

Canadian border, concurrence of the Canadian government has been obtained. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** November 30, 1998. A filing window for Channel 282A at Chehalis, Washington, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 97-7, adopted October 7, 1998, and released October 16, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

**Authority:** Sections 47 U.S.C. 154, 303, 334, 336.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Chehalis, Channel 282A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 98-28777 Filed 10-27-98; 8:45 am]

BILLING CODE 6712-01-P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

#### 49 CFR Part 1

[OST Docket No. 1; Amdt. 1-295]

#### Organization and Delegation of Powers and Duties; Delegation to the Federal Railroad Administrator

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Secretary is delegating his authority to the Federal Railroad Administrator under section 322 to Title 23 of the United States Code. Section 322, titled the Magnetic Levitation Transportation Technology Deployment Program, was added by section 1218 of the Transportation Equity Act for the 21st Century, Public Law 105-178 (June 9, 1998). Section 322 provides a total of \$55 million for Fiscal Years 1999 through 2001 for preconstruction planning activities, final design, engineering, and construction activities for maglev deployment; \$15 million is available in Fiscal Year 1999 and \$40 million for Fiscal Years 2000 and 2001. Also, section 322 authorizes—but does not appropriate—additional Federal funds of \$950 million for final design and construction of the most promising project. The authority of the Secretary in section 322 to make financial assistance available to states through the establishment of eligibility criteria, solicitation of applications, and the selection of projects for funding should be delegated to the Federal Railroad Administrator because FRA has the expertise and staff to carry out this program in accordance with the statutory requirements.

**EFFECTIVE DATE:** October 28, 1998.

**FOR FURTHER INFORMATION CONTACT:** Gareth W. Rosenau, Office of Chief Counsel (RCC-20), Federal Railroad Administration, 400 Seventh Street, SW. (Stop 10), Washington, DC 20590. Phone: (202) 493-6054.

**SUPPLEMENTARY INFORMATION:** Since this amendment relates to departmental organization, procedure and practice, notice and comment on it are unnecessary under 5 U.S.C. 553(b). Further, since the amendment expedites the Federal Railroad Administration's ability to meet the statutory deadlines of the Magnetic Levitation Transportation Technology Deployment Program, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

#### List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended, effective upon publication, to read as follows:

#### PART 1—[AMENDED]

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

**Authority:** 49 U.S.C. 322; Public Law 101-552, 28 U.S.C. 2672, 31 U.S.C. 3711(a)(2).

2. In § 1.49 (*Delegations to Federal Railroad Administrator*), the following section (kk) is added at the end thereof.

#### § 1.49 Delegations to the Federal Railroad Administration.

\* \* \* \* \*

(kk) Carry out the functions and exercise the authority vested in the Secretary by 23 U.S.C. 322, titled the Magnetic Levitation Transportation Technology Deployment Program.

Issued in Washington, DC, this 21st day of October, 1998.

**Rodney E. Slater,**

*Secretary of Transportation.*

[FR Doc. 98-28821 Filed 10-27-98; 8:45 am]

BILLING CODE 4910-62-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

#### RIN 1018-AE36

#### Endangered and Threatened Wildlife and Plants; Endangered Status for Three Aquatic Snails, and Threatened Status for Three Aquatic Snails in the Mobile River Basin of Alabama

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

**ACTION:** Final rule.

**SUMMARY:** The Fish and Wildlife Service (Service) determines the cylindrical lioplax (*Lioplax cyclostomaformis*), flat pebblesnail (*Lepyrium showalteri*), and plicate rocksnail (*Leptoxis plicata*) to be endangered species; and the painted rocksnail (*Leptoxis taeniata*), round rocksnail (*Leptoxis ampla*), and lacy elimia (*Elimia crenatella*) to be threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). These aquatic snails are found in localized portions of the Black Warrior, Cahaba, Alabama, and Coosa rivers or their tributaries in central Alabama. Impoundment and water quality degradation have eliminated the six snails from 90 percent or more of their historic habitat. Surviving populations are currently threatened by pollutants such as sediments and nutrients that wash into streams from the land surface. This action implements the protection of the Act for these six snail species.

**DATES:** This rule is effective November 27, 1998.

**ADDRESSES:** The complete file for this rule is available for inspection, by

appointment, during normal business hours at the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Hartfield (see ADDRESSES section), 601/965-4900, extension 25.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Mobile River Basin (Basin) historically supported the greatest diversity of freshwater snail species in the world (Bogan *et al.* 1995), including six genera and over 100 species that were endemic to the Basin. During the past few decades, publications in the scientific literature have primarily dealt with the apparent decimation of this fauna following the construction of dams within the Basin and the inundation of extensive shoal (a shallow place in a body of water) habitats by impounded waters (Goodrich 1944, Athearn 1970, Heard 1970, Stein 1976, Palmer 1986, Garner 1990).

In 1990, the Service initiated a status review of the endemic freshwater snails of the Basin. An extensive literature survey identified sources of information on taxonomy, distribution, ecology, and status of the fauna and was used to assemble a checklist of the Basin's snails and their distributions (Bogan 1992). Field surveys and collections were made for snails and other freshwater mollusks throughout the Basin (Bogan and Pierson, 1993a,b; McGregor *et al.* 1996; Service Field Records, Jackson, Mississippi 1989-1996; Bogan *in litt.* 1995; M. Pierson Field Records, Calera, Alabama, *in litt.* 1993-1994; J. Garner, Alabama Department of Conservation, pers. comm. 1996; J. Johnson, Auburn University, *in litt.* 1996).

Bogan *et al.* (1995) summarized the results of their efforts noting the apparent extinction of numerous snail species in the Coosa and Cahaba River drainages, and the imperiled state of many other aquatic snails in the Basin.

The taxonomy used in this final rule follows Burch (1989), which relies almost exclusively on shell morphology. Many of the Basin's freshwater snail species, particularly in the family Pleuroceridae, are known to exhibit marked clinal variation (gradual change in characters of a species that manifests itself along a geographic gradient) in shell form, some of which has been described as environmentally induced (e.g., Goodrich 1934, 1937). Four of the six species considered in this final rule belong to the family Pleuroceridae and their relationships to each other, as well

as to other Pleuroceridae, are poorly understood. In order to better document taxonomic relationships among these snails, a genetic study was conducted during the status review of a select group of the Basin's Pleuroceridae (Lydeard *et al.* 1997). The four snails within this family considered herein (lacy elimia, round rocksnail, plicate rocksnail, and painted rocksnail) were included in the genetic study. This study supported their current taxonomic status (Lydeard *et al.* 1997).

The cylindrical lioplax (*Lioplax cyclostomaformis* (Lea 1841)) is a gill-breathing snail in the family Viviparidae. The shell is elongate, reaching about 28 millimeters (mm) (1.1 inches (in)) in length. Shell color is light to dark olivaceous-green externally, and bluish inside of the aperture (shell opening). The cylindrical lioplax is distinguished from other viviparid (eggs hatch internally and the young are born as juveniles) snails in the Basin by the number of whorls, and differences in size, sculpture, microsculpture, and spire angle. No other species of lioplax snails are known to occur in the Mobile Basin (see Clench and Turner 1955 for a more detailed description).

