the Endangered Species Act of 1973, as amended (Act), between 1991 and 1999. Sixteen of these species are endemic to the island of Molokai, while 35 species are reported from one or more other islands, as well as Molokai.

In other published proposals we proposed that critical habitat was prudent for 48 of the 51 species (*Adenophorus periens, Alectryon macrococcus, Bidens wiebkei, Bonamia menziesii, Brighamia rockii, Canavalia molokaiensis, Centaurium sebaeoides, Clermontia oblongifolia* ssp. *brevipes, Ctenitis squamigera, Cyanea dunbarii, Cyanea grimesiana* ssp. *grimesiana, Cyanea mannii, Cyanea procera, Cyperus trachysanthos, Diellia erecta, Diplazium molokaiense, Eugenia koolauensis, Flueggea neowawraea, Hedyotis mannii, Hesperomannia arborescens, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Ischaemum byrone, Isodendrion pyrifolium, Labordia triflora, Lysimachia maxima, Mariscus fauriei, Marsilea villosa, Melicope mucronulata, Melicope reflexa, Neraudia sericea, Peucedanum sandwicense, Phyllostegia mannii, Phyllostegia mollis, Plantago princeps, Platanthera holochila, Pteris lidgatei, Schiedea lydgatei, Schiedea nuttallii, Schiedea sarmentosa, Sesbania tomentosa, Silene alexandri, Silene lanceolata, Spermolepis hawaiiensis, Stenogyne bifida, Tetramolopium rockii, Vigna o-wahuensis,* and *Zanthoxylum hawaiiense*) from the island of Molokai (65 FR 66808, 65 FR 79192, 65 FR 82086, 65 FR 83158, 67 FR 3940, 67 FR 9806, 67 FR 16492). In addition, we proposed that critical habitat was not prudent for *Pritchardia munroi* because it would likely increase the threats from vandalism or collection of this species on Molokai (65 FR 83158). At the time we listed *Labordia triflora* and *Melicope munroi* we determined that the designation of critical habitat was prudent for these two taxa from Molokai (64 FR 48307).

In the April 5, 2002, revised prudency and critical habitat proposal, we proposed critical habitat for 46 of the 51 species from the island of Molokaii (67 FR 16492). Critical habitat was not proposed for 4 of the 51 species (*Bonamia menziesii, Cyperus trachysanthos, Melicope munroi,* and *Solanum incompletum*) which no longer occur on the island of Molokai and for which we are unable to identify any habitat that is essential to their conservation on the island of Molokai. Critical habitat was not proposed for *Pritchardia munroi* for the reasons given above.

We have proposed to designate a total of 10 critical habitat units covering approximately 17,614 hectares (ha) (43,532 acres (ac)) on the island of Molokaii.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act (16 U.S.C. 1531 *et seq.*) with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that the Secretary shall designate or revise critical habitat based upon the best scientific and commercial data available, and after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for plant species from Molokai, and comments received during the previous comment period, we have prepared a draft economic analysis of the proposed critical habitat designations. The draft economic analysis is available on the Internet and from the mailing address in the Public Comments Solicited section below.

Public Comments Solicited

We will accept written comments and information during this re-opened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., PO Box 50088, Honolulu, HI 96850–0001.

(2) You may send comments by electronic mail (e-mail) to: *Molokai_Crithab@r1.fws.gov*. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include ''Attn: RIN 1018–AH08'' and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Honolulu Fish and Wildlife Office at telephone number 808/541–3441.

(3) You may hand-deliver comments to our Honolulu Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the draft economic analysis are available on the Internet at *http://pacificislands.fws.gov* or by request from the Field Supervisor at the address and phone number under (1 and 2) above.

Author(s)

The primary author of this notice is John Nuss, U.S. Fish and Wildlife Service, Regional Office, 911 NE 11th Avenue, 4th floor, Portland, OR 97232–4181.

Authority

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

Dated: August 1, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–20340 Filed 8–9–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF96

Endangered and Threatened Wildlife and Plants; Establishment of Nonessential Experimental Population Status and Reintroduction of Four Fishes in the Tellico River

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), plan to reintroduce two federally listed endangered fishes—the duskytail darter (*Etheostoma percnurum*) and smoky madtom (*Noturus baileyi*)—and two federally listed threatened fishes—the yellowfin madtom (*Noturus flavipinnis*) and spotfin chub (=turquoise shiner) (*Cyprinella* (=*Hybopsis*) *monacha*)—into the Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile (TRM) 19 (30.4 kilometers (km))) and TRM 33 (52.8 km), near the Tellico Ranger Station, Monroe County, Tennessee.

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

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

DATES: The effective date of this rule is September 11, 2002.

