricted in distribution). However, the reestablishment of historical populations is a critical component to the recovery of all four species.

**4. Reintroduction Site:** In March 1998, the Executive Director of the TWRA stated that he supports the conclusions of Rakes and Shute (1998), and requested that we consider designating the Tellico River a NEP Area and reintroducing the four fishes. He further stated that (1) the Tellico River was the probable historical habitat of the duskytail darter, smoky madtom, yellowfin madtom, and spotfin chub; and (2) the Tellico River appeared to have almost ideal habitat for the reintroduction of all four fishes.

Dr. David Etnier, Department of Ecology and Evolutionary Biology, University of Tennessee, Knoxville, Tennessee, stated in April 1998, that he supports the reintroduction of the four species into the Tellico River. Dr. Etnier presented several reasons for his support: (1) The mouth of the Tellico River is approximately 10 miles (16 km) downstream of the mouth of Citico Creek, which historically supported all

four species and currently supports all but the spotfin chub; (2) CFI's habitat analysis indicated that reintroductions of these fishes into the Tellico River have a greater potential for success than reintroductions into any other tributary of the Little Tennessee River system, except Abrams Creek, where apparently successful reintroductions are already occurring; (3) apparently, no fish collections were made from the Tellico River prior to the 1960s, so the extirpation of these fishes could have occurred prior to the 1960s due to siltation caused by heavy logging in the watershed around the turn of the century; and (4) none of these species displays any biological attributes that suggest they could become a problem if successfully established into the Tellico River.

We propose to reintroduce populations of the duskytail darter, smoky madtom, yellowfin madtom, and spotfin chub (=turquoise shiner) into the Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile (TRM) 19 (30.4 kilometers (km))) and TRM 33 (52.8 km), near the Tellico Ranger Station, in Monroe County, Tennessee and to designate these populations as NEPs. This area is identified as the proposed NEP Area.

**5. Reintroduction Procedures:** At this time, we cannot determine the proposed dates for these reintroductions, the specific sites where the fish species will be released, and the actual number of individuals to be released. We will release primarily artificially propagated juveniles, but we could release some wild adult stock. Propagation and juvenile rearing technology is available for the spotfin chub and the duskytail darter. Limited numbers of smoky and yellowfin madtom juveniles can be reared using eggs and larvae taken from the wild. However, madtom artificial propagation technology, which is needed to produce large numbers of juvenile madtoms, will likely not be available for 2 to 3 years.

The parents of the juveniles reintroduced into the NEP Area will come from existing wild populations. The two madtoms and duskytail darters will come from a nearby Little Tennessee River tributary—Citico Creek, Monroe County, Tennessee. The spotfin chubs will come from upstream in the Little Tennessee River, Swain County, North Carolina. In some cases the parents will be returned to the wild population from which they were taken. However, in most cases the parents will be permanently relocated to propagation facilities.

### Status of Reintroduced Populations

We determine that these proposed reintroduced fish populations are not essential to the continued existence of the species. Therefore, we believe it is appropriate to designate these populations as nonessential in accordance with section 10(j) of the Act. We will ensure, through our section 10 permit authority and the section 7 consultation process, that the use of animals from any donor population for these reintroductions is not likely to jeopardize the continued existence of the species. Therefore, if any of the reintroduced populations become established and are subsequently lost, it would not reduce the likelihood of the species' survival in the wild or jeopardize its continued existence. In fact, the anticipated success of these reintroductions will enhance the conservation and recovery potential of these species by extending their present ranges into currently unoccupied historic habitat. These species are not known to exist in the Tellico River or its tributaries at the present time.

### Location of Reintroduced Populations

Sites for the proposed reintroduction of these four fish species into the Tellico River, Monroe County, Tennessee, are within the proposed NEP Area. This area is totally isolated from existing populations of these species by large reservoirs, and none of these fishes are known to occur or move through large reservoir habitat. Therefore, these reservoirs will act as barriers to the downstream expansion of these species into the main stem of the Little Tennessee River and its tributaries and ensure that these populations will remain geographically isolated.

