Proposed Rule to Designate Critical Habitat and 4(d) Rule for the Trispot Darter (*Etheostoma trisella*)
The trispot darter was petitioned for listing under the Endangered Species Act (ESA) in 2010. In October 2017, it was proposed for listing as a threatened species, and it was finalized on January 28, 2019.

On December 28, 2018, the FWS proposed two separate rules to assist with the conservation of the Trispot Darter and provide regulatory flexibility:

- 4(d) rule
- Critical habitat (CH)
Goal of the 4(d) rule and CH rule:

Protect spawning habitat and maintain and restore connectivity between spawning and non-spawning habitat
Trispot Darter Proposed 4(d) & Critical Habitat
Diagram of what spawning cycle looks like

Culverts, log jams, dams, etc.

Same Site
Diagram of what spawning cycle looks like

Culverts, log jams, dams, etc.

Cal Johnson, ADEM

Same Site
Diagram of what spawning cycle looks like

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Cal Johnson, ADEM

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Trispot Darter Proposed 4(d) & Critical Habitat

2 inches

Photo Credit Alan Cressler

Photo Credit Cal Johnson
What is a 4(d) Rule?

• The intent of the 4(d) rule is to identify activities that are beneficial or neutral for the species and minimize regulation on those activities

• For practitioners, this approach allows more management flexibility and promotes activities that make the most sense for conserving and recovering the species
What does a 4(d) Rule not mean?

- The customized protections under section 4(d) of the ESA do not remove, or alter in any way, a Federal agency’s requirement to ensure any action authorized, funded, or carried out does not jeopardize the continued existence of a listed species or adversely modify or destroy its critical habitat under section 7 of the ESA.
Proposed 4(d) Rule for the Trispot Darter

These activities would be allowed without the need to consult with the FWS:

1. Species restoration efforts by State wildlife agencies.

2. Channel restoration projects that offer suitable habitats and contain stable channel features, if the activity occurs in known spawning habitat and the activity takes place between May 1 and December 31, or consultation with FWS is recommended.

3. Streambank stabilization projects.

4. Silviculture practices and forest management activities that implement best management practices, if the activity occurs in spawning habitat and the activity takes place between May 1 and December 31, or consultation with FWS is recommended.
Proposed 4(d) Rule for the Trispot Darter

These activities would be allowed without the need to consult with the FWS:

5. Stream crossings that provide organism passage, if the activity occurs in spawning habitat and the activity takes place between May 1 and December 31, or consultation with FWS is recommended.

6. Working Lands for Wildlife (NRCS program) activities that do not negatively impact Trispot Darter habitat, if the activity occurs in spawning habitat and the activity takes place between May 1 and December 31, or consultation with FWS is recommended.
Questions

Photo credit: Bernie Kuhajda
What is Critical Habitat?

• Areas essential to the conservation of a listed species
• Areas that contain necessary the physical or biological features
• Areas that may need special management
What does Critical Habitat really mean?

• It identifies essential areas and is a reminder to federal agencies of their responsibility to protect the important characteristics of these areas.
What does Critical Habitat really mean?

- Critical habitat designations affect only federal agency actions or federally-funded or permitted activities. Critical habitat designations do not affect activities by private landowners if there is no federal connection — that is, no federal funding or authorization.
What does Critical Habitat not mean?

• Does not affect land ownership;
• Does not establish a refuge, wilderness reserve, preserve, or other conservation area;
• Does not allow the government to access private lands;
• Does not require non-federal landowners to implement restoration, recovery, or enhancement measures;
• Does not require landowners to manage their lands in a specific way (such as converting their land to longleaf pine forest or conducting prescribed burning);
• Does not require trispot darter monitoring.
Questions
How were critical habitat units chosen?
How were critical habitat units chosen?
How were critical habitat units chosen?

- Occupied river or stream
- Spawning habitat accessibility and quality
  - Geology
  - Topography
- Movement distance
Trispot Darter Proposed Critical Habitat
Proposed CH Units 1 – 6

Trispot Darter (Etheostoma trisella)
Critical Habitat Index Map
“Etowah, Cherokee, Calhoun, and St. Clair Counties, Alabama; Gordon, Murray, and Whitfield Counties, Georgia; and Bradley and Polk Counties, Tennessee”
Trispot Darter Proposed Critical Habitat

Proposed CH Unit 4
Trispot Darter Proposed Critical Habitat
Proposed CH Unit 5
Trispot Darter Proposed Critical Habitat
Proposed CH Unit 6
Examples of Summer and Winter habitat
Trispot Darter Habitat

Bird’s-eye view
Examples of Summer and Winter habitat
Comments
Due by February 26, 2019

If you have previously submitted comments, you do not need to re-submit; they are already part of our record.

**Electronically:** Go to [http://www.regulations.gov](http://www.regulations.gov). In the Search box, enter the docket numbers FWS-ES-2018-0074 for 4(d) Rule and FWS-ES-2018-0073 for Critical Habitat Rule. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment Now!”

**By hard copy:** Submit your comments by mail to: Public Comments Processing, Attn: FWS-ES-2018-0074 or -0073, U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041-3803.

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Trispot Darter Proposed 4(d) & Critical Habitat

• Additional information can be found at our Alabama Field Office website:
  http://www.fws.gov/daphne

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** This .ppt available on ALFO website at https://www.fws.gov/daphne/