imported materials; low compaction of soils within adjacent riparian areas; and inclusion of riparian wetlands.

(C) Streambank stabilization projects that utilize bioengineering methods to replace pre-existing, bare, eroding stream banks with vegetated, stable stream banks, thereby reducing bank erosion and instream sedimentation and improving habitat conditions for the species. Stream banks may be stabilized using live stakes (live, vegetative cuttings inserted or tamped into the ground in a manner that allows the stake to take root and grow), live fascines (live branch cuttings, usually willows, bound together into long, cigar-shaped bundles), or brush layering (cuttings or branches of easily rooted tree species layered between successive lifts of soil fill). Stream banks must not be stabilized solely through the use of quarried rock (rip-rap) or the use of rock baskets or gabion structures.

(D) Silviculture practices and forest management activities that:

(*1*) Implement State best management practices, particularly for streamside management zones, for stream crossings, for forest roads, for erosion control, and to maintain stable channel morphology; or

(*2*) Remove logging debris or any other large material placed within natural or artificial wet weather conveyances or ephemeral, intermittent, or perennial stream channels; and

(*3*) When such activities involve trispot darter spawning habitat, are carried out between May 1 and December 31.

(E) Transportation projects that provide for fish passage at stream crossings that are performed between May 1 and December 31 to avoid the time period when the trispot darter will be found within spawning habitat, if such habitat is affected by the activity.

(F) Projects carried out in the species' range under the Working Lands for Wildlife program of the Natural Resources Conservation Service, U.S. Department of Agriculture, that:

(*1*) Do not alter habitats known to be used by the trispot darter beyond the fish's tolerances; and

(*2*) Are performed between May 1 and December 31 to avoid the time period when the trispot darter will be found within its spawning habitat, if such habitat is affected by the activity.

(v) Possess and engage in other acts with unlawfully taken wildlife, as set forth at § 17.21(d)(2) for endangered wildlife.

* * * * *

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–19109 Filed 9–29–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2018–0073; FF09E21000 FXES11110900000 201]

RIN 1018–BD40

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Trispot Darter

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the trispot darter (*Etheostoma trisella*) under the Endangered Species Act of 1973 (Act), as amended. We are designating as critical habitat for this species six units, totaling approximately 175.4 miles (282.3 kilometers) of streams and rivers and 9,929 acres (4,018 hectares), in Calhoun, Cherokee, Etowah, and St. Clair Counties in Alabama; Gordon, Murray, and Whitfield Counties in Georgia; and Bradley and Polk Counties in Tennessee. This rule extends the Act's protections to the trispot darter's designated critical habitat.

DATES: This rule is effective October 30, 2020.

ADDRESSES: This final rule is available on the internet at *http://www.regulations.gov* and *http://www.fws.gov/daphne.* Comments and materials we received, as well as some supporting documentation we used in preparing this rule, are available for public inspection at *http://www.regulations.gov.*

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.regulations.gov* at Docket No. FWS–R4–ES–2018–0073 and at the Alabama Ecological Services Field Office's website (*https://www.fws.gov/daphne*). Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the Fish and Wildlife Service website and may also be included in the preamble and at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: William Pearson, Field Supervisor, U.S. Fish and Wildlife Service, telephone 251–441–5184. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Endangered Species Act of 1973 (Act), as amended, if we determine that a species is an endangered or threatened species, we must designate critical habitat to the maximum extent prudent and determinable. We published a final rule to list the trispot darter as a threatened species on December 28, 2018 (83 FR 67131). Designations of critical habitat can be completed only by issuing a rule.

What this document does. This rule finalizes a designation of critical habitat for the trispot darter of approximately 175.4 miles (282.3 kilometers) of streams and rivers and 9,929 acres (4,018 hectares), in Calhoun, Cherokee, Etowah, and St. Clair Counties in Alabama; Gordon, Murray, and Whitfield Counties in Georgia; and Bradley and Polk Counties in Tennessee.

The basis for our action. Under section 4(a)(3) of the Act, if we determine that any species is an endangered or threatened species we must, to the maximum extent prudent and determinable, designate critical habitat. Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part

of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

The critical habitat we are designating in this rule, consisting of six units comprising approximately 175.4 miles (282.3 kilometers) of streams and rivers, in an area of 9,929 acres (4,018 hectares), constitutes our current best assessment of the areas that meet the definition of critical habitat for the trispot darter.

Economic analysis. In accordance with section 4(b)(2) of the Act, we prepared an economic analysis of the impacts of designating critical habitat for the trispot darter. We published the announcement of, and solicited public comments on, the draft economic analysis (DEA; 83 FR 67190, December 28, 2018). Because we received no comments on the DEA, we adopted the DEA as a final version.

Peer review and public comments. We considered all comments and information we received from the public and peer reviewers during the comment period on the proposed designation of critical habitat for the trispot darter and the associated DEA (83 FR 67190; December 28, 2018).

Previous Federal Actions

On October 4, 2017, we published a proposed rule in the **Federal Register** (82 FR 46183) to list the trispot darter as a threatened species under the Act (16 U.S.C. 1531 *et seq.*). On December 28, 2018, we published a final rule (83 FR 67131) to list the species as a threatened species. On the same date, we published a proposed section 4(d) rule for the trispot darter (83 FR 67185) and a proposed critical habitat rule for the species (83 FR 67190). Please refer to these rules for a detailed description of previous Federal actions concerning this species. Elsewhere in today's **Federal Register**, we issue a final rule under section 4(d) of the Act that provides measures necessary and advisable for the conservation of the threatened trispot darter.

Summary of Changes From the Proposed Rule

This final rule incorporates changes to our proposed rule (83 FR 67190; December 28, 2018) based on the comments we received, as discussed above under Summary of Comments and Recommendations. We made changes to the unit sizes in the proposed critical habitat rule as a result of a public comment we received. Based on our mapping analysis of elevations where spawning has occurred, we omitted areas from Unit 1 in this critical habitat designation that are likely to be perennially dry, and we added language to the rule to clarify that perennially dry areas that are located within the critical habitat boundaries are not being designated as critical habitat. Our analysis also revealed other areas that we removed from critical habitat in Unit 4 (Mill Creek). These areas in Unit 4 are not suitable for seasonal spawning, because a large portion (86 percent) is occupied by large commercial structures and the remaining portion contains straightened channels with intervening segments enclosed in culverts. In addition to the altered spawning areas, tributaries to Mill Creek are not included in this final critical habitat designation because they also have been heavily altered. The mapping analysis to more precisely identify spawning areas and removal of developed areas in the Mill Creek unit reduced the total amount of critical habitat we are designating, from 16,735 acres (ac) (6,772 hectares (ha)) in the proposed rule, to 9,929 ac (4,018 ha) in this final rule.

Supporting Documents

We prepared a species status assessment (SSA) report for the trispot darter. Written in consultation with species experts, the SSA report represents the best scientific and commercial data available concerning the status of the trispot darter, including its habitat needs, and impacts of past, present, and future factors (both negative and beneficial) affecting the species and its habitat (Service 2018, entire). In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, the SSA report underwent independent peer review by scientists with expertise in fish biology, habitat management, and stressors (factors negatively affecting the species) to the trispot darter. The purpose of peer review is to ensure that our listing determinations and critical habitat designations are based on scientifically sound data, assumptions, and analyses. The SSA report (Service 2018, entire), the proposed and final listing rules (82 FR 46183, October 4, 2017; 83 FR 67131, December 28, 2018, respectively), the proposed critical habitat rule (83 FR 67190; December 28, 2018), this final rule, and other materials relating to this rulemaking can be found on the Service's Southeast Region website at *https://www.fws.gov/southeast/* and at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0073.

Summary of Comments and Recommendations

In the proposed rule published on December 28, 2018 (83 FR 67190), we requested that all interested parties submit written comments on the proposal by February 26, 2019. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices inviting general public comment were published in the Chattanooga Times Free Press (2/8/19), The Daily Citizen (2/08/19), Daily Home (2/13/19), and St. Clair Times (2/14/19). We did not receive any requests for a public hearing. During the open comment period, we received 27 public comments on the proposed rule to designate critical habitat for the trispot darter; a majority of comments supported the designation of critical habitat, and none opposed the designation. However, some commenters provided suggestions on how we could refine or improve the designation, and all substantive information provided to us during the comment period has been incorporated directly into this final rule or is addressed below.

(1) Comment: Two commenters sought clarification on how designated critical habitat will affect agriculture and development activities.

Our Response: Private agricultural and development activities on private lands will not be affected by designated critical habitat, because the Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. An action with a Federal nexus, meaning one that is authorized, funded, or carried out by a Federal agency, would, on private lands, be subject to consultation under section 7 of the Act. However, routine agricultural and forestry activities on private lands are not likely to have a Federal nexus and require consultation. Designation of critical habitat does not affect land ownership, or establish any closures or restrictions on use of, or access to, the designated areas whether private, tribal, State, or Federal. Critical habitat designation also does not establish a refuge, wilderness, reserve, preserve, or other conservation area, and does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. In addition, critical habitat designation does not establish specific land management standards or prescriptions

for private parties, although Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat.