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

FOR FURTHER INFORMATION CONTACT: Mr. Bob Butler at 828/258–3939, Ext. 235; facsimile 828/258–5330; or e-mail bob_butler@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

1. *Legislative:* Congress made significant changes to the Act with the addition of section 10(j), which provides for the designation of specific reintroduced populations of listed species as ''experimental populations.'' Previously, we had authority to reintroduce populations into unoccupied portions of a listed species' historical range when doing so would foster the conservation and recovery of the species. However, local citizens often opposed these reintroductions because they were concerned about the placement of restrictions and prohibitions on Federal and private activities. Under section 10(j), the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range, but within its historical range, as ''experimental.''

Under the Act, species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of endangered wildlife. ''Take'' is defined by the Act as harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or attempt to engage in any such conduct. Service regulations (50 CFR 17.31) generally extend the prohibition of take to threatened wildlife. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitats. It mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species. It also states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

Section 10(j) is designed to increase our flexibility in managing an experimental population by allowing us to treat the population as threatened, regardless of the species' designation elsewhere in its range. Threatened designation gives us more discretion in developing and implementing management programs and special regulations for such a population and allows us to develop any regulations we consider necessary to provide for the conservation of a threatened species. In situations where we have experimental populations, most of the section 9 prohibitions that normally apply to threatened species no longer apply, and the special rule contains the prohibitions and exceptions necessary and appropriate to conserve that species. Regulations for NEPs may be developed to be more compatible with routine human activities in the reintroduction area.

Based on the best available information, we must determine whether experimental populations are ''essential'' or ''nonessential'' to the continued existence of the species. An experimental population that is essential to the survival of the species is treated as a threatened species. An experimental population that is nonessential to the survival of the species is also treated as a threatened species. However, for section 7 interagency cooperation purposes, if the NEP is located outside of a National Wildlife Refuge or National Park, it is treated as a species proposed for listing.

For the purposes of section 7 of the Act, in situations where there is an NEP located within a National Wildlife Refuge or National Park (treated as threatened), section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act would apply. Section 7(a)(1) requires all Federal agencies to use their authorities to conserve listed species. Section 7(a)(2) requires that Federal agencies consult with the Service before authorizing, funding, or carrying out any activity that would likely jeopardize the continued existence of a listed species or adversely modify its critical habitat. When NEPs are located outside a National Wildlife Refuge or National Park, only two provisions of section 7 apply—section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer with the Service on actions that are likely to jeopardize the continued existence of a proposed species. However, since we determined that the experimental population is not essential to the continued existence of the species, it is very unlikely that we would ever determine jeopardy for a project impacting a species within an NEP outside a National Wildlife Refuge or National Park.

Individuals used to establish an experimental population may come from a donor population, provided their removal will not create adverse impacts upon the parent population and provided appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal.

2. *Biological:* Since the mid-1980s, Conservation Fisheries, Inc. (CFI), with support from us, the Tennessee Wildlife Resources Agency (TWRA), U.S. Forest Service (USFS), National Park Service (NPS), Tennessee Valley Authority (TVA), and Tennessee Aquarium (TA), has reintroduced the smoky madtom, duskytail darter, yellowfin madtom, and spotfin chub into Abrams Creek, within the Great Smoky Mountains National Park, Blount County, Tennessee. We have evidence that all four species are becoming reestablished in Abrams Creek (Rakes *et al.* 1998). Based on this success and CFI's intimate knowledge of the fishes' habitat needs, we contracted them to survey the Tellico River to determine if we could expand the recovery program for these fishes into the Tellico River.

CFI determined that the Tellico River appears to contain ideal habitat for the reintroduction of the four fishes, between the backwaters of the Tellico Reservoir (approximately TRM 19 (30.4 km)) and TRM 33 (52.8 km), near the Tellico Ranger Station, Monroe County, Tennessee (Rakes and Shute 1998). CFI concluded that the Tellico River's overall water quality and clarity, combined with substrate quality, were somewhat less optimal than Citico Creek, where three of the four species currently exist. However, they also concluded that the Tellico River contains as good or better habitat than that which exists in Abrams Creek, where reintroductions of all four species are apparently succeeding.

Rakes and Shute (1998) reported that there are no confirmed historical collection records for these fishes from the Tellico River. However, they believe that all four species probably occurred in the river historically. They based their conclusion on two facts: (1) That the Tellico River is a Little Tennessee tributary just downstream from the mouths of Abrams and Citico Creeks (all four fishes historically occurred in these creeks) and (2) that all three streams drain the same physiographic provinces (Blue Ridge and Ridge and Valley). Additionally, all four species historically had access to the Tellico River. Prior to the construction of reservoirs on the main stem of the Little Tennessee River, no physical barriers prevented the movement of these fishes among Abrams Creek, Citico Creek, and the Tellico River (Peggy Shute, TVA, personal communication, 1998).

