requested information to the employer making the inquiry.

(i) As the employer requesting the information required under this section, you must maintain a written, confidential record of the information you obtain or of the good faith efforts you made to obtain the information. You must retain this information for three years from the date of the employee's first performance of safety-sensitive duties for you.

(j) As the employer, you must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, you must not use the employee to perform safety-sensitive functions for you, until and unless the employee documents successful completion of the return-to-duty process (see paragraphs (b)(5) and (e) of this section).

Regulatory Analyses and Notices

The Department has previously considered all of 49 CFR Part 40 with respect to rulemaking process requirements (see 65 FR 79516–79518; December 19, 2000). The proposed rule, analyses concerning it, and the comments on it can be found in the Department's docket or on the Department's Dockets Management System (DMS) web site. The address for the Dockets office and the DMS web site are listed under **ADDRESSES** above. This action is simply a response to an industry request for, essentially, the reopening of a comment period; the Department does not propose to take any new action through this document that would be subject to statutory or Executive Order requirements concerning the regulatory process.

Issued this 11th Day of June, 2001, at Washington DC.

Kenneth C. Edgell,

Acting Director, Office of Drug and Alcohol Policy and Compliance.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE92

Endangered and Threatened Wildlife and Plants; Establishment of Nonessential Experimental Population Status for 16 Freshwater Mussels and 1 Freshwater Snail (Anthony's Riversnail) in the Free-Flowing Reach of the Tennessee River below the Wilson Dam, Colbert and Lauderdale Counties, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), plan to reintroduce 16 federally listed endangered mussels—Alabama lampmussel (*Lampsilis virescens*), birdwing pearlymussel (*Conradilla caelata*), clubshell (*Pleurobema clava*), cracking pearlymussel (*Hemistena lata*), Cumberland bean (pearlymussel) (*Villosa trabalis*), Cumberlandian combshell (*Epioblasma brevidens*), Cumberland monkeyface pearlymussel (*Quadrula intermedia*), dromedary pearlymussel (*Dromus dromas*), fine-rayed pigtoe (*Fusconaia cuneolus*), oyster mussel (*Epioblasma capsaeformis*), catspaw (purple cat's paw pearlymussel) (*Epioblasma obliquata obliquata*), shiny pigtoe (*Fusconaia cor*), tubercled blossom (pearlymussel) (*Epioblasma torulosa torulosa*), turgid blossom (pearlymussel) (*Epioblasma turgidula*), winged mapleleaf (mussel) (*Quadrula fragosa*), and yellow blossom (pearlymussel) (*Epioblasma florentina florentina*)—and 1 federally listed endangered aquatic snail, Anthony's riversnail (*Athearnia anthonyi*), into historical habitat in the free-flowing reach of the Tennessee River. The geographic boundaries of the nonessential experimental populations (NEPs) extend from the base of the Wilson Dam (River Mile 259.4 (414.0 kilometers)) to the backwaters of the Pickwick Reservoir (RM 246.0 (393.6 km)) and include the lower 5 RM (8 km) of all tributaries that enter the Wilson Dam tailwaters.

These reintroduced populations will be classified as NEPs under section 10(j) of the Endangered Species Act of 1973, as amended (Act). Based on the evaluation of species experts, none of these species are currently known to exist in this river reach or its tributaries.

These reintroductions are recovery actions and are part of a series of reintroductions and other recovery actions that the Service, Federal and State agencies, and other partners are considering and conducting throughout the species' historical ranges. This rule provides a plan for establishing the NEPs and provides for limited allowable legal taking of the aforementioned mollusks within the defined NEP Area.

DATES: The effective date of this rule is July 16, 2001.

ADDRESSES: The complete administrative file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins at 828/258–3939, Ext. 228; facsimile 828/258–5330; and e-mail richard_biggins@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

1. *Legislative:* Congress made significant changes to the Endangered Species Act of 1973 (Act), as amended, 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 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 NEP's 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:* Muscle Shoals (sometimes referred to as Mussel Shoals), a 53 RM (85-km) reach of the Tennessee River in Colbert and Lauderdale Counties, Alabama, once supported the world's greatest assemblage of freshwater mussels (van der Schalie 1939) and was one of the finest mussel habitats ever known (Isom 1969). Ortmann (1924) stated that no other place on earth could compare to this shoal with respect to freshwater mussels. This river reach historically contained nearly 80 percent of all the mussel taxa known from the entire Tennessee River system (ca. 100 taxa) and about 25 percent of the total North American mussel fauna (ca. 300 taxa). Ortmann (1925) listed 69 mussel species and varieties from this shoal complex. Stansbery (1964), using current nomenclatural concepts, excluding subspecies, and adding a species not reported by Ortmann (1925), reported the mussel diversity at 63 species. A biologist with the Alabama Division of Wildlife and Freshwater Fisheries (ADWFF) (J. Garner, personal communication, 1997) combined historic distribution records (Ortmann 1925, van der Schalie 1939, Scruggs 1960, Stansbery 1964, Gooch *et al.* 1979) with personal observations and the observations of malacologists (scientists who study mollusks) familiar with the area (P. Yokley and T. Richardson, University of North Alabama, and S. Ahlstedt, U.S. Geological Survey, personal communication, 1997) and found that a total of 78 mussel taxa had been reported from Muscle Shoals. Goodrich (1931) reported that Anthony's riversnail also occurred at Muscle Shoals. However, the species is no longer found in the area (Garner, personal communication, 1997).

