§ 5.51 (a) through (c) as a precedent for action against a person unless we have published the record or have made it available electronically or by other means, or unless the person has timely notice of the record.

Subpart F—Predisclosure Notification for Certain Kinds of Commercial/ Financial Records

§ 5.61 General.

(a) *Designation of commercial information as confidential.* A person who submits records to the government may designate part or all of the information in such records as information that the person claims is exempt from disclosure under exemption 4 of the FOIA. The person may make this designation either at the time the records are submitted to the government or within a reasonable time thereafter. The designation must be in writing. Where a legend is required by a request for proposals or request for quotations, pursuant to 48 CFR 352.215–12, then that legend is necessary for this purpose. Any such designation will expire ten years after the records were submitted to the government.

(b) *Predisclosure notification.* The procedures in this paragraph apply to records on which the submitter has designated information as provided in paragraph (a) of this section. They also apply to records that were submitted to the government where we have substantial reason to believe that the information in the records could reasonably be considered exempt under exemption 4 of the FOIA. Certain exceptions to these procedures are stated in paragraph (c) of this section.

(1) When we receive a request for such records, and we determine that we may be required to release them, we will make reasonable efforts to notify the submitter about these facts. The notice will include a copy of the request, and it will inform the submitter about the procedures and time limits for submission and consideration of objections to disclosure. If we must notify a large number of submitters, we may do this by posting or publishing a notice in a place where the submitters are reasonably likely to become aware of it, or by sending the notice to a person or persons who we reasonably expect will give appropriate notification to the submitters or who will act on their behalf.

(2) The submitter will have five working days from receipt of the notice to object to disclosure of any part of the records and to state all bases for the objections. At the discretion of the FOIA Officer, extensions of the time within which to respond may be granted, when requested by the submitter. These extensions shall not exceed an additional five working days.

(3) We will give consideration to all bases that have been timely stated by the submitter. If we decide to disclose the records, we will notify the submitter in writing. This notice will briefly explain why we did not sustain his/her objections. We will include with the notice a copy of the records about which the submitter objected, as we propose to disclose them. The notice will state that we intend to disclose the records five working days after the submitter receives the notice unless we are ordered by a United States District Court not to release them.

(4) When a requester files suit under the FOIA to obtain records covered by this subsection, we will promptly notify the submitter.

(5) Whenever we send a notice to a submitter under paragraph (b)(1) of this section, we will notify the requester that we are giving the submitter a notice and an opportunity to object. Whenever we send a notice to a submitter under paragraph (b)(3) of this section, we will notify the requester of this fact.

(c) *Exceptions to predisclosure notification.* The notice requirements in paragraph (b) of this section do not apply in the following situations:

(1) We decide not to disclose the records;

(2) The information has previously been published or made generally available;

(3) Disclosure is required by a regulation, issued after notice and opportunity for public comment, that specifies certain narrow categories of records that are to be disclosed upon request. However, a submitter may still designate such records as described in paragraph (a) of this section, and in exceptional cases, we may, at our discretion, follow the notice procedures in paragraph (b) of this section.

(4) The designation appears to be obviously frivolous. We will still, however, give the submitter the written notice as described in paragraph (b)(3) of this section (although this notice need not explain our decision or include a copy of the records), and we will notify the requester as described in paragraph (b)(5) of this section.

[FR Doc. 99–7222 Filed 3–25–99; 8:45 am]

BILLING CODE 4110–60–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 381

[Docket No. MARAD–99–5038]

RIN 2133–AB37

Regulations To Be Followed by All Departments and Agencies Having Responsibility To Provide a Preference for U.S.-Flag Vessels in the Shipment of Cargoes on Ocean Vessels

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Advance notice of proposed rulemaking; Extension of deadline for comments.

SUMMARY: On January 28, 1999, the Maritime Administration (MARAD) Advance Notice of Proposed Rulemaking (ANPRM) soliciting public comment concerning whether MARAD should amend its cargo preference regulations governing the carriage of agricultural exports was published in the **Federal Register** [64 FR 4382].

DATES: The deadline for submitting comments concerning this ANPRM is extended to April 28, 1999.

FOR FURTHER INFORMATION CONTACT: Thoms W. Harrelson, Director, Office of Cargo Preference 202–366–5515.

By order of the Maritime Administrator.

Dated: March 19, 1999.

Joel C. Richard,

Secretary.

[FR Doc. 99–7265 Filed 3–25–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF56

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Alabama Sturgeon as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the Fish and Wildlife Service (Service), propose to list the Alabama sturgeon (*Scaphirhynchus suttkusi*) as endangered under the authority of the Endangered Species Act of 1973, as amended (Act). The Alabama sturgeon's historic range once included about 1,600 kilometers (km) (1,000 miles (mi)) of the Mobile River system

in Alabama (Black Warrior, Tombigbee, Alabama, Coosa, Tallapoosa, Mobile, Tensaw, and Cahaba rivers) and Mississippi (Tombigbee River). Since 1985, all confirmed captures have been from a short, free-flowing reach of the Alabama River below Miller's Ferry and Claiborne locks and dams in Clarke, Monroe, and Wilcox counties, Alabama. The historic decline of the Alabama sturgeon is attributed to over-fishing, loss and fragmentation of habitat as a result of navigation-related development, and water quality degradation. Current threats primarily result from its small population numbers and its inability to offset mortality rates with reproduction and recruitment. This proposed rule, if made final, would extend the Act's protection to the Alabama sturgeon.

DATES: Send your comments to reach us on or before May 26, 1999. We will not consider comments received after the above date in making our decision on the proposed rule. We must receive requests for public hearings by May 10, 1999.

ADDRESSES: Send comments and materials concerning this proposal to the Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Paul Hartfield at the above address (telephone 601/965–4900, extension 25; facsimile 601/965–4340).