3. *Recovery Efforts:* We listed the duskytail darter (*Etheostoma percnurum*) (Jenkins 1994) as an endangered species on April 27, 1993 (58 FR 25758), and completed the recovery plan for this species in March 1994 (Service 1994). Although likely once more widespread in the upper Tennessee and middle Cumberland River systems, the species was historically known from only six populations—Little River and Abrams Creek, Blount County, Tennessee; Citico Creek, Monroe County, Tennessee; Big South Fork Cumberland River, Scott County, Tennessee, and McCreary County, Kentucky; Copper Creek and the Clinch River (this is one population), Scott County, Virginia; and the South Fork Holston River, Sullivan County, Virginia (Service 1994). The South Fork Holston River population is apparently extirpated. The Little River, Copper Creek/Clinch River, and Big South Fork Cumberland River populations are extant but small. CFI has reintroduced the duskytail darter into Abrams Creek, where a population is apparently becoming reestablished (Rakes *et al.* 1998).

The downlisting (reclassification from endangered to threatened status) criteria in the Duskytail Darter Recovery Plan are: (1) Protect and enhance existing populations and reestablish a population so that at least three distinct viable duskytail darter populations exist, (2) complete studies of the species' biological and ecological requirements, (3) develop management strategies from these studies that are or are likely to be successful, and (4) ensure that no foreseeable threats exist that would likely threaten the continued existence of the three aforementioned viable populations. The delisting criteria in the recovery plan are: (1) Protect and enhance existing populations and reestablish populations so that at least five distinct viable duskytail darter populations exist, (2) complete studies of the species' biological and ecological requirements, (3) develop management strategies from these studies that are or are likely to be successful, and (4) ensure that no foreseeable threats exist that would likely threaten the continued existence of the five aforementioned viable populations.

We listed the smoky madtom (*Noturus baileyi*) (Taylor 1969) as an endangered species on October 26, 1984 (49 FR 43065), and finalized the recovery plan for this species in August 1985 (Service 1985). Although once probably more widespread in tributaries to the lower Little Tennessee River system, this species was historically collected from only two creeks—Abrams Creek, Blount County, Tennessee, and Citico Creek, Monroe County, Tennessee (Service 1985). The Citico Creek population is still extant. CFI has reintroduced the smoky madtom into Abrams Creek, and a population is apparently becoming reestablished (Rakes *et al.* 1998).

The downlisting criteria in the Smoky Madtom Recovery Plan are: (1) Protect the existing Citico Creek population and reintroduce the species into Abrams Creek so that at least two distinct viable smoky madtom populations exist, and (2) eliminate threats to the species by implementing management activities. The delisting criteria in the recovery plan are: (1) Protect and enhance existing populations and reestablish populations so that at least four distinct viable smoky madtom populations (Abrams and Citico Creeks, plus two others) exist; (2) implement successful management plans for the populations in Abrams and Citico Creeks; and (3) protect all four populations and their habitat from present and foreseeable threats that could interfere with the survival of any of the populations.

We listed the yellowfin madtom (*Noturus flavipinnis*) (Taylor 1969) as a threatened species on September 9, 1977 (42 FR 45527), and finalized the recovery plan for this species in June 1983 (Service 1983a). This fish was probably once widely distributed in the Tennessee drainage, from the Chickamauga system upstream (Service 1983a). However, the yellowfin madtom was historically known from only six streams—South Chickamauga Creek, Catoosa County, Georgia; Hines Creek, a Clinch River tributary, Anderson County, Tennessee; North Fork Holston River, Smyth County, Virginia; Copper Creek, Scott and Russell Counties, Virginia; Powell River, Hancock County, Tennessee; and Citico Creek, Monroe County, Tennessee (Service 1983a). Although there are no historical yellowfin madtom records from Abrams Creek, Blount County, Tennessee, Lennon and Parker (1959) reported that the brindled madtom (the name given by early collectors for the yellowfin) was collected during a reclamation project of lower Abrams Creek in 1957. Based on this observation, Dinkins and Shute (1996) and others believe the species once occurred in the middle and lower reaches of Abrams Creek. Three small populations still persist—Citico Creek, Copper Creek, and the Powell River. CFI has reintroduced the species into Abrams Creek, and a population is apparently becoming reestablished (Rakes *et al.* 1998).

The delisting criteria in the Yellowfin Madtom Recovery Plan are: (1) Protect and enhance existing populations and/or reestablish populations so that viable populations exist in Copper Creek, Citico Creek, and the Powell River; (2) recreate and/or discover two additional viable populations; (3) ensure that noticeable improvements in coal-related problems and substrate quality exist in the Powell River; and (4) protect the species and its habitat in all five rivers from present and foreseeable threats that may adversely affect essential habitat or the survival of any of the populations.

