

(c) Based upon information from the U.S. Customs Service, the bond processing fee for each vehicle for which a certificate of conformity is furnished from October 1, 1989, through September 30, 1990, is \$4.35.

Dated: September 26, 1989.

Jeffrey R. Miller,

Acting Administrator.

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BILLING CODE 4910-59-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

RIN 1018-AB31

#### Endangered and Threatened Wildlife and Plants; Designation of the Ring Pink Mussel as an Endangered Species

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

**ACTION:** Final rule.

**SUMMARY:** The service designates a freshwater mussel, the ring pink mussel (*Obovaria retusa*), formerly referred to as the golf stick pearly mussel, as an endangered species under the Endangered Species Act of 1973, as amended (Act). This freshwater mussel historically occurred in the Ohio River and its large tributaries in Pennsylvania, West Virginia, Ohio, Indiana, Illinois, Kentucky, Tennessee, and Alabama. Presently, the ring pink mussel is known from four relic, apparently nonreproducing, populations in the States of Kentucky and Tennessee. The distribution and reproductive capacity of this species has been seriously impacted by the construction of impoundments on the large rivers it once inhabited. Determination of endangered species status implements the protection of the Act for the ring pink mussel.

**EFFECTIVE DATE:** October 30, 1989.

**ADDRESSES:** A complete file of this rule is available for public inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard G. Biggins at the above address (704/259-0321 or FTS 672-0321).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The ring pink mussel (*Obovaria retusa*), formerly referred to and proposed for listing by the Service as the golf stick pearly mussel, was described

by Lamarck (1819). This freshwater species, which is characterized as a large-river species (Bates and Dennis 1985), has a medium to large shell that is ovate to subquadrate in outline (Bogan and Parmalee 1983). The shell exterior lacks rays and has a yellow-green to brown color. Older individuals are usually darker brown or black. The inside of the shell is salmon to deep purple surrounded by a white border. Like other freshwater mussels, it feeds by filtering food particles from the water. It has a complete reproductive cycle in which the mussel's larvae parasitize fish. The mussel's life span, fish species its larvae parasitize, and other aspects of its life history are unknown.

The ring pink mussel was historically widely distributed in the Ohio, Cumberland, and Tennessee River systems in Pennsylvania, West Virginia, Ohio, Illinois, Indiana, Kentucky, Tennessee, and Alabama (Bogan and Parmalee 1983, Kentucky Nature Preserves Commission 1980, Parmalee and Klippel 1982, Lauritsen 1987, Stansbery 1970). Based on personal communications with knowledgeable experts (Steven Ahlstedt and John Jenkinson, Tennessee Valley Authority, 1987; Arthur Bogan, Philadelphia Academy of Sciences, 1988; Arthur Clarke, Corpus Christi State University, 1986; Ronald Cicerello, Kentucky Nature Preserves Commission, 1988; James Sichel, Murray State University, 1987; and David Stansbery, Ohio State University, 1987) and a review of current literature (see above plus Sichel 1985), the species is known to survive in only four river reaches. The species still exists but apparently does not reproduce in the Tennessee River, Livingston, Marshall, and McCracken Counties, Kentucky; the Tennessee River in Hardin County, Tennessee; the Cumberland River, Wilson, Trousdale, and Smith Counties, Tennessee; and the Green River, Hart and Edmonson Counties, Kentucky.

The continued existence of these four populations is questionable. Unless reproducing populations can be found or methods can be developed to maintain these or create new populations, the species will become extinct in the foreseeable future. The individuals that still survive in these four river reaches are also threatened from other factors. The Green River in Kentucky has experienced water quality problems related to the impacts from oil and gas production in the watershed. The individuals still surviving in the Tennessee and Cumberland Rivers are potentially threatened by gravel dredging, channel maintenance, and

commercial mussel fishing. Although the species is not commercially valuable, incidental take of the species does sometimes occur during commercial mussel fishing for other species.

The ring pink mussel was recognized by the Service in the May 22, 1984, **Federal Register** (49 FR 21664) and the January 6, 1989, **Federal Register** (54 FR 554) as a species that was being considered for possible addition to the Federal List of Endangered and Threatened Wildlife and Plants. On March 17, 1987, and October 27, 1987, the Service notified Federal, State, and local governmental agencies and interested individuals by mail that a status review was being conducted specifically on this mussel and that the species could be proposed for listing. Since that time, additional contacts with Federal and State agency personnel and the scientific community have occurred concerning the species' status and its potential for being protected under the Act.