Habitat for the cylindrical lioplax is unusual for the genus, as well as for other genera of viviparid snails. It lives in mud under large rocks in rapid currents over stream and river shoals. Other lioplax species are usually found in exposed situations or in mud or muddy sand along the margins of rivers. Little is known of the biology or life history of the cylindrical lioplax. It is believed to brood its young and filter-feed, as do other members of the Viviparidae. Life spans have been reported from 3 to 11 years in various species of Viviparidae (Heller 1990).

Collection records for the cylindrical lioplax exist from the Alabama River (Dallas County, Alabama), Black Warrior River (Jefferson County, Alabama) and tributaries (Prairie Creek, Marengo County, Alabama; Valley Creek, Jefferson County, Alabama), Coosa River (Shelby, Elmore counties, Alabama) and tributaries (Oothcalooga Creek, Bartow County, Georgia; Coahulla Creek, Whitfield County, Georgia; Armuchee Creek, Floyd County, Georgia; Little Wills Creek, Etowah County, Alabama; Choccolocco Creek, Talladega County, Alabama; Yellowleaf Creek, Shelby County, Alabama), and the Cahaba River (Bibb, Shelby counties, Alabama) and its tributary, Little Cahaba River (Jefferson County, Alabama) (Clench and Turner 1955). A single collection of this species has also been reported from the Tensas River, Madison Parish, Louisiana (Clench 1962), however, there are no

previous or subsequent records outside of the Alabama-Coosa system, and searches of the Tensas River in Louisiana by Service biologists (1995) and others (Vidrine 1996) have found no evidence of the species or its typical habitat.

The cylindrical lioplax is currently known only from approximately 24 kilometers (km) (15 miles (mi)) of the Cahaba River above the Fall Line in Shelby and Bibb counties, Alabama (Bogan and Pierson 1993b). Survey efforts by Davis (1974) failed to locate this snail in the Coosa or Alabama rivers, and more recent survey efforts have also failed to relocate the species at historic localities in the Alabama, Black Warrior, Little Cahaba, and Coosa rivers and their tributaries (Bogan and Pierson 1993a, 1993b; M. Pierson *in litt.* 1993, 1994; Service Field Records 1991, 1992, 1993).

The flat pebblesnail (*Lepyrium showalteri* (Lea 1861)) is a small snail in the family Hydrobiidae; however, the species has a large and distinct shell, relative to other hydrobiid species. This snail's shell is also distinguished by its depressed spire and expanded, flattened body whorl. The shells are ovate in outline, flattened, and grow to 3.5 to 4.4 mm (0.1-0.2 in) high and 4 to 5 mm (0.2 in) wide. The umbilical area is imperforate (no opening), and there are 2 to 3 whorls which rapidly expand. The anatomy of this species has been described in detail by Thompson (1984). The flat pebblesnail is found attached to clean, smooth stones in rapid currents of river shoals. Eggs are laid singly in capsules on hard surfaces (Thompson 1984). Little else is known of the natural history of this species.

The flat pebblesnail was historically known from the mainstem Coosa River in Shelby and Talladega counties, the Cahaba River in Bibb and Dallas counties, and Little Cahaba River in Bibb County, Alabama (Thompson 1984). The flat pebblesnail has not been found in the Coosa River portion of its range since the construction of Lay and Logan Martin Dams, and recent survey efforts have failed to locate any surviving populations outside of the Cahaba River drainage (Bogan and Pierson, 1993a,b; McGregor *et al.* 1996; Service Field Records, Jackson, Mississippi 1989-1996; Bogan *in litt.* 1995; M. Pierson Field Records, Calera, Alabama, *in litt.* 1993-1994; J. Garner pers. comm. 1996; J. Johnson *in litt.* 1996). The flat pebblesnail is currently known from one site on the Little Cahaba River, Bibb County, and from a single shoal series on the Cahaba River above the Fall Line, Shelby County, Alabama (Bogan and Pierson 1993b).

The lacy elimia (*Elimia crenatella* (Lea 1860)) is a small species in the family Pleuroceridae. Growing to about 1.1 centimeters (cm) (0.4 in) in length, the shell is conic in shape, strongly striate, and often folded in the upper whorls. Shell color is dark brown to black, often purple in the aperture, and without banding. The aperture is small and ovate. The lacy elimia is easily distinguished from other elimia species by a combination of characters (i.e., size, ornamentation, color).

In a recent genetic sequence study of the 16S rRNA gene, the lacy elimia was found to be very similar to the compact elimia (*Elimia showalteri*) (Lydeard *et al.* 1997). Despite their apparent close genetic relationship, the authors made no suggestion that the two species represented a single species. Upon review of Lydeard *et al.* (1997), Dillon (College of Charleston, Charleston, South Carolina, *in litt.* 1997) suggested that additional genetic studies were needed to demonstrate the genetic uniqueness of the lacy elimia. However, the Lydeard *et al.* (1997) genetic study addressed only one small genetic character of the genome (entire genetic make-up of an individual) of these species, and other characters strongly support the taxonomic status of the lacy elimia. The two species are allopatric (do not overlap in distribution—the compact elimia occurs in the Cahaba River, whereas the lacy elimia was found in the Coosa River and tributaries), and are strikingly different in size, appearance, and behavior. The compact elimia has a large, robust, smooth shell boldly colored brown and/or green, whereas the lacy elimia has a small, delicate, darkly colored, and ornamented shell. The lacy elimia is one of the few elimia snails in the Basin that does not exhibit clinal variation (Goodrich 1936). In addition, compact elimia are found grazing individually throughout shoal habitats, whereas the lacy elimia is usually found in tight clusters or colonies on larger rocks within a shoal (P. Hartfield, Jackson, MS, pers. obsv.). Allopatry, morphology, and behavior are strong characters supporting species specific status of the lacy elimia.

Elimia snails are gill breathing snails that typically inhabit highly oxygenated waters on rock shoals and gravel bars. Most species graze on periphyton growing on benthic (bottom) substrates. Individual snails are either male or female. Eggs are laid in early spring and hatch in about 2 weeks. Snails apparently become sexually mature in their first year, but, in some species, females may not lay until their second

year. Some elimia may live as long as 5 years (Dillon 1988).

The lacy elimia was historically abundant in the Coosa River main stem from St. Clair to Chilton County, Alabama, and was also known in several Coosa River tributaries—Big Will's Creek, DeKalb County; Kelley's Creek, St. Clair County; and Choccolocco and Tallaseehatchee creeks, Talladega County, Alabama (Goodrich 1936). The lacy elimia has not been recently located at any historic collection site. However, as a result of the recent survey efforts, previously unreported populations were discovered in three Coosa River tributaries—Cheaha, Emauhee, and Weewoka creeks, Talladega County, Alabama (Bogan and Pierson 1993a). The species is locally abundant in the lower reaches of Cheaha Creek. This stream originates within the Talladega National Forest; however, no specimens of the lacy elimia have been collected on Forest Service lands. The species has also been found at single sites in Emauhee and Weewoka creeks, where specimens are rare, and difficult to locate.