We listed the spotfin chub (=turquoise shiner) (*Cyprinella* (=*Hybopsis*) *monacha*) (Cope 1868) as a threatened species on September 9, 1977 (42 FR 45527), and finalized the recovery plan for this species in November 1983 (Service 1983b). This once widespread species was historically known from 24 streams in the upper and middle Tennessee River system. It is now extant in only four rivers/river systems—the Buffalo River at the mouth of Grinders Creek, Lewis County, Tennessee; Little Tennessee River, Swain and Macon Counties, North Carolina; Emory River system (Obed River, Clear Creek, and Daddys Creek) Cumberland and Morgan Counties, Tennessee; Holston River and its tributary, the North Fork Holston River, Hawkins and Sullivan Counties, Tennessee, and Scott and Washington Counties, Virginia (Service 1983b; P. Shute, TVA, personal communication, 1998). CFI has reintroduced the species into Abrams Creek, and indications are that it may become reestablished (Rakes *et al.* 1998).

The delisting criteria in the Spotfin Chub Recovery Plan are: (1) protect and enhance existing populations and/or reestablish populations so that viable populations exist in the Buffalo River

system, upper Little Tennessee River, Emory River system, and lower North Fork Holston River and (2) ensure, through reintroductions and/or the discovery of new populations, that two other viable populations exist.

The recovery criteria for all four of these fishes generally agree that, to reach recovery, we must: (1) Restore existing populations to viable levels, (2) reestablish viable populations in historical habitats, and (3) eliminate foreseeable threats that would likely threaten the continued existence of any viable populations. The number of secure, viable populations (existing and restored) needed to achieve recovery varies by species and depends on the extent of the species' probable historical range (*i.e.,* species that were once widespread require a greater number of populations for recovery than species that were historically more restricted in distribution). However, the reestablishment of historical populations is a critical component to the recovery of all four species.

4. *Reintroduction Site:* In March 1998, the Executive Director of the TWRA stated that he supports the conclusions of Rakes and Shute (1998) and requested that we consider designating the Tellico River an NEP area for reintroducing the four fishes. He further stated that: (1) The Tellico River was the probable historical habitat of the duskytail darter, smoky madtom, yellowfin madtom, and spotfin chub, and (2) the Tellico River appeared to have almost ideal habitat for the reintroduction of all four fishes.

Dr. David Etnier, Department of Ecology and Evolutionary Biology, University of Tennessee, Knoxville, Tennessee, stated in April 1998 that he supports the reintroduction of the four species into the Tellico River. Dr. Etnier presented several reasons for his support: (1) The mouth of the Tellico River is approximately 10 miles (16 km) downstream of the mouth of Citico Creek, which historically supported all four species and currently supports all but the spotfin chub; (2) CFI's habitat analysis indicated that the reintroduction of these fishes into the Tellico River has a greater potential for success than reintroductions into any other tributary of the Little Tennessee River system, except Abrams Creek, where apparently successful reintroductions are already occurring; (3) apparently, no fish collections were made from the Tellico River prior to the 1960s, so the extirpation of these fishes could have occurred prior to the 1960s due to siltation caused by heavy logging in the watershed around the turn of the century; and (4) none of these species display any biological attributes that suggest they could become a problem if successfully established into the Tellico River.

We will reintroduce populations of the duskytail darter, smoky madtom, yellowfin madtom, and spotfin chub (=turquoise shiner) into the Tellico River, between the backwaters of the Tellico Reservoir (approximately TRM 19 (30.4 km)) and TRM 33 (52.8 km), near the Tellico Ranger Station, Monroe County, Tennessee, and designate these populations as NEPs. This area is identified as the NEP area.

5. *Reintroduction Procedures:* At this time we cannot determine the dates for these reintroductions, the specific sites where the fish species will be released, and the actual number of individuals to be released. We will release primarily artificially propagated juveniles, but we could release some wild adult stock. Propagation and juvenile rearing technology is available for the spotfin chub and the duskytail darter. Limited numbers of smoky and yellowfin madtom juveniles can be reared using eggs and larvae taken from the wild. However, madtom artificial propagation technology, which is needed to produce large numbers of juvenile madtoms, is still in development.

The parents of the juveniles reintroduced into the NEP area will come from existing wild populations. The two madtoms and duskytail darters will come from a nearby Little Tennessee River tributary—Citico Creek, Monroe County, Tennessee. The spotfin chubs will come from upstream in the Little Tennessee River, Swain County, North Carolina. In some cases, the parents will be returned to the wild population from which they were taken. However, in most cases the parents will be permanently relocated to propagation facilities.

Status of Reintroduced Populations

The status of the extant populations of the duskytail darter, smoky madtom, yellowfin madtom, and spotfin chub is such that individuals can be removed to provide a donor source for reintroduction without appreciably reducing the likelihood of the species' survival in the wild. Therefore, we have determined that these reintroduced fish populations are not essential to the continued existence of the species. We will ensure, through our section 10 permitting authority and the section 7 consultation process, that the use of animals from any donor population for these reintroductions is not likely to jeopardize the continued existence of the species.

