

environmental impact statement is not required.

In Docket No. 89-20, 54 FR 40891 (October 4, 1989), the Commission proposes to amend its tariff and service contract rules in 46 CFR parts 580 and 581 to: (1) Amend the definition of "shipper" to clarify the scope of the term, and (2) require that mixed commodity rates be made available only to a "shipper," as proposed, and to "shippers' associations" as presently defined in the Commission rules. A shipper using a mixed commodity rate would be required to furnish the ocean common carrier a listing of commodities. If the shipper is a non-vessel-operating common carrier ("NVOCC"), it would also have to indicate its FMC tariff number on the ocean carrier's bill of lading and on any service contracts to which it is a party. The proposed rule is intended to preclude untariffed NVOCC operations and to otherwise ensure that persons acting as shippers pursuant to the 1984 Act qualify to do so.

This Finding of No Significant Impact ("FONSI") will become final within 10 days of publication of this notice in the *Federal Register* unless a petition for review is filed pursuant to 46 CFR 504.6 (b).

The FONSI and related environmental assessment are available for inspection on request from the Office of the Secretary, room 11101, Federal Maritime Commission, Washington, DC 20573-0001, telephone (202) 523-5725.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 89-25351 Filed 10-26-89; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 23

[OST Docket No. 64; Notice 89-21]

RIN Number 2105-AA03

Minority Business Enterprise Program

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of proposed rulemaking; withdrawal.

SUMMARY: This notice withdraws a regulatory proposal concerning direct Department of Transportation (DOT) contracting in regard to programs for minority business enterprises (MBEs). The rulemaking proposal has become unnecessary in view of other programs

to assist small and disadvantaged firms in Federal procurement.

EFFECTIVE DATE: October 27, 1989.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Office of the General Counsel, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-9306.

SUPPLEMENTARY INFORMATION: On May 17, 1979, the Office of the Secretary of the Department of Transportation (DOT) published a Notice of Proposed Rulemaking (44 FR 28928) proposing to establish a uniform Departmental program for participation by firms owned and controlled by minorities and women (MBEs) in contracts and programs funded by the Department. The proposal would have applied to any direct or DOT-assisted contract or program where funds are made available for accomplishing the mission of DOT. "Direct contract" meant a contract or any modification thereof between the Department and a contractor or lessee.

The final rule resulting from this proposal (49 CFR part 23) covers only financial assistance programs. When the final rule became effective in 1980, the Department contemplated the addition of a direct contracts subpart (subpart B) to the rule at a later date. This subpart was to implement amendments to the Small Business Act, as amended (Pub. L. 95-507). This subpart was not implemented and this final rule does not address direct DOT procurement activities.

The Department has decided that an MBE program based on the 1979 proposal for direct contracting is not necessary in view of the developments in the small and disadvantaged business programs during the interim period. Some examples of DOT programs that help minority-owned, women-owned and disadvantaged enterprises are the Short Term Lending Program, the Bonding Assistance Program, the Women-Owned Business Enterprise Program, and the Public Information Program. These are in addition to provisions in Federal government and DOT procurement rules and procedures that carry out small and disadvantaged business subcontracting plan requirements of Public Law 95-507.

For these reasons, those portions of the 1979 proposal relating to direct contracts are withdrawn.

Issued this 17th day of October 1989, at Washington, DC.

Samuel K. Skinner,

Secretary.

[FR Doc. 89-25322 Filed 10-26-89; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB36

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Inflated Heelsplitter, *Potamilus inflatus*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes the inflated heelsplitter mussel, *Potamilus inflatus*, to be a threatened species under the authority of the Endangered Species Act of 1973, as amended (Act). This freshwater mussel is currently known from only the Amite River, Louisiana, and the Tombigbee and Black Warrior Rivers, Alabama. Habitat modification by gravel dredging and for flood control and navigation represent major threats to this species. This proposal, if made final, would implement the protection of the Act for the inflated heelsplitter. The Service seeks relevant data and comments from the public.

DATES: Comments from all interested parties must be received by December 26, 1989. Public hearing requests must be received by December 11, 1989.

ADDRESSES: Comments and materials concerning this proposal should be sent to Complex Field Supervisor, U.S. Fish and Wildlife Service, Jackson Mall Office Center, 300 Woodrow Wilson Avenue, Suite 316, Jackson, MS 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James H. Stewart at the above address, (telephone 601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

The inflated heelsplitter was first described as *Symphynota inflata* by Lea in 1831. While the taxonomic status of this species has not been questioned in the literature, there has been considerable discussion of the genus. It has been placed in *Unio*, *Lampsilis*, *Metaptera*, *Margarita*, *Margaron*, and *Proptera*, in addition to the other names discussed here (Simpson 1914, Clarke 1986, Hartfield 1988). *Potamilus* is accepted as the correct generic name by numerous authors (Morrison 1969).