The painted rocksnail (*Leptoxis taeniata* (Conrad 1834)) is a small to medium snail about 19 mm (0.8 in) in length, and subglobose to oval in shape. The aperture is broadly ovate, and rounded anteriorly. Coloration varies from yellowish to olive-brown, and usually with four dark bands. Some shells may not have bands and some have the bands broken into squares or oblongs (see Goodrich 1922 for a detailed description). All of the rocksnails that historically inhabited the Basin had broadly rounded apertures, oval shaped shells, and variable coloration. Although the various species were distinguished by relative sizes, coloration patterns, and ornamentation, identification could be confusing. However, the painted rocksnail is the only known survivor of the 15 rocksnail species that were historically known from the Coosa River drainage.

Rocksnailed are gill breathing snails found attached to cobble, gravel, or other hard substrates in the strong currents of riffles (a shallow area in a streambed that causes ripples in the water) and shoals. Adult rocksnails move very little, and females probably glue their eggs to stones in the same habitat (Goodrich 1922). Heller (1990) reported a short life span (less than 2 years) in a Tennessee River rocksnail. Longevity in the painted and the Basin's other rocksnails is unknown.

The painted rocksnail had the largest range of any rocksnail in the Mobile River Basin (Goodrich 1922). It was historically known from the Coosa River

and tributaries from the northeastern corner of St. Clair County, Alabama, downstream into the mainstem of the Alabama River to Claiborne, Monroe County, Alabama, and the Cahaba River below the Fall Line in Perry and Dallas counties, Alabama (Goodrich 1922, Burch 1989). Surveys by Service biologists and others (Bogan and Pierson 1993a, 1993b; M. Pierson, *in litt.* 1993) in the Cahaba River, unimpounded portions of the Alabama River, and a number of free-flowing Coosa River tributaries have located only three localized Coosa River drainage populations.

The painted rocksnail is currently known from the lower reaches of three Coosa River tributaries—Choccolocco Creek, Talladega County; Buxahatchee Creek, Shelby County (Bogan and Pierson 1993a); and Ohatchee Creek, Calhoun County, Alabama (Pierson *in litt.* 1993).

The round rocksnail (*Leptoxis ampla* (Anthony 1855)) grows to about 20 mm (0.8 in) in length. The shell is subglobose, with an ovately rounded aperture. The body whorl is shouldered at the suture, and may be ornamented with folds or plicae. Color may be yellow, dark brown, or olive green, usually with four entire or broken bands (Goodrich 1922). Round rocksnails inhabit riffles and shoals over gravel, cobble, or other rocky substrates.

Lydeard *et al.* (1997) found slight differences in DNA sequencing between the painted rocksnail and the round rocksnail, and considered them to be sister species. Following analysis by allozyme electrophoresis on these same species, Dillon (*in litt.* 1997) speculated that the two species represented isolated populations belonging to a single species. The two species are geographically separated, with the painted rocksnail inhabiting Coosa River tributaries, while the round rocksnail is the only surviving rocksnail species in the Cahaba River drainage. Both species are currently recognized by the malacological community (e.g., Burch 1989; Turgeon *et al.* 1988, revision in review), and are treated as distinct in this final rule.

The round rocksnail was historically found in the Cahaba River, and its tributary, Little Cahaba River, Bibb County, Alabama; and the Coosa River, Elmore County, and tributaries—Canoe Creek and Kelly's Creek, St. Clair County; Ohatchee Creek, Calhoun County; Yellowleaf Creek, Shelby County; and Waxahatchee Creek, Shelby/Chilton counties, Alabama (Goodrich 1922).

The round rocksnail is currently known from a shoal series in the Cahaba

River, Bibb and Shelby counties, Alabama, and from the lower reach of the Little Cahaba River, and the lower reaches of Shade and Six-mile creeks in Bibb County, Alabama (Bogan and Pierson 1993b).

The plicate rocksnail (*Leptoxis plicata* (Conrad, 1834)) grows to about 20 mm (0.8 in) in length. Shells are subglobose with broadly rounded apertures. The body whorl may be ornamented with strong folds or plicae. Shell color is usually brown, occasionally green, and often with four equidistant color bands. The columella (central column or axis) is smooth, rounded, and typically pigmented in the upper half. The aperture is usually bluish-white, occasionally pink or white. The operculum (plate that closes the shell when the snail is retracted) is dark red, and moderately thick (Goodrich 1922). Although morphologically similar to the Basin's other three surviving rocksnail species, the plicate rocksnail is genetically distinct (Lydeard *et al.* 1997, Dillon *in litt.* 1997).

The plicate rocksnail historically occurred in the Black Warrior River and its tributary, the Little Warrior River, and the Tombigbee River (Goodrich 1922). Status survey efforts found populations of plicate rocksnails only in an approximately 88km (55 mi) reach of the Locust Fork of the Black Warrior River, Jefferson and Blount counties, Alabama (Service Field Records, Jackson, Mississippi 1991, 1992; Malcolm Pierson, Calera, Alabama, Field Notes 1993). Surveys during 1996 and 1997 indicate that the snail has recently disappeared from the upstream two-third portion of that habitat and now appears restricted to an approximately 32 km (20 mi) reach in Jefferson County (Garner *in litt.* 1998).

#### Previous Federal Action

The six aquatic snails were identified as Category 2 species in notices of review published in the **Federal Register** on November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982). At that time, a Category 2 species was one that was being considered for possible addition to the Federal List of Endangered and Threatened Wildlife, but for which conclusive data on biological vulnerability and threat were not available to support a proposed rule. Designation of Category 2 species was discontinued in the February 28, 1996, Notice of Review (61 FR 7596). The six snails considered in this final rule were approved as Candidate species by the Service on November 9, 1995, and identified as Candidates in the 1996 Notice of Review (61 FR 7601). A

Candidate species is defined as a species for which the Service has on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule.

A status review summary, that included these six snails, was mailed on August 23, 1994 (62 letters), to appropriate species authorities, State and Federal agencies, private organizations, and interested individuals. A cover letter provided notification that a status review was in progress by the Service, stated that the species appeared to qualify for listing under the Act, and requested a review of the status review summary for accuracy regarding taxonomy, distribution, threats, and status. Three species authorities responded by telephone concurring with the status reviews. No other comments were received as a result of this notification.

An updated status report, along with a review request, was mailed on March 11, 1997 (157 letters), following elevation of the snails to Candidate status. One snail authority concurred with the status review analysis; however, he recommended additional genetic studies on the lacy elimia (see "Background" section above). Two other snail authorities responded concurring with the analysis, as well as the taxonomic treatment of the six species.

On September 5, 1995, the Service received two petitions, dated August 31, 1995, from a coalition of environmental organizations (Coosa-Tallapoosa Project, Biodiversity Legal Foundation, and Alabama Wilderness Alliance) represented by Mr. Ray Vaughan. The petitioners requested the Service to list the plicate rocksnail as endangered and to designate critical habitat for this species. The second petition requested the Service to list the lacy elimia as a threatened species and to designate critical habitat.