In addition, the anticipated success of these reintroductions will enhance the conservation and recovery potential of these species by extending their present ranges into currently unoccupied historic habitat. These species are not known to exist in the Tellico River or its tributaries at the present time.

Location of Reintroduced Populations

Sites for the reintroduction of these four fish species into the Tellico River, Monroe County, Tennessee, will be within the designated NEP area. This area is totally isolated from existing populations of these species by large reservoirs, and none of these fishes are known to occur or move through large reservoir habitat. Therefore, these reservoirs will act as barriers to the downstream expansion of these species into the main stem of the Little Tennessee River and its tributaries and ensure that these populations will remain geographically isolated.

Management

We do not believe these reintroductions will conflict with existing or proposed human activities or hinder public utilization of the NEP area. Special rules for experimental populations contain all the prohibitions and exceptions regarding the taking of individual animals. These special rules are more compatible with routine human activities in the reintroduction area.

Based on the habitat requirements of these four fishes, we do not expect them to become established outside the NEP area. However, if any of the four species move upstream or downstream or into tributaries outside the designated NEP area, we would presume that the animals had come from the reintroduced populations. The rule would then be amended, and the boundaries of the NEP area would be enlarged to include the entire range of the expanded population.

Previous Federal Actions

On June 26, 1998, we mailed letters to 67 potentially affected congressional offices, Federal and State agencies, local government offices, and interested parties that we were considering proposing NEP status for four fish species in the Tellico River. We received four written responses.

The USFS, which is significantly involved in reintroduction efforts for these fishes into Abrams Creek, supported the proposed reintroductions into the Tellico River as NEPs and offered to cooperate with us and TWRA in the reintroductions.

The Tennessee Department of Environment and Conservation, Division of Natural Heritage (TDEC),

supported the proposed reintroduction of the four fishes into the Tellico River. They believed that designating the reintroduced populations as NEPs is appropriate because it should enable Federal, State, and local authorities to continue to promote the conservation and recovery of these fishes.

The Tennessee Chapter of the American Fisheries Society supported the proposed reintroduction of these fishes into the Tellico River under NEP status. They concluded that: (1) Although there is little information on the historical environmental conditions in the Tellico River, the river now supports a relatively healthy native fish community with respect to species diversity, species composition, fish abundance, and fish health; (2) the river appears to contain suitable habitat for the survival of all four species; (3) all four species probably historically occupied the river; and (4) designating reintroductions as NEPs greatly relaxes regulatory requirements and makes introduced populations more compatible with other resource use in the watershed.

The Southeast Aquatic Research Institute (SARI) fully supported the proposed reintroductions.

On June 8, 2001, we published the proposed rule in the **Federal Register** (66 FR 30853) to designate NEP status, under section 10(j) of the Act, for the reintroduction of the aforementioned four fishes into the Tellico River, Monroe County, Tennessee. Additionally, we announced this proposal in facsimiles dated June 7, 2001; in letters dated June 8, 2001; and in a legal notice published in the *Knoxville News-Sentinel*, Knoxville, Tennessee, on June 21, 2001. Those documents notified affected congressional offices, the Governor of Tennessee, Federal and State agencies, local government offices, scientific organizations, and interested parties of the proposed action and requested comments and information that might contribute to the development of a final determination.

Summary of Comments and Recommendations

In the June 8, 2001, proposed rule (66 FR 30853), we opened a 60-day comment period. We received eight responses—five supported the designation as an NEP, one supported the reintroduction but requested the experimental population be designated ''essential'' rather than ''nonessential,'' and two respondents expressed concern that the designation would adversely impact recreational activities in the Tellico River watershed. These comments did not result in any changes to the final rule. Key issues raised and our responses are presented below.

Issue 1: Two respondents expressed concern that the NEP designation would adversely impact recreational activities in the Tellico River watershed. They were especially concerned with the impact to off-road-vehicle use in the Cherokee National Forest portion of the watershed.

Response: Because of the regulatory flexibility provided through an NEP designation, we do not believe the reintroduction of these fishes will have any adverse impact on recreational or other legal activities in the Tellico River watershed (see ''Required Determinations'' and ''Management'' sections). Federal agencies, like the USFS, are not required under the Act to change any recreational uses in the Cherokee National Forest to protect the continued existence of these fishes in the Tellico River watershed. State and local agencies, communities, and private citizens would not be required to change current uses in the watershed to protect the fishes in this NEP.

Issue 2: One respondent stated that we should classify the experimental populations as ''essential'' instead of ''nonessential.''