SUPPLEMENTARY INFORMATION:

Background

The Alabama sturgeon (*Scaphirhynchus suttkusi*) is a small, freshwater sturgeon that was historically found only in the Mobile River Basin of Alabama and Mississippi. This sturgeon is an elongate, slender fish growing to about 80 centimeters (cm) (30 inches (in)) in length. A mature fish weighs 1 to 2 kilograms (kg) (2 to 3 pounds (lb)). The head is broad and flattened shovel-like at the snout. The mouth is tubular and protrusive. There are four barbels (whisker-like appendages used to find prey) on the bottom of the snout, in front of the mouth. Bony plates cover the head, back, and sides. The body narrows abruptly to the rear, forming a narrow stalk between the body and tail. The upper lobe of the tail fin is elongated and ends in a long filament. Characters used to distinguish the Alabama sturgeon from the closely-related shovelnose sturgeon (*Scaphirhynchus platorynchus*) include larger eyes, orange color, number of dorsal plates, dorsal fin ray numbers, and spines on snout.

The earliest specimens of Alabama sturgeon in museum collections date from about 1880. The first mention of the fish in the scientific literature, however, was not until 1955, when a report of the collection of a single specimen from the Tombigbee River was published by Chermock. In 1976, Ramsey referred to the Alabama sturgeon as the ''Alabama shovelnose sturgeon,'' noting that it probably was distinct from the shovelnose sturgeon which is found in the Mississippi River Basin, and was also historically known from the Rio Grande. In 1991, Williams and Clemmer formally described the species based on a comparison of relative sizes and numbers of morphological structures of Alabama and shovelnose sturgeons.

The methods used by Williams and Clemmer (1991) to justify species designation for the Alabama sturgeon have been criticized. In unpublished manuscripts, (e.g., Blanchard and Bartolucci 1994, Howell *et al.* 1995), and in one published paper (Mayden and Kuhajda 1996), several authors identified a variety of statistical and methodological errors and limitations [e.g., small sample size, clinal variation, allometric growth (growth of parts of an organism at different rates and at different times), inappropriate statistical tests, and others] that appeared in the analyses used in the original description. Howell *et al.* (1995) in an unpublished manuscript, reexamined the data set used by Williams and Clemmer (1991), corrected certain errors, and recommended that *S. suttkusi* be synonymized with *S. platorynchus.* Mayden and Kuhajda (1996), in a peer-reviewed paper published in the journal *Copeia,* reevaluated the morphological distinctiveness of the Alabama sturgeon using improved statistical tests and new data derived from examination of additional shovelnose sturgeon specimens from a larger geographic area. Mayden and Kuhajda (1996) identified eight new diagnostic characters, found that there was little evidence of geographic clinal variation in these diagnostic features, and concluded that the Alabama sturgeon was a distinct and valid species. Bartolucci *et al.* (1998) showed the Alabama and shovelnose sturgeon to be indistinguishable using principal component analyses, as published in a peer-reviewed statistical journal.

Genetic analyses of sturgeon DNA used in attempts to clarify taxonomic findings have met with limited success. In an unpublished report, Schill and Walker (1994) used tissue samples from the Alabama sturgeon collected in 1993 to compare the three nominal *Scaphirhynchus* species. Based on estimates of sequence divergence at the mitochondrial cytochrome *b* locus, they concluded that the Alabama, shovelnose, and pallid sturgeons were indistinguishable. Other studies have also found that the cytochrome *b* locus was not useful for discriminating among some congeneric fish species which were otherwise distinguished by accepted morphological, behavioral, and other characteristics (Campton *et al.* 1995).

In two unpublished reports for us and the U.S. Army Corps of Engineers (Corps) by Genetic Analyses Inc. (1994, 1995), nuclear DNA fragments were compared among the three *Scaphirhynchus* species. The three Alabama sturgeon specimens examined proved genetically divergent from pallid and shovelnose, while there were no observed differences of DNA fragments between the pallid and shovelnose sturgeons. However, the 1995 study also noted that two of the Alabama sturgeon differed substantially from the third, and recommended additional studies to examine genetic diversity within the Alabama sturgeon population.

A comparative study of the mitochondrial DNA d-loop of *Scaphirhynchus* species has also been completed (Campton *et al.* 1995). The d-loop is considered to be a rapidly evolving part of the genome. Campton *et al.* (1995) found that haplotype (genetic markers) frequencies of the d-loop from the three *Scaphirhynchus* species were significantly different, with the Alabama sturgeon having a unique haplotype. However, the relative genetic differences among the three species was small, suggesting that the rate of genetic change in the genus is relatively slow and/or they have only recently diverged. The genetic similarity between the pallid and shovelnose sturgeon has been suggested to be due to interbreeding that has recently occurred as a result of niche overlap resulting from widespread habitat losses (Carlson *et al.* 1985, Keenlyne *et al.* 1994).

We acknowledge that there is some disagreement concerning the Alabama sturgeon's taxonomic status. However, the description of the Alabama sturgeon (*S. suttkusi*) complies with the rules of the *International Code of Zoological Nomenclature* (§ 17.11(b)). Furthermore, our analysis of the best available evidence supports its consideration as a species in this proposed rule.

Very little is known of the life history, habitat, or other ecological requirements

of the Alabama sturgeon. Observations by Burke and Ramsey (1985) indicate the species prefers relatively stable gravel and sand substrates in flowing river channels. Verified captures of Alabama sturgeon have primarily occurred in large channels of big rivers; however, at least two historic records were from oxbow lakes (Williams and Clemmer 1991). Examination of stomach contents of museum and captured specimens show that these sturgeon are opportunistic feeders, preying primarily on aquatic insect larvae (Mayden and Kuhajda 1996). Mayden and Kuhajda (1996) deduced other aspects of Alabama sturgeon life history by a review of spawning habits of its better known relative, the shovelnose sturgeon. Life history of the shovelnose sturgeon has also been recently summarized by Keenlyne (1997). These data indicate that Alabama sturgeon are likely to migrate upstream during late winter and spring to spawn. Downstream migrations may occur to search for feeding and summer refugia areas. Eggs are probably deposited on hard bottom substrates such as bedrock, armored gravel, or channel training works in deep water habitats, and possibly in tributaries to major rivers. The eggs are adhesive and require current for proper development. Sexual maturity is believed to occur at 5 to 7 years of age. Spawning frequency is influenced by food supply and fish condition, and may occur every 1 to 3 years. Alabama sturgeon may live up to 15 years of age.