Section 4 (b)(3)(A) of the Act and implementing regulations at 50 CFR 424.14 require that, to the extent practicable, the Service make a finding of substantiality on any petition within 90 days of its receipt, and publish a notice of its finding in the **Federal Register**. If a substantial 90-day finding is made, the Service is required, to the extent practicable, within 12 months of receipt of the petition, to make a finding as to whether the action requested in the petition is: (a) Not warranted; (b) warranted; or (c) warranted but precluded. Because of reductions in funding and the lasting effects of a congressionally imposed listing moratorium from April 10, 1995, to April 26, 1996, the Service's listing

program was essentially shut down and the Service was precluded from processing petitions and developing proposed rules from October 1, 1995, through April 26, 1996. When the moratorium was lifted and funds were appropriated for the administration of the listing program, the Service was faced with a significant backlog of listing activities. Petitions and other listing actions were processed according to the listing priority guidance published in the **Federal Register** on December 5, 1996 (61 FR 64475). The guidance clarified the order in which the Service processed listing actions during fiscal year 1997. The guidance called for giving highest priority (Tier 1) to handling emergency situations and second highest priority (Tier 2) to resolving the status of outstanding proposed listings. Third priority (Tier 3) was given to resolving the conservation status of Candidate species and processing administrative findings on petitions to add species to the lists or reclassify threatened species to endangered status. The processing of these two petitions and the proposed rule fell under Tier 3. A proposal to list three aquatic snails as endangered, and three aquatic snails as threatened was published in the **Federal Register** (62 FR 54020) on October 17, 1997. The proposal constituted the 90-day and 12-month finding on the petitioned actions. The processing of this final rule conforms with the Service's final listing priority guidance for fiscal years 1998 and 1999 published in the **Federal Register** on May 8, 1998 (63 FR 25502). The guidance calls for giving highest priority (Tier 1) to handling emergency situations, second highest priority (Tier 2) to resolving the listing status of outstanding proposed listings, resolving the conservation status of candidate species, processing administrative findings on petitions, and processing a limited number of delistings and reclassifications, and third priority (Tier 3) to processing proposed and final designations of critical habitat. The processing of this final rule falls under Tier 2. The Southeast Region has no pending Tier 1 actions.

#### Summary of Comments and Recommendations

In the October 17, 1997, proposed rule (62 FR 54020) and associated notifications, all interested parties were requested to submit factual information that might assist the Service in determining whether these taxa warrant listing. Direct notification of the proposal was made to 205 institutions and individuals, including State and Federal agencies, county governments,

scientific organizations, and other interested parties. Newspaper legal notices announcing the proposal and inviting public comment were published in *The Birmingham News*, *Daily Home*, *Montgomery Advertiser*, and *Anniston Star*. The comment period closed on December 16, 1997. During the initial comment period, a public hearing was requested by Gorham & Waldrep, a legal firm representing The Birmingham Water Works Board. The public comment period was reopened on December 19, 1997 (62 FR 66583), and extended until January 23, 1998, to accommodate the public hearing. The Service notified by letter appropriate State and Federal agencies, county governments, scientific organizations, and other interested parties of the public hearing and the reopening of the comment period. In addition, newspaper notices announcing the public hearing and reopening of the comment period were published in *The Birmingham News*, *Anniston Daily Star*, *Montgomery Advertiser*, and *Daily Home*. The hearing was held at the Dwight Beeson Hall Auditorium on the campus of Samford University in Birmingham, Alabama, on January 13, 1998, with 23 people in attendance. Oral comments were received from six individuals, four in support of the proposed action, and two requesting clarification of language in the proposal.

During the comment periods, the Service received over 200 cards and letters concerning the proposal. Most individuals expressed support for the proposed listing; however, one individual expressed concern over the listing of the plicate rocksnail, another individual supported preservation of the species but opposed the listing on constitutional grounds, and several individuals expressed concern over specific statements within the proposal.

Written comments and oral statements presented at the public hearing and received during the comment periods are either incorporated into the appropriate section of this rule, or are addressed in the following summary. Comments of a similar nature or point are grouped into a number of general issues. These issues and the Service's response to each are discussed below:

**Issue 1:** The Service lacks authority to regulate these species under the Commerce Clause of Article I, Section 8 of the United States Constitution.

**Response:** On June 22, 1998, the Supreme Court, without comment, rejected the argument that using the Act to protect species that live only in one State goes beyond Congress' authority to regulate interstate commerce. This

decision upholds a decision made by the United States Court of Appeals for the District of Columbia Circuit (National Association of Homebuilders vs. Babbitt, 97-1451) that regulation under the Act is within Congress' Commerce Clause power and that loss of animal diversity has a substantial effect on interstate commerce. Thus, although these six snails are found only within the State of Alabama, the Service's application of the Act to list these species is constitutional.

**Issue 2:** Emergency listing is appropriate for the cylindrical lioplax, flat pebblesnail, and the plicate rocksnail.

**Response:** Emergency listing is appropriate only in cases where imminent threats to a species have been identified requiring the immediate protection of the Act for the species. As noted in the proposed rule, nonpoint source pollution is the primary threat to all known populations of these six species. The deleterious effects of nonpoint source pollution on these snails are gradual and cumulative, and cannot be easily eliminated or specifically identified. Federal and State agencies are currently working with the Service in attempts to identify and address similar problems of nonpoint source pollutants on other listed species within the Mobile River Basin. Emergency listing would not accelerate this process.

**Issue 3:** Endangered status is more appropriate for the lacy elimia and round rocksnail.

**Response:** There are three known populations of the lacy elimia, and four known populations of the round rocksnail. The primary threat to populations of both species is from nonpoint source pollution. This is an insidious but unpredictable threat, and no two of the distinct populations of these species are likely to be faced with identical impacts from stormwater runoff since they all occupy distinct watersheds. Although both species have declined significantly in overall range, one or more populations of each species is currently vigorous, with high numbers of individuals and strong recruitment. Therefore, the Service believes that threatened status is appropriate for these species. If conditions should deteriorate in the future, the status of one or both species could be elevated to endangered.

**Issue 4:** Critical habitat should be designated for all six species because the Alabama Department of Environmental Management (ADEM) would have to maintain and protect designated critical habitat as an existing use under Federal and State water

quality regulations. The U.S. Environmental Protection Agency (EPA) commented that it does not have the authority to require water use classifications higher than the minimum goal of Fish and Wildlife or Swimmable, and suggested that designation of critical habitat might encourage the State to elevate the use classifications of streams where the snails occur to higher levels.

**Response:** As discussed in the proposed rule and in this final rule (see "Critical Habitat" section), critical habitat designation, by definition, directly affects only Federal actions. The presence of listed species is already an existing use of a water body which ADEM, under authority delegated by EPA, is responsible to maintain. ADEM has been informed of the location of the six species, and the threats confronting them. Therefore, critical habitat designation will have no effect on ADEM's responsibilities to maintain State water quality that do not already accrue from the listing. The Service, through coordination and cooperation with the EPA and ADEM, will continue to define water quality impacts and work to revise State and Federal water quality standards and stream use classifications where appropriate.

