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Provisions of the Regulatory Flexibility Act of 1980 does not apply to this proceeding.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comment may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1988).

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. For submitting comments, filers should follow the instructions provided on the website.

For ECFS filer, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filer must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

For Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rule making number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to

the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelope must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Government Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

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

Federal Communications Commission.

**John A. Karousos,**  
Assistant Chief,  
Audio Division,  
Media Bureau.

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**BILLING CODE 6712-01-S**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R4-ES-2008-0104]  
[MO 92210-0-0009-B4]

[RIN 1018-AU88]

#### Endangered and Threatened Wildlife and Plants; Listing with Designation of Critical Habitat for the Georgia Pigtoe Mussel, Interrupted Rocksnail, and Rough Hornsnail

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

**ACTION:** Proposed rule; reopening of comment period, availability of draft economic analysis, amended required determinations, and announcement of public hearing.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, announce the

availability of the draft economic analysis for the proposed designation of critical habitat for 3 mollusks, Georgia pigtoe mussel (*Pleurobema hanleyianum*), interrupted rocksnail (*Leptoxis foremani*), and rough hornsnail (*Pleurocera foremani*), under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) and an amended required determinations section of the proposal. We are reopening the comment period for an additional 30 days to allow all interested parties an opportunity to comment simultaneously on the proposed listing and designation of critical habitat for the 3 mollusks, the associated DEA, and the amended required determinations section. Comments previously submitted need not be resubmitted and will be fully considered in preparation of the final rule. We also announce a public hearing; the public is invited to review and comment on any of the above actions associated with the proposed listing and critical habitat designation at the public hearing or in writing.

**DATES: Written Comments:** We will consider public comments received or postmarked on or before March 12, 2010.

**Public Hearing:** We will hold a public hearing from 7 to 10 p.m. Central Time, on Tuesday, March 2, 2010, on the campus of Auburn University Montgomery, 7440 East Drive, Montgomery, Alabama, at the Taylor Center in conference room 223.

Maps of the critical habitat units and information on the species will be available for public review at the hearing location for 1 hour prior to the public hearing (6 to 7 p.m.).

**ADDRESSES: Written Comments:** You may submit comments by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-R4-ES-2008-0104.

- **U.S. mail or hand-delivery:** Public Comments Processing, **Attn: FWS-R4-ES-2008-0104**; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

**Public Hearing:** We will hold the public hearing on March 2, 2010 at 7 p.m. Central Time, at the campus of Auburn University Montgomery, Taylor Center-conference room 223, 7440 East Drive, Montgomery, Alabama. We will post all comments and the public hearing transcript on <http://www.regulations.gov>. This generally means that we will post any personal

information you provide us (see the **Public Comments** section below for more information).

**FOR FURTHER INFORMATION CONTACT:**

Stephen Ricks, Field Supervisor, Mississippi Fish and Wildlife Office at 6578 Dogwood View Parkway, Jackson, MS 39213; by telephone (601-321-1122); or by facsimile (601-965-4340). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**Public Comments**

We will accept written comments and information during this reopened comment period on the proposed listing and designation of critical habitat for Georgia pigtoe mussel, interrupted rocksnail, and rough hornsnail that was published in the **Federal Register** on June 29, 2009 (74 FR 31114), the DEA of the proposed designation of critical habitat for Georgia pigtoe mussel, interrupted rocksnail, and rough hornsnail, and the amended required determinations provided in this rule. Verbal testimony or written comments may also be presented during the public hearing (see the **Public Hearing** section below for more information). We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate areas as “critical habitat” under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether there are threats to Georgia pigtoe mussel, interrupted rocksnail, and rough hornsnail from human activity, the degree of which can be expected to increase due to the designation, and whether the benefit of designation would outweigh threats to the species caused by the designation, such that the designation of critical habitat is prudent.

(2) Specific information on:

- The amount and distribution of Georgia pigtoe mussel, interrupted rocksnail, and rough hornsnail habitat;

- What areas containing features essential to the conservation of the species should be included in the designation and why;

- Special management considerations or protections for the features essential to Georgia pigtoe mussel, interrupted rocksnail, and rough hornsnail conservation that have been identified in the proposed rule may need, including managing for the potential effects of climate change; and

- What areas not currently occupied by the 3 species are essential to the conservation of the species and why.

(3) Specific information on Georgia pigtoe mussel, interrupted rocksnail, and rough hornsnail and the habitat components (physical and biological features) essential to the conservation of these species.

(4) Any information on the biological or ecological requirements of these species.

(5) Land-use designations and current or planned activities in areas occupied by the species, and their possible impacts on the species and the proposed critical habitat.

(6) Any foreseeable economic, national security, or other potential impacts resulting from the proposed designation and, in particular, any impacts on small entities and the benefits of including or excluding areas that are subject to these impacts.

