

**Frequently Asked Questions
Proposed Critical Habitat Rule for the Neosho Mucket and Rabbitsfoot**

February 2014

1. When were the Neosho mucket and rabbitsfoot listed under the Endangered Species Act?

The Service listed these two mussels on September 17, 2013.

2. What is critical habitat?

Critical habitat is a term defined and used in the Endangered Species Act. It refers to specific designated geographic areas containing features essential to the conservation of a threatened or endangered species and that may require special management consideration or protection. Designation of critical habitat does not affect land ownership, does not allow the government to take or manage private property, nor does it establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands. The term critical habitat in this legal context should not be confused with an informal usage of the phrase to describe a type of habitat that is ‘critical’ to individuals of the species.

3. Why is critical habitat being designated for these two mussels?

At the time of listing, the Service assessed whether critical habitat would be prudent for these species. For designation of critical habitat to be prudent under the ESA, the Service must determine that it would not likely increase the degree of threat to the species and may provide some measure of benefit. The Service determined that in the case of the two mussels it is prudent. Critical habitat designations benefit listed species. For instance, we modified proposed culvert replacements on streams by installing fencing to reduce silt entering the streams. This prevents harm to mussels and fish. It helps maintain water quality and reduces water treatment expenses for downstream towns, cities, and businesses. Therefore, as required by the ESA, the Service is designating critical habitat for these two mussels.

4. How much critical habitat has been proposed for the Neosho mucket and rabbitsfoot and where is it located?

The Service is designating critical habitat for the Neosho mucket in Arkansas, Kansas, Missouri, and Oklahoma and for the rabbitsfoot in Alabama, Arkansas, Illinois, Indiana, Kansas, Kentucky, Mississippi, Missouri, Ohio, Oklahoma, Pennsylvania, and Tennessee. In total, approximately 484 river miles in the Cottonwood, Elk, Fall, Illinois, Neosho, Shoal, Spring, North Fork Spring, and Verdigris Rivers are being designated as critical habitat for the Neosho mucket. In total, approximately 1,655 river miles in the Neosho, Spring (Arkansas River system), Verdigris, Black, Buffalo, Little, Ouachita, Saline, Middle Fork Little Red, Spring (White River system), South Fork Spring, Strawberry,

White, St. Francis, Big Sunflower, Big Black, Paint Rock, Duck, Tennessee, Red, Ohio, Allegheny, Green, Tippecanoe, Walhonding, Middle Branch North Fork Vermilion, and North Fork Vermilion Rivers and Bear, French, Muddy, Little Darby and Fish Creeks.

5. Are all the areas proposed for designation as critical habitat occupied by these mussels?

Yes.

6. How did the Service determine which areas to designate as critical habitat?

The critical habitat designations are based on the best scientific information available concerning the species' present and historical range, habitat, biology, and threats. The Service reviewed and summarized the current information available for these two mussels. The information used included known locations; the final listing rule for the species; recent biological surveys and reports; aerial photography of historically and currently occupied habitat; peer-reviewed literature; and discussions and recommendations from species experts. Biologists identified the physical and/or biological habitat features needed for life and successful reproduction of the two species:

- 1) Geomorphically stable river channels and banks with habitats that support a diversity of freshwater mussel and native fish.
- 2) A hydrologic flow regime necessary to maintain benthic habitats where the species are found and to maintain connectivity of rivers with the floodplain, allowing the exchange of nutrients and sediment for maintenance of the mussels' and fish hosts' habitat, food availability, spawning habitat for native fishes, and the ability for newly transformed juveniles to settle and become established in their habitats.
- 3) Water and sediment quality necessary to sustain natural physiological processes for normal behavior, growth, and viability of all life stages.
- 4) The presence and abundance of fish hosts necessary for recruitment of the Neosho mucket and rabbitsfoot.
- 5) Either no competitive or predaceous invasive (nonnative) species, or such species in quantities low enough to have minimal effect on survival of freshwater mussels.