### Management

We do not believe these reintroductions will conflict with existing or proposed human activities or hinder public utilization of the NEP Area. Experimental population special rules contain all the prohibitions and exceptions regarding the taking of individual animals. These special rules are more compatible with routine human activities in the reintroduction area.

Based on the habitat requirements of these four fishes, we do not expect them to become established outside the NEP Area. However, if any of the four species move upstream or downstream or into tributaries outside of the designated NEP Area, we would presume that the animals had come from the reintroduced populations. The rule will be amended and the boundaries of the

NEP Area would be enlarged to include the entire range of the expanded population.

#### **Preliminary Notification and Comment**

On June 26, 1998, we mailed letters to 67 potentially affected congressional offices, Federal and State agencies, local governments, and interested parties that we were considering proposing NEP status for four fish species in the Tellico River. We received four written responses.

The U.S. Forest Service, which is significantly involved in reintroduction efforts for these fishes into Abrams Creek, supports proposed reintroductions into the Tellico River as NEPs and offered to cooperate with us and TWRA in the reintroductions.

The Tennessee Department of Environment and Conservation, Division of Natural Heritage, supports the reintroduction of the four fishes into the Tellico River. They believe that designating the reintroduced populations as NEPs is appropriate because it should enable Federal, State, and local authorities to continue to promote the conservation and recovery of these fishes.

The Tennessee Chapter of the American Fisheries Society supports the reintroduction of these fishes into the Tellico River under NEP status. They concluded that: (1) Although there is little information on the historical environmental conditions in the Tellico River, the river now supports a relatively healthy native fish community with respect to species diversity, species composition, fish abundance, and fish health; (2) the river appears to contain suitable habitat for the survival of all four species; (3) all four species probably historically occupied the river; and (4) designating reintroductions as NEPs greatly relaxes regulatory requirements and makes introduced populations more compatible with other resource use in the watershed.

The Southeast Aquatic Research Institute (SARI) fully supports these reintroductions.

#### **Public Comments Solicited**

We intend for any rule that is finally adopted to be as effective as possible. Therefore, we invite the public, concerned government agencies, the scientific community, industry, and other interested parties to submit comments or recommendations concerning any aspect of this proposed rule (see **ADDRESSES** section).

Our practice is to make 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 address 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 request prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses available for public inspection in their entirety.

#### **Public Hearings**

You may request a public hearing on this proposal. Your request for a hearing must be made in writing and filed within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests for a hearing must be addressed to the State Supervisor for the Fish and Wildlife Service in North Carolina (see **ADDRESSES** section).

#### **Required Determinations**

##### *Regulatory Planning and Review*

This rule is not a significant rule and is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866. This rule will not have an effect of \$100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The area affected by this rule consists of a very limited and discrete geographic segment (only 14 river miles (22.4 km)) of the Tellico River in Monroe County, Tennessee. No significant impacts to existing human activities on the river as a result of this rule are expected.

This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Designating reintroduced populations of federally listed species as NEPs significantly reduces the Act's regulatory requirements regarding the reintroduced listed species. Because of the substantial regulatory relief, we do not believe the reintroduction of these fishes will conflict with existing or proposed human activities or hinder public use of the Tellico River.

This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs, or the rights and obligations of their recipients. Because there are no expected impacts or

restrictions to existing human uses of the Tellico River as a result of this rule, no entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients are expected to occur.

This rule does not raise novel legal or policy issues. We have previously promulgated section 10(j) rules for experimental populations of other listed threatened or endangered species in various localities since 1984. The rules are designed to reduce the regulatory burden that would otherwise exist when reintroducing listed species to the wild.

##### *Regulatory Flexibility Act*

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Although most, if not all, of the identified entities are small businesses engaged in activities along the affected reach of the stream, this rule will have no economic effect in that it will operate to reduce or remove regulatory restrictions (see above for discussion of expected impacts).