(7) Whether the benefits of excluding any particular area from critical habitat outweigh the benefits of including that area as critical habitat under section 4(b)(2) of the Act, after considering the potential impacts and benefits of the proposed critical habitat designation.

(8) Whether our approach to designating critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

You may submit your comments and materials concerning this proposed rule or DEA by one of the methods listed in the **ADDRESSES** section.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including your personal identifying information—will be posted on the website. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation used in preparing this proposed rule and DEA, will be available for public inspection on <http://www.regulations.gov>.

or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Mississippi Fish and Wildlife

Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule and the DEA on the Internet at <http://www.regulations.gov> at Docket Number **FWS-R4-ES-2008-0104**, or by mail from the Mississippi Field Office (see **FOR FURTHER INFORMATION CONTACT** section).

**Public Hearing**

We are holding a public hearing on the date listed in the **DATES** section at the address listed in the **ADDRESSES** section. We are holding this public hearing to provide interested parties an opportunity to provide verbal testimony (formal, oral comments) or written comments regarding the proposed critical habitat designation, the associated DEA, and the amended required determinations section. An informational session will be held on the day of the hearing from 6:00 p.m. to 7:00 p.m. Central Time. During this session, Service biologists will be available to provide information and address questions on the proposed rule in advance of the formal hearing.

People needing reasonable accommodations in order to attend and participate in the public hearings should contact Stephen Ricks, Mississippi Fish and Wildlife Office, at 601-321-1122, as soon as possible (see **FOR FURTHER INFORMATION CONTACT** section). In order to allow sufficient time to process requests, please call no later than 1 week before the hearing date. Information regarding this notice is available in alternative formats upon request.

**Background**

We proposed to list the Georgia pigtoe mussel (*Pleurobema hanleyianum*), interrupted rocksnail (*Leptoxis foremani*), and rough hornsnail (*Pleurocera foremani*), as endangered species, with critical habitat under the Act, on June 29, 2009 (74 FR 31114).

The Georgia pigtoe, interrupted rocksnail, and rough hornsnail are endemic to the Coosa River drainage within the Mobile River Basin of Alabama, Tennessee, and Georgia. These 3 species have disappeared from large portions of their natural ranges due to the construction of dams that eliminated or reduced water currents and caused changes in habitat and water quality. The surviving populations are small, localized, and highly vulnerable to water quality and habitat deterioration.

We proposed to designate critical habitat concurrently with listing for the Georgia pigtoe, interrupted rocksnail, and rough hornsnail under the Act. In total, approximately 258 kilometers

(km) (160 miles (mi)) of stream and river channels fall within the boundaries of the proposed critical habitat designation for the 3 species: 153 km (95 mi) for the Georgia pigtoe, 101 km (63 mi) for the interrupted rocksnail, and 28 km (17 mi) for the rough hornsnail. The proposed critical habitat is located in Cherokee, Clay, Coosa, Elmore and Shelby Counties, Alabama; Gordon, Floyd, Murray, and Whitfield Counties, Georgia; and Bradley and Polk Counties, Tennessee.

Section 3 of the Act defines critical habitat as 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 essential to the conservation of the species and that may require special management considerations or protection, and 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. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting critical habitat are required to consult with us on the effects of their proposed actions, under section 7(a)(2) of the Act.

#### Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate critical habitat based upon the best scientific data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided such exclusion will not result in the extinction of the species. We have not proposed to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation. Accordingly, we have prepared a draft economic analysis concerning the proposed critical habitat designation (DEA), which is available for review and comment (see **ADDRESSES** section).

The intent of the DEA is to identify and analyze the potential economic impacts associated with the proposed

critical habitat designation for the 3 mollusks. The DEA quantifies the economic impacts of all potential conservation efforts for the 3 mollusks, some of which will likely be incurred whether or not we designate critical habitat. The economic impact of the proposed critical habitat designation is analyzed by comparing scenarios both “with critical habitat” and “without critical habitat.” The “without critical habitat” scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The “with critical habitat” scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat.

The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the species over the next 30 years, which we determined to be the appropriate period for analysis because limited planning information was available for most activities to forecast activity levels for projects beyond a 30-year timeframe. The DEA estimates the baseline costs associated with potential future conservation efforts for the 3 mollusks to be \$8.89 million to \$9.16 million annually, assuming a seven percent discount rate. Ninety-six percent of baseline costs quantified in this analysis are conservation efforts related to lost hydropower production value at 3 facilities. The remaining four percent of potential post-designation baseline costs are related to transportation activities, water quality management activities, and National Forest management activities. The DEA anticipates that incremental costs associated with this rulemaking will be administrative in nature because the consideration of adverse modification for the 3 mollusks is not expected to result in significant additional conservation efforts and measures for the mollusks above the consideration of jeopardy in occupied habitat. Additionally, designated critical habitat for 11 other mussels with similar

primary constituent elements and threats as the 3 mollusks overlap with all but 5 river miles of the proposed critical habitat for these 3 mussel species. Therefore, activities that are already considered and planned for the 11 other mussels are considered in the baseline cost versus the incremental cost of this proposed designation. As a result, the total incremental costs associated with this rule are estimated to be \$354,000 over 30 years, or \$43,000 annually, discounted at seven percent.