Valentine and Stansbery 1971, Clark 1986, Tergeon *et al.* 1988). The common name in general usage for this species has been the Alabama heelsplitter. This rule follows the common names as used in Turgeon *et al.* (1988) in support of the effort to standardize nomenclature of mussels.

The inflated heelsplitter was known historically from the Amite and Tangipahoa Rivers, Louisiana; the Pearl River, Mississippi; and the Tombigbee, Black Warrior, Alabama, and Coosa Rivers, Alabama (Hurd 1974, Stern 1976, Hartfield 1988). The presently known distribution is limited to the Amite River, Louisiana, and the Tombigbee and Black Warrior Rivers, Alabama (Stern 1976, Hartfield 1988). The collection of this species from the Pearl River by Hinckley was reported by Frierson (1911) and a single valve collected by Parker is curated in the National Museum of Natural History (Dr. James Williams, U.S. Fish and Wildlife Service, pers. comm. 1988). There are no other reported collections from the Pearl River (Hartfield 1988). A single specimen was collected from the Tangipahoa River, Louisiana, in 1964 by Stein and Stansbery (Dr. David Stansbery, Ohio State University, pers. comm. 1985). Hartfield (1988) did not find the species in the Tangipahoa River during his survey. Hurd (1974) doubted the occurrence of this species in the Coosa River based upon the single lot available in museums. The species has not been reported from the Coosa or Alabama Rivers in over 20 years (Hurd 1974, Hartfield 1988).

The inflated heelsplitter has an oval, compressed to moderately inflated, thin shell. The valves may gape anteriorly, the umbos are low, and there is a prominent posterior wing that may extend anterior to the beaks in young individuals. The shell is brown to black and may have green rays in young individuals. The umbonal cavity is very shallow and the nacre is pink to purple. Shell length reaches 140 millimeters (5½ inches) in adults (Stern 1976). It is most similar to the pink papershell (*Potamilus ohioensis*), yet is easily distinguished by shell morphology (Hartfield 1988). The shell and teeth of the inflated heelsplitter are more delicate, and the shell is darker and has a pointed posterior, whereas the pink papershell has a rounded posterior. The inflated heelsplitter appears more inflated due to a more developed and rounded posterior ridge. The posterior wing of the inflated heelsplitter is more pronounced and abruptly rounded over the dorsum. The pink papershell may lack much of a wing, and when pronounced, it may be

only slightly rounded and extend scarcely above the dorsum (Hartfield 1988). Lending further taxonomic strength to this species distinction is the occurrence of the pink papershell in lakes and sloughs, while the inflated heelsplitter has not been found in this habitat.

The preferred habitat of this species is soft, stable substrates in slow to moderate currents (Stern 1976). It has been found in sand, mud, silt and sandy-gravel, but not in large gravel or armored gravel (Hartfield 1988). It is usually collected on the protected side of bars and may occur in depths over 20 feet. The occurrence of this species in silt may not indicate that the life cycle can be successful in that substrate (Hartfield 1988). Adult mussels may survive limited amounts of silt where juveniles would suffocate. The occurrence of this species in silt may be because it was established prior to deposition of the silt.

The inflated heelsplitter, *Potamilus inflatus*, was listed as a category 2 candidate (a taxon for which data in the Service's possession indicate listing is possibly appropriate) in the notice of review published in the **Federal Register** on May 22, 1984 (49 FR 21664) and January 6, 1989 (54 FR 554).

Summary of Factors Affecting the Species

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 set forth the procedures for adding species to the Federal lists. 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 inflated heelsplitter (*Potamilus inflatus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The inflated heelsplitter historically occurred in the Amite and Tangipahoa Rivers, Louisiana; the Pearl River, Mississippi; and the Tombigbee, Black Warrior, Alabama, and Coosa Rivers, Alabama (Hurd 1974, Stern 1976, Hartfield 1988, 1989). It is currently known from only the Amite, Tombigbee and Black Warriors Rivers. Only one specimen has been collected from the Tangipahoa River, and in a recent survey by Hartfield (1988) no additional specimens were found. Hartfield found the upper Tangipahoa River to be much smaller than areas where this species occurs in other rivers. The stretch of the Tangipahoa River where the one

specimen was collected has been severely eroded in recent years, presumably by gravel mining (Hartfield 1988).