**Issue 5:** The Service should not construe its mandate to designate critical habitat as narrowly as was done in the proposed rule, i.e., there are benefits to critical habitat designation beyond the section 7 consultation process. The prior controversy surrounding the proposed listing of the Alabama sturgeon should not be a factor in determining critical habitat for the snails.

**Response:** The Service recognized and discussed benefits that might accrue from identifying stream and river reaches currently unoccupied by these species as critical habitat. However, because stream and river habitats change rapidly in response to watershed land use, and it is difficult to project watershed conditions and stream habitat values into the future, the Service is working through a dynamic process with State and other Federal agencies and private parties. In a cooperative relationship, these entities periodically survey, assess, and protect habitat, as well as potential habitat, for listed aquatic species and species of concern within the Mobile River Basin. Additionally, the Service believes that any benefits that might be derived from designation of critical habitat for these species would be outweighed by increasing the threat of vandalism that might result from such a designation. The proposed listing and designation of

critical habitat for the Alabama sturgeon was used as an example of increased potential for vandalism that can result from proposed designation of critical habitat. Other examples can also be given; however, the Alabama sturgeon inhabits the same drainage basin as these snails, and reflects the public mood within the basin.

**Issue 6:** EPA requested clarification regarding the potential that these snails may be more susceptible to common pollutants than organisms currently used in bioassays. EPA provided a table demonstrating that at least nine species of snails have been used for bioassays in the development of criterion for arsenic, copper, lead, mercury, ammonia, aluminum, as well as several other chemicals, and showing them less sensitive than other species, e.g., guppy, crayfish, bluegill, etc.

**Response:** None of the six snails addressed herein have been used for bioassays. Of the nine snail species referenced in the table provided by EPA, all are widespread, most occur far north of the Mobile River Basin, and only one is closely related to any of the six species considered herein. The liver elimia, *Elimia livescens*, is within the same genus as the lacy elimia, but is a widely distributed and locally abundant species in the Great Lakes and its drainages. The other species that have been used for bioassays included five pulmonate (lung breathing and include land and freshwater snails) snails, which are often considered tolerant species, two hydrobiid (small aquatic snail in Hydrobiidae family) species, and one viviparid species. The high tolerance demonstrated by the snails in the data provided by EPA supports the Service's assertion that current standards must be assumed protective until further evidence proves otherwise. The Service and EPA are working to identify appropriate surrogates for listed species for use in bioassays.

**Issue 7:** Dams and impoundment may not be the primary cause of decline of the six snail species. The plicate rocksnail has continued to decline in the unimpounded Locust Fork, suggesting that nonpoint source pollution, or other factors not addressed in the proposed rule, such as flood scour, loss of food source, water temperature changes, etc., represent the primary threats to this species. Dams can increase habitat suitability for aquatic snails by providing flood flow control, flow augmentation, and retention of sediments and toxins.

**Response:** Dams and impounded waters have long been recognized as a cause of decline, extirpation, and extinction of aquatic snails in the Basin

(see discussion under Factor A in the "Summary of Factors Affecting the Species" section). Pollution, particularly nonpoint source pollution, is the primary threat to surviving populations of the six species in unimpounded stream and river habitats. Flood scour was not addressed in the proposed rule, and may have been, and continue to be a factor in the decline of the species. However, all six species inhabit the most dynamic portions of the stream channel and are well adapted to strong flows.

The Service agrees that there are situations in which dams can serve to moderate or augment flows, and retain sediments and contaminants. However, it must also be recognized that none of the six snail species addressed in this rule survive in tailwaters below any of the many dams constructed within their historic ranges.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the cylindrical lioplax (*Lioplax cyclostomaformis*), flat pebblesnail (*Lepyrium showalteri*), and plicate rocksnail (*Leptoxis plicata*) should be classified as endangered species, and the painted rocksnail (*Leptoxis taeniata*), round rocksnail (*Leptoxis amplata*), and lacy elimia (*Elimia crenatella*) should be classified as threatened species. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the cylindrical lioplax, flat pebblesnail, plicate rocksnail, painted rocksnail, round rocksnail, and lacy elimia are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The cylindrical lioplax, flat pebblesnail, lacy elimia, round rocksnail, painted rocksnail, and plicate rocksnail have all disappeared from more than 90 percent of their historic ranges. All of these snails were historically, and continue to be, strongly associated with river or stream habitats characterized by flowing currents, and hard, clean bottoms (e.g., bedrock, boulder, gravel) (Goodrich 1922, 1936; Clench and Turner 1955). The curtailment of habitat and range for these six species in the Basin's larger rivers (Coosa, Alabama, Tombigbee, and Black Warrior) is primarily due to

extensive construction of dams and the inundation of the snail's shoal habitats by impounded waters. Thirty dams have changed this system from a continuum of free-flowing riverine habitats into a series of impoundments connected by short, free-flowing reaches. On the Alabama River, there are 3 dams (built between 1968–1971); the Black Warrior has 5 (1915–1959); the Coosa 10 (1914–1966), and the Tombigbee 12 (1954–1979). Dams impound approximately 1,650 km (1,022 mi) of river channel in the Basin.

These six snail species have disappeared from all portions of their historic habitats that have been impounded by dams. As noted earlier, they are all associated with fast currents over clean, hard bottom materials. Dams change such areas by eliminating or reducing currents, and allowing sediments to accumulate on inundated channel habitats. Impounded waters also experience changes in water chemistry which could affect survival or reproduction of riverine snails. For example, many reservoirs in the Basin currently experience eutrophic (enrichment of a water body with nutrients) conditions, including chronically low dissolved oxygen levels (Alabama Department of Environmental Management (ADEM) 1994, 1996). Such physical and chemical changes can affect feeding, respiration, and reproduction of these riffle and shoal snail species.

A site on the Locust Fork River is being considered for the construction of a water supply impoundment, however, no formal proposal has been made and no permits have been issued (C. Waldrep, Gorham & Waldrep, P.C., Montgomery, Alabama, *in litt.* 1995; G. Hanson, Birmingham Water Works Board, *in litt.* 1998). Plicate rocksnails occurred in riffle and shoal habitats above and below the reservoir site in 1994. In 1996, plicate rocksnails could not be relocated in the portion of the river to be flooded by the reservoir; however, they were confirmed to continue to survive in an approximately 32 km (20 mi) reach of river below the potential dam site, which would be subject to impacts from construction activities and post-construction changes in water quality (Garner *in litt.* 1998).

In addition to directly altering snail habitats, dams and their impounded waters also formed barriers to the movement of snails that continued to live below dams or in unimpounded tributaries. It is suspected that many such isolated colonies gradually disappear as a result of local water and habitat quality changes. Unable to emigrate (move out of the area), the

isolated snail populations are vulnerable to local discharges as well as any detrimental land surface runoff within their watersheds. Although many watershed impacts have been temporary, eventually improving or even disappearing with the advent of new technology, management practices, or laws, dams and their impounded waters prevent natural recolonization by snail populations surviving elsewhere.