Response: In our August 27, 1984, final rule regarding experimental populations (49 FR 33885), we stated that, in some situations, the status of the extant population is such that individuals can be removed to provide a donor source for reintroduction without creating adverse impacts on the parent population. This is especially true if captive propagation efforts are providing individuals for release into the wild. Further, we cannot ignore Congressional intent in explaining the ''essential'' determination:

''* * * The Secretary shall consider whether the loss of the experimental population would be *likely to appreciably reduce the likelihood of survival of that species in the wild.* If the Secretary determines that it would, the population will be considered essential to the continued existence of the species. The level of reduction necessary to constitute ''essentiality'' is expected to vary among listed species, and *in most cases, experimental populations will not be essential.*''

H.R. Conf. Rep. No. 835, supra at 34 [emphasis added]. An ''essential'' population will be a special case, not the general rule.

The status of the extant populations of the duskytail darter, smoky madtom, yellowfin madtom, and spotfin chub is such that individuals can be removed to provide a donor source for reintroduction without appreciably reducing the likelihood of the species' survival in the wild. Therefore, we have determined that these reintroduced fish populations are not essential to the continued existence of the species. We will ensure, through our section 10 permitting authority and the section 7 consultation process, that the use of animals from any donor population for these reintroductions is not likely to jeopardize the continued existence of the species.

Issue 3: Four respondents (TVA, TWRA, TDEC, and SARI) expressed support for the designation of the experimental population as ''nonessential'' because it provides greater management flexibility.

Response: We agree that an NEP designation provides more management flexibility than an essential experimental population designation. We also believe that the NEP designation is appropriate for the reasons discussed in our response to Issue 2 above.

Peer Review

In conformance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we provided copies of the proposed rule to ten specialists in order to solicit comments on the scientific data and assumptions relating to the supportive biological and ecological information for this NEP rule. The purpose of such review is to ensure that the NEP designation decision is based on the best scientific information available, as well as to ensure that reviews by appropriate experts and specialists are included into the review process of rulemakings. Although comments were solicited from ten specialists, none of these reviewers provided comments on the proposed rule. However, we did receive comments expressing support for the designation from the State (e.g., TWRA, TDEC), Tennessee Chapter of the American Fisheries Society, and SARI, and we are working closely with TWRA, USFS, NPS, TVA, and the TA on our reintroduction efforts, as mentioned above.

Required Determinations

Regulatory Planning and Review

This rule is not a significant rule as determined by the Office of Management and Budget (OMB) under Executive Order 12866. This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition,

jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The area affected by this rule consists of a very limited and discrete geographic segment (only 14 river miles [22.4 km]) of the Tellico River in Monroe County, Tennessee. No significant impacts to existing human activities are expected as a result of this rule.

This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Designating reintroduced populations of federally listed species as NEPs significantly reduces the Act's regulatory requirements regarding the reintroduced listed species. Because of the substantial regulatory relief, we do not believe the reintroduction of these fishes will conflict with existing or proposed human activities or hinder public use of the Tellico River.

This rule does not alter the budgetary effects of entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. No entitlements, grants, user fees, or loan programs are associated with this rule.

This rule does not raise novel legal or policy issues. We have previously promulgated section 10(j) rules for experimental populations of other listed threatened or endangered species in various localities since 1984. The rules are designed to reduce the regulatory burden that would otherwise exist when reintroducing listed species to the wild.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Although most, if not all, of the identified businesses engaged in activities along the affected stream reaches are small businesses, this rule will have no economic effect in that it will operate to reduce or remove regulatory restrictions (see above for discussion of expected impacts).

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more on local or State governments or private entities. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The intent of this special rule is to facilitate and continue the existing commercial activities along the affected stream reaches, while providing for the conservation of species through reintroduction into suitable habitat.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. The TWRA, which manages the fishes in the Tellico River, requested that we consider this reintroduction under an NEP designation. However, this rule will not require the TWRA to specifically manage for any of these reintroduced species. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this rule does not have significant takings implications. When reintroduced populations of federally listed species are designated as NEPs, the Act's regulatory requirements regarding the reintroduced listed species within the NEP are significantly reduced. Section 10(j) of the Act can provide regulatory relief with regard to the taking of reintroduced species within an NEP area. For example, this rule allows for the taking of these reintroduced fishes when such take is incidental to an otherwise legal activity, such as recreation (*e.g.,* fishing, boating, wading, trapping, swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations. Because of the substantial regulatory relief provided by NEP designations, we do not believe the reintroduction of these fishes will conflict with existing or proposed human activities or hinder public use of the Tellico River system. A takings implication assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule will not have substantial direct effects on the States, in the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have coordinated extensively with the State of Tennessee regarding the reintroduction of these fishes into the Tellico River. We are undertaking this rulemaking at the request of the State wildlife agency (TWRA) in order to assist the State in restoring and recovering its native aquatic fauna. Achieving the recovery goals for these four fish species will contribute to the eventual delisting of these species and, thus, the return of these species to State management. We do not expect any intrusion on State policy or administration; the roles or responsibilities of Federal or State governments will not change; and fiscal capacity will not be substantially directly affected. This special rule operates to maintain the existing relationship between the States and the Federal Government and is being undertaken at the request of a State agency. We have endeavored to cooperate with the TWRA in the preparation of this final rule.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Department of the Interior has determined that this rule does not unduly burden the judicial system and meets the applicable standards provided in sections (3)(a) and (3)(b)(2) of the order.