On March 7, 1989, the Service published in the **Federal Register** (54 FR 9529) a proposal to list the golf stick pearly mussel, now referred to as the ring pink mussel, as an endangered species. That proposal provided information on the species' biology and status and threats to its continued existence. The proposal also solicited comments on the species.

#### **Summary of Comments and Recommendations**

In the March 7, 1989, proposed rule and associated notifications, all interested parties were requested to submit factual reports and information that might contribute to development of the final rule. Appropriate Federal and State agencies, county governments, scientific organizations, and interested parties were contacted and requested to comment. A legal notice was published in the following newspapers: *Hart County News*, Munfordville, Kentucky, March 23, 1989; *Lebanon Democrat*, Lebanon, Tennessee, March 24, 1989; *Paducah Sun*, Paducah, Kentucky, March 26, 1989; and *Savannah Courier*, Savannah, Tennessee, April 6, 1989.

Support for listing the ring pink mussel as an endangered species was received from the Tennessee Valley Authority, National Park Service, Kentucky Department of Fish and Wildlife Resources, Ohio Environmental Protection Agency, Ohio Department of Natural Resources, and one private individual. The U.S. Soil Conservation Service, Nashville, Tennessee, stated that they had " \* \* \* no current of planned activities that would likely

jeopardize the continued existence of the species." Three respondents suggested that the ring pink mussel is a more accepted common name for the species. The Service has made that name change in the final rule.

The Alabama Department of Conservation and Natural Resources stated that the proposed rule does not support listing because, as the fish host is unknown and none of the presently known populations are reproducing, Federal protection could not save the species. The Service agrees that these problems plus other considerations make it doubtful that this species can ever be recovered. However, the Service references section 4 (a)(1) and (b) of the Act, which requires the Secretary of Interior to determine whether a species is an endangered or threatened species based solely on one or more of five specific factors. These five factors and their application to the ring pink mussel are presented in the "Summary of Factors Affecting the Species" section of this rule. Neither incomplete life history information, lack of reproducing populations, nor the relative likelihood of recovery is pertinent to any of the five factors considered in determining a species' Federal status.

The Alabama Department of Conservation and Natural Resources also stated that it is not reasonable to list a species that does not have a recovery plan. The Service responds that recovery plans, in accordance with section 4(f) of the Act, are developed subsequent to a species being listed. This listing is a precursor to and facilitates the development and implementation of recovery plans.

#### Summary of Factors Affecting the Species

After a thorough review and consideration of all information, the Service has determined that the ring pink mussel should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the ring pink mussel (*Obovaria retusa*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The ring pink mussel was once widespread in the Ohio River and its large tributaries in Pennsylvania, West Virginia, Ohio, Kentucky, Indiana, Illinois, Tennessee,

and Alabama (Bogan and Parmalee 1983). However, most of the historically known populations were apparently lost due to conversion of many sections of these big rivers to a series of large impoundments. This seriously reduced the availability of preferred riverine gravel/and habitat, and it likely affects the distribution and availability of the mussel's fish host. As a result, the species' distribution has been substantially reduced.

The species was last taken in Pennsylvania in 1908 (Daniel Devlin, Pennsylvania Department of Environmental Resources, personal communication, 1987). No live or fresh-dead specimens have been taken in West Virginia in recent years (William Tolin, U.S. Fish and Wildlife Service, personal communication, 1987). According to a personal communication with Robert McCance, Jr. (Ohio Department of Natural Resources, 1987), the last Ohio collection of the ring pink mussel was made in 1938. In Indiana waters, the species has not been collected in decades (Max Henschen, Indiana Mollusk Technical Advisory Committee, personal communication, 1987). The Illinois Department of Energy and Natural Resources (Kevin Cummings, personal communication, 1987) reported that the species has not been collected from Illinois in over 30 years.

The species is presently known from only four river reaches—two in Kentucky and two in Tennessee. In Kentucky waters, the ring pink mussel has been taken in recent years only from the Tennessee River in McCracken, Livingston, and Marshall Counties, and from the Green River in Hart and Edmonson Counties (Linda Andrews, Kentucky Department of Fish and Wildlife Resources, and Ronald Cicerello, personal communication, 1987). Kentucky's Tennessee River population is represented by the collection of only two live individuals in recent years. One was taken in 1985 (Sickel 1985), and the other was collected in 1986 (C.E. Moore, U.S. Army Corps of Engineers, personal communication, 1987). In the Green River, only one fresh-dead individual was taken during a mussel survey between Munfordville, Kentucky, and Mammoth Cave, Kentucky, in 1987 (Ronald Cicerello, personal communication, 1987). The last live specimen taken from the Green River was collected in the mid-1960s (Mary Heller, Kentucky Natural Resources and Environmental Protection Cabinet, personal communication, 1987).