By law, the Service is required to identify sufficient areas containing these characteristics to ensure the conservation of the species.

7. How can I find out if my land is within critical habitat for the two mussels?

The proposed rule published in the *Federal Register* includes maps showing the critical habitat subunits. If you are unsure if your property is included within one of these subunits, contact your local Fish and Wildlife Ecological Services Field Office, as described below:

For information about the final designation in Alabama, contact Bill Pearson, Field Supervisor, U.S. Fish and Wildlife Service, Alabama Ecological Services Field Office, 1208 Main Street, Daphne, AL 36526; telephone 251-441-5181; facsimile 251-441-6222.

For information about the final designation in Illinois, contact Richard C. Nelson, Field Supervisor, U.S. Fish and Wildlife Service, Rock Island Ecological Services Field Office, 1511 47th Avenue, Moline, IL 61265; telephone 309-757-5800; facsimile 309-757-5807.

For information about the final designation in Indiana, contact Scott Pruitt, Field Supervisor, U.S. Fish and Wildlife Service, Bloomington Ecological Services Field Office, 602 South Walker Street, Bloomington, IN 47403-2121; telephone 812-334-4261; facsimile 812-334-4273.

For information about the final designation in Kansas, contact Heather Whitlaw, Field Supervisor, U.S. Fish and Wildlife Service, Kansas Ecological Services Field Office, 2609 Anderson Avenue, Manhattan, KS 66502; telephone 785-539-3474; facsimile 785-839-8567.

For information about the final designation in Kentucky, contact Lee Andrews, Field Supervisor, U.S. Fish and Wildlife Service, Kentucky Ecological Services Field Office, 330 West Broadway, Suite 265, Frankfort, KY 40601; telephone 502-695-0468; facsimile 502-695-1024.

For information about the final designation in Mississippi, contact Stephen Ricks, Field Supervisor, U.S. Fish and Wildlife Service, Mississippi Ecological Services Field Office, 6578 Dogwood View Parkway, Suite A, Jackson, MS 39123; telephone 601-965-4900; facsimile 601-965-4340.

For information about the final designation in Missouri, contact Amy Salveter, Field Supervisor, U.S. Fish and Wildlife Service, Columbia Ecological Services Field Office, 101 Park DeVille Drive, Suite A, Columbia, MO 65203-0057; telephone 573-234-2132; facsimile 573-234-2181.

For information about the final designation in Oklahoma, contact Jontie Aldrich, Acting Field Supervisor, U.S. Fish and Wildlife Service, Oklahoma Ecological Services Field Office, 9014 East 21st Street, Tulsa, OK 74129-1428; telephone 918-382-4501; facsimile 918-581-7467.

For information about the final designation in Pennsylvania, contact Lora Zimmerman, Field Supervisor, U.S. Fish and Wildlife Service, Pennsylvania Ecological Services Field Office, 315 South Allen Street, Suite 322, State College, PA 16801.

For information about the final designation in Tennessee, contact Mary Jennings, Field Supervisor, U.S. Fish and Wildlife Service, Cookeville Ecological Services Field Office, 446 Neal Street, Cookeville, TN 38501; telephone 931-528-6481; facsimile 931-528-7075.

If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800-877-8339.

8. Is habitat supporting all populations of these two mussels included in critical habitat?

No. All sizeable and small rabbitsfoot populations and three marginal populations (Fish Creek, Allegheny River, and Red River) are included in critical habitat. There are 18 marginal populations not included in critical habitat for rabbitsfoot. All existing Neosho mucket populations are included in proposed critical habitat.

9. Will these two mussels still be protected if they are outside of designated critical habitat?

Yes. Because both mussels are listed species, they are protected regardless of whether they are inside or outside of an area designated as critical habitat. Federal agencies are required to consult with the Service on their actions on critical habitat and work to avoid or minimize impacts through conservation measures. In most cases these conservation measures would be carried out regardless of whether or not critical habitat is designated.