##### *Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of \$100 million or more on local or State governments or private entities. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The intent of this special rule is to facilitate and continue the existing commercial activity, while providing for the conservation of species through reintroduction into suitable habitat.

##### *Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. The TWRA, which manages the fishes in the Tellico River, requested that we consider this reintroduction under an NEP designation. However, this rule will not require the TWRA to specifically manage for any of these reintroduced species. A statement

containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

#### *Takings (Executive Order 12630)*

In accordance with Executive Order 12630, the rule does not have significant takings implications. When reintroduced populations of federally listed species are designated as NEPs, the Act's regulatory requirements regarding the reintroduced listed species within the NEP are significantly reduced. Section 10(j) of the Act can provide regulatory relief with regard to the taking of reintroduced species within a NEP area. For example, this rule allows for the unavoidable and unintentional taking of these reintroduced fishes when such take is incidental to a legal activity (e.g., boating, wading, and fishing) and the activity is in accordance with State laws or regulations. Because of the substantial regulatory relief provided by NEP designations, we do not believe the reintroduction of these fishes will conflict with existing or proposed human activities or hinder public use of the Tellico River system. A takings implication assessment is not required.

#### *Federalism (Executive Order 13732)*

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule will not have substantial direct effects on the States, in the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have coordinated extensively with the State of Tennessee on the proposed reintroduction of fish to the Tellico River. We are undertaking this rulemaking at the request of the State wildlife agency (TWRA) in order to assist the State in restoring and recovering its native aquatic fauna. Achieving the recovery goals for these four fish species will contribute to the eventual delisting of these species and, thus, the return of these species to State management. We do not expect any intrusion on State policy or administration; roles or responsibilities of Federal or State governments will not change; and fiscal capacity will not be substantially directly affected. This special rule operates to maintain the existing relationship between the States and the Federal Government and is being undertaken at the request of a

State agency. We have endeavored to cooperate with the TWRA in the preparation of this proposed rule.

#### *Civil Justice Reform (Executive Order 12988)*

In accordance with Executive Order 12988, the Department of the Interior has determined that this proposed rule does not unduly burden the judicial system and meets the applicable standards provided in sections (3)(a) and (3)(b)(2) of the order.

#### *Paperwork Reduction Act*

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required.

#### *National Environmental Policy Act*

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act is not required. We have determined that the issuance of a proposed rule for these NEPs is categorically excluded under our NEPA procedures (516 DM 6, Appendix 1.4 B (6)).

#### *Clarity of This Regulation*

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the SUPPLEMENTARY INFORMATION section of the preamble helpful in understanding the rule? (6) What else could we do to make the rule easier to understand?

Send your comments concerning how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240 (e-mail: Exsec@ios.doi.gov).

#### **Literature Cited**

Dinkins, G.R., and P.W. Shute. 1996. Life history of *Noturus baileyi* and *N. flavipinnis* (Pisces: Ictaluridae), two rare

madtom catfishes in Citico Creek, Monroe County, Tennessee. Bull. Alabama Mus. Nat. His. 18:43-69.

Lennon, R.E., and P.S. Parker. 1959. The reclamation of Indian and Abrams Creeks, Great Smoky Mountains National Park. U.S. Fish and Wildlife Service Scientific Report 306. 22 pp.

Rakes, P.L., and J.R. Shute. 1998. Results of an assay of portions of the Tellico and Hiwassee Rivers for suitable habitat to support reintroductions of rare fish. January 23, 1998, unpublished report prepared by Conservation Fisheries, Inc., Knoxville, Tennessee, for U.S. Fish and Wildlife Service, Asheville, North Carolina. 14 pp.

Rakes, P.L., P.W. Shute, and J.R. Shute. 1998. Captive propagation and population monitoring of rare Southeastern fishes. Final Report for 1997. Field Season and Second Quarter Report for Fiscal Year 1998, prepared for Tennessee Wildlife Resources Agency, Contract No. FA-4-10792-5-00. 32 pp.

U.S. Fish and Wildlife Service. 1983a. Yellowfin Madtom Recovery Plan. Atlanta, GA. 33 pp.