The Alabama sturgeon's historic range consisted of about 1,600 km (1,000 mi) of river habitat in the Mobile River Basin in Alabama and Mississippi. There are records of sturgeon captures from the Black Warrior, Tombigbee, Alabama, Coosa, Tallapoosa, Mobile, Tensaw, and Cahaba rivers (Burke and Ramsey 1985, 1995). The Alabama sturgeon was once common in Alabama, and perhaps also in Mississippi. The total 1898 commercial catch of ''shovelnose'' sturgeons (i.e., Alabama sturgeon) from Alabama was reported as 19,000 kg (42,900 lb) in a statistical report to Congress (U.S. Commission of Fish and Fisheries 1898). Of this total, 18,000 kg (39,500 lb) came from the Alabama River and 1,000 kg (2,300 lb) from the Black Warrior River. Given that an average Alabama sturgeon weighs about 1 kg (2 lb), the 1898 commercial catch consisted of approximately 20,000 fish. These records indicate a substantial historic population of Alabama sturgeon.

Between the 1898 report and 1970, little information was published regarding the Alabama sturgeon. An anonymous article published in the *Alabama Game and Fish News* in 1930 stated that the sturgeon was not uncommon; however, by the 1970's, it had become rare. In 1976, Ramsey considered the sturgeon as endangered and documented only six specimens from museums. Clemmer (1983) was able to locate 23 Alabama sturgeon specimens in museum collections, with the most recent collection dated 1977. Clemmer also found that commercial fishermen in the Alabama and Tombigbee rivers were familiar with the sturgeon, calling it hackleback, buglemouth trout, or devilfish.

During the mid-1980's Burke and Ramsey (1985) conducted a status survey to determine the distribution and abundance of the Alabama sturgeon. Interviews were conducted with commercial fishermen on the Alabama and Cahaba rivers, some of whom reported catch of Alabama sturgeon as an annual event. However, during their collection efforts in areas identified by fishermen, Burke and Ramsey were able to collect only five Alabama sturgeons, including two males, two gravid females, and one juvenile about 2 years old. Burke and Ramsey (1985) concluded that the Alabama sturgeon had been extirpated from 57 percent (950 km or 600 mi) of its range and that only 15 percent (250 km or 150 mi) of its former habitat had the potential to support a good population. An additional sturgeon was taken in 1985 in the Tensaw River and photographed, but the specimen was lost (Mettee, Geologic Survey of Alabama, pers. comm. 1997).

In 1990 and 1992, biologists from the Alabama Department of Conservation and Natural Resources (ADCNR), with the assistance of the Corps, conducted searches for Alabama sturgeon using a variety of sampling techniques, without success (Tucker and Johnson 1991, 1992). However, some commercial and sports fishermen continued to report recent catches of small sturgeon in Millers Ferry and Claiborne reservoirs and in the lower Alabama River (Tucker and Johnson 1991, 1992).

In 1993, our biologists and the ADCNR conducted another extensive survey for Alabama sturgeon in the lower Alabama River. On December 2, 1993, a mature male was captured alive in a gill net downstream of Claiborne Lock and Dam, at river mile 58.8 in Monroe County, Alabama (Parauka, U.S. Fish and Wildlife Service, pers. comm. 1995). This specimen represented the first confirmed record of Alabama sturgeon in about 9 years. This fish was moved to a hatchery where it later died.

On April 18, 1995, an Alabama sturgeon captured by fishermen below Claiborne Lock and Dam was turned over to ADCNR and Service biologists. This fish was carefully examined, radio-tagged, and returned to the river where it was tracked for 4 days before the transmitter switched off (Parauka, pers. comm. 1995). In June 1995, it was determined that the tag had dislodged. On May 19, 1995, our biologists took another Alabama sturgeon in Monroe County, Alabama, near the 1993 collection site. Unfortunately, shortly after the fish was tagged and released, it was found entangled and dead in a vandalized gill net lying on the river bottom (Parauka, pers. comm. 1995). On April 26, 1996, a commercial fisherman caught, photographed, and released an Alabama sturgeon (estimated at about 51 to 58 cm (20 to 23 in) total length and 1 kg (2.5 lb) weight in the Alabama River, 5 km (3 mi) south of Millers Ferry Lock and Dam (Reeves, ADCNR, pers. comm. 1996).

During the spring of 1996, members of the Mobile River Basin Recovery Coalition began discussions to develop and implement a conservation plan for the Alabama sturgeon that could receive wide support. A draft plan was subsequently endorsed by the ADCNR, Service, Mobile District Corps of Engineers, and representatives of the Alabama-Tombigbee Rivers Coalition. The draft plan identified the need to develop life history information through capture, tagging, and telemetry; capture of broodstock for potential population augmentation; construction of hatchery facilities for sturgeon propagation; and habitat identification and quantification in the lower Alabama River.

In March 1997, the ADCNR implemented the collection component of the conservation plan. The Geological Survey of Alabama, Corps, Waterways Experiment Station, Alabama Power Company, and the Service also participated in the effort. Up to four crews were on the river at any one time using gill nets and trot lines. Most of the effort focused on the lower Alabama River where recent previous captures had been made. Personnel from the ADCNR caught one small sturgeon (1 kg (2 lb) weight) on April 9, 1997, immediately below Claiborne Lock and Dam.

The ADCNR continued fishing for sturgeon through the fall and winter and collected another sturgeon below Miller's Ferry Lock and Dam on December 10, 1997. This fish was also transported to the Marion Fish Hatchery, where both fish are being held for potential use as broodstock. In January 1998, the two fish were

biopsied to determine sex. The April specimen was found to be a mature female with immature eggs, whereas the December fish was a mature male.