(2) Comment: One commenter recommended that we reevaluate Unit 1 of proposed critical habitat because, as proposed, it included upland areas that do not provide the physical and biological features that support the trispot darter. The commenter suggested that we use finer resolution data to undertake an analysis that more precisely delineates critical habitat for the species. The same commenter requested that we provide additional language explaining that perennially dry lands inadvertently left inside critical habitat boundaries due to mapping resolution constraints are not being designated as critical habitat.

Our Response: Finer resolution data are not consistently available throughout the range of the trispot darter and could not be used to more precisely delineate the habitat containing the physical and biological features necessary for the species to spawn. In the absence of finer resolution data, to refine our critical habitat maps and exclude upland areas that are not suitable habitat because they are dry perennially, we used mean elevation data; specifically, we analyzed the mean elevation where there are records for spawning trispot darters and, from our analysis, we include in the designated critical habitat all areas of the proposed critical habitat that are up to one standard deviation greater than the calculated mean elevation for trispot darter spawning occurrences. This approach removed much of the upland areas originally proposed as critical habitat in Unit 1 that are likely perennially dry and lacking any of the physical and biological features necessary for the species. The analysis also resulted in revisions to proposed Unit 4, as discussed above in Summary of Changes from the Proposed Rule. In this final rule, we include language in the description of the critical habitat units to specify that perennially dry areas not identified as such by the mapping analysis are not being designated as critical habitat (see Final Critical Habitat Designation, below).

Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the specific features that support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we may designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We will determine whether unoccupied areas are essential for the conservation of the species by considering the life-history, status, and conservation needs of the species. This will be further informed by any generalized conservation strategy, criteria, or outline that may have been developed for the species to provide a substantive foundation for identifying which features and specific areas are essential to the conservation of the species and, as a result, the development of the critical habitat designation. For example, an area currently occupied by the species but that was not occupied at the time of

listing may be essential to the conservation of the species and may be included in the critical habitat designation.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and other information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

On August 27, 2019, we published a final rule in the **Federal Register** (84 FR 45020) to amend our regulations concerning the procedures and criteria we use to designate and revise critical habitat. That rule became effective on September 26, 2019, but, as stated under **DATES** in that rule, the amendments it sets forth apply to rules for which a proposed rule was published after September 26, 2019. We published our proposed critical habitat designation for the trispot darter on December 28, 2018 (83 FR 67190); therefore, the amendments set forth in the August 27, 2019, final rule at 84 FR 45020 do not apply to this final designation of critical habitat for the trispot darter.

Prudency and Determinability

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. In our proposed critical habitat rule (83 FR 67190; December 28, 2018), we found that designating critical habitat is both prudent and determinable. In this final rule, we reaffirm those determinations.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkali soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

The trispot darter is a freshwater fish that occurs in the Coosa River system in the Ridge and Valley ecoregion of Alabama, Georgia, and Tennessee. It is a migratory species that uses distinct breeding and nonbreeding habitats. From approximately April to October, the species occupies its nonbreeding habitat, which consists of small to medium margins of rivers and lower reaches of tributaries with slower velocities. It is associated with detritus, logs, and stands of water willow, and with a substrate that consists of small cobbles, pebbles, gravel, and often a fine

layer of silt. During low flow periods, the darters move away from the peripheral zones and toward the main channel; edges of water willow beds, riffles, and pools; and mouths of tributaries.

Migration into spawning areas begins in approximately late November or early December, with fish moving from the main channels into tributaries and eventually reaching adjacent seepage areas where they will congregate and remain for the duration of spawning, until approximately late April. Breeding sites are intermittent seepage areas and ditches with little to no flow; shallow depths (12 inches (30 centimeters) or less); moderate leaf litter covering mixed cobble, gravel, sand, and clay; a deep layer of soft silt over clay; and emergent vegetation. Additionally, breeding sites possess channels that maintain base flow throughout the winter and early spring.

Trispot darters predominantly feed on mayfly nymphs and midge larvae and pupae. A thorough review of the life history and ecology of the trispot darter is presented in the SSA report (Service 2018, entire). A summary of the resource needs of the trispot darter is provided below in Table 1.

TABLE 1—RESOURCE NEEDS FOR THE TRISPOT DARTER TO COMPLETE EACH LIFE STAGE

Life stage	Resources needed
Fertilized eggs	Ephemeral streams/ditches connected to nonbreeding habitat with adequate water quality; vegetation, rocks for adhesive eggs; eggs submerged on vegetation and/or rocks for approximately 30 days at 53 degrees Fahrenheit (°F) (12 degrees Celsius (°C)).
Larvae	Ephemeral streams/ditches connected to nonbreeding habitat with adequate water quality; low predation, disease, and environmental stress; flushing rain events to reach lower stream reaches; 41 days to reach juvenile stage.
Juveniles	Flowing water with good water quality; low predation, disease, and environmental stress; adequate food availability.
Nonbreeding adults (mid-April to mid-October).	Clear, flowing water in shallow pools and backwaters in main channel with good water quality, with a fine layer of silt and/or debris, leaf litter; adequate food availability.
Breeding adults (late November to late April).	Flowing water with adequate water quality, adequate flow to connect to breeding areas; clean structure (vegetation, rock, substrate); appropriate male to female demographics; appropriate spawning temperatures.

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of trispot darter from studies of this species' habitat, ecology, and life history. Additional information can be found in the October 4, 2017, proposed listing rule (82 FR 46183); the December 28, 2018, final listing rule (83 FR 67131); the December 28, 2018, proposed critical habitat rule (83 FR 67190); and the SSA report (Service 2018, entire). We have determined that the following physical or biological features are essential to the conservation of trispot darter:

(1) Geomorphically stable, small to medium streams with detritus, woody debris, and stands of water willow (*Justicia americana*) over stream substrate that consists of small cobble, pebbles, gravel, and fine layers of silt; and intact riparian cover to maintain stream morphology and reduce erosion and sediment inputs.

(2) Adequate seasonal water flows, or a hydrologic flow regime (which includes the severity, frequency, duration, and seasonality of discharge over time) necessary to maintain appropriate benthic habitats and to maintain and create connectivity between permanently flowing streams with associated streams that hold water from November through April, providing connectivity between the darter's spawning and summer areas.

(3) Water and sediment quality (including, but not limited to, conductivity; hardness; turbidity; temperature; pH; ammonia; heavy metals; pesticides; animal waste products; and nitrogen, phosphorus, and potassium fertilizers) necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages.

(4) Prey base of aquatic macroinvertebrates.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and which may require special management considerations or protection. The features essential to the conservation of the trispot darter may require special management considerations or protections to reduce the following threats: (1) Urbanization of the landscape, including (but not limited to) land conversion for urban and commercial use, infrastructure (roads, bridges, utilities), and urban water uses (water supply reservoirs, wastewater treatment); (2) nutrient pollution from agricultural activities that impact water quantity and quality; (3) significant alteration of water quality; (4) improper forest management or silviculture activities that remove large areas of forested wetlands and riparian systems; (5) culvert and pipe installation that creates barriers to movement; (6) changes and shifts in seasonal precipitation patterns as a result of climate change; (7) other watershed and floodplain disturbances that release sediments or nutrients into the water or fill suitable spawning habitat; and (8) creation of reservoirs that convert permanently flowing streams and/or streams that hold water from November through April into lake or pond-like (lentic) environments.

Management activities that could ameliorate these threats include, but are not limited to, use of best management practices (BMPs) designed to reduce sedimentation, erosion, and bank-side destruction; protection of riparian corridors and suitable spawning habitat; retention of sufficient canopy cover along banks; moderation of surface and ground water withdrawals to maintain natural flow regimes; increased use of stormwater management and reduction of stormwater flows into the stream systems; placement of culverts or bridges that accommodate fish passage; and reduction of other watershed and floodplain disturbances that release sediments, pollutants, or nutrients into the water.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In

accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat.

The current distribution of the trispot darter is reduced from its historical distribution. We anticipate that recovery will require continued protection of existing populations and habitat, as well as ensuring there are adequate numbers of fish in stable populations and that these populations occur over a wide geographic area. This will help to ensure that catastrophic events, such as floods, cannot simultaneously affect all known populations. Rangewide recovery considerations, such as maintaining existing genetic diversity and striving for representation of all major portions of the species' current range, were considered in formulating this critical habitat designation.

Sources of data for this critical habitat include multiple databases maintained by universities and State agencies in Tennessee, Alabama, and Georgia, as well as numerous survey reports on streams throughout the species' range. Other sources of available information on habitat requirements for this species include studies conducted at occupied sites and published in peer-reviewed articles, agency reports, and data collected during monitoring efforts (Service 2018, entire).

Areas Occupied at the Time of Listing

This critical habitat designation does not include all streams known to have been occupied by the species historically; instead, it focuses on currently occupied streams and rivers within the historical range that have retained the necessary physical or biological features that will allow for the maintenance and expansion of existing populations. For the purposes of critical habitat designation, we determined a unit to be occupied if it contains recent (*i.e.,* observed in the past 10 years (since 2007), based on the data available for the SSA analysis) observations of trispot darter. Collection records were compiled and provided to us by State partners funded under a concurrent section 6 status assessment for the trispot darter. Collection records were obtained through the website FISHNET2 (an online repository of ichthyological museum data) or directly from institutions. To delineate spawning areas for trispot darter, we identified waterways where the trispot darter was observed from November to April between the years 2007 and 2017. We assume these observations represented fish in or near spawning habitat within the timeframe. We based this assumption on the knowledge that this short-lived migratory species will stage near spawning areas in pre-spawning congregations and that both spawning and non-spawning individuals will make a migration.