With the completion of Wilson Dam (completed in 1924), Wheeler Dam (completed in 1936), and Pickwick Dam (completed in 1938), about 41 RM (66 km) of shoal habitat were impounded. Although some mussel species survived in the remaining 12 RM (19 km) of shoal habitat between Wilson Dam and the backwaters of Pickwick Reservoir, much of the diversity and abundance of mussels in that reach began to disappear. Based largely on a 1931 survey of Muscle Shoals, van der Schalie (1939) reported the resident mussel fauna at 40 species; Stansbery (1964) listed 30 species from a 1963 mussel survey of remaining shoal habitat; and Isom (1969) reported that 31 species existed on the shoal. Garner (personal communication, 1997) reviewed current and recent historical records (last 20 years) and concluded that possibly as many as 44 mussel species, including 6 federally listed mussels—fanshell (*Cyprogenia stegaria*), orange-foot pimple back pearlymussel (*Plethobasus cooperianus*), pink mucket (*Lampsilis abrupta*), ring pink (*Obovaria retusa*), rough pigtoe (*Pleurobema plenum*), and white wartyback (pearlymussel) (*Plethobasus cicatricosus*)—are known, or presumed to still exist in the free-flowing riverine habitat below Wilson Dam. Because these six listed mollusks exist, or are believed to still exist in this river reach, they are not included in this reintroduction effort. However, these populations could be augmented with artificially propagated juveniles. They will retain their endangered status and associated protections. Based on a review of the most recent records, it is presumed that 34 mussel species, including 16 federally listed mussels and the Anthony's riversnail, have been extirpated from the Muscle Shoals complex (Garner, personal communication, 1997).

Although many aquatic mollusks have been lost from Muscle Shoals, habitat quality has been improving in the remaining shoal habitat in recent years. The Tennessee Valley Authority (TVA) (1993), reporting on their Clean Water Initiative, rated macroinvertebrates below Wilson Dam as excellent. The Reservoir Fish Assemblage Index, a measure the TVA uses to rate the health of the fish fauna at sites throughout the Tennessee River valley, was rated as good in the Wilson Dam tailwaters during 1993, 1994, and 1996; no figure was given for 1995 (E. Scott, TVA, personal communication, 1997). Additionally, the ADWFF Director, in a December 9, 1996, letter to us, points to the improving water quality and the

improved health of mussel and snail populations below Wilson Dam and other TVA dams on the Tennessee River in Alabama.

The Tennessee River from about 1.4 RM (2.2 km) below Wilson Dam to the backwaters of Pickwick Reservoir (about 12 RM (19 km)) now appears suitable for a mollusk reintroduction effort for several reasons: (1) habitat quality in the Wilson Dam tailwaters has improved; (2) existing aquatic mollusk populations have responded positively to the improved habitat quality; (3) Muscle Shoals historically contained a rich mollusk fauna, and some of the shoal habitat that once supported this fauna still remains; and (4) the reestablishment of listed mollusks to historic habitat is identified as a high-priority task in listed aquatic mollusk recovery plans.

3. *Recovery Efforts:* The Alabama lampmussel (*Lampsilis virescens*) (Lea 1858), a Tennessee River system endemic, was listed as an endangered species on June 14, 1976 (41 FR 24064). We completed a recovery plan for this species in July 1985 (Service 1985a). The Alabama lampmussel was historically known from seven rivers in the Tennessee River system (Ortmann 1918, Bogan and Parmalee 1983, Service 1985a). The species was last collected at Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. Currently, the species is known to survive only in the upper Paint Rock River system, Jackson County, Alabama (Service 1985a). The delisting objectives in the recovery plan call for: (1) restoring the viability of the population in the Paint Rock River and its tributaries; (2) reestablishing or discovering viable populations in two additional rivers; and (3) ensuring there are no foreseeable threats to the continued existence of any of the populations. No downlisting (reclassification from endangered to threatened) criteria are provided in the recovery plan.

The birdwing pearlymussel (*Conradilla caelata*) (Conrad 1834) was listed as an endangered species on June 14, 1976 (41 FR 24064). We finalized a recovery plan for the species in July 1984 (Service 1984c). This species was originally known from 11 rivers in the Tennessee River system, and one record exists from an unknown location in the Cumberland River. The species was last collected from Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. It currently survives in the Clinch and Powell Rivers in Tennessee and Virginia and in the Duck and Elk Rivers in Tennessee (Service 1984c). The delisting objectives presented in the recovery plan call for: (1) Restoring the viability of the populations in the Clinch and Powell Rivers; (2) reestablishing or discovering viable populations in three additional rivers (only two rivers if Columbia Dam on the Duck River is not built); (3) ensuring there are no foreseeable threats to the continued existence of any of the populations; and (4) noticeable improvements in coal-related problems and substrate quality in the Powell River and no increase in coal-related sedimentation in the Clinch River. No downlisting criteria are given in the recovery plan.

The clubshell (*Pleurobema clava*) (Lamarck 1819) was listed as an endangered species on January 22, 1993 (58 FR 5642). We finalized a recovery plan for the species in September 1993 (Service 1993a). This widespread species occurred in the Ohio River and Lake Erie basins but now survives in only a few small and isolated populations in both basins (Service 1993a). It was last found at Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed no longer to survive in this river reach. The downlisting objectives in the recovery plan call for the establishment of 10 viable populations and ensuring there are no foreseeable threats to the continued existence of any of the populations. The delisting objectives call for: (1) The establishment of 10 viable populations; (2) populations to be large enough to survive a single adverse ecological event; and (3) ensuring that there are no foreseeable threats to the continued existence of any of the populations.

The cracking pearlymussel (*Hemistena lata*) (Rafinesque 1820) was listed as an endangered species on September 28, 1989 (54 FR 39853). We finalized a recovery plan for the species in July 1991 (Service 1991). This widespread species historically occurred in the Ohio, Cumberland, and Tennessee River systems (Bogan and Parmalee 1983, Service 1991). It has been extirpated throughout much of its range. It was last collected at Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed no longer to survive in this river reach. It is presently known to survive at only a few shoals in the Clinch and Powell Rivers in Tennessee and Virginia (Bogan and Parmalee 1983, Neves 1991). This species possibly survives in the Green River, Kentucky, and below Pickwick Reservoir in the Tennessee River, Tennessee (Service 1991). The downlisting objectives in the recovery plan call for the establishment of five viable populations and ensuring that there are no foreseeable threats to the continued existence of any of the populations. The delisting objectives call for the establishment of eight viable populations.