Alabama broodstock collection efforts in 1998 resulted in the capture of a single fish on November 12, 1998. A biopsy performed in December found the specimen to be a reproductively inactive male. The two 1997 fish were also biopsied at this time, and were determined to be candidates for propagation in the spring.

The chronology of commercial harvest, scientific collections, and incidental catches by commercial and sport fishermen demonstrate a significant decline in both the population size and range of the Alabama sturgeon in the past 100 years. Historically the fish occurred in commercial abundance and was found in all major coastal plain tributaries of the Mobile River system. The Alabama sturgeon has apparently disappeared from the upper Tombigbee, lower Black Warrior, lower Tallapoosa, and upper Cahaba, where it was last reported in the 1960's; the lower Coosa, last reported around 1970; the lower Tombigbee, last reported around 1975; and lower Cahaba, last reported in 1985 (Clemmer 1983; Burke and Ramsey 1985, 1995; Williams and Clemmer 1991; Mayden and Kuhajda 1996). The fish is known from a single 1985 record in the Mobile-Tensaw Delta; however, no incidental catches by commercial or recreational fishermen have been reported since that time. Recent collection efforts indicate that very low numbers of Alabama sturgeon continue to survive in portions of the 216 km (130 mi) length of the Alabama River channel below Millers Ferry Lock and Dam.

The historic population decline of the Alabama sturgeon was probably initiated by unrestricted harvesting near the turn of the century. Although there are no reports of commercial harvests of Alabama sturgeon after the 1898 report, it is reasonable to assume that sturgeon continued to be affected by the commercial fishery. Keenlyne (1997) noted that in the early years of this century, shovelnose sturgeon were considered a nuisance to commercial fishermen and were destroyed when caught. Interviews with commercial and recreational fishermen along the Alabama River indicate that Alabama sturgeon continued to be taken into the 1980's (Burke and Ramsey 1985). Studies of other sturgeon species suggest that newly exploited sturgeon fisheries typically show an initial high yield, followed by rapid declines. There may be little or no subsequent recovery with continued exploitation and habitat loss, even after nearly a century (National Paddlefish and Sturgeon Steering Committee 1993, Birstein 1993).

Although unrestricted commercial harvesting of the Alabama sturgeon may have significantly reduced its numbers and initiated a population decline, the present curtailment of the Alabama sturgeon's range is the result of 100 years of cumulative impacts to the rivers of the Mobile River Basin (Basin) as they were developed for navigation. Navigation development of the Basin affected the sturgeon in major ways. This development significantly changed and modified extensive portions of river channel habitats; blocked long-distant movements, including migrations; and fragmented and isolated sturgeon populations.

The Basin's major rivers are now controlled by more than 30 locks and/or dams, forming a series of lakes that are interspersed with short, free-flowing reaches. Within the sturgeon's historic range, there are three dams on the Alabama River (built between 1968 and 1971); the Black Warrior has two (completed by 1959); and the Tombigbee six (built between 1954 and 1979). These 11 dams affect and fragment 970 km (583 mi) of river channel habitat. Riverine (flowing water) habitats are required by the Alabama sturgeon to successfully complete its life cycle. Alabama sturgeon habitat requirements are not met in impoundments, where weak flows result in accumulations of silt making bottom habitats unsuitable for spawning and, perhaps, for the bottom-dwelling invertebrates on which the sturgeon feed.

Prior to widespread construction of locks and dams throughout the Basin, Alabama sturgeon could move freely between feeding areas, and from feeding areas to sites that favored spawning and development of eggs and larvae. Additionally the sturgeon may have sought thermal refuges during summer months, when high water temperatures became stressful. Such movements might have been extensive, since other *Scaphirhynchus* species of sturgeons are known to make long distance movements exceeding 250 km (150 mi) (Moos 1978, Bramblett 1996). Locks and dams, however, fragmented the sturgeons' range, forming isolated metapopulations between the dams where all the species' habitat needs were not necessarily met. With avenues of movement and migration restricted, these metapopulations also became more vulnerable to local declines in water and habitat quality caused by riverine and land management practices and/or polluting discharges.

Most of the major rivers within the historic range of the Alabama sturgeon have also been dredged and/or channelized to make them navigable. For example, the 740-km (460-mi) long Warrior-Tombigbee Waterway channel was originally dredged to 45 meters (m) by 2 m (150 feet (ft) by 6 ft) and later to 61 m by 2 m (200 ft by 9 ft). The lower Alabama and Tombigbee rivers are routinely dredged in areas of natural deposition to maintain navigation depths. Dredged and channelized river reaches, in comparison to natural river reaches, have reduced habitat diversity (e.g., loss of shoals, removal of snags, removal of bendways, reduction in flow heterogeneity, etc.), which results in decreased aquatic diversity and productivity (Hubbard *et al.* 1988 and references therein). The deepening and destruction of shoals and shallow runs or other historic feeding and spawning sites as a result of navigation development likely contributed to local and overall historic declines in range and abundance of the Alabama sturgeon.

Dams constructed for navigation and power production also affected the quantity and timing of water moving through the Basin. Water depths for navigation are controlled through discharges from upstream dams, and flows have also been changed as a result of hydroelectric production by upstream dams (Buckley 1995; Freeman and Irwin, U.S. Geological Survey, pers. comm. 1997).

The construction and operation of dams and development of navigation channels were significant factors in curtailment of the historic range of the Alabama sturgeon and in defining its current distribution. While these structures and activities are likely to continue to influence the ecology of this species and others, the present effects of the operation of existing structures, flow regulation, and navigation maintenance activities on the sturgeon are poorly understood. This is due in large part to lack of specific information on the behavior and ecology of the Alabama sturgeon.

In summary, the Alabama sturgeon has undergone marked declines in population size and range during the past century. Over-fishing and navigation development were significant factors in the sturgeon's historic decline. The Alabama sturgeon currently inhabits only about 15 percent of its historic range, and the species is known to survive only in the Alabama River channel below Millers Ferry Lock and Dam.