We considered areas of low topographic variation at lower elevations as exhibiting topographic characteristics that support recharge of a shallow soil water table, slow release of water into breeding channels, and connectivity between ephemeral breeding channels and permanent trispot darter summer habitat. These areas support the essential physical and biological features that allow for adequate seasonal water flows, the hydrologic flow regime that maintains appropriate trispot habitat, and connectivity between streams in the winter. Areas of low topographic variation generally have slower stream velocities and retain water for longer duration (*i.e.,* have a less ''flashy'' hydrograph), in order to maintain necessary benthic habitat and stream substrate. Areas at lower elevation interact with permanent streams and rivers, and will be accessible to trispot darters attempting to migrate into adjacent ephemeral spawning streams.

To identify areas with both low elevation and low topographic variation, we conducted a geographic information system (GIS) analysis using a 30-meter digital elevation model (DEM). We analyzed the areas in Alabama separately from areas in the upper Coosa River basin in Tennessee and Georgia owing to natural topographic differences between the two regions, with the upper Coosa River basin having greater topographic relief and higher elevations than areas where the species occurs in Alabama. Low elevation for this analysis was defined as one standard deviation above the mean elevation at which spawning trispot darters were observed. Therefore, elevation ranged from 558 to 790 feet (ft) (170 to 241 meters (m)). We used roughness, calculated as described in the proposed critical habitat rule (83 FR 67190; December 28, 2018), as a measure of topographic variation. Subsequently, we produced a map of potential spawning habitat by overlaying the spawning elevation and roughness layers.

Finally, when delineating critical habitat that included spawning habitat, we considered the dispersal ability of the trispot darter. Trispot darters have been recorded to travel approximately 6,000 ft (1,829 m) during a spawning season. Therefore, we only delineate lands that exhibit topographic characteristics we consider suitable for trispot darter spawning habitat that are within 6,000 ft (1,829 m) of a trispot darter observation between November and April in the years 2007 to 2017.

The following rivers and streams meet the criteria described above and are considered occupied by the species at the time of listing where the essential physical and biological features are found: Big Canoe Creek, Ballplay Creek, Conasauga River, Mill Creek, Coahulla Creek, and Coosawattee River.

Areas Outside the Geographical Area Occupied at the Time of Listing

We may designate as critical habitat areas outside the geographical area occupied as listing only if we determine that such areas are essential for the conservation of the species. We may consider unoccupied areas to be essential only where we determine that a designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species.

We are not designating any areas outside the geographical area currently occupied by the species because we did not find any unoccupied areas that were essential for the conservation of the species. Protection of six moderately or highly resilient management units across the physiographic representation of the range, all of which are currently occupied by the species, will sufficiently reduce the risk of extinction. Improving the resiliency of populations in the currently occupied streams will likely increase viability to the point that the protections of the Act are no longer necessary.

Critical Habitat Maps

When determining critical habitat boundaries, we make every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for the trispot darter. The scale of the maps we prepare under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification

unless the specific action will affect the physical or biological features in the adjacent critical habitat. We are designating critical habitat in areas within the geographical area occupied by the species at the time of listing in 2018. We are not designating any areas outside the geographical area occupied by the species at the time of listing.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented below under Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the discussion of individual units, below. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0073.

Final Critical Habitat Designation

We are designating 175.4 river or stream miles (mi) (282.3 kilometers (km)) and 9,929 acres (ac) (4,018 hectares (ha)) in six units as critical habitat for the trispot darter. These six critical habitat areas, described below, constitute our current best assessment of areas that meet the definition of critical habitat for the trispot darter. All of these areas are in the Coosa River system in Alabama, Georgia, and Tennessee. Table 2 shows the name, land ownership, approximate stream miles, and acres of the designated units for the trispot darter. Per State regulations (Alabama Code section 9–11–80, Tennessee Code Annotated section 69–1–101, and Georgia Code section 52–1–31), navigable waters are considered public rights-of-way. Lands beneath the navigable waters included in this rule are owned by the States of Alabama, Georgia, or Tennessee. Ownership of lands beneath nonnavigable waters included in this rule are determined by riparian land ownership. As discussed below, riparian lands along the waters described are owned by either private, State, or Federal entities.

TABLE 2—OWNERSHIP OF CRITICAL HABITAT UNITS FOR THE TRISPOT DARTER

Unit	Ownership * of river or stream miles (kilometers)					Ownership of acres (hectares)	
	Private	Local	State	Federal	Total	Private	Total
1. Big Canoe Creek	41 (66)	0	0	0	41(66)	5,286 (2,139)	5,286 (2,139)
2. Ballplay Creek	17 (27)	0	0	0	17 (27)	2,527 (1,023)	2,527 (1,023)
3. Conasauga River	54.6 (87.8)	0	2.4 (3.9)	0	57 (92)	1,400 (567)	1,400 (567)
4. Mill Creek	8.1 (13.0)	1.3 (2.1)	0	0	9.4 (15.1)	0	0
5. Coahulla Creek	26 (42)	0	0	0	26 (42)	716 (290)	716 (290)
6. Coosawattee River ..	24.2 (39.0)	0	0.3 (0.6)	0.42 (0.68)	25 (40.2)	0	0
Totals	170.9 (275)	1.3 (2.1)	2.7 (4.5)	0.42 (0.68)	175.4 (282.3)	9,929 (4,018)	9,929 (4,018)

* Adjacent riparian ownership is reported under river or stream miles.
Note: Measurements may not sum due to rounding.

There may be some small perennially dry areas misidentified by our digital elevation model analysis as spawning habitat that are included inside critical habitat boundaries shown on the maps. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this rule are not being designated as critical habitat.

Below, we present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the trispot darter. All units are currently occupied by the darter and contain the physical and biological features that are essential to the conservation of the species and which may require special management considerations or protection.

Unit 1: Big Canoe Creek

Unit 1 consists of 41 stream mi (66 km) in St. Clair County, Alabama, from approximately 3.5 mi (5.6 km) upstream of Pinedale Road, west of Ashville, Alabama, to approximately U.S. Highway (Hwy.) 11. In addition to Big Canoe Creek, Unit 1 includes the westernmost portion of Little Canoe Creek to State Hwy. 174 and all of its associated tributaries. Unit 1 also includes all low-elevation areas (5,286 ac (2,139 ha)) containing channels that hold water from November through April beginning 0.5 mi (0.8 km) upstream of County Road 31 upstream to the U.S. Hwy. 11 crossing with Big Canoe Creek, approximately 0.70 miles (1.1 km) downstream of the Interstate 59 (I–59) crossing with the Left Hand Prong Little Canoe Creek, and the State Hwy. 174 crossing with Little Canoe Creek and Stovall Branch. The low-elevation riparian areas that hold water seasonally in Unit 1 are privately owned, except for bridge crossings and road easements, which are owned by the State or County.

Additional special management considerations or protection may be required within Unit 1 to alleviate impacts from stressors that have led to the degradation of the habitat, including roadside erosion, urban development, fish barriers, and unstable stream banks. Livestock accessing streams and riparian buffers have led to high levels of sedimentation, siltation, contamination, and nutrient-loading, as well as destabilized stream banks.

Unit 2: Ballplay Creek

Unit 2 consists of 17 stream mi (27 km) of Ballplay Creek in Etowah, Cherokee, and Calhoun Counties, Alabama, and 2,527 ac (1,023 ha) of ephemeral spawning habitat. Unit 2 begins upstream of a wetland complex located at the border between Etowah and Cherokee Counties approximately at County Road 32, and continues upstream approximately to the U.S. Hwy. 278 crossing over Ballplay Creek in Calhoun County, Alabama. Unit 2 includes all low-elevation areas (2,527 ac (1,023 ha)) containing channels that hold water from November through April beginning upstream of a wetland complex located at the border between Etowah and Cherokee Counties approximately 0.60 mi (1 km) southwest of County Road 32 and extending upstream to the confluence of Ballplay and Little Ballplay Creeks and to the west along Rocky Ford Road and Alford Road. The spawning habitat in Unit 2 is privately owned except for bridge crossings and road easements, which are owned by the State or Counties. Additional special management considerations or protection may be required within Unit 2 because entrenchment and channelization have altered the channel and may degrade spawning habitat and reduce floodplain access.

Unit 3: Conasauga River

Unit 3 consists of 57 stream mi (92 km) and 1,400 ac (567 ha) of ephemeral wetland spawning habitat in Whitfield and Murray Counties, Georgia, and Polk and Bradley Counties, Tennessee. Unit 3 begins in the Conasauga River upstream of the mouth of Coahulla Creek and continues upstream to the mouth of Minneawauga Creek.