The Cumberland bean (pearlymussel) (*Villosa trabalis*) (Conrad 1834) was listed as an endangered species on June 14, 1976 (41 FR 24064). A recovery plan for the species was approved August 22, 1984 (Service 1984d). This species was historically known from 10 river systems in the Cumberland and Tennessee river basins (Service 1984d). It was last collected at Muscle Shoals, which may represent its type locality, prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. The Cumberland bean currently survives only in the Hiwassee River in Tennessee and in Buck Creek, the Little South Fork of the Cumberland River, and the Rockcastle River system in Kentucky (Service 1984d). The delisting objectives in the recovery plan call for: (1) Restoring the viability of its populations in Buck Creek, the Rockcastle River, and the Little South Fork River in Kentucky; (2) reestablishing or discovering viable populations in two additional rivers; and (3) ensuring that there are no foreseeable threats to the continued existence of any of the populations. No downlisting criteria are given in the recovery plan.

The Cumberlandian combshell (*Epioblasma brevidens*) (Lea 1831) was listed as an endangered species on January 10, 1997 (62 FR 1647). This mussel was historically distributed throughout much of the Cumberlandian Region of the Tennessee and Cumberland River drainages in Alabama, Kentucky, Tennessee, and Virginia (Gordon 1991). Currently, only small populations survive in a few river reaches in both river systems (Gordon 1991). The species was last collected from Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. Although there is no recovery plan for the Cumberlandian combshell, we developed a recovery outline, which briefly enumerates anticipated recovery actions, prior to publishing the final listing decision. The recovery outline identifies reintroduction into historic habitat as a method that would likely be needed to recover the species.

The Cumberland monkeyface pearlymussel (*Quadrula intermedia*) (Conrad 1836) was listed as an endangered species on June 14, 1976 (41 FR 24064). We completed a recovery plan for the species in July 1984 (Service 1984a). This species was historically known from 11 rivers in the Tennessee River system (Service 1984a).

It was last collected from Muscle Shoals around 1900 by R. E. Call and A. A. Hinkley (Ortmann 1925) and is presumed to be extirpated from the shoal. Currently, the species survives only at a few shoals in the Powell River, Tennessee and Virginia, and the Elk and Duck Rivers, Tennessee (Service 1984a). The delisting objectives presented in the recovery plan call for: (1) Restoring the viability of the populations in the Powell and Elk Rivers; (2) reestablishing or discovering viable populations in two additional rivers; and (3) ensuring that there are no foreseeable threats to the continued existence of any of the populations. No downlisting criteria are given in the recovery plan.

The dromedary pearlymussel (*Dromus dromas*) (Lea 1845) was listed as an endangered species on June 14, 1976 (41 FR 24064). We completed a recovery plan for the species in July 1984 (Service 1984b). This species was historically widespread in the Cumberland and Tennessee River systems (Bogan and Parmalee 1983). It was last collected at Muscle Shoals prior to 1931 (van der Schalie 1939) and is presumed to be extirpated from the shoal. The species survives at a few shoals in the Powell and Clinch Rivers, Tennessee and Virginia, and possibly in the Cumberland River, Tennessee (Service 1983b, Neves 1991). The delisting objectives in the recovery plan call for: (1) Restoring the viability of the populations in the Clinch and Powell Rivers; (2) reestablishing viable populations in three additional rivers; and (3) ensuring there are no foreseeable threats to the continued existence of any of the populations. No downlisting criteria are provided in the recovery plan.

The fine-rayed pigtoe (*Fusconaia cuneolus*) (Lea 1840) was listed as an endangered species on June 14, 1976 (41 FR 24064). A recovery plan for the species was approved in September 1984 (Service 1984e). This species was historically known from 15 Tennessee River tributaries and is currently known from 7 rivers (Service 1984e). The species was last collected from Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. The delisting objectives call for: (1) Restoring the viability of the populations in the Clinch, Powell, and North Fork Holston Rivers and in the Little River and Copper Creek (Clinch River tributaries); (2) reestablishing or discovering one additional viable population; and (3) ensuring there are no foreseeable threats to the continued existence of any of the populations. No downlisting criteria are given.

The oyster mussel (*Epioblasma capsaeformis*) (Lea 1834) was listed as an endangered species on January 10, 1997 (62 FR 1647). This mussel was historically distributed throughout much of the Cumberlandian Region of the Tennessee and Cumberland River drainages (Gordon 1991). Currently, only small populations survive in a few river reaches in both river systems (Gordon 1991). The species was last collected from Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. Although there is currently no recovery plan for the oyster mussel, we developed a recovery outline, which briefly enumerates anticipated recovery actions, prior to publishing the final listing decision. The recovery outline identified reintroduction into historic habitat as a method that would likely be needed to recover the species.

The Catspaw (purple cat's paw pearlymussel) (*Epioblasma obliquata obliquata*) (Rafinesque 1820) was listed as an endangered species on July 10, 1990 (55 FR 28210). We finalized a recovery plan for the species in March 1992 (Service 1992). This once-widespread species historically occurred in the larger rivers of the Ohio River system (Service 1992). The species is currently known from two apparently nonreproducing populations (the Green River in Kentucky and the Cumberland River in Tennessee) and one reproducing population in Killbuck Creek, Muskingum River system, Ohio. It was last collected at Muscle Shoals by A. E. Ortmann sometime prior to 1925 (Ortmann 1925) and is presumed no longer to survive in this river reach. The downlisting objectives in the recovery plan call for: (1) The establishment of four viable populations; (2) establishment of two naturally produced year classes in each of the four populations; (3) completion of biological studies on the species; and (4) increasing the population density and/or length of the river inhabited. The delisting objectives call for the establishment of six viable populations in addition to criteria (2) through (4) above.