Previous Federal Actions

The Alabama sturgeon was included in **Federal Register** notices of review for candidate animals in 1982, 1985, 1989, and 1991. In the 1982 and 1985 notices (47 FR 58454 and 50 FR 37958), this fish was included as a category 2 species (a species for which we had data indicating that listing was possibly appropriate, but for which we lacked substantial data on biological vulnerability and threats to support a proposed rule). We discontinued designation of Category 2 species in the February 28, 1996, notice of review (61 FR 7956). In the 1989 and 1991 notices (54 FR 554 and 56 FR 58816), the Alabama sturgeon was listed as category 1 candidate species (a species for which we have on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule).

On June 15, 1993, we published a proposed rule to list the Alabama sturgeon as endangered with critical habitat (58 FR 33148). On July 27, 1993, we published a notice scheduling a public hearing on the proposed rule (58 FR 40109). We published a notice on August 24, 1993 (58 FR 44643), canceling and rescheduling the hearing. On September 13, 1993 (58 FR 47851), we published a notice re-scheduling the public hearing for October 4, 1993, and extending the comment period to October 13, 1993. The October 4 public hearing was held on the campus of Mobile College, Mobile, Alabama. On October 25, 1993 (58 FR 55036), we published a notice announcing a second public hearing date, reopening the comment period, and stating the availability of a panel report. This second public hearing was canceled in response to a preliminary injunction issued on November 9, 1993.

On January 4, 1994 (59 FR 288), we published a notice rescheduling the second public hearing and extending the comment period. However, this hearing was subsequently rescheduled in a January 7, 1994, notice (59 FR 997). We held the second public hearing on January 31, 1994, at the Montgomery Civic Center, Montgomery, Alabama.

We published a 6-month extension of the deadline and reopening of the comment period for the proposed rule to list the Alabama sturgeon with critical habitat on June 21, 1994 (59 FR 31970). On September 15, 1994 (59 FR 47294), we published another notice that further extended the comment period and sought additional comments on only the scientific point of whether the Alabama sturgeon still existed. We withdrew the proposed rule on December 15, 1994, (59 FR 64794) on the basis of insufficient information that the Alabama sturgeon continued to exist. On September 19, 1997, after capture of several individuals confirming that the species was extant, we included the Alabama sturgeon in the candidate species notice of review (62 FR 49403). A candidate species is defined as a species for which we have on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule.

We published Listing Priority Guidance for Fiscal Years 1998 and 1999 on May 8, 1998 (63 FR 25502). That guidance clarifies the order in which we will process rulemakings, giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this proposed rule is a Tier 2 action.

Summary of Factors Affecting the Species

The procedures for adding species to the Federal lists are found in section 4 of the Act and the accompanying regulations (50 CFR part 424). 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 Alabama sturgeon (*Scaphirhynchus suttkusi*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Alabama sturgeon has apparently disappeared from 85 percent of its historic range. Its decline has been associated with construction of dams, flow regulation, navigation channel development, other forms of channel modification, and pollution. Dams in the Alabama River have reduced the amount of riverine habitat, impeded migration of Alabama sturgeon for feeding and spawning needs, and changed the river's flow patterns. The species is now restricted to a 216 km (130 mi) reach of the Alabama River below Millers Ferry Lock and Dam. It is unknown if the quantity of fluvial (stream) habitat currently available to the species in this river reach is adequate to meet all of its ecological needs.

Changes in natural river flow regimes by operation of hydroelectric dams are known to be detrimental to other sturgeon species (e.g., Khoroshko 1972, Zakharyan 1972, Veshchev 1982, Veshchev and Novikova 1983, Auer 1996). Flow quantity is believed to be adequate to sustain the sturgeon in the lower Alabama River (Biggins 1994). The Alabama Power Company currently releases 57 cubic meters per second (cms) (2000 cubic feet per second (cfs)) seasonal minimum flow from Jordan Dam into the lower Coosa River, and 34 cms (1200 cfs) minimum flow from Thurlow Dam into the lower Tallapoosa River. These two releases provide a combined 91 cms (3200 cfs) minimum flow to the upper Alabama River for passage through the three Alabama River locks and dams. Alabama River flows are further augmented by generating flows from Jordan, Thurlow, and Bouldin dams, as well as other Alabama River tributary flows. The average daily flows measured over the last decade downstream of Claiborne Lock and Dam have ranged from over 100 cms to nearly 7,000 cms (4,000 to 240,000 cfs). While there is no evidence to suggest that the Alabama sturgeon is limited by water quantity below Robert F. Henry and Millers Ferry locks and dams, these dams house hydropower facilities and neither is required to maintain a minimum flow. Current low flow releases from these two facilities can be as little as 3 hours of generation timed according to peaking needs, plus lockage releases. The effect of such daily flow fluctuations below Millers Ferry Lock and Dam on Alabama sturgeon reproductive, larval, or juvenile habitat requirements may be negative; however, the importance of the area between Robert F. Henry and Claiborne lock and dams for sturgeon reproduction is currently unknown.

The most visible continuing navigation impact within presently occupied Alabama sturgeon habitat is maintenance dredging of navigation channels. At this time, there is no evidence that it currently constitutes a limiting factor to the sturgeon (Biggins 1994). The Corps has constructed 67 channel training works (jetties) at 16 locations in the lower Alabama River, eliminating about 60 percent of dredging requirements at those locations. In the Mississippi River drainage, such channel training works are believed to be used as spawning areas by other sturgeon species (Mayden and Kuhajda 1996).