Prior to the passage of the Clean Water Act and the adoption of State water quality criteria, water pollution may have been a significant factor in the disappearance of snail populations from unimpounded tributaries of the Basin's impounded mainstem rivers. For example, Hurd (1974) noted the extirpation of freshwater mussel communities from several Coosa River tributaries, including the Conasauga River below Dalton, Georgia, the Chatooga River, and Tallaseehatchee Creek, apparently as a result of textile and carpet mill waste discharges. He also attributed the disappearance of the mussel fauna from the Etowah River, Talladega and Swamp creeks, and from many of the lower tributaries of the Coosa River, to organic pollution and siltation.

Short-term and long-term impacts of point and nonpoint source water and habitat degradation continue to be a primary concern for the survival of all these snails, compounded by their isolation and localization. Point source discharges and land surface runoff (nonpoint pollution) can cause eutrophication, decreased dissolved oxygen concentration, increased acidity and conductivity, and other changes in water chemistry that are likely to seriously impact aquatic snails. Point sources of water quality degradation include municipal and industrial effluents.

Nonpoint source pollution from land surface runoff can originate from virtually all land use activities, and may include sediments, fertilizers, herbicides, pesticides, animal wastes, septic tank and gray water leakage, and oils and greases (ADEM 1996). During many recent surveys for these snails, sediment deposition and nutrient enrichment of stream reaches was noted as being associated with the absence of snails from historic collection localities (Bogan and Pierson 1993a, 1993b; Hartfield 1991; Service Field Observations 1992-1994, Jackson Field Office, MS).

Excessive sediments are believed to impact riverine snails requiring clean, hard shoal stream and river bottoms, by making the habitat unsuitable for feeding or reproduction. Similar

impacts resulting from sediments have been noted for many other components of aquatic communities. For example, sediments have been shown to abrade and/or suffocate periphyton (organisms attached to underwater surfaces, upon which snails may feed); affect respiration, growth, reproductive success, and behavior of aquatic insects and mussels; and affect fish growth, survival, and reproduction (Waters 1995).

Sediment is the most abundant pollutant produced in the Basin (ADEM 1989). Potential sediment sources within a watershed include virtually all activities that disturb the land surface, and all localities currently occupied by these snails are affected to varying degrees by sedimentation. The amount and impact of sedimentation on snail habitats may be locally correlated with the land use practice. For example, the use of agriculture, forestry, and construction Best Management Practices can reduce sediment amounts and impacts.

Land surface runoff contributes the majority of human-induced nutrients to water bodies throughout the country (Louisiana Department of Environmental Quality 1995). Excessive nutrient input (from fertilizers, sewage waste, animal manure, etc.) can result in periodic low dissolved oxygen levels that are detrimental to aquatic species (Hynes 1970). Nutrients also promote heavy algal growth that may cover and eliminate clean rock or gravel habitats of shoal dwelling snails. Nutrient and sediment pollution may have synergistic effects (a condition in which the toxic effect of two or more pollutants is much greater than the sum of the effects of the pollutants when operating individually) on freshwater snails and their habitats, as has been suggested for aquatic insects (Waters 1995).

The cylindrical lioplax, flat pebblesnail, and the round rocksnail currently survive in localized reaches of the Cahaba River drainage. Water quality studies in the upper Cahaba River drainage by the Geological Survey of Alabama (Shepard *et al.* 1996) found that discharges from 34 waste water treatment plants (WWTPs) in the upper drainage have contributed to water quality impairment. This was reflected by low levels of dissolved oxygen downstream of Birmingham; ammonia and chlorination by-products in excess of recommended water quality criteria; and eutrophication due to excessive levels of phosphorus and nitrogen. The study noted that these problems are chronic and have been a factor in a loss of mollusk and fish diversity throughout the drainage. Their results indicate that

the upper Cahaba River drainage is primarily impacted by nonpoint runoff and WWTPs through physical habitat destruction by sedimentation, and chronic stress from exposure to toxics and low dissolved oxygen. The middle Cahaba River is primarily impacted by eutrophication and associated affects.

The lacy elimia is now restricted to three small stream channels in Talladega County, Alabama—Cheaha, Emauhee, and Weewoka creeks (Coosa River drainage). The painted rocksnail currently survives in localized reaches of three other Coosa River tributaries, Choccolocco, Buxahatchee, and Ohatchee creeks. The plicate rocksnail inhabits a single short reach of the Locust Fork River in Jefferson County, Alabama (Black Warrior River drainage). All of these streams are variously impacted by sediments and nutrients from a variety of upstream rural, suburban, and/or urban sources. The streams are all small to moderate in size and volumes of flow, and their water and habitat quality can be rapidly affected by local and offsite pollution sources.

*B. Overutilization for commercial, recreational, scientific, or educational purposes.* The six aquatic snail species are currently not of commercial value, and overutilization has not been a problem. However, as their rarity becomes known, they may become more attractive to collectors. Unregulated collecting by private and institutional collectors poses a threat. The cylindrical lioplax, flat pebblesnail, plicate rocksnail, painted rocksnail, round rocksnail, and lacy elimia inhabit shallow, fast-flowing waters of shoals and riffles. Because of their occurrence and exposure in such areas, they are readily vulnerable to overcollecting and/or vandalism. In these areas, the snails are also exposed to crushing by recreational activities such as canoeing, wading, swimming, or fishing; however, normal recreational activities are not believed to be a factor in their decline.

*C. Disease or predation.* Aquatic snails are consumed by various vertebrate predators, including fishes, mammals, and possibly birds. Predation by naturally occurring predators is a normal aspect of the population dynamics of a species and is not considered a threat to these species. However, the potential now exists for black carp (*Mylopharyngodon piceus*), a nonselective molluskivore recently introduced into waters of the United States, to eventually enter the Mobile River Basin. Exotic black carp recently escaped to the Osage River in Missouri when hatchery ponds were flooded during a 1994 spring flood of the river

(LMRCC newsletter, 1994). The extent of stocking black carp for snail control in aquaculture ponds within the Basin is unknown; however, black carp are currently cultured and sold within the State of Mississippi (D. Reike, Mississippi Department of Wildlife, Fisheries, and Parks, 1997).

D. *The inadequacy of existing regulatory mechanisms.* Although the negative effects of point source discharges on aquatic communities have probably been reduced over time by compliance with State and Federal regulations pertaining to water quality, there is currently no information on the sensitivity of the Mobile River Basin snail fauna to common industrial and municipal pollutants. Current State and Federal regulations regarding such discharges are assumed to be protective; however, these snails may be more susceptible to some pollutants than test organisms currently used in bioassays. A lack of adequate research and data currently may prevent existing authorities, such as the Clean Water Act (CWA), administered by EPA and the Army Corps of Engineers (Corps), from being fully utilized. The Service is currently working with EPA to develop a Memorandum of Agreement that will address how EPA and the Service will interact relative to CWA water quality criteria and standards within the Service's Southeast Region.

Lacking State or Federal recognition, these snails are not currently given any special consideration under other environmental laws when project impacts are reviewed.