The shiny pigtoe (*Fusconaia cor*) (Conrad 1834) was listed as an endangered species on June 14, 1976 (41 FR 24064). We completed a recovery plan for the species in July 1984 (Service 1984f). This species was historically known from the Tennessee River and 10 of its tributaries. It is currently known from five river systems—the Clinch, Powell, North Fork Holston, Elk, and Paint Rock (Service 1984f). The species was last collected at Muscle Shoals prior to 1925 (Ortmann 1925) and is presumed to be extirpated from the shoal. The delisting objectives call for: (1) Restoring the viability of the populations in the Clinch, Powell, North Fork Holston, and Paint Rock Rivers; (2) reestablishing or discovering one additional viable population; and (3) ensuring there are no foreseeable threats to the continued existence of any of the populations. No downlisting criteria are provided in the recovery plan.

The tubercled blossom (pearlymussel) (*Epioblasma torulosa torulosa*) (Rafinesque 1820) was listed as an endangered species on June 14, 1976 (41 FR 24064). We completed a recovery plan for the species in January 1985 (Service 1985b). This species was historically known from nine rivers in the Ohio River system (Service 1985b). The species was last collected at Muscle Shoals around 1900 by A. A. Hinkley (Ortmann 1925); it has not been collected anywhere since 1969 (Stansbery 1976, Service 1985b). However, we continue our efforts to determine whether any extant populations occur; thus, the species is included in this NEP rule. If the species is found and can be propagated, the area below Wilson Dam could be considered for a reintroduction effort without going through a separate NEP rulemaking. No downlisting or delisting criteria are presented in the recovery plan. However, the plan does call for recovery efforts to be reevaluated if the species is found.

The turgid blossom (pearlymussel) (*Epioblasma turgidula*) (Lea 1858) was listed as an endangered species on June 14, 1976 (41 FR 24064). A recovery plan for the species was completed in January 1985 (Service 1985b). This widespread species was historically known from 12 rivers in Arkansas, Missouri, Tennessee, and Alabama (Service 1985b). The species was last collected at Muscle Shoals (its type locality, along with the Cumberland River in Tennessee) prior to 1925 (Ortmann 1925); it has not been collected anywhere since the early 1960s (Stansbery 1971, Service 1985b). However, we continue our efforts to determine whether any extant populations occur; thus, the species is therefore included in this NEP rule. If the species is found and can be propagated, the area below Wilson Dam could be considered for a reintroduction effort without going through a separate NEP rulemaking. No downlisting or delisting criteria are presented in the recovery plan. However, the plan does call for recovery efforts to be reevaluated if the species is found.

The winged mapleleaf (mussel) (*Quadrula fragosa*) (Conrad 1835) was listed as an endangered species on June 20, 1991 (56 FR 28349). We completed the final recovery plan for the species in June 1997 (Service 1997a). This species was historically reported from 34 rivers in 12 States in the Mississippi River drainage (Service 1997a). It is now believed to be extirpated from all but one remnant population in the St. Croix River between Minnesota and Wisconsin. The species was recorded in the Tennessee River, Mussel Shoals, Alabama by Ortmann (1924). The downlisting objectives in the recovery plan call for: (1) The existence of three distinct viable populations in at least two tributaries of the Mississippi River basin and (2) the long-term protection of all three populations. Delisting objectives call for: (1) The existence of five distinct viable populations and (2) the long-term protection of all five populations.

The yellow blossom (pearlymussel) (*Epioblasma florentina florentina*) (Lea 1857) was listed as an endangered species on June 14, 1976 (41 FR 24064). We completed a recovery plan for the species in January 1985 (Service 1985b). This species was historically known from 13 rivers in the Cumberland and Tennessee River systems (Service 1985b). The species was last collected at Muscle Shoals, its type locality, prior to 1925 (Ortmann 1925); it has not been collected anywhere in over 50 years (Stansbery 1971, Service 1985b). However, we continue our efforts to determine whether any extant populations occur; thus, the species is included in this NEP rule. If the species is found and can be propagated, the area below Wilson Dam could be considered for a reintroduction effort without going through a separate NEP rulemaking. No downlisting or delisting criteria are presented in the recovery plan; however, it does call for the recovery efforts to be reevaluated if the species is found.

Anthony's riversnail (*Athearnia anthonyi*) was listed as an endangered species on April 15, 1994 (59 FR 17994). We completed the final recovery plan for the species in August 1997 (Service 1997b). This snail was historically found in the Tennessee River and the lower reaches of some of its tributaries from Muscle Shoals, Colbert and Lauderdale Counties, Alabama, upstream to the Clinch and Nolichucky Rivers, Tennessee (Bogan and Parmalee 1983). Currently, two populations are known to survive—one in Limestone Creek, Limestone County, Alabama, and one in the Tennessee River and the lower portion of the Sequatchie River (a tributary to this reach of the Tennessee River), Marion County, Tennessee, and Jackson County, Alabama (Service 1997b). It is apparently extirpated from Muscle Shoals (Garner, personal communication, 1997). The downlisting objectives in the recovery plan call for: (1) The establishment of four viable populations; (2) establishment of two naturally produced year classes in each of the four populations; (3) completion of biological studies on the species; (4) documentation of noticeable improvements in water and substratum quality where habitat is degraded; (5) protection of each of the populations from present and foreseeable threats; and (6) maintaining all four populations as stable or increasing over a 10-year period. The delisting objectives call for the establishment of six viable populations in addition to criteria (2) through (5) above and for maintaining six populations as stable or increasing over a 15-year period.

The recovery objectives in the recovery plans and recovery outlines for the aforementioned species generally agree that, to reach recovery: (1) Existing populations should be restored to viable levels; (2) the species should be protected from threats to their continued existence; and (3) viable populations should be reestablished in historic habitat. The number of secure, viable populations (existing and restored) needed to achieve recovery varies from species to species, depending on the extent of the species' former 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 historic populations is a critical component to the recovery of all these species.