As listed species, these two mussels are protected from “take” throughout their range regardless of whether critical habitat has been designated. “Take” is defined to include harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these. Harm is further defined in the Service’s regulations (50 CFR 7.3) to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

10. Does a critical habitat designation affect all activities that occur within the designated area?

No. Designation of critical habitat does not affect land ownership, does not allow the government to take or manage private property, nor does it establish a refuge, reserve, preserve, or other conservation area, and it does not allow government or public access to private land. Designating critical habitat has no impact on landowner activities that do not require federal funding or federal permits. Private land use activities, such as farming and silviculture, would be unaffected. Federal activities, or actions permitted, licensed, or funded by federal agencies, will require consultation with the Service if they are likely to adversely modify critical habitat. In such cases, the Service will work with the federal agency to identify alternatives where the project may proceed without adverse modification to critical habitat.

11. What does “consultation” mean?

Consultation is a process by which federal agencies use the Service’s expertise to evaluate the potential effects of a proposed action on Endangered Species Act listed species and their critical habitats.

Consultation also may identify alternatives to the proposed action to avoid adverse effects on listed species and their habitats. Federal agencies are already required to consult with the Service under the Endangered Species Act whenever a proposed action might impact a listed species or its habitat. Thus, the designation of critical habitat is unlikely to appreciably increase the cost of consultation to either the federal agency or the permit applicant.

12. Will the critical habitat designation lengthen the consultation process?

Probably not, unless an “adverse modification” determination is made (see question number 14). Under the Endangered Species Act, the Service has 135 days in which to complete the consultation process with action agencies. This time frame remains the same whether or not there is critical habitat within the project area. In addition, the outcome of issuing federal permits or providing federal funding for research will not be altered due to critical habitat designation unless adverse modification is determined. Designation of critical habitat for these mussels notifies the federal action agencies and the public that permits and other authorizations for activities within these proposed critical habitat areas must comply with Section 7 consultation requirements. For each Section 7 consultation, the Service already reviews the direct and indirect effects of the proposed projects on these mussels, and will continue to do so for critical habitat, if it is designated.

13. What activities could adversely affect critical habitat and may require special management considerations for these two mussels?

Activities that may affect critical habitat include, but are not limited to, the following:

- Coal and gravel mining
- Natural gas and oil exploration activities
- Timber harvest
- Agricultural activities (row crops and livestock)
- Construction and maintenance of roadways
- Nonpoint source pollution
- Loss of river bank buffers
- Gas, water, electrical power-line, and sewer easements and/or pipelines
- Water diversion and/or withdrawal from streams and springs
- Off-road vehicle use

14. What does it mean to “destroy” or “adversely modify” critical habitat?

Pursuant to current national policy and the statutory provisions of the Endangered Species Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed federal action, the affected critical habitat would remain functional (or retain the current ability for the species’ essential habitat or biological elements to be functionally established to serve the intended conservation role for the species).

15. Must federal agencies consult with the Service even where critical habitat has not been designated?

Even when there is no critical habitat designation, federal agencies must consult with the Service on actions that may affect listed species in order to ensure that any action they carry out, fund or authorize is not likely to jeopardize a listed species continued existence. Where critical habitat is designated, a consultation also ensures that the critical habitat is not destroyed or adversely modified.

16. Who can I contact for more information regarding the final listing and recovery efforts for the Neosho mucket and rabbitsfoot?

For more information concerning the listing of these two freshwater mussels under the ESA, please contact Chris Davidson, U.S. Fish and Wildlife Service, Arkansas Ecological Services Field Office, 110 South Amity Road Suite 300, Conway, AR 72302; telephone 501-513-4481; facsimile 501-513-4480. Also, please visit <http://www.fws.gov/arkansas-es/> or Docket #FWS-R4-ES-2012-0031 or FWS-R4-ES-2013-0007 on <http://www.regulations.gov/>