The inflated heelsplitter has been reported from two areas on the Pearl River, Mississippi. One site was in the lower Pearl downstream of Bogalusa, Louisiana (Williams pers. comm. 1988) and the other site was near Jackson, Mississippi (Frierson 1911). The exact collecting site is unknown for both of these records. The Pearl River near Jackson has been impacted by pollution, channelization, and flood control levees and by an impoundment for recreation and a municipal water supply. The lower Pearl River near Bogalusa has been impacted by channel erosion, habitat modification for navigation, and industrial and urban pollution (Hartfield 1988). Based upon the scarcity of records from the Coosa River, Hurd (1974) doubted the historic occurrence of this species in that system. It has not been reported from that system since the construction of impoundments for flood control and hydropower.

The type specimen was reported from the Alabama River by Lea (1831) and has been reported from this same river by others (Conrad 1834, Simpson 1914). However, it has not been collected from the Alabama River in many years, presumably due to the impoundment of that system for navigation, flood control, and hydropower (Hartfield 1989).

The only known site for this species in the Black Warrior River is below Warrior Dam near Eutaw, Alabama. A single specimen was collected by Grace in the mid-1970's (Williams, pers. comm. 1985). A survey by Service divers in 1989 found two fresh dead shells but no live individuals. The species undoubtedly continues to survive in the Black Warrior River below Warrior Dam. The remainder of the Black Warrior River has been impacted by impoundment for navigation sedimentation from surface mining.

The species continues to survive in the Tombigbee River in at least two localities, Gainesville Bendway and downstream of Jackson Dam. Most of the Tombigbee River was modified by construction of the Tennessee-Tombigbee Waterway. This resulted in the loss of riverine habitat by impoundment, channelization, and flow diversion. Habitat that was originally believed would continue to support mussel populations has been destroyed by heavy accumulations of sediment. The only known population of the inflated heelsplitter in the Waterway is below Gainesville Spillway where the normal river flow, with the exception of

navigation lockages, is released from this impoundment (Paul Hartfield, Mississippi Department of Wildlife Conservation, pers. comm. 1989). This has maintained a relatively clean and stable habitat suitable to this species.

The only other known population in the Tombigbee River occurs downstream of Jackson Dam. In this stretch, the species has been collected by Service and Mississippi Department of Wildlife Conservation biologists at four sites over a 12-river-mile area. Below the lowermost of these collection sites, no mussels were found by surveys in 1985 and 1986 by Service and Department biologists, possibly due to impacts from industrial effluents. The entire Tombigbee River has been modified for navigation by impoundment and channelization, and frequent dredging is required to maintain the navigation channel. Navigation dredging threatens this population by the deposition of spoil on bars along the sides of the river channel (Hartfield 1988). This material washes onto mussel habitat below the bars and may suffocate mussels and make conditions unfavorable for recruitment.

This species continues to exist in the Amite River with major threats being gravel mining and proposed channel modification for flood control. Hartfield (1989) concluded that 30 percent of the range of this species in the Amite River had been lost since 1976, primarily due to gravel mining. Without protection, this loss is expected to continue with the intensive gravel mining and resulting headcutting that is ongoing. The Corps of Engineers and Louisiana Department of Transportation and Development are studying methods of flood control on the Amite River. The proposed Darlington Reservoir would be constructed upstream of existing inflated heelsplitter habitat, and the actual impoundment of the stream may not impact this population of the species. The impact of this reservoir will likely be determined by the type and method of water releases incorporated. A deep water release would result in colder water temperatures, which may interrupt the life cycle of this mussel. The control of water flows, especially during low water levels, could strand mussels on dry bars and may reduce the capacity of the river to flush sediments from mussel habitat. An alternative flood control measure under consideration is the widening and channelization of the Amite River. This potential action would likely eliminate the inflated heelsplitter from the Amite River, leaving the only population in the Tombigbee and Black Warrior system.

B. Overutilization for commercial, recreational, scientific, or educational purposes. The species is not of commercial value at this time and any collecting is likely to be for scientific purposes. Over collection is not considered a threat.

C. Disease or predation. Diseases are not known for mussels, although unexplained dieoffs have occurred. Predation may exist to a limited extent when muskrats and raccoons prey on mussels. This would have a minimal effect since this species seems to prefer deeper water.