4. *Reintroduction Site:* In 1996, the Director of the ADWFF indicated that, due to recent improvements in water quality, mollusk populations below Guntersville, Wheeler, and Wilson Dams were in excellent condition. He indicated that, although several species have been extirpated from these areas in the past, both mussels and snails which now occur there are abundant and a healthy range of size classes are present.

Based on the improving status of mollusks in these river reaches and the fact that recent advances in mussel culture techniques will likely lead to the availability of endangered juvenile mussels for release, the ADWFF Director requested that we consider designating NEP status for the reintroduction of federally listed mussel and snail species that historically existed in the riverine habitat below these dams.

A Service biologist met with representatives of the ADWFF in January 1997 to discuss the possibility of designating NEP status for the reintroduction of federally listed mollusks into the tailwaters of Guntersville, Wheeler, and Wilson Dams. The consensus at that meeting was that: (1) The tailwaters of Wilson Dam (the remains of Muscle Shoals) provided the best opportunity for successfully reestablishing federally listed mollusks and (2) the tailwaters of Guntersville and Wheeler Dams should be considered for mollusk reintroductions at a later time.

We will reintroduce populations of 16 mussels—Alabama lampmussel, birdwing pearlymussel, clubshell, cracking pearlymussel, Cumberland bean (pearlymussel), Cumberlandian combshell, Cumberland monkeyface pearlymussel, dromedary pearlymussel, fine-rayed pigtoe, oyster mussel, catspaw (purple cat's paw pearlymussel), shiny pigtoe, tubercled blossom (pearlymussel), turgid blossom (pearlymussel), winged mapleleaf (mussel), and yellow blossom (pearlymussel)—and 1 freshwater snail, Anthony's riversnail, into the historical habitat of the free-flowing reach of the Tennessee River from about RM 258.0 (412.8 km) (1.4 RM [2.2 km]) below Wilson Dam downstream to about RM 248.0 (396.8 km) (2 miles [3.2 km]) above the backwaters of Pickwick Reservoir in Colbert and Lauderdale Counties, Alabama. None of these species is known to currently exist in this river reach or in tributaries to this reach.

5. *Reintroduction Procedures:* The date the mollusks will be reintroduced, the number of individuals to be released, and the exact locations of the releases within the NEP Area cannot be determined at this time. Individual endangered mussels that will be used for these reintroductions will be primarily artificially propagated juveniles. However, it is possible that wild adult stock of some mussels could also be released into the area.

Mussel propagation and juvenile rearing technology are currently being developed, and juvenile endangered mussels of some species could be available for reintroduction next year. The parent stock for juvenile mussels that will be used for the reintroductions will come from existing wild populations, and in most cases, they will be returned live to that wild population. Under some circumstances, adult endangered mussels could be permanently relocated to propagation facilities or could be moved directly into the NEP Area. Anthony's

riversnails will be collected from a large naturally reproducing population located in the Tennessee River, Jackson County, Alabama, and Marion County, Tennessee, and relocated directly into the NEP.

The permanent removal of adults from the wild for their use in reintroduction efforts could occur when one or more of the following conditions exist: (1) Sufficient adult endangered mollusks are available within a donor population to sustain the loss without jeopardizing the species; (2) the species must be removed from an area because of an imminent threat that is likely to eliminate the population or specific individuals present in an area; or (3) when the population is not reproducing. An enhancement of propagation or survival permit under section 10 (a)(1)(A) of the Act will be issued before any take occurs, and we will coordinate these actions with the Service's appropriate lead regions and State natural resources agencies.

Status of Reintroduced Populations

We determine that these reintroduced mussel 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.

Location of Reintroduced Population

The NEP Area, which encompasses all the sites for the planned reintroductions, will be located in the free-flowing reach of the Tennessee River between Wilson Dam and the backwaters of Pickwick Reservoir, Colbert and Lauderdale Counties, Alabama. The NEP Area is totally isolated from existing populations of these species by large reservoirs, and none of these mollusks are known to occur in reservoir habitat. These reservoirs will act as barriers to the expansion of these species upstream or downstream in the main stem of the Tennessee River and ensure that these NEPs remain geographically isolated and easily distinguishable from existing wild populations.

Management

We do not believe these reintroductions will conflict with existing or proposed human activities or hinder public use 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.

If any of the reintroduced endangered mollusks move beyond the current boundaries of this NEP Area, the animals will be presumed to have come from the NEP Area. In that case, the rule will be amended and the boundaries of the NEP Area will be enlarged to include the entire range of the expanded population.

Previous Federal Actions

On June 18, 1997, we mailed letters to 54 potentially affected congressional offices, Federal and State agencies, local governments, and interested parties to notify them that we were considering proposing NEP status for 17 mollusks. We received six written responses. The majority of these comments were very supportive of the potential reintroduction efforts, and few concerns were raised.

On May 27, 1999, we published the proposed rule in the **Federal Register** (64 FR 28779) to designate NEP status, under section 10(j) of the Act, for the reintroduction of the aforementioned 16 mussels and 1 snail into the Tennessee River below Wilson Dam in Alabama. Additionally, we announced this proposal in faxes dated May 26, 1999, in letters dated May 27, 1999, and in a legal notice published in the *Times Daily,* Florence, Alabama, on June 12, 1999. Those documents notified affected congressional offices, the Governor of Alabama, Federal and State agencies, local governments, scientific organizations, and interested parties of the proposed action, and requested comments and information that might contribute to the development of a final determination.

Summary of Comments and Recommendations

In the May 27, 1999, proposed rule (64 FR 28779), we opened a 60-day public comment period. We received two responses. These comments did not result in any changes to the final rule. Key issues raised in the comments are presented below.

Issue 1: Concerns were raised that a project by the Shoal Economic Development Authority (SEDA) along the Tennessee River, below the Colbert Steam Plant in Colbert County, Alabama, might be impacted by the NEP designation.