Unit 3 also includes: Mill Creek from its confluence with the Conasauga River in Bradley County, Tennessee, upstream to the first impoundment on Mill Creek approximately at Green Shadow Road SE; Old Fort Creek from Ladd Springs Road SE in Polk County, Tennessee, to its confluence with Mill Creek in Bradley County, Tennessee; and Perry Creek from its headwaters (approximately 0.35 mi (0.6 km) upstream of Tennga Gregory Road) to its confluence with the Conasauga River in Murray County, Georgia, and both of its tributaries. Unit 3 includes all low-elevation areas (1,400 ac (567 ha)) containing channels that hold water from November through April, beginning from the confluence of the Conasauga River and Shears Branch (west of U.S. Hwy. 411 in Polk County, Tennessee) to approximately 0.30 mi (0.5 km) downstream of the confluence of the Conasauga River and Perry Creek; Mill Creek from Hicks Tanyard Road downstream to its confluence with the Conasauga River; Old Fort Creek from Hicks Tanyard Road to its confluence with Mill Creek; and Perry Creek. The ephemeral wetland areas surrounding the river in this unit include a combination of private ownership, conservation easements, and State Natural Areas. The easements are held by Georgia Department of Transportation, Georgia Department of Natural Resources, and Georgia-Alabama Land trust.

Additional special management considerations or protection may be required within the Conasauga River Unit to reduce impacts from pollutants from agricultural runoff, construction of farm ponds that destroy spawning habitat, development, erosion, sedimentation, and dams and other barriers to dispersal.

Unit 4: Mill Creek

Unit 4 consists of 9.4 stream mi (15.1 km) of Mill Creek in Whitfield County, Georgia. The land surrounding the river in this unit is both in private ownership and owned by the City of Dalton, Georgia. Unit 4 begins at the confluence of Mill Creek with Coahulla Creek and continues upstream along Mill Creek for approximately 9.4 mi (15.1 km) to the U.S. Hwy. 41 crossing.

Additional special management considerations or protection may be required within Unit 4 to address pollutants from agricultural runoff, agricultural ditching, and the construction of ponds that remove potential spawning habitat. Sediment loading and excessive livestock fecal contamination have degraded water quality and also require special management considerations.

Unit 5: Coahulla Creek

Unit 5 consists of 26 stream mi (42 km) of Coahulla Creek and 716 ac (290 ha) of ephemeral spawning habitat in Whitfield County, Georgia, and Bradley County, Tennessee. Unit 5 begins immediately upstream of the Prater Mill dam upstream of State Hwy. 2 in Georgia. The unit continues upstream for approximately 26 mi (42 km) to Ramsey Bridge Road SE and includes ephemeral wetland habitat from 0.5 mi (0.8 km) downstream of Hopewell Road to approximately 0.5 mi (0.8 km) upstream of McGaughey Chapel Road. The ephemeral spawning habitat surrounding the river in this unit is privately owned except for bridge crossings and road easements, which are owned by the State or County.

Additional special management considerations or protection may be required within Unit 5 to address pollutants from agricultural runoff, agricultural ditching, and the construction of farm ponds that remove spawning habitat. Sediment loading and excessive livestock fecal contamination have degraded water quality and also require special management considerations.

Unit 6: Coosawattee River

Unit 6 consists of 25 stream mi (40.2 km) of the Coosawattee River beginning at the confluence with the Conasauga River in Gordon County, Georgia. The unit continues upstream to Old Highway 411 downstream of Carters Lake Reregulation Dam in Murray County, Georgia. The ephemeral spawning habitat surrounding the river in this unit is a mix of State, private, and Federal (U.S. Army Corps of Engineers) ownership.

Additional special management considerations or protection may be required within Unit 6 to address erosion and sedimentation from urban runoff and development, rural unpaved roads, dam construction and use, and agriculture, leading to impairment of water quality.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final regulation with a revised definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species' critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2), is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, critical habitat.

When we issue a biological opinion concluding that a project is likely to destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if

any are identifiable, that would avoid the likelihood of destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation, we have listed a new species or designated critical habitat that may be affected by the Federal action, or the action has been modified in a manner that affects the species or critical habitat in a way not considered in the previous consultation. In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Services may, during a consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would alter the minimum flow or the existing flow regime. Such activities could include, but are not limited to, impoundment, channelization, water diversion, and water withdrawal. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the trispot darter by decreasing or altering seasonal flows to levels that would adversely affect the species' ability to complete its life cycle.

(2) Actions that would significantly alter water chemistry or quality. Such activities could include, but are not limited to, release of chemicals (including pharmaceuticals, metals, herbicides, and pesticides) or biological pollutants into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could alter water conditions to levels that are beyond the tolerances of the trispot darter and result in direct or cumulative adverse effects to individuals and their life cycles.

(3) Actions that would significantly increase sediment deposition within the stream channel. Such activities could include, but are not limited to, excessive sedimentation from livestock grazing, road construction, channel alteration, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances. These activities could eliminate or reduce the habitat necessary for the growth and reproduction of the trispot darter by increasing the sediment deposition to levels that would adversely affect the species' ability to complete its life cycle.

(4) Actions that would significantly increase eutrophic conditions. Such activities could include, but are not limited to, release of nutrients into the surface water or connected groundwater at a point source or by dispersed release (non-point source). These activities could result in excessive nutrients and algae filling streams and reducing habitat, degrading water quality from excessive nutrients and during algae decay, and decreasing oxygen levels below the tolerances of the trispot darter.

(5) Actions that would significantly alter channel morphology or geometry, or decrease connectivity. Such activities could include, but are not limited to, channelization, impoundment, road and bridge construction, mining, dredging, and destruction of riparian vegetation. These activities may lead to changes in water flows and levels that would degrade or eliminate the trispot darter and its habitats. These actions could also lead to increased sedimentation and degradation in water quality to levels beyond the tolerances of the trispot darter.

(6) Actions that result in the introduction, spread, or augmentation of nonnative aquatic species in occupied stream segments, or in stream segments that are hydrologically connected to occupied stream segments, or introduction of other species that compete with or prey on the trispot darter. Possible actions could include, but are not limited to, stocking of nonnative fishes and crayfishes, stocking of sport fish, or other related actions. These activities could introduce parasites or disease; result in direct predation or direct competition; or affect the growth, reproduction, and survival of the trispot darter.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' There are no Department of Defense lands with a completed INRMP within the final critical habitat designation for the trispot darter.

Exclusions

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat.

The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To consider economic impacts, we prepared an incremental effects memorandum (IEM) and screening analysis which, together with our narrative and interpretation of effects, constitute our final economic analysis (FEA) of the critical habitat designation and related factors (IEc 2018, entire). Additional information relevant to the probable incremental economic impacts of critical habitat designation for the trispot darter is summarized below.

The final critical habitat designation for the trispot darter totals approximately 175.4 mi (282.3 km) of streams and rivers and 9,929 ac (4,018 ha) of spawning areas, all occupied at the time of listing. This final critical habitat designation is likely to result annually in a maximum of one formal section 7 consultation, three informal section 7 consultations, and two technical assistance efforts at a total incremental cost of less than $13,000 per year. Because all designated critical habitat is in the range occupied by the trispot darter, any actions that may affect critical habitat will likely also affect the species. Therefore, it is unlikely that any additional conservation efforts will be required to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of the species. The only additional costs expected due to the critical habitat designation are administrative costs to consider adverse modification, which are incurred by both the Federal action agency and the Service.

Exclusions Based on Economic Impacts

As discussed above, the Service considered the economic impacts of the critical habitat designation, and the Secretary is not exercising his discretion to exclude any areas from this designation of critical habitat for the trispot darter based on economic impacts. A copy of the IEM and screening analysis with supporting documents may be obtained by contacting the Alabama Ecological Services Field Office (see **ADDRESSES**) or by downloading from the internet at *http://www.regulations.gov.*

Exclusions Based on Impacts on National Security and Homeland Security

Section 4(a)(3)(B)(i) of the Act may not cover all Department of Defense (DoD) lands or areas that pose potential national-security concerns (*e.g.,* a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' Nevertheless, when designating critical habitat under section 4(b)(2), the Service must consider impacts on national security, including homeland security, on lands or areas not covered by section 4(a)(3)(B)(i). Accordingly, we will always consider for exclusion from the designation areas for which DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns. No lands within the designation of critical habitat for trispot darter are owned or managed by DoD or DHS. Consequently, the Secretary is not exercising his discretion to exclude any areas from this final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether there are permitted conservation plans covering the species in the area, such as habitat conservation plans, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that there are currently no permitted conservation plans or other non-permitted conservation agreements or partnerships for the trispot darter, and the final critical habitat designation does not include any tribal lands or trust resources. We anticipate no impact on tribal lands, partnerships, or permitted or non-permitted plans or agreements from this critical habitat designation. Accordingly, the Secretary is not exercising his discretion to exclude any areas from the final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order (E.O.) 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory

flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

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

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate only the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities will be directly regulated by this rulemaking, the Service certifies that this critical habitat designation will not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

Executive Order 13771

This rule is not an E.O. 13771 (''Reducing Regulation and Controlling Regulatory Costs'') (82 FR 9339, February 3, 2017) regulatory action because this rule is not significant under E.O. 12866.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this E.O. that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to not taking the regulatory action under consideration. The economic analysis finds that none of these criteria is relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with trispot darter conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

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

(1) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

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

(2) We do not believe that this rule will significantly or uniquely affect small governments because most of the lands within and adjacent to the streams being designated as critical habitat are owned by private landowners. These entities do not fit the definition of ''small governmental jurisdiction.'' The 4.42 mi (7.28 km) of riparian habitat owned by Federal, State, or local governments that we are designating as

critical habitat in this rule are either lands managed for conservation or lands already developed. Consequently, we do not believe that the critical habitat designation will significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the trispot darter in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this designation of critical habitat for the trispot darter does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of the critical habitat designation with, the appropriate State resource agencies. We did not receive comments from the States. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the State, or on the relationship between the national government and the State, or on the distribution of powers and responsibilities among the various levels of government. The designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist these local governments in long-range planning (because these local governments no longer have to wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) will be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this rule identifies the elements of physical or biological features essential to the conservation of the species. The designated areas of critical habitat are presented on maps, and the rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We have identified no tribal interests that will be affected by this rule.