D. The inadequacy of existing regulatory mechanisms. Existing laws are inadequate to protect this species. It is not recognized by Alabama or Louisiana as needing any special protection, although both States require a scientific collector's permit. Collection, however, is likely to go undetected due to the limited enforcement personnel available and higher priority demands on their time. The species is not given any special consideration under other environmental laws when project impacts are reviewed.

E. Other natural or manmade factors affecting its continued existence. The known populations are isolated from each other and apparently are limited in extent. This could result in low genetic variation and make these populations more susceptible to environmental disturbance due to loss of adaptability.

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 propose this rule. Based on this evaluation, the preferred action is to list the inflated heelsplitter as threatened. Threatened status was chosen because the species still exists in three rivers, and the range within two of these rivers consists of reproducing populations that are widely distributed and not subject to single event impacts.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for this species due to the lack of benefit from such designation. All Federal and State agencies likely to be involved have been notified of the location and importance of protecting this species' habitat. No additional benefits would accrue from a critical habitat designation that would not accrue from the listing. Precise

locality data are available to appropriate agencies through the Service office described in the ADDRESSES section. Protection of this species' habitat will be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for the inflated heelsplitter.

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 prohibitions 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)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species, or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, 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 such a 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.

Federal involvement is expected to include the Environmental Protection Agency in consideration of the Clean Water Act, pesticide registration, and waste management actions. The Corps of Engineers will include this species in project planning and operation and during the permit review process. The Federal Highway Administration will consider impacts of bridge and road

construction at points where known habitat is crossed. Continuing urban development within the drainage basins may involve the Farmers Home Administration and their loan programs.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), 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 threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. 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. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical

habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Complex Field Supervisor (see ADDRESSES section).

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

- Clarke, A.H. 1986. *Potamilus Rafinesque* (1818) versus *Proptera Rafinesque* (1819) (Unionidae). Malacology Data Net. pp. 58-65.
- Conrad, T.A. 1834. A synopsis of the American naiades. Philadelphia, PA. pp. 67-73.
- Frierson, L.S. 1911. A comparison of the Unionidae of the Pearl and Sabine Rivers. *Nautilus* 24:134-136.
- Hartfield, P. 1988. Status survey for the Alabama heelsplitter mussel, *Potamilus inflatus* (Lea, 1831). A report to the U.S. Fish and Wildlife Service. 27 pp. + Appendix.
- Hartfield, P. 1989. Mussel survey of the Amite River, Louisiana. A report to Espy Huston and Associates, Inc., Austin, TX. 16 pp.
- Hurd, J.C. 1974. Systematics and zoogeography of the unionacean mollusks of the Coosa River drainage of Alabama, Georgia, and Tennessee. Ph.D. Dissertation, University of Michigan, Ann Arbor. 240 pp.

Lea, I. 1831. Observations on naiades and descriptions of new species. *TAPS* V.4: pp. 99-100.

Morrison, J.P.E. 1969. The earliest names for North American naiades. *Annu. Rep. Am. Malacol. Un.* pp. 22-24.

Simpson, C.T. 1914. A descriptive catalogue of the naiades, or pearly freshwater mussels. Published by Bryant Walker, Detroit. 1540 pp.

Stern, E.M. 1976. The freshwater mussels (Unionidae) of the Lake Maurepas-Pontchartrain-Borgne drainage system, Louisiana and Mississippi. Ph.D. Dissertation, Louisiana State University, Baton Rouge, LA. 206 pp.

Turgeon, D.D., A.E. Bogan, E.V. Coan, W.K. Emerson, W.G. Lyons, W.L. Pratt, C.F.E. Roper, A. Scheltema, F.G. Thompson, and J.D. Williams. 1988. Common and scientific names of aquatic invertebrates from the United States and Canada: mollusks. *Amer. Fisheries Soc.* p. 32.

Valentine, B.D., and D.H. Stansbery. 1971. An introduction to the naiades of the Lake Texoma region, Oklahoma, with notes on the Red River fauna (Mollusca, Unionidae). *Sterkiana*. pp. 1-40.

Author

The primary author of this proposed rule is James H. Stewart (see ADDRESSES section).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

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

2. It is proposed to amend § 17.11(h) for animals 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:.....							
Heelsplitter, inflated (= Alabama)	<i>Potamilus inflatus</i>	U.S.A. (AL, LA, MS) ..	NA	T	NA.....	NA	

Dated: October 3, 1989.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 89-25369 Filed 10-26-89; 8:45 am]

BILLING CODE 4310-55-M