Our Response: Because of the regulatory flexibility provided through a NEP designation and the fact that the project is downstream of the NEP Area, we do not believe the reintroductions will have any effect on SEDA's project. The SEDA project, which starts at about RM 244 (390.4 km), is approximately 2 miles (3.2 km) below the downstream extent of the NEP Area (RM 246 [393.6 km]) and 3 to 4 miles (4.8 to 6.4 km) below the area where the species will be released. Because of habitat suitability problems, we do not expect these reintroduced species to inhabit the river below RM 246 (393.6 km). However, if they did move downstream into Pickwick Reservoir, we would assume that the animals came from the existing NEP Area, and we would amend the rule to extend the NEP Area boundaries downstream to include the expanded population.

Issue 2: The TVA was generally supportive of the NEP designation and offered their assistance in the reintroduction effort. They again expressed concerns about the long-term viability of mussels in this river reach but stated that their concern had been noted in the proposed rule. The TVA is concerned that, although reintroduced Cumberlandian mussel species might survive below Wilson Dam, they might not be able to reproduce there.

Our Response: Based on the improved reproductive success of the mussel fauna below Wilson Dam, we are optimistic that at least some of the Cumberlandian species will reproduce. However, even if these species are unable to reproduce, the establishment of nonreproducing populations of listed Cumberlandian mussels will assist in the recovery effort. Mussels are long-lived (40 years or more); thus, any surviving mussels could be available to researchers and managers for a number of years after they are reintroduced.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the final rule to designate NEP status for 16 endangered mussels and 1 endangered aquatic snail in the free-flowing reach of the Tennessee River below Wilson Dam in Colbert and Lauderdale Counties,

Alabama, is not a significant regulatory action subject to Office of Management and Budget review. This rule will not have an annual economic effect of $100 million and will not have an adverse effect on any economic sector, productivity, jobs, the environment, or other units of government. The area affected by this rule consists of a very limited and discrete geographic segment (only 12 RM (19 km)) of the Tennessee River in northern Alabama. Therefore, a cost-benefit and economic analysis is not required.

Shellfish harvesting in the United States is dominated by small firms. Of the 441 firms included in Standard Industrial Code 0913 for ''establishments primarily engaged in the catching or taking of shellfish,'' 421 have fewer than 20 employees, and 353 have fewer than 5 employees. These figures include saltwater shellfishing (lobsters, crabs, clams, etc.), so freshwater mussel harvesting is only a fraction of this small industry (Office of Advocacy, U.S. Small Business Administration, based on data provided by the Department of Commerce, Bureau of the Census).

A recent die-off of the pearl oyster stock in Japan has almost eliminated the market for freshwater mussels this year. In fiscal year 1998, there were 79 licensed mussel harvesters in the entire State of Alabama but almost no sales. In normal years, there may be as many as 270 mussel harvesters. County level data is not available.

Because there are no expected impacts or restrictions to existing human uses of the Tennessee 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 will not raise novel legal or policy issues. Since 1984, we have promulgated 10(j) rules for many other listed threatened and endangered species in various localities. Such 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.*). This rule is not expected to have any impact on the use of the river. Mussels are harvested from the relevant reach, primarily by diving from one- or two-person boats. Harvesters are seeking larger mussels of a dozen specific permitted species to be used as seeds in the Japanese cultured pearl industry. Several endangered mussels still occur in the area, and divers are careful to identify species on site in order to avoid carrying extra weight to the surface. The addition of NEP species is not expected to complicate this task. Other river activities will not be affected.

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 will not have an annual effect on the economy of $100 million or more for reasons outlined above. It will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The 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.

Unfunded Mandates Reform Act

The NEP designation will not place any additional requirements on any city, county, or other local municipalities. The ADWFF, which manages the aquatic mollusks in the Tennessee River below Wilson Dam, requested that we consider this reintroduction. However, they will not be required by the Endangered Species Act to specifically manage for any reintroduced species. Accordingly, this rule will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. Because this rulemaking does not require any action be taken by local or State government or private entities, we have determined and certify pursuant to the Unfunded Mandates Reform Act, 2, U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities (i.e., it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act).

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required because this rule (1) will not effectively compel a property owner to suffer a physical invasion of property and (2) will not deny all economically beneficial or productive use of the land. This rule will substantially advance a legitimate government interest (conservation and recovery of listed freshwater mussel and snail species) and will not present a bar to all reasonable and expected beneficial use of private property. Because of the regulatory flexibility provided by NEP designations under section 10(j) of the Act, we do not believe the reintroduction of these mollusks would conflict with existing or proposed human activities or hinder public use of the Tennessee River system.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. This rule will not have substantial direct effects on the States in their 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 Alabama on the reintroduction of freshwater mussels into the Tennessee River. The State wildlife agency (ADWFF) requested that we undertake this rulemaking in order to assist the State in restoring and recovering its native aquatic fauna. Achieving the recovery goals for these 17 species will contribute to their eventual delisting and their return to State management. No intrusion on State policy or administration is expected, roles or responsibilities of Federal or State governments will not change, and fiscal capacity will not be substantially directly affected. The 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. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism Assessment pursuant to the provisions of Executive Order 13132.

Paperwork Reduction Act

This rule contains no information collection. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

We have determined that the issuance of this rule is categorically excluded under our National Environmental

Policy Act procedures (516 DM 6, Appendix 1.4 B(6)).