In Tennessee the species apparently still survives in the Cumberland River in

Wilson, Trousdale, and Smith Counties, and in the Tennessee River in Hardin County. According to personal communications with knowledgeable individuals, the species is taken on rare occasions by commercial mussel fishermen from both these rivers (Paul Parmalee, University of Tennessee, personal communication, 1986; Steven Ahlstedt, personal communication, 1987; Paul Yokley, University of North Alabama, personal communication, 1987).

The four surviving populations are all threatened for impacts to their environment. The Green River population is threatened from degradation of water quality resulting from inadequate environmental controls at oil and gas exploration and production facilities, and from altered stream flows from an upstream reservoir. The other populations are potentially threatened by river channel maintenance, navigation projects, and gravel and sand dredging.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although the species is not commercially valuable, it does exist in harvested mussel beds, and the species is therefore sometimes taken by mussel fishermen. Thus, take does pose some threat to the species. Federal protection will help to control the take of individuals.

C. *Disease or predation.* Although the ring pink mussel is undoubtedly consumed by predatory animals, there is no evidence that predation threatens the species. However, freshwater mussel die-offs have recently (early to mid-1980s) been reported throughout the Mississippi River basin, including the Tennessee River and its tributaries (Richard Neves, Virginia Polytechnic Institute and State University, personal communication, 1986). The cause of the die-offs has not been determined, but significant losses have occurred to some populations.

D. *The inadequacy of existing regulatory mechanisms.* The States of Kentucky and Tennessee prohibit taking fish and wildlife, including freshwater mussels, for scientific purposes without a State collecting permit. However, these States do not protect the species from take for other purposes. Federal listing will provide the species additional protection under the Endangered Species Act by requiring Federal permits to take the species and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species.

E. *Other natural or manmade factors affecting its continued existence.* None of the four populations is known to be reproducing. Therefore, unless reproducing populations can be found or methods can be developed to maintain these or create new populations, the species will be lost in the foreseeable future. In fact, three of the populations (Cumberland and Tennessee River populations) may contain only old individuals that have passed their reproductive age.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the ring pink mussel (*Obovaria retusa*) as an endangered species. Historical records reveal that the species was once much more widely distributed in many of the large rivers of the Ohio River system. Presently only four isolated, apparently non-reproducing, populations are known to survive. Due to the species' history of population losses and the vulnerability of the four remaining populations, threatened status does not appear appropriate for this species (see "Critical Habitat" section for a discussion of why critical habitat is not being designated for the ring pink mussel).

#### Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for the ring pink mussel owing to the lack of benefits from such designation. The U.S. Army Corps of Engineers, the Tennessee Valley Authority, and the National Park Service are the three Federal agencies most involved, and they, along with the State natural resources agencies in Tennessee and Kentucky, are already aware of the location of the remaining populations that would be affected by any activities in these river reaches. These Federal agencies have conducted studies in these river basins and are knowledgeable of the fauna and of impacts that could result from their projects. No additional benefits would accrue from critical habitat designation that would not also accrue from the listing of the species. In addition, this species is so rare that taking for scientific purposes or private collections could be a threat. The publication of critical habitat maps and other

information accompanying critical habitat designation, such as the location of inhabited river reaches, could increase that threat. The location of populations of this species has consequently been described only in general terms in this final rule. More precise locality data is available to appropriate Federal, State, and local governmental agencies through the Service office described in the "ADDRESSES" section.

#### Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species 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 Endangered Species 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 prohibition against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed 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 the Service. The Service has notified Federal agencies that may have programs that affect the species. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for hydroelectric facility construction and operation, reservoir construction, river channel maintenance, stream alteration, wastewater facilities development, and road and bridge construction. It has been the experience of the Service, however, that nearly all Section 7 consultations have been resolved so that the species has been protected and the project objectives have been met. In fact, the areas

inhabited by the ring pink mussel are also inhabited by other mussels that have been federally listed since 1976. The Service has a history of successful section 7 conflict resolutions.