\_\_\_\_\_. 1983b. Spotfin Chub Recovery Plan. Atlanta, GA. 46 pp.

\_\_\_\_\_. 1985. Smoky Madtom Recovery Plan. Atlanta, GA. 28 pp.

\_\_\_\_\_. 1994. Duskytail Darter Recovery Plan. Atlanta, GA. 25 pp.

#### **Author**

The principal author of this proposed rule is Richard G. Biggins (see ADDRESSES section).

#### **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 amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations 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. In § 17.11(h), revise entries in the table under FISHES for "Chub, spotfin"; "Darter, duskytail"; "Madtom, smoky"; and "Madtom, yellowfin"; to read as follows:

#### **§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*

(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
* * * * *							
FISHES							
* * * * *							
Chub, spotfin (=turquoise shiner).	<i>Cyprinella</i> (= <i>Hybopsis</i> ) <i>monacha</i> .	U.S.A. (AL, GA, NC, TN, VA).	Entire, except where listed as an experimental population.	T	28	17.95(e)	17.44(c)
Do .....	.....do .....	.....do .....	Tellico River, from the backwaters of the Tellico Reservoir (about Tellico River mile 19 (30.4 km)) upstream to Tellico River mile 33 (52.8 km), in Monroe County, TN.	XN	.....	NA	17.84(m)
* * * * *							
Darter, duskytail .....	<i>Etheostoma</i> <i>percnurum</i> .	U.S.A. (TN, VA) .....	Entire, except where listed as an experimental population.	E	502	NA	NA
Do .....	.....do .....	.....do .....	Tellico River, from the backwaters of the Tellico Reservoir (about Tellico River mile 19 (30.4 km)) upstream to Tellico River mile 33 (52.8 km), in Monroe County, TN.	XN	.....	NA	17.84(m)
* * * * *							
Madtom, smoky .....	<i>Noturus baileyi</i> .....	U.S.A. (TN) .....	Entire, except where listed as an experimental population.	E	163	17.95(e)	NA
Do .....	.....do .....	.....do .....	Tellico River, from the backwaters of the Tellico Reservoir (about Tellico River mile 19 (30.4 km)) upstream to Tellico River mile 33 (52.8 km), in Monroe County, TN.	XN	.....	NA	17.84(m)
* * * * *							
Madtom, yellowfin ...	<i>Noturus flavipinnis</i> ...	U.S.A. (TN, VA) .....	Entire, except where listed as an experimental population.	T	28,317	17.95(e)	17.44(c)
Do .....	.....do .....	.....do .....	N. Fork Holston River Watershed, VA, TN; S. Fork Holston R., upstream to Ft. Patrick Henry Dam, TN; Holston R. downstream to John Sevier Detention Lake Dam, TN; and all tributaries thereto.	XN	317	NA	17.84(e)
Do .....	.....do .....	.....do .....	Tellico River, from the backwaters of the Tellico Reservoir (about Tellico River mile 19 (30.4 km)) upstream to Tellico River mile 33 (52.8 km), in Monroe County, TN.	XN	.....	NA	17.84(e)
* * * * *							

3. Revise § 17.84(e) to read as follows:

(e) Yellowfin madtom (*Noturus flavipinnis*).

(1) Where is the yellowfin madtom designated as a nonessential experimental population (NEP)?

§ 17.84 Special rules—vertebrates.

\* \* \* \* \*

(i) The North Fork Holston River Watershed NEP Area is within the species' historic range and is defined as follows: The North Fork Holston River watershed, Washington, Smyth, and Scott Counties, Virginia; South Fork Holston River watershed upstream to Ft. Patrick Henry Dam, Sullivan County, Tennessee; and the Holston River from the confluence of the North and South Forks downstream to the John Sevier Detention Lake Dam, Hawkins County, Tennessee. This site is totally isolated from existing populations of this species by large Tennessee River tributaries and reservoirs. As the species is not known to inhabit reservoirs, and it is unlikely that the fish could move 100 river miles through these large reservoirs, the possibility of this population contacting extant wild populations is unlikely.