E. *Other natural or manmade factors affecting its continued existence.* The narrow distribution of extant populations of all six snail species and the nature of their habitats (i.e., small to moderate sized streams) renders them vulnerable to a natural catastrophic event (e.g., flood, drought).

Habitat fragmentation and population isolation are a significant threat to the continued survival of the lacy elimia and painted rocksnail. The known populations of these two species are isolated by extensive areas of impoundment, and there is little, if any, possibility of genetic exchange between them. Over time, this isolation may result in genetic drift, with each population becoming unique and vulnerable to environmental disturbance.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to make this rule final. Based on these evaluations, the preferred action is to

list the cylindrical lioplax, flat pebblesnail, and plicate rocksnail as endangered; and the painted rocksnail, round rocksnail, and lacy elimia as threatened. All of these species have been rendered vulnerable due to significant loss of habitat and severe range restriction.

The cylindrical lioplax is confined in distribution to a short reach of the Cahaba River. The flat pebblesnail currently survives in localized portions of the Cahaba River and the Little Cahaba River. Both species are vulnerable to extinction by their confined ranges, and current impacts from water quality degradation in the Cahaba River drainage. The single known population of the plicate rocksnail has experienced a significant reduction in range within the past 2 years, apparently due to pollution of its habitat from nonpoint sources. Habitat that was, until recently, occupied by the species is within a potential site for reservoir construction. Endangered status is appropriate for these three species due to their single populations, restricted numbers within these populations, existing threats to their occupied habitats, and in the case of the plicate rocksnail, an ongoing decline in range.

The lacy elimia, painted rocksnail, and round rocksnail are each currently known from three distinct drainage localities. Extant populations and colonies of these three species are localized, isolated, and are vulnerable to water quality degradation, future human activities that would degrade their habitats, and random catastrophic events. Threatened status is considered more appropriate for these species due to the larger number of populations or colonies, and the less immediate nature of these threats.

#### Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring the species to the point at which the measures provided pursuant to the Act are no longer necessary.

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 designate critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (ii) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not presently prudent for any of these six aquatic snails.

Critical habitat designation, by definition, directly affects only Federal agency actions. Since these snail species are aquatic throughout their life cycles, Federal actions that might affect these species and their habitats include those with impacts on stream channel geometry, bottom substrate composition, water quantity and quality, and stormwater runoff. Such activities would be subject to review under section 7(a)(2) of the Act, whether or not critical habitat was designated. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. The cylindrical lioplax, flat pebblesnail and plicate rocksnail have become so restricted in distribution that any significant adverse modification or destruction of their occupied habitats would likely jeopardize their continued existence. The round rocksnail, painted rocksnail, and lacy elimia are not as restricted in distribution as the other three snails, none the less, projects found to cause a significant adverse modification or destruction of their occupied habitats would also likely jeopardize their continued existence. This would also hold true as the species recovers and its numbers increase. Therefore, habitat protection for these six species can be accomplished through the section 7 jeopardy standard and there is no benefit in designating currently occupied habitat of these species as critical habitat.

Recovery of these species will require the identification of unoccupied stream and river reaches appropriate for reintroduction. Critical habitat designation of unoccupied stream and river reaches might benefit these species by alerting permitting agencies to



potential sites for reintroduction and allow them the opportunity to evaluate projects which may affect these areas. The Service is currently working with the State and other Federal agencies to periodically survey and assess habitat potential of stream and river reaches for listed and candidate aquatic species within the Mobile River basin. This process provides up to date information on instream habitat conditions in response to land use changes within watersheds. Information generated from surveys and assessments is disseminated through Service coordination with other agencies. The Service will continue to work with State and Federal agencies, as well as private property owners and other affected parties, through the recovery process to identify stream reaches and potential sites for reintroduction of these species. Thus, any benefit that might be provided by designation of unoccupied habitat as critical will be accomplished more effectively with the current coordination process and is preferable for aquatic habitats which change rapidly in response to watershed land use practices. In addition, the Service believes that any potential benefits to critical habitat designation are outweighed by additional threats to the species that would result from such designation, as discussed below.

Though critical habitat designation directly affects only Federal agency actions, this process can arouse concern and resentment on the part of private landowners and other interested parties. The publication of critical habitat maps in the **Federal Register** and local newspapers, and other publicity or controversy accompanying critical habitat designation may increase the potential for vandalism as well as other collection threats (See Factor B under "Summary of Factors Affecting the Species" section). For example, on June 15, 1993, the Alabama sturgeon was proposed for endangered status with critical habitat (59 FR 33148). Proposed critical habitat included the lower portions of the Alabama, Cahaba, and Tombigbee rivers in south Alabama. The proposal generated thousands of comments with the primary concern that the actions would devastate the economy of the State of Alabama and severely impact adjoining States. There were reports from State conservation agents and other knowledgeable sources of rumors inciting the capture and destruction of Alabama sturgeon. A primary contributing factor to this controversy was the proposed designation of critical habitat for the sturgeon.

The six snail species addressed in this rule are especially vulnerable to vandalism. They all are found in shallow shoals or riffles in restricted stream and river segments. The flat pebblesnail, plicate rocksnail, round rocksnail, painted rocksnail, and lacy elimia attach to the surfaces of bedrock, cobble, or gravel, while the cylindrical lioplax is found under large boulders. The six species are relatively immobile and unable to escape collectors or vandals. They inhabit remote but easily accessed areas, and they are sensitive to a variety of easily obtained commercial chemicals and products. Because of these factors, vandalism or collecting could be undetectable and uncontrolled. For example, the plicate rocksnail recently disappeared from approximately 80 percent of its known occupied habitat. While the Service has been unable to determine the cause of this decline, the disappearance illustrates the vulnerability of this and the other snail species.

All known populations of these six snail species occur in streams flowing through private lands. The primary threat to all surviving populations appears to be pollutants in stormwater runoff that originate from private land activities (see Factor A). Therefore, the survival and recovery of these snails will be highly dependent on landowner cooperation in reducing land use impacts. Controversy resulting from critical habitat designation has been known to reduce private landowner cooperation in the management of species listed under the Act (e.g., spotted owl, golden cheeked warbler). The Alabama sturgeon experience suggests that critical habitat designation could affect landowner cooperation within watersheds occupied by these six snails.

Based on the above analysis, the Service has concluded critical habitat designation would provide little additional benefit for these species beyond those that would accrue from listing under the Act. The Service also concludes that any potential benefit from such a designation would be offset by an increased level of vulnerability to vandalism or collecting, and by a possible reduction in landowner cooperation to manage and recover these species. The designation of critical habitat for these six snail species is not prudent.

#### **Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and

prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal activities that could occur and impact these species include, but are not limited to, the carrying out or the issuance of permits for reservoir construction, stream alterations, discharges, wastewater facility development, water withdrawal projects, pesticide registration, mining, and road and bridge construction. Activities affecting water quality may also impact these species and are subject to the Corps and EPA's regulations and permit requirements under authority of the CWA and the National Pollutant Discharge Elimination System (NPDES). It has been the experience of the Service, however, that nearly all section 7 consultations have been resolved so that the species have been protected and the project objectives have been met. Other than a potential dam on the Locust Fork River, Jefferson and Blount counties, Alabama, no other Federal activities that may affect these species are currently known to be under consideration.