The Act and 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, 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 such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are 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.

#### National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

#### References Cited

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- Lamarck, J.B.P.A. 1815-1822. Histoire naturelle des animaux sans vertebres. Tome V-VII, 8 vol.
- Lauritsen, Diane. 1987. The Nature Conservancy element stewardship abstract: *Obovaria retusa*. The Nature Conservancy, Midwest Regional Office, Minneapolis, Minnesota. Unpublished report. 4 pp.
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middle Cumberland River, Tennessee. The Nautilus 96(1):30-32.  
 Sickel, James B. 1985. Biological assessment of the freshwater mussels in the Kentucky Dam tailwaters of the Tennessee River. Submitted to Kentucky Division of Water, Frankfort, Kentucky. 42 pp.  
 Stansbery, David H. 1970. Eastern freshwater mollusks (I) the Mississippi and St. Lawrence River systems. Malacologia 10(1):9-22.

**Author**

The primary author of this final rule is Richard G. Biggins, U.S. Fish and Wildlife Service, Asheville Field Office, 100 Otis Street, Room 224, Asheville.

North Carolina 28801 (704/259-0321 or FTS 672-0321).

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

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

**Regulation Promulgation**

**PART 17—[AMENDED]**

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

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

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1543; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

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

**§ 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						
Clams							
Mussel, ring pink (=golf stick pearly)	<i>Obovata retusa</i>	U.S.A. (AL, IL, IN, KY, OH, PA, TN, WV)	NA	E	369	NA	NA

Dated: September 26, 1989.  
 Richard N. Smith,  
 Acting Director, Fish and Wildlife Service.  
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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 662**

[Docket No. 90775-9215]

**Northern Anchovy Fishery**

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Emergency interim rule.

**SUMMARY:** The Secretary of Commerce (Secretary) issues this emergency interim rule changing current regulations promulgated under the Northern Anchovy Fishery Management Plan (FMP). This action is necessary to allow a reduction fishery for northern anchovy during the 1989-1990 fishing season, which otherwise would be unnecessarily denied due to a low estimated spawning biomass resulting from atypical environmental conditions during the spawning season. Since the estimated total biomass is large, a small reduction quota (5,000 mt) is established.

**EFFECTIVE DATES:** The emergency rule is effective from 0001 hours Pacific Daylight Time (PDT) September 25, 1989 until 2400 hours PDT December 23, 1989.

**ADDRESS:** Copies of the environmental assessment may be obtained from, and comments should be addressed to, E.C. Fullerton, Director, Southwest Region, NMFS, 300 South Ferry Street, Terminal Island, CA 90731.

**FOR FURTHER INFORMATION CONTACT:** James J. Morgan, Fisheries Management and Analysis Branch, Southwest Region, NMFS, 213-514-6667.

**SUPPLEMENTARY INFORMATION:** The FMP provides for a reduction fishery for northern anchovy when the abundance of the resource is above the level needed to sustain adequate levels of predator fish, birds, and marine mammals. Harvest in the reduction fishery is converted into fishery products, such as fish flour, fish meal or fertilizer, that are not intended for direct human consumption. Because of the large natural fluctuations of the anchovy resource, a fixed annual harvest would be too large in some years and too small in others; therefore, annual harvest allocations are based on estimates of current spawning stock biomass (spawning biomass). Spawning biomass estimates are useful as a measure of population size of northern anchovy because they usually represent about 95

percent of the total stock biomass (total biomass), and because egg and larval surveys have been conducted for many years, resulting in a long time-series of data. Spawning biomass of the central subpopulation of northern anchovy is estimated annually; from this estimate, the optimum yield and harvest quotas are determined by formulas contained in the FMP and its implementing regulations at 50 CFR Part 662. The allocation formulas assume a close correlation between spawning biomass estimates and total stock biomass.

The annual spawning biomass of northern anchovy is determined during January-February, which is during the period of peak spawning. About 90 percent of age 0-1 fish usually are sexually mature at that time; however, maturity and spawning are greatly affected by water temperature. During 1989, the index of historical egg production indicated that egg production was very low, and environmental data showed that the mean sea surface temperatures during and preceding the spawning season were much lower than normal. At the temperatures measured during January-February, 1989, only 5 percent of 1-year old fish are expected to be sexually mature and actively spawning. Data from the fishery and surveys indicated that the 1988 year class (1-year-old fish) is large, and that this large year class is being recruited to