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Author

The principal author of this 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.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations, as set forth below:

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. Amend § 17.11(h), by revising the existing entries for ''Bean, Cumberland (pearlymussel)''; ''Blossom, tubercled (pearlymussel)''; ''Blossom, turgid (pearlymussel)''; ''Blossom, yellow (pearlymussel)''; ''Catspaw (=purple cat's paw pearlymussel)''; ''Clubshell''; ''Combshell, Cumberlandian''; ''Lampmussel, Alabama''; ''Mapleleaf winged (mussel)''; ''Monkeyface, Cumberland (pearlymussel)''; ''Mussel, oyster''; ''Pearlymussel, birdwing''; ''Pearlymussel, cracking''; ''Pearlymussel, dromedary''; ''Pigtoe, fine-rayed''; and, ''Pigtoe, shiny'' under CLAMS and for ''Riversnail, Anthony's'' under ''SNAILS'' 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						
*	*	*	*	*	*		*
CLAMS							
*	*	*	*	*	*		*
Bean, Cumberland (pearlymussel).	*Villosa* (= *Micromya*) *trabalis*.	U.S.A. (AL, KY, TN, VA).	NA	E	15	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	.....do	.....do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	*	*	*		*
Blossom, tuberoled (pearlmyussel).	*Epioblasma* (=Dysnomia) *torulosa torulosa*.	U.S.A. (AL, IL, IN, KY, TN, WV).	NA	E	15	NA	NA
Do	.....do	.....do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
Blossom, turgid (pearlymussel).	*Epioblasma (=Dysnomia) turgidula*.	U.S.A. (AL, TN)	NA	E	15	NA	NA
Do	.....do	.....do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
Blossom, yellow (pearlymussel).	*Epioblasma (=Dysnomia) florentina florentina*.	U.S.A. (AL, TN)	NA	E	15	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	.....do	.....do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
Catspaw, (=purple cat's paw pearlymussel).	*Epioblasma (=Dysnomia) (=sulcata sulcata)*.	U.S.A. (AL, IL, IN, KY, OH, TN).	NA	E	394	NA	NA
Do	.....do	.....do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	* *	*		*	
Clubshell	*Pleurobema clava*	U.S.A. (AL, IL, IN, KY, MI, OH, PA, TN, WV).	NA	E	488	NA	NA
Do	.....do	.....do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	* *	*		*	
Combshell, Cumberlandian.	*Epioblasma brevidens*.	U.S.A. (AL, KY, MS, TN, VA).	NA	E	602	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	.....do	.....do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	*	*	*		*
Lampmussel, Alabama.	*Lampsilis virescens*	U.S.A. (AL, TN)	NA	E	15	NA	NA
Do	.....do	.....do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	*	*	*		*
Mapleleaf, winged (mussel).	*Quadrula fragosa*	U.S.A. (AL, IA, IL, IN, KY, MN, MO, NE, OH, OK, TN, WI).	NA	E	426	NA	NA
Do	.....do	.....do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	*	*	*		*
Monkeyface, Cumberland (pearlymussel).	*Quadrula intermedia*	U.S.A. (AL, TN, VA)	NA	E	15	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	.....do	.....do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	*	*	*		*
Mussel, oyster	*Epioblasma capsaeformis*.	U.S.A. (AL, GA, KY, NC, TN, VA).	NA	E	602	NA	NA
Do	.....do	.....do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	*	*	*		*
Pearlymussel, birdwing.	*Conradilla caelata*	U.S.A. (AL, TN, VA)	NA	E	15	NA	NA
Do	.....do	.....do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
Pearlymussel, cracking.	*Hemistena* (=*Lastena*) *lata*.	U.S.A. (AL, IL, IN, KY, OH, TN, VA).	NA	E	366	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	...do	...do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	*	*	*		*
Pearlymussel, dromedary.	*Dromus dromas*	U.S.A. (AL, KY, TN, VA).	NA	E	15	NA	NA
Do	...do	...do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	*	*	*	*	
Pigtoe, fine-rayed	*Fusconaia cuneolus*	U.S.A. (AL, TN, VA)	NA	E	15	NA	NA
Do	...do	...do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	*	*	*	*	
Pigtoe, shiny	*Fusconaia cor* (=*edgariana*).	U.S.A. (AL, TN, VA)	NA	E	15	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	...do	...do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	* *		*	*	
SNAILS							
*	*	*	* *		*	*	
Riversnail, Anthony's	*Athearnia anthonyi* ..	U.S.A. (AL, GA, TN)	NA	E	538	NA	NA
Do	...do	...do	U.S.A. (AL—The free-flowing reach of the Tennessee R. from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir [about 12 RM (19 km)] and the lower 5 RM [8 km] of all tributaries to this reach in Colbert and Lauderdale Cos., see 17.85(a)).	XN		NA	17.85(a)
*	*	*	* *		*	*	

3. Add § 17.85 to read as follows:

§ 17.85 Special rules—invertebrates.

(a) Cumberland bean (pearlymussel) (*Villosa trabalis*), tubercled blossom (pearlymussel) (*Epioblasma torulosa torulosa*), turgid blossom (pearlymussel) (*Epioblasma turgidula*), yellow blossom (pearlymussel) (*Epioblasma florentina florentina*), catspaw (purple cat's paw pearlymussel) (*Epioblasma obliquata obliquata*), clubshell (*Pleurobema clava*), Cumberlandian combshell (*Epioblasma brevidens*), Alabama lampmussel (*Lampsilis virescens*), winged mapleleaf (mussel) (*Quadrula fragosa*), Cumberland monkeyface (pearlymussel) (*Quadrula intermedia*), oyster mussel (*Epioblasma capsaeformis*), birdwing pearlymussel (*Conradilla caelata*), cracking pearlymussel (*Hemistena lata*), dromedary pearlymussel (*Dromus dromas*), fine-rayed pigtoe (*Fusconaia cuneolus*), shiny pigtoe (*Fusconaia cor*), Anthony's riversnail (*Athearnia anthonyi*).

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

(i) The NEP Area for these 17 mollusks is within the species' historic ranges, and is defined as follows: The free-flowing reach of the Tennessee River from the base of Wilson Dam downstream to the backwaters of Pickwick Reservoir (river mile (RM) 259.4 [414.0 km] to RM 246.0 [393.6 km] and includes the lower 5 RM (8 km) of all tributaries to this reach in Colbert and Lauderdale Counties, Alabama.