Paperwork Reduction Act

This rule does not require an information collection from ten or more parties, and a submission under the Paperwork Reduction Act is not required. 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 OMB Control Number.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act (NEPA) is not required. We have determined that the issuance of a final rule for these NEPs is categorically excluded under our NEPA procedures (516 DM 6, Appendix 1.4 B (6)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive

Order 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have determined that there are no effects.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this final rule is not a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is a not a significant energy action and no Statement of Energy Effects is required.

Literature Cited

Dinkins, G. R., and P. W. Shute. 1996. Life history of *Noturus baileyi* and *N. flavipinnis* (Pisces: Ictaluridae), two rare madtom catfishes in Citico Creek, Monroe County, Tennessee. Bull. Alabama. Mus. Nat. His. 18:43–69.

Lennon, R. E., and P. S. Parker. 1959. The reclamation of Indian and Abrams Creeks, Great Smoky Mountains National Park. U.S. Fish and Wildlife Service Scientific Report 306. 22 pp.

Rakes, P. L., and J. R. Shute. 1998. Results of an assay of portions of the Tellico and Hiwassee Rivers for suitable habitat to support reintroductions of rare fish. January 23, 1998, unpublished report prepared by Conservation Fisheries, Inc., Knoxville, Tennessee, for U.S. Fish and Wildlife Service, Asheville, North Carolina. 14 pp.

Rakes, P. L., P. W. Shute, and J. R. Shute. 1998. Captive propagation and population monitoring of rare Southeastern fishes. Final Report for 1997. Field Season and Second Quarter Report for Fiscal Year 1998, prepared for Tennessee Wildlife Resources Agency, Contract No. FA–4–10792–5–00. 32 pp.

U.S. Fish and Wildlife Service. 1983a. Yellowfin Madtom Recovery Plan. Atlanta, GA. 33 pp.

—1983b. Spotfin Chub Recovery Plan. Atlanta, GA. 46 pp.

—1985. Smoky Madtom Recovery Plan. Atlanta, GA. 28 pp.

—1994. Duskytail Darter Recovery Plan. Atlanta, GA. 25 pp.

Author

The principal author of this final rule is Richard G. Biggins. Please contact Bob Butler (see **ADDRESSES** section) for further information.

List of Subjects in 50 CFR Part 17

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

Final Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. In § 17.11(h), revise entries in the table under FISHES for ''Chub, spotfin''; ''Darter, duskytail''; ''Madtom, smoky''; and ''Madtom, yellowfin'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Chub, spotfin (=turquoise shiner).	*Cyprinella*(=*Hybopsis monacha*).	U.S.A. (AL, GA, NC, TN, VA).	Entire, except where listed as an experimental population.	T	28, 732	17.95(e)	17.44(c)
Do .....do	do .....do	do .....do	Tellico River, from the backwaters of the Tellico Reservoir (about Tellico River mile 19 [30.4 km]) upstream to Tellico River mile 33 (52.8 km), in Monroe County, TN.	XN	732	NA	17.84(m)
*	*	*	*	*	*		*
Darter, duskytail	*Etheostoma percnurum*	U.S.A. (TN, VA)	Entire, except where listed as an experimental population.	E	502, 732	NA	NA

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Do	....do	....do	Tellico River, from the backwaters of the Tellico Reservoir (about Tellico River mile 19 [30.4 km]) upstream to Tellico River mile 33 (52.8 km), in Monroe County, TN.	XN	732	NA	17.84(m)
*	*	*	*	*	*		*
Madtom, smoky	*Noturus baileyi*	U.S.A. (TN)	Entire, except where listed as an experimental population.	E	163, 732	17.95(e)	NA
Do	....do	....do	Tellico River, from the backwaters of the Tellico Reservoir (about Tellico River mile 19 [30.4 km]) upstream to Tellico River mile 33 (52.8 km), in Monroe County, TN.	XN	732	NA	17.84(m)
Madtom, yellowfin	*Noturus flavipinnis*	U.S.A. (TN, VA)	Entire, except where listed as an experimental population.	T	28, 317, 732	17.95(e)	17.44(c)
Do	....do	....do	N. Fork Holston River Watershed, VA, TN; S. Fork Holston R., upstream to Ft. Patrick Henry Dam, TN; Holston R. down-stream to John Sevier Detention Lake Dam, TN; and all tributaries thereto.	XN	317	NA	17.84(e)
Do	....do	....do	Tellico River, from the backwaters of the Tellico Reservoir (about Tellico River mile 19 [30.4 km]) upstream to Tellico River mile 33 (52.8 km), in Monroe County, TN.	XN	732	NA	17.84(e)
*	*	*	*	*	*		*

3. Amend § 17.84 by revising paragraph (e) and adding paragraph (m) as set forth below:

§ 17.84 Special rules-vertebrates.

