

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 17****Endangered and Threatened Wildlife and Plants; Removal of *Epioblasma* (= *Dysnomia*) *sampsoni*, Sampson's Pearly Mussel, from the List of Endangered and Threatened Wildlife****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service is removing *Epioblasma* (= *Dysnomia*) *sampsoni* (Lea, 1861), Sampson's pearly mussel, from the U.S. List of Endangered and Threatened Wildlife. This action is based on a review of all available data, which indicate that this species is extinct. This mussel was restricted to portions of the Wabash River in Illinois and Indiana and the Ohio River near Cincinnati. No specimens have been collected in over 50 years despite repeated sampling within its range. Removing the species from the list recognizes its extinction and removes Federal protection under the Endangered Species Act.

**DATE:** This rule becomes effective on February 8, 1984.**ADDRESSES:** Questions concerning this action may be addressed to the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Comments and materials received will be available for public inspection, by appointment, during normal business hours by contacting the Regional Endangered Species staff at the above address.**FOR FURTHER INFORMATION CONTACT:** Mr. James M. Engel, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111 (612/725-3276).**SUPPLEMENTARY INFORMATION:****Background**

*Epioblasma sampsoni* was described by Lea (Lea, Isaac, 1861. Proceedings of the Academy of Natural Sciences of Philadelphia 13:392) and was originally listed as Endangered on June 14, 1976 (41 FR 24064). The Service's listing

regulations at 50 CFR 424.20 state that, at least once every 5 years, the Director shall conduct a review of each listed species to determine whether it should be removed from the list, be changed from an Endangered to a Threatened status, or be changed from a Threatened to an Endangered status. As part of this review process, the Service contracted with Dr. Arthur Clarke to determine the present status of this species. The status review was initiated in 1981.

Dr. Clarke has recently completed a survey of the historic range of *Epioblasma sampsoni*. During the course of the survey, Dr. Clarke interviewed many commercial clambers and shell buyers. These individuals were shown specimens of *E. sampsoni* and illustrations of the species were given to the individuals. Mr. Virgil Carroll of Mt. Carmel, Illinois, Mr. Nelson Cohen of Terre Haute, Indiana, and Mr. David Nelson of Newport, Indiana, provided the most information. These individuals indicated that to their knowledge nothing ever resembling *E. sampsoni* has been seen from the Wabash or White Rivers for decades. Other clambers were consulted and together their combined expertise covered the Wabash River from its mouth to more than 350 miles upstream. A substantial reward was offered for information concerning *E. sampsoni* and this effort was also unsuccessful in discovering extant populations of the species. The gravel and sand bars, where this species was historically found, no longer exist in the Ohio River from the vicinity of Cincinnati to the mouth of the Wabash. A series of dams have been constructed in this area, eliminating the gravel and sand bar habitat.

Records also exist from an unknown location in Tennessee. Dr. Clarke feels that, since this record is far out of the range otherwise known for the species, it is incorrect. Meyer (1974) and Clark (1976) did not find any *E. sampsoni* specimens during their surveys. Dr. Clarke was unable to find specimens or recent evidence of this species. He believes it to be extinct and has recommended that it should be removed from the List of Endangered and Threatened Wildlife. Based on this information, the Service proposed to remove Sampson's pearly mussel from the List (July 15, 1983; 48 FR 32534-32535).

**Summary of Comments and Recommendations**

In the July 15, 1983, Federal Register, the proposed rule to deregulate Sampson's pearly mussel asked all interested parties to submit their

comments. All comments relating to the existence of Sampson's pearly mussel were considered in the present status determination. A total of three comments were received that dealt specifically with the delisting proposal.

Two of the three comments came from the state resource and conservation agencies of the two affected states, Illinois and Indiana. The third comment came from the Museum of Zoology of the Ohio State University. All supported the removal of Sampson's pearly mussel from the list. Both the Indiana Department of Natural Resources and the Illinois Department of Conservation reported that numerous surveys over the past 50 years have revealed no live specimens. The Ohio State University Museum of Zoology reported that a re-examination of nearly all major museum collections did not find any evidence of Sampson's pearly mussel being found alive or as a fresh shell during the twentieth century.

**Summary of Status Findings**

After a careful review and examination of all available data, the Service has determined that Sampson's pearly mussel is extinct and no longer requires protection pursuant to the Endangered Species Act of 1973, as amended. If evidence to the contrary is presented at a later date, Endangered or Threatened status may be repropoed.

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 amendments, cf. 48 FR 29990, June 29, 1983) set forth the criteria for determining whether any species is an Endangered or a Threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act. The regulations state the factors for removing a species from the list. The data used to support such a removal must be the best scientific and commercial data available to substantiate that the species is neither Endangered or Threatened because of extinction, recovery of the species, or because the original data for classification were in error. The factors in Section 4(a)(1) of the Act and 50 FR 424.11(b), and their application to Sampson's pearly mussel are as follows:

A. *Present or threatened destruction, modification, or curtailment of its habitat or range.* This species has not been collected alive for over 50 years and is believed to be extinct. The gravel and sand bars that were the primary habitat of this species in the Ohio River have been destroyed by siltation that

resulted from the construction of a number of dams. Chemical pollutants have also contributed to a decrease in water quality in the Ohio and Wabash Rivers.

B. *Overutilization for commercial, recreational scientific, or educational purposes.* Not applicable.

C. *Disease or predation.* Not applicable.

D. *The inadequacy of existing regulatory mechanisms.* Not applicable.

E. *Other natural or manmade factors affecting its continued existence.* Not applicable.

#### Effects of the Rule

The rule removes Sampson's pearly mussel from the List of Endangered and Threatened Wildlife and discontinues all protections of the mussel and its habitat accorded by its listing as Endangered under provisions of the Endangered Species Act of 1973, as amended. Sampson's pearly mussel is listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. The Service will also consider proposing the removal of this species from Appendix I or annotation of the listing as "p.e." (possibly extinct):

#### National Environmental Policy Act

In accordance with a recommendation from the Council on Environmental Quality (CEQ), the Service has not prepared any NEPA documentation for this final rule. The recommendation from CEQ was based, in part, upon a decision in the Sixth Circuit Court of appeals, which held that the preparation of NEPA documentation was not required as a matter of law for Section-4 actions under the Endangered Species Act. *PLF v. Andrus* 657 F. 2d 829 (6th Cir. 1981).

#### References

- Clark, C. F. 1976. The freshwater naiades of the lower end of the Wabash River, Mt. Carmel, Illinois to the south. *Sterkiana*, No. 61, pp 1-14.
- Clarke, A. H. Determination of the precise geographical areas occupied by four endangered species of mollusks. Final Report to U.S. Fish and Wildlife Service on Contract No. 14-16003-81-019. December, 1981.
- Meyer, E. R. 1974. Unionid mussels of the Wabash, White, and East Fork of the White Rivers, Indiana. *Virginia Journal of Science* 25(1):20-25.

#### Author

The primary author of this final rule is John G. Sidle, Office of Endangered Species, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111 (612/725-3276).

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

Endangered and threatened wildlife, Fish, Marine mammals, Plants, (agriculture).

#### Regulation Promulgation

#### PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, is amended as set forth below:

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411 (18 U.S.C. 1531 *et seq.*).

#### § 17.11 [Amended]

2. Amend § 17.11(h) by removing Sampson's pearly mussel (*Epioblasma (=Dysnomia) sampsoni*) under "Clam from the list of Endangered and Threatened Wildlife.

Dated: December 12, 1983.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-420 Filed 1-8-84; 8:45 am]

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