(ii) None of the identified species are known to exist in any of the tributaries to the free-flowing reach of the Tennessee River below Wilson Dam or from below the backwaters of Pickwick Reservoir, Colbert and Lauderdale Counties, Alabama. In the future, if any of the 17 mollusks are found upstream of the lower 5 RM (8 km) of these tributaries or downstream into Pickwick Reservoir, we will presume the animals came from the reintroduced NEP, and 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 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 rule, all the prohibitions of 17.31(a) and (b) apply to the mollusks identified in this special rule.

(ii) Any manner of take not described under paragraph (a)(3) of this section will not be allowed in the NEP Area. We may refer the 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 17 mollusks, or parts thereof, that are taken or possessed in violation of these regulations 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 (a).

(3) What take is allowed in the NEP Area?

(i) Take of these species that is accidental and incidental to an otherwise lawful activity such as fishing, boating, commercial navigation, trapping, wading, or mussel harvesting, is allowed.

(ii) Any individual collecting or harvesting mussels must check their collection prior to leaving the immediate area and return any NEP mussels to the site where they were obtained.

(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: May 31, 2001.

Marshall P. Jones, Jr.

Acting Assistant Secretary for Fish and Wildlife and Parks.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20 and 21

RIN 1018–AI00

Migratory Bird Hunting; Regulations Designed to Reduce the Mid-Continent Light Goose Population

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule is intended to notify the public of a clarification of the expiration date of regulations imposed by Congress to reduce the population of mid-continent light geese (MCLG). In this rule we clarify the expiration date of special regulations pertaining to hunting methods (electronic calls and unplugged shotguns) for taking mid-continent light geese. We also clarify the expiration date of the conservation order for the reduction of the mid-continent light goose population.

DATES: This rule takes effect immediately upon publication on June 14, 2001.

ADDRESSES: Copies of the Environmental Assessment are available by writing to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Dept. of the Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, Division of Migratory Bird Management, Dept. of the Interior, ms 634—ARLSQ, 1849 C Street, NW., Washington, DC 20240. (703) 358–1714.

SUPPLEMENTARY INFORMATION: The Service (or ''we'') promulgated regulations on February 16, 1999, (64 FR 7507; 64 FR 7517) that authorized additional methods of take of MCLG and established a conservation order for the reduction of the MCLG population. In issuing those regulations, we indicated that we would initiate preparation of an Environmental Impact Statement (EIS) on light goose management beginning in 2000. The light goose regulations were subsequently challenged in a United States District Court by several groups. Though the judge refused to preliminarily enjoin the program, he did indicate a likelihood that the plaintiffs might prevail on the EIS issue when the lawsuit proceeded. In light of our earlier commitment to prepare an EIS on light goose management and to preclude further litigation on the issue, we published a Notice of Intent to begin immediate preparation of the EIS on May 13, 1999 (64 FR 26268). Subsequent to this action, on June 17, 1999, we withdrew the regulations promulgated on February 16, 1999 (64 FR 32778). On November 10, 1999, Congress passed the Arctic Tundra Habitat Emergency Conservation Act (Act), which effectively reinstated the MCLG regulations that we withdrew on June 17, 1999. On December 20, 1999 (64 FR 71236) we published a final rule that reinstated the MCLG regulations in the CFR and stipulated that such regulations would remain in effect until May 15, 2001 at the latest. However, this stipulation is contrary to the expiration date that Congress mandated in the Act.

Background

Lesser snow (*Anser caerulescens caerulescens*) and Ross' (*Anser rossii*) geese that primarily migrate through the Mississippi and Central Flyways are collectively referred to as mid-continent light geese (MCLG). MCLG breed in the central and eastern arctic and subarctic regions of northern Canada. The total MCLG population is experiencing a high population growth rate and has become seriously injurious to its Arctic and sub-Arctic breeding grounds through the feeding actions of geese. Our management goal is to reduce the MCLG population by 50% by the year 2005 in order to prevent further habitat degradation and impacts to other species.

On February 16, 1999, we published rules that: (1) authorized additional methods of take of MCLG (electronic calls and unplugged shotguns; 64 FR 7507); and (2) created a conservation order for the reduction of the MCLG population (64 FR 7517). These actions were designed to reduce the population of MCLG over a period of several years in order to bring the population to a level that their breeding habitat can support. We prepared an Environmental Assessment (EA) in support of this program, which resulted in a Finding of No Significant Impact.

On February 25, 1999, several groups filed a complaint in the District Court for the District of Columbia seeking an injunction against these regulations. On March 2, 1999, the plaintiffs filed a motion for a preliminary injunction against the two rules cited above. The lawsuit alleged that we had implemented the rules without adequate scientific evidence that MCLG were causing habitat destruction, that we did not have the authority under the Migratory Bird Treaty to allow take of MCLG after March 10 (the latest date allowable under the Treaty), and that an EIS should have been prepared prior to implementation of the rules. In his memorandum opinion the judge indicated that ''the scientific evidence regarding the overpopulation of snow geese strongly favors FWS'' and that we had exercised a reasonable use of our authority under the Migratory Bird Treaty Act to initiate population control measures. Although the judge refused to issue an injunction, he did indicate a likelihood that plaintiffs might succeed on their argument that an EIS should have been prepared. In order to avoid further litigation, and because we had earlier indicated we would begin preparing in the year 2000 an EIS on the larger, long-term program, we decided to withdraw the regulations and begin immediate preparation of the EIS. We concluded the public scoping phase of the EIS process on November 22, 1999. We anticipate publication of a draft EIS in the summer of 2001.

On November 10, 1999, Congress passed the Arctic Tundra Habitat Emergency Conservation Act (Pub. L. 106–108) to ''reduce the population of mid-continent light geese,'' and ''to assure the long-term conservation of mid-continent light geese and the