Maintenance dredging continues to be necessary in the Alabama River to remove seasonally accumulated material from deposition areas within the navigation channel. Dredged materials are usually placed on natural deposition features adjacent to the navigation channel, such as point bars or lateral bars. Due to the natural dynamics of river channels and annual sediment movement, maintenance areas have remained fairly constant over time, with the same areas repeatedly dredged or used for disposal. Recent investigations by us, the Corps, and ADCNR indicate that the distribution of stable benthic (bottom) habitats in the riverine portions of the Alabama River has been, and continues to be, strongly influenced by historical dredge and disposal practices. Changes in disposal practices could disrupt the existing equilibrium. For example, river channels are strongly influenced by the amount of sediment moving through them. Increases in sediment budget can cause aggradation (filling) of the channel, while decreases in sediment can cause degradation (erosion). With the upstream dams forming barriers to the movement of sediment through the Alabama River, additional reduction of sediment availability (e.g., through upland disposal) could increase river bed and bank erosion, including areas that are now important, stable habitats. In consideration of this, significant changes in current disposal methods in the Alabama River could adversely affect the Alabama sturgeon.

Recent investigations by us and ADCNR biologists have documented the presence of high quality, stable river bottom habitats interspersed within and between dredge and disposal sites in the lower Alabama River (Hartfield and Garner 1998). These included stable sand and gravel river bottom supporting freshwater mussel beds, and bedrock walls and bottom. Mussel beds are excellent indicators of riverine habitat stability because freshwater mussels may live in excess of 30 years and mussel beds require many decades to develop (Neves 1993). Clean bedrock has been identified as potential Alabama sturgeon spawning habitat (Mayden and Kuhajda 1996). The significance of such areas of stability are suggested by the location of recent and historic Alabama sturgeon capture sites below Millers Ferry and Claiborne locks and dams. Dive surveys at 19 capture sites dating back to 1950 found 17 in the vicinity of dense mussel beds (15 sites) and/or clean bedrock riverine habitat (11 sites) (Hartfield and Garner 1998). Depths at these areas (5 to 15 m (15 to 45 ft)) are well below the minimum navigation maintenance depth of 3 m (9 ft).

Sand and gravel mining has had historic impacts on riverine habitats in the lower Tombigbee and Alabama river channels. Instream dredging for sand and gravel can result in localized biological and geomorphic changes similar to those caused by channelization and navigation channel development. For example, mining of rivers has been shown to reduce fish and invertebrate biomass and diversity, and can induce geomorphic changes in the river channel both above and below mined areas (Simons *et al.* 1982, Brown and Lyttle 1992, Kanehl and Lyons 1992, Hartfield 1993, Patrick and Dueitt 1996). Sand and gravel dredging of the Tombigbee and Alabama river channels within the historic and current range of the Alabama sturgeon has occurred periodically since the 1930's (Simons *et al.* 1982). We are not aware of any currently active sand and gravel dredging operations in the Alabama River; however, future mining of gravel from stable river reaches used by the Alabama sturgeon would be detrimental to the species.

Pollution may adversely impact sturgeon (Ruelle and Keenlyne 1993), and it was likely a factor in the decline of the Alabama sturgeon, especially prior to implementation of State and Federal water quality regulations. Presently, the major sources of water pollution in Alabama are agriculture, municipal point sources, resource extraction, and contaminated sediments, in order of decreasing importance based on numbers of miles impaired (Alabama Department of Environmental Management 1994). Water quality in the lower Alabama River is generally good; however, two localized river segments above Claiborne Lock and Dam have been reported as occasionally impaired due to excess nutrients and organic enrichment (Alabama Department of Environmental Management 1994). Sources of impairment were broadly identified as the combined effects of industrial and municipal discharges, and runoff from agriculture and silviculture. These river segments are also affected by hydropower discharges from Millers Ferry Lock and Dam.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* As discussed in the ''Background'' section of this proposed rule, the Alabama sturgeon was commercially harvested around the turn of the century. Alabama State law (sect. 220–2—.26–4) now protects the Alabama sturgeon and other sturgeons requiring that ''* * * any person who shall catch a sturgeon shall immediately return it to the waters from whence it came with the least possible harm.'' As a result, sturgeon are not currently pursued by commercial or recreational fishermen. Nonetheless, Alabama sturgeon are occasionally caught by fishermen in nets or trot lines set for other species. For example, one of the Alabama sturgeons caught in 1995 was hooked by a fisherman on a trot line, and the Alabama sturgeon caught in 1996 was trapped in a hoop net; both of these fish were released. Doubtless there have been additional, undocumented incidental captures by commercial and sport fishermen; however, the surveys and collection efforts of the past decade have shown such captures to be rare.

C. *Disease or predation.* There are no known threats from disease or natural predators. To the extent that disease or predation occurs, it becomes a more important consideration as the total population decreases in number.

D. *The inadequacy of existing regulatory mechanisms.* As we discussed in factor B, Alabama State law (sect. 220–2-.26–4) protects the Alabama sturgeon and other sturgeons requiring that ''* * * any person who shall catch a sturgeon shall immediately return it to the waters from whence it came with the least possible harm.'' As a result, sturgeon are not currently pursued by commercial or recreational fishermen. There is currently no requirement within the scope of other environmental laws or Alabama State law to specifically consider the Alabama sturgeon or ensure that a project will not jeopardize its continued existence.

E. *Other natural or manmade factors affecting its continued existence.* The primary threat to the immediate survival of the Alabama sturgeon is its apparent inability to offset mortality rates with current reproduction rates. As noted in the ''Background'' section, incidents of capture of Alabama sturgeon have been steadily diminishing for the past two decades, indicating declining population numbers over this time. Recent studies suggest that below some minimum population size, termed ''minimum viable population'' (MVP), a species is unable to offset mortality rates with natural reproduction and recruitment (Soule 1987). In such cases, the species becomes more vulnerable to extinction from natural or human-induced random events (e.g., droughts, floods, competition, variations in prey abundance, toxic spills, etc.), which further reduce recruitment or increase mortality. Estimates of the MVP in vertebrates range from hundreds to thousands of reproducing individuals

(Belovsky 1987, Shaffer 1987, Lande and Barrowclough 1987).