The Act and its implementing regulations found at 50 CFR 17.21 for endangered species, and 17.21 and 17.31 for threatened species, set forth a series of general prohibitions and exceptions that apply to all endangered or threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot,

wound, kill, trap, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered or threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 for endangered species and 17.32 for threatened species. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

It is the policy of the Service, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness as to the effects of these listings on future and ongoing activities within a species' range.

Activities which the Service believes are unlikely to result in a violation of section 9 for these six snails are:

(1) Existing discharges into waters supporting these species, provided these activities are carried out in accordance with existing regulations and permit requirements (e.g., activities subject to sections 402, 404, and 405 of the Clean Water Act and discharges regulated under the NPDES).

(2) Actions that may affect these six snail species and are authorized, funded or carried out by a Federal agency when the action is conducted in accordance with any reasonable and prudent measures given by the Service in accordance with section 7 of the Act.

(3) Normal agricultural and silvicultural practices that are carried

out in accordance with any existing regulations, permit requirements, and best management practices.

(4) Development and construction activities designed and implemented pursuant to Federal, State, and local water quality regulations.

(5) Existing recreational activities such as swimming, wading, canoeing, and fishing.

Activities that the Service believes could potentially result in "take" of these snails include:

(1) The unauthorized collection or capture of the species;

(2) Unauthorized destruction or alteration of the species habitat (e.g., instream dredging, channelization, discharge of fill material);

(3) Violation of any discharge or water withdrawal permit;

(4) Illegal discharge or dumping of toxic chemicals or other pollutants into waters supporting the species.

Other activities not identified above will be reviewed on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity. The Service does not consider these lists to be exhaustive and provides them as information to the public.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Jackson Field Office (see **ADDRESSES** section). Requests for copies of regulations regarding listed species and inquiries about prohibitions and permits should be addressed to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Atlanta, Georgia 30345 (Phone 404/679-7313; Fax 404/679-7081).

**National Environmental Policy Act**

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

**Paperwork Reduction Act**

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018-0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered and threatened species, see 50 CFR 17.22 and 17.32, respectively.

**References Cited**

A complete list of all references cited herein, as well as others, is available upon request from the Field Supervisor (see **ADDRESSES** section).

**Author**

The primary author of this final rule is Paul Hartfield (see **ADDRESSES** section)(601/965-4900, extension 25).

**List of Subjects in 50 CFR Part 17**

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

**Regulation Promulgation**

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

**PART 17—[AMENDED]**

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

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

2. Amend section 17.11(h) by adding the following, in alphabetical order under **SNAILS**, to the List of Endangered and Threatened Wildlife to read as follows:

**§ 17.11 Endangered and threatened wildlife.**

\* \* \* \* \*  
(h) \* \* \*

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
SNAILS							
*	*	*	*	*	*		*
Elimia, lacy .....	<i>Elimia crenatella</i> .....	U.S.A. (AL) .....	NA .....	T	651	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
Lioplax, cylindrical ...	<i>Lioplax cyclostomaformis</i> .	U.S.A. (AL) .....	NA .....	E	651	NA	NA
*	*	*	*	*	*	*	*
Pebblesnail, flat .....	<i>Lepyrium showalteri</i>	U.S.A. (AL) .....	NA .....	E	651	NA	NA
*	*	*	*	*	*	*	*
Rocksnnail, painted ...	<i>Leptoxis taeniata</i> .....	U.S.A. (AL) .....	NA .....	T	651	NA	NA
*	*	*	*	*	*	*	*
Rocksnnail, plicate .....	<i>Leptoxis plicata</i> .....	U.S.A. (AL) .....	NA .....	E	651	NA	NA
*	*	*	*	*	*	*	*
Rocksnnail, round .....	<i>Leptoxis ampla</i> .....	U.S.A. (AL) .....	NA .....	T	651	NA	NA
*	*	*	*	*	*	*	*

Dated: October 16, 1998.  
**Jamie Rappaport Clark**,  
 Director, Fish and Wildlife Service.  
 [FR Doc. 98-28884 Filed 10-27-98; 8:45 am]  
 BILLING CODE 4310-55-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 217 and 227**

[I.D. 102098A]

RIN 0648-AH97

**Sea Turtle Conservation; Shrimp Trawling Requirements**

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

**ACTION:** Notification of an exemption and request for comments.

**SUMMARY:** NMFS issues this rule to allow the use of limited tow times by shrimp trawlers in the inshore waters of Mississippi and in the inshore waters of Louisiana, north and east of the Mississippi River to its terminus at the South Pass, as an alternative to the requirement to use Turtle Excluder Devices (TEDs). This area was affected by Hurricane Georges on and about September 27 to 29, 1998. NMFS has been notified by the Director of the Mississippi Department of Marine Resources that large amounts of debris in Mississippi Sound in the aftermath of the hurricane are causing difficulty with the performance of TEDs. NMFS has been notified by the Secretary of the Louisiana Department of Wildlife and Fisheries that his department had

received documentation that hurricane-related debris was interfering with TED performance in their shrimping grounds east of the river. NMFS will monitor the situation to ensure there is adequate protection for sea turtles in this area and to determine whether impacts from the hurricane continue to make TED use impracticable.

**DATES:** This rule is effective from October 23, 1998, through October 31, 1998, when tow times must be limited to no more than 55 minutes measured from the time trawl doors enter the water until they are retrieved from the water, and from November 1, 1998, until November 23, 1998, when tow times must be limited to no more than 75 minutes. Comments on this rule are requested, and must be received by November 23, 1998.

**ADDRESSES:** Comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Oravetz, 813-570-5312, or Barbara A. Schroeder, 301-713-1401.

**SUPPLEMENTARY INFORMATION:**

**Background**

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempi*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take of these species, as a result of shrimp trawling activities, have been documented in the Gulf of Mexico and along the Atlantic. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 227.72. Existing sea turtle conservation regulations (50 CFR part 227, subpart D) require most shrimp trawlers operating in the Gulf and Atlantic areas to have a NMFS-approved TED installed in each net rigged for fishing, year round.

The regulations provide for the use of limited tow times as an alternative to the use of TEDs for vessels with certain specified characteristics or under certain special circumstances. The provisions of 50 CFR 227.72 (e)(3)(ii) specify that the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), may authorize "compliance with tow time restrictions as an alternative to the TED requirement, if [he] determines that the presence of algae, seaweed, debris or other special environmental conditions in a particular area makes trawling with TED-equipped nets impracticable." The provisions of 50 CFR 227.72(e)(3)(i) specify the maximum tow times that may be used when authorized as an alternative to the use of TEDs. The tow times may be no more than 55 minutes from April 1 through October 31 and no more than 75 minutes from November 1 through March 31. NMFS has selected these tow time limits to minimize the level of mortality of sea turtles that are captured by trawl nets that are not equipped with TEDs.

**Recent Events**

On September 27, Hurricane Georges made landfall on the Mississippi coast.