References Cited

A complete list of references cited in this rule is available on the internet at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0073 and upon request from the Alabama Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this rule are the staff members of the U.S. Fish and Wildlife Service's Species Assessment Team and Alabama Ecological Services Field Office.

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 Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11 in paragraph (h) by revising the entry for ''Darter, trispot'' under FISHES in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	* * *
Fishes				
*	*	*	*	* * *
Darter, trispot	*Etheostoma trisella*	Wherever found	T	83 FR 67131, 12/28/2018; 50 CFR 17.44(q); [4d] 50 CFR 17.95(e).[CH]
*	*	*	*	* * *

■ 3. Amend § 17.95 in paragraph (e) by adding an entry for ''Trispot Darter (*Etheostoma trisella*)'' immediately following the entry for ''Slackwater Darter (*Etheostoma boschungi*)'', to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Trispot Darter (Etheostoma Trisella)

(1) Critical habitat units are depicted for St. Clair, Etowah, Cherokee, and Calhoun Counties, Alabama; Bradley and Polk Counties, Tennessee; and Whitfield, Murray, and Gordon Counties, Georgia, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of the trispot darter consist of the following components:

(i) Geomorphically stable, small to medium streams with detritus, woody debris, and stands of water willow (*Justicia americana*) over stream substrate that consists of small cobble, pebbles, gravel, and fine layers of silt; and intact riparian cover to maintain stream morphology and reduce erosion and sediment inputs.

(ii) Adequate seasonal water flows, or a hydrologic flow regime (which includes the severity, frequency, duration, and seasonality of discharge over time) necessary to maintain appropriate benthic habitats and to maintain and create connectivity between permanently flowing streams with associated streams that hold water from November through April, providing connectivity between the darter's spawning and summer areas.

(iii) Water and sediment quality (including, but not limited to, conductivity; hardness; turbidity; temperature; pH; ammonia; heavy metals; pesticides; animal waste products; and nitrogen, phosphorus, and potassium fertilizers) necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages.

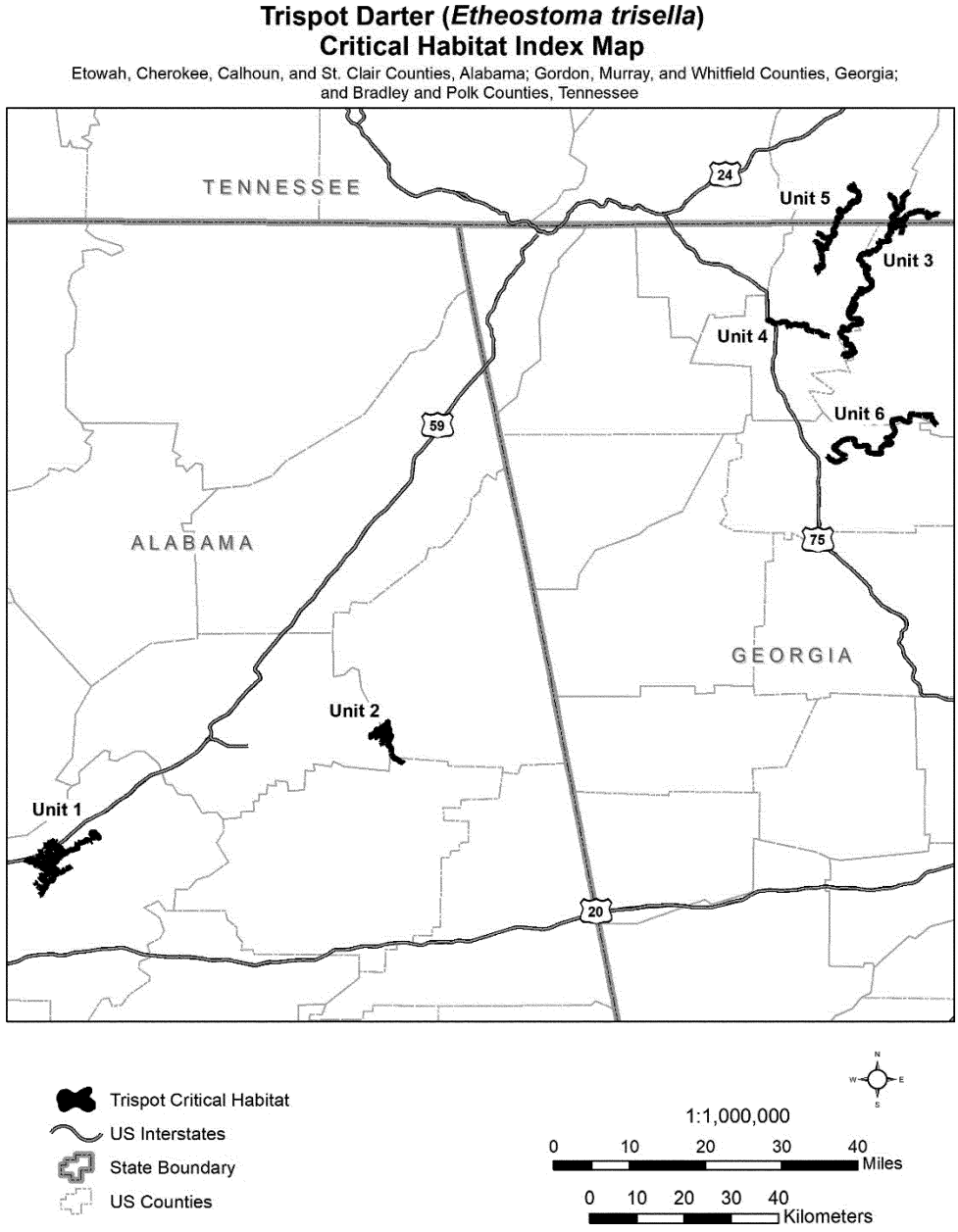
(iv) Prey base of aquatic macroinvertebrates.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on October 30, 2020. In addition, any lands that are perennially dry areas that are located within the critical habitat boundaries shown on the maps in this entry are not designated as critical habitat.

(4) *Critical habitat map units.* Data layers defining map units were created using Universal Transverse Mercator (UTM) Zone 16N coordinates and species' occurrence data. The hydrologic data used in the maps were extracted from U.S. Geological Survey National Hydrography Dataset High Resolution (1:24,000 scale) using Geographic Coordinate System North American 1983 coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0073.

(5) *Note:* Index map follows:

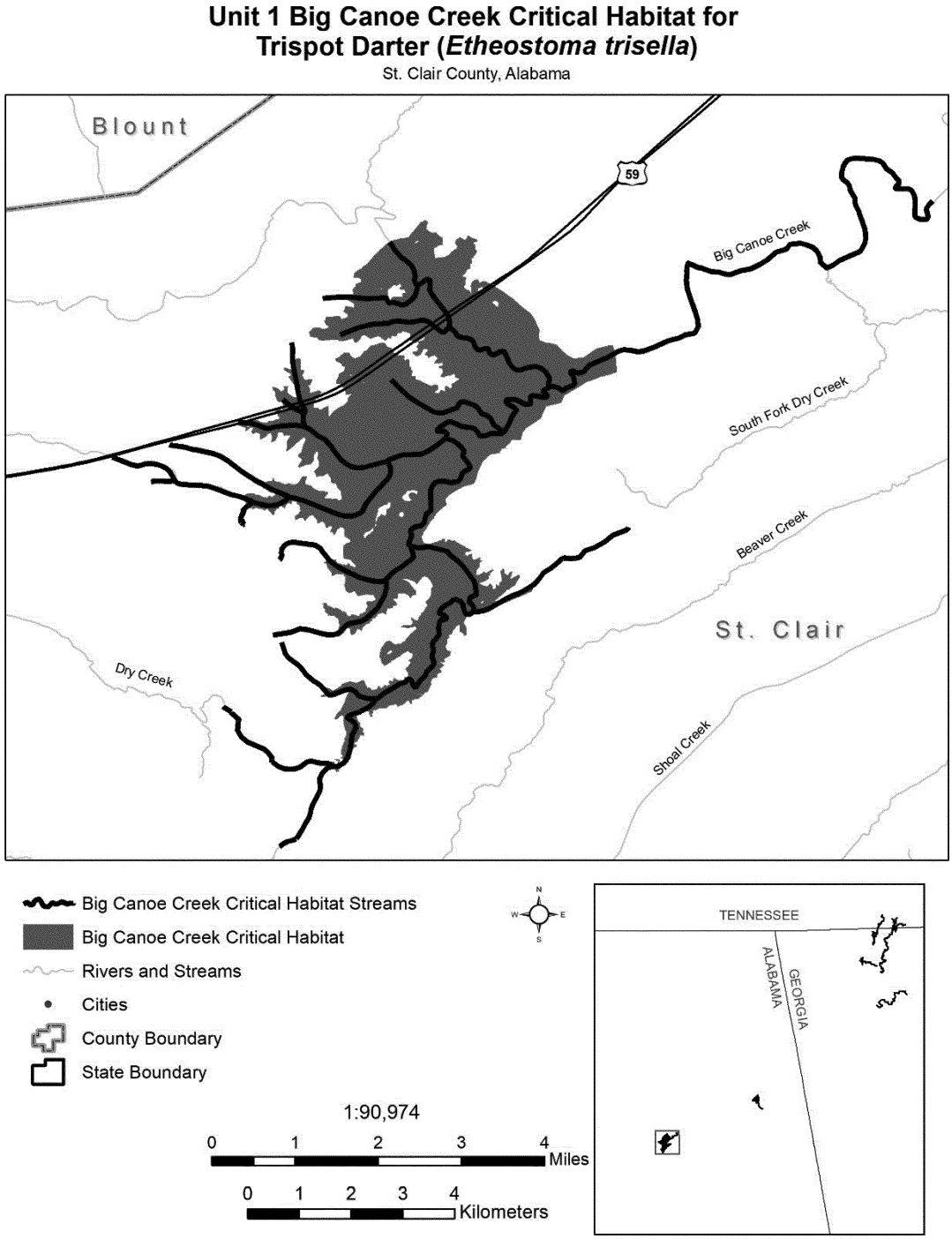
BILLING CODE 4333–15–P



(6) Unit 1: Big Canoe Creek, St. Clair County, Alabama.

(i) *General Description:* Unit 1 consists of 41 stream miles (mi) (66 kilometers (km)) in St. Clair County, Alabama, from approximately 3.5 mi (5.6 km) upstream of Pinedale Road, west of Ashville, Alabama, to approximately U.S. Highway (Hwy.) 11. In addition to Big Canoe Creek, Unit 1 includes the westernmost portion of Little Canoe Creek to State Hwy. 174 and all of its associated tributaries. Unit 1 also includes all low-elevation areas (5,286 acres (ac) (2,139 hectares (ha))) containing channels that hold water from November through April beginning 0.5 mi (0.8 km) upstream of County Road 31 upstream to the U.S. Hwy. 11 crossing with Big Canoe Creek, approximately 0.70 mi (1.1 km) downstream of the Interstate 59 (I–59) crossing with the Left Hand Prong Little Canoe Creek, and the State Hwy. 174 crossing with Little Canoe Creek and Stovall Branch.

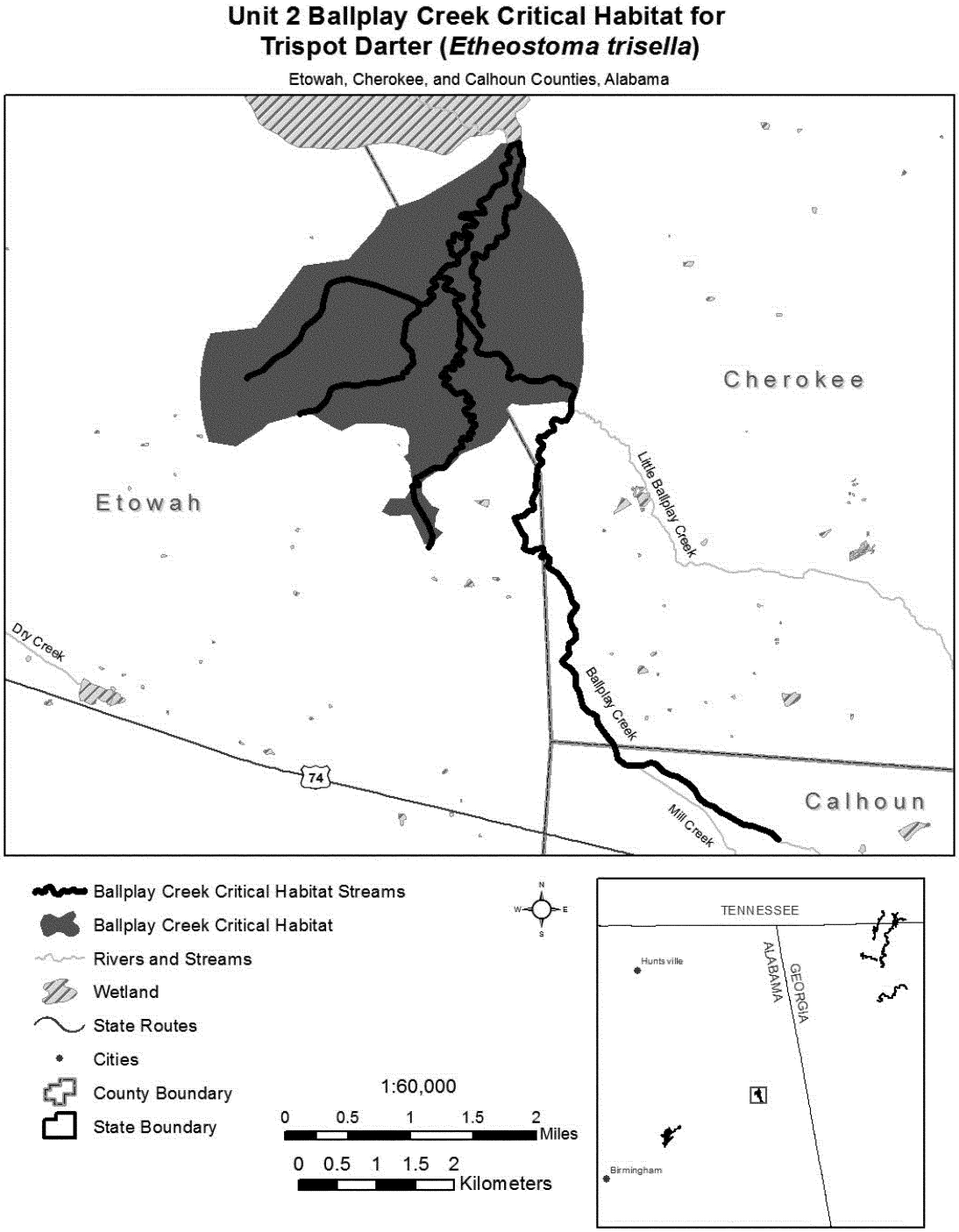
(ii) Map of Unit 1 follows:



(7) Unit 2: Ballplay Creek, Etowah, Cherokee, and Calhoun Counties, Alabama.

(i) Unit 2 consists of 17 stream mi (27 km) of Ballplay Creek in Etowah, Cherokee, and Calhoun Counties, Alabama, and 2,527 ac (1,023 ha) of ephemeral spawning habitat. Unit 2 begins upstream of a wetland complex located at the border between Etowah and Cherokee Counties approximately at County Road 32, and continues upstream approximately to the U.S. Hwy. 278 crossing over Ballplay Creek in Calhoun County, Alabama. Unit 2 includes all low-elevation areas containing channels that hold water from November through April beginning upstream of the wetland complex located at the border between Etowah and Cherokee Counties approximately 0.60 mi (1 km) southwest of County Road 32, extending upstream to the confluence of Ballplay and Little Ballplay Creeks and to the west along Rocky Ford Road and Alford Road.

(ii) Map of Unit 2 follows:

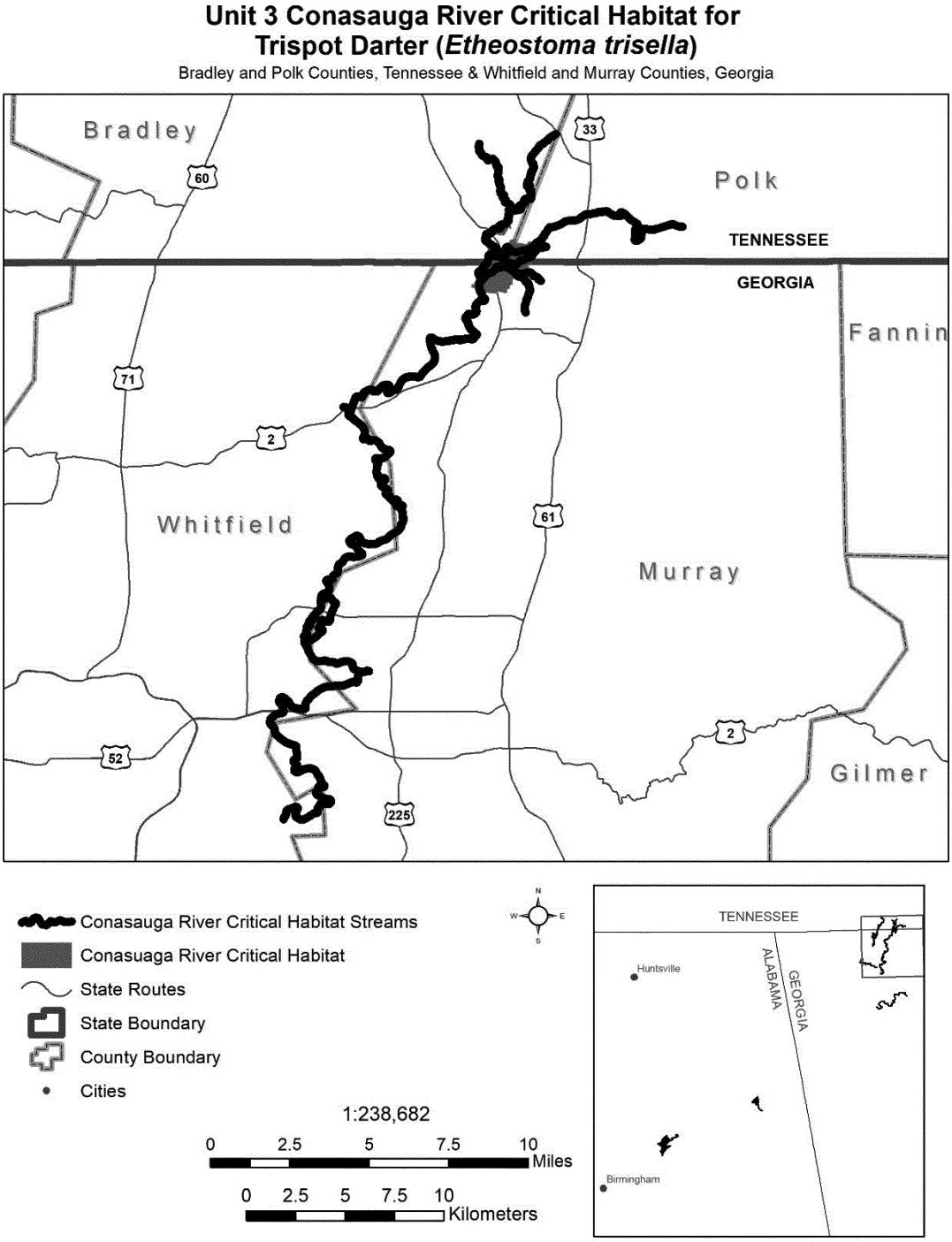


(8) Unit 3: Conasauga River, Bradley and Polk Counties, Tennessee, and Whitfield and Murray Counties, Georgia.

(i) Unit 3 consists of 57 stream mi (92 km) and 1,400 ac (567 ha) of ephemeral wetland spawning habitat in Whitfield and Murray Counties, Georgia, and Polk and Bradley Counties, Tennessee. Unit 3 begins in the Conasauga River upstream of the mouth of Coahulla Creek and continues upstream to the mouth of Minneawauga Creek. Unit 3 also includes Mill Creek, from its confluence with the Conasauga River in Bradley County, Tennessee, upstream to the first impoundment on Mill Creek approximately at Green Shadow Road SE; Old Fort Creek, from Ladd Springs Road SE in Polk County, Tennessee, to its confluence with Mill Creek in Bradley County, Tennessee; and Perry Creek, from its headwaters (approximately 0.35 mi (0.6 km) upstream of Tennga Gregory Road) to its confluence with the Conasauga River in Murray County, Georgia, and both of its tributaries. Unit 3 includes all low-elevation areas containing channels that hold water from November through April, beginning from the confluence of the Conasauga River and Shears Branch (west of U.S. Hwy. 411 in Polk County, Tennessee) to approximately 0.30 mi (0.5 km) downstream of the confluence of the Conasauga River and Perry Creek; Mill Creek from Hicks Tanyard Road downstream to its confluence with the Conasauga River; Old Fort Creek from

Hicks Tanyard Road to its confluence with Mill Creek; and Perry Creek.

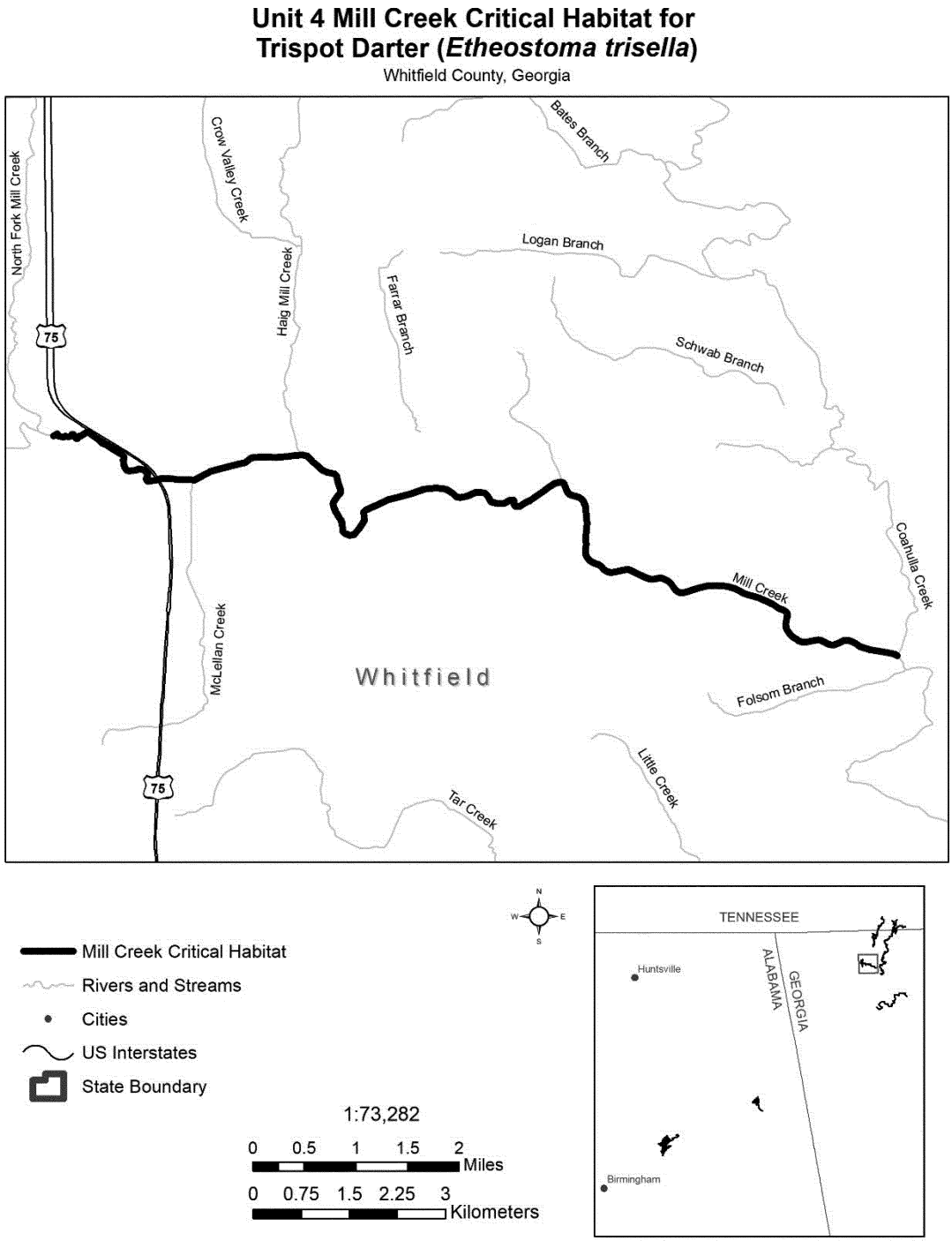
(ii) Map of Unit 3 follows:



(9) Unit 4: Mill Creek, Whitfield County, Georgia.

(i) Unit 4 consists of 9.4 stream mi (15.1 km) of Mill Creek in Whitfield County, Georgia. Unit 4 begins at the confluence of Mill Creek with Coahulla Creek and continues upstream along Mill Creek for approximately 9.4 mi (15.1 km) to the U.S. Hwy. 41 crossing.