Sturgeons may be especially sensitive to MVP effects (likely to become extinct) for several reasons. Age at first spawning (ranging from 5 to 7 years for shovelnose sturgeon) is much delayed in comparison to other fishes, and female sturgeons may not spawn for intervals of several years (Wallus *et al.* 1990). Thus, the effective population size (number of adult males and females capable of reproducing in a given year) is much smaller than it would be if reproduction began earlier and took place annually. Also, recruitment success in fish is subject to considerable natural variability owing to fluctuations of environmental conditions, and there can be several years between periods of good recruitment.

Currently, there are no population estimates for the Alabama sturgeon. Recent collection efforts demonstrate its increasing rarity. For example, beginning in the spring of 1997 through 1998, up to four crews of professional fisheries biologists have expended approximately 3,000 man-hours of fishing effort in the lower Alabama River to capture Alabama sturgeon for use as broodstock. This effort resulted in the capture of only three Alabama sturgeon. During this time, commercial and recreational fishermen encountered on the Alabama River were interviewed, and asked to report any captures of sturgeon to the ADCNR. No incidental catches were reported. Thus, approximately 18 months of fishing by professional, commercial, and recreational fishermen resulted in the capture of only three Alabama sturgeon. Compared to the estimated 20,000 Alabama sturgeon reported in the 1898 harvest, the amount of effort currently required to capture Alabama sturgeon indicates that the species' population numbers are extremely low. This strongly suggests that the Alabama sturgeon is highly vulnerable to MVP effects.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Alabama sturgeon in determining to propose this rule. Based on this evaluation, the preferred action is to list the Alabama sturgeon as endangered. The Act defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. A threatened species is one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range. Endangered status is appropriate for the Alabama sturgeon due to the extensive curtailment of its range and extremely low population numbers.

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 needed to bring the species to the point at which listing under the Act is 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. Our 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: (1) 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 (2) Such designation of critical habitat would not be beneficial to the species. We find that designation of critical habitat is not presently prudent for the Alabama sturgeon.

Critical habitat receives consideration under section 7 of the Act. Section 7(a)(2) requires Federal agencies to consult with the Service to ensure that any action they carry out, authorize, or fund does not jeopardize the continued existence of a federally listed species or destroy or adversely modify designated critical habitat. The Service's implementing regulations (50 CFR part 402) define ''jeopardize the continuing existence of'' and ''destruction or adverse modification of'' in very similar terms. To jeopardize the continuing existence of a species means to engage in an action ''that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species by reducing the reproduction, numbers, or distribution of that species.'' Destruction or adverse modification of habitat means a ''direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species in the wild.'' Common to both definitions is an appreciable detrimental effect to both the survival and recovery of a listed species.

For any listed species, an analysis to determine jeopardy under section 7(a)(2) would consider impacts to the species resulting from impacts to habitat. Therefore, an analysis to determine jeopardy would include an analysis closely parallel to or, for the Alabama sturgeon, equivalent to an analysis to determine adverse modification of critical habitat. For the Alabama sturgeon, any modification to suitable habitat within the species' range has the potential to affect the species. Actions that may affect the habitat of the Alabama sturgeon in the lower Alabama River include those with impacts on river channel morphology, bottom substrate composition, water quantity and quality, and stormwater runoff. Any activity that would be determined to cause an adverse modification to critical habitat also would jeopardize the continued existence of this fish given its restricted distribution and imperiled status.

Critical habitat designation within a species' occupied range heightens the awareness of Federal agencies to the potential presence of the species, and encourages consideration of the effects of Federal actions on the species' habitat. We have worked closely with Federal agencies, particularly the Corps, in evaluating Federal agency actions and their potential effects to the Alabama sturgeon (Biggins 1994). All potentially affected Federal agencies are currently aware of the location and extent of habitat occupied by the Alabama sturgeon. In addition, should the species be listed, Federal actions that might affect occupied sturgeon habitat would be subject to review under section 7(a)(2) of the Act, whether or not critical habitat is designated. Therefore, habitat protection for the Alabama sturgeon can be accomplished through the section 7 jeopardy standard and there is no benefit in designating occupied habitat as critical habitat.

Designation of unoccupied habitat as critical habitat may, in certain instances, provide additional protection to that afforded by the jeopardy standard. Specific areas outside the geographic area occupied by a species at the time it is listed may be designated as critical habitat, if it is determined that such areas are essential for the conservation of the species. The ecological requirements of the Alabama sturgeon are so poorly known, its historical habitats are so severely modified and fragmented, and its population numbers are so small, that extensive research

over an extended period of time would be required to identify any existing essential unoccupied habitats (see ''Background'' and ''Summary of Factors Affecting the Species'' sections).

Though critical habitat designation directly affects only Federal agency actions, this process can arouse public concern and resentment. Although Alabama sturgeon are currently protected from commercial or recreational fishing, they are occasionally captured (see factor B). Publicity or controversy accompanying critical habitat designation may increase the potential for illegal take. For example, on June 15, 1993, the Alabama sturgeon was initially 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 proposed listing and designation of these rivers as critical habitat 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.

The primary threat to the Alabama sturgeon has been identified as its small numbers and its apparent inability to offset mortality rates with current reproduction rates (see factor E). As noted in the ''Available Conservation Measures'' section, a collaborative effort by public and private partners to address this threat and conserve the Alabama sturgeon was initiated in 1997. Essential to this effort is the collection of sturgeon for use as broodstock for hatchery propagation, and for telemetry studies on habitat and behavior. Commercial and recreational fishermen have caught two of the seven fish captured over the past decade. Their continued cooperation is important to on-going Alabama sturgeon conservation efforts. The loss of the cooperation of fishermen and other private partners, as a result of proposed designation of unoccupied habitat as critical habitat, would be detrimental to the survival and recovery of the species.