#### Required Determinations—Amended

In our June 29, 2009, proposed rule (74 FR 31114), we indicated that we would defer our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. We have now made use of the DEA data in making this determination. In this document, we affirm the information in our proposed rule concerning: Executive Order (E.O.) 13132 (Federalism), E.O. 12988 (Civil Justice Reform), the Paperwork Reduction Act, the National Environmental Policy Act, the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), E.O. 12866 (*Regulatory Planning and Review*), E.O. 13211 (Energy Supply, Distribution, and Use), E.O. 12630 (Takings), and the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*). However, based on the DEA data, we are amending our required determinations concerning the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

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

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), 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 effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions), as described below. However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed designation, we provide our analysis for determining whether the proposed rule

would result in a significant economic impact on a substantial number of small entities. Based on comments we receive, we may revise this determination as part of a final rulemaking.

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 if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the Georgia pigtoe mussel (*Pleurobema hanleyianum*), interrupted rocksnail (*Leptoxis foremani*), and rough hornsnail (*Pleurocera foremani*) would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities, such as residential and commercial development. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement. Critical habitat designation will not affect activities that do not have any Federal involvement; designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies.

If we finalize this proposed listing rule and critical habitat designation, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. In areas where the 3 mollusks

are present, Federal agencies will also be required to consult with us under section 7 of the Act, due to the endangered status of the species. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the same consultation process.

In the DEA, we evaluated the potential economic effects on small entities resulting from implementation of conservation actions related to the proposed designation of critical habitat for the Georgia pigtoe mussel (*Pleurobema hanleyianum*), interrupted rocksnail (*Leptoxis foremani*), and rough hornsnail (*Pleurocera foremani*). Based on that analysis, impacts on small entities due to this rule are expected to be modest because the incremental costs of the rule are estimated to be administrative in nature. The only incremental impacts associated with this rulemaking are administrative costs of consultation under section 7 of the Act. The administrative costs described in Appendix B of the DEA are predominantly associated with water management, water quality, National Forest, and construction. The following percentages are estimated annualized incremental impacts by activities discounted at 7 percent: 42 percent transportation construction, 33 percent water quality, 18 percent national forest activities, and 7 percent water management. Tribal lands are not expected to be affected by the designation. Incremental costs to all parties are not expected to exceed \$43,600 annualized (discounted at seven percent). Third parties (some of which may be small entities) would bear significantly less than this total—approximately \$5,060 annualized, or less than 1 percent impact for all sectors. These potential impacts may result from consultations on changes in water management, actions that affect water quality, dredging activities, or other activities in the region. Please refer to the DEA of the proposed critical habitat designation for a more detailed discussion of potential impacts.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. Information for this analysis was gathered from the Small Business Administration, stakeholders, and the Service. For the reasons discussed above, and based on currently available information, we certify that if promulgated, the proposed designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial

regulatory flexibility analysis is not required.

#### Author

The primary author of this document is the staff of the Mississippi Fish and Wildlife Office (see **ADDRESSES** section).

#### Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: January 25, 2010

**Thomas L. Strickland**

*Assistant Secretary for Fish and Wildlife and Parks*

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**BILLING CODE 4310-55-S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Parts 223 and 224

[Docket No. 0911231415-0052-01]

RIN 0648-XT12

#### Endangered and Threatened Wildlife; Notice of 90-Day Finding on a Petition to List 83 Species of Corals as Threatened or Endangered Under the Endangered Species Act (ESA)

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

**ACTION:** 90-day petition finding; request for information.

**SUMMARY:** We (NMFS) announce a 90-day finding on a petition to list 83 species of corals as threatened or endangered under the ESA. We find that the petition presents substantial scientific or commercial information indicating that the petitioned actions may be warranted for 82 species; we find that the petition fails to present substantial scientific or commercial information indicating that the petitioned action may be warranted for *Oculina varicosa*. Therefore, we initiate status reviews of 82 species of corals to determine if listing under the ESA is warranted. To ensure these status reviews are comprehensive, we solicit scientific and commercial information regarding these coral species.

**DATES:** Information and comments must be submitted to NMFS by April 12, 2010.

**ADDRESSES:** You may submit comments, information, or data, identified by the Regulation Identifier Number (RIN),