(ii) Map of Unit 4 follows:



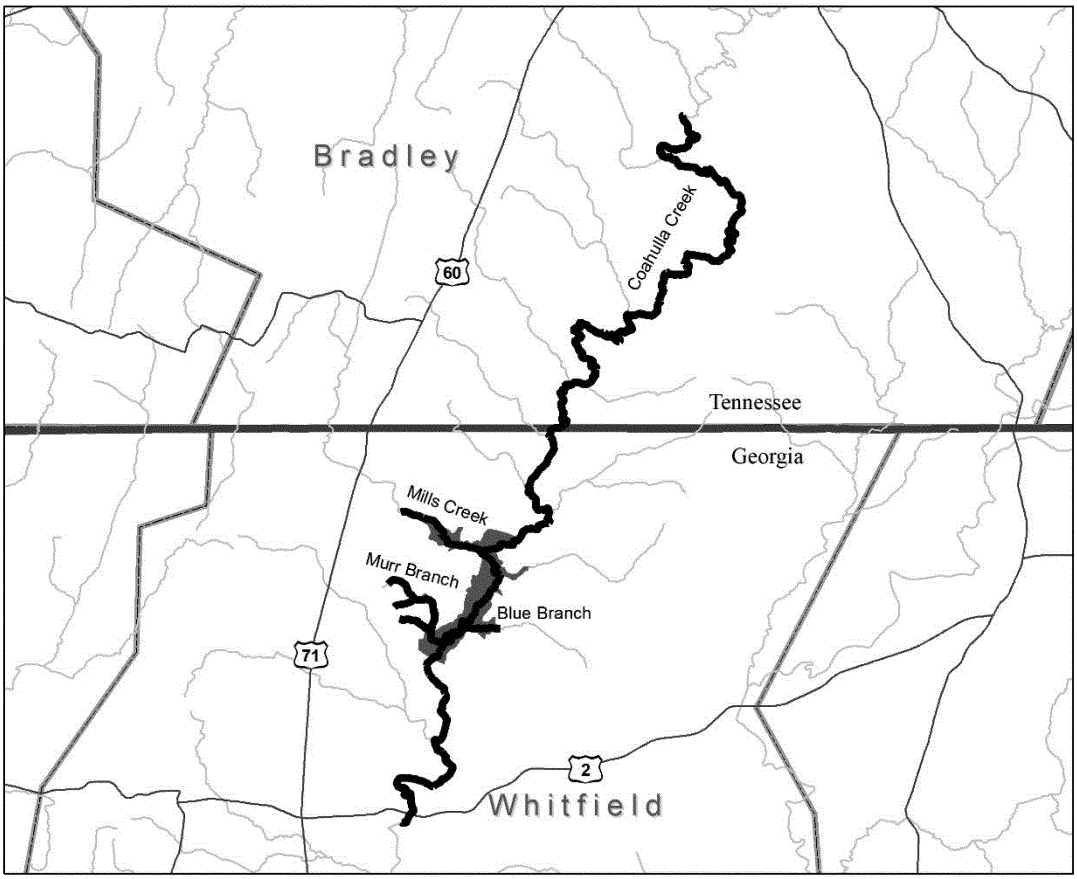
(10) Unit 5: Coahulla Creek, Whitfield County, Georgia, and Bradley County, Tennessee.

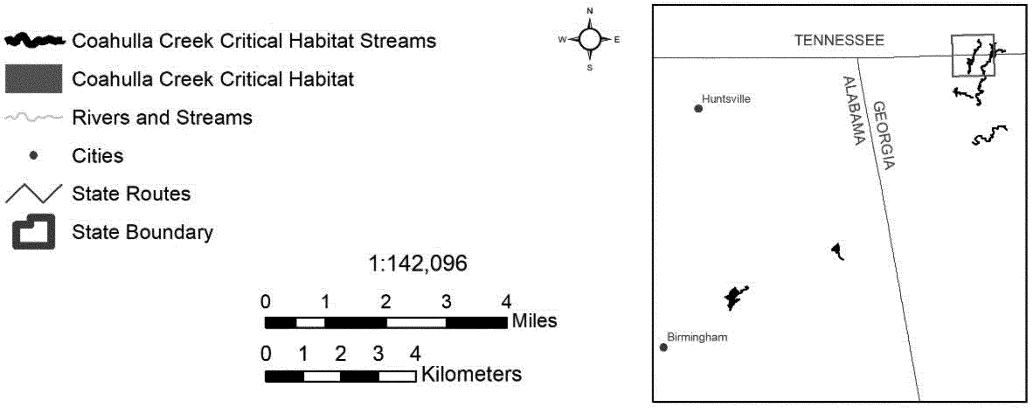
(i) Unit 5 consists of 26 stream mi (42 km) of Coahulla Creek and 716 ac (290 ha) of ephemeral spawning habitat in Whitfield County, Georgia, and Bradley County, Tennessee. Unit 5 begins immediately upstream of the Prater Mill dam upstream of State Hwy. 2 in Georgia. The unit continues upstream for approximately 26 mi (42 km) to Ramsey Bridge Road SE and includes ephemeral wetland habitat from 0.5 mi (0.8 km) downstream of Hopewell Road to approximately 0.5 mi (0.8 km) upstream of McGaughey Chapel Road.

(ii) Map of Unit 5 follows:

Unit 5 Coahulla Creek Critical Habitat for Trispot Darter (*Etheostoma trisella*)

Whitfield County, Georgia; Bradley County, Tennessee





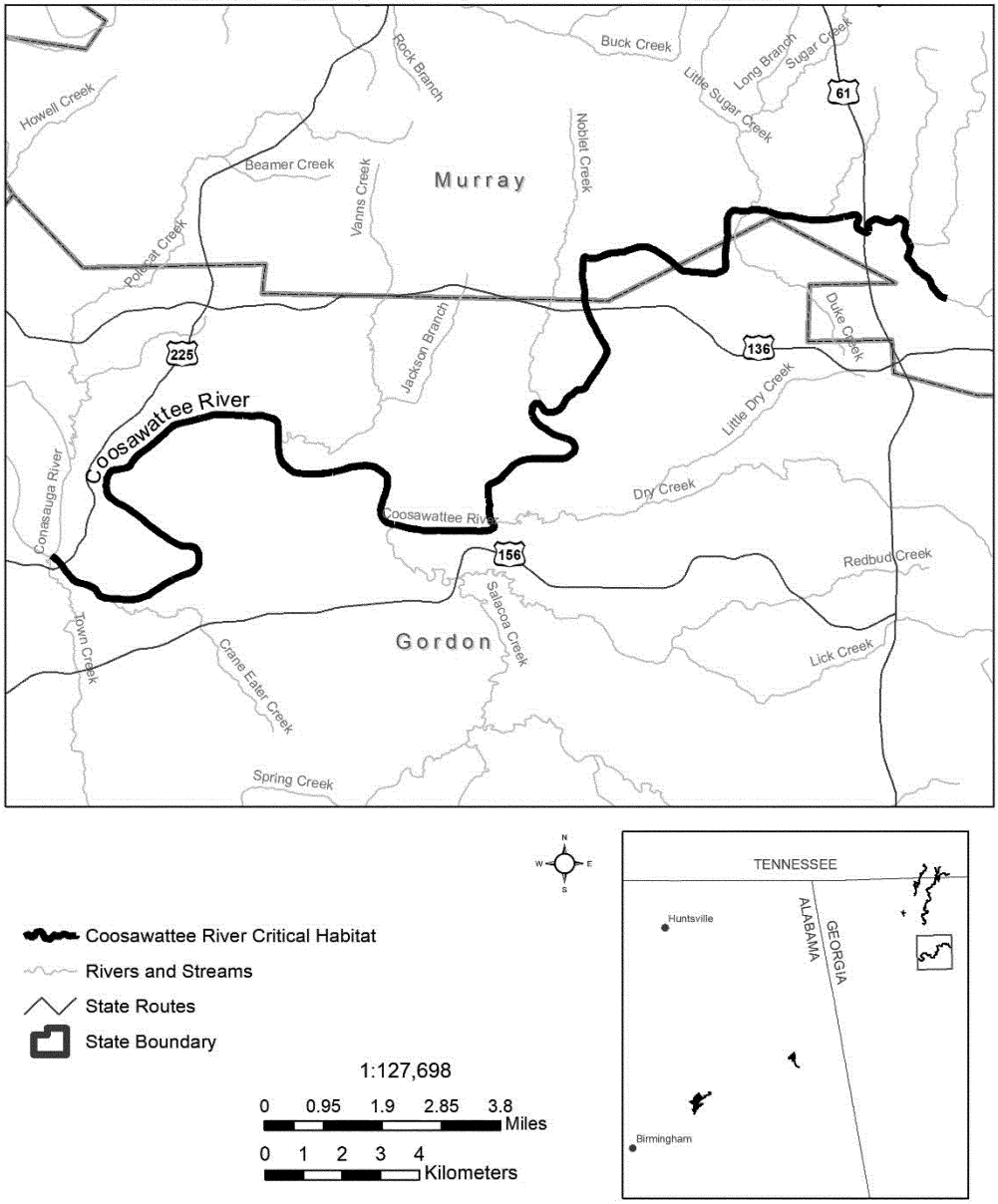
(11) Unit 6: Coosawattee River, Gordon and Murray Counties, Georgia.

(i) Unit 6 consists of 25 stream mi (40.2 km) of the Coosawattee River beginning at the confluence with the Conasauga River in Gordon County, Georgia. The unit continues upstream to Old Highway 411 downstream of Carters Lake Reregulation Dam in Murray County, Georgia.

(ii) Map of Unit 6 follows:

Unit 6 Coosawattee River Critical Habitat for Trispot Darter (*Etheostoma trisella*)

Gordon & Murray Counties, Georgia



* * * * *

Aurelia Skipwith,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2020–19115 Filed 9–29–20; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 180117042–8884–02; RTID 0648–XA505]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure of the Atlantic Bluefin Tuna General category September fishery for 2020.

SUMMARY: NMFS closes the General category fishery for large medium and giant (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater) Atlantic bluefin tuna (BFT) for the September subquota time period until the General category reopens on October 1, 2020. The intent of this closure is to prevent overharvest of the adjusted General category BFT September subquota of 195.6 metric tons (mt).