It should also be noted that regardless of critical habitat designation, Federal agencies are required by section 7(a)(1) of the Act to utilize their authorities in furtherance of the Act's purposes by carrying out conservation activities for listed species. We have been working with the Corps and other partners to assess habitat quantity, quality, and accessibility within the historic range of the Alabama sturgeon. Such studies, along with ongoing broodstock collection efforts, hatchery propagation, and other activities have focused attention on the sturgeon, its habitat, and threats to its existence, and will continue should the species be listed. Thus, any benefit that might accrue from designation of unoccupied habitat as critical is being accomplished under the existing coordination process.

Based on the above analysis, we have concluded critical habitat designation would provide no additional benefit for the Alabama sturgeon beyond that which would accrue from listing under the Act. In addition, we also conclude that any potential benefit from such a designation would be outweighed by a loss of cooperation by fishermen and other partners in current conservation efforts, and an increased level of vulnerability to illegal take. Therefore, the designation of critical habitat for the Alabama sturgeon is not prudent.

Available Conservation Measures

The ADCNR has implemented a conservation plan for the sturgeon that addresses the immediate threat to the species, its depressed population size, and seeks to develop information on the species and its habitat needs. A variety of public and private groups, including the Service, Army Corps of Engineers, Geological Survey of Alabama, Auburn University, the Alabama-Tombigbee Rivers Coalition, and the Mobile River Basin Coalition are participating in, and/or endorse, implementation of this plan. The immediate focus of the plan is to prevent extinction through a captive breeding program and release of propagated fish. Other objectives of the plan include habitat restoration and determining life history information essential to effective management of the species. A freshwater sturgeon conservation plan working group composed of scientists and resource managers from a variety of Federal and State agencies, industry, and local universities was formed in September 1996 to establish collection and handling protocols, and to recommend and participate in research efforts. Implementation of the conservation plan began in March 1997, with broodstock collection efforts. A female and two male sturgeon have been collected and are being held at the Marion Fish Hatchery. The hatchery has been upgraded to accommodate sturgeon propagation. An attempt to spawn the captive sturgeon is planned for spring 1999. Coordinated studies are currently in progress by us, the ADCNR, and the Corps to identify and quantify stable riverine habitat in the Alabama River, and to develop strategies for its management. Life history and habitat studies in progress include habitat characterization at historic sturgeon collection sites, prey density studies, and larval sturgeon surveys.

The Mobile River Basin Aquatic Ecosystem Recovery Coalition, a partnership comprised of diverse business, environmental, private landowner, and agency interests, has been meeting regularly to participate in recovery planning for 15 listed aquatic species in the Basin (U.S. Fish and Wildlife Service 1998). The Coalition promotes increased stewardship awareness by private landowners throughout the Basin, and encourages the control of nonpoint source pollution through the implementation of Best Management Practices. All aquatic habitats, including Alabama sturgeon habitat, will benefit from such efforts.

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)(4) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed, 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 affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal activities that could occur and impact the Alabama sturgeon 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. It has been our experience that nearly all section 7 consultations have been resolved so that the species have been protected and the project objectives have been met.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered 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 our agents and agents of State conservation agencies.

It is our policy, 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 if this species is listed. The intent of this policy is to increase public awareness as to the effects of these proposed listings on future and ongoing activities within a species' range.

Activities that we believe are unlikely to result in a violation of section 9 for the Alabama sturgeon are:

(1) Discharges into waters supporting the sturgeon, provided these activities are carried out in accordance with existing regulations and permit requirements (e.g., activities subject to section 404 of the Clean Water Act and discharges regulated under the National Pollutant Discharge Elimination System (NPDES)).

(2) Maintenance dredging of unconsolidated sediments undertaken or approved by the Corps of Engineers.

(3) Development and construction activities designed and implemented pursuant to State and local water quality regulations and implemented using approved Best Management Practices.

(4) Lawful commercial and sport fishing.

(5) Actions that may affect the Alabama sturgeon and are authorized, funded or carried out by a Federal agency when the action is conducted in accordance with an incidental take statement issued by the Service pursuant to section 7 of the Act.

Activities that we believe could potentially result in ''take'' of the Alabama sturgeon, if it becomes listed, include:

(1) Illegal collection of the Alabama sturgeon.

(2) Unlawful destruction or alteration of the Alabama sturgeon's habitat (e.g., un-permitted instream dredging, channelization, discharge of fill material).

(3) Violation of any discharge or water withdrawal permit in waters supporting the Alabama sturgeon.

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

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 should the sturgeon become listed. We do not consider these lists to be exhaustive and provide them as information to the public.

You should direct questions regarding whether specific activities will constitute a violation of section 9, should the sturgeon be listed, to the Field Supervisor of our Jackson Field Office (see **ADDRESSES** section).

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. 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. Send requests for copies of regulations regarding listed species and inquiries about prohibitions and permits to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Atlanta, Georgia 30345 (telephone 404/679–7313; facsimile 404/679–7081).

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the lower Alabama River and their possible impacts on this species.

We will take into consideration your comments and any additional information received on this species when making a final determination regarding this proposal. We will also submit the available scientific data and information to appropriate, independent specialists for review. We will summarize the opinions of these reviewers in the final decision document. The final determination may differ from this proposal based upon the information we receive.

You may request a public hearing on this proposal. Your request for a hearing must be made in writing and filed within 45 days of the date of publication of this proposal in the **Federal Register**. Address your request to the Field Supervisor (see **ADDRESSES** section).

Executive Order 12866

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand including answers to the following: (1) Are the requirements of the rule clear? (2) Is the discussion of the rule in the Supplementary Information section of the preamble helpful in understanding the rule? (3) What else could we do to make the rule easier to understand?

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, 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. We published a notice outlining our reasons for this determination 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 species, see 50 CFR 17.22.

References Cited

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

Author: The primary author of this document 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.

Proposed Regulation Promulgation

Accordingly, the Service proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

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

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
FISHES							
*	*	*	*	*	*	*	
Sturgeon, Alabama ..	*Scaphirhynchus suttkusi.*	U.S.A.(AL, MS)	Entire	E		NA	NA
*	*	*	*	*	*	*	

Dated: March 18, 1999.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 99–7387 Filed 3–23–99; 9:43 am]

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