* * * * *

(e) Yellowfin madtom (*Noturus flavipinnis*).

(1) Where is the yellowfin madtom designated as a nonessential experimental population (NEP)? We have designated two populations of this species as NEPs: the North Fork Holston River Watershed NEP and the Tellico River NEP.

(i) The North Fork Holston River Watershed NEP area is within the species' historic range and is defined as follows: The North Fork Holston River watershed, Washington, Smyth, and Scott Counties, Virginia; South Fork Holston River watershed upstream to Ft. Patrick Henry Dam, Sullivan County, Tennessee; and the Holston River from the confluence of the North and South Forks downstream to the John Sevier Detention Lake Dam, Hawkins County, Tennessee. This site is totally isolated from existing populations of this species by large Tennessee River tributaries and reservoirs. As the species is not known to inhabit reservoirs and because individuals of the species are not likely

to move 100 river miles through these large reservoirs, the possibility that this population could come in contact with extant wild populations is unlikely.

(ii) The Tellico River NEP area is within the species' historic range and is defined as follows: The Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile 19 (30.4 kilometers) and Tellico River mile 33 (52.8 kilometers), near the Tellico Ranger Station, Monroe County, Tennessee. This species is not currently known to exist in the Tellico River or its tributaries. Based on its habitat requirements, we do not expect this species to become established outside this NEP area. However, if individuals of this population move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this rule and enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(2) We do not intend to change the NEP designations to ''essential experimental,'' ''threatened,'' or ''endangered'' within the NEP areas. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(3) What activities are not allowed in the NEP areas?

(i) Except as expressly allowed in paragraph (e)(4) of this section, all the prohibitions of § 17.31 (a) and (b) apply to the fishes identified in paragraph (e)(1) of this section.

(ii) Any manner of take not described under paragraph (e)(4) of this section is prohibited in the NEP area. We may refer unauthorized take of these fishes to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (e)(3) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (e)(3) of this section.

(4) What take is allowed in the NEP area? Take of this species that is incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(5) How will the effectiveness of these reintroductions be monitored? We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

* * * * *

(m) Spotfin chub (=turquoise shiner) (*Cyprinella* (=*Hybopsis*) *monacha*), duskytail darter (*Etheostoma percnurum*), smoky madtom (*Noturus baileyi*).

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

(i) The NEP area for these three fishes is within the species' probable historic ranges and is defined as follows: The Tellico River, between the backwaters of the Tellico Reservoir (approximately Tellico River mile 19 (30.4 kilometers) and Tellico River mile 33 (52.8 kilometers), near the Tellico Ranger Station, Monroe County, Tennessee.

(ii) None of the fishes named in paragraph (m) of this section are currently known to exist in the Tellico River or its tributaries. Based on the habitat requirements of these fishes, we do not expect them to become established outside the NEP area. However, if any individuals of any of the species move upstream or downstream or into tributaries outside the designated NEP area, we would presume that they came from the reintroduced populations. We would then amend paragraph (m)(1)(i) of this section and enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iii) We do not intend to change the NEP designations to ''essential experimental,'' ''threatened,'' or ''endangered'' within the NEP area. Additionally, we will not designate critical habitat for these NEPs, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) What activities are not allowed in the NEP area?

(i) Except as expressly allowed in paragraph (m)(3) of this section, all the prohibitions of § 17.31 (a) and (b) apply to the fishes identified in paragraph (m)(1) of this section.

(ii) Any manner of take not described under paragraph (m)(3) of this section is prohibited in the NEP area. We may refer unauthorized take of these species to the appropriate authorities for prosecution.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified fishes, or parts thereof, that are taken or possessed in violation of paragraph (m)(2) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (m)(2) of this section.

(3) What take is allowed in the NEP area? Take of this species that is incidental to an otherwise legal activity, such as recreation (e.g., fishing, boating, wading, trapping, or swimming), forestry, agriculture, and other activities that are in accordance with Federal, State, and local laws and regulations, is allowed.

(4) How will the effectiveness of these reintroductions be monitored? We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 and 10 years to determine whether to continue or terminate the reintroduction efforts.

Dated: July 23, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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