(ii) The Tellico River NEP Area is within the species' historic range and is defined as follows: The Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile (TRM) 19 (30.4 kilometers (km))) and TRM 33 (52.8 km), near the Tellico Ranger Station, in Monroe County, Tennessee. This species is not currently known to exist in the Tellico River or its tributaries. Based on the habitat requirements of this species, we do not expect the fish to become established outside this NEP Area. However, if they do move upstream or downstream or into tributaries outside of the designated NEP Area, we will presume that the fish came from the reintroduced populations. We will amend this rule and enlarge the boundaries of the NEP Area to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designations to "essential experimental," "threatened," or "endangered" within the NEP Areas. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) What activities are not allowed in the NEP Area?

(i) Except as expressly allowed in this paragraph (e), all the prohibitions of § 17.31(a) and (b) apply to the fish identified in this paragraph.

(ii) Any manner of take not described under paragraph (e)(3) of this section is prohibited in the NEP Area. We may refer unauthorized take of these species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fish, or parts thereof, that are taken or possessed in violation of this paragraph or in violation of the

applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in this paragraph.

(3) What take is allowed in the NEP Area? Take of this species that is accidental and incidental to an otherwise lawful activity, such as fishing, boating, trapping, wading, or swimming, is allowed.

(4) How will the effectiveness of these reintroductions be monitored? We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

\* \* \* \* \*  
4. Amend § 17.84 by adding paragraph (m) to read as follows:

**§ 17.84 Special rules—vertebrates.**

\* \* \* \* \*

(m) Spottin chub (=turquoise shiner) (*Cyprinella (=Hybopsis) monacha*), duskytail darter (*Etheostoma percnum*), smoky madtom (*Noturus baileyi*).

(1) Where are these fish designated as nonessential experimental populations (NEPs)?

(i) The NEP Area for the three fishes is within the species' probable historic ranges and is defined as follows: The Tellico River, from the backwaters of the Tellico Reservoir (approximately Tellico River mile (TRM) 19 (30.4 kilometers (km))) to TRM 33 (52.8 km), near the Tellico Ranger Station, in Monroe County, Tennessee.

(ii) None of the fish named in this paragraph (m) are currently known to exist in the Tellico River or its tributaries. Based on the habitat requirements of these fish, we do not expect them to become established outside the NEP Area. However, if any of the species move upstream or downstream or into tributaries outside of the designated NEP Area, we will presume that the fish came from the reintroduced populations. We will amend this paragraph and enlarge the boundaries of the NEP Area to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designations to "essential experimental," "threatened," or "endangered" within the NEP Area. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) What activities are not allowed in the NEP Area?

(i) Except as expressly allowed in this paragraph, all the prohibitions of

§ 17.31(a) and (b) apply to the fish identified in this paragraph.

(ii) Any manner of take not described under paragraph (m)(3) of this section is prohibited in the NEP Area. We may refer unauthorized take of these species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fish, or parts thereof, that are taken or possessed in violation of this paragraph or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in this paragraph.

(3) What take is allowed in the NEP Area? Take of these species that is accidental and incidental to an otherwise lawful activity, such as fishing, boating, trapping, wading, or swimming, is allowed.

(4) How will the effectiveness of these reintroductions be monitored? We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

Dated: March 20, 2001.

**Joseph E. Doddridge,**

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

[FR Doc. 01-14454 Filed 6-7-01; 8:45 am]

**BILLING CODE 4310-55-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018-AH56**

**Endangered and Threatened Wildlife and Plants; Proposed Rule To Remove *Potentilla robbinsiana* (Robbins' cinquefoil) From the Endangered and Threatened Plant List**

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to remove *Potentilla robbinsiana*, commonly called Robbins' cinquefoil, from the List of Endangered and Threatened Plants. We propose this action because the available data indicate that this species has met the goals for delisting. The main population of the species currently has more than 14,000 plants, and the 2 transplant